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# Public Entities, Officers, & Employees

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# Public Entities, Officers, & Employees

## Public Entities, Officers and Employees; insurance for public agencies

Government Code §§990, 11007.4 (amended).  
AB 3333 (Moorhead); STATS 1971, Ch 140

Sections 990 and 11007.4 of the Government Code contain provisions granting local and state agencies the authority to insure against certain liabilities. This amends §990 and §11007.4 to permit such agencies to insure themselves against all or any part of any tort of inverse condemnation liability. Prior to this amendment these sections permitted such agencies to insure against liability for any *injury*.

### COMMENT

Prior to this amendment, liability insurance permitted under §990 and §11007.4 was limited by the definition given the word *injury* in §810.8 and §11007.4, respectively. Both these sections defined injury as death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings or estate, of such a nature that it would be actionable if inflicted by a private person. Hence liability insurance was permitted to protect against an injury that would be privately actionable as a tort.

It was demonstrated that certain liabilities arising from inverse condemnation proceedings would not be actionable as private tort actions and therefore, agencies could not insure against such liabilities under the authority of §§ 990 and 11007.4 [Albers v. Los Angeles County, 62 CAL. 2d 250 (1965); Van Alstyne, *Inverse Condemnation: Unintended Physical Damage*, 20 HASTINGS L. J. 431, 494 n. 288 (1969)]. The effect of this chapter appears to be to permit agencies to insure against such liabilities arising from inverse condemnation.

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#### See Generally:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §§44D, 60A (Supp. 1969).
- 2) REVIEW OF SELECTED 1967 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 119.
- 3) Van Alstyne, *California Inverse Condemnation Law*, CALIF. L. REV'N COMM'N 226, n.288 (June 1971).

**Public Entities, Officers and Employees; Public Housing Authority**

Government Code §1091.5 (amended); Health and Safety Code §§33110, 34276, 34281 (amended).

AB 121 (B. Greene); STATS 1971, Ch 1054

*Permits a tenant to serve as a commissioner of a public housing authority, and to serve as a member of a community redevelopment agency; provides that a tenant who serves as a commissioner is not deemed to be interested in contracts of the housing authority.*

Section 1091.5 of the Government Code, relating to interests for which an officer or employee shall not be deemed to be interested in a contract, is amended to include the interest of a tenant in a public housing authority, (Health and Safety Code §34200 *et seq.*), in which the tenant serves as a member of the board of commissioners.

Health and Safety Code §33110 is amended to provide that tenants of a public housing authority, as well as resident electors of the community, may be appointed as members of a redevelopment agency. Prior to this amendment, the members were to be appointed only from the resident electors of the community.

Section 34276 of the Health and Safety Code is amended to provide that action may be taken by the authority upon the vote of a majority of the commissioners *empowered to vote*, rather than by a majority of the commissioners.

Health and Safety Code §34281, as amended, provides that nothing contained in this section, which prohibits commissioners or employees from having a direct or indirect interest in certain specified housing project contracts, shall be construed as precluding a tenant of an authority from serving as a commissioner of that authority, provided that the fact of such tenancy is disclosed to the authority in writing and entered upon its minutes immediately upon his assuming office; nor shall any provision in the code or elsewhere be construed as in any manner inhibiting the right of such tenant commissioner to exercise the full powers vested in his office.

**Public Entities, Officers and Employees; Administrative hearings**

Government Code §11517 (amended).

SB 1111 (Bradley); STATS 1971, Ch 653

Section 11517(c), as amended, now provides that if a proposed de-

cision of a hearing officer (Government Code §§11370 *et seq.*) is not adopted by an agency pursuant to §11517(b), the agency itself may decide the case, or may refer the case to the same hearing officer to take additional evidence.

Prior to amendment, §11517 provided that an agency could decide the case itself, or refer the case to the same or *another* hearing officer to take additional evidence.

### **COMMENT**

This amendment prevents an agency from resubmitting a case to another hearing officer if it does not agree with the officer's findings.

