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Public Entities, Officers, & Employees Review of Selected 1970 California Legislation

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Public Entities, Officers, & Employees

Claims; time of filing

Government Code §§911.4, 946.6 (amended).

AB 1614; STATS 1970, Ch 411

Pursuant to Section 911.2 where one files a claim relating to a cause of action for death or for personal injury or for injury to personal property or to growing crops, the claim shall be presented no later than 100 days after the accrual of the cause of action.

Section 911.4 provides that where one fails to present such a claim within the 100 days, he may make a written application to the public entity for leave to present such claim. This application must be presented within a reasonable time after the 100 days, such reasonable time not to exceed one year after the date of accrual of such cause of action. The amendment to Section 911.4 now states that in computing the one-year period, the time during which the plaintiff is a minor shall be counted, but the time during which he is mentally incapacitated and does not have a guardian or a conservator shall not count. If a person is mentally incapacitated and has a guardian or conservator, his time of such incapacity shall be counted in determining the one-year period.

As provided by Section 946.6 when the public entity has denied a claim pursuant to Section 911.6 (*which sets forth the circumstances upon which an application shall be granted*), an application may be made to the court for an order relieving the petitioner from the provisions of Section 945.4 (*requiring a written claim to be presented to the public entity and that it have been acted upon by the board*), if the court finds that the application under Section 911.4 was made within the reasonable time specified in Section 911.4 including the portion referring to minors and mentally incompetents.

Other criteria explicitly mentioned in Section 946.6 were not amended by this Chapter.

Reference:

- 1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION, 126; CALIFORNIA GOVERNMENT TORT LIABILITY, §9.5, CONTINUING EDUCATION OF THE BAR (1964); CALIFORNIA LAW REVISION COMM'N, *Recommendation Relating to Sovereign Immunity* (January 1965).

Claims and Actions; statute of limitations

Code of Civil Procedure §352 (amended). Government Code §§ 915.4 (new); 910.8, 911.8, 913, 945.6, 950.6 (amended); Water Code Appendix §§19-34, 99-10, 100-23, 101-23, 112-23 (amended). AB 126; STATS 1970, Ch 104
(Effective January 1, 1971)

This Chapter prevents the tolling of the statute of limitations on a claim against a public entity for persons who are 1) under the age of majority, 2) insane, 3) imprisoned on certain criminal charges, or 4) a married woman whose husband is a necessary party to the action.

Under the existing law, persons who pursue a claim for money or damages through court action following rejection of their claim by a governmental body must file their suits within a prescribed period of time (usually six months) or lose their right of action. Government Code Section 945.6 has specifically allowed tolling of the statute of limitations on claims against a public entity for a person in state prison, but has made no mention of minors or other persons under a disability. In *Williams v. Los Angeles Metropolitan Transit Authority* [68 Cal. 2d 599 (1968)], the California Supreme Court held that the provisions of Code of Civil Procedure Section 352 that tolls the statute of limitations for a minor is applicable to an action against a public entity. This decision would presumably apply to anyone else under a disability.

This legislation was sponsored by the California Law Revision Commission, who believe that the recent supreme court decision would impose a significant and unnecessary hardship upon the public entity, for the claimant could defer bringing the action until the evidence became stale and the witnesses unavailable.

To avoid this difficulty, Chapter 104 provides that the disabilities listed above will not toll the statute of limitations against a public entity. To prevent injustice to persons under a disability, the agency disposing of a claim must provide *all* persons presenting claims a written notice indicating the disposition of the claim. If the claim has been rejected, the notice must call attention to the requirement that court action must be instituted within six months.

Amended Government Code Section 913 provides the form of the notice and Section 915.4 provides the alternative methods of giving notice. If the agency fails to give the prescribed notice, the claimant is given two years to file his action.

These provisions have also been applied to five local water agencies organized under general law, and other insubstantial changes (such as deleting references to obsolete code sections) have been made.

The act becomes effective on January 1, 1971 and does not apply to claims presented to public entities before that date.

Conflicts of Interest

Government Code §1121 (new).

SB 918; STATS 1970, Ch 853

The new Section provides that if an officer or employee of the state or a local public agency, with knowledge gained from his employment not a matter of public record, profits from the purchase and sale of property whose value was enhanced by governmental action, such profits are impressed with a trust in favor of the state or the agency concerned. Exempted from the Section are persons submitting bids under authorized bidding procedures.

