

5/30/72

Memorandum 72-41

Subject: Research Contracts

The staff suggests that two additional research contracts be made with funds appropriated for the current fiscal year.

Contract with Ferdinand F. Fernandez. We suggest that a contract be made with Ferdinand F. Fernandez, Chairman of the State Bar Committee on Attachments, to attend meetings and provide expert advice. The contract would be the same in substance as the one with Fadem and Kanner. Compensation would be \$20 per day attending meetings and travel expenses. The amount of the contract would be \$500. The contract would cover the period ending on June 30, 1974. We make this suggestion because we believe that it would be of significant help in coordinating the work of the Commission with that of the State Bar Committee. I discussed this matter with the Chairman and then called Mr. Fernandez. He indicates he needs a few days to determine if he could find time to attend our meetings.

Contract with Arvo Van Alstyne. The attached article from the Los Angeles Daily Journal is a fairly clear indication that the Commission will have to come up with legislation to cover various areas affected by the recent case of Nestle v. City of Santa Monica. Assuming that common law nuisance will be permanently eliminated as a basis of governmental liability, the problem is what solutions are to be provided in aircraft noise cases and possibly other types of cases where nuisance liability would otherwise exist. I have discussed the problem with Professor Van Alstyne. As is always the case, he has many demands on his time, including work for the Uniform Eminent Domain Act Committee and the study he is preparing for the Law Revision Commission

on procedural aspects of inverse condemnation. Nevertheless, he is willing to prepare an analysis of the areas that need to be studied and the possible alternative approaches that might be taken in legislating in those areas, including a discussion of the relevant policy considerations in those areas. Such an analysis should serve as a useful means of reviewing the areas and determining the approaches to liability that appear to be the most promising. After such analysis is considered by the Commission, a second contract could be made with Professor Van Alstyne covering precise problems and the Commission's staff also could work on precise problems.

The staff believes that the contract proposed is the most efficient way of proceeding. The analysis should be most useful; indeed, the staff believes it is an essential first step. The analysis would not be the equivalent of a law review article.

Accordingly, the staff recommends that a contract be made with Professor Van Alstyne to prepare the analysis. The compensation would be \$1,500 plus not to exceed \$200 travel expenses.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Measure Would Bar Nuisance Suits

SACRAMENTO — A northern Californian legislator last week introduced a bill aimed at imposing a two-year moratorium on nuisance actions against governmental agencies.

The measure, AB 2570, introduced Friday by Assemblyman John Knox, D-Richmond, is in direct response to a recent decision of the California Supreme Court in the case of *Nestle v. City of Santa Monica*.

In that case, the high court reversed a lower court ruling that held governmental entities to be immune from liability for an alleged nuisance. The Supreme Court ordered the lower court to permit a cause of action to be brought to trial against the city of Santa Monica for a possible nuisance in the operation of its airport.

While the deadline for the introduction of legislation has already passed, Knox was able to introduce his bill under a special rule entitling each member to drop bills into the hopper after the deadline.

According to terms of the legislation, action against a governmental agency for a nuisance could not be filed or prosecuted for a two year period. At the end of that period, any action barred by the moratorium could be filed. The existing statute of limitation would not apply to such actions.

Knox said that he will ask the California Law Revision Commission to study and propose guidelines and standards under

which a government agency can be sued for creation of a nuisance. Presumably the guidelines would then be enacted by the legislature.

An aide to the legislator said that the bill's chief sponsor is the League of California Cities, adding that several cities have independently given their support to the bill, including the city of Los Angeles.

The legislative staffer said that it is hoped that any guidelines adopted by the legislature would be imposed by the courts on all causes of action for nuisance — both those arising before the effective date of the guidelines and those arising subsequent to the effective date.

Los Angeles City Attorney Roger Arnebergh, who said that his office had a hand in drafting the legislation, said that "everybody felt that government entities had nuisance immunity — everybody but five members of the Supreme Court."

Asked whether legislative guidelines enacted in a subsequent session of the legislature could be applied to a cause of action for nuisance arising today, Arnebergh said that past cases have provide for the operation of such statutes on prior causes of action.

Assemblyman Knox said that the legislation "is not aimed at sanctioning the wrongdoing of government. Rather it is proposed to prevent and protect the citizens of the state from the false impression that the State Supreme Court has unequivocally determined that public agencies operating airports or other facilities such as streets, can be held liable for creating a nuisance."