

Meeting copy
8/9/62

Memorandum No. 45(1962)

Subject: Study No. 52(L) - Sovereign Immunity
(Vehicle Code Sections
17000-17004.5)

Attached (blue pages) are two copies of a tentative recommendation relating to the liability of public entities for the ownership and operation of motor vehicles. This subject has not been previously considered by the Commission. (See Study, pp.32-37, for the research consultant's comments on the Vehicle Code.)

Please mark any revisions you have on one copy of the tentative recommendations so that you may give it to the staff at the August meeting.

Respectfully submitted,

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August 9, 1962

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Liability of Public Entities for Ownership and Operation of
Vehicles

Section 17001 of the Vehicle Code imposes liability upon all types of public entities for injuries resulting from the negligent operation of motor vehicles by public personnel in the course of public employment. It is not clear, however, whether the section imposes liability for injuries resulting from intentionally tortious operation of a motor vehicle by a public employee in the scope of his employment. Private employers, of course, may be held liable for both negligent and intentional torts of their employees acting within the scope of their employment.

Vehicle Code Section 17150 imposes liability upon a motor vehicle owner for the negligence of a person using or operating the vehicle with the consent of the owner. Where liability does not arise through a master-servant or principal-agent relationship, this vehicle ownership liability is limited to maximum dollar amounts. The liability of public entities, as vehicle owners, for the negligent operation of vehicles with their permission has been limited by judicial decisions to vehicles maintained for use in "proprietary" activities; no vehicle ownership liability exists where the publicly owned vehicle is maintained only

for "governmental" activities. Thus, a city may be held liable as a vehicle owner for injuries caused by a vehicle assigned to the water department (proprietary function) and may not be held liable as an owner for a similar injury inflicted by a vehicle assigned to the health department (governmental activity).

The effect of the Muskopf decision on Section 17001 liability and on the liability of public entities as owners of motor vehicles is not clear.¹ The courts may hold that governmental entities are not liable for vehicle torts except to the extent provided in these statutes. On the other hand, they may hold that the liability of public entities is the same as that of private persons.

The Commission has concluded that the uncertainties created by the Muskopf decision should be removed by legislation and that the liability of public entities for the ownership and operation of motor vehicles should be the same as that of private persons. There is no reason why public entities should not be subject to the same vicarious liability as a private employer for injuries resulting from the operation of motor vehicles. Nor should the rights of a person injured by a negligently operated motor vehicle differ merely because the vehicle was loaned to the operator by a public entity rather than by a private person. Accordingly, the Commission recommends.

1. Section 17001 of the Vehicle Code should be amended to make public entities liable for death, personal injury or property damage caused by a negligent or wrongful act or omission of an officer, agent or employee operating a vehicle while in the scope of his office, agency or employment. This amendment will make clear that Section 17001

1. See research study at 36-37.

imposes liability for both negligent and intentional torts of public employees operating motor vehicles in the scope of their public employment.

2. The vehicle ownership liability statute should be made applicable to public entities to the same extent that it applies to private owners.

3. Section 17002 of the Vehicle Code, which grants a right of subrogation to a public entity vicariously liable for the negligence of its personnel in the operation of motor vehicles, should be repealed. The policy expressed in this section is contrary to the general policy recommended by the Commission that the ultimate financial responsibility for the torts of its personnel should be borne by the public entity.² There is no reason for making an exception to the general policy in the vehicle tort situation.

4. Section 17003, which authorizes public entities to insure against the vehicle liability imposed upon them, should be repealed. This section is superseded and unnecessary in light of the Commission's recommendation regarding a broad grant of authority for public entities to insure against any liability.³

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

2. See Tentative Recommendation of the California Law Revision Commission relating to Liability of Public Entities and Public Officers and Employees (soon to be available for distribution).

3. See Tentative Recommendation of the California Law Revision Commission relating to Insurance Coverage for Public Entities and Public Officers and Employees (May 1, 1962).

An act to amend Section 17001 of, and to repeal Sections 17002 and 17003 of, and to add Section 17002 to, the Vehicle Code, relating to civil liability of owners and operators of vehicles.

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

SECTION 1. Section 17001 of the Vehicle Code is amended to read:

17001. [Any] A public agency ~~[owning-any-motor-vehicle]~~ is ~~[responsible-to-every-person-who-sustains-any-damage-by-reason-of]~~ liable for death [,] or injury to persons or property ~~[as-the-result-of-the-negligent-operation-of-the-motor-vehicle-by-an-officer,-agent,-or-employee-or-as-the-result-of-the-negligent-operation-of]~~ proximately caused by a negligent or wrongful act or omission in the operation of any ~~[motor]~~ motor vehicle by [any] an officer, agent [,] or employee of the public agency ~~[when]~~ acting within the scope of his office, agency [,] or employment. ~~[The-injured person-may-sue-the-public-agency-in-any-court-of-competent-jurisdiction-in-this-State-in-the-manner-directed-by-law.]~~

SEC. 2. Section 17002 of the Vehicle Code is repealed.

~~[17002:--If there is recovery under this chapter against a public agency, it shall be subrogated to all the rights of the person injured against the officer, agent, or employee and may recover from the officer, agent, or employee the total amount of any judgment and costs recovered against the public agency, together with costs therein.]~~

SEC. 3. Section 17003 of the Vehicle Code is repealed.

~~[17003: - Any public agency may insure against liability under this chapter in any insurance company authorized to transact the business~~

~~of such insurance in the State of California, and the premium for the
insurance shall be a prefer charge against the general fund of the
public agency.]~~

SEC. 4. Section 17002 is added to the Vehicle Code, to read:

17002. A public agency is liable for death or injury to persons or property to the same extent as a private person under the provisions of Article 2 (commencing with Section 17150) of this chapter, whether or not the motor vehicle is owned, used or maintained for a governmental or proprietary purpose.