

5/13/65

Memorandum 65-25

Subject: Revisions of Governmental Liability Act (A.B. No. 1733)

The League of California Cities distributed the Commission recommended legislation which would make certain revisions of the 1963 claims statute and would clarify the law relating to motor vehicle liability.

A number of objections to the bills were received. The staff has discussed these objections with the League representative in Sacramento. He has indicated that he is willing to restrict his objections to the one matter indicated below.

To eliminate this one objection, we suggest that Section 930.4 (set out on pages 416-417 of the Recommendation attached) be revised to read:

930.4. A claims procedure established by agreement made pursuant to Section 930 or Section 930.2 exclusively governs the claims to which it relates, except that :

~~(a)--The procedure so prescribed may not require a shorter time for presentation of any claim than 100 days after the accrual of the cause of action to which the claim relates.~~

~~(b)--The procedure so prescribed may not provide a longer time for the board to take action upon any claim than the time provided in Section 912.4.~~

~~(c)--The procedure so prescribed may not authorize the consideration, adjustment, settlement, allowance or payment of a claim by any claims board or commission or employee of a local public entity contrary to the provisions of Section 935.2 or 935.4 or by any state agency contrary to the provisions of Section 935.6.~~

~~(d)--If if the procedure so prescribed requires a claim to be presented within a period of less than one year after the accrual of the cause of action and such claim is not presented within the required time, an application may be made to the public entity for leave to present such claim. Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Section 946.6 are applicable to all such claims, and the time specified in the agreement shall be deemed the "time specified in Section 911.2" within the meaning of Sections 911.6 and 946.6.~~

This suggested revision would retain the substance of the law enacted in 1963 upon recommendation of the Commission and will satisfy the League.

In its 1963 recommendation, the Commission recommended that the previously existing 100-day limitation not be applicable to claims procedures established by agreement. The fact that this change was recommended was pointed out in the Comment to the pertinent section of the 1963 legislation.

We do not believe it is necessary to change the 1963 legislation. In 1963, we also revised the late claims procedure to provide that a claimant may file his claim within a reasonable time not to exceed one year if he failed to file the claim because of mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced. This ground for relief from failing to present a claim within the period prescribed in the agreement applies to a claims procedure established by an agreement and appears to eliminate the most persuasive arguments that could be made in support of the proposed change.

Several city attorneys have expressed the belief that the revision proposed by the Commission will cast doubt on the validity of provisions that require prompt notice of completion of a construction project, require prompt notice of disputes arising under contracts, permit the settlement of disputes under the contract on the basis of an architect's certificate, and the like. Although we do not believe that the revision proposed by the Commission would make such provisions invalid, we believe that the matter is not so clear that we can say that no judge would so hold. We do not believe it would be feasible to attempt to revise the Comments in the report to make the matter clear; the legislative committees are now so busy that they really do not have time to consider the bills-- and we do not want to suggest that the committees undertake the additional task of reading and approving the comments.

Accordingly, the staff suggests that Section 930.4 be revised as indicated above to eliminate this objection.

The State Bar also has objections to A.B. No. 1733. We have been advised that material will be provided by the State Bar for your consideration at the meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary