MINUTES OF MEETING

of

May 24 and 25, 1962

Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles at the U.C.L.A. Law School on May 24 and 25, 1962.

Present: John R. McDonough, Jr., Vice Chairman (May 24)
Honorable James A. Cobey
Honorable Clark L. Bradley
Joseph A. Ball (May 24)
James R. Edwards
Richard H. Keatinge
Angus C. Morrison, ex officio

Absent: Herman F. Selvin, Chairman
Sho Sato
Thomas E. Stanton, Jr.

Messrs. John H. DeMoully, Joseph B. Harvey and Jon D. Smock of the Commission's staff were also present.

Professor Arvo Van Alstyne, the Commission's research consultant on Study No. 52(L) - Sovereign Immunity, and Mr. Benton A. Sifford, special research consultant to the Senate Fact Finding Committee on Judiciary, and the following persons were also present:

Robert F. Carlson, Department of Public Works
Louis J. Heinzer, Department of Finance
Robert Lynch, Office of the County Counsel (Los Angeles)
Richard C. Maxwell, Dean, U.C.L.A. Law School (May 24)
John J. Savage, Bureau of Casualty Underwriters (May 25)

Minutes of April Meeting. The Minutes of the April 1962 meeting were approved as submitted.

ADMINISTRATIVE MATTERS

Letter from Assembly Interim Committee on Criminal Procedure. The Commission considered a letter from the Chairman of the Assembly Interim Committee on Criminal Procedure requesting the comments of the Commission on a proposed amendment to California law. The Commission suggested that the Chairman of the Commission advise the Chairman of the Interim Committee that the Commission is not authorized to study any matter unless prior legislative approval has been secured and that the Commission has not been authorized to study the subject matter of the proposed amendment.

Meeting Dates and Places. Future meetings are tentatively scheduled as follows:

June 15-16	Los Angeles (State Bar Building)
July 20-21	Stanford Law School
August 10-11	San Francisco
September 21-22	Beverly Hills (State Bar Convention)

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

Defense of Actions Brought Against Public Officers and Employees.

The Commission considered Memorandum No. 21(1962).

Section 991.1 of the draft statute was amended to limit "actions or proceedings" to judicial actions and proceedings. The Commission discussed whether the statute should be extended to include the right to a defense at public expense in administrative proceedings. Representatives of public agencies pointed out the difficulties that would arise if a defense were provided in these cases. It was noted that the theory of the statute is that a defense should be provided where a public officer or employee is sued for something he did to carry out the interests of the public entity. The extension to include administrative proceedings would change the theory to provide for free defense whenever a public officer is sued and was not guilty of bad faith or malice--a completely different theory to justify the statute.

A motion to delete all of paragraph (a) of Section 991.1 did not receive a second.

Paragraph (a) of Section 991.1 was revised to read:

> (a) "Action or proceeding" means a judicial action or proceeding, but does not include (1) an action or proceeding brought by a public entity to remove, suspend or otherwise penalize its own employee, or (2) an action or proceeding brought by a public entity against its own employee as an individual and not in his official capacity.

Under Section 991.1(a)(1) above, a public officer, agent or employee would not be entitled to counsel at public expense when his employer brings a judicial proceeding to remove him, nor would he be entitled

to counsel at public expense when he seeks judicial review of administrative disciplinary proceedings.

The staff was directed to add a provision to Section 991.2 to make clear that for the purposes of the proposed statute, a cross action, counterclaim or cross complaint against an officer, agent or employee would be considered to be a civil action or proceeding brought against him. It was suggested that the text of the recommendation also make clear that the public entity in defending an action or proceeding brought against a public officer, agent or employee could take any appropriate action necessary to defend the action or proceeding, including the prosecution of a cross action, counterclaim or cross complaint by the defendant against the plaintiff who brought the action or proceeding against the public officer, agent or employee.

The staff was directed to substitute "actual fraud" for "bad faith" throughout the statute.

Proceedings to remove an officer under Sections 3060 to 3073, inclusive, of the Government Code, are to be treated the same as criminal actions under Section 991.4.

