

Mez.

Memorandum No. 69 (1962)

Subject: Study No. 52(L) -- Sovereign Immunity (Claims, Actions and Judgments)

This memorandum relates to the procedure for presentation of claims to public entities, to the provisions of law relating to actions against public entities and to certain provisions relating to payment of judgments.

Under separate cover you have received a Revised Tentative Recommendation relating to Claims, Actions and Judgments Against Public Entities and Public Employees. (Commission members -- this tentative recommendation is inserted in brown covers. Please bring the tentative recommendation to each meeting. We will be replacing certain pages of the tentative recommendation with revised pages from time to time. We do not plan, however, to reproduce the entire tentative recommendation each time changes are required to be made.)

The recommendation the Commission will make to the Legislature concerning Claims, Actions and Judgments Against Public Entities and Public Employees will include provisions that are not included in the Revised Tentative Recommendation referred to above. For convenience, we have prepared Memorandum No. 51(1962) (payment of tort judgments) and Memorandum No. 73(funding tort judgments against local public entities with bonds) as separate memoranda. Ultimately, the material contained in the tentative recommendations attached to Memorandum No. 51 and Memorandum No. 73 will be included in the Recommendation relating to Claims, Actions and Judgments Against Public Entities and Public Employees.

Attached to this memorandum are four exhibits. These are all the comments we received on the tentative claims recommendation we distributed for comments some time ago. The four exhibits are:

Exhibit I (pink sheets) (State Bar Committee)

Exhibit II (yellow sheets) (Perry H. Taft's office)

Exhibit III (mimeographed on white) (Office of Los Angeles County Counsel) (insufficient copies available to permit distribution to all persons receiving this memorandum)

Exhibit IV (Photocopy on white) (Department of Finance) (insufficient copies available to permit distribution to all persons receiving this memorandum)

The comments in the exhibits listed above are directed to the tentative recommendation we previously distributed for comments. We will note each comment under the pertinent section of the revised tentative recommendation. We found that it was necessary to completely rewrite the claims statutes and we wanted the Commission to work with the rewritten statute.

The following are comments of the staff and of other interested persons on the Revised Tentative Recommendation relating to Claims, Actions and Judgments Against Public Entities and Public Employees:

1. The Department of Finance (Exhibit IV) objects to providing one statute covering claims against all public entities. Moreover, the Department wants to have certain limitations on filing times included in the State claims statute, but apparently is unwilling to include in the State claims statute even those provisions of the local public entities statute that now permit presentation of late claims in certain circumstances. Does the Commission wish to accept the suggestion of the Department of Finance that there be two separate statutes, with different provisions or does the Commission wish to attempt to perfect

the revised tentative recommendation which represents the actions of the Commission previously taken on this subject? The specific points raised by the Department of Finance as to particular changes will be discussed under the pertinent section of the proposed statute.

2. The following are section by section comments on the revised tentative recommendation. In some cases we made technical corrections in previously approved sections. We note any comments made on the comparable section of the tentative recommendation we distributed for comments.

900. This is approved by Commission.

901. This is approved by the Commission. The State Bar Committee suggests with reference to another section the following:

The concluding phrase "that would be applicable if the action were brought against a defendant other than a public entity" should be eliminated as unnecessary. The present statutes of limitations apply to governmental agencies. Furthermore, what would be the effect upon such special statutes of limitation as C.C.P. Section 337.5(1) and (2)? [These provisions deal with actions on state and local entity bonds (10 years.)] It is not clear why the tolling of the statute of limitations during minority or disability, as provided in the Code of Civil Procedure Section 352, should not be equally applicable to actions against public entities.

Present Section 715 of the Government Code provides in part:

For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action accrued within the meaning of the applicable statute of limitations.

See also Sections 945.6 and 945.8 of the proposed statute. This change in the language of Section 715 apparently creates no great problem as far as actions against local public entities are concerned, since there are a number of specific exceptions to the claims filing requirement found in

Section 905 of the proposed statute. However, no comparable exceptions are provided with respect to the State. See Section 905.2 of the proposed statute.

