#65.70 11/12/75

Memorandum 76-2

Subject: Study 65.70 - Inverse Condemnation (Claims Presentation Requirement)

At the November 1975 meeting, the Commission decided not to consider the material presented by its consultant, Professor Gideon Kanner, because the material arrived too late for some members of the Commission to read it prior to the meeting and because there was a general feeling that the study should be broader than merely the claims presentation requirement. The Commission directed the staff to discuss with Professor Kanner whether he would be interested in undertaking a broader study.

I discussed this matter with Professor Kanner. He suggested that the Commission should consider the material that he presented just prior to the November meeting at its January meeting. This material is attached to this memorandum. At the January meeting, if the Commission decides that a broader study is needed, the scope of the study can be determined and the Commission can determine what priority such a study should be given. Professor Kanner has indicated that he will be present at the meeting when this matter is discussed.

The Commission will be interested in reading the recent decision of the Supreme Court of the State of Washington, holding that state's claims statute unconstitutional (attached as Exhibit I).

Respectfully submitted,

John H. DeMoully
Executive Secretary

RECOMMENDATION RELATING TO REPEAL OF CLAIMS STATUTE REQUIREMENT IN INVERSE CONDEMNATION CASES.

It is recommended that the following statute be enacted:

> Gov't. Code § ____ - No claim need be presented against a public entity under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code as a prerequisite to commencement or maintenance of an action brought pursuant to Article 1, §19 of the California Constitution.

Although case law indicates that the claims statute requirement is applicable to inverse condemnation actions,[1/] the decided cases have not explored certain potentially troublesome constitutional issues.[2/] Moreover, there are pragmatic difficulties inherent in the application of the claims statute requirement to inverse condemnation litigation which militate in favor of elimination of the claims requirement in that context.

The nature of inverse condemnation cases that are usually litigated, is generally such that great difficulties

arise in determining when the cause of action has accrued so as to trigger the running of the claims statute. The California Supreme Court has taken the position that even though a cause of action in inverse condemnation may accrue when the objectionable governmental activity commences an infliction of damage on the affected property, nonetheless, the owner may defer the filing of his claim to a time more than one year from the accrual of the first item of damage.[3/] The policy basis for this rule is that this is beneficial not only to the owner who may be uncertain as to when his cause of action accrued,[4/] but also to the government, in the sense that by the time a "final account may be struck"[5/] the damage has fully accrued, thereby letting the government know what potential expense it faces. It is also useful to society at large by eliminating the need for piecemeal litigation that would be necessary to adjudicate each additional increment of damage as it accrues more than a year after the commencement of the damaging governmental action.

The problem areas may be subdivided into three categories: (a) where the government seizes privately owned land in order to devote it to some governmental purpose, (b) where the government constructs a public improvement on its own land, that becomes the cause of damage to nearby private property, but the actual damage does not occur until sometime after the completion of the construction, and

(c) where the "taking" of "damaging" comes about by a continuous and gradual process of governmental interference with private land use.[6/]

Even in the first category, which at first blush might seem to be the simplest one, complexities arise. The governmental entities have argued, not without logic, that in such cases the mere seizure of land in question should serve as notice to the owner that a "taking" has occured, thereby putting the burden on the owner to file a claim within one year of the physical seizure (or at least his awareness of the seizure). However, the Supreme Court rejected that argument in the Pierpont Inn case, pointing out that the seizure alone may not be indicative of the measure of damages suffered by the owner, in that the damage may continue developing as the public project is completed on the seized land. Accordingly, held the court in Pierpont Inn, the owner may await the completion of the project and a stablization of his damages before the time in which to file a claim starts running.

As for the second situation, the latest and most definitive statement from the Supreme Court is contained in the Mehl case.[7/] There, land was formally taken for a freeway (in a judicial condemnation proceeding) and the freeway constructed. However, the freeway construction altered drainage patterns in the area, thereby setting the stage for damaging the remaining land whenever the next heavy rain came. The

next heavy rain came several years later and the damage occurred. When the owner brought an inverse condemantion action seeking to recover for such damage, he was met with the argument that the damage actually accrued at the time the State built the freeway and therefore the owner's claim was too late. The Supreme Court rejected that argument by pointing out that a claim is not tardy where it is filed within one year of the time when the occurrence of damage would be perceptible to the reasonable man. Thus, even in the first and second category, the claim filing requirement gives rise to complexities and generates sterile but expensive litigation over timeliness of claim filing.

