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(37) Memorandum No. 4(1961) 1/5/61

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

When the Commission approved the recommendation and statute relating to claims against public officers and employees, the staff was directed to prepare a draft statute to provide a uniform claims procedure for such claims. Attached (Exhibit I - blue pages) is such a statute.

The principal arguments made in defense of the claims statutes asserted that the filing of a claim against a negligent public employee: (1) Provides an opportunity for early investigation, (2) permits prompt repair of dangerous and defective conditions, (3) and permits prompt settlement by the agency without litigation in those cases where the agency assumes the employee's liability. These arguments allege that a public employee is distinguishable from a private employee in that public employees must supervise vast networks of roads and highways and they may be held liable for injuries caused by dangerous or defective conditions upon public property which they negligently failed to repair. The injury in this type of case is not immediately known to the employee, nor is the dangerous condition known immediately to the public agency. Therefore, notice should be provided for the reasons enumerated above.

These arguments are not applicable to torts arising out of other situations - such as malpractice, negligent operation of a motor vehicle or negligent supervision of students - in which the employee concerned is directly involved. Therefore, the staff statute (Exhibit I) has been drafted to require the filing of a claim only when the injury arises out of a dangerous and defective condition of public property.

Generally, the statute follows the scheme of the entities' claim statute. However, claims against State employees have been separated from claims against local public employees. The superior court is granted power to extend the time within which a claim may be filed without regard to the question of prejudice to the employee. The staff believes that inasmuch as the employee's liability is personal, not vicarious, relief should not be denied a careful plaintiff merely because there has been some delay which has prejudiced the negligent defendant. Another ground for extension has been added -- if the claimant did not know or have reason to know that the person against whom the claim is filed was a public employee acting in the course of his employment.

There are other modifications, and these are apparent from a reading of the statute.

Exhibit II (green pages) attached is a draft statute relating to presentation of claims against public officers and employees prepared by the Los Angeles County Counsel's office.

Exhibit III (yellow pages) attached is the text of the statement of the Department of Public Works regarding the Commission's recommendation on presentation of claims against public officers and employees. This statement was made to the Assembly Interim Committee on Judiciary - Civil in December 1960.

Respectfully submitted

Joseph B. Harvey
Assistant Executive Secretary

EXHIBIT I

STAFF DRAFT

An act to repeal Chapter 3 (commencing with Section 800) of, and to add Chapter 3 (commencing with Section 800) to, Division 3.5 of Title 1 of the Government Code, relating to claims against public officers and employees.

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

SECTION 1. Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 3 (commencing with Section 800) is added to Division 3.5 of Title 1 of the Government Code, to read:

CHAPTER 3. PRESENTATION OF CLAIM AS PREREQUISITE TO SUIT AGAINST PUBLIC OFFICER OR EMPLOYEE

Article 1. General

800. As used in this chapter:

(a) "Local public entity" includes any county or city and any district, local authority, or other political subdivision of the State but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof.

(b) "Public employee" includes any public officer, deputy, assistant or employee.

(c) "Public property" includes public street, highway, bridge, building, park, grounds, works or property and any vehicle, implement or machinery, whether owned by the State or any local public entity or operated by or under the direction or authority or at the request of any public employee.

801. Except as otherwise provided in this chapter, a claim need not be presented as a prerequisite to the commencement of an action against a public employee to enforce his personal liability.

802. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity which requires the presentation of a claim as a prerequisite to the commencement of an action against a public employee to enforce his personal liability, is invalid.

803. A claim against a public employee presented in substantial compliance with any other claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of this chapter shall satisfy the requirements of this chapter if such compliance takes place before the repeal of such statute, charter or ordinance, or before July 1, 1964, whichever occurs first. Sections 812 and 822 are applicable to claims governed by this section.

Article 2. Presentation and Enforcement of Claims Against State Officers and Employees

810. No suit for money or damages may be maintained against any public employee of the State for death or for injury to person or property

resulting from the dangerous or defective condition of any public property alleged to be due to the negligence of such public employee occurring during the course of his service or employment unless within 100 days after the cause of action has accrued a claim for damages, specifying the name and address of the claimant, the date and place of the accident, and the extent of the injuries or damages received, is presented in writing to such public employee and to the Governor.

811. For the purpose of computing the time limit prescribed by this article, 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.