905. Not previously approved but is existing law.

905.2. Previously approved.

905.4. Previously approved. County Counsel of Los Angeles suggests that this section be deleted. He states:

[Proposed Section 905.4] should be eliminated as the requirement that a claim be filed with reference to causes of action under Section 17001 of the Vehicle Code is just as important as the necessity for filing claims with respect to other causes of action. Further, the second provision eliminating the claims requirement where the plaintiff did not know of the necessity for the presentation of a claim would apparently eliminate any statute of limitations as to this type of claim. It would appear that the subject matter is adequately covered by proposed Sections [911.4 to 912.2].

The Commission's consultant has recommended that causes of action arising under Vehicle Section 17001 be eliminated from the claims requirement on the theory that most of these claims are covered by insurance. The assumption that there is insurance coverage is not necessarily based on fact as for instance the City of Los Angeles is self-insured with reference to its motor vehicle actions. However, the provisions respecting the filing of claims are just as important in motor vehicle claims as they are in any other, as the primary purpose of the filing of a claim is to provide a businesslike procedure for the expenditure of public funds. The claim sections as originally developed (see Chapter 47, Stats. 1855 or Section 4072 of the 1872 Political Code) were for the purpose of establishing fiscal machinery for the payment of public funds. This machinery of course applies not only to damage actions but also to the payment of all the usual claims for services and materials rendered to the public agency.

There is clearly no reason for excepting vehicle code actions from the claims requirement. The County of Los Angeles for instance operates a large number of parking lots. Where damage is caused by a parking lot attendant, liability has been recognized under Section 17001 of the Vehicle Code. These claims are not covered by insurance

but the claims provisions provide a reasonable method of processing these claims, few if any of which ever result in litigation.

It is likewise true that personal injury claims may arise out of what appears to be a very trivial accident. A review of recent jury cases tried in the Los Angeles Superior Court indicates a substantial number of whiplash injuries where the physical damage to the vehicles was extremely minor. The claims requirement in such accidents therefore, irrespective of whether there is insurance coverage or not, is just as necessary with respect to motor vehicle accidents as to any other type of damage claim.

The office of Mr. Perry H. Taft also objects to not requiring the filing of a claim in a case involving the operation of a motor vehicle. See Exhibit II (yellow sheet).

905.6. Not previously approved but is existing law.

905.8. Previously approved.

910. Previously approved.

910.2. Inadvertently omitted from previous tentative recommendation.

Is existing law.

910.4. Previously approved.

910.6. Previously approved.

910.8. Previously approved. The Los Angeles County Counsel has the following comment concerning proposed Sections 910.8 and 911:

[These sections] are entirely unnecessary because of the doctrine of substantial compliance and unworkable as presently drafted because of the short period of time provided therein and the fact that a defect or omission in a claim may not be apparent from examination of the face of the claim itself. We would further recommend that if these provisions are retained that the notice of the deficiency in the claim may be given not only by the Board but also by its clerk, auditor or attorney.

As the note under Section 910.8 indicates, the notice giving function and function of ruling on the sufficiency of claims could be delegated by the

governing body of a local public entity. However, similar authority should be given to the Board of Control or the section should be revised to permit the delegation in the case of 910.8 and 911. An appropriate amendment to proposed Section 912.8 to give the Board of Control such authority should be considered.

911. Previously approved. See comments under proposed Section 910.8

911.2. Previously approved. The State Bar Committee comments on this section as follows:

The Section feels strongly that the time limit of 100 days provided in Section [911.2] should be extended to not less than 180 days. In this connection attention is called to the fact that the time for filing claims against the State is being reduced from the present time limit of two years and further that the draft statute proposes a short six-month statute of limitations after rejection of a claim in whole or in part. This same recommendation was strongly urged by the State Bar in connection with the Presentation of Claims Act before the 1959 legislature.

