Study N-200 April 14, 1999

Memorandum 99-28

Mandamus to Review Agency Action: Selected Issues

Attached to this Memorandum is a staff draft of a Tentative Recommendation on *Mandamus to Review Agency Action: Selected Issues.* Also attached is a communication from Jack Golden of the Orange County Counsel's Office.

The staff prepared the attached draft as directed by the Commission at the February meeting. The Commission asked the staff to bring back as free-standing proposals some of the salutary provisions of the Commission's 1997 recommendation on *Judicial Review of Agency Action*. The attached draft would do the following:

(1) Abolish the case law rule that, if reconsideration of an administrative decision is authorized, a party must petition for reconsideration before seeking mandamus.

(2) Expand superior court venue for mandamus to review state agency action to include Sacramento County.

(3) Require the agency to give notice to the parties of the calendar date of the last day for judicial review in adjudications by state agencies and under the formal hearing provisions of the Administrative Procedure Act.

This Memorandum and staff draft replace Memorandum 99-21 and First and Second Supplements that were on the agenda for the April meeting. The attached draft includes revisions in response to comments received on the earlier draft from the California State Employees Association and Legal Division of the Public Utilities Commission. As a result, the attached draft omits the earlier proposal to overturn the rule that the requirement of exhaustion of administrative remedies is jurisdictional, which proved to be controversial.

Supreme Court Review Granted

The California Supreme Court granted review in *Sierra Club v. San Joaquin Local Agency Formation Comm'n,* 64 Cal. App. 4th 1304, 75 Cal. Rptr. 2d 846, 851, *review granted,* 963 P.2d 1005, 78 Cal. Rptr. 2d 818 (1998), the case which is so critical of the rule that reconsideration of the agency decision must be sought before judicial review. Thus the court may abolish the rule without legislation.

Nonetheless, the staff recommends proceeding with this recommendation, since it may be a long time before the court decides this case.

Writ Procedure Under California Environmental Quality Act

The attached communication from Jack Golden, Deputy County Counsel for Orange County, says the "patchwork scheme of writ procedure is a nightmare for public agencies defending CEQA litigation." Mr. Golden suggests revisions to the California Environmental Quality Act to address some of these problems. **The staff does not recommend doing this.** There are organizations with greater expertise in CEQA matters than our staff, and any proposed revisions of CEQA would likely be highly contentious. The staff would limit our proposal to a limited reform of mandamus law with a view to obtaining a consensus for reform.

Staff Recommendation

The staff recommends the Commission approve the attached staff draft for distribution for review and comment.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

From: "Golden, Jack" <jgolden@coco.co.orange.ca.us>
To: "'sterling@clrc.ca.gov'" <sterling@clrc.ca.gov>
Subject: Judicial Review of Agency Action
Date: Fri, 5 Mar 1999 16:01:57 -0800
MIME-Version: 1.0
X-Rcpt-To: sterling@clrc.ca.gov

Thank you for your letter dated March 3, 1999. I am the CEQA lawyer for the Orange County Counsel's Office. The patchwork scheme of writ procedure is a nightmare for public agencies defending CEQA litigation.

There are writ cases that hold that the public agency has only two options after a writ of mandate is issued: comply with the writ, or appeal. This would make sense if the prevailing petitioner could not appeal its victory, but that procedure is not designed for a situation wherein the prevailing party can appeal. In nearly every CEQA case where the Petitioner prevails on one or more issues, there are other issues that the Respondent wins. This gives the Petitioner the opportunity to appeal even though it "won" the case. Further, if the agency chooses to appeal, but also wants to comply with the writ of mandate, its writ compliance can either waive its right to appeal or moot its issues on appeal. There is also an issue of whether it has any jurisdiction to take actions to comply with the writ if it has already appealed.

Further, if the agency takes further actions under CEQA to comply with the writ, the Petitioners have at least three procedural options: file a motion objecting to the writ return, file a supplemental petition for writ of mandate, or file a petition for writ of mandate under a new case number. The latter procedure allows the petitioner to go forum shopping or to delay the case while motions to consolidate or coordinate are addressed. (In cases between cities and their county, any party is entitled to a change of venue, which complicates motions to consolidate or coordinate.)(In some cases a party may be able to exercise a peremptory challenge to the judge who heard the original writ after a new case is consolidated or coordinated with the original case.)

