9/13/60

Supplement to Memorandum No. 80 (1960)

Subject: Study No. 37(L) - Claims Against Public Officers and Employees.

The attached letter was received from the Office of the County Counsel, Los Angeles.

Respectfully submitted,

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September 6, 1960

California Law Revision Commission
School of Law
Stanford University
California

Re: Recommendation and Proposed Legislation Relating to the Presentation of Claims against Public Officers and Employees

Gentlemen:

The proposed recommendation of the California Law Revision Commission that the statutory provisions requiring the filing of claims with public officers and employees prior to suit be repealed comes as a great shock to those charged with the responsibility of defending actions brought against such public officers and employees. With the increasing size and complexity of governmental agencies and the corresponding increase in the responsibilities placed upon their officers and employees, every effort should be made to protect the servants of the government from unmeritorious or vexatious litigation rather than to facilitate their harassment or subject them to liability in cases which can be adequately defended only if prompt investigation is made. The duties and responsibilities of public officers and employees are such as to necessitate that they and their attorneys be advised promptly of any contemplated litigation in order that an adequate defense can be established. The factors that motivated the enactment of the statutory provisions requiring the filing of claims with public officers and their governing bodies are even more compelling today than when these provisions were first enacted.

It should be noted that the claims provisions now found in Secions 800-802 of the Government Code were originally enacted as Chapter 1168, Statutes of 1931 which was a companion measure with Chapter 1167 pertaining to the filing of claims against counties, municipalities and school districts. In referring to these two acts the court stated in Yonker vs. City of San Gabriel 23 Cal. App. 2d. 556 at page 559:

> "A number of acts have been passed to which we will now refer and which we think must all be read together and so construed the liability of a city or its agents must be determined and the procedure therein set forth must be followed."

and at page 560:

> "These two acts as read together, passed at the same time, approved on the same day and effective on the same day both provide for the filing of verified claimes stating the matters therein contained of which we have just made mention."

The necessities for the presentation of a claim with a public officer are just as cogent as the same requirements with respect to the public agency itself. Normally where a public officer is sued the defense of of the action becomes the responsibility of the public agency. See Sections 2000, 2001, and 2002 of the Government Code and the cost of any judgment against the officer may directly or indirectly become a burden upon the public agency itself, either through self insurance, the cost of insurance premiums, or the payment of increased compensation to cover the risk involved.

Certain of the more compelling reasons supporting the claims requirements are set forth in Huffaker vs. Decker 77 Cal. App 2nd. 383 at page 388:

> "The underlying reason for this condition to the maintenance of an action against the state or a a public agency is to protect the public from the cost and expense of needless litigation. It is stated in the early case of McCann vs. Sierra County, 7 Cal. 121: 'We think the intention of the of the Legislature was to prevent the revenue of the county from being consumed in litigation, by providing that an opportunity of amicable adjustment should be first afforded to the county, before she should be charged with the costs of a suit.' In addition, the authorities of the public body are thereby afforded the opportunity to discover witnesses promptly so as to ascertain the facts while their recollections are fresh. Aside from the fact that the public is interested

in saving its officers and employees from the harassment of vexatious litigation, it is directly and peculiarly concerned in any action against its employees in suits against them for damages occasioned through their negligence while acting as such employees and within the scope of their employment. This is so because Section 2001 of the Government Code casts the duty upon the attorney for the municipality to act as counsel in defense of such action against the employee and the fees and expenses incurred therein are a lawful charge against the municipality. Furthermore, Section 1956 authorizes a municipality to insure its employees against the liability for such negligence and the premium for such insurance is therein declared to be a proper charge against the treasury of the municipality. It is thus seen that the city has a financial liability in any action brought against its employee under the above stated conditions, though perhaps the liability is not usually as great as it is where the city is sued. In either situation the difference in the liability is merely a matter of degree. The city is concerned with the expenditures of its funds regardless as to whether those expenditures are great or small.

"It should be noted that the statute does not deprive the injured person of his cause of action against the employee. That remains as it was before the statute was enacted. He is not denied due process. (Young v. County of Ventura, 39 Cal. App. 2nd. 732.) The statute merely places upon him a reasonable procedural requirement to the maintenance of his action."