Other minor revisions were made in the form of the statute.

Tentative Recommendation. A number of suggestions were made for revision of the text of the tentative recommendation.

The Commission determined that reasons should be stated in the tentative recommendation to indicate why the proposed statute does not permit reimbursement for cost of defense in a criminal case where the defendant is exonerated of the criminal charge and proves in a subsequent

action against the public entity to recover the costs of his defense that he was not guilty of actual fraud, corruption or actual malice. It was noted that the public employee who makes a similar showing after defending a civil action or proceeding is entitled to reimbursement. The following reasons were thought to justify the distinction between civil actions and criminal actions:

Although as a general rule a public officer, agent or employee should be given a right to a defense at public expense against a civil action or proceeding, he should have no recourse against the public entity if it declines to furnish him with a defense against a criminal charge. Giving public personnel a right to a defense against criminal actions and proceedings would, in effect, give them a right to free legal service as an incident to their employment that other citizens are not entitled to receive. Such a requirement might tend to undermine the deterrent effect of our criminal laws. In criminal actions, too, there is a preliminary screening process by responsible public officials--the magistrate, public prosecutor or grand jury--which is not present in civil actions; hence, criminal actions are less likely to be prosecuted without probable cause than are civil actions. Moreover, criminal actions frequently involve serious misconduct and it would sometimes be harmful to the good public relations of the public entity to require it to expend public funds for the defense of such actions. In many instances the public entity would be compelled to appear through counsel on both sides of the same case. Since it is necessary to weigh a great many factors to determine whether the public interest would be served by providing

public officers, agents and employees with a defense against criminal charges, and since these factors will vary in importance from case to case, the Commission has concluded that the decision whether it is in the public interest to provide such a defense in any particular case is best left to the sound discretion of the public entity. In reaching this conclusion, the Commission is also influenced by the existence of such civil remedies as actions for false arrest, false imprisonment and malicious prosecution that may be available when unfounded criminal charges are made against public personnel.

Mob and Riot Damage

The Commission considered the First Supplement to Memorandum No. 23(1962) containing a draft statute and proposed tentative recommendation relating to liability for mob and riot damage. The Commission made the following decisions.

1. The theory of liability for mob and riot damage was changed from absolute liability to a negligence standard of liability based upon failure of the responsible public authority to exercise reasonable care or diligence to prevent or suppress the mob or riot. It was noted that the present law imposes absolute liability for mob and riot damage whereas no liability is imposed for damage resulting from other crimes even where the grossest lack of diligence could be shown. The present law is unrealistic in terms of the duty imposed upon public authorities to prevent or suppress mobs and riots. The Commission believes that this relic of past history should not be perpetuated, particularly where

liability is extended to embrace personal injury resulting from a mob or riot. This extension of liability further justifies a change in the theory of substantive liability in recognition of the impossible burden which would otherwise be placed upon public authorities. Other means of limiting this burden, such as limiting the amount recoverable or substantially raising the number of participants in the mob or riot, were thought to be highly arbitrary and less realistic than imposing a standard of reasonable care or diligence.

2. The definitions in Section 905.1 were changed in several respects.

(a) The definition of the responsible public authority liable for mob and riot damage was changed to include any local public entity that has the duty or has undertaken to maintain peace or order in the area where the mob or riot occurs. The language of this definition is to be carried over into the substantive liability provision--Section 905.2--but the latter section is to include language limiting the liability of counties since they now have responsibility for law enforcement throughout the county.

(b) The definition of "mob" was revised to reduce the number of participants from five to two or more. This action is consistent with the changed theory of liability and the relatively narrow scope of activity embraced within the substantive definition of "mob".

(c) The definition of "riot" was changed to increase the number of participants from five to ten or more. This action was taken because of the broad sweep of the substantive definition of "riot" and the fact

that a lesser number would be able to congregate in a single vehicle, thereby making it a practical impossibility for public authorities to exercise an acceptable measure of diligence in preventing or suppressing the group from damaging activity.

