LIU, J.

S202037

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

JOHN W. McWILLIAMS, on behalf of himself and all others similarly situated,
Plaintiff and Appellant,

vs.

CITY OF LONG BEACH
Defendant and Respondent.

After A Decision By The Court Of Appeal
Second Appellate District, Division Three
Case No. B200831

Superior Court for the County of Los Angeles
Hon. Anthony J. Mohr, Judge
Trial Court Case No. BC361469

ANSWER TO PETITION FOR REVIEW

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
FRANCIS M. GREGOREK (144785)
RACHELE R. RICKERT (190634)
gregorek@whafh.com
rickert@whafh.com
750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

TOSTRUD LAW GROUP, P.C.
JON TOSTRUD (199502)
tostrud@yahoo.com
1901 Avenue of the Stars,
2nd Floor
Los Angeles, CA 90067
Telephone: 310/278-2600
Facsimile: 310/278-2640

CUNEO GILBERT
& LADUCA, LLP
SANDRA W. CUNEO (110388)
330 South Barrington Ave., #109
Los Angeles, CA 90049
Telephone: 424/832-3450
Facsimile: 424/832-3452

Attorneys for Plaintiff John W. McWilliams

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

Cases

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

The City of Long Beach's ("City") Petition for Review ("Petition") should be rejected on the grounds that it seeks an impermissible advisory opinion on the preemption issue in the absence of a local claiming ordinance applicable to Plaintiff's claim, much less one conflicting with the Government Claims Act. Furthermore, as the City's Petition expressly admits, this Court's decision in *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 [128 Cal.Rptr.3d 283, 255 P.3d 958] (*Ardon*), a case indistinguishable in all material respects from this one, has already addressed and ***affirmatively resolved*** "whether, in the absence of a local claiming ordinance, class tax refund claims may be brought under the Government Claims Act." (Petition, *supra*, at p. 29.)

Government Code, section 910[1] clearly applies to Plaintiff's claim for refund of the Telephone Users Tax ("TUT") because no applicable claiming ordinances exist. In *Ardon*, this Court declined to consider whether local ordinances governing the filing of claims for refund of local taxes are preempted by the Government Claims Act because the Court of Appeal had held that the City of Los Angeles' municipal code did not apply to Ardon's claim and the City of Los Angeles did not appeal the issue before this Court. (*Ardon*, *supra*, 52 Cal.4th at p. 246, fn. 2.) Likewise, here, the Second District Court of Appeal unanimously held in its March 28, 2012 opinion ("Opinion") that ***the City's own ordinances do not require a service user, such as Plaintiff, to file a claim before filing an action in court*** for refund of the TUT, ***and the City's Petition does not seek review of this holding***. (Opinion, *supra*, at pp. 4, 11 & fn. 7.) Therefore, here, as in *Ardon*, review for preemption is not warranted. This Court need not reach the questions presented by the Petition including, *inter*

---

[1] Unless otherwise stated, all future section references are to the Government Code.

alia, whether the term "statute" in sections 905(a) and 811.8[2] exclude local legislation because no applicable ordinance exists. Furthermore, even if this Court were to decide in the abstract as the City wishes that local provisions are not preempted, such a holding would be moot here since there is no applicable Long Beach ordinance or municipal code section disallowing Plaintiff's claims.

Even if the Court were to overlook the fact that the City does not have an ordinance applicable to Plaintiff's claim in this case, the Petition should still be denied because, as demonstrated more fully *infra*, there is no wave of similar cases as the City asserts. Most of the cases cited by the City do not involve the question of whether local ordinances are preempted by the Government Claims Act. In fact, only two cases appear to involve that precise issue and this Court denied a Petition for Review of that issue in one of them on May 16, 2012, despite the fact that in that case Chula Vista had an arguably applicable local ordinance banning class claims. *City of Chula Vista v. Superior Court* (*Villa*), (Supreme Court of California, No. S201440) [5/16/2012 Docket Entry].)

Moreover, the Petition should be denied because the City's positions on the merits are entirely baseless. The statutory language at issue here is so plain that the City's attempt to demonstrate that the word "statute" in section 905(a) does not mean "statute" as it is explicitly defined in section 811.8 is futile. When the words are clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

---

[2] Section 811.8 expressly limits the term "statute" to "an act adopted by the Legislature of this State or by the Congress of the United States, or a statewide initiative act."

Finally, there is also no conflict among the lower courts that requires this Court's intervention. The only two Court of Appeal decisions that have ever misinterpreted the word "statute" to include local legislation are *Pasadena Hotel Development Venture v. City of Pasadena* (1981) 119 Cal.App.3d 412 [174 Cal.Rptr. 52] (*Pasadena Hotel*), an opinion by the same court that issued the Opinion below – which acknowledged that it erred on this point (Opinion, *supra*, at p. 10) – and *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 79 [65 Cal.Rptr.3d 716] (*Batt*), which followed and relied on the misstatement of legislative history underlying *Pasadena Hotel*. Neither *Pasadena Hotel* nor *Batt* even mentions the applicable definition of "statute" in section 811.8. Sections 905(a) and 811.8, read together, clearly provide that local legislation providing claiming procedures for the refund of local taxes are preempted by section 910.[3]

Even if examination of the legislative history of section 905(a) were appropriate, this Court's findings in *Ardon* concerning the legislative history of section 905(a) are contrary to and therefore overrule the contrary language in *Pasadena Hotel* and *Batt*. This Court in *Ardon* found that the Law Revision Commission's proposal that section 905(a) exclude from the Government Claims Act "'[c]laims under the Revenue and Taxation Code or other *provisions of law* prescribing procedures for the refund ... of any tax ...'" was, ***contrary to the finding underlying Pasadena Hotel***, "specifically rejected" by the Legislature. (*Ardon*, *supra*, 52 Cal.4th at p. 247.) Instead, the Legislature enacted the current language which excludes from the Government Claims Act "'[c]laims under the Revenue

---

[3] The Court below expressly rejected the City's argument that when the Legislature enacted section 811.8 it did not intend to affect section 905(a) based on principles of statutory construction and legislative history. (Opinion, *supra*, at p. 8-9, fn. 5.)

and Taxation Code or other *statute* prescribing procedures for the refund ... of any tax....'" (*Ibid.*) Therefore, the contrary language in *Pasadena Hotel, supra,* 119 Cal.App.3d at p. 415, fn.3 and in *Batt, supra,* 155 Cal.App.4th at p. 79 has been implicitly overruled by *Ardon.*[4]

Ardon resolved all of the issues arising from the pertinent facts present here and, for that reason alone – apart from Petitioner's seeking of an impermissible advisory opinion – the Petition should be denied.

