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10/10/62

First Supplement to Memorandum No. 61(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Workmen's Compensation)

The Legislative Counsel makes the following comment concerning the recommended legislation on workmen's compensation:

1. Workmen's Compensation Benefits

The purpose of the draft is stated to be to extend workmen's compensation benefits to a person who is killed or injured while engaged in the performance of active law enforcement or fire suppression service, which service he is required by law or requested to perform by a peace officer or fire control officer.

The sections proposed to be added to the Labor Code would provide that such a person is an employee of the public entity that he is serving or assisting. If this is read literally it makes such a person an employee of the public agency for all purposes. Such a construction would, of course, have an impact beyond the Workmen's Compensation Act.

The relating clause of the title and the placing of the proposed sections in the workmen's compensation provisions of the Labor Code indicate that this literal construction of the draft is not intended. We note that Sections 3361, 3362, 3363, and 3364 of the Labor Code provide that certain classes of persons are employees of a public entity for purposes of the Workmen's Compensation Act. Section 4458.5 of the Labor Code merely provides that persons impressed or ordered into fire control service shall receive workmen's compensation benefits as provided for active fire fighting members of regularly organized volunteer fire departments. Either approach would seem to be more desirable than purporting to make the persons employees of the public entities for all purposes.

The staff agrees with the Legislative Counsel that a change is needed in the proposed statute. We suggest that Section 3365

on pages 3 and 4 of the tentative recommendation be revised to read:

3365. For the purposes of this division, 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 request of a public officer or employee charged with the duty of preventing or suppressing fires, is deemed to be an employee of the public entity that he is serving or assisting in the suppression of the fire, and is entitled to receive compensation from such public entity in accordance with the provisions of this division.

A comparable revision is required in proposed Section 3366 on page 4 of the tentative recommendation.

Respectfully submitted,

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Executive Secretary