

meeting
10/8/62

Memorandum No. 62(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Vehicle Code amendments)

Attached is a copy of the tentative recommendation relating to Liability of Public Entities for Ownership and Operation of Motor Vehicles.

We propose that this recommendation and proposed legislation be printed as a separate pamphlet. We want to send it to the printer and have it printed as soon as possible. We also need to have the bill preprinted as soon as possible. Accordingly, we need to give final approval to the text of the recommendation and the proposed statute at the October meeting.

A sample of the Cover and Title Page for this publication and the Letter of Transmittal is also attached.

At the time this recommendation was previously approved, the Commission determined that similar ownership liability should exist in other cases where private owners are subject to ownership liability for personal property. We determined that such liability exists in the case of ownership of vessels. We requested the Legislative Counsel to draft legislation to effectuate the Commission's determination. The Legislative Counsel provided us with a draft statute to impose such liability but raised a number of difficult policy questions. Moreover, the law relating to vessels is very complex. We believe that the Commission will not have time prior to the 1963 legislative session to take up and consider ownership liability for vessels. We will do well to complete our work on the statutes we now have

under consideration. Accordingly, we propose that the attached recommendation be approved for printing and that consideration of other types of ownership liability be deferred at least until after the 1963 legislative session.

We received no comments on the attached recommendation. However, a letter from the Chairman of the State Bar Committee (dated September 21, 1962) contains the following statement concerning the attached recommendation:

Time did not permit our consideration of the proposed amendment of Section 17001 of the Vehicle Code covering liability of public entities for ownership and operation of motor vehicles. However, I think you and the Commission may be entitled to assume that the Committee approves your proposal as drafted. In light of the proposed repeal of Section 17002 of the Vehicle Code granting a right of subrogation to the public entity, I would call your attention to Vehicle Code Section 17153, which grants a right of subrogation to the owner when held vicariously liable for one driving a vehicle with the owner's consent, express or implied. It would seem that this right of subrogation should still be retained, because by hypothesis an action against a public entity on the basis of an owner's imputed liability would normally only result from the operation of a publicly owned vehicle by someone other than a public employee or by a public employee not acting within the scope of his employment.

As Mr. Cox, the Chairman of the State Bar Committee, points out, ownership liability will be subject to Vehicle Code Section 17153, which grants a right of subrogation to the owner when held liable for the negligence of one driving a vehicle with the owner's consent. He is correct in his statement that this right of subrogation should be retained. We determined to treat public entities like private owners so far as ownership liability is concerned. Since new Section 17002 will impose liability on a public entity to the same extent as a private person is liable, no change is required in the draft statute in view of Mr. Cox's comment.

Respectfully submitted

John H. DeMouilly
Executive Secretary

[Cover and Title page]

STATE OF CALIFORNIA

C A L I F O R N I A L A W R E V I S I O N C O M M I S S I O N

R E C O M M E N D A T I O N

relating to

S O V E R E I G N I M M U N I T Y

Liability of Public Entities for Ownership
and Operation of Motor Vehicles

January 1963

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

[For use in printed pamphlet]

LETTER OF TRANSMITTAL

January 2, 1963

To His Excellency Edmund G. Brown
Governor of California
and to the Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission herewith submits its recommendation on one portion of this subject--liability of public entities for ownership and operation of motor vehicles. Recommendations covering other aspects of this subject are contained in other reports prepared for the 1963 legislative session. The Commission has also published a research study relating to sovereign immunity prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

Herman F. Selvin, Chairman
John R. McDonough, Jr., Vice Chairman
James A. Cobey, Member of the Senate
Clark L. Bradley, Member of the
Assembly
Joseph A. Ball
James R. Edwards
Richard H. Keatinge
Sho Sato
Thomas E. Stanton, Jr.
Angus C. Morrison, Legislative
Counsel, ex officio

September 1, 1962

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Liability of Public Entities for Ownership and Operation of Motor Vehicles

NOTE: This is a tentative recommendation prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

September 1, 1962

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Liability of Public Entities for Ownership and Operation of
Motor 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 public personnel within the scope of their employment should be borne by the public entity unless the officer, agent or employee was guilty of actual fraud, corruption or actual malice.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 (September 1, 1962).
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 liability arising out of ownership or operation 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-~~
~~te-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 proper charge against the general fund of the public agency.]~~

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

17002. Notwithstanding any other statute, charter provision, ordinance or regulation, 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.