

Requirements for Filing Claims Against Governmental Units in California

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THE PAST twenty-five years have produced a growing body of law, both statutory and judicial, covering the tort liability of governmental units in California. The old doctrine of governmental immunity from suit has been curtailed in two ways. (1) In some instances the government has consented to be sued for injuries caused by governmental functions. (2) The government has been held subject to suit regardless of consent in cases arising out of proprietary functions.

This extension of tort liability has made necessary certain procedural requirements designed not only to protect the public treasury from fraudulent or stale claims but also to enable public officials to deal intelligently with legitimate claims. Probably the most important step in this procedure is a requirement that a tort claim be filed promptly with the proper officials as a condition precedent to suit on the claim. The requirement is found in the so-called "claims statutes."

This article is primarily concerned with the application of the various claims statutes to different governmental units. Although there is no general claims statute covering all claims against governmental units, any one statute may cover both state subdivisions and municipalities in a given situation. Therefore, the decisions interpreting these statutes must be examined with reference to a particular governmental unit (state, city, county, etc.) carrying on a certain sort of activity (governmental or proprietary). These points will be discussed first with reference to the state and its subdivisions, next with reference to cities.

THE STATE AND ITS SUBDIVISIONS

The State

According to the doctrine of "sovereign" immunity, the state cannot be sued without its consent. Section 6 of Article XX of the California Constitution provides that "suits may be brought against the State in such manner and in such courts as shall be *directed by law*."¹ This in itself is not a consent to be sued. To authorize suit a statutory consent is necessary.

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¹ Emphasis added.

In 1893 a "consent statute" was enacted.² It provided for suits against the state based on contract or negligence. As amended in 1929 and 1945, the statute now appears in Government Code Sections 16041 *et seq.*³ It requires that claims be presented to the State Board of Control for approval or rejection before suit can be brought. The recent decision in *People v. Superior Court*⁴ holds that the statute applies to a suit brought against the state for its negligence in carrying on a business or proprietary activity (in this instance, the State Belt Railroad in San Francisco). The case does not hold that the consent statute applies to all claims against the state based on negligence. On the contrary, the opinion points out that the statute has never been interpreted as authorizing tort suits based upon governmental activities of the state. After passage of the statute in 1893, it had been decided that the result was merely to give an additional remedy to enforce such liability on the part of the state as already existed.⁵ Since the state was not liable for its negligence occurring in governmental activities, the consent statute did not apply to such cases, and no suit could be brought. *People v. Superior Court* strengthens that line of authority. There is one situation, however, in which the state is liable for consequences of either governmental or proprietary activities. In the case of state operation of motor vehicles, liability is established by Vehicle Code Section 400.⁶

² Cal. Stats. 1893, p. 59.

³ §§ 16041 through 16046. Section 16041 states: "Any person who has a claim against the State (1) on express contract, (2) for negligence, or (3) for the taking or damaging of private property for public use within the meaning of section 14 of Article I of the Constitution, shall present the claim to the board (of Control) in accordance with Section 16021. If the claim is rejected or disallowed by the board, the claimant may bring an action against the State on the claim and prosecute it to final judgment, subject to the conditions prescribed by this chapter."

⁴ 29 Cal. 2d 754, 178 P. 2d 1 (1947).

⁵ *Denning v. State*, 123 Cal. 316, 55 Pac. 1000 (1899); *Walker v. Department of Public Works*, 108 Cal. App. 508, 291 Pac. 907 (1930).

⁶ CALIF. VEH. CODE § 400: "The State, and every county, city and county, municipal corporation, the State Compensation Insurance Fund, irrigation district, school district, district established by law and political subdivision of the State 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 any said 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; and such person may sue the State, county, city and county, municipal corporation, the State Compensation Insurance Fund, irrigation district, school district, district established by law and political subdivision of the State, as the case may be, in any court of competent jurisdiction in this State in the manner directed by law."