812. The superior court of any county in which the Attorney General has an office shall grant leave to present a claim against a public employee of the State after the expiration of the time specified in this article where no claim was presented during such time and where:

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

(b) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time;

(c) Claimant dies before the expiration of such time; or

(d) Claimant did not know or have reason to know within such time the identity of the person against whom the claim is made or that the injury or damage was caused by the wrongful act or omission to act of a public employee acting within the course of his service or 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 time for presentation has expired. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the public employee against whom the claim is made and upon the Attorney General not less than 10 days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in support thereof or in opposition thereto and any additional evidence received at such hearing.

Article 3. Presentation and Enforcement of Claims Against Officers and Employees of Local Public Entities

820. No suit for money or damages may be brought against any public employee of any local public entity for death or for injury to person or property resulting from the dangerous or defective condition of any public property alleged to be due to the negligence of such public employee occurring during the course of his service or employment until a written claim therefor, naming or describing the public employee, has been presented to the entity in conformity with and subject to the provisions of Sections 711 to 715, inclusive, of this code.

821. The clerk or secretary of the local public entity shall cause a copy of the claim to be delivered to each public employee named or described therein, and the claimant, on request of the clerk or secretary, shall supply sufficient copies for this purpose.

822. The superior court of the county in which the local public entity has its principal office shall grant leave to present a claim under this article after the time for presentation of such claim has expired where:

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

(b) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time;

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

(d) Claimant did not know or have reason to know within such time that the injury or damage was caused by a wrongful act or omission to act on the part of a public employee acting within the course of his service or 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 time for presentation has expired. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the public employee against whom the claim is made and upon the clerk or secretary or governing board of the local entity not less than 10 days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in support thereof or in opposition thereto and any additional evidence received at such hearing.

823. A claim against a local public entity presented in conformity with Chapter 2 (commencing with Section 700) of Division 3.5 of this

code shall be deemed a sufficient compliance with Section 820 if the public employee claimed to be negligent is named or described therein.

SEC. 3. This act applies only to claims relating to causes of action which accrue on or after its effective date. Any claim relating to a cause of action which accrued prior to the effective date of this act shall be governed by any procedural provisions applicable thereto immediately prior to the effective date of this act, notwithstanding the subsequent repeal of such provisions. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that was barred prior to the effective date of this act.

EXHIBIT II

LOS ANGELES COUNTY COUNSEL'S OFFICE DRAFT

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:

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 714 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 repealed.

Sec. 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 indebtedness, 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.

Sec. 3. The provisions of this act insofar 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.

EXHIBIT III

STATEMENT OF DEPARTMENT OF PUBLIC WORKS

REGARDING

CLAIMS AGAINST PUBLIC OFFICERS AND EMPLOYEES

TO

ASSEMBLY INTERIM COMMITTEE ON JUDICIARY - CIVIL

(December 1, 1960)

The Department of Public Works, with approximately 14,000 civil service employees in its Division of Highways, is deeply interested and vitally concerned with the duties and liabilities of its personnel. The Division of Highways maintains approximately 13,000 miles of State highways, many miles of which are substandard and deficient due to lack of sufficient funds for their modernization (Report of The Joint Interim Committee on Highway Problems, 1959). These highways must nevertheless be kept open to the traveling public under extreme conditions and varied circumstances, e.g., forest fires, snow storms, heavy rainfall, slides, high winds, construction, detours, etc. The maintenance of State highways includes not only the highways themselves, but trees, traffic signals, culverts, bridges, highway lighting, and warning and directional signs. The employees involved in this operation of keeping the highways open are undertaking duties which often expose

them and the traveling public to dangerous risks which could result in substantial tort liability.

Figures of the Joint Interim Committee on Highway Problems show 65 billion miles of vehicle travel on our State highways per year. This is expected to increase to 200 billion miles in 1980. With this volume of use, it can readily be seen that there is no public or private property comparable to public streets and highways. Maintenance crews, unlike their counterpart in private industry, cannot close transcontinental and interstate highways when abnormal conditions occur. Private buildings and areas can be closed to the public in time of repair or construction, but not so with public property. In short, the exposure of such public employees to tort liability is far greater than that of private persons.

Because of these facts, the Department is very concerned with the proposed recommendation of the California Law Revision Commission that the claim-filing provisions applicable to public officers and employees be repealed. It is the general policy of the law to limit liability of public officers and employees and to require claims as a condition precedent to filing suit. Without such limitations and conditions, responsible persons would hesitate to accept such offices and jobs with a danger of personal liability arising from remote conditions over which they often have little or no control.

