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## Part VII

# Remedial Legislation: Two Proposals

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## Comment

### ESTOPPEL AGAINST THE GOVERNMENT IN CALIFORNIA

#### INTRODUCTION

The maxim that the government cannot be estopped by the acts of its agents,<sup>1</sup> like the doctrine of sovereign immunity, raises serious problems

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<sup>1</sup> See generally Berger, *Estoppel Against the Government*, 21 U. CHI. L. REV. 680 (1954); Newman, *Should Official Advice Be Reliable?—Proposals as to Estoppel and Related Doctrines in Administrative Law*, 53 COLUM. L. REV. 374 (1953); Comment, *Estoppel Against State*,

as to the status of the State in the general legal order. The theory which concedes to the State a mystical existence apart from and superior to the community of its citizens is an anachronism in a democratic society.<sup>2</sup>

Arguments against subjecting the government to the same rules of law and liabilities as private persons stress the interference with governmental functions which would result. However, the student of comparative law can testify that such apprehensions are unfounded.<sup>3</sup> Furthermore, our political philosophy often prefers impediments upon governmental efficiency over doing injustice to the individual. Thus steps have been taken over a long period of time to bring the law in line with our present needs and ideas. The legislative attack on the sovereign immunity doctrine on the federal level<sup>4</sup> began with the Tucker Act<sup>5</sup> in 1887 and culminated in the Federal Tort Claims Act of 1946.<sup>6</sup>

The availability of the plea of estoppel against the government must be considered as part of the same problem. The need for protection of action in reliance on official advice or other representations has found expression in scattered provisions of federal legislation.<sup>7</sup> However, an attempt to codify a generally applicable rule whereby an estoppel would arise upon reli-

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*County, and City*, 23 WASH. L. REV. 51 (1948); Farrer, *A Prerogative Fallacy—'That the Crown Is Not Bound by Estoppel'*, 49 L.Q. REV. 511 (1933); Manning, *The Application of the Doctrine of Estoppel Against the Government in Federal Tax Cases*, 30 N.C.L. REV. 356 (1952); Maguire and Zimet, *Hobson's Choice and Similar Practices in Federal Taxation*, 48 HARV. L. REV. 1281 (1935). Cases are collected in Annot., 1 A.L.R.2d 338 (1948).

<sup>2</sup> See generally Borchard, *Governmental Responsibility in Tort*, 36 YALE L.J. 1, 757, 1039 (1926-27); Davis, *Sovereign Immunity in Suits Against Officers for Relief Other Than Damages*, 40 CORNELL L.Q. 3 (1954). Cf. LORING, *DIE ZIVILRECHTLICHE INANSPRUCHNAHME DES STAATES NACH DEUTSCEM, ENGLISCHEM UND AMERIKANISCHEM RECHT* (Unpublished Doctor's Thesis, University of Munich, 1952).

<sup>3</sup> As to the availability of estoppel or equivalent doctrines against the government in Germany see reference to case law in 1 FORSTHOFF, *LEHRBUCH DES VERWALTUNGSRECHTS*, 139-41, 176-77 (2d ed. 1951); 1 SOERGEL, *BUERGERLICHES GESETZBUCH*, Annot. A III 5 to § 242 (8th ed. 1952); 1 REICHSGERICHTSRAETE KOMMENTAR ZUM BUERGERLICHEN GESETZBUCH, Annot. 4 to § 242 (10th ed. 1953). As to the rule in England see Farrer, *A Prerogative Fallacy—'That the Crown Is Not Bound by Estoppel'*, 49 L.Q. REV. 511 (1933); *Robertson v. Minister of Pensions*, [1948] 2 All E.R. 767 (K.B.), noted in 22 AUSTR. L.J. 427 (1949). As to the application of estoppel in international law between sovereigns see *Status of Eastern Greenland Case*, P.C.I.J. Ser. A/B, No. 53 (1933).

<sup>4</sup> As to State law see Note, *Administration of Claims Against the Sovereign—A Survey of State Techniques*, 68 HARV. L. REV. 506 (1955); see also Kuchel, *Should California Accept Tort Liability*, 25 CALIF. S.B.J. 146 (1950).

<sup>5</sup> Act of March 3, 1887, c. 359, 24 STAT. 505 (codified in scattered sections of 28 U.S.C.).

<sup>6</sup> 28 U.S.C. §§ 2671-80 (1952). For the development in England see *Petition of Right*, 9 HALSBURY'S LAWS OF ENGLAND 688-98 (2d ed. 1933) and the *Crown Proceedings Act*, 1947, 10 and 11 GEO. 6, c. 44.

<sup>7</sup> Portal-to-Portal Act of 1947 § 10, 61 STAT. 89 (1947), 29 U.S.C. § 259 (1955 Supp.); similar provisions are contained in *Defense Production Act* of 1950 § 707, 64 STAT. 818 (1950), 50 App. U.S.C. § 2157 (1955 Supp.); *Securities Act* of 1933, 48 STAT. 85 (1933), 15 U.S.C. § 77s(a) (1952); *Trust Indenture Act* of 1939, 53 STAT. 1174 (1939), 15 U.S.C. § 77sss(c) (1952); *Securities Exchange Act* of 1934, 48 STAT. 901 (1934), 15 U.S.C. § 78w(a) (1952); *Public Utilities Holding Company Act* of 1935, 49 STAT. 833 (1935), 15 U.S.C. § 79t(d) (1952); *Investment Companies Act* of 1940, 54 STAT. 841 (1940), 15 U.S.C. § 80a-37(c) (1951); *Investment Advisers Act* of 1940, 54 STAT. 855 (1940), 15 U.S.C. § 80b-11(d) (1952).

ance on the official advice of a federal agency died in the Senate Judiciary Committee.<sup>8</sup>

Since the expansion of governmental activities in recent decades has not been restricted to the federal government, the availability of estoppel against state and local governments is a problem of importance. Yet state legislatures, including the Legislature of California, apparently have not found it necessary to seek a statutory solution but have left the matter to be worked out by the courts.<sup>9</sup>

This comment will discuss the case law in California in the various areas where the estoppel problem has most often been met, and will then suggest a possible statutory solution.