The law as to suits against the *state itself* may be summarized as follows:

1. Where the state is carrying on a business or proprietary activity it is liable for the negligent acts of its employees. Government Code Sections 16041 *et seq.* apply, and a verified claim must be filed with the State Board of Control. The filing must be within two years after the claim first arose. If the claim is rejected, suit must be brought within six months after rejection.⁷ Minors, incompetents and other persons under disability may file claims within two years after the disability ceases.⁸

2. Where the state is carrying on a governmental activity it is not liable for the torts of its servants unless liability is created by statute. The state consent statute does not create such liability.

3. The Vehicle Code Section 400 does establish liability in certain cases arising out of the operation of motor vehicles by state employees whether in connection with governmental or proprietary activity. Suits may be brought in "the manner directed by law."⁹ The manner directed by law is found in the consent statute. A verified claim must be filed with the State Board of Control within one year after the claim arises. If the claim is rejected, suit must be brought within the time limitations of Government Code Section 16043.¹⁰

Subdivisions of the State

The same general principles of tort liability apply to the state's subdivisions, for such units are considered agents of the state for carrying on state functions.¹¹ Therefore, these subdivisions are liable in tort while engaged in proprietary functions. They are not liable while carrying on governmental functions unless a statute establishes that liability. Once liability is established, the proper procedure for enforcing it must be followed. If a claims statute exists, a claim must be filed.

⁷ CALIF. GOVT. CODE § 16044.

⁸ *Id.*, § 16046.

⁹ *Supra* note 6.

¹⁰ CALIF. GOVT. CODE § 16043: "A claim arising under Section 400 of the Vehicle Code shall be presented to the board within one year after the claim first arose or accrued. An action on such a claim shall be brought either within the time prescribed by the Code of Civil Procedure within which such an action may be brought or within six months after the claim is rejected or disallowed in whole or in part."

¹¹ *Yolo v. Modesto Irrigation District*, 216 Cal. 274, 13 P.2d 908 (1932); *Muses v. Housing Authority*, 83 Cal. App. 2d 489, 189 P.2d 305 (1948).

1. *Counties*

For the most part a county is not engaged in proprietary activity. If such activity is carried on, the general county claims statute must be complied with, as set out in Government Code Sections 29700 *et seq.*¹² A verified claim containing the prescribed information must be filed with the Board of Supervisors within one year after accrual of the claim.¹³ A dissatisfied claimant must sue within six months after final action by the Board.

In the field of governmental activities, the general claims statute of Government Code Sections 29700 *et seq.* has no application unless: (a) a statute creates county liability for negligence in a governmental function,¹⁴ and (b) the statute creating that liability does not itself set up a claims procedure.¹⁵ Actions under Vehicle Code Section 400 are illustrative. Section 400 establishes county liability, but sets up no claims procedure. Therefore, compliance with the claims procedure of Government Code Sections 29700 *et seq.* is a condition precedent to bringing suit under the section.¹⁶

Outside of Vehicle Code Section 400, the majority of tort actions against a county are based upon the Public Liability Act of 1923.¹⁷ Claims based on this act must meet the procedural requirements set up in Act 5149, now found in Government Code Sections 53052 and 53053.¹⁸ When suit is brought under the Public Liability Act because of an injury resulting from the dangerous or defective condition of county property, Act 5149 then requires the filing of a verified claim with the county Board of Supervisors within ninety days after the

¹² §§ 29700 through 29749.

¹³ CALIF. GOVT. CODE § 29702.

¹⁴ *Johnson v. County of Fresno*, 64 Cal. App. 2d 576, 149 P. 2d 38 (1944).

¹⁵ *Dillard v. County of Kern*, 23 Cal. 2d 271, 144 P. 2d 365 (1943).

¹⁶ *Ibid.*; *Artukovich v. Astendorf*, 21 Cal. 2d 329, 131 P. 2d 831 (1942).

¹⁷ Former Act 5169, Deering's General Laws. Re-enacted in 1949 in CALIF. GOVT. CODE § 53051: "A local agency 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."

¹⁸ Former Act 5149, § 1, Deering's General Laws, re-enacted in 1949 in CALIF. GOVT. CODE §§ 53052 and 53053. Section 53052 reads: "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." Section 53053 requires that the claim state the extent of injury, date and place of accident, and claimant's name and address.

accident.¹⁹ If no claim has been filed, no cause of action can be stated.