The Section also recommends that it should not be necessary to file a claim with a public entity on any cause of action arising out of any contract. For example, a glazier repairing a broken window in a school or a garage man repairing a municipally owned automobile should not be required to file a written claim under the Act if their bills are not paid. Furthermore where the claim arises out of a contractual obligation on the part of a public entity, knowledge of the obligation on its part is a necessary hypothesis.

In connection with contract claims, see comment to Section 930.2.

The Department of Finance strongly urges that a section like Section 911.2 be made applicable to claims against the State. See Exhibit IV.

911.4. Previously approved.

911.6. The office of the Los Angeles County Counsel suggests with reference to this section:

With reference to proposed Section [911.6], we would suggest that the application should be deemed to have been "granted" instead of "denied" by the inaction of the Board.

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This would avoid the necessity of a specific action on the part of the Board where grounds for granting the application exist.

With reference to proposed Section [911.6], we would suggest either that the requirement that the public entity be not unduly prejudiced apply as well to minor, incapacitated and dead claimants as well as to mistaken claimants or that the provisions with respect to filing claims by minors, incapacitated and dead claimants be included in Section [911.2] within the one year provision.

911.8. Previously approved.

912. Previously approved. The Los Angeles County Counsel suggests with reference to this section:

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We would recommend that the provisions of proposed Section [912] be eliminated. Having provided an administrative procedure for the filing of late claims, it would appear unnecessary to provide an additional court procedure to determine the same matter. In case of a failure of the Board to properly comply with the provisions of Section [911.6] resort could be had to an action in mandamus to review such action.

912.2. Previously approved.

912.4. Previously approved. The Los Angeles County Counsel has the following comment on this section:

With reference to Section [912.4], we are in agreement with the concept that the Board should have a reasonable time within which to act upon the claim before suit can be commenced and further with the concept that the claim shall be deemed to have been automatically rejected by the Board on the expiration of the period. We would suggest, however, that the forty-five day period be increased to ninety days as was set forth in former Section 29714 of the Government Code and Section 4078 of the Political Code, as forty-five days is an inadequate time in which to investigate and take action on a pending claim.

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With reference to proposed Section [912.4] the forty-five day period specified therein appears to be entirely inadequate from our previous experience. For many years we operated under the ninety day provision set forth in Section 29714 and still attempt to meet this ninety day

time limitation and even so have considerable difficulty in completing the investigation and making our recommendation to the Board of Supervisors within this ninety day period.

912.6. Previously approved except that we have inserted in subdivision (a)(4) the words "or the amount justly due is disputed" in response to a suggestion from the State Bar Committee.

912.8. Previously approved.

913. Previously approved. The Department of Finance suggests that this section be revised to read:

The Board in its discretion may automatically deny any claim covered by insurance or self-insurance or for which the claimant, in the opinion of the Board, has an adequate remedy at law.

The staff suggests that Section 913 be omitted. The apparent reason why it is now in the existing statute is because the statute apparently requires that a hearing be held on each claim. We have deleted that requirement. Accordingly, Section 913 is unnecessary since the board is authorized to examine and adjust claims in accordance with such procedure as the board, by rule, may prescribe. (Proposed Section 912.8).

913.2. Previously approved.

915. Previously approved.

915.2. Previously approved. The State Bar Committee suggests that this section be deleted. The Committee states:

The Section recommends the deletion from the draft statute of Section [915.2] as tending to Unnecessarily complicate the claims procedure. Section [915 (a)(2)] expressly authorizes mailing. The incorporation by reference of Section 1013 of the Code of Civil Procedure adds nothing to the authority granted and raises a question whether it is intended to add an additional day for each 100 miles of distance that the Section provides. Furthermore, the incorporation by reference of Section 1013(a) of the Code of Civil Procedure raises serious questions as to whether all claims would have to have attached to them an

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affidavit or certificate of mailing. Clearly the average layman is not going to be familiar with this type of procedural proof.