The trust is to be enforced by the city attorney of the city in which the property is located. If the property is not located within a city the trust is to be enforced by the county counsel. If neither of these parties enforce the trust the Attorney General may do so.

References:

- 1) CAL. GOV'T CODE §1120.
- 2) I WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §199 (7th ed. 1960).

State Colleges; conflict of interest

Education Code §§23605.5, 24058-24061 (new).

AB 400; STATS 1970, Ch 31

(Effective March 30, 1970)

Chapter 31 relates to conflicts of interest which may arise from a contractual relationship with, or employment by the state colleges, and conflicts of interest which may arise by one a member of the governing board of a state college auxiliary organization.

Section 23602.5 provides that it is unlawful for any person employed by or having a contractual relationship with, trustees of a state college, or a state college auxiliary organization to utilize any information, not of public record, by reason of his relationship with such organization for

his personal pecuniary gain. This provision applies regardless of whether the person is or is not employed or under contract at the time the gain is realized.

Any member of a governing board of a state college auxiliary organization, under Section 24058, shall have no financial interest in any contract or transaction entered into by the governing board. If such interest exists, the contract is void.

Section 24059 provides that if a financial interest under Section 24058 exists, the member of the governing board will not be disqualified or deemed guilty of misconduct if the following circumstances exist:

- (1) The member's financial interest is disclosed to the board, noted in the minutes, and the contract is subsequently approved or ratified in good faith by the board. The ratification vote must be sufficient without counting the vote of the interested member, and
- (2) The contract is just and reasonable as determined by the board at the time it is authorized or approved.

Section 24060, lists certain circumstances where the exceptions listed in Section 24059 will not apply.

Section 24061 provides that it is unlawful for any member of a governing board to utilize any information, not of public record, which is received by him by reason of his membership, for personal pecuniary gain. This Section applies regardless of whether or not he is a member of the governing board at the time such gain is realized.

References:

- 1) CAL. GOV'T CODE §§3600-3754.
- 2) I WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §199(d) (7th ed. 1960), (Supp. 1969).

College Police; scope of authority

Education Code §§25429, 25429.1 (new); 24651 (amended); Penal Code §§830.3, 830.4 (amended).

SB 445; STATS 1970, Ch 1592

Chapter 1592 adds state college police and community college police to the list of positions designated as peace officers under Penal Code Sections 830.3 and 830.4. The California State Colleges utilize college policemen to protect persons and property on particular campuses and grounds under the control of the state college or the trustees of the state colleges. In addition, Education Code Section 24651 is amended to

extend the jurisdictional authority of these campus policemen to an area within one mile beyond the exterior boundaries of each campus. Such policemen are now deemed to be peace officers upon *any* state college campus instead of being restricted to any particular campus.

Education Code Sections 25429 and 25429.1 are added to empower the governing board of a community college to establish a community college police department.

Such policemen are to be restricted in authority to the campus of the particular community college and in or about other grounds or properties owned, operated, controlled, or administered by the community college, or the state on behalf of the community college.

Public Officers and Employees; arrests without warrants

Penal Code §836.5 (amended).

AB 89; STATS 1970, Ch 114

Section 836.5 as amended expands the definition of "ordinance" to include any order, rule, or regulation of any air pollution control district.

A public officer or employee (*which includes all persons employed by the state or any county, city, city and county, state agency, or public district; see Government Code Section 3101*) when authorized by ordinance, may arrest any person without a warrant whenever he has reasonable cause to believe the person has committed a misdemeanor in his presence which is a violation of a statute or ordinance the officer or employee has the duty to enforce. The governing body of a local agency may authorize by ordinance those of its officers and employees who shall have the duty to enforce and power to arrest.

The Section specifies that no cause of action shall arise against any public officer or employee for making a false arrest while acting within the scope of his authority, providing he had reasonable cause to believe the arrest was lawful.

In any case where a person is arrested under this Section and does not demand to be taken before a magistrate, the officer or employee must present the alleged violator with a written notice to appear and release the person on his promise to appear (*see Section 853.6*).

Reference:

- 1) Note, *Civil Liability for Illegal Arrests and Confinements in California*, 19 HAST. L.J. 974 (1968).