Thus, I would love to see a revamping of writ procedure under CEQA. What I would propose is as follows:

That Public Resources Code section 21168.9(b) be amended to clarify that:
1) the trial court retains jurisdiction to assure compliance with its writ and CEQA even when an appeal by one or more parties is pending.(The automatic stay of trial court proceedings under Code of Civil Procedure section 916 does not apply to CEQA cases.)
2) The agency does not waive its right to appeal by attempting to comply with the writ, and does not lose jurisdiction to comply with the writ if it has filed an appeal.
3) Petitioners who wish to challenge writ compliance must do so by filing a motion or a supplemental petition for writ of mandate under the same case number and before the same judge that issued the writ. The trial court does not have discretion to reject the supplemental petition for writ of mandate, but must allow it to be filed.
4) Neither party may exercise a peremptory challenge under Code of Civil Procedure section 170.6 during proceedings involving writ compliance adjudication after the first peremptory writ of mandate has been issued, so long as the judge that issued the writ remains the judge assigned to the case.

These changes would facilitate the goal of CEQA to expedite proceedings expressed in Public Resources Code sections 21003(f) and 21157.1.

Please let me know if I can be of assistance, should submit a more formal proposal with suggested language, etc.

Thanks.

Jack W. Golden

Deputy County Counsel
(714)834-3357
fax 834-2359

#N-200

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Mandamus to Review Agency Action: Selected Issues

June 1999

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **September 30, 1999.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation would do the following:

(1) Abolish the case law rule that, if reconsideration of an administrative decision is authorized, a party must petition for reconsideration before seeking mandamus.

(2) Expand superior court venue for mandamus to review state agency action to include Sacramento County.

(3) Require the agency to give notice to the parties of the calendar date of the last day for judicial review in adjudications by state agencies and under the formal hearing provisions of the Administrative Procedure Act.

This recommendation was prepared pursuant to Resolution Chapter 91 of the Statutes of 1998.

MANDAMUS TO REVIEW AGENCY ACTION: SELECTED ISSUES

In 1997, the Law Revision Commission recommended a comprehensive revision of the law governing judicial review of agency action.[1] The legislative proposal resulting from that recommendation was not enacted.[2] Nonetheless, the Commission believes that several of the reforms in that proposed legislation would be clear improvements in the law and would engender widespread support. This recommendation proposes three of the more desirable reforms in that proposal.

Reconsideration by Agency

The doctrine of exhaustion of administrative remedies requires that a litigant complete all federal, state, and local administrative remedies before coming to court or defending against administrative enforcement.[3] The doctrine requires that a person seeking judicial review of agency action must first petition the agency for reconsideration of its decision if such a procedure is available.[4]

The case law requirement of a petition for reconsideration has been criticized by commentators,[5] and has been called a trap for the unwary by a recent court of appeal decision.[6] The doctrine requires an idle act[7] and leads to unnecessary litigation.[8]

---

1. See *Judicial Review of Agency Action*, 27 Cal. L. Revision Comm'n Reports 1 (1997).

2. Senate Bill 209, 1997-98 legislative session.

3. Asimow, *Judicial Review: Standing and Timing*, 27 Cal. L. Revision Comm'n Reports 229, 254 (1997). Exhaustion of administrative remedies is not required if one of the exceptions applies. *Id*.

4. Alexander v. State Personnel Bd., 22 Cal. 2d 198, 137 P.2d 433 (1943) (traditional mandamus, 4-2 decision with Justices Carter and Traynor dissenting). *Alexander* has been repudiated by the Legislature for the State Personnel Board and for agencies under the Administrative Procedure Act. See Gov't Code §§ 11523 (petition for rehearing not necessary in formal proceedings under APA), 19588 (petition for rehearing not necessary in State Personnel Board proceedings). See also Gov't Code § 11350 (right to declaratory relief to review state agency regulation not affected by failure to petition for reconsideration); 3 B. Witkin, California Procedure *Actions* § 309, at 398 (4th ed. 1996).