There remains the question of the application of Government Code Section 1981²⁰ to suits against a county. Where suit is brought against a county employee or officer in an effort to hold him personally liable for injury resulting from the dangerous or defective condition of public property²¹ it is clear that Section 1981 requires the filing of a claim within ninety days after the accident. But where suit is brought against the county itself (or other governmental unit), until recently there has been some confusion as to the applicability of the procedural requirements of Section 1981. That confusion has now been resolved.

Section 1981 (formerly Act 5150) is found in Chapter VI of the Government Code. This chapter is entitled "Liability of Officers and Employees," substantially the same title as that of the predecessor statute, Act 5150. The cases construing Act 5150 clearly state that it did not cover all claims and had no application to claims against the municipality itself. Instead it was held that: (a) Act 5150 applied only to negligence arising from defective or dangerous conditions and not to general negligence,²² and (b) since the title of Act 5150 related only to the liability of "Public Officers," it did not apply to the liability of counties or municipalities.²³

Act 5150 was amended when it was incorporated in Government Code Section 1981 so as to apply to claims based on the general negligence of employees, as well as to claims based on their negligence connected with defective or dangerous conditions of public property.²⁴ A recent decision has so interpreted the section, and in addition

¹⁹ *Veterans' Welfare Bd. v. City of Oakland*, 74 Cal. App. 2d 818, 169 P. 2d 1000 (1946).

²⁰ CALIF. GOVT. CODE § 1981: "Whenever it is claimed that any person has been injured or any property damaged as 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 the case of a State officer the claim shall be filed with the officer and the Governor."

²¹ CALIF. GOVT. CODE § 1953.

²² *Dillard v. County of Kern*, *supra* note 15; *Redlands Sch. Dist. v. Superior Court*, 20 Cal. 2d 348, 125 P. 2d 490 (1942).

²³ *Dillard v. County of Kern*, *supra* note 15; *Redlands School District v. Superior Court*, *supra* note 22; *Jackson v. Patterson*, 42 Cal. App. 2d 255, 108 P. 2d 682 (1940); *Jackson v. City of Santa Monica*, 13 Cal. App. 2d 376, 57 P. 2d 226 (1936).

²⁴ Cal. Stats. 1943, pp. 974 and 2126.

pointed out that it does not apply to suits against the municipality itself. It applies only to suits against public employees.

In *Tyree v. City of Los Angeles*²⁵ a suit based upon Vehicle Code Section 400 was filed against the city alone. Plaintiff filed a claim within six months as required by the city charter, but did not comply with the ninety day requirement of Section 1981. The court noted that had the employee been sued along with the city, Section 1981 would apply to such an action against him based on general negligence. But since the employee had not been sued, it was held that Section 1981 had no application whatever to the action against the city itself. *Saldana v. City of Los Angeles*²⁶ is to the same effect. In both cases a petition for hearing was denied by the Supreme Court. There seems little doubt that these cases represent a proper interpretation of Section 1981.

The present state of the law as to claims against counties may then be summarized as follows:

(a) If suit is brought against a county based on an injury stemming from a proprietary activity, the general county claims statute of Government Code Sections 29700 *et seq.* controls. Where the suit is under Vehicle Code Section 400 the same claims statute governs.

(b) If the cause of action is based upon the Public Liability Act of 1923, the ninety day claims provision in Act 5149 controls.

(c) If any other statute authorizes suit against the county, the statute may contain its own claims provision, but if it authorizes suit and makes no provision for filing claims Government Code Sections 29700 *et seq.* are to be followed.

(d) If suit is brought against a county officer or employee based on his negligence, whether he is sued alone or joined as a defendant with the county, the action may not be maintained against that officer or employee unless a claim is filed under Government Code Section 1981. But Section 1981 has no application to suit against the county itself.

2. School Districts

A school district is a political subdivision of the state created for state purposes.²⁷ State law will govern claims procedure in suits against a school district. Since a school district is engaged in carrying

²⁵ 92 Cal. App. 2d 182, 206 P. 2d 912 (1949).

