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Address Before the San Francisco City Attorneys' Luncheon Entitled "The Claims Statutes"

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I must confess that I have some doubt as to why I was selected to address you on this subject today. My first thought was that it was because of my experience as City Attorney of two cities in this state for several years prior to my appointment to the Supreme Court of California, but on second thought it may have been to give me an opportunity to justify, if I could, my position in the cases involving claims statutes which have been decided by the Supreme Court during the past twelve years. Whatever may have been the reason for the invitation, I wish to state frankly that I have no apology to offer for either the position I took on this subject as a City Attorney or as a member of the Supreme Court of California. In other words, I do not feel that I have anything to live down so far as my work as City Attorney is concerned, and furthermore, I don't think it can be said, after a review of my record as a member of the Supreme Court in matters involving municipalities, that I did not cease to be a City Attorney when I became a member of the
Supreme Court of California. No one who has followed my decisions as a member of the Supreme Court of California can have any possible doubt as to my philosophy with respect to the law applicable to claims statutes or any other subject on which I have had an opportunity to give expression to my views. Right

I want to make it clear that I have no patience with the critics of the Supreme Court of California, or any other court of last resort, who do not approve of dissenting opinions, as I have a very definite belief that dissenting opinions have a wholesome influence in the advancement of the science of jurisprudence and in the administration of justice. I also have an abiding conviction that forthrightness in the expression of the views of a judge of any court begets confidences in his integrity, and where his views are different from those of the majority of the court on which he serves, such forthrightness requires that he give expression to those views in a dissenting opinion, even though it places an unusual burden upon him to do

It is my considered opinion that if there is a sound basis for an honest difference of opinion as to what the law is or should be as to any important question of law, the attorneys, litigants and the public are entitled to know what the minority as well as the majority of the court think about the subject. In my experience as a member of the Supreme Court
of California during the past twelve years, I have seen many a dissent become a majority opinion before the final determination of the case, and I must confess that I fondly hope that the views expressed in many more of my dissents will in the future become the basis for majority opinions to the end that justice will ultimately triumph.

My secretary suggested that the title of this address could more properly be called "Confusion Unlimited" or "Why Hard Cases Make Bad Law" after the manner of the old melodramas.

The claims statutes are outcroppings of the old outmoded and outgrown maxim that "The King Can Do No Wrong," or the doctrine of sovereign immunity. This had its origin in medieval English theory and was introduced in this country without sufficient understanding. It has been pointed out that what the maxim really meant was that the King was privileged to do no wrong -- that if his acts were against the law -- they were wrongs -- not that he should be immune from the consequences of his unlawful acts. However that may be, there was never any reason for its incorporation into the law of this country where democracy exists and where we are said to have a "government of the people, by the people and for the people." It requires but a slight appreciation of the facts to realize that in
Anglo-American law the individual citizen is left to bear almost all the risks of a defective, negligent, perverse or erroneous administration of the state's functions -- an unjust burden -- which is becoming graver and more frequent as the government's activities become more diversified and as we leave to administrative officers in even greater degree the determination of the legal relations of the individual citizen. The government obviously cannot insure the citizen against all defects and errors in administration, but there is no reason why the most flagrant of the injuries wrongfully sustained by the citizen, those arising from the torts of the officers, should be allowed to rest as they now generally do, in practice, if not in theory, at the door of the unfortunate citizen alone.

Justice, and a respect for the rights of the individual citizen, demand that government, national, state and municipal, shall admit legal responsibility for the torts of its officers and that invasions of the rights of the individual by act of public authority should be compensated and the burden of that compensation distributed among the community at large.