In the third situation, the difficulties in ascertaining when to file the claim, become literally insurmountable. The problem has its roots in the judicial accommodation to the interests of the public entities in Klopping [8/] and Selby.[9/] These cases indicate that a cause of action in inverse condemnation cannot accrue for a mere filing of a general plan or a mere announcement of a future intent to condemn. This rule is manifestly sound as it encourages legitimate and open public planning functions. Nevertheless, the beneficial purpose of the rule exacts a high price in terms of predictability. Recall that in Klopping the Supreme Court established a sort of a legal continuum that begins with a "mere" announcement which is not actionable.[10/] From there

we progress to a level of what the Court termed "slight incidental loss" which still goes uncompensated as far as the owner is concerned, because additional time is necessary to facilitate the public planning function.[11/] Beyond this "slight incidental loss" level, further delay (or other unreasonable conduct) gives rise to a constitutional "damaging" (or a "taking" of some interest, such as loss of rents), i.e., a situation where the owner has suffered a compensable loss but the degress of interference with his land has not risen to the level of a de facto taking of the fee ownership.[12/] Still further down the line, if the degree of governmental interference becomes more severe, the situation ripens into a de facto taking of the owner's entire interest.[13/]

The obvious difficulty with this progression - notwithstanding its theoretical appeal - is that it results in a sort of a large grey area in which it becomes extremely difficult to know when a cause of action in inverse condemnation has accrued. The difficulty is substantial for skilled lawyers; it is insurmountable for lay property owners.

The owner who has suffered this type of damage, is placed in an extremely difficult situation in trying to ascertain whether his damage is of the "slight incidental loss" which goes without compensation, or whether he has crossed a line into the "damaging" area. If he tries to play it safe from the point of view of the claims statute, and files

the claim early, he can expect to be met with governmental arguments of prematurity (i.e., that the level of the damages suffered, if any, is not so high as to rise to the level of a "damaging" and is still within the "slight incidental loss" area). If, on the other hand, the owner wants to play it safe from the point of view of alleging and proving demonstrably sufficient interference and damages to qualify for at least a constitutional "damaging", then he may find himself confronting the argument that he waited too long and that the action he wishes to pursue is now barred by the claims statute. As will be demonstrated below this concern is not an academic one and in several recent cases the Courts of Appeal have generated a climate in which this difficulty has risen to alarming proportions.

Regrettably, three of the four pertinent cases have been certified for non-publication by the Courts of Appeal. Nevertheless, without getting embroiled into the jurisprudential debate as to whether or not, and if so to what extent, these cases constitute precedential authority,[14/] it is evident that if lawyers could persuade the courts to make these rulings in those case, they can surely do so again in other cases, and the unpublished status of the pertinent opinions notwithstanding, they do provide a fascinating insight into the problem.[15/] They also demonstrate the enormous time, effort, energy and expense being expended by both owners and

governmental entities, as well as the courts, on the question of whether the claim was timely filed.

The first of these cases is Winje v. People.[16/] There the owners brought an action against the State under the Klopping theory, alleging that a freeway route had been laid out over their land for so long a period of time as to amount to the "unreasonable delay" declared by Klopping to be actionable. When the case went to trial, the State made a motion for judgment on the pleadings arguing in part that the owner's claim had not been timely filed. The trial judge was sufficiently concerned about this issue that he apparently required the owner to explain the situation. The opinion indicates that the owner made what is termed an "offer of proof" concerning the State's liability. Apparently the trial judge was dissatisfied with the "offer of proof" and rendered judgment on the pleadings for the State on the ground that the action was tardy. The Court of Appeal reversed, holding that (1) the trial judge erred in deciding a motion for judgment on the pleadings on a basis other than the four corners of the attacked pleading (i.e., in considering the "offer of proof"), and (2) any issue concerning the timeliness of the filing of the claim would be resolved the same way that issues concerning the running of the statute of limitations are resolved in general litigation, i.e. by a jury trial. The opinion is quite explicit on this point and does not leave

any room for interpretation.[12]

