

Memorandum No. 15(1962)

Subject: Study No. 52 - Sovereign Immunity (Liability for Dangerous Conditions of Public Property)

The Commission has prepared and is distributing for comments a tentative recommendation relating to liability for dangerous conditions of public property. At the time the Commission approved the tentative recommendation it was suggested that consideration should be given to various special statutes that provide for immunity from liability for certain types of dangerous conditions of public property.

The staff believes that the Commission should devote its attention to the most acute problems in this field. Accordingly, we have examined the consultant's research study and selected for Commission consideration only those statutes that appear to be in need of revision and which can be considered and acted upon by the Commission with dispatch. For this reason, we recommend that no attempt be made to revise Civil Code Section 1714.5 (civil defense facilities). We suggest that you read pages 215-226 of the research study. If you think that the Commission should consider Civil Code Section 1714.5, we can consider it upon the basis of the consultant's research study.

Listed below are the statutes that the staff believes should be considered and acted upon by the Commission:

(1) Streets and Highways Code Section 941 provides in part:

941. . . . No public or private road shall become a county highway until and unless the board of supervisors, by appropriate resolution, has caused said road to be accepted into the county road system; nor shall any county be held liable for failure to maintain any road unless and until it has been accepted into the county road system by resolution of the board of supervisors. . . .

Should this section be revised to substitute "for a dangerous condition of" in place of "for failure to maintain"? This change would make it clear that immunity is complete until the road is accepted. Although the section provides immunity in terms of liability based on "failure to maintain," it does not by its terms provide immunity from liability for negligent creation of a condition, negligent failure to establish adequate safeguards against foreseeable danger resulting from use and other acts or omissions which would not ordinarily be deemed to involve a failure to maintain. See research study, pages 215-217.

(2) Streets and Highways Code Section 1806 provides:

1806. No public or private street or road shall become a city street or road until and unless the governing body, by resolution, has caused said street or road to be accepted into the city street system; nor shall any city be held liable for failure to maintain any road unless and until it has been accepted into the city street system by resolution of the governing body.

Section 1806 should be amended to conform to the amendment made to Section 941. See research study, pages 217-218.

(3) Sections 54000 to 54005 of the Government Code provide:

54000. Upon application to the Department of Public Works, a flood control district, county, or city, and subject to any conditions imposed by it, permission may be granted to any person, or riding club to enter, traverse, and use for horseback riding, any trail, right of way, easement, river, flood control channel, or wash, owned or controlled by the State, a city, or county.

54001. A fee shall not be charged for the use of such bridle paths.

54002. The State, city, or county, is not liable for damages caused by accidents on the bridle trails.

54003. An equestrian group may be granted the right to erect and maintain suitable trail markers for the convenience and guidance of horseback riders but a structure shall not be erected on state-owned property without the approval of the Division of State Lands.

54004. It is unlawful for any person to remove, deface, or destroy the markers, or to erect fences, barbed wire, or other obstructions on the bridle trails.

The consultant notes that Section 54002 fails to list flood control districts although Section 54000 authorizes flood control districts to permit use of their property for horseback riding. He recommends that flood control districts be listed in Section 54002. See research study, pages 219-221.

The consultant also notes that Section 54002 confers what he believes is too broad an immunity. He recommends in substance that the immunity be limited to "death or injury to horseback riders resulting from dangerous conditions of the bridle trails."

If the consultant's recommendations are adopted, the section might be revised to read:

54002. The State, flood control district, city [,] or county [,] is not liable for [damages-caused-by-accidents-on] death or injury to horseback riders or their horses resulting from dangerous conditions of the bridle trails.

(4) Sections 943 and 954 of the Streets and Highways Code provide in part:

943. Such board [of supervisors] may . . . (d) Construct and maintain stock trails approximately paralleling any county highway, retain and maintain for stock trails the right of way of any county highway which is superseded by relocation. The county shall not be liable in any way for any damages resulting from the use of such stock trail by any vehicle. . . .

954. After a stock trail has been established or designated as provided in this chapter, the county shall not be liable in any way for any damages resulting from the use of such stock trail by any vehicle. . . .

With respect to these provisions the research consultant states:

These two provisions were enacted as companion measures in the 1949 General Session of the legislature. ⁶⁴³ Neither has been judicially construed, but it seems evident that the latter provision, referring to any stock trails established as provided in "this chapter" (i.e., Chapter 2 of Division 2 of the Code), effectively renders the former provision superfluous.

In terms, the immunity here granted, although confined to injuries resulting from use of a stock trail by any vehicle, is absolute so far as it extends. Undoubtedly, it would constitute a complete defense against county liability resulting from a defective condition of a stock trail which causes injury to a motorist thereon. However, it is less certain that it would be deemed to effectively repeal by implication various other potential bases of county liability, such as the liability established by section 17001 of the Vehicle Code, in appropriate cases (e.g., negligent use of stock trail by county truck operator in course of duties, with resultant injury to farmer and livestock being driven by him along the trail). In view of the probable intent to exonerate the county from the duty to maintain stock trails in fit condition for operation of motor vehicles, it is likely that these provisions may be construed as simply a legislative declaration that one who drives a vehicle on a stock trail does so with full assumption of the risk of injury to himself or vehicle from the physical condition of the trail. Such an interpretation would leave in existence any available grounds of county liability resulting from the use of a county vehicle on the stock trail, or from any negligent or intentional torts committed by county employees upon persons operating vehicles on such a stock trail (other than torts consisting of failure to adequately maintain, or negligent creation or failure to warn of defects or dangerous conditions, on such stock trail). Since this interpretation is not consistent with the literal meaning of the two sections, an appropriate amendment would seem to be desirable to clarify the legislative intent.

The appropriate amendment would (1) delete from Section 943 the language "The county shall not be liable in any way for any damages resulting from the use of stock trail by any vehicle " and (2) revise the language of Section 954 to state: "After a stock trail has been established or designated as provided in this chapter, the county ~~[shall]~~ is not ~~[be]~~ liable ~~[in-any-way-for-damages-resulting-from-the-use-of-such-stock-trail-by-any-vehicle]~~ for death or injury to a vehicle owner or operator, or passenger, or for damage to a vehicle, resulting from a dangerous condition of the stock trail."

Respectfully submitted,

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