In People vs. Standard Accident Ins. Co., 42 Cal. App. 2nd 409, in holding constitutional a statute authorizing the purchase of public liability insurance covering public employees, the court stated at page 413:

"It may well be argued that any decrease in the potential liability of an official will increase the willingness of competent people to assume the risk of office and an expenditure to that end is for a public purpose."

In the dissenting opinion in Stewart v. McCollister, 37 Cal. 2nd 203, it is stated at page 212:

> "It is the fact of public employment, with its relatively low compensation, and the interest of the public therein, which has led the legislature to extend the safeguards (or what have heretofore been the safeguards) of Section 1981 to persons so employed."

In addition to the compelling reasons given by the courts for the enactment of claims statutes, there are others that are just as important. As has been noted, the act providing for the filing of claims against public officers was a companion measure to the one requiring the filing of a claim against a public agency for injuries or damages caused by a dangerous or defective condition of public property. Because of geographical conditions, it is obvious that a public agency cannot keep constant supervision over all of the property under its jurisdiction. Consequently, both in imposing liability upon certain public agencies for the failure to remedy a dangerous or defective condition (Section 53051 Government Code) and in limiting the liability of public officers for such failure (Section 1953 Government Code) the legislature imposed the requirement that the officer or employee authorized to remedy the condition have knowledge or notice thereof. The same geographical conditions are frequently responsible for the fact that the first notice that a public agency or its officers have that an accident has occurred that may have been caused by a dangerous or defective condition of public property is the filing of a claim. Even where a claim is filed within the ninety or one hundred day period, conditions may have changed or witnesses may have become available. The defense of such proceedings is much more difficult if a prompt investigation is not made. For instance in the case of a street defect, the condition causing the injury, may be entitely repaired before there is any knowledge of a pending action. Great care must be taken to protect both public agencies and public officers against claims which are entirely fraudulent. It is not unknown for a party to suffer an accident in his own home and then contend it was caused by a defect in a public street. The later the opportunity for investigation the greater the

chance of such fraud being successful.

In many other situations, the lack of opportunity for timely investigation may be highly predjudicial. Compare, for instance, the situation presented in Olivas v. Weiner, 127 Cal. App. 2nd 597, where a doctor formerly employed at the Los Angeles County General Hospital was sued for malpractice alleged to have occurred at the time of the plaintiff's birth some twenty-one years before. The claims provisions are particularly necessary in such malpractice actions arising out of services rendered in public hospitals because of the assembly-line type of treatment and the rapid turnover in the employees and attending staff. Medical malpractice actions are sufficiently speculative from both the plaintiff and defendant point of view without the additional hazard of being faced with unavailable witnesses or of witnesses who have no independent recollection of the patient or his difficulties other than a few sketchy notes in the hospital chart. A timely claim, thus, has a very desirable benefit of enabling defense counsel to obtain witness statements while the witness still has some independent recollection of the events out of which the cause of action arose.

Our legal procedures are presently undergoing an evolutionary process tending to eliminate the elements of surprise and chance from a law suit and to expedite the settlement of disputes. Recent legislation broadening discovery procedures and the amendment of court rules relative to pre-trial conferences are indication of this tendency. Claims statutes are designed to serve much the same ends. The opportunity for a timely investigation helps to equalize the position of the potential defendant with that of the claimant in so far as the development of evidence is concerned and thereby assists in eliminating the element of surprise. Also as pointed out in the cases, the filing of a claim facilitates the settlement of legitimate claims. This is particularly true where the claim is payable out of public funds or is covered by insurance. The repeal of the claims statutes would constitute a reversal of this evolutionary tendency without corresponding benefit except for those who through lack of diligence fail to pursue their remedy.