The second recent case in this series is People v. Kornwasser,[13] a direct condemnation case. The facts were as follows: The owners bought their land in 1961, and in 1968 hired an engineer to plan a subdivision. At that time he informed the owners that the State was planning a freeway through their land. The engineer was instructed to proceed with the plans. In 1970 the owners employed another engineer who prepared plans and specifications for a subdivision and arranged with a contractor who was working on the freeway, to deposit excess dirt from the freeway on the Kornwasser property according to those plans. The second engineer also contacted the State and obtained drawings of the proposed freeway route. In June 1973, he again contacted the State and was given newer, revised plans. During 1968 through 1974 the State's plans called for commencement of freeway construction in 1974 and its completion in 1978.

In 1972, the owners filed a subdivision map which was incomplete and was eventually rejected by the City.

In the meantime, the owners contacted the State and inquired whether the State would buy the right of way across their land. In 1970, the owners wrote to the State asking that a purchase be made under the hardship acquisition procedure. One and one half years later - i.e., in 1972 - the State made two offers, but they were refused. In 1973, a direct con-

demantion action was brought, in which the owners sought pre-condemnation damages pursuant to Klopping.[19] However, the State made an in limine motion to exclude evidence thereof, and the trial court granted the motion. The Court of Appeal affirmed on the grounds that the State's conduct was neither oppressive nor unreasonable, because of the "... complex [legislative] scheme which provides for a planned and coordinated effort before a freeway is ever constructed," and which makes delay an inherent part of the "process affecting substantial condemnation."[20]

The third case is Fryberger v. People.[21] In Fryberger the owner, an eighty-year-old widow, decided to sell her family farm upon her husband's death in 1965. She listed the farm with a broker in 1966 for $75,000. In attempting to sell the property she heard for the first time rumors that a freeway route had been planned across her parcel. She and her daughter then contacted the State Highway Department seeking further information, at which point the rumors were confirmed. In 1967, in response to the owner's request for a hardship acquisition, the State indicated that the freeway would affect Mrs. Fryberger's property, but the design was not yet complete, and hence it was unknown whether the take would be total or partial. In June 1968, the State wrote to Mrs. Fryberger that design work was proceeding and upon its completion it would be known how much of Mrs. Fryberger's

property would be needed. In October 1968,[22] she was informed that the design was completed and only a part of her property would be needed. However in May 1970, the State offered her $31,000 for the entire property (this offer was less than half of the price at which she listed the property four years earlier). This offer was declined. In November 1971, the State offered to buy only a 0.786 acre part of the subject property [23] for $19,785, but this offer was also refused.

Mrs. Fryberger brought an inverse condemnation action in November 1972, but after her case was presented the trial court granted nonsuit against her on the grounds that she had not stated a cause of action. [24]

The Court of Appeal affirmed. However, the affirmance rested on an entirely different ground; namely, that Mrs. Fryberger had a good cause of action but it was barred by the claim statute. Here too, the court's language is quite plain and does not lend itself to interpretation:

> "We have concluded that plaintiff's action is barred by Government Code Section 911.2, which requires that a Board of Control claim for inverse condemnation be presented wtihin one year after accrual of the cause of action." [25]

"From plaintiff's standpoint, formative, progressive and cumulative developments occurred which, at some point of time, metamorphosed into actionable damage to plaintiff's property. So far as these developments were appreciable to plaintiff, they commenced with her unsuccessful effort to sell the property in 1966; continued with her recognition that the freeway proposal had prevented the sale; progressed when the map supplied by the state in 1967 demonstrated the freeway's relationship to her property; continued during her ensuing correspondence and meetings with the state's representatives; culminated when - in May 1970 - the state offered to buy the parcel for $31,960 and she made a counter demand for $75,000. At that point of time, at the very latest, plaintiff's claim of damage received distinct recognition by the state and by herself. According to plaintiff's own theory, the damage became appreciable to her no later than May 1970. We hold that as a matter of law the damage claimed by