Public Records; disclosure, inspection

Corporations Code §§25605, 27005 (amended); Financial Code §§ 8709, 18610 (amended); 254, 5023, 8710, 8754, 8807, 17417 (repealed); Government Code §6254 (amended); Insurance Code §735 (repealed).

AB 1981; STATS 1970, Ch 1231

This Chapter revises the Public Records Act of 1968 (*Government Code Sections 6250-6260*). This Act was intended to balance the individual's right to privacy against a citizen's right to information concerning the conduct of public affairs. Section 6252(d) gives a broad definition to public records, and Section 6253 declares that public records are open to inspection by every citizen; Section 6254 provides a list of those records exempt from disclosure.

The exemption previously made for trade secrets has been deleted; there is now no reference to trade secrets in Section 6254. However, Chapter 1295 (STATS 1970) added Section 6254.7 to the Government Code. This new Section makes public any records that disclose the extent of air contaminants which a machine will produce, and also discloses all air monitoring data. Trade secrets, however, are not public records under Section 6254.7. This Section was the result of extensive maneuvering which attempted to require disclosure of pollution information for equipment which would otherwise be protected under the trade secret exemption.

The amendments to Section 6254 exempt from disclosure records that relate to: a) applications filed with any state agency responsible for the regulation of securities or financial institutions (such as banks, credit unions and savings and loan associations); b) reports prepared by such state agencies; c) communications prepared by or for such agencies; and d) information received in confidence by such agencies. In addition, statements of personal worth or other personal financial data are exempted from disclosures when such information is required from the applicant by a licensing agency.

Corporations Code Sections 25605 and 27005 have been amended to eliminate the provision that any information filed with the Corporations Commissioner may be withheld from public disclosure if the Commissioner feels that disclosure is not necessary in the public interest or for the protection of investors. These Sections still allow the Commissioner to publish any information which he feels is in the public interest or would prevent fraud or injury to the public, as long as the information is not otherwise withheld from public inspection.

The repeal of Section 254 of the Financial Code makes the records

of the State Banking Department public records. The repeal of Financial Code Sections 5023, 8710, 8754, 8807 and 17417, and the amendments to Section 8709 and 18610 make public the records of escrow agents, industrial loan companies and the Savings and Loan Department. The repeal of Insurance Code Section 735 allows disclosure of the records of the Department of Insurance.

References:

- 1) CAL. GOV'T CODE §§6250-6260.
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION 152-153.
- 3) Comment, *Interagency Information Sharing: Access to Public Records—A Legal Vacuum*, 9 SANTA CLARA LAW. 301 (1969).

Public Assistance; records

Welfare and Institutions Code §10850.1 (new).

SB 438; STATS 1970, Ch 765

With the addition of Section 10850.1, county welfare agencies are now required to release certain confidential welfare records to law enforcement agencies conducting criminal investigations into the fraudulent or unauthorized use of public assistance payment checks.

Prior to this addition all records pertaining to an individual receiving welfare assistance under a program subsidized by the Federal Government were required to be kept confidential in accordance with Section 10850; however, information contained in these records could be released to the district attorney for official purposes (*Section 10850*).

Section 10850.1 requires that disbursement records of a recipient or former recipient must now be released to the head of any law enforcement agency investigating violations of state law involving fraudulent or other unauthorized use of public assistance payment checks. The head of the law enforcement agency is required to file an affidavit with the county welfare department having the records. The affidavit must show the records are material to the investigation. Any information obtained may be used only for criminal investigations into welfare fraud.

It should be noted that Section 10850.1 (STATS 1968 c. 910 p. 1701) remains in existence despite the enactment of this new Section 10850.1. The 1968 Section permits a public assistance recipient or anyone authorized by him to inspect his welfare records. Assembly Bill 1752 (1970 Reg. Sess.) proposed the repeal of this Section, but failed to pass. Hence, there are now two Sections with the same number relating

to different matters. The rule in such a case is to allow both Sections to stand (one will probably be re-numbered next year) [*People v. Phair*, 137 Cal. App. 612 (1934)].

Reference:

- 1) WITKIN, CALIFORNIA EVIDENCE, *Witnesses* §§787 et seq., 871(2) (2nd ed. 1966);
- 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Governmental Authority* §896 (1963).

