STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION AND STUDY

relating to

The Presentation of Claims Against Public Officers and Employees

October 1960

LETTER OF TRANSMITTAL

To His Excellency Edmund G. Brown
Governor of California
and to the Members of the Legislature

The California Law Revision Commission was authorized by Resolution Chapter 35 of the Statutes of 1956 to make a study of the various provisions of law relating to the presentation of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised. Upon recommendation of the Commission, legislation was enacted in 1959 creating a uniform procedure governing the presentation of claims against local public entities. At that time the Commission reported that it had not had an opportunity to make a comprehensive study of the provisions of law relating to the presentation of claims against public officers and employees. Since then the Commission has made such a study and herewith submits its recommendation and the study prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

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October 1960

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RECOMMENDATION OF CALIFORNIA LAW REVISION COMMISSION

Relating to Presentation of Claims Against Public Officers and Employees

Sections 801 and 803 of the Government Code and various municipal charters and ordinances contain provisions that bar suit against a public officer or employee on his personal liability unless a claim for damages is presented within a relatively short time after the claimant's cause of action has accrued. These provisions are referred to in this recommendation as "personnel claims statutes."

The Law Revision Commission recommends that all personnel claims statutes be repealed for the following reasons:

1. The effect of personnel claims statutes is to limit the substantive liability of public officers and employees by making available to them a technical defense, which other citizens do not have, against otherwise meritorious actions. The Commission believes that these statutes are unfair in those cases where they bar otherwise meritorious actions merely because the plaintiff fails to comply with a technical procedural requirement. Moreover, they are unnecessary because there are fairer and more effective methods that could be used to protect public officers and employees against having to pay judgments arising out of their personal liability for their negligent acts or omissions in the course and scope of their employment. In his study the Commission's research consultant refers to two such methods which the Legislature has made available to some but not all public officers and employees: defense of public personnel at public expense and personal liability insurance obtained at public expense for public officers and employees.

2. As the study prepared by the Commission's research consultant demonstrates, the arguments advanced in favor of the personnel claims statutes are not convincing.[1] The recognized justification for a claims statute is that it assures reasonably prompt notice of a potential liability to a defendant whose unique situation requires this preferred treatment. Thus, a claims statute is justified as applied to a public entity which, but for such protection, might frequently find itself sued on stale claims of which it had not theretofore been aware. But the liability of public officers and employees against which the personnel claims procedure affords protection is a personal liability based on the defendant's own negligence. In many cases the injury involved arises directly out of an act or omission of the public officer and employee and he is immediately aware of it. There is no more justification in these cases for requiring a plaintiff to present a claim as a condition of bringing suit than there would be for imposing a similar requirement when a plaintiff sues any other defendant. Of course, in some instances a public officer or employee may be held liable even though he did not have immediate

[1] For a more complete discussion of the arguments, see research consultant's study, *infra* at H-28 *et seq.*

personal knowledge of the injury. But in such cases the public officer's liability is no greater than that of his counterpart in private employment.

3. Personnel claims statutes create a procedural trap for plaintiffs. In addition to the fact that a plaintiff is unlikely to be aware of the existence of personnel claims statutes and may not consult an attorney until it is too late, the circumstances of the particular case sometimes do not disclose that the public officer or employee was acting as such and the plaintiff and his attorney may not discover this fact until the time for presenting the claim has elapsed.

4. As the report of the Commission's research consultant shows, the existing personnel claims statutes are ambiguous, inconsistent and overlapping.[2] Claimants, attorneys and the courts have difficulty in determining which, if any, of the claims presentation provisions applies in a particular case.

5. Only one other state, New York, has enacted a general personnel claims statute and its statute is of limited scope.[3]

The Commission has noted the lack of uniformity in treatment of public officers and employees in this State where personal liability for negligent acts or omissions within the course and scope of their employment is concerned. In some instances the State[4] or other employing public entity[5] is made legally responsible for judgments rendered against its officers or employees. In other instances the public entity is authorized to insure or self-insure the personal liability of its officers or employees,[6] and in still other instances, such insurance or self-insurance is required.[7] In most instances the public entity is required to provide legal counsel for the defense of the negligent officer or employee at public expense.[8] At the other end of the spectrum, in at least one instance the State or other public entity is given an express right of subrogation against its officer, agent or employee when it has been held liable by reason of his negligence.[9]

The Commission appreciates that to the extent that these statutory provisions impose liability upon a public entity to pay a judgment rendered against its officer or employee or require the public entity to provide insurance or legal representation for him at public expense, the repeal of the personnel claims statutes will negate or diminish the protection given the public entity by the General Claims Statute enacted in 1959. The Commission believes, however, that the fact that the public entity is thus involved in the suit against its officer or employee is no reason to limit his personal liability. It may be in the interest of good employee relations and hence sound public policy to require or authorize a public entity to assume all or part of the burden of such personal liability as its officers and employees may incur in the course of their public employment. But it is quite unfair to transfer this burden to the injured plaintiff. The plaintiff should have an adequate right of redress against every individual who harms him, whether

[2] For a detailed discussion of the defects in the personnel claims statutes, see research consultant's study, *infra* at H-13, *et seq.*

[3] The New York statute is discussed in the research consultant's study, *infra* at H-32, H-33.

[4] CAL. GOVT. CODE § 2002.5.

[5] *E.g.*, CAL. GOVT. CODE § 61633; CAL. WATER CODE §§ 22730, 31090, 35755.

[6] *E.g.*, CAL. GOVT. CODE §§ 1956, 1959; CAL. WATER CODE §§ 22732, 35757.

[7] *E.g.*, CAL. EDUC. CODE §§ 1044, 1045.

[8] *E.g.*, CAL. GOVT. CODE, §§ 2000, 2001, 2002, 2002.5; CAL. EDUC. CODE § 1043.

[9] CAL. VEH. CODE § 17002.

that individual is a public officer or employee or any other citizen. The fact that the Legislature or the public entity chooses to have the entity assume all or a part of this liability in some instances does not justify legislation which, in effect, limits the liability in order to reduce the public expense involved. The cost of the public policy should be borne by the public, not by the individual who has been injured.

The Commission has not undertaken to recommend revisions of the law designed to secure uniformity of treatment of public officers or employees in this State insofar as protection against personal liability for official acts or omissions is concerned, since it considers that any such recommendations would go beyond the scope of its assignment, which is to study and recommend needed revisions of the law relating to the presentation of claims against public officers and employees.

The Commission's recommendation would be effectuated by the enactment of the following measure:*

An act to amend Section 313 of the Code of Civil Procedure, to repeal Sections 800, 801, 802 and 803 of the Government Code and to add Sections 800 and 801 to Chapter 3 of Division 3.5 of Title 1 of the Government Code, relating to claims against public officers, agents and employees.

The people of the State of California do enact as follows:

SECTION 1. Section 800 of the Government Code is repealed.

~~800. As used in this chapter:~~

~~(a) "Person" includes any pupil attending the public schools of any school or high school district.~~

~~(b) In addition to the definition of public property as contained in Section 1951, "public property" includes any vehicle, implement or machinery whether owned by the State, a school district, county, or municipality, or operated by or under the direction, authority or at the request of any public officer.~~

~~(c) "Officer" or "officers" includes any deputy, assistant, agent or employee of the State, a school district, county or municipality acting within the scope of his office, agency or employment.~~

SEC. 2. Section 801 of the Government Code is repealed.

~~801. Whenever it is claimed that any person has been injured or any property damaged as a result of the negligence or carelessness of any public officer or employee occurring during the course of his service or employment or as a result of the dangerous or defective condition of any public property, alleged to be due to the negligence or carelessness of any officer or employee, within 90 days after the accident has occurred a verified claim for damages shall be presented in writing and filed with the officer or employee and the clerk or secretary of the legislative body of the school district, county, or municipality, as the~~

* Matter in "strikeout" type would be omitted from the present law.

~~case may be. In the case of a state officer the claim shall be filed with the officer and the Governor.~~

SEC. 3. Section 802 of the Government Code is repealed.

~~802. The claim shall specify the name and address of the claimant, the date and place of the accident and the extent of the injuries or damages received.~~

SEC. 4. Section 803 of the Government Code is repealed.

~~803. A cause of action against an employee of a district, county, city, or city and county for damages resulting from any negligence upon the part of such employee while acting within the course and scope of such employment shall be barred unless a written claim for such damages has been presented to the employing district, county, city, or city and county in the manner and within the period prescribed by law as a condition to maintaining an action therefor against such governmental entity.~~

SEC. 5. Section 800 is added to Chapter 3 of Division 3.5 of Title 1 of the Government Code, to read:

800. A claim need not be presented as a prerequisite to the commencement of an action against a public officer, agent or employee to enforce his personal liability.

SEC. 6. Section 801 is added to Chapter 3 of Division 3.5 of Title 1 of the Government Code, to read:

801. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity, as defined in Section 700 of this code, which requires the presentation of a claim as a prerequisite to the commencement of an action against a public officer, agent or employee to enforce his personal liability is invalid.

SEC. 7. Section 313 of the Code of Civil Procedure is amended to read:

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State~~, and against the officers and employees thereof,~~ is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

SEC. 8. This act applies only to causes of action heretofore or hereafter accruing that are not barred on the effective date of this act. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that is barred on the effective date of this act.

A STUDY RELATING TO THE PRESENTATION OF CLAIMS AGAINST PUBLIC OFFICERS AND EMPLOYEES *

INTRODUCTION

One of the notable achievements of the 1959 General Session of the California Legislature was the enactment, upon the recommendation of the California Law Revision Commission, of a series of bills creating a uniform procedure governing claims for money or damages, with stated exceptions, against all forms of local governmental entities.[1]

In submitting its recommendations with respect to this proposed legislation,[2] the Commission noted that there were certain provisions of California law which also required claims to be filed before suit could be brought against public officers or employees. Such requirements, it was reported, were characterized by ambiguity and uncertainty of meaning, and by overlapping application. The Commission, however, had not had sufficient time to study these provisions in order to make a recommendation concerning them at that time.[3] The present study is designed to assist the Commission in arriving at such recommendations.

The scope of the present study should be carefully noted. It relates only to legal provisions requiring the presentation of a formal claim as a condition precedent to maintaining an action against a public officer or employee. Since claims procedures such as this inevitably constitute a procedural limitation upon substantive liability, their very existence in California law is somewhat anomalous, for unlike governmental entities (which in the absence of statutory waiver are largely immune from tort liability) officers and employees of such bodies are, with very few exceptions,[4] fully liable for their own torts to the same extent as other private citizens. The potential litigation against which such claims requirements provide protection is thus directed solely against the individual to enforce a purely personal liability; and such procedures, where applicable, provide public personnel with a technical defense, often conclusive, against otherwise meritorious litigation, which defense is not available to defendants not employed by government. The existence of such procedures is also nearly unique, for outside of California there appears to be only one state,[5] and there only to a limited extent, in which similar personnel claims procedures are prescribed by law.

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* This study was made at the direction of the Law Revision Commission by Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

[1] Cal. Stat. 1959, chs. 1715, 1724-28, pp. 4115, 4133, 4138, 4142, 4156.

[2] See *Recommendation and Study relating to The Presentation of Claims Against Public Entities*, 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES A-1 (1959) [hereinafter cited as CLAIMS STUDY].

[3] *Id.* at A-11.