PURPOSE OF CLAIMS STATUTES

The courts have said, in numerous cases, that the purposes to be accomplished by the claims statutes are to put
the public agency on notice, to give it an early opportunity to investigate the merits of the claim of which it otherwise might have no knowledge until after the chance for effective investigation had been lost by the lapse of time; so that the city, or other public agency, might have an opportunity to settle without litigation; so that the public agency might provide for the defense of suits for damages against officers, and to authorize the insurance of officers at public expense. Looking at the matter realistically, it appears to me that there is no more reason for providing such safeguards to a municipal corporation than to a private one. The same necessity for prompt investigation exists as does the necessity for insurance, although in the one case, private capital controls, in the other, it is the expenditure of public funds. If negligent individual is sued in his capacity as a public employee, the public agency is as well prepared to arrange for his defense as is a private corporation. In enacting the claims statutes, the entire burden is placed on the injured person and not on the wrongdoer, where, in any other situation, it would normally be. Taking into consideration the type of government we have in this country, why should the burden be so placed? If the wrongdoer was acting in a public capacity and is entitled to defend himself at public expense, the burden of informing his public employer of the unlawful act, no matter
what it happens to be, should, logically, be placed on him.

LIABILITY OF PUBLIC AGENCY

California, by statute in 1923 (Stats. 1923, p. 675; Deering's Gen. Laws 1937, Act 5619 [now Gov. Code 53051]) admitted a limited public liability. The Government Code (53051, added by 1949 amendment) now provides that "A local agency (public agency [53020]) is liable for injuries to persons and property resulting from the dangerous or defective condition of public property if the legislative body, board, or person authorized to remedy the condition: (a) Had knowledge or notice of the defective or dangerous condition. (b) For a reasonable time after acquiring knowledge or receiving notice, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition."

The public agency, having given its consent to be sued, has specified the manner and method in which suit shall be instituted by the accompanying claims statute (§§ 53052-53), which provides that: "When it is claimed that a person has been injured or property damaged as a result of the dangerous or defective condition of public property, a verified written claim for damages shall be filed with the clerk or secretary of the legislative body of the local agency within ninety days after the accident occurred." (1949 amendment) And: "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." These sections admit the liability of
the public agency and provide for the manner in which claims
against it shall be presented. (Jackson v. City of Santa
Monica, 13 Cal.App.2d 376; Tyree v. City of Los Angeles, 92
Cal.App.2d 182.)

The liability admitted by the statute is a limited
one -- limited to the dangerous or defective condition of public
property. There is also a common law liability of a city for
injuries resulting from the defective or dangerous condition
of property used in a proprietary activity. The common law also
gives a right of action against a city for the negligent acts
of its servants where it is performing a proprietary or business
activity. Municipal water, gas, and electric utilities,
municipal auditoriums, airports, streets, railways, and housing
authorities all have been held to come within this category.
(See Muses v. Housing Authority, 83 Cal.App.2d 489.) (Gov.
Code, §§ 53052, 53053 are based on the former Act 5149,
Deering's Gen. Laws, 1937.)

EMPLOYEE OF PUBLIC AGENCY

Government Code, sections 1950 through 1981, provide
for the liability of officers and employees of public agencies
(districts, counties or cities). It is provided (§1953) that the injury must be the direct and proximate result of the dangerous or defective condition of public property; that the officer must have had notice of the condition which must be directly attributable to work done by him or under his direction in a negligent, careless or unworkmanlike manner; he must have had the authority and the duty to remedy the condition at public expense and the funds must have been immediately available for that purpose; he must have failed to either remedy the condition, being able to do so, within a reasonable time or have failed to take reasonable steps to give warning concerning it. Further, injury must have been sustained while the public property was being carefully used and due care exercised by the plaintiff to avoid the danger caused by such condition. Section 1981 provides: "Whenever it is claimed that any person has been injured or any property damaged by 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 Dillard v. County of Kern, 23 Cal.2d 271, a unanimous Supreme Court held that this section applied only to suits against employees or officers.