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**See Generally:**

- 1) CONTINUING EDUCATION OF THE BAR, *California Administrative Agency Practice* §§4.3, 4.4, 4.19 (1970).
- 2) CONTINUING EDUCATION OF THE BAR, *California Administrative Mandamus* §5.37 (1966).

### **Public Entities, Officers and Employees; off-duty employment, conflict of interest**

Government Code §§1125, 1126, 1127 (new).  
SB 220 (Cologne); STATS 1971, Ch 633

Section 1125 of the Government Code defines "local agency" as a county, city, city and county, political subdivision, district, or municipal corporation.

Section 1126 prohibits any officer or employee of a local agency from employment or activity for compensation which is inconsistent with or inimical to his duties to the local agency and the public. Such officer or employee is prohibited from performing any work for compensation outside his agency employment where any part of such efforts will be subject to approval by any other officer, employee, or board of the employing body, unless otherwise approved as provided *infra*.

The appointing power for each office or position of employment in a local agency may determine, subject to approval by the local agency, those outside activities which are inconsistent with the duties of the office or position. Outside employment may be prohibited for any of the following reasons:

- 1) It involves the use of local agency time, facilities, equipment, or supplies for private gain or advantage; or the use of badge, uniform, prestige, or influence of the agency office or employment.
- 2) It involves receipt or acceptance of consideration by an em-

ployee or officer for the performance of an act which would be expected to be rendered by such person in his normal employment by the local agency.

3) It involves the performance of an act which may later be subject to control, inspection, audit, review, or enforcement by another officer or employee of the local agency for which he is employed.

4) It involves such time demands as would render the performance of duties for the local agency less efficient.

Section 1126 further provides that a local agency may adopt rules governing the application of this section, including:

1) Notice to employees of the determination of prohibited activities;

2) Disciplinary action to be taken against employees for engaging in prohibited activities;

3) Appeal by employees from such determination and from its application to an employee.

Section 1127 states that it is not the intent of §1126 to prevent off duty employment of officers and employees of a local agency, so long as the persons to be employed have the approval of their agency supervisor and are certified as qualified (permitted type of employment contemplated in view of their position with the local agency) by the appropriate agency.

### **Public Entities, Officers and Employees; government contracts—progress payments**

Government Code §§14394, 14402 (amended); §14402.1 (new).  
AB 834 (Townsend); STATS 1971, Ch 1286

*Designates the percentage a sub-contractor shall be paid as a progress payment and provides the penalty for failure of a contractor to make such progress payment.*

Section 14394 of the Government Code specifies the alternatives of the Director of Public Works if a contractor fails to supply adequate working force, materials, or to otherwise comply with the terms of his contract. Chapter 1286 amends this section to include failure of a contractor to comply with the provisions of §14402.1 (*infra*).

Section 14402 of the Government Code designates the percentage that a subcontractor shall be paid on a contract as a progress payment. Chapter 1286 amends §14402 to provide that progress payments shall not be made in excess of 95%, rather than 90% as previously pro-

vided, of the percentage of actual work completed. Section 14402 is further amended to provide that the Department of Public Works shall withhold not less than 5%, rather than 10%, of the contract price until the final completion and acceptance of the project.

Chapter 1286 deletes from §14402 the provision that at any time after 50% of the work has been completed, if the department finds that satisfactory progress is being made, the department may make any of the remaining progress payments in full or actual work completed, or it may withhold any amount up to 10% thereof as it may find appropriate based on the contractors' progress.

Chapter 1286 adds §14402.1 to the Government Code to provide that a contractor shall pay to his subcontractor, promptly upon receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by his subcontractors, to the extent of each subcontractor's interest therein. Such payments are to be based on estimates made pursuant to §14402 (*supra*). Any diversion by the contractor of payments received for prosecution of a contract, or failure to reasonably account for the application or use of such payments, constitutes ground for actions prescribed in §14394, in addition to disciplinary action by the Contractors' State License Board. The subcontractor is required to notify the Board and the department in writing of any payment less than the amount of percentage approved for the class or item of work as set forth in §14402 (*supra*).