The general good of the public justifies the regulations which have been enacted for the protection of such officers and employees. These regulations, such as the filing of a claim, should not be lightly set aside. The reasons for their original enactment are even more compelling today. (See Ham v. County of Los Angeles, 46 Cal. App. 148, 164; Douglass v. City of Los Angeles, 5 Cal. 2d 123, 127; Osborne v. Imperial Irrigation District, 8 Cal. App. 2d 622, 623; and Shannon v. Fleishhacker, 117 Cal. App. 258, 263).

It is also important that a copy of such claims be filed with the public employer, as well as the officer or employee. The reasons are clearly defined in Huffaker v. Decker, 77 Cal. App. 2d 383, at pages 388-389:

> " * * * 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 expenditure of its funds regardless as to whether those expenditures are great or small."

Substantially these same reasons were advanced in the earlier case of Jackson v. City of Santa Monica, 13 Cal. App. (2d) 376, involving a statute similar to Government Code Section 801, formerly Section 1981. The court said at page 385:

> " * * * The fact that claims against officers must also be filed with the city in cases arising out of the dangerous condition of streets means no more than that the city shall be notified of the claim against the officer, . . . it still was the intention, as we construe the various acts, that the city (or the state) should have notice of the claim against the officer, even though no demand was being made against the city (or the state). There are reasons why it should be so. It is the duty of city attorneys (and the attorney for the state) to defend suits on all claims against officers based upon their negligence, and cities have authority to insure their officers against liability therefor. It is unquestionably to the interest of cities that they be advised of damage claims against their officers. These reasons are sufficient for the requirement that cities receive the claims as well as the officers." (Emphasis added)

Although the Huffaker and Jackson cases deal with the liability of city employees, it should be observed that the principles involved apply with equal force to State officers and employees. Government Code Section 1956 authorizes the State to insure its officers against liability for negligence and for injuries resulting from dangerous or defective conditions of public property, and the premium for such insurance is a proper charge against the Treasury of the State. Government Code Section 2001 requires the attorney for the State to defend such suits against State officers, and the fees, costs and expenses involved are a lawful charge against the State. Obviously, then, the State is interested in all actions against its officers and employees and for this reason,

Government Code Section 801 requires a claim to be filed with the Governor as well as with the officer or employee.

The rationale of the Huffaker and Jackson cases was approved by the Supreme Court in Veriddo v. Renaud, 35 Cal. (2d) 263, an action against a State employee for negligence. The Court stated at pages 264-265:

> "Division 4 of title 1 of the Government Code deals with 'Public Officers and Employees' and chapter 6 of division 4 treats of the 'Liability of Officers and Employees.' Study of the sections (1950-2002) which make up chapter 6, and of the prior statutes upon which such sections are based, clearly indicates the intention of the Legislature to (1) define certain conditions of, and to prescribe procedural requirements for enforcing, the liability of public officers and employes for acts performed or damages arising in connection with performance of the duties of their office or employment (see Sections 1953, 1953.5, 1954, 1955, 1981); (2) permit the public agencies involved (the state, school districts, counties and municipalities) to provide liability insurance to officers and employes at agency expense (Sec. 1956); (3) specifically, to require the filing of a claim with the public officer or employe and with the public agency (in the case of a state employe the filing is to be with the employe and with the Governor) in the cases specified in section 1981, quoted hereinabove; and (4) provide for the defense at public expense of certain damage actions brought against specified public officers and employes (Sections 2000, 2001, 2002), including this action against the state employe who is defendant here (sub. (b) (1) of Sec. 2001)."

In addition, the reasons and necessity for filing claims against public officers and employees are substantially the same as the reasons and necessity for filing claims with public agencies when the claimant desires to hold the agency liable. In Abrahamson v. Ceres, 90 Cal. App. 2d 523, the court held that the principal purpose of the claim requirements of Government Code Section 801 (formerly Section 1981) is to

provide the public agency with full information concerning the rights asserted against its employee so that it may settle the claim without litigation if it is meritorious. Another reason advanced in Stewart v. McCollister, 37 Cal. 2d 203, is the opportunity for an early and effective investigation of the facts giving rise to the claim.

To repeal the claims procedure applicable to public officers and employees would, in effect, undo the previous work of the Legislature in enacting a uniform claims statute for all public agencies. There would be no need to comply with the new uniform claims statute for public agencies, as the claimant could proceed directly against the public officer or employee without filing a claim and thus affording no opportunity for early investigation or settlement without litigation. The public agency would suffer, as it normally stands behind its employees with insurance and must provide its employees with a defense at public expense. This result points to the conclusion that the claims procedure for suit against the agency and the employee should be substantially the same. One must be a counterpart of the other. In practice, the same insurance policy usually covers the agency as well as its employees and the defense is generally conducted by the same attorneys.