> plaintiff became appreciable to a reasonable person no later than May 1970. Not until November 1972, two and one-half years later, did plaintiff file her damage claim with the State Board of Control. The claim was filed well past the period of limitations." 26/

The fourth recent case which contributes to the chaos, is Smith v. State.27/ There the Smiths brought an action based on Klopping, for pre-condemnation damage resulting from an 8-year delay in the implementation of the construction of the Route 64 Freeway in the Los Angeles area. When they brought their action, the State demurred and the trial court sustained the demurrer without granting leave to amend even once. The case was appealed and the judgment of dismissal was affirmed.28/ The essence of the appellate opinion is that the 8-year delay was, under the circumstances, not unreasonable and that because of the need to comply with environmental regulations, the State was guilty of nothing more than prudent planning.

Petitions for hearing were sought in all four of the above cases, but all were denied.29/

The implications of Smith, particularly vis-a-vis Kornwasser and Fryberger, are chaotic. In a nutshell, Fryberger

says that a party who has waited as little as three years after learning of the delay in implementation of freeway construction across her property is too late to bring an inverse condemnation action, whereas Smith says that a party who has waited eight years under similar circumstances, is premature if he brings an action.

Moreover, Fryberger holds as a matter of law that a disagreement between the condemnor and the owner as to the amount of a "hardship" advance acquisition offer constitutes - in the court's words - "distinct recognition by the state" 30/ of the owner's claim and is the last possible time at which a cause of action accrues, requiring the filing of a claim within one year. Kornwasser, on the other hand, attaches no significance to an identical disagreement between the owner and the state, and holds that three years after such disagreement the owners still had no valid claim for unreasonable delay.

While unquestionably lawyers could, at this point, unleash their professional talents and attempt to spin fine distinctions between the two cases, the inescapable implication is that there is no rational way to reconcile these cases. The present decisional law provides no guidance whatsoever to parties confronted with a Klopping-type action, as to when a claim is to be filed.

The situation becomes even more strained in attempting to determine the period for which damages may be recovered once a court has determined that a claim has been timely filed.

Recall that under Pierpont Inn, a property owner may await completion of the project and stabilization of the damages before filing a claim. Furthermore, in Pierpont Inn, the owner was awarded damages for all injury inflicted, notwithstanding that the damages began on February 1, 1960, and a claim was not filed until August 1962, two and a half years after the damaging activity began.[31/]

Nonetheless, in the recent decision in Stone v. City of Los Angeles,[32/] a Klopping-type case brought to recover compensation for excessive delay in acquiring property for the Palmdale Intercontinental Airport, the trial court limited the recoverable damages to a period beginning one year before the filing of the claim, and the Court of Appeal affirmed.[33/]

Briefly, the facts in Stone are that in August, 1968, the Los Angeles Department of Airports passed a resolution to condemn, inter alia, the subject property. In February, 1969, the City council passed an ordinance authorizing such condemnation. In November, 1970, the City made a written offer which the owner rejected. Notwithstanding widespread publicity of the pending acquisition, the City filed no action.

In April, 1972, without filing a claim,[34] the owners filed suit pursuant to CCP §1243.1, since more than six months had elapsed since passage of the condemnation ordinance. The City's demurrer - based on failure to file a claim - was sustained by the trial court. Based on the court's refusal to allow the case to proceed without a claim, the owner filed a claim in September, 1972. The Court then ruled that because of Govt. Code §911.2, recoverable damages were limited to the period after September 1971 (i.e., one year before the filing of the claim), and this ruling was affirmed on appeal.

Stone appears irreconcilable with Pierpont Inn. In both cases, the governmental entity knew its actions could be causing damage to the property owner. In Pierpont Inn, such knowledge resulted in recovery of all damages, while in Stone, recovery was limited.