920-920.8. Not previously approved but existing law.

925-926.8. Not previously approved but existing law.

930. Previously approved. See comment to Section 930.2.

930.2. Previously approved. This section states existing law. The Los Angeles County Counsel suggests that the last sentence of the section be deleted:

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With reference to proposed Section [930.2] relating to contractual claims provisions, it would appear that these matters should be completely divorced from the time limitations and other provisions relating to the extension of such time periods contained in the proposed legislation as these are primarily a matter of negotiation between the parties and the contract may take into consideration time limitations which are a primary interest to the parties and not a matter which should be governed by general state legislation. For instance, in a typical construction contract whether entered into by a public agency or a private party, claims for extra services are generally required to be submitted within a relatively short period of time after such services have been performed. It is likewise true in many construction contracts that provision is made for progress payments to be made monthly as the work progresses and there are many other contractual provisions which do not fit within the proposed general claims legislation.

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935. Previously approved. This section is existing law except insofar as it authorizes local public entities to require that the claim be acted upon before an action can be commenced. This requirement--that the claim be acted upon--should be deleted. The difficulty that arises as a result of this requirement involves the interrelationship of the statutes of limitation and the claims filing requirement. We would need, if we retain proposed Section 935 as is, to provide a special statute of limitations. See proposed Section 945.8. It is suggested that the existing law is

adequate in this regard and that the requirement that the claim be first acted upon before an action be brought be eliminated.

935.2. Previously approved. Should this section be made applicable to "functions of the governing body of the public entity under this division"?

935.4. Previously approved. See comment on 935.2. The Los Angeles County Counsel has the following comment with reference to this section:

With reference to proposed Section [935.4], the \$1,000.00 limitation should be eliminated as the authority of the agent to allow, compromise or settle a claim should be determined by the governing body of the local public entity and it may be desirable to grant authority to permit allowance of claims substantially exceeding the \$1,000.00 limitation as has been provided in the past with respect to the Auditor of the County who may be granted rather broad powers with respect to the allowance of certain types of claims.

940. Previously approved.

941. Previously approved.

942. Previously approved.

945. Previously approved.

945.2. Previously approved.

945.4. Substance of this provision previously approved. Technical defects corrected in light of comments of State Bar Committee.

945.6. Substance of this provision previously approved. Technical defects corrected in light of comments of State Bar Committee.

The State Bar Committee has the following comment with reference to this Section:

Section [945.6] provides for a six-month statute of limitations for the commencement of an action after the claim has been acted on by the board. Unless the time for presenting claims based on personal injury is increased from 100 to 180 days, the Section regards this time limitation as being too short and recommends that the six months be increased to one year.

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With reference to Section 945.6, the Los Angeles County Counsel states:

With reference to proposed Section [945.6], we are in agreement with the proposed reinforcement of the six months' statute of limitations which was formerly contained in Government Code 29715 and 342 Code of Civil Procedure. This six months' statute was of considerable assistance in closing out old claim files after the period within which suit could be filed had expired.

The office of Perry Taft states with reference to proposed Sections 945.6 and 945.8:

Moreover proposed sections [945.6] and [945.8] to the Government Code would establish differing periods of limitation dependent upon whether a claim is required to be presented in accordance with [Chapters 1 and 2 of Part 3]. Thus [945.6] would require suit to be commenced within six months after the date the claim is acted upon by the board in a case where a claim is required to be presented whereas [945.8] would establish the usual statute of limitations in those cases where a claim is not required to be presented.

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We submit this distinction is unwise and not in conformity to the Commission's objective of unifying and simplifying claims procedures.

945.8. Previously approved. The Los Angeles County Counsel states:

With reference to proposed Section [945.8], we are in agreement with the proposal that general statutes of limitations also be made applicable to public entities but would suggest that a proviso be added to this section extending the period of the statute of limitations for the time required to process the claim and during which the claimant was unable to file suit.