5. See, e.g., Asimow, *Judicial Review: Standing and Timing*, 27 Cal. L. Revision Comm'n Reports 229, 275 (1997) (a "request for reconsideration should never be required as a prerequisite to judicial review unless specifically provided by statute to the contrary"); 3 B. Witkin, California Procedure *Actions* § 309, at 398 4th ed. 1996) (*Alexander* case called "extreme"); see also *infra* note 5. For statutes that do specifically require a petition for reconsideration or rehearing, see Lab. Code § 5901; Pub. Util. Code §§ 1731(b), 1732.

6. Sierra Club v. San Joaquin Local Agency Formation Comm'n, 64 Cal. App. 4th 1304, 75 Cal. Rptr. 2d 846, 851, *review granted*, 963 P.2d 1005, 78 Cal. Rptr. 2d 818 (1998) ("the rule in *Alexander* is incorrect and outmoded" and "presents a fitful trap for the unwary").

7. 3 Davis, Administrative Law Treatise § 20.09 n.7 (1958); California Administrative Mandamus § 2.30, at 52 (Cal. Cont. Ed. Bar, 2d ed. 1989).

8. Alexander v. State Personnel Bd., 22 Cal. 2d 198, 204, 137 P.2d 433 (1943) (Traynor, J., dissenting).

The Commission recommends the case law requirement of a petition to the agency for reconsideration be abolished as a condition of judicial review by writ of mandamus.[9]

Venue to Review State Agency Action

Under existing law, both for administrative mandamus (to review administrative adjudication) and traditional mandamus (to review other forms of agency action), venue is determined under ordinary rules of civil practice.[10] Thus venue for both forms of mandamus is in the superior court of the county where the cause of action arose.[11]

It is probable that superior court judges in small counties are inexperienced in administrative law matters. Most counties do not maintain a specialized writ department, so cases are assigned to judges at random. There may be a significant home town advantage for the petitioner in these cases.[12]

Most state agencies have their headquarters offices in Sacramento. The Superior Court for Sacramento County is likely to have expertise in judicial review proceedings. The Commission recommends Sacramento County be added as another permissible venue for mandamus to review state agency action.

Notice of Last Day to Review State Agency Adjudication

In some adjudicative decisions, a local agency must give notice to the parties that the time within which judicial review must be sought is governed by Code of Civil Procedure Section 1094.6.[13] When the California Real Estate Commissioner denies a claim against the department's recovery account, the Commissioner must give notice that the claimant must seek judicial review not later than six months after receipt of the notice.[14] The notice is particularly helpful when a party is not represented by counsel.

---

9. This recommendation would not otherwise affect the requirement of exhaustion of administrative remedies or the statutes that specifically require a petition for reconsideration or rehearing, Labor Code Section 5901 (Workers' Compensation Appeals Board) and Public Utilities Code Sections 1731(b) and 1732 (Public Utilities Commission). The recommendation would not affect writs of review by which most actions of the WCAB and PUC are reviewed. See Lab. Code §§ 5950-5951, 5954, 6000; Pub. Util. Code §§ 1756, 1758.

10. California Administrative Mandamus § 8.16, at 269 (Cal. Cont. Ed. Bar, 2d ed. 1989); California Civil Writ Practice § 5.4, at 185 (Cal. Cont. Ed. Bar, 3d ed. 1997).

11. Code Civ. Proc. § 393(1)(b); Duval v. Contractors State License Bd., 125 Cal. App. 2d 532, 271 P.2d 194 (1954); California Administrative Mandamus, § 8.16, at 269 (Cal. Cont. Ed. Bar, 2d ed. 1989); California Civil Writ Practice § 5.4, at 185 (Cal. Cont. Ed. Bar, 3d ed. 1997).

12. Asimow, *A Modern Judicial Review Statute to Replace Administrative Mandamus,* 27 Cal. L. Revision Comm'n Reports 403, 434-35 (1997).