[4] The chief exceptions are found in CAL. GOVT. CODE §§ 1953-55; CAL. VEH. CODE § 17004; and in the judicially recognized immunity from suit based on exercise of discretionary powers. Hardy v. Vial, 48 Cal.2d 577, 311 P.2d 494 (1957). See Note, 5 U.C.L.A. L. REV. 164 (1958).

[5] N.Y. GEN. MUNIC. LAW § 50e. See discussion in text *infra* at notecalls 113-119.

SUMMARY OF CONCLUSIONS REACHED

Two general conclusions have been formulated as a consequence of this study:

(1) The existing law of California with respect to presentation of claims as a condition precedent to maintaining suit against public officers and employees is in urgent need of legislative correction. Existing statutory, charter and ordinance provisions are ambiguous, inconsistent and uncertain of application; frequently are overlapping and confusing as to scope and coverage; and, as the Supreme Court observed with respect to one of these laws, have become, for the most part, "traps for the unwary." [6]

(2) Serious objections may be advanced against the retention in California law of any personnel claims provisions.[7] The potentialities for injustice inherent in such procedural requirements outweigh whatever dubious advantages may be secured therefrom. Such advantages, moreover, may be achieved through other means than the claims procedures. Consideration should be given, therefore, to the repeal of all existing personnel claims procedures.

THE EXISTING STATUTORY PATTERN

Present Statute Law

Personnel claims provisions are a relatively recent development in California statutory law. Unlike the proliferation of requirements that claims be presented before suing public entities, which have a legislative history extending back more than a century,[8] the first general statutory provision relating to claims against public personnel was not enacted until 1931.[9] This original provision, as subsequently amended and enlarged in scope, is now found in the Government Code as Section 801, and reads:

> Whenever it is claimed that any person has been injured or any property damaged as a result of the negligence or carelessness of any public officer or employee occurring during the course of his service or employment or as a result of the dangerous or defective condition of any public property, alleged to be due to the negligence or carelessness of any officer or employee, within 90 days after the accident has occurred a verified claim for damages shall be presented in writing and filed with the officer or employee and the clerk or secretary of the legislative body of the school district, county, or municipality, as the case may be. In the case of a state officer the claim shall be filed with the officer and the Governor.

The only other statutory provision relating to personnel claims was enacted in 1951,[10] and is presently found in the Government Code as Section 803. It provides:

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[6] Stewart v. McCollister, 37 Cal.2d 203, 207, 231 P.2d 48, 50 (1951).
[7] The term "personnel claims provisions" is used herein to refer generically to claims procedures imposed by statute, municipal charter or ordinance relating to claims against any class of public servant.
[8] Cal. Stat. 1855, ch. 47, § 24, p. 56. See CLAIMS STUDY at A-18.
[9] Cal. Stat. 1931, ch. 1168, § 1, p. 2477, subsequently codified as CAL. GOVT. CODE § 1981. In 1959, this section was repealed and re-enacted as CAL. GOVT. CODE § 801. Cal. Stat. 1959, ch. 1715, §§ 1, 3, pp. 4116, 4120.
[10] Cal. Stat. 1951, ch. 1630, § 1, p. 3673.

> A cause of action against an employee of a district, county, city, or city and county for damages resulting from any negligence upon the part of such employee while acting within the course and scope of such employment shall be barred unless a written claim for such damages has been presented to the employing district, county, city, or city and county in the manner and within the period prescribed by law as a condition to maintaining an action therefor against such governmental entity.

Apart from Sections 801 and 803 of the Government Code, there are today no other statutes that provide for claims against public officers and employees. Prior to the enactment of the General Claims Act of 1959, however, it was possible to contend [11] that a few special district claims provisions [12] were applicable to claims against district personnel as well as against the district itself. (There being no cases in point, however, any such contention was at best only an argument founded upon ambiguous statutory language.) Persuasive and plausible arguments could equally have been advanced that such district claims provisions were either wholly inapplicable to personnel claims,[13] or were applicable only when an officer of the district was being sued in his official capacity on a claim payable out of district funds rather than one seeking to impose personal liability.[14] Regardless of the merits of these opposing contentions, however, it is clear that most of the district laws in question had already been rendered nugatory, in practical effect, by the Supreme Court's decision in *Stewart* v. *McCollister*,[15] decided in 1951; and that to the extent (if at all) that any of these

[11] See CLAIMS STUDY at A-103, A-104.

[12] CAL. GOVT. CODE § 61628 (community services districts); CAL. PUB. UTIL. CODE § 12830 (municipal utility districts); CAL. PUB. UTIL. CODE § 29060 (San Francisco Bay Area Rapid Transit District); CAL. WATER CODE § 22727 (irrigation districts); CAL. WATER CODE §§ 31084-85 (county water districts); CAL. WATER CODE § 35752 (California water districts); Kings River Conservation District Act, Cal. Stat. 1951, ch. 931, § 15, p. 2508, CAL. GEN. LAWS ANN. Act 4025, § 15 (Deering 1954), CAL. WATER CODE APP. § 59-15 (West 1956); Los Angeles Metropolitan Transit Authority Act of 1957, Cal. Stat. 1957, ch. 547, § 4.23, p. 1623, CAL. PUB. UTIL. CODE APP. § 4.23 (West Cum. Supp. 1957); Metropolitan Water District Act, Cal. Stat. 1927, ch. 429, § 6.1 added by Cal. Stat. 1945, ch. 1084, p. 2091, CAL. GEN. LAWS ANN. Act 9129, § 6.1 (Deering 1954), CAL. WATER CODE APP. § 35-6.1 (West 1956); Municipal Water District Act of 1911, Cal. Stat. 1911, ch. 671, § 20 added by Cal. Stat. 1951, ch. 62, § 21, p. 199, CAL. GEN. LAWS ANN. Act 5243, § 20 (Deering 1954), CAL. WATER CODE APP. § 20-20 (West 1956). All citations in this note are to the law as it existed prior to 1959.

[13] In seven of the statutes cited in note 12, (*i.e.*, all except the Los Angeles Metropolitan Transit Authority Act, the Metropolitan Water District Act and the Municipal Water District Act) there was no language explicitly making the claims procedure a condition to suit against officers or employees. Instead, the presentation of a claim based on personnel negligence was simply a condition to the maintaining of "any action." In light of the rule that personnel claims statutes must be strictly construed to avoid denial of a remedy wherever possible, Stewart v. McCollister, 37 Cal.2d 203, 231 P.2d 48 (1951); Porter v. Bakersfield & Kern Elec. Ry., 36 Cal.2d 582, 225 P.2d 223 (1950), held this language might well be construed to mean "any action" against the district only.

[14] In the three statutes mentioned in note 13, which are not subject to the contention urged therein, the claims procedure was expressly made a condition to suit against officers or employees. However, the statutory mechanism provided for the processing of all claims and for their approval and payment out of district funds on the order of the governing body, strongly suggests that suit against personnel in an official capacity only, upon a claim payable out of public funds under the control of the officer rather than suit on a purely personal liability claim, was contemplated.

[15] 37 Cal.2d 203, 231 P.2d 48 (1951) (holding a personnel claim statute applicable, in terms, only when it is "claimed" that injury has resulted from employee negligence need not be complied with where plaintiff did not allege or otherwise claim that the defendant's negligence occurred in the course of public employment). See *infra* note 74. All of the statutes cited in note 12, except the Metropolitan Water District Act and the Municipal Water District Act of 1911 employed this "whenever it is claimed" language, and were thus subject to the doctrine of the *Stewart* case.

provisions were applicable to negligent torts of district employees occurring during the course and scope of employment, they were simply an unnecessary duplication of the general claims procedure prescribed since 1951 by Section 2003 of the Government Code (now Section 803). The repeal of these several district provisions during the enactment of the 1959 General Claims Statute, and the substitution of a provision applicable solely to claims against the district,[16] thus in all likelihood had at most only a negligible effect upon their substantive significance, but served to clarify the statute law of the State by leaving Sections 801 and 803 as the only statutory personnel claims provisions in existence.

City Charters

In 29 municipal charters [17] language appears which might be construed as creating a claims procedure prerequisite to suit against city officers or employees. Typical of these provisions is Section 70 of the Sacramento Charter, which reads:

> No suit shall be brought on any claim for money against the City or any officer, board, or commission of the City until a demand for the same has been presented, as herein provided, and rejected in whole or in part.[18]

Although language such as this seems to contemplate that a claim be presented as a prerequisite to suit against an officer of the city, it is to be noted that not one of the 29 city charters in question requires the claim to be presented to the officer or employee whose actions allegedly gave rise to the plaintiff's cause of action, but in each instance presentation is to be made solely to a designated official of the city (*e.g.*, city clerk); and that the charter in each case contemplates that the claim will be presented to the governing body of the city for its rejection or approval and payment by official warrants drawn on the public treasury. Moreover, in view of the typical requirement that presentation of a claim be "as herein provided," it is significant that in 26 out of the 29 charters cited,[19] the only presentation provisions are explicitly applicable only to claims "against the city" and that there are no procedural mechanisms authorized for presentation of claims against officers or employees. Even in the three charters [20] wherein the procedural language does refer to claims against officers, the general context is still such as to suggest that the presentation requirement is intended to be a condition precedent to suit against officers of the city only in their official capacity and not in their individual capacity. In this connection, it is noteworthy that in at least one charter (not included in the 29 heretofore cited) wherein a closely similar requirement with respect to claims presentation is found, the limitation on suit is explicitly defined in terms of actions against the "city or any officer,

[16] Cal. Stat. 1959, ch. 1727, §§ 7, 8, 46, 47, 50, 51, 64, 65, 66, 67, 68, 69; ch. 1728, §§ 11, 12, 19, 20, 59, 60, 87, 88.

[17] Arcadia, Berkeley, Chula Vista, Compton, Culver City, Dairy Valley, Fresno, Glendale, Grass Valley, Hayward, Huntington Beach, Inglewood, Los Angeles, Marysville, Modesto, Mountain View, Needles, Riverside, Roseville, Sacramento, San Buenaventura, San Leandro, San Luis Obispo, Santa Ana, Santa Clara, Santa Cruz, Sunnyvale, Visalia, and Whittier. Citations to these charter provisions are given in Appendix A *supra*.

[18] SACRAMENTO CHARTER § 70, Cal. Stat. 1940 (1st Ex. Sess.), ch. 74, p. 320.

[19] All except the charters of Culver City, Los Angeles and Santa Cruz.

[20] Culver City, Los Angeles and Santa Cruz.

board or department thereof *in his or its official capacity.*" [Emphasis added.] [21]

The uncertainty inherent in the language of the city charters referred to is unfortunately not clarified in case law. No decision has squarely held that any municipal charter provision, standing alone, has established a claims presentation requirement as a condition precedent to suit against a municipal officer or employee. To be sure, an ordinance of the City of Glendale, enacted pursuant to and in elaboration of the Glendale City Charter provision, has been held applicable in such cases; [22] and at least by implication the Los Angeles City Charter provision has been deemed to be applicable.[23] None of the cited cases, however, constitutes a square holding, and in none of them did the court undertake to make a detailed analysis of the language of the claims presentation provision of the city charter to determine its applicability to personnel claims.

Despite the uncertainty referred to, in the course of the present study, it will be assumed that municipal charter claims provisions are applicable.

