

8/11/62

Second Supplement to Memorandum No. 46(1962)

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

The attached letter was received from the Department of Public
Works concerning liability for dangerous conditions of public property.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

[Insufficient copies of this letter received to send to
all on mailing list.]

ROBERT E. REED
CHIEF OF DIVISION

EDMUND G. BROWN
GOVERNOR OF CALIFORNIA

ROBERT B. BRADFORD
DIRECTOR

STATE OF CALIFORNIA
Department of Public Works
DIVISION OF CONTRACTS AND RIGHTS OF WAY
(LEGAL)

PUBLIC WORKS BUILDING
1120 N STREET
(P. O. BOX 1498)
SACRAMENTO 7, CALIFORNIA

PLEASE REFER TO
FILE NO.

August 8, 1962

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Attention: Mr. John H. DeMouilly, Executive Secretary

Gentlemen:

Reference is made to your letter of July 26, 1962, requesting our comments on the suggestion of the League of California Cities that the 1923 Public Liability Act (Government Code Section 53050) be left as it is and be made applicable to all public entities.

We believe that the Public Liability Act would be a good foundation for drafting a statute pertaining to the liability of all public agencies for the dangerous or defective condition of public property. This is one of the recommendations of the consultant to the Commission (Study, page 455). However, in addition to expanding the scope of this act, we believe that certain amendments should be made to the Public Liability Act as follows:

1. The existing rule of evidence which allows the happening of the accident to be regarded as some evidence that the property was in a dangerous or defective condition should be changed by statute.
2. Actual notice and failure to remedy or warn should be the basis of liability.
3. Evidence of subsequent precautions or repairs should be inadmissible.
4. The burden of proof of lack of contributory negligence should be placed upon the plaintiff except in wrongful death cases. However, in wrongful death cases the decedent should not have the presumption of due care.

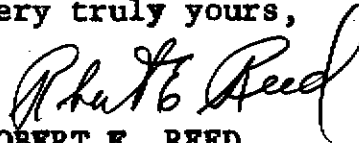
Aug. 8, 1962

5. Public entities should be immune for the discretionary acts of their officers and employees.

The suggested amendments and reasons therefor are contained in our letter to the Commission of July 13, 1962, beginning on page 15. Most of these suggestions were incorporated in a draft of a statute set forth in our letter to the Commission on January 6, 1962. We believe these suggestions are in accordance with the position taken by the Director of the Department of Finance in his letter of June 2, 1962, to the Commission.

If you wish, we would be glad to cooperate with the staff of the Commission to draft a concise, comprehensive statute amending the Public Liability Act to include all public agencies and the above suggestions.

Very truly yours,



ROBERT E. REED
Chief of Division