13. Code Civ. Proc. § 1094.6(f).

14. Bus. & Prof. Code § 10471.5. Other statutes merely require that the agency give the party notice of the party's right to judicial review. See, e.g., Unemp. Ins. Code § 410; Veh. Code § 14401.

The Commission recommends a general notice provision that would require a state agency[15] to give notice to the parties after an adjudicative proceeding of the calendar date of the last day for judicial review. Running of the applicable limitations period would de delayed until the notice is given, but commencing no later than 180 days after the date or event otherwise provided by law.[16]

15. A notice provision would be added to the formal hearing provisions of the APA, which may occasionally apply to a local agency. For example, school districts are governed by the APA with respect to certificated employees. Educ. Code §§ 44944, 44948.5, 87679.

16. For formal proceedings under the APA, the limitations period is provided by Government Code Section 11523 (later of 30 days after last day on which reconsideration can be ordered or 30 days after record is delivered). For the remaining state agency adjudications not conducted under the formal hearing provisions of the APA, the limitations periods are provided by statutes applicable to the particular agency. See, e.g., Code Civ. Proc. § 706.075 (90 days for withholding order for taxes); Food & Agric. Code §§ 59234.5, 60016 (30 days from notice of filing with court of notice of deficiency of assessment under commodity marketing program); Lab. Code §§ 1160.8 (30 days after ALRB decision), 5950 (45 days for decision of Workers' Compensation Appeals Board); Gov't Code §§ 3542 (30 days for PERB decisions), 19630 (one year for various state personnel decisions), 19815.8 (same), 65907 (90 days for decisions of zoning appeals board); Unemp. Ins. Code § 410 (six months for appeal of decision of Unemployment Insurance Appeals Board); Veh. Code § 14401(a) (90-days after notice of driver's license order); Welf. & Inst. Code §10962 (one year after notice of decision of Department of Social Services). Because of the complexity of the applicable limitations period, proceedings under the California Environmental Quality Act (Pub. Res. Code §§ 21000-21177) would be expressly exempted from the notice requirement.

PROPOSED LEGISLATION

Code Civ. Proc. § 1094.5 (amended). Administrative mandamus

SEC. ___. Section 1094.5 of the Code of Civil Procedure is amended to read:

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by

substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest; provided that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h) (1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the provisions of the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits; and provided further that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency which issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. For purposes of this section, the court is not

authorized to review any disciplinary decisions reached pursuant to Section 19576.1 of the Government Code.

(k) In a proceeding subject to review under this section, the agency shall, in the order or decision or otherwise, give notice to the parties in substantially the following form: "The last day to file a petition with a court under Section 1094.5 of the Code of Civil Procedure to review the order or decision is [date] unless the time is extended as provided by law." This subdivision does not apply to review of proceedings under the California Environmental Quality Act. The limitations period for commencing a proceeding under this section begins to run from the later of the following:

(1) The date or event otherwise provided by law.

(2) The date the notice is delivered, served, or mailed, but in no case later than 180 days after the date or event otherwise provided by law.

Comment. Subdivision (k) is added to Section 1094.5 to require notice to the parties of the last date for review by administrative mandamus, and to delay commencement of the running of the limitations period under the section until the date the notice is delivered, served, or mailed, but in no case later than 180 days after the date or event otherwise provided by law. For the date or event otherwise provided by law and for limitations periods that may be extended by this section, see Bus. & Prof. Code §§ 4875.6, 7071.11, 10471.5, 12015.3, 19463; Code Civ. Proc. § 706.075; Educ. Code § 94323; Fin. Code § 8055; Food & Agric. Code §§ 5311, 11512.5, 12999.4, 12999.5, 21051.3, 24007, 46007, 47025, 59234.5, 60016, 61899, 62665; Gov't Code §§ 8670.68, 8670.69.6, 31725, 54740.6, 66641.7; Health & Safety Code §§ 1793.15, 18024.4, 25398.10, 25514.6, 40864, 42316, 44011.6, 108900, 110915, 111855, 111940, 112615, 116700, 121270, 123340; Ins. Code §§ 791.18, 1065.4, 1780.63, 12414.19; Lab. Code § 1964; Pub. Res. Code §§ 2774.2, 2774.4, 3333, 25534.2, 25901, 29602, 29603, 29772, 30801, 30802, 41721.5, 42854, 50000; Pub. Util. Code §§ 13575.7, 21675.2; Unemp. Ins. Code § 1243; Veh. Code §§ 3058, 3068, 13559, 14401; Water Code §§ 1126, 6357.4, 6461, 13330; Water Code Appendix § 65-4.8; Welf. & Inst. Code §§ 10962, 11468.5, 11468.6, 14105.405, 14171, 19709.