3. The substantive liability provision was changed to read substantially as follows:

> 905.2. A local agency is liable for death or for injury to persons or property proximately caused by a mob or riot within an area where the local agency has the duty or has undertaken to maintain peace and order if the local agency fails to exercise reasonable care or diligence to prevent or suppress the mob or riot. A county is not liable under this section where a mob or riot occurs within an area in the county where another local agency has the duty or has undertaken to maintain peace and order unless the county fails to exercise reasonable care or diligence to prevent or suppress the mob or riot after the county has notice, express or implied, of the danger.

The revision of the first sentence is in accord with the changed theory of liability. The second sentence makes clear that a county that has relinquished to another public authority the primary responsibility for law enforcement, and now acts solely as a backstop in a secondary capacity, should be liable only if it fails to act with reasonable care or diligence after notice of the danger. A county that knows or should have known that the other local agency cannot cope with a mob or riot within the area in the county policed by that entity has the duty to exercise reasonable care or diligence to prevent or suppress the mob or riot. This is a relaxation of present law concerning the liability of counties for mob and riot damage because the county, having responsibility for law enforcement within its boundaries whether within or without

incorporated areas, would appear to be liable under the present statute whether or not another local agency also would be liable. Under the proposed statute, in areas within the county where no other local agency has the duty or has undertaken to maintain peace and order, the county is under the same obligation as every other local agency because of its principal responsibility for law enforcement in the county, thus being covered by the first sentence in Section 905.2.

Workmen's Compensation Benefits for Persons Required or Requested to Assist Law Enforcement Officers

The Commission considered the Second Supplement to Memorandum No. 23 (1962) and took the following actions:

(1) The proposed statute was approved as drafted by the staff.

(2) The proposed text of the tentative recommendation was approved as submitted.

(3) The distribution of the tentative recommendation to interested persons for comments and suggestions was unanimously approved.

During the discussion of this matter, the Commission considered whether the right to compensation should be dependent upon the claimant having a legal duty to assist in law enforcement or upon the showing of an expressed or implied request of an officer for assistance. A majority of the Commission took the view that volunteers should not be entitled to compensation under the proposed statute. Before a duty to pay compensation is imposed, it should be established that the public entity at least impliedly requested the claimant to perform the service that resulted in the injury for which compensation is sought.

The Commission also considered whether the claimant should be entitled to workmen's compensation or should be given a right of action against the public entity for his injuries. Mr. Sifford recommended that the workmen's compensation solution to the problem be the one adopted by the Commission. He stated that this solution permits the risk to be spread so that a claim for which compensation is allowed would have only a relatively slight impact on any individual account. In addition, it was noted that this solution guarantees that the claimant will receive compensation even though he assumed the risk or was contributorily negligent.

Revision of Claims Statutes

The Commission considered Memorandum No. 19(1962).

A motion by Commissioner McDonough that all public entity claims statutes be repealed did not receive a second. The Commission took the following action with respect to the provisions of the proposed draft statute relating to local public entities (blue sheets attached to Memorandum No. 19):

Section 710. The research consultant suggested that the proposed addition to this section is in accord with the case law prior to the enactment of the local public entity claims statute and that the proposed addition also may represent what a court would hold under the language of the new local public entities claims statute.

A motion to adopt the proposed addition to Section 710 failed to pass and the proposed addition was rejected.

Section 715. The policy reflected in the amendment to this section was previously approved by the Commission. No action was taken

to change the previous decision of the Commission.

Section 716. It was suggested that the text of the recommendation include a statement that whether the entity received notice may be considered by the court in determining whether the entity was unduly prejudiced under Section 716(a).

Section 716(a) was approved with the addition of the word "surprise" after the word "inadvertence."

Section 716(b) was approved as drafted.

Section 716(c) was rejected.

Section 717 and Section 720. The amendments to these sections were approved as drafted.

Section 12 (introductory clause). The figure "729" was deleted and the provision was approved as so revised.

Section 729. This section was deleted.