II. STATEMENT OF THE CASE

This is a class action brought by Plaintiff John W. McWilliams against Defendant City of Long Beach challenging the legality of the City's TUT as applied to certain telephone service. Plaintiff's Complaint alleges that the City has improperly required telephone companies to collect and remit taxes from telephone users on long distance and bundled telephone services where calls are not charged by both elapsed time and distance. (Clerk's Transcript ("CT") 5-6 at ¶ 4; 7 at ¶ 8; 14 at ¶ 53.)

Section 3.68.050(A) of the TUT imposes a tax on amounts paid for all telephone services used by every person or entity located within the City. (CT 5, 9, 44; App. A.[5]) However, at the time this action was filed, the TUT expressly excluded from taxation all amounts paid for telephone services "to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under section 4251 of title 26 of the internal revenue code" (hereinafter, the "Federal Excise Tax" or "FET"). (Long Beach Municipal Code § 3.68.050(d); CT 10 at ¶ 28; 11-12 at ¶ 36; 47; App. A.) Therefore, telephone services not subject to the tax imposed

---

[4] Plaintiff requested publication of the Division Three's Opinion below because it explicitly recognized the misreading of legislative history underlying its decision in *Pasadena Hotel*, which was relied on in *Batt*, and corrected it. (Opinion, *supra*, at pp. 10-11.)

[5] Citations to "App." refer to the Appendices to Appellants' Opening Brief, filed with the Court of Appeal on February 1, 2008.

by the FET, were not subject to the TUT. (CT 12-13.)

In numerous cases brought by corporate taxpayers seeking refunds from the Internal Revenue Service ("IRS") of improperly collected FET, federal courts held that in order to be taxable under the plain language of the FET, charges for long-distance telephone services ***must*** be based on ***both*** distance ***and*** elapsed transmission time.[6] Since most modern telephone service is charged on a "postalized" structure, where charges do not vary by distance, the federal courts concluded that the FET had been improperly applied.[7] Eventually, after these numerous adverse court decisions, the IRS ceased collecting the FET on long distance and bundled services and allowed taxpayers to receive a refund simply by checking a box on their federal tax return. (See IRS Notice 2006-50 (CT 25-38).)[8]

---

[6] See *Reese Bros., Inc. v. U.S.* (W.D.Pa. Nov. 30, 2004, No. 03-CV-745) 2004 WL 2901579, affd. (3d Cir. 2006) 447 F.3d 229 (App. C); *Hewlett-Packard Co. v. U.S.* (N.D.Cal. Aug. 5, 2005, No. C-04-03832 RMW) 2005 WL 1865419 (App. D); *Fortis, Inc. v. U.S.* (S.D.N.Y. 2004) 420 F.Supp.2d 166, affd. (2d Cir. 2006) 447 F.3d 190; *Am. Online, Inc. v. U.S.* (Fed.Cl. 2005) 64 Fed.Cl. 571; *Honeywell Int'l, Inc. v. U.S.* (Fed.Cl. 2005) 64 Fed.Cl. 188; *National Railroad Passenger Corp. v. U.S.* (D.D.C. 2004) 338 F.Supp.2d 22, affd. (D.C. Cir. 2005) 431 F.3d 374; *OfficeMax, Inc. v. U.S.* (N.D.Ohio 2004) 309 F.Supp.2d 984, affd. (6th Cir. 2005) 428 F.3d 583, rehearing en banc denied (6th Cir. Mar. 30, 2006, No. 04-CV-4009) 2006 U.S. App. Lexis 8294; *Am. Bankers Ins. Group, Inc. v. U.S.* (S.D.Fla. 2004) 308 F.Supp.2d 1360, revd. (11th Cir. 2005) 408 F.3d 1328.

[7] The term "postalized" derives from the fact that the charge to mail a letter does not vary by distance.

[8] Contrary to the City's (at best) misleading "statement of the case," it was the FET itself that was incorporated into the City's TUT ordinance, not the IRS's interpretation of the FET. Plaintiff does not and has never alleged or contended that "when the [IRS] changed its position with respect to the FET ... the City was required to change its interpretation of its local tax" or that the IRS's change in position required "a reduction in the City's telephone tax base." (Petition, *supra*, at p. 10.) Plaintiff clearly and plainly alleges, rather, that under the City's TUT ordinance and the plain language

Even after the IRS conceded and capitulated, however, the City continued to collect the TUT on long distance and bundled services, to which neither the FET nor the TUT applies, and has refused to pay refunds. (CT 5-7.)

III. LEGAL DISCUSSION

A. Supreme Court Review Is Not Warranted Because Petitioner Has No Applicable Refund Ordinance Much Less One Conflicting With the Government Code

As the Court of Appeal unanimously held, the City has no ordinance that requires service users, such as Plaintiff, to file a claim with the City for refund of the TUT prior to filing suit. (Opinion, *supra*, at pp. 4, 11 & fn. 7.) The City does not contend otherwise in its Petition. Therefore, just as in *Ardon*, *supra*, 52 Cal.4th at p. 246, fn. 2, this Court does not need to reach the preemption issue – the only issue purportedly presented by the Petition.

Subsection A of section 3.68.160 of the Long Beach Municipal Code provides, in relevant part, "Whenever the amount of any tax has been overpaid ... or has been erroneously or illegally collected or received ... under this Chapter, ***it may be refunded as provided in this Section.***" (CT 10, 73; App. A, emphasis added.) Subsection B of section 3.68.160 grants a substantive right to ***service suppliers***, stating, "A service supplier may claim a refund" on behalf of its customers. (CT 10, 73; App. A.) Subsection C imposes a procedural requirement, stating, "No refund shall be paid under the provisions of this section unless the ***claimant*** established his or her right thereto by written records showing entitlement thereto." (CT 73; see also CT 11; App. A.)

In short, Section 3.68.160 does not speak to *individual taxpayer*

---

of the FET, "charges for telephone service that do not vary by time and distance have ***never*** been taxable." (CT 7 at ¶ 10.)

refund claims.[9] Subsection B merely establishes the substantive right of *service suppliers* to seek refunds, and subsection C is a procedural requirement for those service suppliers to follow. The term "claimant" in subsection C can only refer to service suppliers entitled to seek refunds because subsection A states that refunds may only be sought "as provided in this Section."[10] Therefore, the City has failed to provide any right or procedure for service users/taxpayers to pursue their claims administratively.

Based on a review of these provisions, the Court of Appeal unanimously found that Long Beach Municipal Code section 3.68.160 "does *not* require a service provider, much less a service user such as McWilliams, to file a claim before filing an action in court for a refund of TUT." (Opinion, *supra*, at p. 11, fn. 7.) The City does not challenge this holding.

Similarly, although the City asserts in its Statement of the Case that

---

[9] Service users/taxpayers are also precluded from requiring service suppliers to obtain refunds on their behalf by California Public Utilities Code, section 799, which grants service suppliers immunity from such claims. (CT 11.) As a result of the immunity granted them, service suppliers have no economic or legal incentive to file refund claims on behalf of their customers. (See *Javor v. State Board of Equalization* (1974) 12 Cal.3d 790, 801 [117 Cal.Rptr. 305, 527 P.2d 1153] [the Court found itself called upon to fashion a remedy since, "[u]nder the procedure set up by the [State] Board [of Equalization], the retailer is the only one who can obtain a refund from the Board; yet, since the retailer cannot retain the refund himself, but must pay it over to his customer, the retailer has no particular incentive to request the refund on his own."].)

[10] The word "claimant" must be interpreted by reference to the rest of this section under the canons of statutory construction. "*Expressio unius est exclusio alterius* means that 'the expression of certain things in a statute necessarily involves exclusion of other things not expressed." (*Major v. Silna* (2005) 134 Cal.App.4th 1485, 1494, fn. 6 [36 Cal.Rptr.3d 875].) Therefore, it is clear that the term "claimant" in the refund provision refers solely to service providers, excluding service users.

the "Court of Appeal failed to address § 3.48.060" of its municipal code (Petition, *supra*, at p. 11, fn. 9), the Petition does not request this Court review this issue.[11]

Since the Court of Appeal unanimously concluded that there is no local municipal code provision that prohibits Plaintiff's claims, and the City does not seek to appeal ***that*** ruling, the City is asking this Court to hypothetically ***assume*** that it has an applicable claiming ordinance and to review the Opinion's alternative holding that the City's claiming ordinances are preempted by the Government Claims Act. This Court should decline to issue an advisory opinion based upon hypothetical facts not before it and deny the City's Petition.

B. Supreme Court Review Is Not Warranted Because There Is No Wave Of Similar Cases

The City attempts to cloak the absence of any applicable local ordinance here by citing to a handful of other cases that purportedly challenge local tax refund ordinances in an attempt to demonstrate that the preemption of local claims procedures is a widespread issue. In fact, however, virtually none of the plaintiffs in those cases "argue that [local tax

---

[11] Long Beach Municipal Code section 3.48.060 provides:

> Any refund made pursuant to this Chapter must be authorized by the department head with the approval of the City Attorney or the City Attorney and the City Council, provided the refund is made within one year after payment of the money to the City, or if an application for a refund is filed by the person entitled to the money, the application therefor must be filed within said one-year period.

(CT 74.) Section 3.48.060 is merely a limitations period for claims, which grants no substantive rights to a refund. Indeed, that section specifies a limitations period where a "refund is filed by the person entitled to the money." Taxpayers are not "persons entitled" to a TUT refund because the TUT only authorizes refund claims by service suppliers and not individual taxpayers.

refund] ordinances are preempted by the Government Claims Act, Government Code §§ 810 et seq.," as the City claims (Supplement to Notice of Motion and Motion for Judicial Notice, at p. 6.), and one of the cases cited by the City was settled five years ago.

Exhibit G of the Notice of Motion and Motion for Judicial Notice ("MJN"), the first amended complaint in *Borst v. City of El Paso De Robles*, San Luis Obispo Superior Court, No. CV 09-8117, does not even mention a relevant local tax refund claiming ordinance but only that the Government Claims Act, rather than the Revenue & Taxation Code or Health and Safety Code, provides the applicable claims procedures. (*Id.* at ¶ 18.).

Moreover, there is no tax refund claiming ordinance at issue in *Hanns v. City of Chico*, Butte County Superior Court, No. 149292 (MJN Exhibit I), since the class action admittedly challenges "a ***fee*** [as distinct from a tax] on those arrested for driving under the influence." (Petition, *supra*, at p. 8, emphasis added.)

Furthermore, *Shames v. City of San Diego*, San Diego Superior Court, No. GIC831539 (MJN Exhibit H), settled over five years ago, so any decision by this Court on the preemption issue would clearly not aid the Court in that case. (See *California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1589 [126 Cal.Rptr.3d 160].)

Finally, the City concedes that the preemption issue is also irrelevant in *Granados v. County of Los Angeles*, California Court of Appeal, Second Appellate District, Case No. B200812, filed March 28, 2012 (MJN Exhibit A). (Petition, *supra*, at p. 5 ["*Granados*, like *Ardon*, did not involve a local ordinance barring class relief."].)

Therefore, contrary to the City's statement that the defendants in "most" of the cases it lists "are seeking to enforce local claiming requirements," there are ***only two*** cases on the City's list that are pending

and that actually involve potentially applicable tax refund claims ordinances: *City of Chula Vista v. Superior Court* (*Villa*), California Court of Appeal, Fourth Appellate District, No. D061561 [California Supreme Court Case No. S201440], and *Sipple v. City of Alameda*, Los Angeles Superior Court, No. BC462270. Moreover, to the extent that the defendants in those two cases actually do have applicable claiming ordinances that bar the claims presented, they are factually distinguishable from the fact pattern presented here where there is no applicable local ordinance.

Furthermore, even though review by this Court might have been more appropriate there than here, this Court rejected a Petition for Review in one of them on May 16, 2012. (*City of Chula Vista v. Superior Court* (*Villa*) (Supreme Court of California, No. S201440 [5/16/2012 Docket Entry].) Here, where it is undisputed that the City ***has no applicable claiming ordinance*** and section 910 applies, this Court's decision in *Ardon* controls, and the preemption issue is ***irrelevant***.

C. Supreme Court Review Is Not Warranted Because No Conflict Exists In The Lower Courts

Even if the Court were to overlook the fact that the City does not have an applicable claiming ordinance, much less one that conflicts with the Government Code, the Petition should still be denied because every published opinion that has examined the definition of "statute" in section 811.8 and applied it to the word "statute" in section 905(a) has concluded that "statute" in section 905(a) does not include local legislation. (See *County of Los Angeles v. Superior Court* (*Oronoz*) (2008) 159 Cal.App.4th 353, 360-61 [71 Cal.Rptr.3d 485]; *Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48, 62 [101 Cal.Rptr.869, 496 P.2d 1237].)

The only two Court of Appeal decisions that have ever misinterpreted the word "statute" to include local legislation, *Pasadena*

Hotel, *supra*, 119 Cal.App.3d at p. 415, fn. 3, and *Batt*, *supra*, 155 Cal.App.4th at p. 79, were implicitly overruled by *Ardon*, and the Second Appellate District, which issued the opinion in *Pasadena Hotel*, has repudiated its prior position.

The *Pasadena Hotel* opinion, which concluded that the term "statute" included local tax ordinances, was based on that court's erroneous belief that section 905(a) was "enacted in the form proposed by the [Law Revision Commission]," which would have excluded from the Government Claims Act claims governed by local tax refund ordinances. (*Pasadena Hotel*, *supra*, 119 Cal.App.3d at p. 415, fn. 3.) The *Batt* court then relied upon *Pasadena Hotel* in concluding that "statute" in section 905(a) included local ordinances that did not conflict with the Government Claims Act. (*Batt*, *supra*, 155 Cal.App.4th at p. 83.)

This Court, however, corrected the factual error underlying the *Pasadena Hotel* and *Batt* opinions in its *Ardon* opinion when it stated that the Legislature "specifically rejected" the Law Revision Commission's proposal that section 905(a) exclude from the Government Claims Act "'[c]laims under the Revenue and Taxation Code or other *provisions of law* prescribing procedures for the refund ... of any tax....'" (*Ardon*, *supra*, 52 Cal.4th at p. 247.) Instead, the Legislature enacted the current language which excludes from the Government Claims Act only "'[c]laims under the Revenue and Taxation Code or other *statute* prescribing procedures for the refund ... of any tax ....'" (*Ibid.*) After *Ardon*, the Court of Appeal below disavowed its conclusion in *Pasadena Hotel*, stating that its prior analysis of legislative history had been "incorrect." (Opinion, *supra*, at p. 10).

Therefore, the contrary language in *Pasadena Hotel, supra*, 119 Cal.App.3d at p. 415, fn. 3, and in *Batt*, *supra,* 155 Cal.App.4th at p. 83, has been discredited, if not implicitly overruled by *Ardon*. There is therefore no clear, extant conflict of law.

D. Supreme Court Review Is Not Warranted Because The City's Position Is Demonstrably False

Given the plain statutory language and the *Ardon* Court's finding regarding the Legislature's rejection of the Law Revision Commission's recommendation discussed above, the City's argument that the word "statute" in section 905(a) does not really mean "statute" as it is defined in section 811.8 is futile. Because the meaning of the term "statute" in section 905(a) is clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history. (*California Fed. Savings & Loan Assn. v. City of Los Angeles, supra*, 11 Cal.4th at 342.)

Nevertheless, even if examination of the legislative history of section 905(a) were necessary, it is absolutely clear that the Legislature never used the word "statute" in the Government Claims Act to mean local ordinances – either at the time the Act was enacted in 1959, or any other time for that matter.

The 1959 enactment clearly and consistently distinguished between statutes, charters, ordinances, and other provisions of law. That fact is highlighted, by way of example, by comparing former subsection 703(a) (now subsection 905(a)), with subsection 703(e) (now subsection 905(e)), which served similar purposes and were both enacted at the same time in 1959. Both 703(a) and 703(e) as proposed by the Law Revision Commission would have exempted claims under other "provisions of law" – subsection 703(a) would have exempted claims for tax refunds provided under "the Revenue and Taxation Code or other provisions of law," and subsection 703(e) would have exempted claims under "the Welfare and Institutions Code or other provisions of law." (Recommendation and Study Relating to the Presentation of Claims Against Public Entities (Jan. 1959) 2 Cal. Law Revision Com. Rep. ("Commission Rep.") at p. A-12) (attached

hereto as Exhibit A.) The Legislature enacted subsection 703(e) exactly as proposed by the Law Revision Commission, but in subsection 703(a) the Legislature did *not* enact the Law Revision Commission's proposal. Instead, the Legislature changed the language to exempt only tax refund claims under the Revenue and Tax Code or other "*statute*." (Gov. Code § 905(a).) These two subsections were (and are) in the same section. The fact that the Legislature changed the proposed language in 703(a) but did not change identical proposed language in 703(e) demonstrates that the difference was intentional and meaningful.[12]

The Government Code as enacted in 1959 (and the Law Revision Commission recommendation upon which it was based) is replete with additional examples of clear distinction between the terms "statutes," on the one hand, and "charters" and "ordinances," on the other. For example, section 704, which dealt with interim procedures for claims presented before the effective date of the new Act, stated that claims presented previously that were in compliance with pre-existing procedures "established by ... statute, charter, or ordinance," would be deemed to comply with the new Act. Similarly, former section 730 (now section 935), provided that claims excepted by section 703 which were not governed by

---

[12] The same analysis applies to subsection (b) of section 703, which also excluded claims under "other provisions of law" dealing with mechanics lien claims. The City raises a vague argument in footnote 14 of its Petition that subsection (b) of former section 703 distinguished between statutes and other "provision of law" because of a purported body of judge-made law relevant to mechanics liens, a mere specter an of argument which the City proposes to further develop in merits briefing if the Petition is granted. The City ignores the fact, however, that like subsection (b), subsection (e) also exempted claims under "other provisions of law," specifically, those pertaining to welfare and public assistance claims. The City fails to make any connection between purported judge-made law dealing with mechanics liens and any judge-made law dealing with welfare and public assistance claims, and it is difficult to imagine how the two could possibly be linked in a way that supports the City's argument.

"other statutes or regulations" would be subject to the "procedure prescribed in any **charter, ordinance or regulation *adopted by the local public entity*.**" (Cal. Stats. 1959, ch. 1724, § 730, p. 4138, emphasis added) (attached hereto as Exhibit B.) Clearly, when the Legislature wanted to refer to local procedures in the Government Claims Act as enacted in 1959, it never used the term "statute."

The City and its amicus, the County of Los Angeles, purport to quote a portion of the Law Revision Commission's report stating that "[t]here seems to be no adequate generic word for referring collectively to statutes, city charters and ordinances... [and so] the phrases 'claims statutes' and 'claims provisions' are used interchangeably herein." (Petition, *supra*, at p. 18; County of Los Angeles Amicus Letter at p. 3.) The quoted paragraph was ***not*** part of the Law Revision Commission's Recommendation, however, nor did it have anything to do with the Law Revision Commission's draft statutory language. Rather, the quoted paragraph comes from a study conducted by Professor Van Alstyne, which was appended to, but is *not* the same as, the Law Revision Commission's Recommendation.[13] In fact, virtually all of the quotations offered by the City in support of its position come from Professor Van Alstyne's study, not the Law Revision Commission's Recommendation. That is a momentous error. The purpose of the study was not to define statutory terminology but rather to study the diverse variety of claims requirements that then existed and suggest whether a reform was needed.

---

[13] The City's Motion for Judicial Notice in the Court of Appeal below attached only excerpts of the complete document, which gives the appearance that Professor Van Alstyne's study is actually the Commission's Recommendation. In fact, the City excluded the entire Recommendation of the Commission from its exhibit. The complete document is available online through the Law Revision Commission's website, at: www.clrc.ca.gov/.

Professor Van Alstyne's short-hand terminology, "claims statutes" and "claims provisions," was never adopted by the Commission in its Recommendation nor did the Commission use that short-hand in its proposed statutory text. To the contrary, as discussed above, the Commission's proposed statutory text was careful to distinguish between statutes, charters, and ordinances. Thus, the City's primary argument in support of its position is baseless.

Similarly, by selective quotation and misattribution, the City also asserts that the Legislature was not concerned with uniform claiming processes as to taxes because, as quoted by the City, the Legislature believed that "[p]rovisions governing claims for refund of taxes ... are frequently integrated with special procedures governing the assessment, levy and collection of revenue ... and do not create problems of the same nature and significance as the claim provisions embraced by the report." (Petition, *supra*, at pp. 19-20.) The City once again fails to note, however, that these were not the words of the Legislature but, rather, Professor Van Alstyne and, even more importantly, the City also fails to mention that the quoted paragraph comes from a list of topics that were expressly "***[e]xcluded from the scope of the study***...." (Commission Rep. at p. A-17, emphasis added) (Exhibit A). It is difficult to imagine how a paragraph summarizing a topic that was expressly *excluded* from the scope of Professor Van Alstyne's study could somehow by transmuted into encompassing the intent of the Law Revision Commission, much less the intent of the Legislature.

In any event, the intent of the Legislature with respect to the meaning of the term "statute" in former section 905(a) became manifest in 1963 when it enacted the current definition of "statute" in section 811.8, that the term ***not*** include local governments. No amount of speculation about what the Legislature might have meant in 1959 can change the

Legislature's express pronouncement a few years later.

E. The Regulation Of Claims Filing Procedures Is Not A "Municipal Affair"

The City's argument that the State Constitution grants cities and counties the power to tax and to regulate local tax refunds is inapposite. Although the State Constitution may confer the power to tax on charter cities, and although a charter city's levying and collection of a local tax on local activities may be a "municipal affair," the power to regulate *claims filing procedures* was constitutionally delegated to the Legislature in connection with the adoption of the Government Claims Act.

The Legislature went to great lengths to ensure that the procedures it enacted in the Government Claims Act would apply uniformly to charter and non-charter cities and counties alike. Ordinarily, a charter city may adopt and enforce its own ordinances even if they conflict with general state laws, provided the subject of the regulation is a "municipal affair" rather than one of "statewide concern." (See Cal. Const., art. XI, § 5; *Am. Financial Services Assn v. City of Oakland* (2005) 34 Cal.4th 1239, 1251 [23 Cal.Rptr.3d 453, 104 P.3d 813].) In order to ensure that the uniform procedures of the Government Claims Act would apply without regard to any statewide versus municipal affair distinction, however, the California Constitution was amended contemporaneously with the Government Claims Act to provide that "[t]he Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees." (Cal. Const., art. XI, § 12, amending Cal. Const. art. XI, § 10 (Nov. 8, 1960).)[14]

---

[14] The Law Revision Commission recommended this constitutional amendment to "confirm the Legislature's power to prescribe procedures governing the presentation, consideration and enforcement of claims against [chartered counties and cities]." (See Commission Rep. at p. A-9) (Exhibit A.) Prior to 1959, this Court had already held on several occasions

Therefore, it makes no difference that the power to tax may be a municipal affair. Since 1960, the power to prescribe claims procedures has been Constitutionally delegated to the Legislature without regard to any municipal or statewide or charter or non-charter distinction.

Moreover, as this Court held in *Volkswagen Pacific, Inc. v. City of Los Angeles, supra*, 7 Cal.3d at p. 62, fn. 7, and as the City admitted below in its briefing before the Court of Appeal (Resp. Brf. at 18, 28), the regulation of claims against governmental entities for tax refund claims is one of "statewide concern." Therefore, even if the regulation of claims against local governments was at one time a "municipal affair", once it became an area of "statewide concern" it ceased to be a "municipal affair." (See *California Fed. Savings. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1 [283 Cal.Rptr. 569].) In sum, the "home rule" does not apply allow the City's ordinances to supersede the Government Claims Act.

---

that claiming requirements for *tort* claims were a matter of statewide concern. See *Eastlick v. City of Los Angeles* (1947) 29 Cal.2d 661, 666 [177 P.2d 558] (citing cases); *Taylor v. City of Los Angeles* (1960) 180 Cal.App.2d 255, 261-62 [4 Cal.Rptr. 209]. So, the primary purpose of the Constitutional amendment was to establish the power of the Legislature to prescribe procedures for contract and quasi-contract claims. That distinction was made clear in the provision providing procedures for the interim between adoption of the Government Claims Act by the Legislature and adoption of the Constitutional amendment by the people: "[u]ntil the adoption by the people of an amendment to the Constitution ... confirming the authority of the Legislature to prescribe procedures governing the presentation ... of claims against ... chartered cities ... this chapter shall not apply to causes of action founded ***on contract*** against a chartered city ... while it has an applicable claims procedure prescribed by charter or pursuant thereto." (Cal. Stats. 1959, ch. 1724, § 701, p. 4133) (former section 701, emphasis added) (Exhibit B.) A tax refund claim is an action upon a contract implied in law, or quasi-contract. (*Gregory v. State* (1948) 32 Cal.2d 700, 706-707 [197 P.2d 728].)

F. The City's Argument Concerning Article XIII, Section 32 Is Irrelevant

The City is correct that this Court in *Ardon* did not decide whether the second sentence of article XIII, section 32 of the California Constitution applies to local governments. (*Ardon*, *supra*, 54 Cal.4th at p. 252.) Because section 910 applied to the plaintiff's claim in *Ardon*, this Court held:

> But even assuming article XIII, section 32 is equally applicable to tax actions against local governments, we have already determined that section 910 provides the necessary legislative authority for class claims of taxpayer refunds against local governmental entities. Indeed, there is nothing in the constitutional provision that would preclude the present action.

(*Id.*, emphasis omitted.) Likewise, here, since section 910, rather than any local ordinance, applies to Plaintiff's claim, the Legislature has provided the necessary legislative authorization for Plaintiff's class claim. This is therefore not the appropriate case for this Court to decide whether the second sentence of article XIII, section 32 applies to local governments.[15]

---

[15] In any event, this Court has repeatedly held that article XIII, section 32's two sentences must be read together (*State Board of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638 [217 Cal.Rptr. 238, 703 P.2d 1131]), and that the provision, by its very terms, only applies to actions against the State. (*Howard Jarvis Taxpayers Assn. v. City of La Habra*, (2001) 25 Cal.4th 809, 822, fn. 5 [107 Cal.Rptr.2d 369, 23 P.3d 601] ["Article XIII, section 32 ... [does not] appl[y] to this action against two local governments"]; *Brown v. County of Los Angeles* (1999) 72 Cal.App.4th 665, 670 [85 Cal.Rptr.2d 414] [Section 32 "applies to actions against the State of California, not those involving assessments by local governments."].)

IV. CONCLUSION

The City's Petition should be denied.

DATED: May 21, 2012

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
FRANCIS M. GREGOREK
RACHELE R. RICKERT

FRANCIS M. GREGOREK

750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

CUNEO GILBERT & LADUCA, LLP
SANDRA W. CUNEO
330 South Barrington Ave., #109
Los Angeles, CA 90049
Telephone: 424/832-3450
Facsimile: 424/832-3452

TOSTRUD LAW GROUP, PC
JON TOSTRUD
1901 Avenue of the Stars, 2nd Floor
Los Angeles, CA 90067
Telephone: 310/278-2600
Facsimile: 310/278-2640

Attorneys for Plaintiff/Appellant

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1))

The text of this petition consists of 5,867 words as counted by the Microsoft Word 2003 word-processing program used to generate the brief.

DATED: May 21, 2012

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
FRANCIS M. GREGOREK
RACHELE R. RICKERT

FRANCIS M. GREGOREK

750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

CUNEO GILBERT & LADUCA, LLP
SANDRA W. CUNEO
330 South Barrington Avenue, #109
Los Angeles, CA 90049
Telephone: 424/832-3450
Facsimile: 424/832-3452

TOSTRUD LAW GROUP, PC
JON TOSTRUD
1901 Avenue of the Stars, 2nd Floor
Los Angeles, CA 90067
Telephone: 310/278-2600
Facsimile: 310/278-2640

Attorneys for Plaintiff/Appellant

DECLARATION OF SERVICE

I, Maureen Longdo, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 750 B Street, Suite 2770, San Diego, California. 92101.

2. That on May 21, 2012, declarant served the ANSWER TO PETITION FOR REVIEW via Federal Express Overnight Delivery in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of May 2012, at San Diego, California.

Maureen Longdo

MAUREEN LONGDO

COUNSEL FOR PLAINTIFFS

Francis M. Gregorek
Rachele R. Rickert
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
750 B Street, Suite 2770
San Diego, CA 92101
619/239-4599
619/234-4599 (fax)

Nicholas E. Chimicles
Timothy N. Mathews
Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
610/642-8500
610/649-3633 (fax)
timothymathews@chimicles.com

Jonathan W. Cuneo
William Anderson
CUNEO GILBERT & LADUCA, LLP
507 C Street, NE
Washington, DC 20002
202/789-3960
202/789-1813 (fax)
wanderson@cuneolaw.com

Sandra W. Cuneo
CUNEO GILBERT & LADUCA, LLP
330 South Barrington Avenue, #109
Los Angeles, CA 90049
424/832-3450
424/832-3452
scuneo@cuneolaw.com

Jon Tostrud
TOSTRUD LAW GROUP, P.C.
1901 Avenue of the Stars, 2nd Floor
Los Angeles, CA 90067
310/278-2600
310/278-2640
jtostrud@tostrudlaw.com

COUNSEL FOR DEFENDANTS

Robert E. Shannon
Belinda R. Mayes
CITY ATTORNEY OFFICE
333 West Ocean Blvd., 11th Floor
Long Beach, CA 90802-4664
562/570-2200
562/436-1579 (fax)

Michael G. Colantuono
Sandra J. Levin
Holly O. Whatley
COLANTUONO & LEVIN, P.C.
One California Plaza
300 South Grand Avenue, 27th Floor
Los Angeles, CA 90071
213/542-5700
213/542-5710 (fax)
mcolantuono@cllaw.us
slevin@cllaw.us
hwhatley@cllaw.us

COURTESY COPIES

Hon. Anthony J. Mohr
COUNTY OF LOS ANGELES
SUPERIOR COURT OF CALIFORNIA
600 South Commonwealth Ave., Room 314
Los Angeles, CA 90005

Clerk of the Court
COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
300 South Spring Street,
Second Floor, North Tower
Los Angeles, CA 90013
213/830-7000

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION AND STUDY

relating to

The Presentation of Claims Against Public Entities

January 1959

entities in prompt notice of claims against them will be adequately protected while, by virtue of the ready accessibility and general coverage of the new statute, just claims can be easily filed and the substantial rights of claimants preserved.

The principal features of the legislation recommended by the Commission are the following:

Claims Presentation Procedure. The basic scheme of the proposed general claims statute is simple: no suit may be brought against a governmental entity on a cause of action to which the statute is applicable until a written claim relating thereto has been presented to the entity and time has been allowed for action thereon by its governing body. The claim must be presented not later than 100 days after the cause of action to which it relates has accrued. Thereafter the governing body has 80 days within which to act upon the claim. If it does not act within 80 days, the claim is deemed denied as a matter of law. Suit must be brought within nine months after the date on which the claim was presented.

Provisions Designed To Avoid Injustice. The statute incorporates three provisions designed to alleviate hardship to claimants which have been recognized, albeit not uniformly, in the decisions or statutes of this and other states:

(a) Defects in a claim are waived unless the claimant is given written notice thereof by the entity.

(b) Time for filing is extended for a period not to exceed one year in the case of the claimant's death, minority, or physical or mental disability during the claim-presenting period, if the governmental entity will not be unduly prejudiced thereby.

(c) The governmental entity is estopped to assert the claimant's failure to comply with the statute if he relied upon a representation made by an officer, employee or agent of the entity that a presentation of claim was not necessary or that a claim as filed conformed to legal requirements.

Constitutional Amendment. If the goal of general uniformity of claims provisions is to be realized in respect of chartered counties, cities and counties and cities it is desirable to amend the Constitution to confirm the Legislature's power to prescribe procedures governing the presentation, consideration and enforcement of claims against such entities. The Commission has drafted and recommends the adoption of a constitutional amendment for this purpose. The statutes proposed by the Commission expressly provide that they shall not take effect as to a chartered county or city which has a claims procedure prescribed by charter or pursuant thereto until this constitutional amendment has been adopted.

Coverage of General Claims Statute. The proposed new statute does not govern the presentation of all claims against all governmental entities in this State. Claims against the State itself have been omitted therefrom because the State is unique in comparison with other entities, its legislative body does not meet regularly throughout the year, and the existing statutory provisions governing the filing of claims

DIVISION 3.5. CLAIMS AGAINST THE STATE, LOCAL PUBLIC ENTITIES AND OFFICERS AND EMPLOYEES

CHAPTER 2. CLAIMS AGAINST LOCAL PUBLIC ENTITIES

Article 1. General

700. As used in this chapter, "local public entity" includes any county or city and any district, local authority or other political subdivision of the State but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller.

701. Until the adoption by the people of an amendment to the Constitution of the State of California confirming the authority of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities and against officers, agents and employees thereof, this chapter shall not apply to a chartered county or city while it has a claims procedure prescribed by charter or pursuant thereto.

702. This chapter applies only to claims relating to causes of action which accrue subsequent to its effective date.

703. Articles 1 and 2 of this chapter apply to all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other provisions of law prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public officers and employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or a department or agency thereof or by another local public entity.

704. A claim against a local public entity presented in substantial compliance with any other applicable claims procedure established by

A STUDY RELATING TO THE PRESENTATION OF CLAIMS AGAINST PUBLIC ENTITIES *

INTRODUCTION

California law contains a large variety of legal provisions found in the codes, general laws, city charters and city ordinances which require a written claim to be presented before one may sue a public entity or employee. These provisions are designed to protect against unfounded and unnecessary lawsuits. They apply to various types of claims and to different types of public entities. Some claims against some entities are not subject to a presentation requirement. All claims against certain entities are subject to a presentation requirement while no claims against some and only specified claims against still other entities are subject thereto. The time limits, formal requisites, contents and place to file vary greatly from claim statute to claim statute. All of the many diverse provisions, however, share the common general characteristic that compliance with the applicable claim presentation procedure is a prerequisite to maintenance of a court action to enforce the claim.

Most of the claims statutes and litigation concerning them relate to claims for personal injury or property damage in tort, for money owing on contract, for breach of contract and for taking or damaging private property for public use without payment of just compensation (the so-called "inverse condemnation" action). This study relates exclusively to legal provisions governing claims in the foregoing categories. Excluded from the scope of the study, therefore, are such provisions as the following:

(1) Provisions governing claims for refund of taxes, assessments, fees, etc. Such provisions are frequently integrated with special procedures governing the assessment, levy and collection of revenue. They are separate and independent from the tort and contract claims provisions and do not create problems of the same nature and significance as the claim provisions embraced by the report.
(2) Provisions governing notices and claims in connection with mechanics' and materialmen's lien procedures or their statutory counterparts applicable to public construction contracts.
(3) Provisions governing aid rendered under public assistance programs.
(4) Claims of public officers and employees arising under the Workmen's Compensation law.
(5) Provisions governing payment of benefits under pension and retirement systems.
(6) Provisions for payment of interest and principal on government bonds.

* This study was made at the direction of the Law Revision Commission by Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

referee without any previous order having been made for temporary custody of a person subject to the jurisdiction of the court, the referee shall also, from time to time, recommend to the court such orders for temporary custody as seem necessary.

Utilization of findings and recommendations

SEC. 3. Section 578 of said code is amended to read:

578. Upon the presentation of the findings and recommendations of the referee, the court may make such order in the case as it deems proper, or, after such notice as it deems proper to the persons interested in the case, may hear additional testimony or evidence and may approve or set aside the findings and recommendations of the referee, or may re-refer the case for the taking of further testimony or the making of further recommendations by the referee.

Repeals

SEC. 4. Sections 577 and 578.1 of said code are repealed.

CHAPTER 1723

An act to add Section 752 to the Welfare and Institutions Code, relating to the expunging of juvenile court records and other records relating to wards of the juvenile court.

In effect September 18, 1959

[Approved by Governor July 9, 1959. Filed with Secretary of State July 10, 1959.]

The people of the State of California do enact as follows:

SECTION 1. Section 752 is added to the Welfare and Institutions Code, to read:

752. In any case in which a person became a ward of the juvenile court for the reasons described in subdivisions (f), (g), (h), (i), (j), (k), (m), or (n) of Section 700, or any other reason involving misconduct by such person, such person, or the county probation officer, may, five years or more after the jurisdiction of the juvenile court has terminated as to such person, petition the court for expungement of the records, including records of arrest, relating to such person's case, in the custody of the juvenile court and probation officer and such other agencies, including law enforcement agencies, and public officials, as petitioner alleges, in his petition, to have custody of such records. The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner, of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since such termination of jurisdiction he has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order expunged all records, papers, and exhibits in such person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case, in the custody of such

other agencies and officials as are named in the order. Thereafter the proceedings in such case shall be deemed never to have occurred. The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall expunge records in its custody as directed by the order.

Stats. 1959, CHAPTER 1724

An act to add Division 3.5 (commencing with Section 700) to Title 1 of the Government Code, to repeal Section 342 of the Code of Civil Procedure and to add Sections 313 and 342 to said code, relating to claims against the State, local public entities and public officers and employees.

[Approved by Governor July 9, 1959. Filed with Secretary of State July 10, 1959.]

In effect September 18, 1959

The people of the State of California do enact as follows:

SECTION 1. Division 3.5 (commencing with Section 700) is added to Title 1 of the Government Code, to read:

DIVISION 3.5. CLAIMS AGAINST THE STATE, LOCAL PUBLIC ENTITIES AND OFFICERS AND EMPLOYEES

CHAPTER 2. CLAIMS AGAINST LOCAL PUBLIC ENTITIES

Article 1. General

"Local public entity"

700. As used in this chapter, "local public entity" includes any county or city and any district, local authority or other political subdivision of the State but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller.

