

Supreme Court Number S242250

SUPREME COURT
FILED

MAR 08 2018

Jorge Navarrete Clerk

**In the Supreme Court
of the State of California**

REBECCA MEGAN QUIGLEY,

Deputy

Plaintiff and Appellant,

v.

GARDEN VALLEY FIRE PROTECTION DISTRICT, et al.,

Defendants and Respondents.

After a Decision by the Court of Appeal
For the Third Appellate District
Third Civil Case Number C079270
Superior Court of the State of California
For the County of Plumas, Case No. CV10-00225
The Honorable Janet Hilde

MOTION FOR JUDICIAL NOTICE

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REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rules of Court, rules 8.252(a) and 8.54 and Evidence Code sections 452, 453, and 459, defendants and respondents, Garden Valley Fire Protection District, Jeff Barnhart, Frank DelCarlo and Mike Jellison (“the firefighter defendants”) request that this court take judicial notice of the following legislative history materials, copies of which are attached to this motion as Exhibits A to D:

- Exhibit A: Legislative Analyst Analysis of Senate Bill No. 42, dated April 3, 1963;
- Exhibit B: Release Regarding Six-Bill Package Regarding Public Entity Liability, dated January 10, 1963;
- Exhibit C: Floor Statement on Senate Bill No. 42;
- Exhibit D: Office of Legislative Counsel Report on Senate Bill No. 42, dated July 3, 1963.

This motion for judicial notice is based upon the memorandum of points and authorities, the Declaration of Jeffrey A. Miller and such further documents as this court might consider in ruling on this request for judicial notice.

DATED: March 7, 2018

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By: 

Jeffrey A. Miller
*Attorneys for Defendants and
Respondents Garden Valley Fire
Protection District, et al.*

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This motion seeks judicial notice of legislative history materials of Senate Bill 42, which enacted the Government Tort Claims Act (“Act”), codified at Government Code sections 810 through 996.6. The materials are relevant to demonstrate that the Court of Appeal properly held that Government Code section 850.4 is jurisdictional and to address arguments made by plaintiff and appellant, Rebecca Quigley (“Quigley”) in her opening brief on the merits.

Specifically, Quigley argues in her opening brief that governmental immunities are not jurisdictional. [AOB, pp. 19-20, 36-39.] The firefighter defendants contend, in part, that the legislative history of Senate Bill 42 demonstrates that governmental immunity is the rule and liability may only be imposed against public entities and their employees when provided by statute. The legislative history also establishes the intent of the Legislature to occupy the field of government tort liability through these statutory provisions, and the public policy concerns considered by the Legislature in drafting and enacting the Government Tort Claims Act. The documents demonstrate that Government Code section 850.4 immunity can be raised at any time.

The firefighter defendants respectfully request that this court grant this motion for judicial notice as the legislative history materials are relevant to the issue presented on appeal.

II. Authority for Judicial Notice.

Evidence Code section 459 permits the reviewing court to take judicial notice of any matter specified in section 452. The Supreme Court has the same power as the trial court to take judicial notice of matters properly subject to judicial notice. (Evid. Code, § 459; see also Cal. Rules of Court, rule 8.252(a).) These materials were not presented to the trial court for judicial notice, but they are the proper subject of judicial notice.

Evidence Code section 452, subdivision (a), states that judicial notice may be taken of “[t]he decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.” Additionally, Evidence Code section 452, subdivision (c), states that a court may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Pursuant to Evidence Code section 453, this court must take judicial of such matters provided a proper request is made.

Here, judicial notice is the appropriate procedure for bringing the legislative history materials of the Legislative Analyst Analysis of Senate Bill 42, dated April 3, 1963; the Release Regarding Six-Bill Package Regarding Public Entity Liability, dated January 10, 1963; the Floor Statement on Senate Bill 42; and the Office of Legislative Counsel Report on Senate Bill 42, dated July 3, 1963, before this court. Reports from the Assembly Committee, Senate Subcommittee

and from the Legislative Counsel as well as ballot pamphlets, including summaries and arguments and statements of the vote, different versions of the bill, floor statements and statements by sponsors, proponents and opponents communicated to the Legislature as a whole constitute cognizable legislative history. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-37.)

III. The Legislative History of the Government Tort Claims Act Is Relevant to the Issue on Appeal.

This court should take judicial notice of the legislative history of the Government Tort Claims Act because it is relevant to the Court of Appeal's holding that Government Code section 850.4 is jurisdictional and to addresses Quigley's arguments made in her opening brief on the merits.

Quigley argues that in California the rule regarding public entity immunity is that there is liability and immunity is the exception. [AOB, pp. 19-20.] She also argues the immunity statutes under the Government Tort Claims Act do not deprive a court of subject matter jurisdiction. [*Id.* at pp. 32-39.] The legislative history at issue in this request demonstrates that Quigley is incorrect.

