

6/4/62

Memorandum No. 26(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Mob and Riot Damage)

Attached (blue pages) is a tentative recommendation and statute relating to liability for mob and riot damage. The decisions made by the Commission at the May 1962 meeting are reflected in the attachment.

Substantive Liability Provision. The first sentence of Section 905.2 has been redrafted to change the theory of liability from absolute liability to liability for failure "to exercise reasonable care or diligence to prevent or suppress the mob or riot." The second sentence in this section probably changes existing law by limiting the liability of counties in cases where the mob or riot occurs within an area in the county that is normally policed by another local agency. In these areas, a county is liable under the proposed statute only if it fails to exercise reasonable care or diligence to prevent or suppress the disturbance after it had notice of the danger. Such notice may be express or implied. Thus, in the example cited at the May meeting, if a county knows or should have known that a particular local agency is or will be unable to cope with a mob or riot in the area normally policed by that agency, then the county is liable if it failed to act properly to prevent or suppress the mob or riot. For areas in the county not policed by another local agency, the county is primarily liable.

Definitions. The definitions are contained in Section 905.1. The definitions of "mob" and "riot" are the same as previously submitted and approved, except that they have been revised to reflect the decisions made at the May meeting. Thus, the number of participants in each has been

changed to "two or more" to constitute a mob and "ten or more" to constitute a riot.

The definition of "local agency" has been changed to eliminate the requirement of maintaining a police force so as to pick up those entities that ought to have maintained a force but negligently failed to do so. The definition now parallels the language used in the substantive liability section.

In connection with the definition of "local agency," the Commission might wish to consider whether the State ought to be subject to liability for mob or riot damage. Since the theory of liability has been changed to a negligence standard, it may well be appropriate to subject the State to such liability. The statute does not include the State, however, since no definite action was taken in this regard at the May meeting. Inclusion of the State may create problems not sufficiently explored. For example, it may be that the State has a duty imposed by the State Constitution to maintain peace and order. (See, e.g., Article 5, Section 7 imposing a duty upon the Governor to "see that the laws are faithfully executed" and Article 5, Section 21 naming the State Attorney General as chief law enforcement officer in the State and imposing upon him the duty to see that all laws are "adequately enforced in every county of the State.")

If the State is included, a new sentence might be added to Section 905.2 to read substantially the same as the sentence limiting the liability of the counties. The State should have at least this minimum security to that it would be liable only after notice. The recommendation would be changed to include an explanation of the reason for expanding liability beyond the historical local level. This

might be explained in part as due to the changed theory of liability.

Miscellaneous Provisions. Sections 905.3 and 905.5 remain substantially unchanged. Section 905.4 has been changed to provide for indemnification rather than a bare right of action after payment by the entity in order to protect the public treasury and allow a limited third party practice so that the determination of all issues, particularly the same measure of damages, is made in the same action. Code of Civil Procedure Section 340, providing a one year limitation on actions for mob or riot damage, would be repealed as being superfluous in light of the claims statute.

Respectfully submitted,

Jon D. Smock
Junior Counsel

TENTATIVE RECOMMENDATION

of the
CALIFORNIA LAW REVISION COMMISSION
relating to
Liability for Damages from Mobs and Riots

Sections 50140 through 50145 of the Government Code impose absolute liability upon cities and counties for property damage caused by mobs or riots within their boundaries. Similar laws exist in many states. These laws are patterned after the English Riot Act of 1714 which, together with its successor statutes, have imposed liability on local police districts for mob and riot damage for almost 250 years.

The Commission has concluded that the purpose underlying these statutes is sound. Local community government should be responsible for the maintenance of peace and order, and hence should be liable in damages for failure to do so effectively. Imposition of liability for damages caused by mobs or riots provides local policing agencies with the strongest of incentives to prevent the deterioration of law enforcement to the point where mob violence is apt to occur. However, the California statute should be revised to eliminate several defects and anachronisms. Accordingly, the Commission recommends:

1. The theory upon which liability is presently based--absolute liability without fault--should be abandoned. There is no logical reason for imposing such a strict standard upon local government. Where a local public entity has done all that could reasonably be expected under the circumstances to quell a mob or riot, the imposition of

absolute liability for damages proximately resulting from the disturbance provides no greater incentive to act. In line with several other states which have changed the theory upon which liability for mob and riot damage is founded, liability should be imposed only where the responsible local authority fails to exercise reasonable care or diligence to prevent or suppress the disturbance.

2. Liability for mob or riot damage should be imposed upon all local public entities that have the duty or have undertaken to maintain peace and order. The existing law applies only to cities and counties. Yet community services districts and police protection districts may also provide police protection service to maintain peace and order. Under the existing law, if riot damage occurred in such a district, the county would be liable even though it had no opportunity to prevent or suppress the mob or riot.

Since the present California statute appears in a chapter of the Government Code which deals only with cities and counties, a new statute should be enacted to be placed in a portion of the Government Code that deals with the liability of public entities generally.

3. Local policing agencies should be liable for death or personal injuries as well as for property damage caused by mobs or riots. The rationale that supports recovery for property damage caused by mob violence applies with equal vigor to death or personal injuries resulting from civil disorders. Several states have extended their mob or riot damage statutes to provide compensation for personal injuries in recognition that it is as important to provide persons with effective police protection as it is to protect property. Such statutes implement the public policy against lynching and mob intimidation of minority

groups, for they encourage local policing agencies to be diligent in preventing such occurrences.