It appears that what the Court of Appeal did in Stone (though sub silentio and perhaps unintentionally) was to expand what has been termed "... an exception [which] was carved out" [35] in Bellman v. County of Contra Costa.[36] In Bellman, because the County had no notice of the potential injury, the Court limited the recovery to six months before the filing of the claim (the then applicable provision) and thereafter. As the Court summarized this exception in

Pierpont Inn:

> "That is to say, each of the cited decisions demonstrates an awareness that situations might arise wherein a property owner should not be permitted purposely to withhold notice from a governmental agency which he knows is proceeding mistakenly, but innocently, to damage his property in order to augment his damages and increase his recovery.
>
> "However, no such considerations are applicable in the instant case." 37/

In other words, if the government knows of the potential injury, all damages are recoverable.

Yet, because of the presence of the claim statute,[38/] the Court of Appeal in Stone limited recovery in a situation where the entity clearly knew what was happening. Remember that the Stone case began with the deliberate passage of a condemnation ordinance. The City knew it had done so and knew it had not filed any action. The mere presence of the claim statute injected confusion, and has confounded the applicability of the Bellman exception.

While it could be urged that some confusion exists in ordinary tort cases because of the claims statutes, a different treatment for inverse condemnation cases would appear to be justified by the constitutional origin of inverse condemnation as opposed to ordinary government tort cases. The right to bring inverse condemnation cases springs directly from a self-executing provision of the Constitution.[39/] The right to bring tort actions against the government depends wholly upon legislative action.[40/]

As for situations in which a plaintiff contemplates suing the government on several theories, of which only some sound in inverse condemnation, the enactment of the recommended statute would not vitiate the need to file a claim as to the non-constitutional causes of action. However, it must be kept in mind that inverse condemnation liability can and often does arise out of governmental activities that would be deemed tortious if done by a private party.[41/] To preclude arguments that the act complained of was "tortious" and hence a claim should have been filed, the comment to the statute should unequivocally emphasize that where the requisite "taking" or "damaging" of private property "for a public use"[42/] is alleged, that gives rise to an inverse condemnation cause of action, irrespective of whether the act was "wrongful" in a tort sense, or not.[43/]

The situations described above, strongly suggest that claims serve absolutely no rational function in the context of inverse condemnation cases and moreover, they make an affirmative and substantial constribution to uncertainty and disruption in the orderly development of the law. The situation is further exacerbated by the judicial abuse of Rule 976(b) whereby three extremely significant recent opinions have been certified for non-publication thus creating an invisible but nonetheless substantial conflict in the governing law.

CONCLUSION

A recent commentary aptly summed up the policy problem behind the claim statute:

> "The justification or rationale for the court's strict application of the mandatory [claim] procedures in order to sue a governmental entity is that they are manifestations of legislative prerogatives enacted for the benefit of the governmental entities. These statutory procedures are an integral part of the waiver of governmental immunity. Thus, the right to sue a public entity is not absolute, but conditional upon strict adherence to the procedural requirements of the code. The mode is the measure of the right to sue the entity." 44/

And that is what the problem is all about: In reality the claim statute serves as a quasi-procedural means of smuggling immunity into areas in which substantively there is none. It is an underhanded way of depriving citizens injured by governmental action of their right to seek redress

on the merits. While this sort of morally unpalatable subterfuge may be within the legislative powers, as applied to ordinary relations between the government and the citizens, it has no place in situations where a citizen seeks vindication of a constitutional right, which is the case in inverse condemnation actions.[45/]

A persuasive analogy may be found in Willis v. Reddin,[46/] a recent federal case. There the plaintiff brought a civil rights action against the then Los Angeles Chief of Police, but his case was dismissed by the federal trial court for failure to follow the California claim procedure. The Court of Appeals reversed on the grounds that deference to the California Tort Claims Act would have the effect of conditioning the right to judicial redress of federal constitutional rights, and thus constitute an impairment of those rights.

