

7/10/62

Memorandum No. 37(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Payment of Tort Liabilities of Dissolved Entities)

Because of the timetable for action upon the various aspects of the Sovereign Immunity study, the staff believed it desirable to draft for Commission consideration a tentative recommendation and statute relating to the payment of tort liabilities of dissolved local public entities. Two copies are attached (blue pages). This material has not been considered by the Commission and no decisions have been made with respect thereto, though this draft statute follows the general scheme suggested by the subcommittee at the Commission's May meeting.

It is the purpose of this memorandum to point up some of the problems in this area of the Commission's study. (See Study at 381-83.) Attached as Exhibit I. (yellow pages) is Memorandum No. 29(1962), which also highlights some of the problems still vital in relation to the draft statute.

The following is a brief description of the proposed statute:

Administrative responsibility for the satisfaction of tort claims and tort judgments is imposed upon certain "successor public entities" based upon the applicable law regarding the distribution of assets of the dissolved entity. In the absence of other law, a uniform method of such distribution is provided. The successor entity is not itself liable for payment of such tort liabilities; rather, the territory within the boundaries of the dissolved entity is liable. Where other means are insufficient to raise funds, the successor entity is granted limited taxing authority, with detailed provisions regarding the method

of collection. The successor entity is charged with the duty to receive and consider claims the same as the dissolved entity might do but for such dissolution, including the arrangement for payment and the like. In general, the successor entity is imbued with all the power and authority, and charged with all the duties and responsibilities, of the dissolved public entity.

In addition to those matters raised in Exhibit I, the following deserve particular attention by the Commission:

1. Should tort judgments obtained prior to dissolution be subject to a limitation on the taxing power to satisfy them?

Other recommendations of the Commission have the effect of clothing such judgments with financial security like bonds. In light of this, it is possible that the tax limit is inappropriate. On the other hand, there is little, if any, rational difference between a judgment obtained before and one obtained after dissolution, since both would be founded upon causes of action which accrued before dissolution. In effect, this raises the basic question as to whether there should be any tax limit.

2. If a tax limit is imposed, should the successor entity be required to levy at the maximum rate?

3. Should the successor entity have identical authority as the dissolved entity with respect to funding judgments, such as the issuance of bonds exempt from a tax limit?

4. Should the statute include a section regarding the apportionment of payments between tort creditors, thereby removing this power from the discretion of the successor entity?

5. Should the successor entity be required instead of merely authorized to sell assets prior to levying any taxes?

6. Should local public entities be given general authority to dissolve where tort liabilities constitute the only debts of the entity?

Other questions relating to specific provisions of the proposed statute can be raised at the July meeting.

Respectfully submitted,

Jon D Smock
Junior Counsel

EXHIBIT I

Memo 37(1962)

6/12/62

Memorandum No. 29(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Payment of Tort
Judgments Against Dissolved Local Public
Entities)

Several policy questions regarding the payment of tort judgments against dissolved local public entities were considered by the subcommittee at the May meeting. (See Minutes, May 1962, pp. 20-22.) Because of the possible complexity of provisions which the preliminary decisions may entail, the staff desires the benefit of the Commission's thinking on these policy matters before attempting to present a draft statute and tentative recommendation reflecting these policy matters. Accordingly, the following matters are submitted for consideration and decision by the Commission:

1. Should the statute relating to the payment of tort judgments against dissolved local public entities be the exclusive source of law governing the payment of tort judgments against dissolved entities?

Several present statutes govern the winding up of the affairs of local public entities upon their dissolution. Some of these clearly include the payment of tort judgments, frequently by holding the successor entity liable for payment of such judgments where the dissolution is occasioned by inclusion of the dissolved entity in another local public entity. Other statutes are silent on this point, thus casting doubt upon authority to pay tort judgments. Should the Commission's statute provide a general procedure for winding up the affairs of dissolved entities for which no

provision is presently made?

No action has been taken by the Commission with respect to whether the statute should be the exclusive source of law governing the payment of tort judgments and whether the statute should apply to other debts and liabilities not founded upon tort judgments.

The staff believes that existing statutes should remain intact insofar as they permit the payment of debts and liabilities, including tort judgments; that the proposed statute should impose a duty on the successor public entity to pay tort judgments; and that, insofar as existing law does not provide for the source of funds to pay tort judgments, the statute presented by the Commission should determine the source of such funds.