Vehicle Code section 400, imposes liability upon the public agency for the negligent operation of any motor vehicle by an officer, agent, or employee when such person is acting within the scope of his authority. There is no claims statute incorporated in this section, and it was held in Dillard v. County of Kern, 23 Cal.2d 271 (decided in 1943) that neither Act 5149, nor Act 5150 (Deering's Gen. Laws, 1937), the predecessors of the present sections, required the filing of a claim when section 400 of the Vehicle Code was relied upon. However, in Huffaker v. Decker, 77 Cal.App.2d 383, decided in 1946, it was held that plaintiff must allege and prove compliance with section 1981 before suit could be maintained against a public employee. However, in 1951, section 2003 was added to the Government Code (Chapter 1630, Stats., 1951). This section provides that "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 scope and course 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."
In the very recent case of Stewart v. McCollister, 37 A.C. 203, decided in May of this year, the defendant was driving his own car which bore Nevada license plates. An accident occurred on December 17, 1946, in which the plaintiff was injured. Plaintiff filed suit on March 5, 1947, for damages based on ordinary negligence. The defendant's original answer contained no reference to the fact that he was employed by a public agency and was acting within the scope of his employment. No public agency was made a party to the action. A year after the filing of the complaint and fifteen months after the accident, the defendant amended his answer, and alleged as a special defense, that plaintiff had not complied with section 1981 of the Government Code because defendant was employed by the City of Los Angeles and was acting in the course of his employment at the time the accident occurred. The Supreme Court held that the legislative history, and the present section (Gov. Code, §1981) made it clear that it is the injured person who must claim that his injuries resulted from the negligence of a public employee and that the public employee cannot render himself immune from his common law liability by alleging and proving that his negligence occurred in the course of his public employment and therefore a verified claim must be filed as a prerequisite to the commencement of an action. It was also
noted that if this were not so, then any allegedly negligent person could assert, regardless of the truth or falsity thereof, that the negligence occurred in the course of public employment, and without proof, defeat the plaintiff's claim. It must be remembered that the Stewart case did not involve a claim for damages against a defendant as a public officer, nor did it involve such a claim against a public agency.

Ansell v. City of San Diego, 35 Cal.2d 76, and Holm v. City of San Diego, 35 Cal.2d 399, both held that section 1981 (Gov. Code) did not apply where suit was brought against the city. Where the city is sued alone, as it was in the Tyree case, which involved section 400 of the Vehicle Code, it has been held that the failure to serve a claim on the negligent employee does not exonerate him from liability, but merely constitutes a waiver of the right to recover against him — and that the waiver does not impair the right of the municipality to be subrogated to the rights of the injured party and to hold its employee responsible for the amount recovered by such party from the municipality. (But see Chapter 1630, Stats., 1951.)

In Veriddo v. Renaud, 35 Cal.2d 263, the Supreme Court held that if compliance with the provisions of section 1981 was not a prerequisite to suit, then the section would appear to be wholly meaningless since it is not applicable to claims.
against a public agency.

In Porter v. Bakersfield & Kern Electric Railway Co., 36 Cal.2d 582, no claim was served on the driver of the school bus prior to the filing of suit although a claim was filed with the secretary of the school district. Copies of the claims of the two plaintiffs against the school district were attached to the complaints as exhibits and served on the driver of the bus within 90 days after the accident occurred. The court in affirming judgment against the bus driver, held that compliance with the claims statute was not a prerequisite to the filing of suit, but to the maintenance thereof.

An example of complete confusion is found in the case of Kornahrens v. City & County of S. F., 87 Cal.App.2d 196. There, the plaintiff was injured through the negligent operation of a streetcar of the municipal railway. A verified claim for damages was presented to the controller of the city on the 84th day after the accident. The city charter provided that all such tort claims arising out of the exercise of the municipality's proprietary capacity be filed with the controller within 60 days. Sections 29700-05, Government Code, providing that claims against counties were to be filed within one year were held inapplicable since the operation of a street railway was not a county or governmental function, but a proprietary one, carried on by the city under powers derived solely from
the charter, and that had the claim been against the county it should have been presented to the board of supervisors. So, in San Francisco it would be necessary to ascertain whether the governmental agency is acting as a city or county in order to know to whom the claim should be presented and within what time. Although sections 29700-05 of the Government Code (1947) have not been repealed, sections 53050 et seq., Government Code (1949) apply specifically to counties, and it is there provided that the time within which to file a claim is 90 days rather than the one year period provided for in the 1947 Government Code sections. The 29700-05 sections of the Government Code covers a broader field in that the 1949 amendment (Gov. Code, §53050 et seq.) is limited to dangerous or defective conditions of public property.