Municipal Ordinances

Although city ordinances regulating the procedure for the presentation of claims as a condition precedent to suit against the city itself are fairly prevalent in California, relatively few ordinances are believed to exist requiring claims presentation as a condition to suit against municipal officers or employees. Ordinance No. C-1436 of the City of Long Beach, quoted and applied in *Whitson* v. *LaPay*,[24] is typical of some six ordinance provisions which have been identified.[25] This Long Beach ordinance expressly imposes a claims presentation requirement as a condition precedent to the commencement of an action for damages or money against "any officer, agent, employee, board member or commission member"; and provides that a verified written claim conforming to the requirements set out in the ordinance must be served on the individual employee, and a copy thereof filed with the city clerk, within 90 days after the occurrence from which the damages or claims for money arose. Similar provisions are found in the other ordinances cited.

INTERPRETATION AND APPLICATION

Although personnel claims statutes are fewer in number than was formerly the case with respect to entity claim statutes, a substantial volume of litigation has arisen with respect to them. In addition, substantial problems of interpretation and application appear to be present within the existing statutory pattern, but have not yet been resolved by judicial decisions.

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[21] PASADENA CHARTER Art. 11, § 12, Cal. Stat. 1933, ch. 7, p. 2783.
[22] Klimper v. City of Glendale, 99 Cal. App.2d 446, 222 P.2d 49 (1950); Slavin v. City of Glendale, 97 Cal. App.2d 407, 217 P.2d 984 (1950).
[23] Davis v. Kendrick, 52 Cal.2d 517, 341 P.2d 673 (1959).
[24] 153 Cal. App.2d 584, 315 P.2d 45 (1957).
[25] In addition to the Long Beach Ordinance quoted in the text, the following municipal ordinances also appear applicable to claims against personnel: ESCONDIDO ORD. 316 (July 2, 1936); GLENDALE MUNIC. CODE §§ 2-199 to 2-204; ONTARIO ORD. 661 (Nov. 13, 1940); OXNARD MUNIC. CODE §§ 1630-31 (as amended Aug. 5, 1954); and SAN BUENAVENTURA MUNIC. CODE §§ 1421-26.

Confusion With Entity Claims Provisions

Soon after the original enactment of what later became Section 1981 (now Section 801) of the Government Code in 1931,[26] questions arose as to whether the claims procedure therein prescribed applied to claims against public entities or only to claims against officers and employees of entities. These uncertainties were due in part to internal ambiguities and in part to the close similarity that the section bore to the wording of a companion statute [27] adopted at the same time prescribing procedures for the presentation of claims to certain public entities for damages resulting from dangerous or defective conditions of property.

The earliest case to consider the matter assumed that the section applied to claims against school districts;[28] but in 1936, the District Court of Appeal in a well-considered opinion by Mr. Justice Shinn held that it applied only to claims against public officers and employees and not to claims against public entities.[29] Although this decision was approved and reinforced by unequivocal decisions of the Supreme Court to the same effect in 1938,[30] 1942 [31] and 1943,[32] a contrary view was thereafter repeatedly reflected in judicial opinions.[33] Finally, in a series of decisions announced in 1949 and 1950, the courts spoke with complete unanimity in holding Section 1981 applicable solely to claims against officers and employees of entities and not against the employing entities.[34] Since 1950 this interpretation has not been questioned. Unfortunately, however, it required nearly two decades of repeated litigation to finally lay the issue to rest.

Entities Whose Officers and Employees Are Protected by Claims Procedure

The range of public entities whose officers and employees are protected by a claims presentation requirement under any circumstances is by no means clear from the present statutory pattern. Section 801 of the Government Code refers to "the negligence or carelessness of *any* public officer or employee" [Emphasis added.]; but the requirement of presentation of a verified claim is restricted to presentation to the Governor, in the case of state personnel or to the clerk or secretary of "the *school* district, county or municipality, as the case may be." [Emphasis added.] Section 800 of the Government Code, it will be noted, also defines "officer," as used in Section 801, to include employees "of the State, a school district, county or municipality." Clearly, the only districts whose personnel are protected by Section 801 are *school* districts.

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[26] Cal. Stat. 1931, ch. 1168, p. 2476.

[27] Cal. Stat. 1931, ch. 1167, p. 2475. The legislative background of these two related measures is outlined in Tyree v. City of Los Angeles, 92 Cal. App.2d 182, 184-87, 206 P.2d 912, 913-15 (1949).

[28] Bates v. Escondido U. H. School Dist., 133 Cal. App. 725, 24 P.2d 884 (1933).

[29] Jackson v. City of Santa Monica 13 Cal. App.2d 376, 57 P.2d 226 (1936). See also, to the same effect, Jackman v. Patterson, 42 Cal. App.2d 255, 108 P.2d 682 (1940); Contreras v. Gummig, 54 Cal. App.2d 421, 129 P.2d 18 (1942).

[30] Raynor v. City of Arcata, 11 Cal.2d 113, 77 P.2d 1054 (1938).

[31] Redlands etc. Sch. Dist. v. Superior Court, 20 Cal.2d 348, 125 P.2d 490 (1942).

[32] Dillard v. County of Kern, 23 Cal.2d 271, 144 P.2d 365 (1943).

[33] See, *e.g.*, Abrahamson v. City of Ceres, 90 Cal. App.2d 523, 203 P.2d 98 (1949); Perry v. City of San Diego, 80 Cal. App.2d 166, 181 P.2d 98 (1947); Johnson v. County of Fresno, 64 Cal. App.2d 576, 149 P.2d 38 (1944).

[34] Veriddo v. Renaud, 35 Cal.2d 263, 217 P.2d 647 (1950); Ansell v. City of San Diego, 35 Cal.2d 76, 216 P.2d 455 (1950); Ingram v. City of Gridley, 100 Cal. App.2d 815, 224 P.2d 798 (1950); Mendibles v. City of San Diego, 100 Cal. App.2d 502, 224 P.2d 42 (1950); Glenn v. City of Los Angeles, 96 Cal. App.2d 86, 214 P.2d 533 (1950); Saldana v. City of Los Angeles, 92 Cal. App.2d 214, 206 P.2d 866 (1949); Tyree v. City of Los Angeles, 92 Cal. App.2d 182, 206 P.2d 912 (1949).

The coverage of Section 803 of the Government Code is not as clear. This section, in terms, relates to claims against employees of "a district, county, city, or city and county." In one respect, it appears that Section 803 is more restrictive than Section 801 since the former does not apply to personnel of the State, whereas the latter does. A more difficult question is whether Section 803 is more extensive than Section 801 in its use of the term "a district." In short, the only form of district to which Section 801 provides claims presentation protection to its employees is a school district; is this same limitation of scope applicable to Section 803?

In its present position in Chapter 3 of Division 3.5 of Title 1 of the Government Code, Section 803, like Section 801, appears to be modified by the definitional provisions of Section 800 (which explicitly apply to terms "used in this chapter"), and thus is limited to employees or officers of the State, a school district, county or municipality. However, Section 803 was recodified in 1959 from former Section 2003 of the Government Code. The 1959 Legislature expressly provided that such recodified provisions, "insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments." [35] Accordingly, Section 803 should be construed as retaining the same meaning as it had in its former position and context as Section 2003.[36]

The definitional provisions now found in Section 800, however, were not applicable to former Section 2003. These provisions formerly defined only the words used in Article 2 of Division 4 of Title 1 of the Government Code, which included former Section 1981 (now Section 801) but did not include former Section 2003 (now Section 803). On the other hand, the general provisions found in Article 1 of the same chapter in which former Section 2003 was situated make it abundantly clear that the *general* scope of that chapter was not confined to school districts, but extended to other types of public districts. Section 1953, for example, imposed a limitation upon the personal liability of officers of the State "or of *any* district" as well as of counties or cities. Section 1953.5 contained a like reference to "*any* district." Section 1955 referred to officers or employees of "the State, *a* district, county, *political subdivision*, or city," [Emphasis added.] while the scope of Section 1956 was broad enough to cover the "State, a county, city, district, or *any other public agency or public corporation.*" [Emphasis added.]

Viewed *in pari materia* with these related sections, it seems abundantly clear that former Section 2003 used the phrase "a district" in the broadest possible sense; [37] and accordingly, in its present form as Section 803, the same language would, in all likelihood, be construed by a court to refer to any form of public district.

In the absence of cases, however, it is at least somewhat doubtful whether the term "district" would be deemed sufficiently broad, particularly in light of the more explicit enumeration found in the related sections from which we have just quoted, to embrace other forms of public entities that technically are described by statutory nomenclature

[35] Cal. Stat. 1959, ch. 1715, § 5, p. 4121.
[36] *Cf.* People v. Ellis, 204 Cal. 39, 266 Pac. 518 (1928).
[37] *Cf.* Hunstock v. Estate Development Corp., 22 Cal.2d 205, 138 P.2d 1 (1943); Bogan v. Wiley, 90 Cal. App.2d 288, 293, 202 P.2d 824, 827 (1949).

other than "district," such as a water "agency" [38] or a local "authority." [39]

All city charters and ordinances are explicitly limited to the particular city referred to therein, and no special problem with respect to coverage arises thereunder. To the extent that claims against municipal officers and employees are governed by Sections 801 or 803 of the Government Code, however, it appears that such charter or ordinance provisions are invalid, since the statutory claims provisions undoubtedly occupy the field and supersede charter and ordinance provisions inconsistent therewith.[40]

In summary, it thus appears that (a) claims against state personnel are governed exclusively by Section 801 of the Government Code; (b) claims against personnel of counties and school districts are governed by both Section 801 and Section 803 of the Government Code; (c) claims against personnel of "districts" other than school districts are governed by Section 803 of the Government Code; (d) claims against personnel of cities are governed by the provisions of both Sections 801 and 803 of the Government Code, as well as, in some instances, by applicable provisions of the city charter or municipal ordinances; (e) claims against personnel of other public entities, not specifically designated by law as "districts" are not governed by any claims procedure.

Types of Public Personnel Protected by Claims Presentation Procedure

The categories of public personnel that are protected by the procedures of the several personnel claims provisions vary somewhat, the primary distinction being between "officers" and "employees." Section 801 of the Government Code explicitly applies to claims against "any public officer or employee," and the word "officer" is defined in Section 800(c) to include "any deputy, assistant, agent or employee." In view of this broad definition, Section 801 is applicable to claims against individuals whose relationship with the public employer is somewhat unconventional. In *Barbaria* v. *Independent Elevator Co.*,[41] for example, the court stated that an elevator inspector, duly certified by the State but actually employed and paid for his services by a private elevator company, while engaged in making official elevator inspections was deemed to be a public officer performing his duties, and thus entitled to the protection of the claims presentation requirement.

Section 803 of the Government Code, in contrast to Section 801, explicitly covers only claims against "an employee." In view of the fact that the claims statutes,[42] and statutes relating to public personnel

[38] See, *e.g.*, Contra Costa County Water Agency Act, Cal. Stat. 1957, ch. 518, p. 1553; Santa Barbara County Water Agency Act, Cal. Stat. 1945, ch. 1501, p. 2780.

[39] See, *e.g.*, CAL. H. & S. CODE §§ 34200-313 (housing authorities); CAL. STS. & HWYS. CODE §§ 32500-33552 (parking authorities).

