Supreme Court Number S242250

In the Supreme Court of the State of California

REBECCA MEGAN QUIGLEY,

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 Jeffry 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: _____
Jeffry 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 statue 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: _____
Jeffry A. Miller
Lann 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.

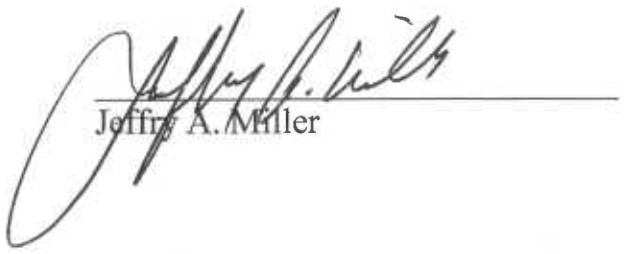
3. The legislative history materials that are the subject of this motion for judicial notice were not presented to the courts below.

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



Jeffry 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"

EXHIBIT "A"

Legislative Analyst
April 9, 1963

ANALYSIS OF SENATE BILL NO. 42 (Cobey)
As Amended in Senate, April 3, 1963
1963 General Session

Fiscal effect: This is a "savings" bill to the extent that it would reduce the increased liability apparently resulting from the Muskopf case. Increased costs resulting from the Muskopf case appear to be limited by this bill to a range of approximately $1 to $1.5 million.

Analysis:

This bill is the major bill in the series introduced at the request of the California Law Revision Commission to limit the substantial increase in tort liability, particularly to the State, which resulted from the Muskopf decision by the State Supreme Court in 1961.

As a result of this and other subsequent decisions, the defense of sovereign immunity in a suit for tort damages is no longer available to the State and the other public entities within the State of California. The effects of the decision are being held in abeyance until the 91st day following adjournment of the 1963 General Session of the Legislature by Chapter 1404, Statutes of 1961, the so-called "moratorium".

Prior to the Muskopf case, the State and other public entities enjoyed immunity generally except in (1) motor vehicle cases, in (2) instances where the entity was acting in a proprietary capacity, and in (3) nuisance cases. In these cases the State had specifically removed the immunity by statute.

The Muskopf decision opens two principal areas of new liability--(1) for injuries alleged to have arisen from "dangerous and defective conditions" of public property, particularly highways and (2) for injuries alleged to have resulted from negligent or intentional acts of public servants, except for some questions with reference to discretionary acts of public employees.

A study made by the Senate Fact Finding Committee on Judiciary estimates that, based upon experience in the State of New York where sovereign immunity was discarded in 1939, the added cost to the State of California resulting from dangerous conditions on highways would probably be in the order of $1,000,000 annually and that other state liability might amount to $250,000.

We are informed by the Department of Finance (March 27, 1963) that in the 23 months since the Muskopf decision, claims amounting to $43,000,000 have been filed against the State itself and that claims appear to be arising at the rate of $2,000,000 a month. While in the opinion of the department, 85 percent of the claims are suable, the department further advises that if the State still had the defense of sovereign immunity available, in its judgment many of the claims would not have been filed.

There is no firm basis on which costs can be estimated. There is divided opinion as to whether or not experience in the federal area and in other states where sovereign immunity has been eliminated is of value for comparison purposes. Added costs are implied in this bill but added in the sense that the reduced area of liability provided by the bill is still larger than the area of liability which existed prior to the Muskopf decision. On the other hand, any legislation enacted which limits liability can only improve the present tort liability status, particularly with reference to the State itself.

This bill adds a new division to the Government Code, amends a number of other code sections and repeals code and other statutory sections relating to the liability of public entities and public officers, servants and employees. The intent of the Law Revision Commission expressed in its report is to make public entities immune unless they are declared to be liable by specific statute and to make the rules apply across the board to all public entities. Discretionary acts are protected and the acts of "governing" are protected. Special provision is made with reference to mental institutions, prisons and unimproved public property.

Analysis of SB 42 (continued) -3-

We are advised by the commission that this bill will put the State in about the same liability conditions as now apply to school districts. The State now insures against many of its liabilities but the fact that it now becomes a party defendant in litigations without its old defense is perhaps an invitation for plaintiffs to seek higher awards.