So far as charter provisions are concerned, when there is a conflict with state law, and the matter is one of statewide concern, the state law controls. One aspect of the matter was decisively settled in Wilkes v. City & County of S.F., 44 Cal.App.2d 393. The claim there, which arose out of personal injuries suffered by the plaintiff because of the defendant's negligent construction of a highway, was filed within the 90 day period provided for by the Public Liabilities Acts of 1923 and 1931, and within the 60 day period provided for in the city charter. The sole question was with whom it should have been filed: With the city
controller as was provided for by the charter and as was done, or with the board of supervisors as provided for by state law. The court held there that the existence of liability for defective highways was one of statewide concern and that the state law controlled, and announced the rule that: "If the state fixes the period of ninety days within which such a claim may be filed, a municipality, even by charter provisions, may not ordain that the claim will not be recognized unless filed within a shorter period." It has been held that in case of a nuisance suit against a city, the charter time limit prevails (Phillips v. City of Pasadena, 27 Cal.2d 104). It is not possible to give a categorical answer as to when the charter time limits would prevail, as it is necessary for the claimant to explore the field and endeavor to ascertain, at his peril, whether the agency causing the injury is exercising a local or statewide function.

**FORMAL REQUIREMENTS**

In Holm v. City of San Diego, 35 Cal.2d 399, defendant's demurrer on the ground that the claim filed with the city clerk and served on its employee was defective for lack of plaintiff's address as required by section 1982 of the Government Code was sustained by the trial court and judgment of dismissal entered. The claim had been signed by the plaintiff "at Lakeside or La Mesa, California" and the Supreme
Court held that such reference was substantial compliance with the statute. It had previously been held that the office address of the claimant's attorney was sufficient (Uttley v. City of Santa Ana, 136 Cal.App. 23, 25) and that the statute was complied with where the claim stated that the claimants were residents of Santa Cruz County and one of them, a minor, was a pupil at Boulder Creek Union High School (Ridge v. Boulder-Creek etc. School Dist., 60 Cal.App.2d 453).

In Osborn v. City of Whittier, 103 A.C.A. 700, the contention was made that the verification of the claim was insufficient in that the claimant had not sworn to anything. The court held that the fact that the opening statement of the affidavit did not state that plaintiff was first duly sworn was not fatal where it appeared that it had been "subscribed" by her and was "sworn to" before a notary whose signature was affixed. It was further held that no particular form of verification was prescribed by the claims statute where suit was against a municipality as distinguished from the situation where suit is against a county.

I would like to point out that a great number of these claims statute cases have been decided by a sharply divided court. In many instances, a too strict construction has worked untold hardship on a deserving claimant whose injuries
have gone uncompensated because the public agency has, while admitting its fault, been able to defeat the plaintiff's claim by relying on a procedural technicality. Typical cases of this character are Hall v. City of Los Angeles, 19 Cal.2d 198 and Artukovich v. Astendorf, 21 Cal.2d 329. In the Hall case it was held that the facts were not set out in the claim with the prescribed particularity, even though the city had made a timely investigation and was fully informed as to what had happened. And in the Artukovich case, a 16 year old child was denied recovery because he failed to file a claim in a suit against a county. Under the reasoning in the latter case, an injured person rendered unconscious, or under a mental disability for the prescribed period, who failed to submit a verified claim to the proper authority would be denied recovery. It is true that in both of these cases the court was sharply divided. And it appears that some members of the Supreme Court, while rigidly upholding the charter provisions where claims statutes are involved, do not so strictly construe similar provisions designed to protect the city from loss where contractors fail to make good their bids for the construction of public works authorized by the city. In Kemper Construction Co. v. City of Los Angeles, 37 A.C. 698, a majority of the Supreme Court of California recently held that notwithstanding a specific charter provision to the contrary, a bidder on a proposed sewer project had the right to withdraw and cancel his bid because
he made a mistake in computation, even though the city had no knowledge of such mistake until after all bids were opened. I mention this because it demonstrates the lack of sanctity accorded charter provisions in this field while upholding them to the letter in cases where claims of tort liability are involved.