2. Where a local public entity dissolves by reason of its inclusion within another local public entity, should the successor public entity be liable for the satisfaction of tort judgments against the dissolved entity? This is the general scheme followed in many present statutes and the scheme approved by the Commission at the December meeting. (See Minutes, December 1961, pp. 17-18.) The subcommittee at the May meeting believed that this scheme might discourage annexation and recommended that a successor entity should not be liable for the payment of tort judgments; rather, liability for the payment of tort judgments should attach only to the property within the boundary of the local public entity at the time the judgment is obtained. Under the staff's recommendation, the rule provided in the proposed statute would apply only to cases where the existing law does not provide a rule determining how tort judgments will be satisfied in case of

dissolution.

3. Should there be a limit placed upon the amount of taxes, assessments or other charges that can be levied against the property within the boundary of the dissolved local public entity to satisfy tort judgments against the dissolved entity? Is a limit of \$.25 per \$100 assessed value for a period not to exceed 20 years from the date of dissolution an appropriate limit? This limit was approved by the subcommittee. Should all property and improvements within the dissolved entity be subject to such tax, assessment or other charge even though the dissolved entity could not itself have imposed any tax, assessment or other charge in any amount?

Respectfully submitted,

Jon D. Smock
Junior Counsel

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Payment of Tort Liabilities of Dissolved Local Public Entities

A number of California statutes authorize many different types of local public entities to be dissolved under specified circumstances. Some of these statutes provide detailed procedures for winding up the affairs of the dissolved entity. In many cases, however, there is no statutory authority governing the many problems associated with the dissolution of a public entity, including the satisfaction of tort liabilities for which the dissolved entity is responsible.

The dissolution of a local public entity presents at least two serious problems for a tort claimant. First, there is the question of how a tort claimant can comply with the statutory requirements for the presentation of claims when his claim is against a previously dissolved and, hence, nonexistent entity. Second, there is the problem of how the claimant can enforce his claim by legal action and satisfy it when it is allowed or reduced to judgment.

The existing statutory provisions governing local public entities are neither uniform nor consistent in the procedures provided for the handling of tort liabilities following dissolution. In addition, existing statutes provide no general limitation on the amount of taxes that may be required to raise funds to pay tort liabilities for which a

dissolved entity is responsible.

To provide a procedure for handling tort liabilities following dissolution and to prevent the imposition of an unreasonable tax burden in order to satisfy tort liabilities, the Law Revision Commission makes the following recommendation:

1. Mere dissolution should not absolve a local public entity of its responsibility for negligent or wrongful acts or omissions which occurred prior to its dissolution. Upon dissolution of a local public entity, specific procedures should be available whereby the tort liabilities for which a dissolved entity is responsible are paid. There is no reason to change established procedures which ensure the satisfaction of such liabilities. However, where there is no procedure now in force, or where the procedure provided is inadequate to ensure the payment of tort liabilities, it is appropriate to clarify this area of the law by providing a uniform method of paying tort liabilities for which the dissolved entity is responsible.

The public authority that succeeds to the ownership of the assets of the dissolved local public entity should have the responsibility for seeing that the tort liabilities of the dissolved entity are satisfied. In the absence of any other law governing the disposition of such assets, a uniform method of distribution is appropriate. For this purpose, existing statutes provide a reasonable pattern. Thus, where a local public entity dissolves by reason of its inclusion within another local public entity, the ownership of the assets of the dissolved entity should vest in the succeeding public entity. Where the dissolution occurs for any other reason, the assets should vest in the county

in which the whole or greater portion of the dissolved entity is situated. These entities should not themselves be liable for tort liabilities of the dissolved entity; rather, they should be responsible for collecting the assets, receiving and considering claims, and performing such other acts on behalf of the dissolved entity as may be necessary to ensure payment of the tort liabilities.

2. Where other means of raising funds for the payment of tort liabilities, such as a sale of the assets of the dissolved entity or the continued operation of the activity of the dissolved entity, do not produce sufficient funds to meet the obligations of the dissolved entity, the public authority responsible for the satisfaction of these obligations should have the power to levy and collect taxes within certain, well-defined limits. Only the territory within the former boundaries of the dissolved entity at the time the cause of action accrued should be subject to taxation for the payment of any liability thereon, because it is the only area which received any benefit from the since dissolved entity at such time. To avoid the possibility of a ruinous taxation for the payment of tort liabilities after a period when such area receives any benefit from the now dissolved entity, however, there should be a limit on the rate and period for which such tax may be imposed. A reasonable limit is \$.25 per \$100 assessed value for a period not exceeding 20 years from the date of dissolution. For convenience in levying, assessing and collecting such taxes, where necessary, there should be a uniform procedure whereby each county in which is situated any part of the dissolved entity should be responsible for performing these functions at the same time and in the same manner as other county taxes are collected.