The State Bar Committee comments:

In Section [945.8], the concluding phrase "that would be applicable if the action were brought against a defendant other than a public entity" should be eliminated as unnecessary. The present statutes of limitation apply to governmental agencies. Furthermore, what would be the effect upon such special statutes of limitation such as C.C.P., Section 337.5 (1) and (2)? It is not clear to the Section why the tolling of the statute of limitations during minority or disability, as provided in the Code of Civil Procedure Section 352, should not be equally applicable to actions against public entities.

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946. Approved in substance.

947. Approved in substance. Language not approved.

947.2. Approved in substance. Language not approved. Professor Van Alstyne advises us that public entities are often sued in small claims courts. Should the public entity get \$50 costs in such a case?

950-951.2. Previously approved. We have corrected technical defects and conformed the provisions to the claims statute. State Bar Committee approves these provisions in substance. See Exhibit I, (pink pages) pages 3 and 4. See comment to Section 947.2 with reference to Section 951.2.

955. Approved in substance. Language not approved.

955.2. Approved in substance. Language not approved.

955.4. Not previously approved. Existing law.

955.6. Not previously approved. Existing law.

955.8. Not previously approved. Existing law.

960. Previously approved.

960.2-960.8. Not previously approved. See Exhibit IV, pages 2-3. We have included these provisions here to permit Commission discussion of the proposals of the Department of Finance.

965. Not previously approved in this form. See Exhibit IV, page 2, Section 623(b).

965.2. Not previously approved. See Exhibit IV, page 4, proposed amendment to Section 654.

965.4. Not previously approved. See Exhibit IV, page 4, proposed amendment to Section 655.

Repealed Government Code Section 652. Government Code Section 652 relating to interest and costs on judgments against the State was deleted as unnecessary. See comment on disposition table (last two pink pages in Tentative Recommendation) under Section 652.

Proposed Section 342 of Code of Civil Procedure (page 73--blue). We suggest that this section be deleted. It is unnecessary. A person having a claim against a public entity can determine the applicable statute of limitation by an examination of Division 3.6. He will be compelled to examine that division to determine whether he has to file a claim, whether liability exists, etc. These cross references in the code create problems in drafting amendments.

Repeal of Government Code Section 13920.1. Previously approved.

Note. We will be repealing or amending at least 148 sections that are not set out in the bill. We plan to submit copy to the printer and get these sections included in the preprinted bill. The Commission could then examine the sections and we could make any changes considered necessary. If desired, we can give examples of typical sections in a later memo and have the Commission determine what course of action should be taken with respect to the various types of sections.

SEC. 155. (Effective date) Previously approved. Should not Chapter 3 (Sections 970-978.4) (blue page 72) take effect at normal effective date? What about other parts of proposed legislation?

SEC. 156. (Saving clause). Previously approved.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

EXTRACT

from

SECOND REPORT OF

STATE BAR COMMITTEE ON SOVEREIGN IMMUNITY

(Meeting of September 20, 1962)

3. CLAIMS AGAINST PUBLIC ENTITIES

The Section feels strongly that the time limit of 100 days provided in Section 767(a) should be extended to not less than 180 days. In this connection attention is called to the fact that the time for filing claims against the State is being reduced from the present time limit to two years and further that the draft statute proposes a short six-month statute on limitations after rejection of a claim in whole or in part. This same recommendation was strongly urged by the State Bar in connection with the Presentation of Claims Act before the 1959 legislature.

The Section also recommends that it should not be necessary to file a claim with a public entity on any cause of action arising out of any contract. For example, a glazier repairing a broken window in a school or a garage man repairing a municipally owned automobile should not be required to file a written claim under the Act if their bills are not paid. Furthermore where the claim arises out of a contractual obligation on the part of a public entity, knowledge of the obligation on its part is a necessary hypothesis.