4. The terms "mob" and "riot" should be defined. Neither "mob" nor "riot" is now defined in the statute imposing liability for mob or riot damage (Government Code Sections 50140 through 50145). Although there is a definition of "riot" in Section 404 of the Penal Code, it is uncertain whether the Penal Code definition is applicable to Government Code Sections 50140 through 50145, or whether the "riot" referred to in Sections 50140 through 50145 is a common law riot. Under the Penal Code definition a riot is any use of force or violence, disturbing the peace, by two or more persons acting together without authority of law. A common law riot is a tumultuous disturbance of the peace by three or more persons who, without lawful authority, seek to accomplish a common purpose, using force if necessary, in such a manner as to alarm and frighten.

The Penal Code definition is too broad for general use in the mob or riot damage statute, for the Penal Code definition would classify virtually any violent crime committed by more than one person as a riot. On the other hand, the common law definition does not reach the mob violence committed without great tumult, such as lynching, that sometimes occurs when there is a serious breakdown in law enforcement.

The recommended legislation contains definitions of "mob" and "riot" that are similar to definitions that appear in the statutes of several other states. The definition of "mob" states the same number of participants (two) mentioned in the Penal Code section. This is appropriate because of the specific intent requirement in the substantive

definition of mob, which embraces a rather narrow area of particularly reprehensible conduct. The requisite number of participants in a "riot" has been raised to ten. If only two or three persons take part in a tumultuous disturbance, law enforcement has not failed in such a degree that liability should be imposed. Moreover, a fewer number congregated in an automobile would make practical law enforcement virtually impossible.

5. The provision of the existing law that a person who negligently aids or abets a riot may not recover damages should be broadened to bar compensation for damage to anyone who participated in, aided or abetted the mob or riot.

6. The statute should expressly provide that a public entity liable under its terms has a right of indemnity in the amount of its liability under the statute from any person who was a party to the mob or riot. In addition, the entity should be indemnified for any necessary expenses it incurred in defending against liability under the statute, including reasonable attorney fees.

7. Provision found in the existing law governing venue and the time within which such actions may be brought should be repealed. The general provisions relating to the venue of actions make the special venue provisions unnecessary. The claims statute applicable to all local public entities provides entities with adequate notice; hence, the special statute of limitations is also unnecessary.

8. Other provisions of the existing law requiring the issuance of warrants and the levy of taxes to pay judgments are also obsolete and redundant and should be repealed.

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

An act to amend Section 340 of the Code of Civil Procedure, and to add Article 5 (commencing with Section 905.1) to Chapter 4 of Division 3.5 of Title 1 of, and to repeal Article 6 (commencing with Section 50140) of Chapter 1, Part 1, Division 1, of Part 5 of, the Government Code, relating to liability for mob and riot damage.

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

SECTION 1. Article 5 (commencing with Section 905.1) is added to Chapter 4 of Division 3.5 of Title 1 of the Government Code, to read:

Article 5. Damage by Mobs and Riots

905.1. As used in this article:

(a) "Local agency" means a city, county, police protection district or other local public entity that has the duty or has undertaken to maintain peace and order.

(b) "Mob" means any collection of individuals, two or more in number, assembled for the unlawful purpose of offering violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional or regulative powers over any person by violence and without lawful authority.

(c) "Riot" means a tumultuous assembly of ten or more persons engaged in disturbing the peace who injure or threaten to injure persons or property by force and violence or who use or threaten to use force and violence against anyone who opposes them in the execution of their purpose.

905.2. A local agency is liable for death or for injury to

persons or property proximately caused by a mob or riot within an area where the local agency has the duty or has undertaken to maintain peace and order if the local agency fails to exercise reasonable care or diligence to prevent or suppress the mob or riot. A county is not liable under this section where a mob or riot occurs within an area in the county where another local agency has the duty or has undertaken to maintain peace and order unless the county fails to exercise reasonable care or diligence to prevent or suppress the mob or riot after the county has notice, express or implied, of the danger.

905.3. A local agency is not liable under this article for the death, or for injury to the person or property, of any person who aided, abetted or participated in the mob or riot that caused the death or injury. A local agency is not liable under this article if the death or injury was aided, abetted or permitted by the negligence of the plaintiff.

905.4. Any person who participated in or who aided or abetted a mob or riot shall indemnify any local agency liable under this article in the amount of such liability together with all costs and expenses necessarily incurred by the local agency in defending the action under this article, including reasonable attorney fees in an amount to be fixed by the court.

905.5. Any action brought under this article for damage to the levees or other works of reclamation of any district shall be prosecuted by the Attorney General in the name of the people of the State of California, and the amount recovered shall be paid to the treasurer of the county, who shall credit it to the district.

SEC. 2. Article 6 (commencing with Section 50140) of Chapter 1, Part 1, Division 1, of Title 5 of the Government Code is repealed.

SEC. 3. Section 340 of the Code of Civil Procedure is amended to read:

340. Within one year:

1. An action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the State, except when the statute imposing it prescribes a different limitation;

2. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this State;

3. An action for libel, slander, assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check, or a check that bears a forged or unauthorized endorsement, or against any person who boards or feeds an animal or fowl or who engages in the practice of veterinary medicine as defined in Business and Professions Code Section 4826, for such person's neglect resulting in injury or death to an animal or fowl in the course of boarding or feeding such animal or fowl or in the course of the practice of veterinary medicine on such animal or fowl;

4. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process;

~~5. An action against a municipal corporation for damages or injuries to property caused by a mob or riot;~~

[6.] 5. An action against an officer to recover damages for the seizure of any property for a statutory forfeiture to the State, or for the detention of, or injury to property so seized, or for damages done to any person in making any such seizure.