3. The existing statutes which preclude the dissolution of a local public entity until all liabilities are satisfied are unrealistic in light of expanded governmental tort liabilities. Similarly, those statutes which require claims to be presented prior to dissolution are unfair to the tort claimant even though reasonable as to claims founded upon other causes. Accordingly, general statutory authority should be enacted to permit a local public entity to dissolve where the only outstanding debts are represented by tort liabilities. The local public entity having the responsibility for paying tort liabilities should have the authority to receive and consider claims founded upon a negligent or wrongful act or omission for which the dissolved local public entity would have been responsible but for its dissolution and the duty to arrange for the payment of such claims the same as though they had been submitted to and considered by the dissolved entity itself.

4. The public authority having the responsibility for satisfying tort liabilities of the dissolved entity should have broad authority to act in all matters relating to such liability as extensive as would the dissolved entity itself but for such dissolution.

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

An act to add Article 5 (commencing with Section 741.1) to Chapter 2
of Division 3.5 of Title 1 of the Government Code, relating to
payment of tort liabilities of dissolved local public entities.

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

SECTION 1. Article 5 (commencing with Section 741.1) is added to Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

Article 5. Payment of Tort Liabilities of
Dissolved Local Public Entities

741.1. As used in this article:

(a) "Fiscal year" means a year beginning on July 1 and ending on June 30 unless the local public entity has adopted a different fiscal year as authorized by law, in which case "fiscal year" means the fiscal year adopted by such local public entity.

(b) "Board" means the governing board of the successor public entity.

(c) "Successor public entity" means the local public entity in which the ownership of the assets of the dissolved local public entity vests as provided by law unless the applicable law provides for a division of such assets between two or more local public entities, in which case "successor public entity" means the county in which is situated the whole or greater portion of the assessed value of all taxable property within the territory of the dissolved local public entity.

(d) "Tort liability" means an obligation, arising from a final judgment or a claim allowed in conformity with this division, which is founded upon death or injury to persons or property proximately caused by a negligent or wrongful act or omission and for which a dissolved local public entity is liable or would be liable upon a cause of action that accrued prior to dissolution but for such dissolution.

741.2. Unless otherwise provided by law, if a local public entity dissolves by reason of its inclusion within another local public entity, the ownership of the assets of the dissolved entity vests in the succeeding local public entity.

741.3. Unless otherwise provided by law, if a local public entity dissolves for any reason other than its inclusion within another local public entity, the ownership of the assets of the dissolved entity vests in the county in which is situated the whole or greater portion of the assessed value of all taxable property in the territory of the dissolved local public entity. For the purpose of this section, the assessed value shall be determined by the last equalized county assessment rolls preceding the fiscal year in which the local public entity dissolves.

741.4. Notwithstanding any other law, a successor public entity shall pay to the extent required by this article any tort liability for which a dissolved local public entity is liable or would be liable upon a cause of action that accrued prior to dissolution but for such dissolution. A writ of mandate is an appropriate

remedy to compel a successor public entity to perform any act required by this article.

741.5. Notwithstanding any other law, the governing board of the successor public entity is ex officio the governing board of the dissolved local public entity and may exercise all the powers of the governing board of such dissolved entity the same as though no dissolution occurred, including the determination in accord with this division of the method of paying any tort liability for which provision has not otherwise been made by the governing board of the dissolved entity. The successor public entity may sell the assets of the dissolved entity, continue the operation of the activity of the dissolved entity, and perform such other acts as are necessary to raise funds to pay any tort liability. Where the applicable law provides for a division of the assets of a dissolved local public entity between two or more local public entities, the successor public entity may, notwithstanding any other law, take possession of, sell, continue to operate, and perform such other acts for the purpose of raising funds to pay any tort liability the same as though the ownership of such assets vested absolutely in such county.

741.6. If the amount received from any other source by the successor public entity is not sufficient to pay any tort liability, the successor public entity shall levy and collect taxes, at a rate not exceeding \$.25 per \$100 assessed valuation and for a period not exceeding 20 years from the date of dissolution, upon all taxable property

within the former boundaries of the dissolved local public entity to the extent necessary to pay any tort liability.