[40] Wilson v. Beville, 47 Cal.2d 852, 306 P.2d 789 (1957); Eastlick v. City of Los Angeles, 29 Cal.2d 661, 177 P.2d 558 (1947). See Douglass v. City of Los Angeles, 5 Cal.2d 123, 53 P.2d 353 (1935). Municipal charter and ordinance claims provisions, however, are still applicable as to claims based on non-negligent torts, for no state legislation has occupied the field as to such claims. See Whitson v. LaPay, 153 Cal. App.2d 584, 315 P.2d 45 (1957).

[41] 139 Cal. App.2d 474, 293 P.2d 855 (1956).

[42] See CAL. GOVT. CODE § 801 ("any officer or employee"); HAYWARD CHARTER, Cal. Stat. 1957, res. ch. 2, § 1212, p. 178 (claims against "any officer, employee, board or commission"). *Cf.* Davis v. Kendrick, 52 Cal.2d 517, 341 P.2d 673 (1959), followed in Hernandez v. Barton, 176 Cal App.2d 535, 1 Cal. Rptr. 572 (1959), which held a Los Angeles Charter claim provision that designates only "officers" as subject thereto is not applicable to a city employee not classified as an officer by the charter.

generally,[43] constantly distinguish employees as being in an entirely separate category from public officers,[44] it appears that Section 803 does not apply to claims against "officers."

This same distinction between officers and employees is also applicable in interpreting personnel claims provisions of city charters and ordinances, the great bulk of which expressly refer only to claims against "officers." In the recent case of *Davis* v. *Kendrick*,[45] the Supreme Court found that the term "officer" as used in the personnel claims provisions of the Los Angeles City Charter did not extend the benefits of the claims procedure to a policeman of the City of Los Angeles where, viewed *in pari materia* with other charter language, there was nothing to indicate that a policeman was an "officer" of the city. As the court pointed out, the problem of interpretation was largely one determined by the context of the charter provision:

> The fact that a policeman may be deemed a public officer for some purposes is not decisive of our problem, which is whether a policeman is an officer of the city within the meaning of [the claims procedure prescribed by] the charter.[46]

On the other hand, where ordinances explicitly make the claims procedure applicable to claims against both officers and employees, the contrary conclusion is readily reached.[47]

If the foregoing analysis is summarized in terms of the various levels of governmental organization, we find that (a) all officers and employees of the State are protected solely by the personnel claims procedures of Section 801; (b) all officers of counties are within the scope of Section 801 only, but county employees are covered both by Section 801 and Section 803; (c) all city officers are covered by Section 801 and, in many cases, also by personnel claims procedures prescribed by municipal charters and ordinances; whereas city employees are within the scope of both Sections 801 and 803, and occasionally also of charter or ordinance provisions; (d) school district officers are within the protection of Section 801 alone, but school district employees may rely on both Sections 801 and 803; (e) officers of districts other than school districts receive the advantage of no claims procedure whatever, but employees of such districts do come within the scope of Section 803; and (f) officers and employees of local public entities other than cities, counties and "districts" are not within the scope of any personnel claims provisions.

Types of Claims Covered

Sections 801 and 803 are in terms applicable only to actions for personal injury or property damage resulting from negligence or carelessness of public officers or employees acting within the course and

[43] As examples of legislative distinctions between "officers" and "employees," see CAL. GOVT. CODE § 1953.6 (limiting liability of city and county "officer" for negligence of "any deputy or employee" serving under him); CAL. GOVT. CODE § 1955 (precluding liability of "any officer, agent or employee" for acts done pursuant to a statute later declared unconstitutional); CAL. GOVT. CODE § 2002 (authorizing a free defense at public expense for state or county officers and employees). It may be noted that the caption of Division 4 of Title 1 of the Government Code is "Public Officers and Employees."

[44] The distinction between officers and employees is well settled in a large variety of contexts. See generally 40 CAL. JUR.2d *Public Officers* § 13 (1958).

[45] 52 Cal.2d 517, 341 P.2d 673 (1959); *accord*, Hernandez v. Barton, 176 Cal. App.2d 535, 1 Cal. Rptr. 572 (1959).

[46] Davis v. Kendrick, *supra* note 45, at 519, 341 P.2d at 674.

[47] See Whitson v. LaPay, 153 Cal. App.2d 584, 315 P.2d 45 (1957); Slavin v. City of Glendale, 97 Cal. App.2d 407, 217 P.2d 984 (1950).

scope of their employment. Counsel representing defendant officers and employees, however, have repeatedly sought to obtain a judicial interpretation extending the scope of the claims protection to other non-negligent torts. These attempts have uniformly been rejected by the courts, and it is today well settled that these provisions do not apply to such non-negligent tort claims as conversion,[48] assault and battery,[49] trespass [50] or false imprisonment.[51]

Although these interpretations appear to be uniform and consistent, they should not be permitted to obscure the potentialities for injustice which the statutory language suggests. Several important considerations must be kept in mind.

First, some of the cases in which the court has held Section 801 (formerly Section 1981) inapplicable are, upon careful reading, instances in which the defendant public officer or employee apparently acted negligently, but the plaintiff framed his complaint on the theory that the tort was intentional, thereby evading the defense of noncompliance with the claims statute. In *Sarafini* v. *San Francisco*,[52] for example, it was held that Section 1981 was not applicable to an action against police officers for forcibly trespassing and breaking into plaintiff's apartment, even though the court acknowledged that defendant's "reason or motive for the intentional invasion of plaintiff's home may have been a negligent belief that a house of prostitution was being conducted therein." Similarly, in *Jones* v. *Shears*,[53] the claims statute was held not to be applicable where the defendant police officer was alleged to have shot the plaintiff maliciously and with wanton disregard for plaintiff's rights. Had the plaintiff sued on the theory of a negligent shooting (which theory might have been consistent with the facts as revealed in the court's opinion) the claims statute would have been applicable. In *Reynolds* v. *Lerman*,[54] where the trial court made an express finding that the defendant sheriff had been negligent in permitting a storage company to make an unauthorized sale of personal property held under attachment, the appellate court held that Section 1981 did not apply, emphasizing that the complaint was pleaded on the theory of conversion: "There is no allegation of negligence whatever in the complaint. Its averments spell conversion and nothing else. . . . Of course, negligence is not an element of conversion." [55] Thus, it appears that some latitude is permitted to the plaintiff to evade the public policy expressed in these statutes by framing his action on a theory other than that of negligence.

Second, failure to recognize that Sections 801 and 803 are not applicable to claims other than those which are framed on the theory of negligence would seem, at first blush, to be of little concern since noncompliance with an inapplicable procedural condition would not seem to have harmful results. Such conclusion, however, is not necessarily correct, for there may be instances (obviously not in reported decisions) in which injured parties have failed to institute litigation to

[48] Reynolds v. Lerman, 138 Cal. App.2d 586, 292 P.2d 559 (1956).
[49] Whitson v. LaPay, 153 Cal. App.2d 584, 315 P.2d 45 (1957); Jones v. Shears, 143 Cal. App.2d 360, 299 P.2d 986 (1956).
[50] Sarafini v. San Francisco, 143 Cal. App.2d 570, 300 P.2d 44 (1956).
[51] Chapelle v. City of Concord, 144 Cal. App.2d 822, 301 P.2d 968 (1956).
[52] 143 Cal. App.2d 570, 574, 300 P.2d 44, 47 (1956).
[53] 143 Cal. App.2d 360, 299 P.2d 986 (1956).
[54] 138 Cal. App.2d 586, 292 P.2d 559 (1956).
[55] *Id.* at 592-93, 292 P.2d at 563-64.

enforce otherwise valid claims, which could plausibly be pleaded as non-negligent torts, because of an erroneous assumption that any such litigation was foreclosed by noncompliance with the personnel claims statute. The recent case of *Chappelle* v. *City of Concord*,[56] moreover, documents the fact that an erroneous assumption as to the applicability of Section 801 to an intentional tort action may indeed have disastrous results to the individual litigant. Plaintiff in this action sued a police officer for assault and battery and wrongful arrest, alleging presentation of a claim long after the statutory period provided by Section 1981 had expired. Although that section was wholly inapplicable, defendant's demurrer urged noncompliance with Section 1981 as a fatal defect. The court concurred in this view, dismissing the action without granting plaintiff leave to amend his complaint. It will be noted that the contention that Section 1981 was applicable was introduced by *plaintiff* in his complaint. Counsel for the defendant, presumably in good faith, was of course happy to accede to plaintiff's erroneous assumption and interposed his demurrer on that basis. The failure of the trial judge to detect the error thus resulted in a dismissal of plaintiff's action. The injustice of the case is underscored by the fact that when plaintiff, in a second action based on the same facts, attempted to assert the inapplicability of Section 1981 he was met by a defense of res judicata. "Here," said the court, "both parties misapprehended the law and induced the court to do the same and plaintiff permitted the decision to become final although appeal was available." [57] Surely in this case the claim procedure proved to be a trap.

Third, even where the limitation of Sections 801 and 803 to negligence actions is recognized, the fact that numerous city charters and ordinances also prescribe claims filing procedures may tend to defeat justice. For example, in at least three cases [58] in which the plaintiff apparently concluded, quite properly, that Section 1981 was not applicable to intentional tort actions, the defendant public officer or employee nevertheless successfully urged noncompliance with a charter or ordinance claims provision as a defense. In a fourth case,[59] where the same situation appears to have obtained, the plaintiff evaded the consequences of noncompliance with a city charter claims provision only because the court was willing to invoke the doctrine of strict construction in his behalf. The fact that provisions relating to claims against public officers and employees are frequently found in obscure places in city charters and municipal ordinances tends to make such provisions procedural traps for the unwary.

Time for Presentation of Claims

The time within which claims against officers and employees must be presented varies somewhat among the various existing provisions. Section 801 of the Government Code requires presentation within 90 days after the accident has occurred. Section 803 requires presentation "within the period prescribed by law as a condition to maintaining an action . . . against . . . [the employing] governmental entity," and

[56] 144 Cal. App.2d 822, 301 P.2d 968 (1956).
[57] Id. at 826, 301 P.2d at 971.
[58] Whitson v. LaPay, 153 Cal. App.2d 584, 315 P.2d 45 (1957); Klimper v. City of Glendale, 99 Cal. App.2d 446, 222 P.2d 49 (1950); Slavin v. City of Glendale, 97 Cal. App.2d 407, 217 P.2d 984 (1950).
[59] Davis v. Kendrick, 52 Cal.2d 517, 341 P.2d 673 (1959).

thereby apparently incorporates by reference the provisions of Section 715 of the Government Code, which is part of the general claims statute. Presumably also, although this conclusion is by no means entirely free from doubt, Section 803 would incorporate by reference the provisions of Section 716 of the Government Code, which authorize the superior court to permit a late filing of a claim in certain cases of minority, disability or death.

Charter [60] and ordinance [61] provisions generally seem to favor 90 days as the appropriate claims presentation period, although six months is also found in some instances.[62]

Recipient of Claim

Somewhat surprisingly, despite the fact that the personnel claims procedures are theoretically designed to give protection to governmental officers and employees, very few such procedures require the claim to be presented to the employee claimed to have acted tortiously. Section 801, to be sure, does require presentation both to the defendant and to the entity that employed him, as do a few of the city ordinances.[63] But not one of the numerous municipal charters contains such a dual presentation requirement.

All of the personnel claims provisions, of course, require presentation to a designated public officer of the employing entity. The person so designated varies considerably. The clerk or secretary of the entity appears to be the favored recipient,[64] although presentation to the chief financial officer,[65] the legislative body of the entity,[66] the chief administrative officer [67] or to still other boards or officers [68] is frequently found. In the case of state officers and employees, such presentation must be made to the Governor.[69]

As in the case of entity claims, a failure to present the claim to the designated recipient or recipients may prove to be fatal,[70] unless in the particular circumstances the court is willing to invoke the doctrine of substantial compliance in behalf of the claimant.[71]

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[60] See charters of Arcadia, Chula Vista, Compton, Culver City, Dairy Valley, Grass Valley, Hayward, Marysville, Modesto, Mountain View, Needles, Riverside, Roseville, San Leandro, San Luis Obispo, Santa Ana, Santa Clara, Sunnyvale and Whittier. Citations are in Appendix A *supra*.

[61] See GLENDALE MUNIC. CODE §§ 2-199 to 2-204; OXNARD MUNIC. CODE §§ 1630-1631. *Cf.* ONTARIO ORD. 661 (Nov. 13, 1940) ("three months").

[62] See charters of Huntington Beach, Inglewood, Los Angeles, Sacramento; and note that ESCONDIDO ORD. 316 (July 2, 1936) allows only 60 days for presentation of the claim.

[63] ESCONDIDO ORD. 316 (July 2, 1936); GLENDALE MUNIC. CODE §§ 2-199 to 2-204; LONG BEACH ORD. No. C-1436, § 7, as quoted in Whitson v. LaPay, 153 Cal. App.2d 584, 586, 315 P.2d 45, 46-47 (1957).

[64] See CAL. GOVT. CODE §§ 801, 803; charters of Arcadia, Culver City, Dairy Valley, Grass Valley, Hayward, Los Angeles, Needles, Roseville, Santa Cruz; ESCONDIDO ORD. 316 (July 2, 1936); GLENDALE MUNIC. CODE §§ 2-199 to 2-204; ONTARIO ORD. 661 (Nov. 13, 1940); OXNARD MUNIC. CODE §§ 1630-1631.

[65] Charters of Chula Vista, Compton, San Leandro, Santa Ana, and Sunnyvale.

[66] Charters of Huntington Beach, Inglewood, and Marysville.

[67] Charters of Modesto, Mountain View, San Luis Obispo, and Santa Clara.

[68] See, *e.g.*, the Glendale Charter (authorizing the presentation of claims to the Park, Playground and Recreation Center Commission, the Social Service Commission or the City Planning Commission where authorized by ordinance); San Buenaventura Charter (providing for presentation of various types of claims to the Board of Library Trustees, Board of Education, the City Council and the City Manager); Visalia Charter *(semble)*.

[69] CAL. GOVT. CODE § 801.

[70] Ward v. Jones, 39 Cal.2d 756, 249 P.2d 246 (1952) (presentation to city clerk but no presentation to allegedly negligent employee, as required by CAL. GOVT. CODE § 1981 (now § 801)); Redwood v. California, 177 Cal. App.2d 501, 2 Cal. Rptr. 174 (1960) (claim presented to allegedly negligent employees but none presented to Governor as required in case of state employees by CAL. GOVT. CODE § 1981 (now § 801)).

[71] Abrahamson v. City of Ceres, 90 Cal. App.2d 523, 203 P.2d 98 (1949).

Contents of Claims

The requirements with respect to contents vary somewhat, although most provisions require a statement of the name and address of the claimant, the date and place of the accident giving rise to the claim, an account of the circumstances of the occurrence and the extent of the injuries or damages received.

Presentation of Claim as Prerequisite to Suit

It is clear that where personnel claims procedures are applicable, presentation of a claim in compliance therewith is deemed a condition precedent to the maintenance of an action against the officer or employee.[72]

Prior to 1951, it was repeatedly assumed that Section 1981 (now Section 801) was applicable whenever injury to the plaintiff or his property had resulted from the negligence of a public employee in the course and scope of his employment.[73] In *Stewart* v. *McCollister*,[74] decided in 1951, however, the Supreme Court pointed to the fact that Section 1981 was limited in terms solely to cases where "it is claimed" that injury has resulted from negligence during the course of public employment. The court regarded the word "claimed" as substantially the equivalent of "pleaded," and concluded that compliance was thus not required unless the plaintiff in his complaint expressly alleged that the defendant's negligence had occurred in the course of his public employment. Since allegations and evidence with respect to public employment are material and relevant only when the plaintiff is seeking to hold the employing entity liable, noncompliance with Section 1981 was not a defense where the plaintiff was suing the employee alone and did not include in his complaint the fatal allegations as to public employment.

It thus appeared for the first time that in the previous cases in which the plaintiff had been barred by noncompliance with Section 1981, plaintiff's mistake had not been his failure to present a claim under that section, but rather the inclusion in the complaint of unnecessary and surplusage allegations regarding public employment.

The court in *Stewart* v. *McCollister* clearly emasculated the claims provisions of Section 1981 and charted a judicially approved route whereby noncompliance with that section could easily be evaded as a potential defense. The impact of the *Stewart* case, however, has not measured up to its full potential.

First, a surprisingly large number of later decisions appear to be completely oblivious (or possibly ignorant) of the existence of the holding in the *Stewart* case, and the reports thus contain numerous misleading intimations to the effect that Section 1981 (now Section 801) is still applicable to any claim based on employee negligence.[75]

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[72] Veriddo v. Renaud, 35 Cal.2d 263, 217 P.2d 647 (1950); Ansell v. City of San Diego, 35 Cal.2d 76, 216 P.2d 455 (1950); Goncalves v. S.F. Unified School Dist., 166 Cal. App.2d 87, 332 P.2d 713 (1958); Pike v. Archibald, 118 Cal. App.2d 114, 257 P.2d 480 (1953). And see Bossert v. Stokes, 179 Adv. Cal. App. 492, 3 Cal. Rptr. 884 (1960).

[73] See, *e.g.*, Huffaker v. Decker, 77 Cal. App.2d 383, 175 P.2d 254 (1946) and cases therein cited.

[74] 37 Cal.2d 203, 231 P.2d 48 (1951).

[75] See Barbaria v. Independent Elevator Co., 139 Cal. App.2d 474, 293 P.2d 855 (1956); Bettencourt v. California, 139 Cal. App.2d 255, 293 P.2d 472 (1956); Rounds v. Brown, 121 Cal. App.2d 642, 263 P.2d 620 (1953). And see Bossert v. Stokes, 179 Adv. Cal. App. 492, 3 Cal. Rptr. 884 (1960).

Second, although the *Stewart* decision explicitly deplored the fact that claims statutes had in many instances become a trap for the unwary, the *Stewart* case tended to lay a trap itself. Thus, in 1953, in *Pike* v. *Archibald*[76] the plaintiff brought a medical malpractice action against the County of Kern and physicians employed by the county. Although the *Stewart* case had been decided some six months before the commencement of this suit and Section 1981 had been on the statute books for over 20 years, plaintiff's attorney was apparently unaware of the existence of either and included in his complaint no allegations with respect to the presentation of the claim, although he did explicitly allege that the defendant physicians were employed by the county and had been guilty of negligence in the course and scope of such employment. The trial court quite properly dismissed the action on demurrer for noncompliance with Section 1981. Shortly thereafter, plaintiff commenced a new action against the defendant physicians alone, omitting any allegations of public employment. Counsel by this time apparently had done his homework and had learned the lesson of the *Stewart* decision. Nonetheless, despite the absence of allegations of public employment in the second complaint, the District Court of Appeal held the action subject to dismissal for failure to comply with Section 1981, since plaintiff had in fact "claimed" (*i.e.*, pleaded in the *previous* action) that defendant's negligence had occurred in the course of public employment. In retrospect, it seems clear that plaintiff lost not because the action had no merit and not because of noncompliance with Section 1981, but because his attorneys had failed to follow the simple pleading rule laid down in the *Stewart* case through which noncompliance with the claims provision may be rendered innocuous.

Third, in 1951 the Legislature attempted to close the loophole created by the *Stewart* case by enacting Section 2003 (now Section 803) of the Government Code.[77] This new section required a claim to be presented to the employing entity as a prerequisite to maintaining any action founded on negligence against the employee, and it was so drafted that its applicability did not depend upon whether "it was claimed" that such negligence was in the course and scope of employment. Thus it is that we have on the books today two overlapping and somewhat inconsistent claims procedures applicable to the same types of claims.

The door opened by the *Stewart* case, however, was not completely closed by Section 2003. For reasons which are obscure, that section does not apply to state personnel, nor to officers of any entities (as dis-

[76] 118 Cal. App.2d 114, 257 P.2d 480 (1953). In Bossert v. Stokes, 179 Adv. Cal. App. 492, 3 Cal. Rptr. 884 (1960), a county supervisor, driving his own car, injured the plaintiff. Within six months plaintiff filed a claim against the county, but this was too late. Plaintiff then sued the county and the supervisor's estate (the supervisor having died in the accident). The county received judgment because of the failure of plaintiff to file a claim against them within 90 days. When plaintiff amended to omit allegations of the supervisor's employment so that recovery could be had against the estate of the supervisor for his personal negligence, the court refused to accept the amended complaint and entered judgment for the defendant.

[77] Cal. Stat. 1951, ch. 1630, p. 3673. This chapter was Senate Bill No. 693 which as introduced on January 18, 1951, contained somewhat different language from the bill as enacted. It was evidently designed to overcome the decision of the District Court of Appeal in Stewart v. McCollister, 220 P.2d 618 (1950), which had been handed down on July 21, 1950, and was still pending on hearing in the Supreme Court when the 1951 Legislature met. The present language was introduced by amendment in the Assembly on June 15, 1951, after the Supreme Court's affirmance of the lower court's decision was announced on May 15, 1951. 37 Cal.2d 203, 231 P.2d 48 (1951). See 3 CAL. ASSEMBLY J. 5730 (Reg. Sess. 1951) concurred in by Senate on June 20, 1951, 3 CAL. SENATE J. 3598 (Reg. Sess. 1951).

tinguished from "employees"); and hence the *Stewart* decision still stands as an available, although surprisingly little known, detour around Section 1981 (now Section 801).[78]

Rejection of Claim as Prerequisite to Suit

With only one exception,[79] all of the 29 municipal charters that have employee claims provisions expressly require that the claim not only be presented but also rejected as a condition precedent to maintaining an action based thereon.[80] This requirement of prior rejection by the governing body (*not* by the officer or employee against whom the claim is being asserted) illustrates the anomaly of such charter provisions insofar as they are intimated to be applicable to personnel claims.[81]

Both Sections 801 and 803 of the Government Code, however, are silent with respect to any such requirement of prior rejection. In view of this absence of language, the Supreme Court held in the case of *Porter* v. *Bakersfield & Kern Elec. Ry.*[82] that service within 90 days on the defendant employee of summons and a duly verified copy of the complaint, to which a copy of the claim previously presented to the employing entity was annexed as an exhibit, amounted to substantial compliance with Section 1981 (now Section 801). The fact that a copy of the claim was annexed to the complaint does not seem to be a controlling factor in the decision. From the language used by the court, it would seem that service of a verified complaint setting forth all of the information required of a claim under Section 1981 would likewise be in substantial compliance, provided such service was made within the 90-day limit. In short, the absence of an express prior rejection requirement denoted a legislative intent that notice within 90 days to both the employing entity and the employee involved was the prime consideration underlying the claims statute; and that such timely notice would be sufficient if given either before or after suit was commenced.[83]

A similar but somewhat modified policy appears to be reflected in the new 1959 General Claims Statute against public entities. Section 710 of the Government Code requires presentation of a claim against a local public entity within specified periods of time, but does not require prior rejection as a condition precedent to commencement of the action. No action may be brought, however, until *after* the claim has been presented.

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[78] In the following cases, decided after the *Stewart* decision, the plaintiff apparently was barred by failure to follow the counsel of the *Stewart* case in order to avoid a bar for noncompliance with Section 1981 of the Government Code: Ward v. Jones, 39 Cal.2d 756, 249 P.2d 246 (1952); Bossert v. Stokes, 179 Adv. Cal. App. 492, 3 Cal. Rptr. 884 (1960); Redwood v. California, 177 Cal. App.2d 501, 2 Cal. Rptr. 174 (1960); Rounds v. Brown, 121 Cal. App.2d 642, 263 P.2d 620 (1953); Pike v. Archibald, 118 Cal. App.2d 114, 257 P.2d 480 (1953); Henry v. City of Los Angeles, 114 Cal. App.2d 603, 250 P.2d 643 (1952). In one case where the plaintiff apparently had inadvertently brought himself within the *Stewart* rule by omitting any allegations with respect to course and scope of public employment, the defendant nevertheless claimed, and the court granted him, the benefit of the claims procedure of Section 1981 where the plaintiff apparently never cited the *Stewart* case nor argued its relevance. Barbaria v. Independent Elevator Co., 139 Cal. App.2d 474, 293 P.2d 855 (1956).

[79] Inglewood Charter.

[80] Typically, the charters also provide that failure of the governing body to complete action either granting or rejecting a claim within a specified period of time shall be deemed equivalent to rejection. See, *e.g.*, Fresno Charter (60 days); Los Angeles Charter (90 days).

[81] Cases like Davis v. Kendrick, 52 Cal.2d 517, 341 P.2d 673 (1959), so intimating by inference, do not consider the possible implications of such procedural provisions as the prior rejection requirement upon the issue of applicability of the claims procedure to personnel claims.

[82] 36 Cal.2d 582, 225 P.2d 223 (1950).

[83] *Cf.* Abbott v. City of San Diego, 165 Cal. App.2d 511, 332 P.2d 324 (1958).

Consequences of Defective Compliance

As in the case of entity claims statutes, an attempt to comply with the personnel claims requirements, if defective, may bar the claimant from maintaining an action against the officer or employee. Thus, where the claims provision requires a claim to be presented to *both* the employing entity and the officer or employee concerned, presentation solely to the entity or solely to the employee is insufficient.[84] Likewise, an unverified claim is deemed fatally inadequate when verification is prescribed.[85] Again, a claim that fails to contain the required information demanded by the statute will not suffice.[86]

The personnel claims requirements are deemed to be fully applicable even where the claimant is a minor.[87] Moreover, none of the cited provisions contain any ameliorating provisions excusing or allowing late filing of a claim on behalf of a minor or other person under a disability, nor do they in any other way relax the need for compliance.

The doctrine of substantial compliance is, however, recognized as a means of alleviating the harshness of the claims provision where its spirit and purpose have been adequately fulfilled by a partially defective attempt at compliance.[88] For example, although a total failure to state the claimant's address where required is a fatal defect,[89] a claim that identified the town in which the claimant resided, without any street address, was held sufficient under the doctrine of substantial compliance where the court concluded that the defendant officers could without undue trouble locate the plaintiff from the name of the town as given.[90] Similarly, a case in which a claim was individually served on all members of the city council within the time prescribed by the claim statute, but no copy was served on the city clerk until after the presentation period had expired, the court held that there had been substantial compliance.[91]

Applicability of Doctrine of Estoppel

The courts have uniformly recognized that the doctrine of estoppel, as originally enunciated in *Farrell* v. *County of Placer*,[92] is applicable to personnel claims statutes. Most of the cases, however, have found that the plaintiff's claim of estoppel was not supported by the facts.[93]

Dettamanti v. *Lompoc Union School Dist.*,[94] in which the doctrine of estoppel was actually applied, poses interesting problems with respect

[84] Ward v. Jones, 39 Cal.2d 756, 249 P.2d 246 (1952) (claim presented to city clerk but not to negligent employee); Redwood v. California, 177 Cal. App.2d 501, 2 Cal. Rptr. 174 (1960) (claim presented to negligent employee but not to designated officer of employing entity); Henry v. City of Los Angeles, 114 Cal. App. 2d 603, 250 P.2d 643 (1952) (claim presented to city clerk but not to negligent employee).

[85] Whitson v. LaPay, 153 Cal. App.2d 584, 315 P.2d 45 (1957); Yonker v. City of San Gabriel, 23 Cal. App.2d 556, 73 P.2d 623 (1937).

[86] Whitson v. LaPay, 153 Cal. App.2d 584, 315 P.2d 45 (1957) (claimant's address not given).

[87] Allen v. L.A. City Board of Education, 173 Cal. App.2d 126, 343 P.2d 170 (1959); Goncalves v. S.F. Unified School Dist., 166 Cal. App.2d 87, 332 P.2d 713 (1958). See also, Dettamanti v. Lompoc Union School Dist., 143 Cal. App.2d 715, 300 P.2d 78 (1956).

[88] Porter v. Bakersfield & Kern Elect. Ry., 36 Cal.2d 582, 225 P.2d 223 (1950).

[89] Whitson v. LaPay, 153 Cal. App.2d 584, 315 P.2d 45 (1957).

[90] Holm v. City of San Diego, 35 Cal.2d 399, 217 P.2d 972 (1950).

[91] Abrahamson v. City of Ceres, 90 Cal. App.2d 523, 203 P.2d 98 (1949).

[92] 23 Cal.2d 624, 145 P.2d 570 (1944).

[93] Rounds v. Brown, 121 Cal. App.2d 642, 263 P.2d 620 (1953); Klimper v. City of Glendale, 99 Cal. App.2d 446, 222 P.2d 49 (1950); Slavin v. City of Glendale, 97 Cal. App.2d 407, 217 P.2d 984 (1950); Johnson v. County of Fresno, 64 Cal. App.2d 576, 149 P.2d 38 (1944).

[94] 143 Cal. App.2d 715, 300 P.2d 78 (1956).

to the rationale of the doctrine where the defendant is a public employee rather than a public entity. Plaintiff's injuries, allegedly incurred as a result of the negligence of defendant school bus driver, were suffered on October 28, 1953. Plaintiff's claim was presented to the clerk of the school district and to the defendant employee on June 28, 1954, long after the expiration of the 90 days provided for such presentation by Sections 1981 and 2003 of the Government Code. The facts alleged by plaintiff in support of a claim of estoppel showed that the plaintiff's father (the plaintiff being a minor) had consulted an attorney for the purpose of employing him to represent the plaintiff in seeking to recover for her injuries; that this attorney was at that time a deputy district attorney of the county; and that, in the course of his duties as such, had investigated the accident, had examined the police reports thereof and was thoroughly familiar with all of the facts of the accident. At the time of the consultation the time for presenting a claim had not yet expired, yet the attorney did not inform the plaintiff's father of the necessity for presenting a claim, did not suggest that he seek other counsel and did not disclose that as deputy district attorney he was legally obligated to represent the school district and therefore could not undertake an inconsistent position. On the contrary, the attorney did agree to represent the plaintiff and her father and to seek to obtain a recovery from the owner of another automobile involved in the accident. Because of reliance upon the advice of this attorney for the school district, plaintiff failed to present a claim in time.

The court held that these facts gave rise to an estoppel on the part of the defendant employee to claim the benefit of the claims statute. Although the deputy district attorney was not an officer of the school district, he had a legal duty (unless excused) to act as counsel for the school district as well as for the defendant employee in any action involving injuries due to the alleged negligence of such employee in the course of his employment.[95] Finding that the relationship of the deputy to the defendant officer was "akin to that of a private attorney who is acting under a general retainer to act for his client in matters of a designated class,"[96] the court concluded that the attorney's failure to advise the plaintiff and her father adequately of the possible liability of, and the need to present a claim against, the defendant bus driver constituted an estoppel. Defendant bus driver was bound by the conduct of the deputy district attorney and would not be heard to say that the deputy was not acting on his behalf and in his interest in dealing with the plaintiff.

The *Dettamanti* case, it will be noted, represents a rather peculiar situation in which the public employee whose conduct gave rise to the estoppel against another public employee (*i.e.*, the defendant being charged with negligence) was, by operation of law, deemed to be the attorney for the latter until replaced by private counsel. Accordingly, it was regarded as proper to hold the defendant employee bound by the failure of such attorney to give complete and unbiased advice to the claimant. The case suggests the question of whether an estoppel could be urged where the personnel chargeable with the claimed estoppel are not, in effect, the agents or representatives of the public em-

[95] CAL. GOVT. CODE § 2001.
[96] 143 Cal. App.2d 715, 722, 300 P.2d 78, 83 (1956).

ployee. In the absence of any such relationship, it is difficult to see how the defendant would be estopped by conduct of a fellow-employee from relying upon noncompliance with the claims statute, even though the latter's conduct could rationally estop the public entity.

Unresolved Problems of Interpretation

There are a number of interpretative problems relating to employee claims statutes that have not yet been resolved by judicial decision.

1. As already noted, Sections 801 and 803 of the Government Code partially overlap, both being applicable to negligence claims against employees of counties, cities and school districts. To the extent of this overlapping coverage, the question immediately arises as to whether a dual compliance is essential. Since it would be a useless formality to require separate and independent claims to be presented where a single claim could fulfill the requirements of both provisions, it would seem under the doctrine of substantial compliance that a single claim should be adequate, provided it sufficiently meets the requirements of both provisions with respect to timing, presentation and contents.

2. Section 803 (like its predecessor Section 2003) generally incorporates the law prescribing claims presentation requirements as a condition for maintaining an action against governmental entities as the applicable procedure for presenting a claim as a prerequisite to suit against governmental employees. It is clear that such general incorporation embraces not only the statutory law existing at the time that Section 2003 was originally enacted but also subsequent legislative amendments or changes in the general body of law thus incorporated by reference.[97] Thus, Section 803 undoubtedly incorporates the general provisions of the new General Claims Statute, and claims thereunder must be presented "in the manner and within the period" prescribed in the General Claims Statute. The question immediately arises whether the quoted words, "in the manner and within the period" include *all* of the procedural requirements of the new act. For example, would these words embrace the provisions of Sections 712 and 713 of the Government Code, under which technical defects in a claim do not render it insufficient in the absence of notice and an opportunity to amend? Would Section 803 include also the general permission to amend a claim at any time, as authorized by the last sentence of Section 711? Would the specific authorization granted by Section 716 for the superior court to permit a late filing of a claim where the claimant was a minor, physically or mentally incapacitated, or died before the expiration of the original presentation period, be deemed applicable to claims under Section 803?

