

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Sovereign Immunity

**Number 5—Liability of Public Entities for Ownership
and Operation of Motor Vehicles**

January 1963

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California

NOTE

This pamphlet begins on page 1401. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes.

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January 2, 1963

To HIS EXCELLENCY, EDMUND G. BROWN
Governor of California
and to the Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission herewith submits its recommendation on one portion of this subject—liability of public entities for ownership and operation of motor vehicles. This is one of a series of reports prepared for the 1963 legislative session containing the recommendations of the Commission relating to various aspects of the subject of sovereign immunity. The Commission also has published a research study relating to sovereign immunity prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*



RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION

relating to

SOVEREIGN IMMUNITY

Number 5—Liability of Public Entities for Ownership
and Operation of Motor Vehicles

Section 17001 of the Vehicle Code imposes liability upon all types of public entities for injuries resulting from the negligent operation of motor vehicles by public personnel in the course of public employment. It is not clear, however, whether the section imposes liability for injuries resulting from the intentionally tortious operation of a motor vehicle by a public employee in the scope of his employment. Private employers, of course, may be held liable for both negligent and intentional torts of their employees acting within the scope of their employment.

Vehicle Code Section 17150 imposes liability upon a motor vehicle owner for the negligence of a person using or operating the vehicle with the consent of the owner. Where liability does not arise through a master-servant or principal-agent relationship, this vehicle ownership liability is limited to maximum dollar amounts. The liability of public entities, as vehicle owners, for the negligent operation of vehicles with their permission has been limited by judicial decisions to vehicles maintained for use in "proprietary" activities; no vehicle ownership liability exists where the publicly owned vehicle is maintained only for "governmental" activities. Thus, a city may be held liable as a vehicle owner for injuries caused by a vehicle assigned to the water department (proprietary activity) and may not be held liable as an owner for a similar injury inflicted by a vehicle assigned to the health department (governmental activity).

The effect of the Supreme Court decision in *Muskopf v. Corning Hospital District*¹ on Section 17001 liability and on the liability of public entities as owners of motor vehicles is not clear.² The courts may hold that governmental entities are not liable for vehicle torts except to the extent provided in these statutes. On the other hand, they may hold that the liability of public entities is the same as that of private persons.

The Commission has concluded that the uncertainties created by the *Muskopf* decision should be removed by legislation and that the liability of public entities for the ownership and operation of motor vehicles should be the same as that of private persons. There is no reason why

¹ 55 Cal.2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961).

² See *A Study Relating to Sovereign Immunity*, 5 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 39-40 (1963).

public entities should not be subject to the same vicarious liability as a private employer for injuries resulting from the operation of motor vehicles. Nor should the rights of a person injured by a negligently operated motor vehicle differ merely because the vehicle was operated with the permission of a public entity rather than a private person. Accordingly, the Commission recommends:

1. Section 17001 of the Vehicle Code should be amended to make public entities liable for death, personal injury or property damage caused by a negligent or wrongful act or omission of an officer, agent or employee operating a vehicle while in the scope of his office, agency or employment. This amendment will make clear that Section 17001 imposes liability for both negligent and intentional torts of public employees operating motor vehicles in the scope of their public employment.

2. The vehicle ownership liability statute should be made applicable to public entities to the same extent that it applies to private owners.

3. Section 17002 of the Vehicle Code, which grants a right of subrogation to a public entity vicariously liable for the negligence of its personnel in the operation of motor vehicles, should be repealed. The policy expressed in this section is contrary to the general policy recommended by the Commission that the ultimate financial responsibility for the torts of public personnel acting within the scope of their employment should be borne by the public entity unless the officer, agent or employee was guilty of actual fraud, corruption or actual malice.³ There is no reason for making an exception to this general policy in the vehicle tort situation.⁴

4. Section 17003, which authorizes public entities to insure against the vehicle liability imposed upon them, should be repealed. This section is superseded and unnecessary in light of the Commission's recommendation providing a broad grant of authority for public entities to insure against any liability.⁵

5. Section 17000 should be amended to provide definitions of "public entity," "employee" and "employment" that are consistent with the definitions contained in the legislation recommended by the Commission relating to the tort liability of public entities and public employees.⁶ The reference to the State Compensation Insurance Fund which is contained in Section 17000 is unnecessary because the broad definition of public entity includes all state agencies, and the State Compensation Insurance Fund is a state agency. The definition of "employee" excludes independent contractors, since the liability of public entities for

³ See *Recommendation Relating to Sovereign Immunity: Number 1—Tort Liability of Public Entities and Public Employees*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 801 (1963).