### **Public Entities, Officers and Employees; amendment of county leases**

Government Code §25536.5 (new).  
AB 699 (Beverly); STATS 1971, Ch 479

Under the provisions of §25536.5 of the Government Code, a county board of supervisors, by four-fifths vote, may enter into an agreement with a lessee or concessionaire to amend any existing lease, sublease, concession, or managerial contract relating to improved property entered into pursuant to §25536 (use as airport, recreation or amusement facility or industrial or commercial development not inconsistent with such facility). Amendments authorized are those which permit the permanent improvement or alteration of the "county-owned, -leased, or -managed property" at the expense of the lessee or concessionaire, and which permit a credit on rentals or other reimbursements pursuant to the lease or contract during the remainder of the term of the obligation.

**Public Entities, Officers and Employees; destruction of records**

Government Code §§26205.1, 71007 (new); 72052.5 (repealed).  
SB 313 (Burgener); STATS 1971, Ch 89

*Provides for the destruction of certain county records, justice court records, and municipal court records.*

Section 26205.1 of the Government Code permits county officers having custody of nonjudicial public records, documents, instruments, books and papers to destroy them if the following conditions are satisfied:

a) County board of supervisors has passed a resolution authorizing the destruction of records, documents, instruments, books, and papers pursuant to this section.

b) Reproductions (in any of several alternative forms) of such records are made and maintained for public use. If such records are prepared or received other than pursuant to a state statute or county charter, or are records which are not expressly required by law to be filed and preserved, reproductions need not be made or maintained as a prerequisite to their destruction.

Section 26205.1 also empowers the county board of supervisors to impose further conditions to be satisfied before destruction may occur.

Section 71007 permits the clerk of a justice court, upon order from the judge of that court, or the clerk of a municipal court, upon the order of the sole or presiding judge of that court, to destroy justice and municipal court records, respectively, if proper reproductions are made, filed and secured as prescribed in this section. Before such reproduction, and subsequent destruction of the original records, may be authorized by the judge, the following time periods must have elapsed:

a) In civil proceedings, 10 years from the date of commencement of action or proceeding.

b) In criminal proceedings, 5 years from the date of final determination of guilt or innocence or from the date of forfeiture of bail in cases in which no other proceedings follow such forfeiture.

Once proper reproductions are made, the original records may be destroyed and the reproductions are deemed as having the validity of originals.

Section 71007 is made effective notwithstanding the provisions of §§68085 and 72052 of the Government Code and §1428b of the Penal

Code. These sections permit the destruction of records in municipal and justice courts after the passage of certain time periods without requiring a reproduction. These sections do not permit the destruction of minutes, minute book entries, dockets, or judgment dockets.

Section 72052.5 is repealed and its provisions for the reproduction of permanent municipal court records are incorporated into §71007 (*supra*).

#### *COMMENT*

Section 71007 of the Government Code appears to address itself to the problem of storage of court records and permits such records to be reproduced and stored in their reproduced form after the passage of certain time periods. Sections 68085 and 72072 of the Government Code and §1428b of the Penal Code relate to the destruction of justice and municipal court records which are not permanent. They authorize the destruction of all records from municipal and justice courts which are not minutes, minute book entries, dockets, or judgment dockets after the passage of certain prescribed time periods (these time periods differ in part from those prescribed in §71007). Presumably such destruction could include destruction of nonpermanent records which had been previously reproduced under the provisions of §71007.

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**See Generally:**

- 1) CAL. GOV'T CODE §§26202, 26205, 68085, 72052; CAL. PEN. CODE §1428b.
- 2) 46 OPS. ATT'Y GEN. 124 (1965).

#### **Public Entities, Officers and Employees; county counsel**

Government Code §§27647, 68111 (new).

SB 670 (Song); STATS 1971, Ch 841

Section 27647 is added to the Government Code to provide that the county counsel may, upon request by the superior court of the county of which he is county counsel, or by any municipal court or justice court in such county, or by any judge thereof, represent any such court or judge in all matters and questions of law pertaining to any such judge's duties, including any representation authorized by §68111 and representation in all civil actions and proceedings in which, with respect to the court's or judge's official capacity, such court or judge is concerned or is a party. However, such duties are not to conflict or interfere with the other duties of the county counsel.

