

5/18/62

Second Supplement to Memorandum No. 23(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Workmen's Compensation for Persons Assisting Peace Officers)

Attached (blue sheets) are two copies of a tentative recommendation extending workmen's compensation benefits to persons assisting law enforcement officers in active law enforcement activities. Please mark your suggested changes in the text of the recommendation on one copy and turn it in to the staff at the May meeting.

The Commission's action at the April meeting was to recommend coverage under the Workmen's Compensation Act for persons impressed into active law enforcement service under Penal Code Section 150. The recommendation and statute go a little further and also extend coverage to persons who perform such services at the express or implied request of a peace officer. The matter of the compensation rate (covered in Section 2 of the proposed act) was not specifically considered at the April meeting.

The extension of the act to cover persons other than those mentioned in Penal Code Section 150 was made because few persons know of the precise terms of that statute and, hence, cannot tell when asked to assist a peace officer whether they are required to or not. Many people would assume that they are required to assist police officers whenever requested to do so, and others would feel it their civic duty whether required to by law or not. These people, it would seem, should also be covered by the Workmen's Compensation Act.

Monterey County v. I.A.C., 199 Cal. 221 (1926), cited in the tentative recommendation, is a square holding that a person may be impressed into law enforcement service by the oral request of a sheriff and that

such a person is covered by workmen's compensation. However, Dept. of Nat'l Resources v. I.A.C., 208 Cal. 14 (1929), distinguishes the earlier case and holds that unpaid officers are not covered. The Monterey County case devoted several pages to explaining how the compensation factor was irrelevant; hence, it is difficult to understand the purported distinction stated in the Natural Resources case. In City of Long Beach v. I.A.C., 4 Cal.2d 624 (1935), a private detective saw some suspicious looking individuals (furtive actions; bent, illegible license plate) and after some preliminary examination with a passing uniformed policeman discovered they were carrying arms in the trunk of the car. The policeman asked him to observe the individuals while the policeman called the station for additional men. After the police arrived, the uniformed policeman was dismissed so that his uniform would not unduly alarm the suspects. The detective remained to assist the police. The detective started to question one of the suspected individuals upon their emergence from a building (where they had just committed a robbery) whereupon the private detective was shot. The Supreme Court held that he was not entitled to compensation benefits as a Long Beach employee as he had not been impressed into service.

It is the purpose of the first section of the proposed statute to avoid any of the technical distinctions that might be based upon the above line of cases.

Section 2, not discussed in policy at the April meeting, is self-explanatory. It carries out a policy previously adopted by the Legislature in regard to volunteer police department members.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

TENTATIVE RECOMMENDATION

of the
CALIFORNIA LAW REVISION COMMISSION
relating to
Workmen's Compensation Benefits for Persons Required or Requested to
Assist Law Enforcement Officers

The California Supreme Court has held that a person impressed into law enforcement service under Penal Code Section 150 is entitled to workmen's compensation benefits as an employee of the law enforcement agency that requested his assistance.¹ Later cases have questioned this holding and have suggested that workmen's compensation benefits may not be paid if the person assisting in the enforcement of the law receives no compensation for his services² or if he has volunteered his services.³

When a person not trained in law enforcement is required by law to assume the risk of death or serious injury to provide police protection to the public, or when he undertakes to do so at the express or implied request of a peace officer, he and his dependents should be provided with protection against the financial consequences of his death or injury. The Commission, therefore, recommends that the benefits of the Workmen's Compensation Act be extended to cover cases where a person

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1. County of Monterey v. I.A.C., 199 Cal. 221 (1926).
 2. Dept. of Nat'l Resources v. I.A.C., 208 Cal. 14, 16-17 (1929).
 3. City of Long Beach v. I.A.C., 4 Cal.2d 624 (1935).

is killed or injured while engaged in the performance of active law enforcement service, whether he does so because he is required by law to do so or because he does so at the request of a peace officer.⁴

The Legislature has previously enacted several statutes that carry out the policy underlying the Commission's recommendation. For instance, Labor Code Section 3362, enacted in 1959, extends the benefits of the Workmen's Compensation Act to members of volunteer police departments. Labor Code Section 3363, enacted in 1961, covers active members of the reserve fish and game warden program of the Department of Fish and Game; and Labor Code Section 3364, also enacted in 1961, brings volunteer, unsalaried members of a sheriff's reserve under the Workmen's Compensation Act while they are engaged in active law enforcement service.

When members of volunteer police departments were covered by workmen's compensation in 1959, the Legislature determined that their benefits should be computed at the maximum rates. The Commission recommends that this policy of providing maximum compensation benefits to citizens providing unsalaried law enforcement service be extended to all persons who are requested or required to assist law enforcement agencies in the enforcement of the law.

The Commission's recommendation would be effectuated by the enactment of the following measure:

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4. In some states, local entities are civilly liable, without regard to negligence, for all damages resulting from the death or injury of a person impressed into law enforcement service. The Commission believes that it is better policy to extend such persons the same benefits and protections that are provided to peace officers generally.

An act to add Section 3365 to, and to amend Section 4458.2 of, the Labor Code, relating to workmen's compensation.

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

SECTION 1. Section 3365 is added to the Labor Code, to read:

3365. Each person engaged in the performance of active law enforcement service as part of the posse comitatus, and each person engaged in assisting any peace officer in active law enforcement service at the express or implied request of such peace officer, is an employee of the public entity he is serving or assisting in the enforcement of the law.

SEC. 2. Section 4458.2 of the Labor Code is amended to read:

4458.2. If a male member registered as an active police member of any regularly organized volunteer police department as described in Section 3362 suffers injury or death while in the performance of his duty as a policeman, or if a person engaged in the performance of active law enforcement service as described in Section 3365 suffers injury or death while in the performance of such active law enforcement service, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.