⁴ The statute should make clear that Vehicle Code Section 17153 does not control subrogation rights of the public entity where liability is based upon the acts or omissions of public personnel acting within the scope of their public employment. Section 17153 should apply, however, where the liability of the public entity is based solely upon vehicle ownership and does not arise by reason of vicarious responsibility for the acts or omissions of public personnel acting within the scope of public employment.

⁵ See *Recommendation Relating to Sovereign Immunity: Number 3—Insurance Coverage for Public Entities and Public Employees*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1201 (1963).

⁶ See *Recommendation Relating to Sovereign Immunity: Number 1—Tort Liability of Public Entities and Public Employees*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 801 (1963).

acts of independent contractors is determined under Section 815.4 of the legislation recommended by the Commission relating to the tort liability of public entities and public employees.⁷

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

An act to amend Sections 17000 and 17001 of, and to repeal Sections 17002 and 17003 of, and to add Sections 17002, 17002.5 and 17003.5 to, the Vehicle Code, relating to liability arising out of ownership or operation of vehicles.

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

SECTION 1. Section 17000 of the Vehicle Code is amended to read :

17000. As used in this chapter :

~~“public agency” means the State, any county, municipal corporation, district and political subdivision of the State, or the State Compensation Insurance Fund.~~

(a) *“Employee” includes an officer, agent or employee, but does not include an independent contractor.*

(b) *“Employment” includes office, agency or employment.*

(c) *“Public entity” includes the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State.*

SEC. 2. Section 17001 of the Vehicle Code is amended to read :

~~17001. Any public agency owning any motor vehicle is responsible to every person who sustains any damage by reason of death, or injury to person or property as the result of the negligent operation of the motor vehicle by an officer, agent, or employee or as the result of the negligent operation of any other motor vehicle by any officer, agent, or employee when acting within the scope of his office, agency, or employment. The injured person may sue the public agency in any court of competent jurisdiction in this State in the manner directed by law.~~

A public entity is liable for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment.

⁷ *Ibid.*

SEC. 3. Section 17002 of the Vehicle Code is repealed.
 17002. If there is recovery under this chapter against a public agency, it shall be subrogated to all the rights of the person injured against the officer, agent, or employee and may recover from the officer, agent, or employee the total amount of any judgment and costs recovered against the public agency, together with costs therein.

SEC. 4. Section 17003 of the Vehicle Code is repealed.
 17003. Any public agency may insure against liability under this chapter in any insurance company authorized to transact the business of such insurance in the State of California, and the premium for the insurance shall be a proper charge against the general fund of the public agency.

SEC. 5. Section 17002 is added to the Vehicle Code, to read:
 17002. Notwithstanding any other statute, charter provision, ordinance or regulation, a public entity is liable for death or injury to person or property to the same extent as a private person under the provisions of Article 2 (commencing with Section 17150) of this chapter, whether or not the motor vehicle is owned, used or maintained for a governmental or proprietary purpose.

SEC. 6. Section 17002.5 is added to the Vehicle Code, to read:

17002.5. Notwithstanding Section 17153, if there is recovery under Section 17001 or 17002 against a public entity based on a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment, the public entity has a right of subrogation only to the extent provided by Article 3 (commencing with Section 825) of Chapter 1 of Part 2 of Division 3.6 of the Government Code.

SEC. 7. Section 17003.5 is added to the Vehicle Code, to read:

17003.5. Nothing in this chapter limits the liability imposed by Section 815.4 of the Government Code for an act or omission of an independent contractor.

SEC. 8. Sections 6 and 7 of this act shall become operative only if Senate Bill No. ___ is enacted by the Legislature at its 1963 Regular Session, and in such case at the same time as Senate Bill No. ___ takes effect.

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