Section 760(a) provides that no suit may be brought against a public entity on a cause of action "for which a claim is required to be presented in accordance with this chapter". Except for Section 620 relating to claims against the State,

we are unable to find in the draft statute any provision specifying under what circumstances and for what obligations or causes of action a claim is required to be presented. A provision somewhat comparable to Section 620 should be written into chapter 2.5, Article 2, eliminating, however, as suggested above, claims based upon contract obligations.

In Section 774(a)(3) it is recommended that there be added to the sub-section the following

"or it may compromise the claim with respect
to the amount due thereunder".

The Section recommends the deletion from the draft statute of Section 777, as tending to unnecessarily complicate the claims procedure. Section 766(a)(2) expressly authorizes mailing. The incorporation by reference of Section 1013 of the Code of Civil Procedure adds nothing to the authority granted and raises a question whether it is intended to add an additional day for each 100 miles of distance that that Section provides. Furthermore, the incorporation by reference of Section 1013(a) of the Code of Civil Procedure raises serious questions as to whether all claims would have to have attached to them an affidavit or certificate of mailing. Clearly the average layman is not going to be familiar with this type of procedural proof.

Section 782 provides for a six-month statute of limitations for the commencement of an action after the claim has been acted on by the board. Unless the time for presenting claims based on personal injury is increased from 100 to 180 days, the Section regards this time limitation as being too short and recommends that the six months be increased to one year.

Section 782 is probably also designed to apply a uniform statute of limitations, both with respect to local public entities and the State. Accordingly,

after the words "in accordance with this chapter" there should be added "or chapter 1 of this Division".

The Section also recommends that there be added at the end of Section 782 the following:

"or within six months after the date the
claim is deemed rejected as provided in
Section 776".

In Section 783, the concluding phrase "that would be applicable if the action were brought against a defendant other than a public entity" should be eliminated as unnecessary. The present statutes of limitation apply to governmental agencies. Furthermore, what would be the effect upon such special statutes of limitation such as C.C.P., Section 337.5 (1) and (2)? It is not clear to the Section why the tolling of the statute of limitations during minority or disability, as provided in the Code of Civil Procedure Section 352, should not be equally applicable to actions against public entities.

The Section has heretofore voiced its criticism with respect to the proposed draft statute relating to "Presentation of Claim as Prerequisite to Action Against a Public Officer or Employee". See pages 7-9 of Minutes of July 19th, 1962. It is recommended that no separate statute covering claims as a prerequisite to an action against a public officer or employee be proposed but rather that there be added to the more comprehensive draft statute relating to Claims against Public Entities a new section as follows:

"787. A cause of action against an employee of a public entity for damages resulting from any negligence on the part of such employee while acting within the course and scope of such employment shall be barred unless a written claim for such damages has been presented to the employing entity in the manner and within

the period prescribed in this Chapter as a condition to maintaining an action thereon against such public entity. Provided, however, that no such written claim need be presented to the employing entity if the plaintiff pleads and proves that he did not know or have reason to know, within the period prescribed for the presentation of a claim to the public entity, that the death or injury to person or damage to property was caused by an act or omission of an employee of such public entity acting within the course and scope of his employment, and that the plaintiff gave notice to the public entity within a reasonable time after he acquired such knowledge."

If the foregoing suggestion is adopted, provision should be made for the repealing of Government Code Sections 1980-82 and 2003.

Under Section 22 of the draft statute where it is proposed to add Section 342 to the Code of Civil Procedure reference should be made not only to Chapter 2.5 but also to Chapter 1 if the same period of limitation is to apply to actions against the State.

Furthermore, in the last line of the Section, the reference to Section 781 of the Government Code should be changed to Section 782.