²⁶ 92 Cal. App. 2d 214, 206 P. 2d 866 (1949).

²⁷ *Ridge v. Boulder Creek School Dist.*, 60 Cal. App. 2d 453, 140 P. 2d 990 (1943).

on a governmental function, its liability must first be established by statute. Only then will a claims statute become operative.

The Public Liability Act of 1923 establishes the liability of school districts for injuries resulting from the dangerous or defective condition of school property. As in case of suits against counties, Act 5149 prescribes the claims procedure for actions under the Public Liability Act. Accordingly, a verified claim must be filed within ninety days as a condition precedent to suit. The fact that a city charter sets up a different time limit has no application whatever to a suit against a school district within a city.²⁸

Vehicle Code Section 400 creates liability on the part of the school district, but, as already noted, prescribes no claims procedure. Therefore the general claims statute for school districts found in Education Code Section 1007²⁹ applies. A verified claim must be filed with the clerk of the governing board of the school district within ninety days after the accident.³⁰

Education Code Section 1007 establishes the liability of school districts and a claims procedure as well. But the relation of Section 1007 to the Public Liability Act of 1923 and its accompanying claims statute in Act 5149 has never been satisfactorily explained in the cases. The predecessor statute of Education Code Section 1007 was enacted in 1923 as Political Code Section 1623. Section 1623 provided in part that the school district should be liable for a judgment "against the district on account of any injury to any pupil." No claims statute was included in the section at this time. The Supreme Court held that Section 1623 was a special statute establishing the liability of the district for injuries to pupils; whereas the Public Liability Act of 1923 was a general statute establishing the liability of the district to the public.³¹ It was therefore concluded that where suit was brought by a pupil, compliance with Section 1623 was all that was necessary.

²⁸ *Kelso v. Board of Education*, 42 Cal. App. 2d 415, 109 P. 2d 29 (1941).

²⁹ CALIF. ED. CODE § 1007: "The governing board of any school district is liable as such in the name of the district for any judgment against the district on account of injury to person or property arising because of the negligence of the district, or its officers, or employees in any case where a verified claim for damages has been presented in writing and filed with the secretary or clerk of the school district within ninety (90) days after the accident has occurred. 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."

³⁰ *Oda v. Elk Grove School Dist.*, 61 Cal. App. 2d 551, 143 P. 2d 490 (1943).

³¹ *Ahern v. Livermore Union High School Dist.*, 208 Cal. 770, 284 Pac. 1105 (1930).

In 1929, Political Code Section 1623 was replaced by School Code Section 2.801 with no material changes in phraseology. But in 1931 Section 2.801 was amended to read "on account of injury to person or property" in place of the former language "on account of injury to any pupil." There was still no claims statute prescribed by Section 2.801. In 1937 Section 2.801 was again amended to include the present claims procedure now found in Education Code Section 1007.

As a result there now exist two statutes, each purporting to establish both the liability and the claims procedure for suits against school districts because of injury to "person or property." The Public Liability Act of 1923 however, is limited by its terms to liability resulting from "the dangerous or defective condition of public property." Education Code Section 1007 covers injuries "arising from the negligence of the district, or its officers or employees." It is apparent that the facts of a given case may make it difficult to draw such a distinction.

Two cases decided in the same year are illustrative. In *Hough v. Orleans School District*³² a student alleged negligence on the part of the school district in the maintenance of a flagpole and braces in the school yard. It was held that the Public Liability Act of 1923 was controlling, and that knowledge or constructive notice on the part of the school district was a condition of the district's liability. But in *Ridge v. Boulder Creek School District*,³³ where a pupil was injured while using a power saw with a broken guard, the court assumed that School Code Section 2.801 was controlling without discussing the applicability of the Public Liability Act of 1923 or its claims statute.