#### THE LAW IN CALIFORNIA

##### *Protection against Criminal and Civil Penalties*

The question whether good faith reliance on official advice constitutes a good defense against a criminal prosecution was raised in California in *People v. Ferguson*<sup>10</sup> and answered in the affirmative. The defendant had been indicted for violation of the Corporate Securities Act for issuing securities without a permit. He offered to prove that he had on several occasions sought and obtained the advice of the Commissioner to the effect that the trust interests issued in his venture were not securities. Because of the exclusion of this evidence the conviction was reversed. The district court of appeal said:<sup>11</sup>

It is true that "ignorance of the law excuses no man" although we are not prepared to say that this old maxim stands undefiled by exceptions . . . . The regulation which has not been complied with is *malum prohibitum* and not *malum in se* . . . . If the appellant . . . found himself in honest doubt, . . . went to the fountainhead itself for information and was there advised that such organizations were not under the department's jurisdiction . . . we cannot believe the law so inexorable as to require the brand of felon upon him for following the advice obtained . . . .

The California Supreme Court has never authoritatively spoken on the point. However, there is at least one district court of appeal decision which

<sup>8</sup> S. 1752, 83rd Cong., 1st Sess., introduced by Senator Langer. Cf. Newman, *Should Official Advice Be Reliable?—Proposals as to Estoppel and Related Doctrines in Administrative Law*, 53 COLUM. L. REV. 374 (1953). See also COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, LEGAL SERVICES AND PROCEDURE, A REPORT TO CONGRESS, Recommendation 46, p. 80 (March 1955); COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, TASK FORCE ON LEGAL SERVICES AND PROCEDURE, REPORT, 375 Proposed Administrative Code 208(c) (March 1955).

<sup>9</sup> The Proposed Uniform Securities Act § 413(d), 2d draft, by Professors Louis Loss and Edward M. Cowett contains a provision for protection of reliance on official advice. For California, see CAL. UNEMP. INS. CODE § 987, but cf. § 310 as construed in *La Societe Francaise v. California Employment Comm'n*, 56 Cal. App.2d 534, 133 P.2d 47 (1943). CAL. REV. & TAX CODE §§ 19132, 25781, 25781a contain provisions for binding closing agreements similar to INT. REV. CODE OF 1954, § 3760.

<sup>10</sup> 134 Cal. App. 41, 24 P.2d 965 (1933), noted in 22 CALIF. L. REV. 569 (1934).

<sup>11</sup> *Id.* at 52-53, 24 P.2d at 970.

puts the rule of the *Ferguson* case in doubt. In *Western Surgical Supply Co. v. Affleck*<sup>12</sup> the court rejected the notion that penal laws could be "waived by estoppel."<sup>13</sup> The *Affleck* court did not mention *Ferguson*, but relied on *Caminetti v. State Mut. Life Ins. Co.*,<sup>14</sup> which merely held that the fact that the Insurance Commissioner had not acted earlier on an illegal method of a business did not estop him from taking such action now. Although it is not clear whether the facts in *Affleck* would have warranted a finding of estoppel, its rationale is inconsistent with the rule of the *Ferguson* case; and it would seem that the *Ferguson* rule is by far the preferable rule if basic notions of fairness are to govern the relationship between government and citizen.

As far as penalties and interest in tax cases are concerned, it was held in the recent case of *Market Street Ry. v. California Bd. of Equalization*<sup>15</sup> that the State could be estopped from imposing penalties and interest on a taxpayer who had failed to pay a tax in reliance on an administrative tax ruling. The case involved a sales tax deficiency assessment. In earlier cases involving unemployment insurance payments, the California courts allowed estoppel, raised by reliance on an administrative ruling, not only as to interest, but also as to the employee contributions which had not been withheld by the employer in reliance on the administrative advice.<sup>16</sup>

In the *Market Street Ry.* case the taxpayer also argued estoppel as to the tax itself. He sought to draw an analogy between employee contributions to unemployment insurance and the sales tax, which the retailer may collect from the consumer.<sup>17</sup> The court rejected this argument. The sales tax is imposed on the retailer taxpayer<sup>18</sup> and the law does not obligate him to collect it from the consumer. The employee contributions to unemployment insurance are, however, imposed on the employee,<sup>19</sup> although the employer is under a duty to collect and transmit these amounts and is liable if he fails to do so.<sup>20</sup> Thus as to the tax itself the plea of estoppel was denied, not, it would seem, because the facts showed no estoppel as to

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<sup>12</sup> 110 Cal. App.2d 388, 242 P.2d 929 (1952).

<sup>13</sup> "Petitioner's contention on estoppel amounts to an assertion that state agencies or state officials may waive the penal laws of this state . . . . The penal provisions contained in the Health and Safety Code . . . were enacted by the Legislature, and it is beyond the power of any board or official to waive or consent to a violation of such provisions." *Id.* at 392, 242 P.2d at 932.

<sup>14</sup> 52 Cal. App.2d 321, 126 P.2d 165 (1942).

<sup>15</sup> 137 Cal. App.2d 87, 290 P.2d 20 (1955).

<sup>16</sup> *Garrison v. State of California*, 64 Cal. App.2d 820, 149 P.2d 711 (1944); *La Societe Francaise v. California Employment Comm'n*, 56 Cal. App.2d 534, 133 P.2d 47 (1943). In the latter case, taxpayer sought to invoke CAL. UNEMP. INS. CODE § 987 giving protection for reliance on official advice; but the court thought that section inapplicable because under CAL. UNEMP. INS. CODE § 310, a superseding ruling is retroactive unless expressly stated not to be, which was not the case.

<sup>17</sup> CAL. REV. & TAX. CODE § 6052.

<sup>18</sup> CAL. REV. & TAX. CODE § 6051.

<sup>19</sup> CAL. UNEMP. INS. CODE § 984.

<sup>20</sup> CAL. UNEMP. INS. CODE §§ 986, 987. See *Market Street Ry. v. California Bd. of Equalization*, 137 Cal. App.2d 87, 102-03, 290 P.2d 20, 29-30 (1955).

the tax itself,<sup>21</sup> but rather because of a rule of law under which the state may not be deprived of its revenues by a plea of estoppel.<sup>22</sup> A similar result was reached in a case involving property taxes the payment of which was omitted in reliance on erroneous official advice.<sup>23</sup>

### *Public Contracts*

Contracting by public agencies has been surrounded by numerous statutory restrictions, many of them designed to protect against fraud and collusion, others intended to compel orderly procedure and financing.

The methods of letting public contracts, including the public bidding requirements, are regulated in detail.<sup>24</sup> To these regulations must be added the limitations imposed by law on the general powers of public agencies or their officers.<sup>25</sup> Finally, there are the restrictions imposed by the various "conflict of interest" provisions.<sup>26</sup>

For the purpose of the following discussion it should be kept in mind that the problem of quasi-contractual recovery is different from the question whether one may be estopped to plead the invalidity of a contract. In the former case, the recovery is for unjust enrichment, in the latter the contract itself is enforced.<sup>27</sup> This distinction, however, is usually overlooked by the courts and the terms "estoppel" and "quasi-contract" are often used interchangeably in judicial opinions.<sup>28</sup>

The general rule can be stated simply: Whenever a contract with a public agency is void because it is beyond the scope of the agency's authority, there can be no recovery on the contract or for the value of the benefit conferred. Money paid out by the agency on such contract can be recovered. The agency cannot be estopped to assert the invalidity of the contract. For the purposes of this rule, substantive provisions as to the method of contracting are limitations on the agency's power.

<sup>21</sup> In the *Market Street Ry.* case the trial court found that taxpayer could not have collected the tax over from the buyer in any event, because the price paid by the buyer, the City of San Francisco, was the maximum authorized by charter amendment; quite apparently there was no other potential buyer.

<sup>22</sup> *Market Street Ry. v. California Bd. of Equalization*, 137 Cal. App.2d 87, 100, 103, 290 P.2d 20, 28, 30 (1955). *But see* text at note 66 *infra*.

<sup>23</sup> *Goodwill Industries v. County of Los Angeles*, 117 Cal. App.2d 19, 254 P.2d 877 (1953) (apparently no penalties or interest had been asserted by the taxing authority).

<sup>24</sup> See, e.g., CAL. GOVT. CODE §§ 4100-412, 14250-424, 23006, 25350, 25450-456, 25480-486, 37900-935, 54800-13, 55050-7, 60626.5; CAL. HARB. & NAV. CODE §§ 1990-2056, 4083-4, 5782, 6080, 6574-9, 6862; CAL. WATER CODE §§ 8051-4, 11554-60, 22300-9, 35402, 43300-09, 55350-3; CAL. EDUC. CODE §§ 5047.5, 18051-7.

<sup>25</sup> See, e.g., CAL. EDUC. CODE § 1009; CAL. STS. & HWYS. CODE § 2009.

<sup>26</sup> CAL. EDUC. CODE §§ 1011-6; CAL. GOVT. CODE §§ 1090-7, 24054, 26003, 36525-7; CAL. PEN. CODE §§ 99-100; CAL. HEALTH & SAFETY CODE §§ 5730.35, 32108, 33236-7; CAL. PUB. UT. CODE §§ 12722, 12392; CAL. WATER CODE §§ 8573, 21195-6. As to the complexity of the conflict of interest provisions see Kennedy and Beck, *Interest of Public Officers in Contracts Prohibited by Law*, 28 So. CALIF. L. REV. 335 (1955) and the comment in this issue by Messrs. Peterson, Norman and Reynolds entitled *Conflict of Interest in Public Contracts in California*.

<sup>27</sup> This distinction is therefore reflected in the amount of the recovery, see Beatty, C.J., concurring in *Contra Costa Water Co. v. Breed*, 139 Cal. 432, 447, 73 Pac. 189, 196 (1903).

<sup>28</sup> See 10 McQUILLIN, MUNICIPAL CORPORATIONS, § 29.26 (3rd ed. 1950).

Under this rule, where the public contract was let in violation of a statutory requirement of public bidding, the public agency retains the benefits, owes nothing, and can recover whatever it has paid out on the contract.<sup>29</sup> This is so because "the mode of contracting as prescribed . . . [by law] is the measure of the power to contract . . ."<sup>30</sup> The same result follows where the contracting agency or officers overstep the general scope of their powers;<sup>31</sup> where the contract was not concluded or adopted by the agency in the form required by law;<sup>32</sup> or where the contract violates any of the provisions protecting against "conflicts of interest."<sup>33</sup>

On the other hand, recovery is allowed where there were merely minor defects in the proceedings taken by the contracting agency.<sup>34</sup> But the test is strict and the standards are very high.

Because of the harshness of the rule denying any recovery for benefits conferred under a void contract, a line of cases developed which was clearly inconsistent with this strict rule.<sup>35</sup> However, the views of Chief Justice Beatty, who had waged a running battle against the rule allowing recovery,<sup>36</sup> finally prevailed and most of the inconsistent cases were overruled or disapproved in *Miller v. McKinnon*.<sup>37</sup>

<sup>29</sup> *Miller v. McKinnon*, 20 Cal.2d 83, 124 P.2d 34 (1942); *Reams v. Cooley*, 171 Cal. 150, 152 Pac. 293 (1915).

<sup>30</sup> See *Los Angeles Dredging Co. v. Long Beach*, 210 Cal. 348, 353, 291 Pac. 839, 842 (1930).

<sup>31</sup> E.g., *Aron v. Leavy*, 219 Cal. 456, 27 P.2d 377 (1933) (alien employees of city hired in violation of charter cannot be paid for their services); *Sutro v. Pettit*, 74 Cal. 332, 16 Pac. 7 (1887) (bona fide holder of negotiable county bonds issued for value, but in excess of amount authorized by statute to be issued, cannot recover); *Bear River Sand & Gravel Corp. v. County of Placer*, 118 Cal. App.2d 684, 258 P.2d 543 (1953) (contract of preparation of gravel not within powers conferred on road commissioner by CAL. STS. & HWYS. CODE § 2009); *Los Angeles Warehouse Co. v. County of Los Angeles*, 139 Cal. App. 368, 33 P.2d 1058 (1934) (statute allows storage of impounded vehicles when necessary for owner's criminal prosecution. No recovery for storage beyond time when criminal proceedings terminated against owner of each vehicle); *Hanhart v. County of Madera*, 76 Cal. App. 290, 245 Pac. 444 (1926) (no recovery by newspaper for 4th printing of delinquent tax list since statute requires only 3 publications); 22 OPS. CAL. ATT'Y GEN. 23 (1953) (school district not liable for work done where contract calls for excess of expenditures over current revenues).

<sup>32</sup> *Mullan v. State*, 114 Cal. 578, 46 Pac. 670 (1896); *Zottman v. San Francisco*, 20 Cal. 96 (1862). See also *County of San Diego v. California Water & Tel. Co.*, 30 Cal.2d 817, 186 P.2d 124 (1947) where county contracted in effect to abandon county road without following procedure for road abandonment provided for by CAL. STS. & HWYS. CODE.

<sup>33</sup> *County of Marin v. Messner*, 44 Cal. App.2d 577, 112 P.2d 731 (1941); *Miller v. City of Martinez*, 28 Cal. App.2d 364, 82 P.2d 519 (1938); *County of Shasta v. Moody*, 90 Cal. App. 519, 265 Pac. 1032 (1928).

<sup>34</sup> *Clark v. Conley School District*, 86 Cal. App. 527, 261 Pac. 723 (1927) (minor defects in publication of notice of trustees' meeting adopting contract; quantum meruit recovery allowed); *McCormick Lumber Co. v. Highland School Dist.*, 26 Cal. App. 641, 147 Pac. 1183 (1915) (defects in publication of notice for electors' meeting and submission of bids; court speaks of estoppel but allows quantum meruit recovery only).

<sup>35</sup> *San Francisco Gas Co. v. San Francisco*, 9 Cal. 453 (1858); *Argenti v. San Francisco*, 16 Cal. 255 (1860); *San Francisco Gas Light Co. v. Dunn*, 62 Cal. 580 (1882); *Higgins v. San Diego Water Co.*, 118 Cal. 524, 50 Pac. 670 (1897); *County of Sacramento v. Southern Pac. Co.*, 127 Cal. 217, 59 Pac. 568, 825 (1899); *Contra Costa Water Co. v. Breed*, 139 Cal. 432, 73 Pac. 189 (1903); *Warren Bros. Co. v. Boyle*, 42 Cal. App. 246, 183 Pac. 706 (1919).

<sup>36</sup> See Beatty, C.J., dissenting from denial of rehearing in *County of Sacramento v. Southern Pac. Co.*, 127 Cal. 217, 226, 59 Pac. 825 (1899); and concurring in *Contra Costa Water Co. v. Breed*, 139 Cal. 432, 445-447, 73 Pac. 189, 195-196 (1903).

<sup>37</sup> 20 Cal.2d 83, 124 P.2d 34 (1942), overruling or disapproving the *Sacramento County*, *Higgins*, *Contra Costa Water Co.* and *Warren Bros. Co.* cases.

In the general field of public employment contracts, the distinction between actions entirely beyond the power of the public agency and mere technical irregularities has also been maintained. The plea of estoppel is denied in the former case<sup>38</sup> but allowed in the latter.<sup>39</sup> However, not all cases lend themselves to a classification in this manner and estoppel has been allowed in situations warranting its application.<sup>40</sup>

It is quite apparent that in the contracting cases estoppel will be allowed against the public agency only if the court feels that none of the provisions making for orderly government or the protection of the taxpayer's money have been disregarded. The courts have protected the policy expressed in these statutes with the enthusiasm of Populist reformers, regardless of the injustice which may be done to the individual, and the windfall to the public agency.<sup>41</sup> They have ceased to ponder whether there could not be found alternative solutions, judicial or statutory, which avoid the unfairness inherent in the present rule.

### *Claims Statutes*

Any person who has a claim against any public agency, whether arising out of tort or contract, must carefully comply with the various claims provisions<sup>42</sup> lest his claim be barred because of failure to file within the prescribed time,<sup>43</sup> or in the proper form,<sup>44</sup> or with the proper content,<sup>45</sup> or with the right officer.<sup>46</sup> Indeed it has been held that a claimant who carefully complies with the applicable charter provisions relating to claims is barred from recovery where the court thereafter holds that state claims provisions override the charter provisions.<sup>47</sup>

<sup>38</sup> *Boren v. State Personnel Bd.*, 37 Cal.2d 634, 234 P.2d 981 (1951); *Patten v. California State Personnel Bd.*, 106 Cal. App.2d 168, 234 P.2d 987 (1951); *Wheeler v. City of Santa Ana*, 81 Cal. App.2d 811, 185 P.2d 373 (1947) (not clear whether facts would warrant finding of estoppel in any event).

<sup>39</sup> *Denton v. San Francisco*, 119 Cal. App.2d 369, 260 P.2d 83 (1953) (alternative ground for decision); *Crawford v. Board of Educ.*, 20 Cal. App.2d 391, 67 P.2d 348 (1937); *Briney v. Santa Ana High School Dist.*, 131 Cal. App. 357, 21 P.2d 610 (1933).

<sup>40</sup> *Tyra v. Board of Police and Fire Pension Comm'rs of Long Beach*, 32 Cal.2d 666, 197 P.2d 710 (1948) (city estopped from pleading statute of limitations on pension claim where claim was not earlier litigated because of erroneous ruling by city attorney); *Baird v. City of Fresno*, 97 Cal. App.2d 336, 217 P.2d 681 (1950) (alternative holding that city is estopped to retroactively change interpretation of pension provision where plaintiff has retired in reliance on earlier interpretation and has received his pension for 20 years).

<sup>41</sup> Under the present test a finding of bad faith is not necessary. The cases therefore do not reveal how often fraud, bad faith, collusion, or overreaching is involved when the various contract statutes have been violated.

<sup>42</sup> See, e.g., CAL. GOVT. CODE §§ 1981-2, 16043-4, 29700-2, 29705, 53052-3; CAL. HARB. & NAV. CODE §§ 6370, 6960; CAL. WATER CODE §§ 22727, 31084-5; CAL. EDUC. CODE § 1007. See generally Comment, *California Claims Statutes—"Traps for the Unwary,"* 1 U.C.L.A. L. REV. 201 (1954); Comment, 23 So. CALIF. L. REV. 507 (1950).

<sup>43</sup> *Kirchmann v. City of Anaheim*, 137 Cal. App.2d 216, 289 P.2d 817 (1955); *Cramer v. County of Los Angeles*, 96 Cal. App.2d 255, 215 P.2d 497 (1950).

<sup>44</sup> *Baker v. Cohen*, 139 A.C.A. 916, 294 P.2d 518 (1956); *Bradshaw v. Glenn-Colusa Irrigation Dist.*, 87 Cal. App.2d 882, 198 P.2d 106 (1948).

<sup>45</sup> *Erde v. City of Los Angeles*, 137 Cal. App.2d 175, 289 P.2d 884 (1955).

<sup>46</sup> *Douglas v. City of Los Angeles*, 5 Cal.2d 123, 53 P.2d 353 (1935).

<sup>47</sup> *Helbach v. Long Beach*, 50 Cal. App.2d 242, 123 P.2d 62 (1942); *Wilkes v. San Francisco*, 44 Cal. App.2d 393, 112 P.2d 759 (1941). Conversely, the plaintiff who by chance complies with the overriding state statute while overlooking the more exacting charter provisions

Prior to 1944, the general rule was that no plea of estoppel could excuse non-compliance with a claims statute.<sup>48</sup> This rule was overturned in *Farrell v. County of Placer*,<sup>49</sup> where it was held that the government could, in proper cases, be estopped from defending on the ground of non-compliance with claims provisions.<sup>50</sup> But some courts still seem reluctant to acknowledge the change in the law initiated by the *Farrell* case,<sup>51</sup> and it has been repeatedly held that in no event can estoppel excuse the failure to file any claim at all.<sup>52</sup>

It would appear that the requirement of filing claims within a relatively short period, usually in verified form, is designed to prevent the pressing of stale claims and to allow the public agency to investigate the matter within a short time after its occurrence. These are desirable ends, but much hardship could be avoided by a unification and simplification of the claims provisions in one statute, applicable to all levels of government.<sup>53</sup> Beyond this, only a more liberal allowance of estoppel by the courts, especially where the agency has been fully informed and has turned the matter over to its insurance carrier, will prevent the frustration of just claims.<sup>54</sup>

### Other Situations

There are many other situations where the doctrine of estoppel could have been or has been applied against the state or its subdivisions. Public land claims are among them. Since no title by adverse possession can be acquired against a public agency other than the state<sup>55</sup> and the rights against the state are narrowed by statute,<sup>56</sup> estoppel may have particular significance in this area. Indeed, one of the earliest cases allowing estoppel against a governmental agency, *City of Los Angeles v. Cohn*,<sup>57</sup> concerned

in point is safe, *Eastlick v. City of Los Angeles*, 29 Cal.2d 661, 177 P.2d 558 (1947). Compare *Wisdom v. Bd. of Supervisors of Polk County*, 236 Iowa 669, 19 N.W.2d 602 (1945), holding that the board is estopped from insisting on statutory requirement of "detailed factual statement" in claim, where form, provided by the board, did not specify such requirement.

<sup>48</sup> See, e.g., *Powers Farms, Inc. v. Consolidated Irrigation Dist.*, 19 Cal.2d 123, 130, 119 P.2d 717, 722 (1941).

<sup>49</sup> 23 Cal.2d 624, 145 P.2d 570, 153 A.L.R. 323 (1944).

<sup>50</sup> Estoppel has been allowed since in *Cruise v. San Francisco*, 101 Cal. App.2d 558, 225 P.2d 988 (1951); *Mendibles v. San Diego*, 100 Cal. App.2d 502, 224 P.2d 42 (1950). Cf. *Lorenson v. City of Los Angeles*, 41 Cal.2d 334, 260 P.2d 49 (1953).

<sup>51</sup> See, e.g., *Bradshaw v. Glenn-Colusa Irrigation Dist.*, 87 Cal. App.2d 882, 198 P.2d 106 (1948), completely ignoring the *Farrell* case.

<sup>52</sup> *Slavin v. City of Glendale*, 97 Cal. App.2d 407, 217 P.2d 984 (1950); *Brown v. Sequoia Union High School Dist.*, 89 Cal. App.2d 604, 201 P.2d 66 (1949). See also *Klimper v. City of Glendale*, 99 Cal. App.2d 446, 222 P.2d 49 (1950).

<sup>53</sup> There may be some doubt whether this can be completely accomplished constitutionally without violating "home rule" principles. See generally BOLLENS AND SCOTT, *LOCAL GOVERNMENT IN CALIFORNIA* (1951).

<sup>54</sup> Readiness on the part of public officials to advise claimants and to inform them in time of any defects in their claims would prevent many cases from ever reaching the courts. *But see Erde v. City of Los Angeles*, 137 Cal. App.2d 175, 179, 289 P.2d 884, 886 (1955): "It was not the duty of the clerk to fill out the form or to advise the appellant or to see to it that the appellant followed the advice given him."

<sup>55</sup> CAL. CIV. CODE § 1007.

<sup>56</sup> CAL. CODE CIV. PROC. § 315.

<sup>57</sup> 101 Cal. 373, 35 Pac. 1002 (1894).



a land claim. But results are not predictable and the doctrine is rarely applied.<sup>58</sup>

It has also been held that the government may be estopped from insisting on procedural limitations, such as the time within which decisions under the Unemployment Insurance Act may be appealed;<sup>59</sup> and the Attorney General has ruled that the state may be estopped from insisting on substantive statutory prerequisites to the granting of unemployment benefits, such as registration with the employment service.<sup>60</sup>

Finally, estoppel has been applied in actions between governmental agencies<sup>61</sup> and between an agency and one of its officers in litigation over the manner in which the officer handled and accounted for public funds.<sup>62</sup>

### *The Distinction between Governmental and Proprietary Functions*

In the field of tort liability of local governments the common law has drawn the distinction between proprietary and governmental functions; liability exists only in the former area, not in the latter where the local agency partakes of the sovereign immunity of the state.<sup>63</sup> This distinction is at best a highly speculative and philosophical one,<sup>64</sup> and it is encouraging to note that California courts have never imported this distinction into the case law relating to the availability of estoppel against the government.

That estoppel may be available under present law in cases involving clearly governmental functions has already been shown.<sup>65</sup> Other cases may be added involving directly the power to tax,<sup>66</sup> or the power of eminent domain.<sup>67</sup> The zoning cases, too, may serve as examples. The case of *Magruder v. City of Redwood*<sup>68</sup> denied the availability of estoppel in this area, but after subsequent cases indicated that estoppel might be applied if

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<sup>58</sup> *E.g.*, *Lantz v. City of Los Angeles*, 185 Cal. 262, 196 Pac. 481 (1921) and *Ernst v. Tiel*, 51 Cal. App. 747, 197 Pac. 809 (1921), denying that city is estopped to claim title to or interest in land after taxing land to another as holder of complete title. See also *City of Sacramento v. Clunie*, 120 Cal. 29, 52 Pac. 44 (1898); *City of Los Angeles v. Forrester*, 12 Cal. App.2d 146, 55 P.2d 277 (1936). As to estoppel by deed, see *Oakland v. Oakland Waterfront Co.*, 162 Cal. 675, 124 Pac. 251 (1912).