EXHIBIT "B"

EXHIBIT "B"

EXHIBIT "B"

FOR IMMEDIATE RELEASE: Thursday 1-10-63

Senator James A. Cobey(D.-Merced) today introduced a package of six bills relating to the liability of public entities, such as the State, cities, counties and school districts, to persons injured by public employees. The crucial question presented by these bills involves the balancing of individual hardship, on the one hand, and, on the other, the ability of the State and its political subdivisions to pay for injuries. The solution to this problem may well be the most important single matter to come before this session of the California Legislature. The bills are the result of a study undertaken by the California Law Revision Commission in 1957.

The Commission recommends that public entities be immune from liability unless such liability is imposed by a specific statute. This recognizes that the government is fundamentally different from a private person. Private persons do not make laws. Private persons do not issue and revoke licenses to engage in various professions and occupations. Private persons do not quarantine sick persons and do not commit mentally disturbed persons to involuntary confinement. Private persons do not prosecute and incarcerate violators of the law or administer prison systems. Only public [redacted] entities are required to build and maintain thousands of miles of streets, sidewalks and highways. Unlike many private persons, a public entity often cannot reduce its risk of potential liability by refusing to engage in a particular activity, for government must continue to govern and is required to furnish services that cannot be adequately provided by any other agency.

Under the recommended legislation a public entity would be liable for an act or omission of its employees in performing his duties to the same extent that the employee is personally liable.

A public entity would also be liable for injuries resulting from a failure to exercise reasonable diligence to comply with mandatory duties imposed by statute or by regulations having the force of law.

A public entity would be liable for an injury resulting from its failure to exercise due care in selecting or in failing to remove an employee. A public entity would be liable for malicious prosecution. A public entity wouldnot be liable for punitive or exemplary damages. No liability would result from the adoption or failure to adopt or to enforce any statute, ordinance or regulation, or from the execution or inadequate enforcement of any law or for failure to regulate the conduct of others.

The proposed statute provides a great many immunities to public employees acting in the scope of their employment. The most important of these are: immunity for an act or omission that is the result of the exercise of a discretion vested in the employee; immunity where he is executing an enactment with due care; immunity where he acts in good faith and with due care under an enactment that is held unconstitutional, invalid or inapplicable; immunity in adopting or failing to adopt an enactment or failing to enforce an enactment; immunity for granting or revoking permits, licenses, certificates and similar authorizations; immunity for failure to make adequate building inspections and other similar inspections and for negligence

2A

health and mental examinations not for the purpose of treatment; immunity from liability for malicious prosecution.

A public entity would be required to pay a judgment against an employee if it arises out of his acts or omission in the scope of his employment. The entity would be permitted to recover back the amount paid from the employee, if he acted or failed to act because of actual fraud, actual malice or corruption. If the netity undertakes the defense of an employee, it waives its right to indemnity (when the right exists) unless reserved by agreement.

The recommended legislation would be given the maximum retroactive effect that is constitutionally permissable. This legislati would supersede a 1961 decision of the California Supremem Court that held that the doctrine of sovereign--that the king can do no wrong--would no longer protect public entities from civil liability for their torts.

The most significant area of liability covered by the proposed legislation relates to liability for dangerous conditions of property. the legislation provides that a public entity is liable for a dangerous condition of its property only where it creates a condition or fails to repair it or post warning signs if it knows that the condition exists

The proposed legislation would require the public entity take reasonable ~~maximum~~ action to protect persons from dangerous condition but take into account the limited funds available to public entities.

Certain immunities from liabilities for dangerous conditions would be provided. These include no liability for failure to provide stop and go lights, stop signs, yield right of way signs or ~~speed~~

EXHIBIT "C"

EXHIBIT "C"

EXHIBIT "C"

FLOOR STATEMENT ON S.B. 42

Senate Bill 42 is the basic and principal product of the California Law Revision Commission's two-year study of State and local governmental liability and nonliability in money damages for wrongs to persons and property.

This study was undertaken at the direction of this Legislature and represents the most comprehensive study of the subject ever made any where at any time.

It was occasioned by a decision of our Supreme Court in the case of Muskopf v. Corning Hospital District on January 27, 1961. This decision ended in California the legal doctrine of governmental nonliability or immunity for torts--that is, wrongs to persons and property.

Many of you will recall that two years ago, we responded to this decision by enacting a statute, Chapter 1404 of the Statutes of 1961, by which we suspended the effect of this decision and its companion decision until the 91st day after the final adjournment of this session of the Legislature this year.

Consequently, government in California, both State and local, is faced with relatively unlimited, unknown and completely chaotic tort liability unless we legislate in this field at this session.

Under Senate Bill 42, the government is liable for a wrongful act or omission of its employee in carrying out his public duties if the employee himself is liable. The bill provides public employees not only wide discretionary immunity but also a great number of specific immunities as well.. These immunities are in recognition of the fact that, unlike private persons or corporations, there are many things that government must do because there is no one else to

do them, such as providing jails and prisons, firefighting facilities, many recreational facilities, mental hospitals, etc.

Senate Bill 42 as modified during its progress through the Legislature represents a sound, balanced, fair and middle of the road approach to the problem of governmental liability and governmental immunity. The bill contains many detailed provisions that indicate whether or not liability will exist in particular types of cases. By these provisions, we have tried to create a known and defined area of liability so that people will know where they stand largely by consulting the statute itself and will not have to go to court and incur the expense and risk of litigation to find this out. In so doing, we believe that we have created by this bill only insurable risks and, furthermore, risks that are insurable for reasonable premiums.

In this connection, the Senate Fact Finding Committee on Judiciary has furnished us with a comprehensive report, prepared by an insurance underwriting expert, which tells us that in all probability the total annual cost of this bill to the State will be in the neighborhood of $1,850,000. Of this $1,850,000, roughly $1 million will be borne by the State Division of Highways and this money will come from the gross receipts transportation tax. The same report states that the bill will not significantly increase the liability costs for cities, counties and school districts.

Because Senate Bill 42, in short, represents a fair, balanced, middle of the road approach to the problem of governmental liability and immunity in California, it now enjoys the support of all levels of government and there is no known opposition to it. Like all political

compromises, it is not completely satisfactory to anybody but it is supported by one and all as the fairest solution that we have been able to work out to this tremendously complex and vexing problem.

EXHIBIT "D"

EXHIBIT "D"

EXHIBIT "D"

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

COPY

July 3, 1963

REPORT ON SENATE BILL NO. 42. COBEY (Departmental).

SUMMARY: Adds, amends, repeals various secs., various codes and laws, re liability of public entities and personnel.

Sets forth comprehensive rules governing liability and nonliability of public entities for acts and omissions of public officers, servants, and employees, and independent contractors, and for the condition of public property (not including liability based on contract or the right to obtain relief other than money or damages). Sets forth rules relating to liability and immunity of public employees. Sets forth rules governing extent of duty of public entity to pay judgments against its officers, agents, and employees, and duty of public entity to indemnify such personnel and duty of such personnel to indemnify a public entity with respect to claims based on liability within scope of act. Provides rules governing liability of, and contributions and indemnification among, public entities that are parties to a joint exercise of power agreements or agreements for transfer of functions. Amends and repeals numerous provisions now dealing with above matters.

FORM: Approved. TITLE: Approved.

CONSTITUTIONALITY: Approved.

COMMENTS: Secs. 1956 and 1956.5, Gov. C., repealed by this bill, are repealed also by S.B. 44, now before the Governor, another of the Law Revision Commission sovereign immunity bills. There is no conflict. Sec. 2002.5, Gov. C., repealed by this bill, is amended by one section of S. B. 45, another of

the Law Revision Commission sovereign immunity bills, now before the Governor. However, that bill provides that if S.B. 42 is enacted, Sec. 2022.5 is not affected by S.B. 45.

A. C. Morrison
Legislative Counsel

By
Terry L. Dean
Deputy Legislative Counsel

TLD:ac

PROOF OF SERVICE

Quigley v. Garden Valley Fire Protection District, et al.
Supreme Court Number S242250

I, Sherry Bernal, state:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 701 B Street, Suite 1900, San Diego, California 92101.

On March 7, 2018, I served the following document described as **MOTION FOR JUDICIAL NOTICE** on all interested parties by overnight mail. I am readily familiar with the firm's practice for collection and processing correspondence for overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. The envelope or package was deposited for collection and delivery to an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2018, at San Diego, California.

Sherry Bernal

SERVICE LIST

Quigley v. Garden Valley Fire Protection District, et al.
Supreme Court Number S242250

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