Such cases throw doubt on the basis of liability of the school district. Fortunately, the claims procedure in suits against a school district is the same in either case. Act 5149 requires a verified claim to be filed within ninety days where the action is based on the Public Liability Act of 1923. Education Code Section 1007 prescribes the same procedure for actions based on negligence. It follows that the filing of a claim within ninety days is a condition precedent to any suit against a school district. In addition, where a claimant seeks to hold an employee of the school district personally liable, a claim must be filed with that employee in accordance with Government Code Section 1981.

³² 62 Cal. App. 2d 146, 144 P. 2d 383 (1943).

³³ 60 Cal. App. 2d 453, 140 P. 2d 990 (1943).

3. Irrigation Districts, Fire Districts, Etc.

Irrigation, fire, reclamation, drainage and similar districts are governmental agencies performing state functions. As such, they are not liable for the torts of their agents unless made so by statute.³⁴ Vehicle Code Section 400 imposes liability upon these districts in the operation of their motor vehicles.³⁵

There seems to be no general claims statute applicable to fire protection districts except Government Code Sections 29700 *et seq.* which provide a claim procedure where the claim is payable out of "any public fund under the control of the board" (of supervisors) where founded upon "any act or omission . . . of any district or public entity . . ."³⁶ The claim must be filed within one year³⁷ and suit may be brought within six months after final action of the board.³⁸ The application of these sections depends upon whether or not the district's funds are under the control of the Board of Supervisors. In the instances of county or unincorporated area fire districts, the sections seem to apply;³⁹ in case of a metropolitan fire district, probably not.

Trustees of a reclamation district may be sued where they are negligent in carrying on the district business and the district will be liable for any judgment against the trustees.⁴⁰ It is doubtful if the above language of Government Code Section 29700 covers reclamation districts. It seems therefore that there is no claims requirement in suits against reclamation districts.

Irrigation districts are liable under the Irrigation District Liability Law, which requires the filing of a claim with the Secretary of the district Board of Directors and with the district officer involved within ninety days after the injury.⁴¹ This provision is broad enough to cover all claims and to constitute a general claims statute for irrigation districts.

³⁴ *Muses v. Housing Authority*, *supra* note 11 and cases cited therein.

³⁵ *Johnson v. Fontana County F. P. Dist.*, 15 Cal. 2d 380, 101 P. 2d 1092 (1940).

³⁶ CALIF. GOVT. CODE § 29704.

³⁷ *Ibid.*, § 29702.

³⁸ *Ibid.*, § 29715.

³⁹ *Johnson v. Fontana County F. P. Dist.*, *supra* note 35; CALIF. HEALTH & SAFETY CODE §§ 14153 through 14159, 14480.

⁴⁰ *Hilton v. Oliver*, 204 Cal. 535, 269 Pac. 425 (1928); CALIF. POL. CODE §§ 3454½, 3464.

⁴¹ CALIF. WATER CODE §§ 22725 through 22732. Section 22727 specifies the claims procedure.

Finally, the Public Liability Act of 1923 refers to "counties, municipalities, and school districts." Unlike Vehicle Code Section 400, this Act does not mention a "district established by law and political subdivisions of the state . . ." The same is true of Act 5149 and Government Code Section 1981. Accordingly these three statutes have no application to fire, irrigation or reclamation districts.

MUNICIPAL CORPORATIONS

Provisions for filing tort claims against a city or its officer are found in most city charters.⁴² In addition the state has enacted statutes setting up a procedure for certain of these claims. Inasmuch as a city charter ordinarily makes the city government independent of state control in purely municipal affairs, some cities have contended that a city charter should control where both state law and the city charter cover the suit. This contention, however, misconstrues the meaning of "municipal affairs." The law is now clear in California that the tort liability of a city is a matter of state concern and a proper subject of state legislation. The activity may be purely a municipal affair, but tort liability arising from it is not so limited. This is true whether that liability arises from a governmental or proprietary activity. The state may legislate as to either. Since state law is supreme, in state affairs, if a state statute covers the case it will override a city charter.⁴³

In determining the proper claims procedure in an action against a city the first question is, what does the state law provide? If there is a pertinent state statute its provisions must be followed. If no statute covers the situation, the claims procedure of the city controls. If it is found that neither statute nor city charter has set up a claims procedure no claim need be filed.