<sup>59</sup> *Holden v. California Employment Stabilization Comm'n*, 101 Cal. App.2d 427, 225 P.2d 634 (1950); 3 OPS. CAL. ATT'Y GEN. 189 (1944).

<sup>60</sup> 10 OPS. CAL. ATT'Y GEN. 32 (1947); 7 OPS. CAL. ATT'Y GEN. 134 (1946).

<sup>61</sup> *County of Sacramento v. City of Sacramento*, 75 Cal. App.2d 436, 171 P.2d 477 (1946).

<sup>62</sup> *County of Los Angeles v. Cline*, 185 Cal. 299, 197 Pac. 67 (1921).

<sup>63</sup> 18 McQUILLIN, MUNICIPAL CORPORATIONS, §§ 53.23-53.30 (3rd ed. 1950).

<sup>64</sup> "Government is not partly public or partly private, depending upon the Governmental pedigree of the type of the particular activity or the manner in which the Government conducts it." Frankfurter, J. in *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 383-4 (1947).

<sup>65</sup> See, *e.g.*, text at footnote 10 *supra*.

<sup>66</sup> *City of Los Angeles v. County of Los Angeles*, 9 Cal.2d 624, 72 P.2d 138 (1937) (city estopped to demand franchise tax from railroad where it has acquiesced in railroad paying such tax to county). See *California State Bd. of Equalization v. Coast Radio Products*, 228 F.2d 520, 524-525 (9th Cir. 1955). But see text at footnote 22 *supra*.

<sup>67</sup> *McGee v. City of Los Angeles*, 6 Cal.2d 390, 57 P.2d 925 (1936); *Times-Mirror Co. v. Superior Court*, 3 Cal.2d 309, 44 P.2d 547 (1935). In both these cases estoppel was applied to prevent the public agency from abandoning eminent domain proceedings.

<sup>68</sup> 203 Cal. 665, 265 Pac. 806 (1928).

proper facts were shown,<sup>69</sup> county officials were held estopped in *Woodie v. Byram*<sup>70</sup> from enforcing a zoning ordinance.

#### CONCLUSIONS AND SUGGESTIONS

Over half a century ago, a California judge said:<sup>71</sup>

There is nothing so sacred about a municipality that an estoppel may not be raised against it by its acts. In equity and good conscience, like individuals, it is bound to treat its neighbors fairly and justly.

Some fifty years later the same notion was expressed thus:<sup>72</sup>

Whether an estoppel exists against the government should be tested generally by the same rules as those applicable to private persons. The government should not be permitted to avoid liability by tactics that would never be countenanced between private parties. The government should be an example to its citizens, and by that is meant a good example and not a bad one.

There is nothing in the California codification of the principle of equitable estoppel<sup>73</sup> which would allow a differentiation between private litigants and the government as a litigant. This principle embodies only fundamental considerations of fairness and justice. It is difficult to see why the government should not be held to the same standards of morality which our law imposes upon the individual.<sup>74</sup> It is of course true that governmental administration requires flexibility.<sup>75</sup> But the possible harm to the individual involved should be equally kept in mind when the retroactive effect of a governmental change of mind comes before a court.

In the field of protection against criminal and civil sanctions, the rule of *People v. Ferguson*,<sup>76</sup> which protects reliance on official advice, is the only one which accords with principles of fairness; and it is submitted that this rule will not interfere with the effectuation of governmental policies.

<sup>69</sup> See *Price v. Schwafel*, 92 Cal. App.2d 77, 206 P.2d 683 (1949) and *Donovan v. Santa Monica*, 88 Cal. App.2d 386, 199 P.2d 51 (1948), denying estoppel for lack of proper facts raising estoppel, without invoking general inapplicability of estoppel.

<sup>70</sup> 132 Cal. App.2d 651, 282 P.2d 920 (1955).

<sup>71</sup> *County of Sacramento v. Southern Pac. Co.*, 127 Cal. 217, 222, 59 Pac. 568, 570 (1899), overruled by *Miller v. McKinnon*, 20 Cal.2d 83, 124 P.2d 34 (1942).

<sup>72</sup> *Peters, P.J. in Cruise v. San Francisco*, 101 Cal. App.2d 558, 565, 225 P.2d 988, 993 (1951).

<sup>73</sup> CAL. CODE CIV. PROC. § 1962: "The following presumptions, and none others, are deemed conclusive: . . . 3. Whenever a party has, by its own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it . . ."

<sup>74</sup> More talented writers have stated it thus: "If we say with Mr. Justice Holmes, 'Men must turn square corners when they deal with the Government', it is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens." Maguire and Zimet, *Hobson's Choice and Similar Practices in Federal Taxation*, 48 HARV. L. REV. 1281, 1299 (1935).

<sup>75</sup> Davis, *Administrative Findings, Reasons, and Stare Decisis*, 38 CALIF. L. REV. 218, 249 (1950).

<sup>76</sup> 134 Cal. App. 41, 24 P.2d 965 (1933). See text at note 10 *supra*.

If we insist that our government employ competent officials, their advice will normally be correct. Where an error is made, the risk should not fall on the individual, if he had no means of discovering it. It should be noted that in a situation such as was presented in the *Ferguson* case,<sup>77</sup> the individual cannot test the correctness of the advice before acting on it. Even under our Administrative Procedure Act, official advice not amounting to a "regulation" cannot be judicially reviewed,<sup>78</sup> and it seems doubtful whether anyone can ever demand judicial review of a favorable ruling. Thus the need for estoppel is great.<sup>79</sup>

In tax cases the result reached in the *Market Street Ry.* case,<sup>80</sup> whereby estoppel was allowed as to penalties and interest but denied as to the tax itself, will normally be sound. But situations may arise where a person could easily have imposed the tax burden on his customer but omitted to do so in reliance on administrative advice. It is hard to believe that the state will be seriously impeded because estoppel prevents the collection of the tax itself in such rare cases.<sup>81</sup>

To consider the clashing policies in public contract cases, let us suppose that a school district lets a contract for the repair of a school house. Contractor X, as the lowest bidder, is awarded the contract. Unknown to him, the contract obligates the school district beyond its revenues for the current fiscal year and is therefore void.<sup>82</sup> It would simply be against common sense to charge the contractor with knowledge of the status of the district's current revenues and expenditures. What policy would be defeated if the innocent contractor were allowed recovery of the reasonable value of his work?<sup>83</sup> Of course, this situation would still not raise a real question of estoppel, but rather one of quasi-contract. But what if the contractor had inquired into the matter and had been assured that revenues were sufficient? In such case, if the governmental operations require protection, the district should be put under administrative supervision in its fiscal operations by some other agency until the deficit has disappeared. This would be just as efficient a remedy and considerably fairer than to throw the entire burden on one individual who has acted in good faith. Thus at the very

<sup>77</sup> See text at note 10, *supra*.

