

11/12/62

First Supplement to Memorandum No. 62(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Vehicle Code Amendment)

The Legislative Counsel makes the following comment concerning the proposed legislation on this subject:

There would seem to be some possibility, which should be considered, that the intention of the commission will be frustrated by provisions of Article 2 (commencing with Section 17150) of Chapter 1, Division 9 of the Vehicle Code. These provisions generally refer to "owner," without qualification, and to actions under the entire chapter. Although the article heading is "Private Owners," article headings do not affect the scope, meaning, or intent of the provisions of the code (Sec. 7, Veh. C.). Thus, the bill repeals Section 17002, providing for subrogation of public agencies, but Section 17153 will continue to provide for subrogation of owners generally. See definition of "owner" in Section 460, Vehicle Code.

In Memorandum No. 62(1962) we noted that the liability based on operating a vehicle with the consent of the owner should be subject to the provisions providing for subrogation of the owner. However, it is the Commission's intent that there be no subrogation in the case of a vehicle tort where an employee is in the scope of his employment except to the extent that the general liability statute provides for subrogation (actual malice, corruption or actual bad faith). The staff agrees that it might be possible that the intention of the Commission would be frustrated unless further clarifying language is added to the proposed legislation. Accordingly, the following change is recommended:

Change number of new Section 17002 (SEC. 4, page 5) to 17003.

Add new Section 17002 to read:

17002. Notwithstanding Section 17153, if a public entity pays any claim or judgment against itself or against an officer, agent

or employee of the public entity, or any portion thereof, arising out of an alleged negligent or wrongful act or omission in the operation of a motor vehicle by an officer, agent or employee of the public entity while he was acting within the scope of his office, agency or 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.

This provision will make clear that the right of subrogation is limited if the act or omission occurs while the employee is within the scope of his employment. Where the act or omission occurs while the employee is not within the scope of his employment or where the operator is not an employee of the public entity, the right of subrogation under Section 17153 will exist.

If the provision is approved an additional provision will be needed so that new Section 17002 will take effect only if the general liability statute becomes law. This provision would read:

Section 17002 added to the Vehicle Code by Section ____ of this Act shall become operative only if Senate Bill No. *** is enacted by the Legislature at its 1963 Regular Session.

Respectfully submitted,

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