My research has shown that claims statutes exist in the following places: Political & Government Code, 1943 (§§1950 et seq.); Political & Government Code, 1947 (§§29700 et seq.); Political & Government Code, 1949 (§§53050 et seq.); Vehicle Code (§400); Education Code, 1943 ($1007); and Chapter 1630, Stats., 1951. Educ. Code, 1943, $1007 goes farther than the Public Liability Act, Government Code, sections 53050 et seq., and provides for claims to be filed for injuries arising from the negligence of the district, or its officers or employees. Requirements for filing a claim for tort liability are also contained in many city and county charters and municipal codes. These requirements vary in many respects. It is quite evident that clarification is vitally necessary if the individual who suffers an injury as the result of the negligence of a public employee is to receive redress without being subjected to the hazard of having liability denied because he has failed to file a claim within a specified time or with a particular official,
setting forth certain facts which may or may not be germane to
either the issue of liability or damages.

New York State has, for itself, as a state, by statute
(Court of Claims Act, §8) waived immunity from liability and
action and assumed liability and consented to have the same
determined in accordance with the same rules of law as are
applied to actions in the trial (supreme) court against
individuals or corporations, provided that the claimant complies
with certain limitations. Section 10 of the same act prescribes
various time limitations within which certain types of claim
must be filed, and further provides that if the claim or notice
of intention to file a claim has not been filed within the time
prescribed, the court may, in its discretion upon showing of a
reasonable excuse, permit filing at any time within two years
after accrual of the cause of action. (See Gilbert-Bliss,
Civil Practice of New York, Annotated, Book 16; Warren's
Negligence, §§107 et seq., Vol. 2, New York.)

If there are some of you who think as I do, that the
existing state of confusion in the field of claims statutes
should be reformed, and if there are some of you who think that
perhaps the law has been unduly stretched to cover certain
factual situations, then we have made a start in the right
direction.
In order to eliminate the confusion which now exists with respect to both the liability of the state and its agencies for wrongs perpetrated by their officials and employees, the plethora of statutes, charter provisions and ordinances providing for the filing of claims as a prerequisite to the maintenance of an action for redress of such wrongs, I would propose that a constitutional amendment be adopted which would authorize the Legislature to enact a statute similar to the New York statute waiving immunity from liability against state and its agencies and consenting that such liability be determined in accordance with the same rules of law as are applied to actions against individuals and corporations and to provide for a uniform procedure for actions against the state and all its agencies for their wrongs, which would contain a uniform claim provision applicable to the state and all its agencies alike and supersede all claims statutes, charter provisions and ordinances providing for the filing of a claim in any case.

I would like to leave this thought with you in conclusion: That we, as public servants, can do more in combating the efforts of those who are seeking to discredit our form of government, by taking steps toward the elimination of confusion and conflict in our laws which result in the maladministration of justice. In so doing, we are helping
to make democracy work, thereby demonstrating to the opponents of our democratic way of life that the concept "EQUAL JUSTICE UNDER LAW" is more than a mere platitude or fiction, but is a reality. With this thought in mind, I feel justified in suggesting to you ladies and gentlemen here today that, regardless of your personal interests, you should make an effort toward relieving the confusion which now exists in this phase of our law. In so doing, you will make a substantial contribution to the stability of our government.