<sup>78</sup> CAL. GOVT. CODE §§ 11440, 11371(b). See Note, *Procedure: Declaratory Relief: Controversy Requirement for Declaratory Relief*, 41 CALIF. L. REV. 341 (1953). Cf. KUCHMAN, CALIFORNIA ADMINISTRATIVE LAW AND PROCEDURE 217 (1953); Davis, *Ripeness of Governmental Action for Judicial Review*, 68 HARV. L. REV. 1122 (1955).

<sup>79</sup> See Appendix, § 3 of the proposed statute which is intended to codify in some detail the basic rule of the *Ferguson* case.

<sup>80</sup> See text at note 15, *supra*.

<sup>81</sup> See *Bennetts Inc. v. Carpenter*, 111 Colo. 63, 137 P.2d 780 (1943), denying estoppel in such a situation involving sales tax. See Appendix, § 3 of the proposed statute, especially subsection (b), which would cover some sales tax situations. But it would not cover other taxes, e.g. franchise taxes, which could be considered in pricing goods, and thus indirectly passed on to others. If such situations should be included, the wording defining "penalty" would have to be changed.

<sup>82</sup> CAL. EDUC. CODE § 1009. See 22 OPS. CAL. ATT'Y GEN. 23 (1953).

<sup>83</sup> The strict rule followed in California is not universal. See cases collected in 84 A.L.R. 936 (1933), 110 A.L.R. 153 (1937), 154 A.L.R. 356 (1945).

least in situations where a genuine estoppel is found, that is, where the private party has in good faith and reasonably relied on official assurances, recovery on the basis of quasi-contractual principles should be allowed.<sup>84</sup>

The fact that in all such situations the representation by public officers will be one of law, or of law and fact, should not lead to a denial of estoppel. The relationship between government and citizen is such that even representations of law may be reasonably relied upon.<sup>85</sup>

The courts in California have reiterated that estoppel will be applied against the government only in "rare and unusual circumstances."<sup>86</sup> A realistic appraisal of the case law reveals that applying estoppel against the government, where the facts genuinely warrant it under the general rules of equitable estoppel, will actually harm governmental operations only in "rare and unusual circumstances." The doctrine of equitable estoppel is flexible enough to make allowance for such occasions.<sup>87</sup>

In drafting a statutory remedy, different policy issues must be considered. Thus, the statute must give the necessary protection to the governmental apparatus. An individual should not be conceded the right to plead estoppel unless he has relied on the advice of the agency responsible for the particular activity. The agency which carries responsibility in its area of competence should not be saddled with the results of erroneous advice, issuing from other agencies.<sup>88</sup>

Minimum standards of formality of the official advice, in order that it may reasonably be relied on, also must be considered. Normally, the official advice should be in writing.<sup>89</sup> This will prevent much factual dispute as to whether there was, in fact, advice amounting to a representation sufficient to raise an estoppel. It will also encourage officials to consider the matter as to which advice is sought with care.

Finally, it must be decided to what extent detailed statutory regulation is preferable to general clauses relying primarily on prior case law. Because

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<sup>84</sup> See Appendix, § 4 of the proposed statute. Even though § 4(b) restricts recovery in certain cases for reasons of policy, § 4(a) makes the contract "of full force and effect." It is believed that this will avoid any doubts as to the constitutionality of that section which might otherwise arise by virtue of CAL. CONST. art. IV §§ 31 and 32.

<sup>85</sup> See PROSSER, TORTS, 559-60 (2d ed. 1955); BIGELOW, ESTOPPEL, 634-6 (6th ed. 1913).

<sup>86</sup> See, e.g., *First Trust & Savings Bank v. Pasadena*, 21 Cal.2d 220, 223, 130 P.2d 702, 704 (1942); *Goodwill Industries v. County of Los Angeles*, 117 Cal. App.2d 19, 26, 254 P.2d 877, 882 (1953); *Donovan v. Santa Monica*, 88 Cal. App.2d 386, 394, 199 P.2d 51, 56 (1948); *Wheeler v. Santa Ana*, 81 Cal. App.2d 811, 817, 185 P.2d 373, 377 (1947); *Aebli v. Bd. of Educ.*, 62 Cal. App.2d 706, 729, 145 P.2d 601, 612 (1944); *Ernst v. Tiel*, 51 Cal. App. 747, 751, 197 Pac. 809, 811 (1921).

<sup>87</sup> See Appendix, § 8(b) of the proposed statute which seeks to accommodate these "rare and unusual" cases.

<sup>88</sup> See Appendix, §§ 3(a) (A) and 4(a) of the proposed statute. However, it was felt that a claimant, who has a claim against a city but presents it to the wrong office within the city administration, should not be barred from the benefits of estoppel if the facts otherwise warrant its application. Section 7(a) of the proposed statute, relating to claims, is therefore worded less stringently.

<sup>89</sup> See Appendix, §§ 3(a) (A) and 4(a) of the proposed statute. Again, however, it seemed preferable to make the requirements in the claims situations somewhat less stringent. See § 7(a) of the proposed statute.

of the wide range of possible situations where the application of estoppel against the government may be raised in issue, a general clause seems indispensable. Detailed regulation should remain restricted to those situations where the draftsman intends to make his own policy decision as clear and precise as statutory formulation permits.

The proposed legislation appended to this comment contains a possible formulation of the minimum protection which this writer believes a citizen to be entitled to when he deals with his government.