Adoption of constitutional amendment

701. Until the adoption by the people of an amendment to the Constitution of the State of California confirming the authority of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, chartered cities and counties and chartered cities and against officers, agents and employees thereof, this chapter shall not apply to causes of action founded on contract against a chartered city and county or chartered city while it has an applicable claims procedure prescribed by charter or pursuant thereto.

Causes of action affected

702. This chapter applies only to claims relating to causes of action which accrue subsequent to its effective date.

Exemptions

703. Articles 1 and 2 of this chapter apply to all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of

any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public officers and employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or a department or agency thereof or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 of Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing at Section 1720).

Claim made under prior law

704. A claim against a local public entity presented in substantial compliance with any other applicable claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of this chapter shall satisfy the requirements of Articles 1 and 2 of this chapter, if such compliance takes place before the repeal of such statute, charter or ordinance or before July 1, 1964, whichever occurs first. Section 716 is applicable to claims governed by this section.

Claim procedure as established by agreement

705. The governing body of a local public entity may include in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, provisions governing the presentation, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. The written agreement may incorporate by reference claim provisions set forth in a specifically identified ordinance or resolution theretofore adopted by the governing body. A claims procedure established by an agreement made pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of claims than the time provided in Section 715, and that Section 716 is applicable to all such claims.

Article 2. Presentation, Consideration and Enforcement of Claims

Necessity of written claim

710. No suit for money or damages may be brought against a local public entity on a cause of action for which this chapter requires a claim to be presented until a written claim therefor has been presented to the entity in conformity with the provisions of this article.

Contents

711. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

(a) The name and post office address of the claimant;

(b) The post office address to which the person presenting the claim desires notices to be sent;

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; and

(e) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.

The claim shall be signed by the claimant or by some person on his behalf.

A claim may be amended at any time, and the amendment shall be considered a part of the original claim for all purposes.

Insufficiency of claim; Notice

712. If in the opinion of the governing body of the local public entity a claim as presented fails to comply substantially with the requirements of Section 711 the governing body may, at any time within fifty (50) days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein.

Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notices to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim.

The governing body may not take action on the claim for a period of twenty (20) days after such notice is given. A failure or refusal to amend the claim shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Section 711.

Article 3. Claims Procedures Established by Local Public Entities

Claims procedures established by local public entities

730. Claims against a local public entity for money or damages which are excepted by Section 703 from Articles 1 and 2 of this chapter, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity. The procedure so prescribed may include a requirement that a claim be presented as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section 715 of this code, and Section 716 of this code shall be applicable to all claims governed thereby.

epeal

SEC. 2. Section 342 of the Code of Civil Procedure is hereby repealed.

SEC. 3. Section 313 is added to the Code of Civil Procedure, to read:

eneral ocedure

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, and against the officers and employees thereof, is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

lor claims

SEC. 4. Nothing in this act shall be deemed to allow suit or reinstate claims which have been denied or barred prior to the effective date of this act, including but not limited to claims under the Revenue and Taxation Code which have been denied or barred by the provisions of the Government Code.

CHAPTER 1725

An act to repeal Sections 29700, 29700.1, 29701, 29702, 29703, 29704, 29705, 29707, 29711, 29713, 29714, 29714.1, 29715, 29716, 29720, to add Sections 29700 and 29706, to renumber Section 29719, to renumber and amend Sections 29706, 29708, 29709, 29710, 29712, 29717, 29718, 29721 and to amend Sections 29741, 29744 and 29748 of the Government Code, and to amend Section 439.56 of the Agricultural Code and Section 945 of the Military and Veterans Code, all relating to claims against counties.

fect under 1959

[Approved by Governor July 9, 1959. Filed with Secretary of State July 10, 1959.]

The people of the State of California do enact as follows:

at

SECTION 1. Sections 29700, 29700.1, 29701, 29702, 29703, 29704, 29705, 29707, 29711, 29713, 29714, 29714.1, 29715, 29716, and 29720 of the Government Code are hereby repealed.

SEC. 2. Section 29700 is added to said code, to read:

Application

29700. Except as otherwise provided herein, this chapter applies to all claims for money or damages against counties including claims which are governed by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of this code.

SEC. 3. Section 29706 of said code is renumbered and amended to read:

Time of presentment

29701. The board shall not consider a claim unless it is presented not less than three days or, if prescribed by ordinance, five days prior to the date of the meeting of the board at which it is considered.

SEC. 4. Section 29708 of said code is renumbered and amended to read:

Approval by officer

29702. A claim based upon an expenditure directed to be made by any officer shall be approved by such officer before it is considered by the board.

SEC. 5. Section 29709 of said code is renumbered and amended to read:

Clerk's duties

29703. When the board acts upon a claim the clerk of the board shall file a memorandum of the action taken and endorse on the claim a statement thereof. If the claim is allowed in whole or in part, the memorandum and endorsement shall state the date of the allowance, the amount of the allowance, and from what fund allowed and whether the board requires the claimant to accept the amount allowed in settlement of the entire claim. The endorsement shall be attested by the clerk with his signature and countersigned by the chairman and the claim, when duly endorsed, attested and countersigned, shall be transmitted by the clerk to the auditor.

SEC. 6. Section 29710 is renumbered and amended to read:

Auditor's approval

29704. If the auditor approves the action taken upon the claim, he shall endorse on the claim "approved" and attest the endorsement with his signature. He shall then issue and tender to the claimant his warrant for the amount allowed. Where the board has required the claimant to accept the amount allowed in settlement of the entire claim, the warrant shall not be delivered to the claimant until there has been delivered to the auditor a duly executed release or other instrument evidencing acceptance of the amount tendered in settlement of the entire claim.

SEC. 7. Section 29712 of said code is renumbered and amended to read:

Adoption of forms

29705. The board may adopt forms for the submission and payment of claims and may prescribe and adopt warrant forms separate from claim forms, to the end that the approved claims may be permanently retained in the auditor's office as vouchers supporting the warrants issued. The forms so adopted may not be inconsistent with the provisions of this article or of any other statutes or regulations expressly governing any such claims or the presentation thereof, and shall provide:

(a) For the approval of the officer directing the expenditure. In counties having a system under which expenditures