3. An even more difficult problem of interpretation of the interrelationship between Section 803 and the new General Claims Statute arises where the type of claim being asserted is one which is expressly exempted from the operation of the new General Claims Statute. For example, Section 703(i) exempts from the operation of the General Claims Statute any claims made by a local public entity. If a county were to assert a claim against one of its own employees for negligent

[97] *Cf.* Palermo v. Stockton Theatres, Inc., 32 Cal.2d 53, 195 P.2d 1 (1948); Thoits v. Byxbee, 34 Cal. App. 226, 167 Pac. 166 (1917). Section 9 of the Government Code provides: "Whenever reference is made to any portion of this code or of any other law of this State, the reference applies to all amendments and additions now or hereafter made."

destruction of county property, Section 803 would appear to require a claim to be presented to itself "within the period prescribed by law as a condition to maintaining an action therefor against" itself. Not only does the General Claims Statute not prescribe a term and manner for presentation of a claim under such circumstances, but it would seem to be completely anomalous to require the claimant county to present a claim to itself.

A similar problem would arise in a more typical fact situation if one public employee were seeking to assert a claim against another public employee for personal injuries caused by the latter's negligence during the course and scope of the employment of both parties. A claim for such injuries presumably might be regarded as one "for which the workmen's compensation authorized by . . . the Labor Code is the exclusive remedy," and therefore exempted from operation of the General Claims Statute by Section 703(d) of the Government Code. Would the claimant (the injured employee or the subrogated insurance carrier) be excused from presenting a claim pursuant to Section 803 under such circumstances, in view of the fact that no procedure for presentation of a claim is prescribed as a condition to bringing suit against the entity employer?

4. A question which has not yet been resolved by judicial decision, with respect to the interpretation of the employee claims statutes, relates to actions for wrongful death. Although it is clear that both Sections 801 and 803 of the Government Code are applicable where wrongful death results from negligence,[98] the computation of time for the presentation of the claim poses difficult problems. Since Section 801 requires presentation of the claim within 90 days "after the accident has occurred," it becomes crucial to determine whether the "accident" referred to, where the claim is for wrongful death, is the accident causing death or the death itself. If death occurs more than 90 days after the date of the negligently caused injury, presentation of a timely claim becomes physically impossible unless the 90-day period is computed from the date of death. Yet, to so compute the filing period would be contrary to the statutory language which relates the filing period to the time when the "accident" occurred. It would also tend to frustrate the basic policy of the statute to insist on prompt notification. Resolution of the problem has not been found necessary in any of the wrongful death actions decided so far; but it obviously suggests a need for legislative clarification.

On the other hand, the time for presentation of a wrongful death claim under Section 803 would not appear to offer undue interpretative difficulties. Presentation under this section must be made "within the period prescribed by law as a condition to maintaining an action therefor" against the governmental entity employing the negligent employee. This language thus incorporates by reference Section 715 of the Government Code, which explicitly provides that a claim relating to a cause of action for death shall be presented "not later than the one hundredth day after the accrual of the cause of action"; and further defines the date of accrual as "the date upon which the cause of action accrued within the meaning of the applicable statute of limitation."

[98] Ward v. Jones, 39 Cal.2d 756, 249 P.2d 246 (1952); Henry v. City of Los Angeles, 114 Cal. App.2d 603, 250 P.2d 643 (1952).

POLICY CONSIDERATIONS

Justification for Employee Claims Statutes

A preliminary question that must be resolved before any attempt is made to chart future directions for legislative action with respect to claims against employees and officers of public entities is whether there exists any adequate policy justification for such procedures. Five main arguments have been advanced in favor of such procedures.

1. Some courts have intimated that personnel claims procedures are simply "reasonable procedural requirements" as a prerequisite to suit against public officers and employees.[99] Although language such as this expresses a conclusion that may justify a holding that such procedures are constitutional as against a claim of denial of due process or equal protection, it does not afford any factual or policy justification for treating public personnel more favorably than other defendants.

The inadequacy of the "reasonableness" rationale is underscored by the attempt of one court to postulate such reasonableness upon the patently erroneous ground that such procedures have been imposed as appropriate conditions attached to a waiver of sovereign immunity.[100] Except in certain narrow areas where official immunity still exists,[101] public officers have never enjoyed the benefits of sovereign immunity. The theory that claims procedures are reasonable conditions to the waiver of sovereign immunity may have some validity as applied to claims against public entities. With respect to claims against officers and employees, this theory is manifestly irrelevant.

2. In view of the fact that all personnel claims provisions require the claim to be presented to the employing entity, it has been urged by some courts that the purpose is to enable the public entity to investigate the claim and thereby give it an early opportunity to settle the litigation.[102] If the claimant seeks to hold the employer liable, this purpose constitutes an appropriate rationale for entity claims procedures; but it seems to be misplaced as a basis for personnel claims provisions. If the claimant seeks to hold the entity liable, the public treasury receives full protection from the entity claims procedures, and the personnel claims procedures become superfluous for that purpose. If the claimant does not seek to hold the entity, or the entity is immune from liability, the personnel claims procedures, viewed as a protection to the entity, become unnecessary.

Furthermore, the liability of public officers and employees against which the personnel claims procedures afford protection is a *personal* liability. Except in relatively rare cases where by statute the public entity is made legally responsible for judgments imposing liability upon officers and employees,[103] the public entity has no responsibility,

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[99] Veriddo v. Renaud, 35 Cal.2d 263, 217 P.2d 647 (1950); Slavin v. City of Glendale, 97 Cal. App.2d 407, 217 P.2d 984 (1950).

[100] Goncalves v. S.F. Unified School Dist., 166 Cal. App.2d 87, 332 P.2d 713 (1958). See also Stewart v. McCollister, 37 Cal.2d 203, 231 P.2d 48 (1951).

[101] See note 4 *supra*.

[102] Holm v. City of San Diego, 35 Cal.2d 399, 217 P.2d 972 (1950). See also Huffaker v. Decker, 77 Cal. App.2d 383, 175 P.2d 254 (1946).

[103] See, *e.g.*, CAL. GOVT. CODE § 61633; CAL. WATER CODE §§ 22730, 31090, 35755.

and indeed has neither a duty nor a right, to settle a personal claim urged solely against its officer or employee.

3. A more plausible justification is found in the theory that the personnel claims statutes are designed to protect public personnel against unfounded litigation.[104] The principal draftsman of the original version of what is now Section 801 of the Government Code explained that its principal object was to insure

> that the city officer or employee concerned may have the fullest preliminary protection against groundless claims. If such claims had to be litigated in each case before the exact basis of the alleged injuries became apparent, it would cast a financial burden upon the officer or employee which could not be otherwise than a detriment to public service. The hazards of office in small cities are already so great as to impel many citizens to avoid public service if possible.[105]

It will be noted that the emphasis here is upon the litigation *expense* that public personnel might be subject to in defending themselves against groundless claims. Although the claims statutes operate, in fact, as a major protection against liability upon apparently meritorious claims, no one has yet urged such partial substantive immunity as a justification for the claims procedure; and it is settled that even though suit against a public employee is barred by nonpresentation of a claim, the employee's substantive liability may still be enforced by the employing entity in a subrogation action against the employee after the employer has been found liable for the employee's tort.[106]

Implicit in the litigation-expense rationale is the assumption that public personnel are in greater danger of unfounded litigation than private citizens; but the factual basis for the assumption is not disclosed. To the extent that danger to the public service may flow from the potential expense of litigation imposed on public personnel who are compensated less adequately than their private counterparts,[107] a better remedy would be to equalize public and private salaries.

In any event, it seems fairly obvious that whatever merits the litigation-expense rationale may have, the same objectives can be achieved through other means less likely to curtail the remedies of deserving plaintiffs. One possibility that immediately comes to mind is the supplying of a defense to the officer or employee, including legal services and court costs, at public expense. Indeed, the California Legislature has approved this form of protective device by a series of legislative acts commencing long before the original 1931 personnel claims statute was adopted,[108] and culminating in what is now Sections 2001

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[104] Tyree v. City of Los Angeles, 92 Cal. App.2d 182, 206 P.2d 912 (1949); Von Arx v. City of Burlingame, 16 Cal. App.2d 29, 60 P.2d 305 (1936).

[105] David, *Municipal Liability in Tort in California*, 7 So. CAL. L. REV. 372, 402 (1934).

[106] Tyree v. City of Los Angeles, 92 Cal. App.2d 182, 206 P.2d 912 (1949); Von Arx v. City of Burlingame, 16 Cal. App.2d 29, 60 P.2d 305 (1936).

[107] For a suggestion along these lines, see the dissent of Mr. Justice Schauer in Stewart v. McCollister, 37 Cal.2d 203, 209, 231 P.2d 48, 51 (1951).

[108] See Cal. Stat. 1919, ch. 360, § 2, p. 757 (providing for a free defense where any public officer is sued on account of any action taken or work done by him in his official capacity, in good faith and without malice).

and 2002 of the Government Code.[109] These sections require counsel for the employing governmental entity to render legal services in behalf of personnel sued on a cause of action founded in negligence or other official act, and expressly provide that the costs, fees and expenses of such litigation are a proper charge against public funds. To the extent that these provisions satisfy the litigation-expense rationale offered for the personnel claim procedures, the latter procedures are, of course, both anachronistic and superfluous.

Section 2001, however, is somewhat ambiguously worded and may not fully cover all officers and employees who are within the scope of the claims procedures established in Sections 801 and 803. It is doubtful, for example, whether that section authorizes a free defense for employees of districts other than school districts. (Section 2001, subdivision (a) refers to officers of "any district"; subdivision (b) refers to officers and employees of "any school district"; the operative language following subdivision (b) imposes the duty of defense upon the attorney for "the . . . district . . . or other public or quasi-public corporation"; and the section concludes with a paragraph making the cost of defense a legal charge against the funds of the "school district.") Amendment of Section 2001 to make its scope co-extensive with the personnel claims provisions would appear to completely minimize the litigation-expense justification here being discussed.

4. Another justification which has been urged for personnel claims procedures is that the public employer "is directly and peculiarly concerned in any action against its employees" because the employing entity has the duty of providing counsel and paying the fees and expenses of such litigation out of public funds, and because the employer is authorized to insure its employees against liability, the premium for such insurance being a proper charge against public funds.[110]

To the extent that this view may have merit, it does not justify *all* employee claims procedures as they now exist, for the statutory requirement of a free defense at public expense, as noted above, is not as extensive in terms as the personnel claims statutes themselves, and thus does not protect all officers and employees who appear to have the benefit of the claims procedures. Similarly, although Section 1956 of the Government Code *authorizes* all types of public entities to insure their officers and employees against liability and to charge the premium for such insurance against public funds, the section does not *require* such insurance. Insofar as personnel claims procedures are based upon insurance coverage of public personnel, they would seem to be unsupported in principle where such insurance had not in fact been obtained pursuant to the statutory authorization.

Even if personnel liability insurance were a mandatory requirement imposed on all public entities, it is difficult to see how this would justify

[109] Section 2001 of the Government Code is derived in part from the 1919 act cited in note 108 *supra* and from Cal. Stat. 1931, ch. 1168, § 2, p. 2477 (this was part of the same bill which enacted the predecessor of CAL. GOVT. CODE § 801, the original personnel claim statute), as amended by Cal. Stat. 1933, ch. 807, § 1, p. 2147. Section 2002 of the Government Code is derived from Political Code Section 472a, which was added by Cal. Stat. 1933, ch. 870, § 1, p. 2250, as amended by Cal. Stat. 1939, ch. 906, § 1, p. 2522, and from Political Code Section 4154a, as added by Cal. Stat. 1941, ch. 263, § 1, p. 1374. And see CAL. GOVT. CODE § 2002.5 (providing defense where malpractice suit is filed against an employee or officer licensed in one of the healing arts).