Section 27647 does not apply to criminal proceedings in which a judge is a defendant, grand jury proceedings in which a judge is under

investigation, proceedings before the Commission on Judicial Qualifications, or any civil action or proceeding arising out of facts under which the judge was convicted of a criminal offense in a criminal proceeding.

Section 68111 is added to the Government Code to provide that a judge is entitled to be represented by counsel of his own choice whenever he is a witness in his official capacity as judge in any action or proceeding.

**Public Entities, Officers and Employees; compensation for victims of crimes**

Government Code §§29631-29636 (new).

AB 581 (Russell); STATS 1971, Ch. 1627

Chapter 1627 grants authority to the legislative body of a city or county to establish a program for the reimbursement of innocent needy residents for property damage resulting from either actions of police officers in the detection of crime, or the apprehension or arrest of persons, or actions of persons resisting or avoiding arrest. When such payments are made by the city or county, it is subrogated to the rights of the private citizen to the extent of the amount paid against the person causing the damage.

**Public Entities, Officers and Employees; annexation**

Government Code §35002.1 (new).

AB 922 (Knox); STATS 1971, Ch. 487

Section 35002.1 of the Government Code provides that territory in an annexation proposal, approved by a Local Agency Formation Commission pursuant to §54797 of the Government Code, will be deemed a single area for purposes of determining the manner in which annexation proceedings will be initiated and conducted.

**Public Entities, Officers and Employees; annexation of non-contiguous territory**

Government Code §35201.6 (new).

AB 380 (Dunlap); STATS 1971, Ch 196

Chapter 196 authorizes a city to annex parcels of non-contiguous territory not exceeding 400 acres in any one parcel under the following conditions: when such territory is dedicated to park purposes; is located

totally within the same county as the annexing city; is not more than five miles from such city; is owned by the city; was purchased by the city with the aid of federal contributions under the Open Space Act; and when annexed to the city, will not be restricted solely to use by residents of the annexing city.

Prior to enactment of this chapter, annexation of non-contiguous territory by a city was limited to parcels not exceeding 100 acres in area, located within the same county, and to be used for municipal purposes, as provided by §35201.5 of the Government Code.

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**See Generally:**

- 1) REVIEW OF SELECTED 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 140.
- 2) Gorlick, *Control of Urban Sprawl, California Style*, 2 URBAN L. 95 (1970).

**Public Entities, Officers and Employees; transfer of territory**

Government Code §§35271.7, 54797.2 (new); 54797.2, 54797.3 (amended).

AB 2072 (Porter); STATS 1971, Ch 483

The transfer of territory from one city to another contiguous city need not include a resolution of consent from the legislative body of either city where:

- (1) The territory is a single block
- (2) The territory is zoned for single family residential use; and
- (3) The boundary line between the two cities runs through each of the residences located upon the territory to be excluded (Government Code §35271.5).

Section 35271.7 is added to the Government Code increasing the types of property capable of being transferred without a resolution of consent to include property owned by a single landowner if all the following conditions are met:

(a) The territory to be transferred is separated from the city in which it is situated by railroad tracks and railroad right-of-way on one side, and by a freeway and state right-of-way on another side.

(b) There is no means of public ingress to or egress from the territory to the city in which the territory is situated.

(c) The only means of public ingress to or egress from the territory is through the city to which the territory is proposed to be transferred.

(d) The city in which the territory is situated cannot provide po-

lice and fire protection with its personnel and equipment without using the streets or the city to which the territory is proposed to be transferred. [*This section becomes inoperative on January 1, 1974*]

Section 54797.2 has been renumbered §54797.3 and §54797.3 renumbered §54797.4. Chapter 483 adds a new §54797.2 to the Government Code which permits the transfer of territory by detachment from one city and attachment to a contiguous city without a Resolution of Consent if the conditions of § 35271.7 (*supra*) are met. [*Section 54797.2 becomes inoperative on January 1, 1974*]

**Public Entities, Officers and Employees; discrimination in planning and zoning**

Government Code §65008 (new).