The Public Liability Act of 1923 establishes the liability of a city for injuries resulting from the defective or dangerous condition of public property used in a governmental activity. In such cases Act 5149 requires that a claim be filed within ninety days after the in-

⁴² *E.g.* Los Angeles City Charter § 376 (1948 ed.) requiring claim to be filed within six months after injury; Charter of the City and County of San Francisco § 87 (1948 ed.) requiring claim to be filed within sixty days after injury. *Cf.* the Oakland city charter in which there is no claim provision with the result that a claim need be filed only if required by state statute.

⁴³ *Kornahrens v. City and County of S. F.*, 87 Cal. App. 2d 196, 196 P. 2d 140 (1948); *Eastlick v. City of Los Angeles*, 29 Cal. 2d 661, 177 P. 2d 558 (1947); *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 123 P. 2d 62 (1942); *Wilkes v. City of San Francisco*, 44 Cal. App. 2d 393, 112 P. 2d 759 (1941).

jury.⁴⁴ 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. If a city is sued on the basis of this common law liability, Act 5149 also requires a claim to be filed, regardless of a charter provision, for Act 5149 is a general claims statute covering all suits based on the defective or dangerous condition of city property.⁴⁵

Similarly where a city employee is sued because of negligence in operating a city vehicle Government Code Section 1981 requires a claim to be filed within ninety days.⁴⁶ Section 1981 (former Act 5150) as now written covers any suit against a city officer or employee individually for his own negligence within the scope of his employment. But for the same reasons set forth in the treatment of claims against counties, Section 1981 has no application where the city alone is sued.⁴⁷

Leaving aside Act 5149 and Government Code Section 1981 there is no general state claims statute applicable to suits against a city and its employees. Vehicle Code Section 400 creates liability on the part of the city, but specifies no claims procedure for suits based upon it. The city charter then will govern the filing of such claims.⁴⁸ Likewise the city charter controls in an action based on nuisance.⁴⁹

The common law gives a right of action against a city for the negligent acts of its servants where the city is performing a proprietary or business activity. Municipal water, gas and electric companies, municipal auditoriums, airports, streets, railways, and housing authorities all come within this category.⁵⁰ As noted above, Act 5149 has a limited application to such suits; otherwise the provisions of the city charter establish the claims procedure to be followed.⁵¹

⁴⁴ *Eastlick v. City of Los Angeles*, *supra* note 43; *Wilkes v. City of San Francisco*, *supra* note 43.

⁴⁵ *Helbach v. City of Long Beach*, *supra* note 43.

⁴⁶ *Huffaker v. Decker*, 77 Cal. App. 2d 383, 175 P. 2d 254 (1946).

⁴⁷ *Tyree v. City of Los Angeles*, 92 Cal. App. 2d 182, 206 P. 2d 912 (1949); *Saldana v. City of Los Angeles*, 92 Cal. App. 2d 214, 206 P. 2d 866 (1949).

⁴⁸ *Raynor v. City of Arcata*, 11 Cal. 2d 113, 77 P. 2d 1054 (1938); *Kornahrens v. City and County of S. F.*, *supra* note 43.

⁴⁹ *Phillips v. City of Pasadena*, 27 Cal. 2d 104, 162 P. 2d 625 (1945).

⁵⁰ *Muses v. Housing Authority*, *supra* note 11.

⁵¹ *Natural Soda Prod. Co. v. City of L. A.*, 23 Cal. 2d 193, 143 P. 2d 12 (1943); *Kornahrens v. City and County of S. F.*, *supra* note 43.

COMPLIANCE WITH A CLAIMS STATUTE

Once it has been established that suits can be brought against a government entity, and that a statute requires filing a claim, a further question sometimes is raised as to the sufficiency of the claim actually filed. This matter can be only briefly discussed here.