[110] Huffaker v. Decker, 77 Cal. App. 2d 383, 388-89, 175 P.2d 254, 257 (1946); *accord*, Veriddo v. Renaud, 35 Cal.2d 263, 217 P.2d 647 (1950).

the personnel claims procedures, except insofar as notice of the claim being pressed against the public employee might afford the public entity an opportunity to prevent like claims in the future, and thereby possibly reduce future premiums. This possibility is discussed in the next numbered paragraph.

Finally, the justification here discussed would seem to provide an adequate basis only for requiring the presentation of notice to the public entity. As noted above, Section 801 requires that notice also be given to the employee concerned, a requirement which appears to have no necessary relevance to free defense or insurance, but which is nonetheless mandatory.

5. A final justification that has been offered for personnel claims procedures relates to the statutory provision, originally contained in the Public Liability Act of 1923, and now found in Sections 1953.6 and 1954 of the Government Code, providing in substance that public officers and governing boards are not liable for negligence of their appointees who are subordinates unless they fail to exercise due care in the selection, appointment or supervision of such subordinates or negligently fail to bring about their suspension or discharge after notice of inefficiency or incompetency. Thus, as the principal draftsman of the predecessor of what is now Section 801 of the Government Code explained:

> The requirement that a claim against officers, agents or employees shall be filed with the clerk of the governing body will aid that body in determining the ability or fitness of such persons to perform their duties. For instance, under the Public Liability Act of 1923, the legislative body is not responsible for the negligent act or omission of any appointee or employee, except when they knew or had notice that the person appointed or employed was inefficient or incompetent to perform or render the service or services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetence.[111]

This view, of course, only tends to support the requirement that the claim be presented to the governing body of the employing entity. Its strength is considerably weakened by the fact that in most instances where a claim is based on negligence by a public employee in the course and scope of his employment, the employing entity will in all likelihood receive actual notice of the accident through internal administrative channels or by informal means long before receiving a formal claim pursuant to statute. At the latest, when suit is brought and the employee requests the services of public counsel in his behalf, or a claim is made to the insurance carrier, notice will be received by the entity. In short, it seems reasonably certain that the employer entity will normally receive actual notice of substantially all claims of negligence on the part of its employees in due course, although possibly not always within the short period of time prescribed by the statutory claims procedure. However, in terms of the present justification, time does not seem to be particularly significant; for the purpose of the claim is not to afford an opportunity for early investigation and settle-

[111] David, *Municipal Liability in Tort in California*, 7 So. Cal. L. Rev. 372, 405 (1934).

ment under this theory, but rather to give notice and an opportunity for department heads concerned to discharge or suspend the employee where it is believed that inefficiency or incompetency has been shown. As long as such notice has not been received in fact, superior officers are not liable within the terms of the statute for the negligence of their subordinates. As soon as they do receive notice, regardless of how long a period of time has elapsed, the provisions of the Public Liability Act come into operation. The relationship between protection against liability for the employing board or superior officer and the personnel claims procedures is thus, at best, only minimal.

Considerations Opposed to Personnel Claims Procedures

Although the preceding analysis has shown that the purported justifications for personnel claims procedures are somewhat weak, and in most instances can be adequately satisfied functionally through alternative means, consideration should also be given to the practical operation of such claims procedures.

It should be recognized that personnel claims procedures tend to operate as a trap for the unwary plaintiff at least equally with, if not to a greater degree than, the entity claims procedures. This is true because the injured party may in many cases fail to identify the defendant as a public employee acting in the course and scope of his employment. It is a matter of common knowledge, for example, that many public employees operate their own privately owned automobiles in the course and scope of public employment, receiving mileage reimbursement therefor. No distinguishing clothing nor markings on the vehicle suggests to the victim of the collision that the defendant is in public service. In such a situation, as the Supreme Court observed in *Stewart* v. *McCollister*,[112] the personnel claims procedure places in the hands of the negligent public employee "the power to conceal the fact of his employment for the short period allowed for the filing of a verified claim, and then to render himself immune from his common law liability by alleging and proving that his alleged negligence occurred in the course of his public employment, and that no verified claim had been filed."

The quoted language was used by the court in referring to Section 1981 (now Section 801) in support of the court's conclusion that it would not ascribe to the Legislature any intention to place such a "nefarious device in the hands of the defendant." It is clear that the Legislature did that exact thing, however, by enacting the predecessor of what is now Section 803. A similar device exists in the hands of the defendant under the many charter claim provisions.

It is pertinent to remember that the personnel claims provisions constitute a modification of the plaintiff's right to sue public officers and employees, who are thereby placed in a specially privileged position. Such special privilege is not generally accorded in the United States. Indeed, a careful check through the indices to current statutory law in other states discloses that only in one jurisdiction outside of California are there any general claims presentation requirements which are prerequisite to suit against public officers or employees. The lone exception is New York, which requires a claim to be presented in

[112] 37 Cal. 2d 203, 207, 231 P.2d 48, 50 (1951).

"any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation . . . or any officer, appointee or employee thereof."[113]

It will be noted that the quoted language, which is part of the New York General Claims Statute, does not require a claim in every tort action, but only "where a notice of claim is required by law as a condition precedent" to such action. In short, a claim timely filed in proper form is a condition precedent to suit against a public employee only where some *other* specific statutory provision so provides.[114] In the absence of such express provision elsewhere than in the claims statute itself, the presentation of a claim is not necessary.[115] The statutory requirements of New York law for notice of claim as a condition precedent to suit against public personnel are limited to certain relatively narrow situations, including actions based upon the negligent operation of a motor vehicle by a public employee in the line of duty,[116] claims based on malpractice by doctors and dentists in the course of public employment,[117] claims for damages against county personnel,[118] and tort claims against officers, teachers or employees of a school district.[119] Since the foregoing enumeration appears to exhaust the requirements of New York law, it is manifest that many kinds of tort actions against public employees in that state are not required to be preceded by presentation of a claim.

CONCLUSIONS AND RECOMMENDATIONS

The preceding analysis suggests that the disadvantages and potential dangers to the just disposition of substantively meritorious claims against public officers and employees substantially outweigh the rather limited and narrow advantages to be secured by the personnel claims statutes. This conclusion appears to be reinforced by the fact that in only one other state, and there only to a limited extent, has the legislature deemed a claims presentation requirement to be desirable as a prerequisite for suit against public personnel, as distinguished from public entities.

Notice of claim requirements have traditionally been regarded in the United States as primarily a means of protecting the public treasury against unfounded and unmeritorious claims for liability. The new General Claims Statute enacted by the California Legislature in 1959 adequately fulfills this function. To the extent that public entities themselves are potentially liable, no need exists for a separate procedure governing claims against officers and employees, for the plaintiff will inevitably present a claim to the public entity or be barred from suit thereon. Functionally, the purposes to be achieved by prompt notice of the claim will thus be accomplished by the General Claims Statute in every case in which the public entity is itself potentially liable.

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[113] N.Y. GEN. MUNIC. LAW § 50e.
[114] Dill v. County of Westchester, 5 Misc.2d 869, 160 N.Y.S.2d 957 (1957), *aff'd*, 4 App. Div.2d 779, 165 N.Y.S.2d 623 (1957).
[115] O'Hara v. Sears, Roebuck & Co., 286 App. Div. 104, 142 N.Y.S.2d 465 (1955).
[116] N.Y. GEN. MUNIC. LAW §§ 50b, 50c.
[117] N.Y. GEN. MUNIC. LAW § 50d.
[118] N.Y. COUNTY LAW § 52(2).
[119] N.Y. EDUC. LAW § 3813.

The true impact of the personnel claims provisions is thus with respect to claims for which the public entity is entitled to assert a defense of sovereign immunity. The interest of the public entity in securing full and prompt notice of a claim in such cases is minimal and derives indirectly from the possibility that the entity has obtained liability insurance covering its officers and employees and from the statutory requirement that the entity provide counsel to defend the officer or employee at public expense. To the extent that such insurance coverage is obtained, and a free defense is available, whatever detriment to the public service might otherwise be attributable to unfounded litigation against officers and employees would seem to be almost completely alleviated.

Accordingly, in evaluating and balancing the competing considerations, it is believed that sound public policy would favor elimination of all provisions requiring the presentation of a claim as a prerequisite to suit against public officers or employees. Indeed, it is at least arguable that the very existence of a technical defense of noncompliance with the personnel claims statute not only poses a trap where the plaintiff is not wary, but also tends to diminish the degree of care and prudence likely to be exercised by public officers and employees in the course of their duties.

Accordingly, it is recommended (a) that all employee claims provisions be repealed and (b) that Section 2001 of the Government Code be amended to eliminate certain ambiguities therein and to make it clear that this section authorizes free defense for personnel of all levels of government.

APPENDIX A

Citations of Municipal Charter Provisions Containing Provisions Applicable to Claims Against Personnel

ARCADIA CHARTER § 1114	Stat. 1951, p. 4538
BERKELEY CHARTER § 61	Stat. 1959, p. 5748
CHULA VISTA CHARTER § 1117	Stat. Ex. Sess. 1949, p. 144
COMPTON CHARTER § 1418	Stat. 1948, p. 267
CULVER CITY CHARTER § 1410	Stat. 1947, p. 3406
DAIRY VALLEY CHARTER § 908	Stat. 1959, p. 5570
FRESNO CHARTER § 1215	Stat. 1957, p. 4707
GLENDALE CHARTER Art. XI, § 5	Stat. 1921, p. 2221
GRASS VALLEY CHARTER Art. X, § 12	Stat. 1952, p. 246
HAYWARD CHARTER § 1212	Stat. 1956, p. 178
HUNTINGTON BEACH CHARTER Art. XV, § 1	Stat. 1937, p. 2997
INGLEWOOD CHARTER Art. XXXVI, § 27	Stat. 1927, p. 2249
LOS ANGELES CHARTER § 376	Stat. 1927, p. 2014
MARYSVILLE CHARTER Art. VI, § 7	Stat. 1954, p. 204
MODESTO CHARTER § 1312	Stat. 1951, p. 4332
MOUNTAIN VIEW CHARTER § 1110	Stat. 1952, p. 185
NEEDLES CHARTER § 1114	Stat. 1959, p. 5462
RIVERSIDE CHARTER § 1115	Stat. 1953, p. 3905
ROSEVILLE CHARTER § 7.18	Stat. 1955, p. 3738
SACRAMENTO CHARTER § 70	Stat. 1st Ex. Sess. 1940, p. 320
SAN BUENAVENTURA CHARTER Art. XVII, § 6	Stat. 1933, p. 2892
SAN LEANDRO CHARTER § 1117	Stat. Ex. Sess. 1949, p. 84
SAN LUIS OBISPO CHARTER § 1213	Stat. 1955, p. 4131
SANTA ANA CHARTER § 614	Stat. 1953, p. 3757
SANTA CLARA CHARTER § 1317	Stat. 1951, p. 4427
SANTA CRUZ CHARTER § 1426	Stat. 1948, p. 343
SUNNYVALE CHARTER § 1316	Stat. 1957, p. 4605
VISALIA CHARTER Art. XI, § 6	Stat. 1923, p. 1484
WHITTIER CHARTER § 1115	Stat. 1955, p. 3689

Note: All citations are to the page upon which the charter provision is found in its present (amended or unamended) form.

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