AB 2946 (Brathwaite); STATS 1971, Ch 1517

Section 65008 is added to the Government Code to provide that any action pursuant to the provisions of the Planning and Zoning Law (Sections 65000 *et seq.*), by any city or county in this state which denies to any individual or group of individuals the enjoyment of residence, land ownership, tenancy or any other land use in this state because of religious or ethnic reasons is null and void. This section shall also apply to a chartered city.

Section 65008 further provides that no city or county shall, in the enactment or administration of ordinances pursuant to the Planning and Zoning Law prohibit or discriminate against any residential development or project because of the method of financing; race, sex, color, religion, national origin, ancestry, or age of the intended occupants of such development or project.

Nor shall any city or county treat federally subsidized, assisted, or insured housing in any manner differently from conventional housing except pursuant to an affirmative plan to encourage such housing, which plan has been approved by the Director of the Department of Housing and Community Development.

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**See Generally:**

- 1) James v. Valtierra, 402 U.S. 137 (1971).

**Public Entities, Officers and Employees; narcotics offenses for teachers**

Health & Safety Code §11850.1 (amended).

AB 341 (Russell); STATS 1971, Ch 565

*Requires law enforcement agencies to notify authorities of pri-*

*vate school when a teacher of such school is arrested for certain narcotic offenses.*

Health and Safety Code §11850.1, as amended, provides that a sheriff or chief of police, upon the arrest of any school employee for violation of §§11850, 11910-11919 of the Health and Safety Code (relating to narcotic offenses), shall do one of the following:

(1) Notify the superintendent of schools of the school district and county employing such person and the State Department of Education if the employee is a teacher in any of the public schools.

(2) Notify the superintendent of schools and the governing board of the school district employing such person, if the employee is a non-teacher in any of the public schools of this state.

(3) If the school employee is a teacher in any private school of this state, notify the private school authority employing such teacher.

Prior to the enactment of Chapter 565, notification of school authorities of the arrest of *private* school teachers for certain narcotic offenses was not required under Health and Safety Code §11850.1.

#### **COMMENT**

Chapter 565 does not require notification of school authorities for the arrest of nonteaching employees in private schools charged with certain narcotic offenses.

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See Generally:

- 1) CAL. HEALTH & SAFETY CODE §§11850.1, 11910-11915.

#### **Public Entities, Officers and Employees; courts**

Government Code §§68082, 68083 (amended).  
AB 523 (McAlister); STATS 1971, Ch 1056

Section 68082 of the Government Code is amended to prohibit, during his continuance in office, a court commissioner as well as a judge of a court of record, or county clerk, from practicing law in any court of this state or acting as an attorney, agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States.

Section 68082 is further amended to define the practice of law as "being in partnership or sharing fees, commissions, or expenses in the practice of law with any person acting as an attorney in this state."

Prior language of §68082 referring to a judge of a justice court is deleted.

Section 68083 of the Government Code is amended to make the provisions of this section applicable to a judge of a justice court and to delete reference to a judge, other elective judicial officer, or court commissioner. Section 68083 now provides that a judge of a justice court shall not practice law before any justice court in the county in which he resides. The "practice of law" is defined in identical language as that found in §68082 (discussed *supra*).

Under the provisions of §68083, as amended, a judge of a justice court may, however, have as a partner, and may share fees, commissions, or expenses with, any person acting as attorney in any court before which such judge may practice law.

#### *COMMENT*

Under Constitutional prohibition, judges of courts of record may not practice law (Const. art. VI, §17). In order to maintain justice court judges, they are permitted to practice in any court except any justice court within their county (justice courts are not courts of record).

One of the apparent purposes of Chapter 1056 was to close a loophole created by the former language "have as a partner." Evidently a limited prohibition against simple partnerships did not reach equally conflicting interests which arise in profit-sharing arrangements.