Aside from the protection afforded to public officers and employees, as well as the public employer, the requirement for filing such claims also operates to protect

the general public using the property by providing an opportunity to remedy the alleged dangerous or defective condition. In highway accident cases, for example, claims filed with maintenance employees are sometimes the first notice received of the condition and enable prompt repairs to be made to prevent similar accidents.

The Commission in its Recommendation made certain statements to support its conclusion, which appear to be inaccurate and in need of clarification.

First, the Commission failed to recognize the difference in the personal liability of a public employee and a private individual. As pointed out above, a public employee, and particularly an employee directly engaged in the construction or maintenance of highways, has by virtue of his duties a greater exposure to liability than do private individuals. This is undoubtedly one reason why the Legislature saw fit to enact a claims procedure for public officers and employees.

Second, the Commission stated that the claims procedure is ineffective because it provides no protection against "substantive liability" in cases where a claim is presented within the prescribed time. This is not the purpose of the claims procedure, and therefore is no reason to repeal such statutes. As noted above, the purpose is to afford an opportunity for early investigation, settlement without litigation, and prompt repair of dangerous or defective conditions. Claims statutes do not, nor are they

intended to, affect substantive liability.

Third, as a reason for the conclusion that the claims procedure is not necessary to give notice to the public employee, the Commission in Recommendation No. 2 stated that "Ordinarily the injury involved arises directly out of an act or omission of the public officer and employee and he is immediately aware of it.". The experience of the Department is directly to the contrary. Highway personnel are not, in cases of dangerous or defective highway conditions, usually aware of the injury or accident until such a claim is filed. The importance of and useful purpose served by such early notice cannot be overemphasized. The Department also disagrees with the Commission's statement on page 3 that "the public officer's liability is no greater than that of his counterpart in private employment.". As demonstrated above, certain public employees are exposed to a much greater hazard of potential liability because of their official duties. In fact, it is unfair and unrealistic to imply that a public officer or employee, particularly a highway construction or maintenance employee, even has a counterpart in private employment.

The last and perhaps most important reason against the repeal of Government Code Section 801 is recognized and succinctly stated in the Commission's own recommendation as follows:

" . . . the repeal of the personnel claims statutes will negate the protection given the public entity by the General Claims Statute enacted in 1959."

It was pointed out above that in order for the General Claims Statute to be useful and effective, it is necessary that there also be a claims statute applicable to the officers and employees of that entity. The basis for the liability and the facts giving rise to the claim are substantially the same (Huffaker v. Decker, supra).

The Department does suggest, however, that certain amendments be made to clarify Government Code Section 801 and have it accord as nearly as possible with the General Claims Statute enacted in 1959. These changes are:

(1) Inclusion of intentional torts: The same reason for a claims statute for negligent acts or dangerous or defective conditions applies to intentional torts. In fact, there is sometimes little difference between them, and in those situations the cause of action can be pleaded both as a negligent act and an intentional tort;

(2) Statement of Contents of Claim: The contents of the claim should be explicitly stated in the statute and should conform to the recently enacted General Claims Statute;

(3) Exception for Disabilities: Legal disabilities such as minority, and insanity, should be incorporated into the claims statute to prevent undue hardship and to bring about uniformity between the general claims statute and the Board of Control claim procedure.

The Los Angeles County Counsel's Office has prepared a draft of a bill which includes the above suggestions. The draft is included in APPENDIX "A" [Exhibit II of Memorandum No. 4(1961)]. The Department is in accord with these proposed amendments to the personnel claims statute and joins with the Los Angeles County Counsel's Office in recommending them to this Committee. It is believed that this is in agreement with the Law Revision Commission's thinking on this subject in its Recommendation and Study of January, 1959, relating to the Presentation of Claims Against Public Entities. In that Report, on page A-11, it is stated:

> "If it is determined that such provisions (Personnel Claims Statute) should remain in existence as to some or all entities, they should be amended to eliminate existing ambiguities and overlaps."

It is suggested that the following provision be added to the draft of the statute proposed by the Los Angeles County Counsel's Office:

> "Sec. 4. The disability provisions of this act apply only to causes of action heretofore or hereafter accruing that are not barred on the effective date of this act."

The necessity for this provision is recognized in the Commission's proposed draft of legislation in Section 4. Its purpose is to prevent the revival of barred or stale claims.