

8/12/62

First Supplement to Memorandum No. 48(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Insurance
Coverage for Public Officers and Employees)

Attached (Exhibit I - buff pages) is an extract from the Minutes of the State Bar Committee on Sovereign Immunity. This supplement indicates matters raised by the State Bar Committee that are not listed in Memorandum No. 48(1962).

Section 990.3. The Committee suggests that this section be deleted. This section should not be deleted. It is necessary because it is not clear whether the public personnel covered by the section are employees of the county. Hence, the general authorization to purchase insurance might not permit the county to purchase the insurance referred to in Section 990.3.

Section 990.4. The Committee suggests that the funding and maintenance of reserves for self-insurance be mandatory rather than discretionary. Why make funding and maintenance of reserves mandatory when the statute is intended to be permissive rather than mandatory?

Section 990.6. The Committee suggests that the phrase "any other law that authorizes a public entity to insure" might not be sufficient to indicate that a municipal charter or ordinance does not limit the authority under the proposed insurance statute.

Respectfully submitted,

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Executive Secretary

8/10/62

EXHIBIT I

INSURANCE COVERAGE FOR PUBLIC ENTITIES
AND PUBLIC OFFICERS AND EMPLOYEES

Section 990.2. This section excepts liabilities which may be insured against pursuant to Division 4 of the Labor Code, to-wit, Workmen's Compensation Liability. Section 11870 of the Insurance Code requires public entities to insure against Workmen's Compensation Liabilities with the State Compensation Insurance Fund and not with any other insurer, unless the Fund refuses to accept the risk. The Committee accordingly recommends that Section 990.2 be amended to read in part as follows:

Except for a liability which may be insured against pursuant to Division 4 (commencing with Section 3201) of the Labor Code, and subject to Insurance Code Section 11870, a public entity may:

Section 990.3. Although largely a reiteration of Section 1959 of the Government Code, which the draft statute would repeal, the Committee questions the necessity for this section which is limited to the obtaining by a County of insurance to cover the personal liability of court attaches of Superior, Municipal and Justice Courts, in view of the all-embrasive authority contained in Section 990.2. There is always the danger that the grant of a special and limited authority might be construed as excluding insurance coverage of officers and attaches of, for example, appellate courts.

Section 990.4(a). In line with comment No. 3 on page 4 of the Commission's comments, the Committee recommends that the funding and maintenance of reserves for self-insurance be made mandatory rather than discretionary. It is accordingly recommended that subsection (a) be revised to read:

(a) Self-insurance, which shall be funded by appropriations to establish or maintain reserves for self-insurance purposes.

Section 990.6. The Committee questions whether this section as worded accomplishes the desired purpose. For example, if a municipal charter or ordinance limits a particular coverage to \$25,000, does the draft statute supersede the restriction or not when it uses the expression "nor is it limited or restricted by, any other law that authorizes a public entity to insure * * *."