

#52

9/24/69

First Supplement to Memorandum 69-114

Subject: Study 52 - Sovereign Immunity (Claims Against Public Entities)

You are aware of our unsuccessful effort to make a modest reform in the claims statute. Nevertheless, you will be interested in the attached letter from Howard C. Erickson, West Covina attorney. One possible solution to the problem that concerns Mr. Erickson might be to allow attorney's fees to the successful claimant who is required to go to court in order to establish that the entity should have allowed the late claim.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

First Supplement
Memorandum 69-114

EXHIBIT I

HOWARD C. ERICKSON
ATTORNEY AT LAW
ROELLE BUILDING, SUITE 102
1500 WEST SERVICE AVENUE
WEST COVINA, CALIFORNIA 91790

TELEPHONE
962-6004

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Assemblyman William Campbell
101 South Second Street
La Puente, California

Dear Mr. Campbell:

I ran across a situation the other day covered by a code section, where some amendment or possibly penalty seems to be in order. The situation has to do with filing late claims covered by section 911.6 of the Government Code.

The legislature sought to liberalize the filing of late claims by providing that the Board shall grant the application (the right to file a late claim) under certain conditions, and yet it appears that County Counsel may be routinely recommending against granting the application on the grounds that to recommend in favor of allowing the filing would jeopardize their rights under the liability policy. The effect of such entities turning down legitimate late claims is to cause counsel to have to file a petition in Court to have granted the very thing that the Board was supposed to do, thus costing more fees and costs to litigants and further and needlessly cluttering the Courts.

The requirement to file a claim at all is sheer nonsense and an anachronism equivalent to the Divine Right of Kings, but if we can't get over that hurdle, then perhaps one of the following methods could be used:

1. Put the burden on the entity. Provide that a claim shall be deemed properly presented even though filed late, but the entity may set up as a defense in their answer to the main action, that they have been prejudiced by late filing.
2. Provide that the granting of leave by the entity to file a late claim shall not constitute a violation of any provision of a

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liability policy.

3. or both.

Yours very truly,

HOWARD C. ERICKSON

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