Building on Willis, a U.S. District Court in an inverse condemnation case recently denied a government motion for summary judgment based on failure to file a claim pursuant to Govt. Code §911.2 before instituting suit:

> "In the instant case, it is apparent that § 911.2 is a condition on the right to sue on an inverse condemnation claim. [Citations] The Fifth Amendment to the

> United States Constitution states that private property shall not be taken for a public use without the payment of just compensation. A suit for inverse condemnation is an action to vindicate the right created and guaranteed by the Fifth Amendment, and applicable to the states by way of the Fourteenth Amendment. To impose a requirement of compliance with California Government Code § 911.2 in the case at bar would allow a state to impose a pre-condition to suit on a federally created and protected right. The imposition of such a prerequisite to suit is an impairment of a federal right not countenanced by Willis." 47/

That reasoning is analogous and persuasive as to state constitutional rights as well.48/

Perhaps the issue resolves itself, in the final analysis, to the statement attributed to Thomas Moore; namely, that one who advises the King should ask not what the sovereign can do, but what he should do. This recommendation, accordingly, concludes that because of (a) the constitutional

policy involved, and (b) the insurmountable difficulties that have arisen in application of the claim statutes to inverse condemnation, the claim requirement, as applied to inverse condemnation actions, should be repealed.

GIDEON KANNER

FOOTNOTES

1/ Powers Farms v. Consolidated Irr. Dist. (1941) 19 Cal 2d 123, 126-127; City of San Jose v. Superior Court (1974) 12 Cal 3d 447, 454; Bozaich v. State (1973) 32 Cal App 3d 689, ___; Mosesian v. Fresno (1972) 28 Cal App 3d 493, 495; Dorow v. Santa Clara County (1970) 4 Cal App 3d 389, 391; Bleamaster v. County of Los Angeles (1961) 189 Cal App 2d 274, 279-280.

2/ The rationale of this line of authority is that the legislature may impose procedural conditions on the enforcement of the constitutional right to just compensation. See Powers Farms v. Consolidated Irr. Dist., supra, 19 Cal 2d at ___. However, in disregard of this rationale, more recent cases tend to view the claim requirement as a substantive element of an inverse condemnation plaintiff's cause of action.

3/ Pierpont, Inn, Inc. v. State (1969) 70 Cal 2d 282.

4/ Id., at 290; Natural Soda Products, Inc. v. City of Los Angeles (1943) 23 Cal 2d 193, 230.

5/ Pierpont Inn, Inc. v. State, supra, 70 Cal 2d at 292.

6/ An example of the last category would be a situation in which the "taking" or "damaging" comes about through an excessive regulatory activity, or in the form of pre-condemnation Klopping-type damages.

7/ Mehl v. People (1975) 13 Cal 3d 710.

8/ Klopping v. City of Whittier (1972) 8 Cal 3d 39

9/ Selby Realty Co. v. City of San Buenaventura (1973) 10 Cal 3d 110.

10/ Klopping v. City of Whittier, supra, 8 Cal 3d at 51.

11/ Id.

12/ Id. at 52.

13/ Id. at _____, Peacock v. County of Sacramento (1969) 271 Cal App 2d 845, Arastra Limited Partnership v. City of Palo Alto (1975) ____ F. Supp.

14/ See Gray v. Kay (1975) 47 Cal App 2d 562, 566.

15/ Moreover, the condemnation bar in California is relatively small, and significant unpublished opinions become quickly known by private circulation or private publication such as the State Department of Transportations' "Eminent Domain Digest of Cases." The Digest is routinely supplied to trial court judges, who are thus aware of the unpublished opinions, regardless of their official, precedential status.

16/ 3d Civ. 14653 (opinion filed April 16, 1975); request for publication denied by the Supreme Court July 23, 1975.

17/ "By relying on matters outside the complaint, the court obviously invaded the province of the jury and decided this fact question. The ultimate issue as to whether the cause of action for inverse condemnation was barred by the statute of limitations became a question of law and fact and, therefore, should have been submitted to the jury under proper instructions of law." Winje v. People, supra, slip opinion, p. 7.

18/ 2d Civ. 45704 (opinion filed July 28, 1975).