*H. Helmut Loring*

#### APPENDIX<sup>90</sup>

AN ACT TO PROVIDE FOR THE BETTER PROTECTION OF GOOD FAITH RELIANCE BY ANY PERSON IN TRANSACTIONS WITH THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

§ 1. This Act may be cited as the "California Good Faith Reliance Act."

#### § 2. DEFINITIONS:

(a) The term "governmental agency" shall include the State of California and all its administrative agencies, departments, state boards and commissions; and all cities, counties, school districts, water districts and other service districts; and all other political subdivisions of the State. The term shall not include the State Legislature including the Office of the Legislative Counsel; nor any court of this State, but the term "court" shall not include the California State Bar, the California Youth Authority or the California Adult Authority.

(b) The term "responsible official" shall refer to the chief executive officer or governing board of any governmental agency, its legal officer or his deputies, or to any other officer whose position is of such responsibility that he could reasonably be believed to speak with authority in the matter as to which the protection of this Act is sought.

(c) The term "written statement" shall include any rule, regulation, order, opinion or ordinance, but shall not include an opinion supplied by any governmental agency merely as reason or explanation for any adjudication or order.

#### § 3. PROTECTION AGAINST CRIMINAL AND CIVIL SANCTIONS:

(a) No person shall be liable to any governmental agency for damages or penalties, nor subject to any criminal punishment, because of conduct not in conformity with any statute or other law, if

<sup>90</sup> The reader who turns to S. 1752, 83rd Cong., 1st Sess., and to Newman, *Should Official Advice Be Reliable?—Proposals as to Estoppel and Related Doctrines in Administrative Law*, 53 COLUM. L. REV. 374 (1953) will immediately recognize how much this writer is indebted to Mr. Frank C. Newman, Professor of Law, University of California at Berkeley, especially for many ideas in connection with the drafting of the proposed statute. The author also gratefully acknowledges the valuable assistance of Messrs. John D. McFeeters, Jr. and Lloyd W. McCormick.

If a statute of the kind here proposed were adopted, a number of other statutory provisions would require amendments. Among the statutes requiring adjustments to § 4 of the proposed statute are CAL. GOV'T. CODE §§ 23006, 36527, 1092 and CAL. EDUC. CODE § 1013. Section 3 of the proposed statute would require clarifying amendments among others to CAL. UNEMP. INS. CODE § 310.

(A) his conduct was in conformity with and in good faith and reasonable reliance on any written statement issued by the governmental agency responsible for the administration of that law and

(B) the written statement was issued to guide him or the class of persons to which he belongs.

(b) The term "penalties" shall include interest and, in cases relating to the collection of any tax or similar levy; such sums as the person seeking the protection of this section was by express provision of any statute or ordinance allowed or obligated to collect from third persons, where such collection is no longer reasonably possible.

#### § 4. PUBLIC CONTRACTS:

(a) Whenever any person has entered into any contract with any governmental agency and has performed such contract or otherwise substantially changed his position because of such contract, in good faith and reasonable reliance on a written statement as to the validity and legality of the contract, issued by the contracting agency or any agency supervising the contracting agency, for him or for the class of persons to which he belongs, the contract shall be, except as otherwise provided in this section, of full force and effect, notwithstanding the violation of any statute, charter or other provision of law restricting the authority to contract or the method of contracting of that governmental agency. The written statement shall not have the protective effect provided for in this subsection unless its wording reasonably covers the point under which invalidity of the contract would otherwise arise.

(b) In cases where the contract is for work, labor or materials, or for the rendition of personal services or the rental of equipment, the recovery allowed on such contract which, but for Section 4(a) of this Act would be unenforceable, shall be restricted to the reasonable value of the benefit conferred upon the governmental agency receiving the performance, or to the contract price, whichever is less. In all other cases the contract shall be enforceable in accordance with its terms.

#### § 5. WHO MAY ISSUE WRITTEN STATEMENTS:

For the purposes of Sections 3 and 4 of this Act, a written statement may be relied on

(a) if it is issued by the governmental agency by virtue of its general authority to promulgate written statements, or to issue written statements without any formal proceedings, or

(b) if it is issued by any official designated by the governmental agency concerned by regulation or ordinance as authorized to issue written statements; or, if no such designation has been made, if it is issued by any responsible official of the governmental agency concerned.

#### § 6. TIME DURING WHICH PROTECTION IS AVAILABLE:

If, in any case under Sections 3 or 4 of this Act, the written statement relied on was later superseded, revoked or modified by competent authority, or invalidated by any court of competent jurisdiction, then

(a) a person can claim the protection of Section 3(a) of this Act only for the period during which he neither knew nor should have known of the change, and for such further period as was reasonably necessary to comply with the change; and

(b) a person can claim the protection of Section 4 of this Act only if at the time he knew or should have known of the change he had already substantially changed his position in reliance on the written statement.

#### § 7. CLAIMS:

(a) Whenever under any provision of law the right to enforce a claim against any governmental agency is conditioned by the requirement of filing a claim within the time and in the form required and with the official designated by law, the governmental agency shall be estopped from defending on the deficiency of the content of the claim, or the time, place, or method of presentation, if the claimant has reasonably and in good faith relied on any representation that his claim was presented in conformity with legal requirements, made by any responsible official of the governmental agency against which the claim is directed. Whenever the claim is against the State, or against any city or county, or city and county, with a population in excess of 100,000, only reliance on a written representation shall be reasonable.

(b) Whenever a claim has been filed against a city or county, or city and county, within the time and in the form required by and with the official designated in the applicable ordinance or charter provision, the public body concerned shall be estopped from defending on any deficiency in the presentation of the claim on the ground that the applicable ordinance or charter provision is invalid because in conflict with any State statute pre-empting the field, unless a court of record of this State invalidated the ordinance or charter provision before the claimant presented his claim.

#### § 8. ESTOPPEL IN GENERAL:

(a) The doctrine of estoppel may be invoked against any governmental agency in proper cases not provided for elsewhere in this Act, whether the transaction involved arises out of the exercise of governmental or proprietary functions, or whether or not the representation by the officer or agent of the governmental agency concerned was within the scope of his actual authority. In order that the representation, whether of law or of fact or both, may be reasonably relied on, it must be in such form, and of such content, and issuing from an officer or agent of such position in the organization of the governmental agency concerned, that reasonable persons would rely thereon.

(b) The plea of estoppel shall be denied only when compelling considerations of an overriding public policy so require.