Code Civ. Proc. § 1098 (added). Reconsideration not required

SEC. ___. Section 1098 is added to the Code of Civil Procedure to read:

1098. The right to a writ of mandate under this chapter to review action of a state or local agency is not affected by failure to seek a rehearing or reconsideration before the agency, unless a statute or regulation requires a petition for rehearing or other administrative review.

Comment. Section 1098 is new. The section generalizes existing provisions that a petition for a rehearing or reconsideration is not a prerequisite to judicial review of an adjudicative decision under the Administrative Procedure Act or of a proceeding before the State Personnel Board. See Gov't Code §§ 11523 (APA), 19588 (Personnel Board). This overrules any contrary case law implication in cases not covered by the two Government Code sections. See Alexander v. State Personnel Board, 22 Cal. 2d 198, 137 P.2d 433 (1943).

By its terms, Section 1098 applies only to a proceeding under this chapter, i.e., to writs of mandamus. It does not apply to other forms of judicial review, such as a writ of review under the Public Utilities Code. See Pub. Util. Code §§ 1756, 1758. Also Section 1098 is subject to statutes that require a petition for reconsideration or rehearing. See, e.g., Lab. Code § 5901; Pub. Util. Code §§ 1731(b), 1732.

Code Civ. Proc. § 1099 (added). Venue in Sacramento County

SEC. ___. Section 1099 is added to the Code of Civil Procedure to read:

1099. In addition to any other county authorized by law, Sacramento County is a proper county for proceedings in superior court under this chapter to review state agency action.

Comment. Section 1099 is new, and authorizes Sacramento County as an additional county for administrative or traditional mandamus proceedings in superior court under this chapter to review state agency action. The general rule is that venue is proper in the county where the cause of action arose. See Sections 1109 (general rules of civil practice apply to proceedings under this title), 393(1)(b) (venue); Duval v. Contractors State License Bd., 125 Cal. App. 2d 532, 271 P.2d 194 (1954) (administrative mandamus).

Gov't Code § 11518.3 (added). Notice of last day for judicial review

SEC. ___. Section 11518.3 is added to the Government Code, to read:

11518.3. The agency shall, in the decision or otherwise, give notice to the parties in substantially the following form:

"The last day to file a petition with a court for a writ of mandate to review the decision is [date] unless the time is extended as provided by law."

Comment. Section 11518.3 is new, and is drawn from Code of Civil Procedure Section 1094.6(f). For provisions extending the time to petition for review, see Section 11523.

An agency notice that erroneously shows a date that is too soon does not shorten the period for review, since the substantive rules in Section 11523 govern. If the notice erroneously shows a date that is later than the last day to petition for review and the petition is filed before that later date, the agency may be estopped to assert that the time has expired. See Ginns v. Savage, 61 Cal. 2d 520, 523-25, 393 P.2d 689, 39 Cal. Rptr. 377 (1964).

Gov't Code § 11523 (amended). Judicial review

SEC. ___. Section 11523 of the Government Code is amended to read:

11523. (a) Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within the later of the following:

(1) 30 days after the last day on which reconsideration can be ordered .

(2) 30 days after the notice required by Section 11518.3 is delivered, served, or mailed, but in no case later than 180 days after the last day on which reconsideration can be ordered.

(b) The right to petition shall not be affected by the failure to seek reconsideration before the agency.

(c) On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining

balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

Comment. Section 11523 is amended to make the limitations period for judicial review under the section dependent on the giving of the notice required by Section 11518.3.