The usual claims procedure requires that: (1) a verified claim be filed, (2) with the proper official, (3) within a certain time, and (4) containing the essential information concerning the accident.⁵²

There are two generalizations to be made in regard to the sufficiency of a claim filed; otherwise each claim must be measured against the particular statute or charter provisions. First, the time limit for filing claims is mandatory and usually is strictly enforced. However, the time for filing may be extended in some cases upon a showing of either disability caused by the very tort on which suit is brought or representations made by the governmental unit which led the claimant to disregard the time limit.⁵³ Second, the claims requirement is designed to enable the governmental unit to deal intelligently with a proper claim. Therefore, if the claim is filed in good faith and with no intention to mislead, there need only be "substantial performance" in regard to the details required to be set out in the claim.⁵⁴

CONCLUSIONS

The ability to maintain a suit against a governmental unit is conditioned upon compliance with the appropriate claims procedure, if such a procedure exists. The first inquiry should be addressed to the state statutes, for where a statute applies, it sets up a mandatory requirement to the exclusion of local procedures. Whether or not a certain statute applies to a particular case will, in turn, depend upon the basis of the liability sought to be enforced. Therefore "general rules" are not of much help; a careful analysis of the cause of action in the light of the various statutes which might apply to it is essential.

Once it has been decided that no state statute requires the filing of a claim, the same inquiry must be addressed to the local ordinances

⁵² CALIF. GOVT. CODE §§ 1981, 16043 *et seq.*, 29700 *et seq.*, 53052-3.

⁵³ *Farrell v. County of Placer*, 23 Cal.2d 624, 145 P.2d 570 (1944); *Schulstad v. City and County of S. F.*, 74 Cal. App.2d 105, 168 P.2d 68 (1946); *Johnson v. City of Fresno*, 64 Cal. App.2d 576, 149 P.2d 38 (1944).

⁵⁴ *Perry v. City of San Diego*, 80 Cal. App.2d 166, 181 P.2d 98 (1947); *Dillard v. County of Kern*, *supra* note 15.

and city charter. Most cities have established some sort of claims procedure, and in the absence of statute this procedure must be followed.

Where filing a claim is required either by statute or by charter, there is a penalty for non-compliance. That penalty is a complete defense on the part of the governmental unit to a suit on the claim. If a complaint fails to plead the filing of a claim as required, a demurrer to the complaint will be sustained.

A procedural requirement designed to facilitate the orderly processing of tort claims against governmental units has grown over a period of years into a bramble patch of legislation which, in many cases, completely chokes off the substantive rights of an unwary litigant. There is little justification for such a result.

The common law liability of the state and its subdivisions has been greatly expanded by statute with the apparent aim and policy of compensating citizens for injuries arising out of governmental activities. That policy should be implemented by reasonable procedural requirements designed to protect the public treasury from fraudulent raids or stale claims. There should be an opportunity for settlement of undisputed cases without the necessity of expensive litigation. Public officers should be given notice of claims which should be defended so that a timely investigation may be made. But in order to accomplish these things it is not necessary to force a claimant to run an obstacle course of conflicting procedures. Nor is it necessary to punish him by barring his suit because of an understandable error caused by legislative confusion.

A layman is unlikely to draw the fine distinctions between "proprietary" and "governmental" functions,⁵⁵ much less a determination of whether or not the funds of a local district are "controlled by the county board of supervisors." A lawyer may have trouble with these. Yet the running of claims statutes depends upon just such niceties, and the penalty for error is drastic.

In this age of "uniform acts" the remedy is obvious. Why not a ninety-day claim statute applied to all claims against all governmental units? There seems to be nothing accomplished by a one-year claims statute that a ninety-day period would not fulfill. No good reason appears for demanding a filing to be completed in sixty days rather

⁵⁵ See generally 6 McQUILLIN, *MUNICIPAL CORPORATIONS* §§ 2792-2822 (ed. 1937 with 1947 Suppl.); PROSSER, *TORTS* 1066 (1941).

ninety. A uniform procedure should easily satisfy the underlying purpose of the requirement that claims be filed.

The courts have repeatedly stated that the tort liability of governmental units is a matter of state control. Only the state has power to establish a uniform claims procedure. Until that is done it is inevitable that valid claims of injured citizens will vanish into the underbrush of haphazard legislation which has grown up around the present procedure for filing tort claims.