It would also appear that the criticism leveled at the claims procedures is mostly unfounded in actual practice. Very few meritorious actions are defeated by the failure to comply with the claims statutes. Normally where there is liability upon a public agency such as for injuries caused by the negligent operation of a motor vehicle (17002 Vehicle Code) or caused by a dangerous or defective condition of public property (Section 53051 Government Code), the claimant will proceed against the public agency instead of the negligent employee, both because he knows that any judgment will be satisfied, but also because he knows a jury will be more likely to hold a public agency liable than it would a poor, underpaid public employee. It is also true that legitmate and meritorious claims are normally handled by attorneys with enough experience and ability to be on notice that in a case where a public agency or public employee is involved there may be procedural requirements which must be met. Very rarely have we experienced the defeat of a legitimate action by reason of the failure to file a timely claim, and in the few cases where this has happened, it has been caused solely by the neglect and lack of diligence on the part of the claimant or his attorney. The claims procedure does have on occasion a beneficial function in screening out purely vexatious claims filed by persons with a litigious complex. See for instance:

Parker v. County of Los Angeles, 62 Cal. App. 2nd 130

Gould v. Executive Power of the State, 112 Cal. App. 2nd 890

It has been suggested that is unfair to discriminate in favor or public officers by providing this special procedure safeguard, which is not available to every defendant. This argument overlooks the great exposure to risk involved in public employment. For instance, the operator of an emergency vehicle is frequently required in the performance of his duties to exceed speed limits and disregard many of the rules of the road. (See Section 21055 Vehicle Code) Firemen in the performance of their duties may be required to take drastic emergency action, involving the intentional destruction of valuable property (Surocco v. Geary, 3 Cal. 70). Health and Agriculture officers may be required to make vigorous efforts to

suppress disease or pests, (Lertora v. Riley, 6 Cal. 2nd 171, and Wolfsen v. Wheeler, 130 Cal. App. 475). Police officers are required to maintain peace and order even though there is occasionally the risk of arresting the wrong party (Coverstone v. Davies, 38 Cal. 2nd 315). Law enforcement personnel must prosecute diligently without fear of personal liability (White v. Towers, 37 Cal. 2nd 727 and Hardy v. Vial, 48 Cal. 2nd 577). Highway officials on the one hand are required to maintain highways free of defects and on the other hand they may be limited as to the funds, personnel, and equipment with which to do the work, (Section 1953 Government Code, Ham v. County of Los Angeles 46 Cal. App. 148).

There are, of course, many other examples where public officers are required to exercise discretion in the performance of their duties and where it is vital that they be protected from personal liability. While in many of these situations protection is afforded by a blanket immunity, there are other cases where the application of such immunity is in doubt. (See: Collenburg v. County of Los Angeles, 150 Cal. App. 2nd 195).

Public officers are also subject to vindictive actions filed solely for purposes of harassment to a much greater degree than are private parties. It is difficult in enforcing laws or in exercising police power functions to please everyone, and retaliatory lawsuits are frequently filed just for spite.

The statutory provisions for the filing of claims, representation at public expense, and the provisions for the purchase of insurance at public expense, are simply a recognition that public employment involves substantial risks.

It has also been suggested that the claims provisions constitute "traps for the unwary." In actual practice this is seldom true. The burden of ascertaining the time limits within which to file a claim is no more onerous than that of determining the applicable statute of limitations, the giving of notice to an insurance carrier within the time limits set forth in the policy, the filing of reports with the Department of Motor Vehicles within 15 days as is required by Section 16000 of the Vehicle Code, or the filing of a notice of injury with an employer within

30 days under the Workmen's Compensation Act.

While there may be room for confusion as to which claims section or time limits apply where there are conflicting statutory, charter or ordinance requirements, this objection can be met by appropriate amendment of the Government Code as has been done with respect to the filing of claims with public agencies, rather than by outright repeal of the claims sections.

It has also been suggested that an injured party may be deprived of a meritorious action where he is unaware that the party causing his injury was a public employee acting within the course and scope of his employment. This fear is again unrealistic in practice as most actions against public officers arise out of situations where there is no room for doubt as to the public employment. If a party is injured by a fire truck, arrested by a police officer in uniform, operated upon in a public hospital, or injured by a defective condition in a public highway, he is immediately on notice that public officers or public employees are involved. Even in the case of a public employee driving his private automobile on public business, a reasonable investigation would disclose the employer or insurance carrier. (Section 16005 Vehicle Code). It is a normal and customary procedure in any accident case to investigate the fact of employment and the insurance coverage. Moreover, if the fact of public employment is not known and could not reasonably be discovered, the courts would undoubtedly imply an exception to the claims requirement as was done in Stewart v. McCollister, 37 Cal. 2nd 203). In order to cover this contingency, however, it might be advisable to spell out in some detail certain exceptions to the time limits as has been done with respect to claims against public agencies by Section 716 of the Government Code.