19/ See 8 Cal 3d at 59.

20/ People v. Kornwasser, supra, slip opinion, p. 5. There is no explanation as to what the court meant by the phrase "affecting substantial condemnation."

21/ 3d Civ. 14934 (opinion filed August 13, 1975).

22/ The opinion (at p. 5) says "October 29, 1967", but the context makes it clear that this is manifestly a typographical error, and it had to be 1968.

23/ This does not appear from the opinion, but the 0.786 acres consisted of two parcels (0.34 and 0.446 acres respectively) whose acquisition would leave two irregular remainders, whose utility would be contingent on the State's completion of the freeway.

24/ The opinion does not mention this, but the trial judge expressly indicated that he did not deem the action untimely.

25/ Fryberger v. People, supra, slip opinion, p. 3.

26/ Id at p. 6.

27/ (1975) 50 Cal App 3d 529.

28/ This opinion was decided by the same court as Kornwasser, supra.

29/ See, generally, Kanner, It's a Busy Court: The Effect of Denial of Hearing by the Supreme Court on Court of Appeal Decisions, 47 Cal. S. Bar Journal 188 (1972).

30/ Fryberger v. People, supra, slip opinion, p. 6.

31/ Pierpont Inn, Inc. v. State, supra, 70 Cal 2d at 286.

32/ ___ Cal App 3d ____ (1975) 2d Civ. No. 44385.

33/ ____ Cal App 3d ____, slip opinion 16-18

34/ As this Commission has said (12 Reports, Recommendations and Studies, p. 1751), "Under former section 1243.1, it was not clear whether a claim was required to be presented to the public entity." This Commission recommended, and the Legislature and the Governor concurred, that §1243.1 be recodified as §1245.260, stating expressly that no claim is required in such actions.

35/ Nelson and Arnaim, Claims Against a California Governmental Entity or Employee, 6 Southwestern U.L.Rev. 550, 587 (1974).

36/ 54 Cal 2d 363 (1960).

37/ 70 Cal 2d at 291. (Emphasis added.)

38/ ____ Cal App 3d at ____, slip opinion, pp. 16-17.

39/ Rose v. State (1942) 19 Cal 2d 713.

40/ Muskopf v. Corning Hosp. Dist. (1961) 55 Cal 2d 211.

41/ See e.g. Blau v. City of Los Angeles (1973) 32 Cal App 3d 77, 83-86.

42/ Eli v. State (1975) 46 Cal App 3d 233.

43/ Reardon v. San Francisco (1885) 66 Cal 492, 505; Clement v. State Reclamation Board (1950) 35 Cal 2d 628, 641; Albers v. County of Los Angeles (1965)62 Cal 2d 250, 258-259; Holtz v. Superior Court (1970) 3 Cal 3d 296, 302[4].

44/ Nelson and Arnaim, Claims Against A California Governmental Entity or Employee, 6 Southwestern U.L.Rev. 550, 591 (1974).

45/ See Rose v. State (1942) 19 Cal 2d 713.

46/ (1969, 9th Cir.) 418 F.2d 702.

47/ The Albert Ellis Radinsky Foundation, Inc. v. County of Sierra (1975, E.D. Cal.) ____F.Supp.____, ____, slip opinion pp. 6-7.

48/ Willis also suggests a pragmatic consideration. If access to state courts on constitutional issues in unduly hampered, plaintiffs can be expected to resort to federal courts. See Arastra Limited Partnership v. City of Palo Alto (1975, N.D. Cal.) ____F.Supp.____, Dahl v. City of Palo Alto (1974, N.D. Cal.) 372 F.Supp. 647, The Albert Ellis Radinsky Foundation, Inc. v. County of Sierra (1975, E.D. Cal.) ____F. Supp. ____, M.J. Brock & Co. v. City of Davis (1975) ____F.Supp. ____, Eleopoulos v. Richmond Redev. Agency (1972, N.D. Cal.) 351 F.Supp.63, Richmond Elks Hall Ass'n. v. Richmond Redev. Agency (1975, N.D. Cal.) 389 F.Supp. 486.