EXHIBIT II

September 7, 1962

Mr. Perry H. Taft

Pacific Coast

Mr. Sydney J. Kandel

New York

California - Governmental Tort Liability - Immunity

Dear Perry:

Pursuant to your memorandum of August 13, 1962, we have reviewed the most recent tentative recommendations of the California Law Revision Commission relative to the above subject.

The recommendation relating to "Claims Against Public Entities" causes some concern in that it seeks to exclude motor vehicle tort claims from the usual requirement of the notice of claims statute. The Commission contends that the basic purpose of a claims statute is to provide the public entity with prompt notice so that it may investigate the claim and remedy the condition which gave rise to it. It states that such notice does not appear to be necessary in auto accident cases since the public entity can establish administrative procedures pursuant to which employees are required to report such accidents promptly to their superiors.

The Commission further contends that the second basic purpose of a claims statute is to afford the public entity an opportunity to consider and approve meritorious claims before commencement of litigation. It states that the liability of public entities in motor vehicle accidents is generally covered by insurance and thus the public entities automatically refer such claims to the insurance carrier. Consequently the claims procedure does not serve its second purpose, in the view of the Commission, in motor vehicle cases.

We feel that deletion of motor vehicle claims from the usual notice of claims provisions is arbitrary and unwise. The fact that, as stated by the Commission, these claims are likely to be insured ones would seem to provide an insufficient basis to eliminate the protective shield of notice of claim provisions.

The basic reasons for notice of claim provisions would seem to be as valid in the case where the public entity is insured as where it might be individually responsible.

Moreover proposed sections 782 and 783 to the Government Code would establish differing periods of limitation dependent upon whether a claim is required to be presented in accordance with this chapter. Thus §782 would require suit to be commenced within six months after the date the claim is acted upon by the board in a case where a claim is required to be presented whereas §783 would establish the usual statute of limitations in those cases where a claim is not required to be presented.

We submit this distinction is unwise and not in conformity to the Commission's objective of unifying and simplifying claims procedures.

Sincerely yours,

Sydney J. Kandel
Law Department

SJK:pl

MEMO 69(1962) EXHIBIT IV
California Law Revision Commission
School of Law
Stanford University, California

October 5, 1962

Attention: Mr. John H. DeMouilly
Executive Secretary

Director

Claims Against Public Entities

In our letter dated May 14, 1962, we commented on the draft of a claims statute that was circulated with your Staff Memorandum #19. Responsive to a subsequent request from the Commission, we enclosed with our letter dated July 18, 1962 a draft of statutory language that would authorize the compromise and settlement of claims against the State. Under date of August 1, 1962, the Commission transmitted its "Tentative Recommendation Relating to Claims Against Public Entities" and invited comments to be considered by the Commission in formulating its final recommendation on the subject at its October meeting.

The position of the Department of Finance regarding the State claims statute is, in general, that the present law should be changed only in the following respects:

1. To provide a simplified system for filing claims.
2. To prescribe a 100-day filing period for tort claims (including motor vehicle claims) and a one-year filing period for all other claims, including expressed contract and inverse condemnation claims. The present law prescribes a 100-day filing period for claims against local public entities related to causes of action for death or for physical injury to the person or to personal property or growing crops, and a one-year filing period for all other claims against local public entities (Section 715, Government Code).
3. To prescribe a six month period for filing actions against the State after rejection of claims by the State Board of Control. The present law prescribes a six month period for bringing an action against the State after a claim has been rejected by the Board of Control, except that for motor vehicle claims the period is six months or the time prescribed by the Code of Civil Procedure (Sections 643 and 644, Government Code).
4. To provide a procedure for compromising claims.

Preserving the existing law with the above changes will provide a procedure that is adequate, fair and understood by the bench and bar. The simplified system proposed by the Department of Finance will avoid an intricate, detailed, new procedure which would impose additional procedural burdens on both claimants and State agencies and result in uncertainty until interpreted by the courts. The Department of Finance therefore recommends legislation which would:

Repeal Section 623, Government Code.