While the retention of the claims requirements is vital, there is, of course, room for improvement. For instance, we would recommend that the claim requirements be extended to include intentional torts as well as claims based upon negligence or the failure to remedy a dangerous or defective condition. Frequently there is little difference between the so called

intentional torts such as false arrest, malicious prosecution or trespass and the negligent torts. In either case, the opportunity for a timely investigation is imperative. It should be noted that most charter and ordinance claims provisions, include all actions based upon a wrongful act or omission to act. Therefore, an amendment of the state law would assist in establishing uniformity.

Again for purposes of uniformity, we would suggest that either the hundred day time limit specified in Section 715 of the Government Code be changed back to ninety days or that the ninety day provision in Section 801 of the Government Code be changed to one hundred days. The ninety day period is easier to compute and is a much more usual and customary time period than the unique one hundred day period found in Section 715. It would also seem necessary to retain the verification requirement as there may be some question as to whether Section 72 of the Penal Code would apply to the filing of a false or fraudulent claim with a public employee as distinguished from a public officer.

In accordance with these suggestions, we are attaching hereto proposed legislation, which we believe would result in a uniform claims procedure. Under this legislation, the requirement that timely notice be given is preserved, However, necessary safeguards such as are found in Section 716 have been added.

Very truly yours,

HAROLD W. KENNEDY
County Counsel

By
Lloyd S. Davis
Deputy County Counsel

LSD/mm

An Act to Amend Section 715 of the Government Code Relating to Claims Against Local Public Entities.

The People of the State of California do enact as follows:

Section 1. Section 715 of the Government Code is amended to read as follows:

715 A claim relating to a cause of action for death or for physical injury to the person or to personal property or growing crops shall be presented as provided in Section 715 not later than the ninetieth ~~one-hundredth~~ day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Section 714 not later than one year after the accrual of the cause of action.

For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action accrued within the meaning of the applicable statute of limitations.

An Act to Repeal Sections 800, 801, 802, and 803 of the Government Code and to add Sections 800, 801, 802 and 803 to Chapter 3 of Division 3.5 Title 1 of the Government Code, relating to claims against public officers and public employees.

The People of the State of California do enact as follows:

Section 1. Sections 800, 801, 802 and 803 of the Government Code are hereby repealed.

Section 2. Sections 800, 801, 802 and 803 are added to Chapter 3 of Division 3.5 Title 1 of the Government Code, to read:

800 As used in this chapter, Public officer includes any elected or appointed officer, or any deputy, assistant or employee of the State, county, city, city and county, municipal corporation, political subdivision, public district or other public agency of the State.

801 No cause of action for injury or damages may be maintained against a public officer or employee based upon a tortious act or omission to act occurring during the course and scope of his public employment unless a verified claim has been presented to and filed with the officer or employee and the clerk or secretary of the legislative body of the employing public agency within ninety days after the cause of action has accrued. In the case of a state officer or employee, the claim shall be filed with the state officer or employee and the Governor.

802 The claim shall be presented by the claimant or by a person acting on his behalf and shall show:

(a) The name and post office address of the claimant;

(b) The post office address to which the person presenting the claim desires notices to be sent;

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

(d) A general description of the indebteness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; and

(e) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.

The claim shall be verified or signed under penalty of perjury by the claimant or by some person on his behalf.

803 The superior court of the county in which the cause of action could be maintained may grant leave to present a claim after the expiration of the ninety day period if the public officer or employee will not be unduly prejudiced thereby where:

(a) Claimant was a minor during all of such time; or

(b) Claimant was physically or mentally incapacitated during all of such time; or

(c) Claimant died before expiration of such time; or

(d) Claimant did not know and could not reasonably have known within such time that the injury or damage was caused by the wrongful act or omission to act on the part of a public officer or employee acting within the course and scope of his public employment.

Application for such leave must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within a reasonable time, not to exceed one year after the cause of action accrued. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof upon the public officer or employee and upon the clerk or secretary of the governing body of the employing public agency not less than 10 days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at such hearing.

Section 3. The provisions of this act in so far as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.