Section 731. References to "resolution" were deleted from this section with appropriate changes to be made to conform to such deletion. As so revised the section was approved.

Section 732. This section was approved after it was revised to read:

> 732. A local public entity may authorize an officer or employee of the local public entity to allow, compromise or settle claims against the local public entity for which the local public entity may be liable in lieu of and with the same effect as an allowance, compromise or settlement by the governing body of the local public entity if the amount to be paid pursuant to such allowance, compromise or settlement does not exceed $1,000 or such lesser amount as may be authorized by the local public entity. Upon the written order of such officer or employee, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised or settled.

Section 53055. The repeal of this section was approved.

Section 14. The repeal of Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of the Government Code was approved.

Section 800. This section was approved as drafted. [Note that the word "agent" should be added to this provision so that it reads "officer, agent or employee."]

Section 801. The Commission discussed whether a claim against the public entity should have to list the names of the officers, agents and employees whom the plaintiff will seek to hold personally liable. The Commission determined not to include such a requirement because this information is more likely to be available to the public entity than to the plaintiff. Section 801 was approved after it was revised to read:

> 801. (a) Except as provided in subdivision (b), a cause of action against a public officer, agent or employee for death, injury or damages resulting from any negligent or wrongful act or omission in the scope of his office, agency or employment is barred if an action against the public entity would be barred for failure to file a claim with the public entity.
>
> (b) A cause of action against a public officer, agent or employee is not barred by this section if the plaintiff pleads and proves that he did not know or have reason to know within the period prescribed by Section 665 or 715 as a condition to maintaining an action therefor against the employing public entity that the death, injury or damage was caused by a negligent or wrongful act or omission of a public officer, agent or employee.

It was noted that the indemnity statute (which will be considered later by the Commission) might contain a provision that a public entity would not be required to pick up a judgment against its public officer, agent or employee in a case where a judgment is obtained against the

officer, agent or employee under subdivision (b) of Section 801 and the public entity is prejudiced because he failed promptly to notify his employer of his negligent or wrongful act or omission.

Section 803. This section was approved as drafted. [Note that the word "agent" should be added to the phrase "officer, agent or employee."]

Section 701. The repeal of this section was approved.

[Note: A subcommittee of the Commission took further action on Memorandum No. 19(1962) at its meeting on May 25.]

REPORT OF SUBCOMMITTEE MEETING ON MAY 25, 1962

On May 25, 1962, a subcommittee of the Commission under the Chairmanship of Commissioner Edwards met. The subcommittee makes the following recommendations to the Commission:

Revisions of Claims Statutes

The subcommittee considered Memorandum No. 19(1962).

General statutory scheme. The Department of Finance objected to the approach reflected in the proposed draft statute. The department representative stated that the department would prefer to have the statute retain the two-year filing period unchanged rather than having 100 days for filing and the possibility of extending the period of time for filing as under the local entities claims statute. Both the Department of Public Works and the Department of Finance objected to having to go to court in every case to resist a petition for leave to present a late claim.

It was suggested that the statute might include a provision providing that a claim would be deemed to be timely filed if the board does not object to the late filing within a certain time.

The subcommittee considered the following scheme for the State claims statute: There would be established a 100-day filing requirement for most actions and a 1-year filing requirement for vehicle accident cases and certain other kinds of cases. Notwithstanding those limitations a person can file his claim late if he files it within 1 year from the time the cause of action accrues; if the entity fails to object within a specified period

of time to the late filing and fails to notify the claimant that it is rejecting the claim because it is filed late, then it is deemed that the late filing is waived so long as filed within the one year. If the entity objects to the late filing on the grounds that it has made a sufficient investigation of the claim so that it has determined that it will be prejudiced by the late filing, then the person filing the late claim should be required to petition the court for leave to file the late claim.

Senator Cobey moved, seconded by Commissioner Keatinge, that the public entity be allowed a period to consider and reject the claim under the local public entities claim statute. The effect of this motion would be to renew in substance the 1959 recommendation regarding local public entities. After rejection of the claim or after the claim is deemed to be rejected, the claimant should be allowed a specified period within which to bring an action. The motion was adopted unanimously.