In 1961, this court held in *Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211, that the doctrine of sovereign immunity would no longer protect public entities from civil liability for their torts. (*Id.* at pp. 213-215 & fn. 1.) In the legislative session immediately following the *Muskopf* decision, the Legislature suspended the

decision's effect and directed the California Law Revision Commission ("Commission") to conduct a study of whether the doctrine of sovereign immunity should be abolished or revised. (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 830 (*Brown*), citing Stats. 1961, ch. 1404, pp. 3209-3210.)

Following extensive research, the Commission published a recommendation that public entities across the board should remain immune from liability unless liability is imposed by a specific statute. (*Brown, supra*, 4 Cal.4th at p. 830, citing Recommendation Relating to Sovereign Immunity, No. 1, Tort Liability of Public Entities and Public Employees, 4 Cal. Law Revision Com. Rep. (Jan. 1963) p. 801.) The recommendation became the Tort Claims Act (Stats. 1963, ch. 1681, p. 3266). (*Brown, supra*, at p. 830; see also *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 348.)

Senate Bill 42 enacted the Government Tort Claims Act, which is codified in Government Code sections 810 through 996.6. Senate Bill 42 was introduced to provide public entities and employees not only wide discretionary immunity, but also a great number of specific immunities. The documents the firefighter defendants request this court to take judicial notice of demonstrate the Legislature's intent to restrict public entity liability to that defined by statute. The legislative history also establishes the intent of the Legislature to occupy the field of government tort liability, thus limiting California courts' jurisdiction to impose liability against public entities and employees. The documents show that immunity is the rule and liability is the exception. Thus, the legislative materials contain discussion of the

legislative intent and reasoning for the bill's enactment that is both relevant and significant for this court's consideration. They demonstrate that section 850.4 immunity can be raised at any time because absent a statute allowing imposition of liability, public entities and employees are immune from liability and courts lack jurisdiction to adjudicate the matter. This court should take judicial notice of these legislative materials in considering whether Government Code section 850.4 may be raised for the first time at trial.

IV. Conclusion.

Based on the foregoing reasons and authority, the firefighter defendants respectfully request this court to grant this motion for judicial notice.

DATED: March 7, 2018

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By: 

Jeffrey A. Miller

Lana G. McIntyre

Jonna D. Lothyan

*Attorneys for Defendants and
Respondents Garden Valley Fire
Protection District, et al.*

**DECLARATION OF JEFFRY A. MILLER IN SUPPORT OF
DEFENDANTS' MOTION FOR JUDICIAL NOTICE**

1. I am an attorney duly admitted to practice in all of the courts of the State of California and a Certified Appellate Specialist so certified by the State Bar of California, Board of Legal Specialization. I am a partner at the law firm of Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for defendants and respondents, Garden Valley Fire Protection District, Barnhart, DelCarlo and Jellison. The facts set forth herein are of my own personal knowledge, and if sworn I could and would competently testify thereto.

2. Attached hereto as "Exhibit A" is a true and correct copy of the relevant portions of the legislative history of Senate Bill 42, which enacted the Government Tort Claims Act. Specifically, the following documents are attached as follows:

Exhibit A: Legislative Analyst Analysis of Senate Bill No. 42, dated April 3, 1963;

Exhibit B: Release Regarding Six-Bill Package Regarding Public Entity Liability, dated January 10, 1963;

Exhibit C: Floor Statement on Senate Bill No. 42;

Exhibit D: Office of Legislative Counsel Report on Senate Bill No. 42, dated July 3, 1963.

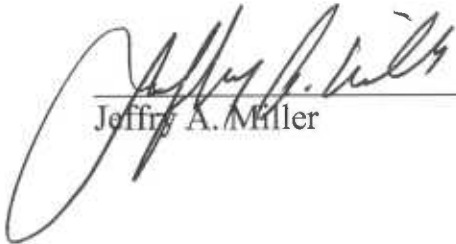
3. The legislative history materials that are the subject of this motion for judicial notice were not presented to the courts below.

4. These legislative history materials are relevant, however, to the issues presented in this court as they disclose the Legislature's

intent and the public policy considerations behind the Government Tort Claims Act, including section 850.4. They are the proper subject of judicial notice pursuant to Evidence Code sections 452 and 459, and do not relate to proceedings occurring after the judgment that is the subject of this appeal.

5. My office obtained a copy of these legislative materials through Legislative Intent Service. The materials attached hereto are true and correct copies of portions of the materials Legislative Intent Service retrieved and provided to my office in response to our request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in San Diego, California on March 7, 2018



Jeffrey A. Miller

**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION
FOR JUDICIAL NOTICE**

IT IS HEREBY ORDERED THAT this court grants respondents, Garden Valley Fire Protection District, Barnhart, DelCarlo and Jellison motion for judicial notice and orders as follows:

Exhibit	Document	Grant	Deny
A	Legislative Analyst Analysis of Senate Bill No. 42, dated April 3, 1963		
B	Release Regarding Six-Bill Package Regarding Public Entity Liability, dated January 10, 1963		
C	Floor Statement on Senate Bill No. 42		
D	Office of Legislative Counsel Report on Senate Bill No. 42, dated July 3, 1963		

IT IS SO ORDERED.

DATED: March ____, 2018

PRESIDING JUSTICE

EXHIBIT “A”

EXHIBIT “A”

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