Add a new Section 623 to the Government Code to read:

- (a) The State Board of Control, by rule, may authorize State agencies to adjust and pay claims for negligence and dangerous conditions of public property where the settlement does not exceed \$1,000 or such lesser amount as the Board may determine, and a sufficient appropriation for such payment exists. Payments shall be made only upon approval of the settlement by the Board.
- (b) Whenever a claim is allowed by the Board, and a sufficient appropriation for the payment thereof exists, it shall designate the fund from which the claim is to be paid, and the State agency concerned shall pay the claim from such fund. Where no appropriation for such payment is available, the Board shall report to the legislature in accordance with Section 622 of this Code.
- (c) The Board may, in its discretion, within the time prescribed by Section 643 of this Code for bringing an action on a claim, re-examine a previously rejected claim in order to consider a settlement thereof.
- (d) The head of the State agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the State, may settle, adjust, or compromise any pending action where a sufficient appropriation for payment thereof exists.

Where no funds or insufficient funds for such payment exist, the head of the State agency concerned, upon recommendation of the Attorney General or other attorney

authorized to represent the State, may settle, adjust, or compromise any pending action with the approval of the Department of Finance.

Amend Section 624 to read:

If the State elects to insure its liability, The Board in its discretion may automatically deny any claim covered by insurance or self-insurance or for which the claimant, in the opinion of the Board, has an adequate remedy at law.

Amend Section 643 to read:

A claim for negligence arising under Section 17000 to 17003, inclusive, of the Vehicle Code shall be presented to the Board within one year 100 days after the claim first arose or accrued. Any other claim including a claim on express contract, or for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution, shall be presented to the Board within one year after the claim first arose or accrued. An action on such any claim shall be brought either within the time prescribed by the Code of Civil Procedure within which such an action may be brought or within six months after the claim is rejected or disallowed in whole or in part.

Repeal Section 644.

Amend Section 645 to read:

An action may not be maintained on a portion of a claim arising under Sections 17000 to 17003, inclusive, of the Vehicle Code, but if the amount is not accepted in full settlement of the claim and an action is brought, it shall be brought on the entire claim and the allowance is ineffective. If any other claim is rejected or is allowed only in part, an action may be maintained only on the portion of the claim rejected or disallowed.

Amend Section 647 to read:

At the time of filing the complaint in any action against the state, except in an action based upon a claim arising under Section 17000 to 17003, inclusive, of the Vehicle Code, the plaintiff shall file therewith an undertaking in such sum, but not less than Two Hundred Fifty Dollars (\$250.00) as a judge

October 5, 1962

of the court shall fix, with two sufficient sureties, to be approved by a judge of the court. The undertaking shall be conditioned upon payment by the plaintiff of all costs incurred by the state in the suit, including a reasonable council fee to be fixed by the court, if plaintiff fails to recover judgment in the action. Where no such undertaking is filed at the time of the filing of the complaint the state may file and serve a demand therefor. Within twenty (20) days after service of a demand, the plaintiff shall file an undertaking as required herein or the action shall be dismissed.

Amend Section 652 to read:

Except as otherwise provided by law and where a judgment is rendered for the plaintiff, it shall be for the legal amount actually found due from the state to the plaintiff, with legal interest from the time the claim or obligation first arose or accrued, and without cost date of entry of judgment, and the state shall not be liable for interest prior to entry of judgment or for punitive damages.

Repeal Section 653.

Amend Section 654 to read:

The Controller shall draw his warrant for the payment of any other final judgments or settlements against the State whenever a sufficient appropriation for such payment exists. Claims upon such judgments and settlements are exempt from Section 603.

Amend Section 655 to read:

The Governor shall report to the legislature, at each session, all judgments or settlements of actions against the State upon claims not arising under Sections 17000 to 17003, inclusive, of the Vehicle Code and not theretofore reported.

/s/ Hale Champion

Hale Champion
Director of Finance

HC:jd
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