It was noted that in 1959 the Commission recommended that an 80-day period be allowed local public entities to consider claims. At the end of the 80 days the claim would be deemed to be rejected. The subcommittee determined that this period be made applicable both to the State and to local public entities claims statutes.

The subcommittee determined that one general statute covering claims against all public entities should be drafted. The statute should be along the lines of the 1959 recommendation of the Commission.

Section 621. The subcommittee determined that both the State and local public entities claims statutes should have a verification requirement or its equivalent or that the claim be made under penalty of perjury (Code Civ. Proc. § 2015.5).

In this connection, however, it was noted that many statutes in other states and the local public entities claims statute do not require verification, possibly because the filing of a false claim is itself actionable.

It was suggested that a provision be added to the claims statutes indicating that the claims statutes do not impose liability where liability does not otherwise exist.

Section 661. It was agreed to delete the provision that permits a claim to be filed that is not signed by the claimant or by some person on his behalf.

It was suggested that the statute authorize the claimant either to list the information specified in the statute or to comply with a claim form prescribed by the public entity. Either procedure would satisfy the statute.

The statute of limitations that would govern actions would be six months after the claim is rejected.

Section 664. The words "in the State Capitol, Sacramento," were deleted.

Section 667. This section was deleted.

It was suggested that the text of the recommendation contain a calendar of significant times under the claims statute.

The Commission discussed whether State agencies should be authorized to compromise claims. The Department of Finance representative stated that the department has no objection to the compromise of claims where the claim has been disallowed by the Board of Control and an action has

been brought by the claimant. It was suggested that the Board of Control be given authority to authorize State agencies to compromise claims without approval of the board as to the particular claims. It was also suggested that claims could be paid by a State agency only if the agency had budgeted funds for that purpose. This would in effect give the Department of Finance and the Legislature a veto power over the compromise of claims by a particular State agency. The Department of Finance and the Department of Public Works were requested to submit to the Commission staff suggested provisions for insertion in the claims statute.

Fiscal Administration

The subcommittee considered Memorandum No. 20(1962) and a portion (pp.1-10) of Memorandum No. 10(1962) relating to several matters pertaining to fiscal administration and the payment of tort claims and tort judgments. The following matters were agreed upon.

Definitions (Section 740). The subcommittee approved the definition of "fiscal year" as it appears in Memorandum No. 20(1962).

The subcommittee agreed that a definition of "tort judgment" should be included in this section to avoid unnecessarily restrictive judicial interpretation. The following definition was approved:

> (b) "Tort judgment" means a final judgment against a local public entity for money damages founded upon death or injury to persons or property arising out of a negligent or wrongful act or omission.

Consent to sue (Section 742). This section was approved as drafted.

Authority to pay judgments. The subcommittee approved a motion by Senator Cobey to include a provision in this article placing a mandatory duty upon the local public entity against which a tort judgment has been rendered to arrange for the payment of such judgment in accord with this article. It was noted that the present sections impose such duty but that a provision should be included to make this clear. The subcommittee then considered the several sections outlining the means of making such payment.

Section 742. This section was approved as drafted in Memorandum No. 20(1962) except that a semicolon and the word "or" were substituted for the period at the end of subdivision (a).

Section 743. This section was approved as drafted in Memorandum No. 20(1962).

Section 744. The subcommittee disapproved the alternative draft of this section presented in Memorandum No. 20(1962) relating to the instalment payment of tort judgments. At least two reasons for this action were specifically noted. First, the court should not be in a position to second guess fiscal policy decisions made by responsible officials of the local public entity. Second, the plaintiff creditor is not really damaged by reason of delayed payment through instalments because of the lucrative interest rate on such unpaid judgment and the ready market for such judgments if the public entity is financially responsible. A suggestion that an additional penalty be imposed upon the entity for deferment of payment was rejected.

The subcommittee approved the former draft of this section as presented in Memorandum No. 10(1962).

