

8/1/62

Memorandum No. 49(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Workmen's Compensation Benefits for Persons Required or Requested to Assist Law Enforcement Officers)

Attached is a copy of the tentative recommendation on this subject, dated June 1, 1962.

Also attached are copies to two communications we received containing comments on this tentative recommendation:

Exhibit I (gold) (Chairman of State Industrial Accident Commission)
Exhibit II (pink) (Comments of Mr. Lackmann of the State Industrial Accident Commission)

In connection with the tentative recommendation, you will also want to refer to pages 4-5 of Exhibit III attached to Memorandum No. 47(1962), containing the comments of the Office of the County Counsel of Los Angeles County.

The Southern Section of the State Bar Committee had the following comment with reference to this tentative recommendation:

The Section does not regard the proposed addition and amendment to the Labor Code to constitute any problem in the field of sovereign immunity. However, the Section sees no objection to the proposed legislation as drafted by the Commission.

Inquiry is raised whether the same type of protection is or should be extended to persons impressed into duty to fight fire. [This inquiry is discussed below.]

The following matters are suggested for Commission consideration:

1. General comment. Note Exhibit I (gold sheet) attached. The Chairman of the State Industrial Accident Commission there states that the recommendation appears to be reasonable and that the Commission

would be willing to accept the responsibility for adjudicating the cases that might arise under the recommendation. Note also, that the Los Angeles County Counsel states: "We strongly endorse the general policy of providing compensation to any person who is required to assist law enforcement officers and who may be killed or injured while performing such a duty."

2. Scope of proposed statute. The Southern Section of the State Bar Committee raises the question--and Referee Lackmann of the State Industrial Accident Commission discusses the question--whether protection should be provided to persons impressed into the fire service.

Labor Code Section 4458.5 provides:

4458.5. Any minor or adult impressed or ordered into fire control service as provided by Section 4010 of the Public Resources Code who suffers injury or the dependents of such person who suffers death while in the performance of the impressed or ordered duties shall receive benefits as provided for a male member registered as an active fire fighting member of a regularly organized volunteer fire department by the provisions of Section 4458 of this code.

Section 4010 of the Public Resources Code provides in part:

4010. The State Forester or his duly authorized agent may summon any able-bodied male to assist in suppressing any forest fire and may authorize any duly authorized officer of the State of California, charged with the prevention and suppression of fire or the enforcement of the State fire laws, to summon any able-bodied man to assist in suppressing any forest fire within their respective jurisdictions; provided, however . . .

Section 4160 of the Public Resources Code provides:

4160. No person shall refuse or fail to render assistance in combating a forest, brush or grass fire at the summons of the State Forester, or his duly authorized agent charged with the prevention or suppression of fire or the enforcement of the State fire laws, or any county firewarden, fireman, or county officer charged with the duty or preventing or combating forest, brush, or grass fires, or any officer of a county fire protection district, unless prevented from so doing by sickness or physical disability.

Section 4161 of the Public Resources Code makes violation of Section 4160 a misdemeanor.

It would appear that the minimum revision needed to take care of the problem of persons required to assist in fire control would be to add a reference to Section 4160 to Section 4458.5.

Referee Lackmann of the State Industrial Accident Commission suggests a more comprehensive provision. See Exhibit II (pink sheets) attached.

Under the Commission's reasoning in the law enforcement cases, it would appear that a person who is required or requested to assist a fire control officer should receive workmen's compensation. As pointed out above, the existing law may not protect all persons who are required to assist in fire control and clearly does not protect persons who are requested to (but not required to) assist fire control officers. If the Commission determines to provide persons who assist fire control officers with the same protection as is provided persons who assist law enforcement officers, the following provisions should be added to the proposed statute:

(1) A new section should be added to the Labor Code--Section 3366--to read as follows:

3366. Each person engaged in suppressing a fire pursuant to Section 4010 or 4160 of the Public Resources Code, and each person engaged in suppressing a fire at the express or implied request of a public officer or employee charged with the duty of preventing or suppressing fires, is an employee of the public entity he is serving or assisting in the suppression of the fire.

(2) Section 4458 should be amended to read:

4458. If a male member registered as an active fire fighting member of any regularly organized volunteer fire

where there is an express request of a peace officer. That office states: "To include an implied request could open the door to a number of applications for Workmen's Compensation benefits by persons who were injured at the scene of an incident in which peace officers were active and who claim that they thought the officer wanted them to assist when in fact this was not true."

Respectfully submitted,

John H. DeMouilly
Executive Secretary