Public Meetings; disturbances

Government Code §§11126.5, 54957.9 (new).

AB 981; STATS 1970, Ch 1610

Chapter 1610 establishes procedures for public agencies whenever a meeting conducted by that agency is willfully interrupted.

In the event any meeting is willfully interrupted by any group or groups of persons so as to render the orderly conduct of such meeting unfeasible, and order cannot be restored by removal of the interruptors, the members of the agency conducting the meeting may order the room cleared and continue in session.

If required to continue the meeting in session, the agency is granted the broad discretion of establishing a procedure for readmitting individuals who were not responsible for the willful disturbance; and they shall readmit duly accredited representatives of the press or other news media; except those participating in the disturbance, to attend the session. In such a session the only matters that may be considered by the agency are those appearing on the agenda.

Two identical Sections were enacted by Chapter 1610. Section 11126.5 pertains to public meetings conducted by "state agencies." A "state agency" is defined in Section 11121 to include every state board, or commission, or similar multimember body of the state which is required by law to conduct official meetings.

Section 54957.9 sets out the identical procedures to be followed in the case of a disturbance, but applies to a legislative body, as distinguished from a state agency. Section 54952.3 defines a "legislative body" as any advisory commission, advisory committee, or advisory board of a local agency created by charter, ordinance, resolution or by any similar formal action of a governing body of a local agency. A legislative body does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.

Public Housing Authorities; landlord-tenant relationship

Health and Safety Code §§34285, 34331, 34332 (new).

AB 606; STATS 1970, Ch 897

This Chapter is directed at correcting existing landlord-tenant problems in low rent housing projects. It contains three basic parts:

1. The formation of a project committee to advise the housing authority on matters which affect the residents of the housing project.
2. Gives basic protections to the tenants of low rent housing projects.
3. Requires the housing authority to repair premises to comply with local codes, make available to the tenant its leasing and occupancy policies, public documents and records, and to inspect the premises before renting to a new tenant.

Prior to the introduction of the legislation, residents of low rent housing projects were particularly susceptible to rental agreements and leases which were so written as to leave the residents who signed them (a prerequisite to admission into the project) with little or no legal recourse in the event of a landlord's negligence, failure to repair, or failure to comply with any applicable building code or health ordinance. These new Sections attempt to correct this relationship.

Section 34285 permits the governing body of a city or county to call upon residents in a housing project to form a project committee considered representative by the governing body. It requires the housing authority, upon direction and approval of the governing body, to consult with the committee on matters which affect the residents at the project. The provisions of this Section apply for a one-year period after the formation of the project committee, subject to one-year extensions by the governing body. In addition, meetings of the housing authority and the project committee must be open and public, and the authority must maintain and make available, for public inspection, minutes of the meetings of the project committee with the authority.

Section 34331 states that in the operation or management of housing projects, an authority is prohibited from taking specified actions with respect to tenants or prospective tenants, including retaliatory actions or requiring a tenant's waiver of rights as a condition of rental.

Section 34332 requires an authority to include in all leases and rental agreements, express covenants to maintain units at code standards contemporaneous with construction; to post certain notices of policy and regulations within projects; to make available authority records; and

to inspect premises to be rented or leased.

References:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §246 (7th ed. 1960).
- 2) Comment, *The Duty of Maintenance of Multiple Dwellings in California*, 18 STAN. L. REV. 1397 (1966); Schier, *Protecting the Interests of the Indigent Tenant: Two Approaches*, 54 CAL. L. REV. 670 (1966).

Apprenticeship Programs; discrimination

Labor Code §3084.5 (new).

AB 2501; STATS 1970, Ch 1504

Section 3084.5 provides that the State Division of Apprenticeship Standards may obtain injunctive relief against any person who willfully violates any of the laws, regulations, or orders governing applicants for apprenticeship or apprentices registered under the Labor Code Chapter. Presently, persons who willfully discriminate in the recruitment of apprentices based on race, creed, color or nation origin are guilty of a misdemeanor (*Section 3095*). Under Section 3096 the Division is required to investigate all complaints of discrimination, hold hearings regarding the complaints and advise the State Fair Employment Practices Commission.

Reference:

- 1) Kovarsky, *The Negro and Fair Employment*, 56 Ky. L.J. 757 (1968).