Mandatory levies to pay tort judgments (Section 745). No final action was taken with respect to this section as presented in Memorandum No. 10(1962). It was suggested that paragraph two of this section might be changed so that the local public entity against whom a tort judgment is rendered would charge only a pro rata share of the cost of such judgment against another local public entity, the share being based upon the same pro rata income for the preceeding year. This is because it would be unfair to charge the other local public entity with the entire cost where it furnishes only one, five or ten percent of the revenue of the entity against whom the judgment is obtained. The subcommittee agreed that this section should be considered again by the Commission.

Judgments as investments (Section 746). The subcommittee agreed that all reference to public bodies should be deleted from this section and that another section permitting such investment by public bodies should be considered by the Commission. This action was taken because there is a possibility that investment by public bodies, particularly the State, may undermine the stability of bonded indebtednesses of the investing entities. With this deletion, the section was approved as drafted.

Attorney's fees limitation. (Section 747). The first matter considered was whether a provision limiting attorney's fees can be

justified. One justification advanced was that if public moneys are to be expended because someone has been injured, the public should be assured that most of the money paid from public funds will go to the injured party. It was noted that the Federal Tort Claims Act contains a similar limit on attorney's fees. (Apparently the attorney's fees provision was added to the Federal Tort Claims Act as an afterthought. There is no discussion of the provision in the legislative history of the Act.) It was suggested that the section also will conserve public funds by reducing the number of unmeritorious suits brought merely because the public entity has a deep pocket. It was also suggested that the attorney's fees limitation is a means of discouraging the filing of law suits unless there is good reason to believe there are grounds for recovery. It was noted that the Industrial Accident Commission fixes maximum fees.

Senator Cobey suggested that the attorney's fees might be subject to approval of the court as to reasonableness as in the case of a minor. Having the fee subject to approval of a court would allow the court to control the situation so that the injured party doesn't have to pay the attorney a large percentage of the amount paid by the entity, particularly where the attorney has rendered little service. This suggestion was not adopted.

A majority of members present (3 to 1) were in favor of Section 747 as drafted.

Claims and Judgments Against Dissolved Local Public Entities

Sections 750-763. The subcommittee considered the sections dealing

with the payment of unsatisfied claims and judgments against dissolved local public entities. The following matters were agreed upon.

The general scheme of providing by statute a uniform method of handling the affairs of dissolved local public entities where no other statutory authority governs was approved in substantially the same form as drafted in the memorandum. The provisions of the proposed Article pertain only to dissolved entities and apply only where no other law governs the winding up of the affairs of the particular entity involved.

Proposed Sections 753 and 754 were drafted to reflect Commission policy approved at the December 1961 meeting. The theory underlying these sections whereby the succeeding entity would pay the outstanding debts of the dissolved entity was changed materially. With respect to these two sections, the following matters deserve particular attention.

1. A local public entity should be required to pay its debts, including claims and judgments arising out of tort liability, or cease to exist. The succeeding entity, whether it be another local public entity or the county in which the whole or greater part of the dissolved entity is situated, should not be generally liable for the payment of debts incurred by the dissolved entity.

2. The territory embraced within the boundaries of the dissolved entity should be solely responsible for the satisfaction of those claims and judgments which remain unsatisfied at the time of dissolution (including those arising after dissolution). Thus, the succeeding entity assumes the position of an administrative-tax levying-tax collecting agency for the dissolved entity.

3. The authority to assess and collect taxes, assessments, etc., for the payment of tort claims and judgments is to be limited by an amount equal to $.25 per $100 assessed value per year for a maximum period of 20 years from the date of dissolution. In effect, this limits the total amount collectible against any dissolved entity, such total to be divided proportionately among the tort judgment creditors. This tax ceiling is to be a mandatory rate applicable to all succeeding entities where the purpose of the collection is to satisfy tort claims and judgments. This rate, of course, does not affect other provisions relating to the power to levy taxes and assessments to raise funds for the payment of general debts, such as bonds and the like.