For the purpose of levying and collecting taxes pursuant to this authority, territory excluded from a local public entity prior to the dissolution of such entity is subject to taxation for the payment of any tort liability founded upon a cause of action which accrued prior to the time such territory was excluded, and for the purpose of discharging such liability shall be considered a part of the dissolved entity the same as though not excluded.

741.7. Where the funds raised from any source, including the taxes levied and collected pursuant to this article, are not sufficient to pay any tort judgment in instalments in the manner provided in Article 4 of this chapter, the successor public entity shall pay such amounts as may be raised by imposing the maximum tax permitted under this article until the tort judgment is paid or for a period not exceeding 20 years from the date of dissolution, whichever is earlier.

741.8. Notwithstanding any other law, a local public entity may dissolve where tort liabilities constitute the only indebtedness of the local public entity. Claims against a dissolved local public entity which are founded upon death or injury to persons or property proximately caused by a negligent or wrongful act or omission shall be presented to the successor public entity with the same effect as though the local public entity had not dissolved. The successor public entity shall receive and consider claims filed in conformity with this division. Nothing contained in any other law limits or restricts the time within which a claim may be presented which is founded upon death or injury to

persons or property proximately caused by a negligent or wrongful act or omission and for which the dissolved local public entity is liable or would be liable upon a cause of action that accrued prior to dissolution but for such dissolution.

741.9. Where it is necessary to levy and collect the taxes authorized by Section 741.6 of this article, the board shall avail itself of the assessments made by the assessors of each county in which the territory of the dissolved local public entity is situated, and of the assessments made by the State Board of Equalization for those counties, and shall have the taxes levied pursuant to Section 741.6 collected by the officials of those counties. For this purpose, the board shall declare by resolution or ordinance the need to collect such taxes and shall file a certified copy of the resolution or ordinance on or before the first day of August next following the date of dissolution with the auditors of each county in which the territory of the dissolved local public entity is situated. Thereafter, each year and until otherwise provided by the board, but not exceeding 20 years from the date of dissolution, all assessments in each such county shall be made for the board by the State Board of Equalization and the county assessors, and all taxes shall be collected for the board in each such county by the tax collectors of each county in which the territory of the dissolved local public entity is situated.

741.10. Where the board acts pursuant to Section 741.9, each county auditor shall, on or before the third Monday in August of each year, transmit to the board a statement in writing showing the total value of all taxable property within the territory of the dissolved

local public entity, ascertained from the assessments referred to in Section 741.9 as equalized.

741.11. Where the board acts pursuant to Section 741.9, the board shall, on or before the first business day in September, fix the rate of taxes, designating the number of cents upon each hundred dollars, but not exceeding \$.25 per \$100 assessed value, using as a basis the value of property transmitted to the board by the county auditors, which rate of taxation shall be sufficient to raise the amount previously fixed by the board for the payment of any tort liability to the extent required by this article. These acts done by the board shall constitute a valid assessment of the property and a valid levy of the taxes so fixed.

741.12. Immediately after fixing the rate of taxes, the board shall transmit to the county auditors in each county in which the dissolved entity is situated a statement of the rate of taxes fixed by the board.

741.13. The taxes levied by the board shall be collected at the same time and in the same manner as county taxes. The provisions of law prescribing the manner of levying, assessing, equalizing and collecting county property taxes, including the sale of property for delinquency and the redemption from such sale, and the duties of the several county officers with respect thereto, are, so far as they are applicable and not in conflict with the specific provisions of this article, hereby adopted and made a part hereof. When collected, the net amount, ascertained as provided in this article, shall be paid to the board that levied the taxes.

741.14. Whenever any real property has been sold for taxes levied pursuant to this article and has been redeemed, the money paid for redemption shall be apportioned and paid to the board that levied the taxes by the county treasurers receiving it in the proportion which the tax due to the board bears to the total tax for which the property was sold.

741.15. The compensation to be charged by and paid to any county for the performance of services under this article shall be fixed by agreement between the board of supervisors of each county and the board. The compensation shall in no event exceed one-half of one percent of all money collected for the board. The compensation collected by the county shall be placed to the credit of the county salary fund.

741.16. All taxes levied under this article are a lien on the property on which they are levied. Unless the board has by resolution otherwise provided, the enforcement of the collection of such taxes shall be, so far as applicable, in the same manner and by the same means provided by law for the enforcement of liens for county taxes.

SEC. 2. This article applies only to local public entities dissolved after December 31, 1963.