4. The governing principle to be reflected in the statute is that the liability for satisfaction of debts attaches only to the property within the boundaries of the dissolved entity at the time the liability accrues. It was noted that this scheme would not interfere with normal annexations and the like because the property affected would be the same as though the dissolution never occurred.

Conforming changes are to be made in the remainder of the proposed article to carry out the policy reflected in these sections.

Indemnity or Save Harmless Agreements

It was pointed out that indemnity agreements, while useful in some cases, would not be desirable in every case, for the expense of a public contractor in providing insurance to cover the indemnity agreement might exceed the benefit to the public agency.

It was also pointed out that indemnity agreements are in wide use now. The proposed statute would merely make clear that public entities have this authority.

It was suggested that the provision be amended to insert "Except as otherwise provided by law" at the beginning of the provision and to add the words "in its discretion" in the portion of the provision that grants the authority to require indemnity or save harmless agreements. It was also suggested that the section be revised so that an indemnity agreement might be drafted to cover only part but not all of the potential liability. It should be clear that the provision covers a contract or agreement between two public entities or between the United States and a public entity in California.

Insurance Under Joint Powers Agreements. A staff recommendation that Section 6502 of the Government Code not be amended to provide for specific authority to enter into a joint powers agreement to jointly secure insurance was adopted. It was pointed out that this amendment was not needed and might be construed to restrict the broad grant of authority under Section 6502.

Liability Under Joint Powers Agreements. The following suggestions were made with reference to proposed Section 6503.5: The general language used in the substantive liability statutes--"arising out of any negligent or wrongful act or omission"--should be used in this section. Other provisions in the Government Code--cited in the Fire Protection portion of the Study and also in the Park and Recreation portion of the Study--

should be amended. Also, some provisions in the Public Resources Code should be amended.

It was noted that under proposed Section 6503.5 the public entity was required to make payment before it was entitled to contribution. It was suggested that the provision be revised to make it an indemnification provision so that a defendant public entity would be permitted to bring other indemnifying public entities into the action. The pro rata share of each entity should be based on assessed valuation of property located within the boundaries of the public entity on the last equalized assessment roll for the county.

Funding Tort Judgments With Bonds

The subcommittee considered pages 27-42 of Memorandum No. 10(1962) relating to the authority of entities to issue bonds to fund tort judgments. The following matters were agreed upon.

1. It was suggested that a workable solution to the problem of providing authority to issue bonds without unnecessarily disturbing present statutes, particularly those relating to bond limits, might be to provide (1) general authority to bond to fund tort judgments and (2) a uniform procedure to be followed in such bonding. The authority created and the procedure provided would be in addition to any existing statutes.

2. The procedure to be provided for the issuance, payment, etc., of bonds issued for the purpose of paying tort judgments should omit any reference to a bond limit, thus leaving to the courts the question

whether the authority therein provided is subject to bonding limits which may be contained in the statutes specifically governing the local entity involved.

3. The uniform procedure to be provided should require a prior two-thirds vote of persons within the local public entity that seeks to issue such bonds. No authority to issue bonds for such purpose should be provided without the prior consent of two-thirds of such persons.

Liability for Dangerous Conditions of Public Property

The subcommittee considered Memorandum No. 15(1962) dealing with special statutes that provide for immunity from liability for certain types of public property and certain activities thereon. The following matters were agreed upon.

Civil Code Section 1714 and 1714.5. The subcommittee approved the staff's suggestion to make no change in these sections.

Streets and Highways Code Sections 941 and 1806. These sections generally provide immunity for failure to maintain streets and roads until accepted by the governing board of the city or county involved. It was noted that there are numerous highways which have not been accepted by such boards. However, because of the importance of fixing an event after which liability attaches, the sections were approved as drafted.

Government Code Sections 54000-54005. It was agreed to defer action on these sections until the Commission considers that portion of the research consultant's study dealing with parks and recreational activities.

Streets and Highways Code Sections 943 and 954. The suggested revisions to these sections dealing with stock trails were approved as drafted, except that "contents of vehicles" were added to the items listed in revised Section 954 for which damages could not be recovered.