

(R-83-1024)

RESOLUTION NUMBER R- 257773

Adopted on JAN 10 1983

WHEREAS, the Department of Intergovernmental Relations requested the various departments of the City, via memorandum dated September 7, 1982, to submit bill proposals for inclusion in The City of San Diego's 1983 Sponsorship Program; and

WHEREAS, the Rules Committee, on December 6, 1982, reviewed various bill proposals submitted by the departments of the City; and

WHEREAS, the Committee reviewed the recommendations and directed various courses of action for two (2) of the proposals rather than City sponsorship; NOW, THEREFORE,

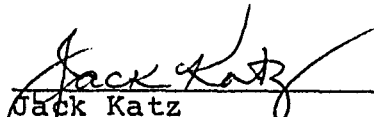
BE IT RESOLVED, by the Council of The City of San Diego, that the City Attorney, City Manager, and Intergovernmental Relations Department further study, as discussed in Attachment 1, affixed hereto, the question of whether a governmental agency is covered by a 10-year statute of limitations for any construction or development performed by that agency, and further, that the City Attorney review the issue of joint and several liability to determine a method for narrowing City liability.

BE IT FURTHER RESOLVED, that the City Attorney draft a letter to California Assemblyman McAllister, as discussed in Attachment 2, affixed hereto, soliciting his assistance in requesting the Employment and Development Director to state why,

in a situation were an unemployment insurance recipient's liability for overpayments is waived, a notice procedure to local government could not be instituted administratively.

APPROVED: John W. Witt, City Attorney

By



Jack Katz
Chief Deputy City Attorney

JK:smm
12/30/82
Or. Dept: Mayor
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CITY OF SAN DIEGO
1983 SPONSORSHIP PROGRAM

LIABILITY FOR CITY IMPROVEMENTS
(STATE)

Proposal:

To clarify the law to insure that a governmental agency is covered by the 10 year statute of limitations for any construction/or development performed by that agency. (CCP Section 337.15)

Source:

Engineering and Development Department.

Present Law:

The law provides that no action may be brought to recover damages from "any person" more than 10 years after he has developed or placed improvements on any real property.

Discussion:

The law is unclear whether a governmental agency is a "person". Courts have interpreted the law to exclude construction/development performed by a government agency and thereby extend to it liability for latent defects in an improvement to an uncertain time in the future. (See Leaf v. City San Mateo.) Of recent concern to the City was the case where a contractor performed grading and filling work on public and private property. The work was supervised, inspected, tested for proper compaction, and approved by the City. All work was performed and completed in 1966. In 1978, more than ten years after the City's role was finished, alleged latent defects in the work appeared as evidenced by suspected land subsidence and structural damage to a house built on the filled/graded property.

This year, the California Second District Court of Appeals greatly expanded the range of responsibility in this area when it held in Valley Circle Estates v. VTN Consolidated, Inc.

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that if work by a defendant is within the ten-year statute of limitations, cross-defendants, (a City) may also be sued, even if their work was performed outside the statute of limitations. (A petition to appeal this ruling has been filed with the California Supreme Court.)

It should be understood that for those properties the City actually possesses or controls, the statute of limitations, cannot be asserted and our exposure is uncertain. Accordingly, this proposal's scope is to restrict the City's liability for improvements constructed by it to a 10 year period.

Issues

1. Could this change in law make local agency responsibility more explicit for damages resulting from construction or design deficiencies within the 10 year statute of limitations?
2. If passed, would this measure reduce the thoroughness of the City's engineering reviews, because of the alleged "protection" of a 10 year statute of limitations?
3. If passed, how would this measure affect citizen recourse for damages resulting from work performed by the City on property it no longer owns or controls?
4. In addition to the problem cited in Issue #1 above, this proposal may be of only marginal value to the City if Valley Circle Estates v. VTN Consolidated is upheld by higher courts.

Recommendation:

Because of the magnitude of this issue, it is recommended that the proposal be deferred and that the Engineering and Development Department and the City Attorney's Office study this issue further.

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OVERPAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS
(STATE)

Proposal:

To prohibit the Employment Development Department (EDD) from waiving an unemployment insurance recipient's liability for overpayments unless the previous employers received ten days prior notice and is given an opportunity to respond in writing.

Source:

City Attorney

Present Law:

The following sections of state law are relevant:

- Unemployment Insurance Code Section 1375 permits EDD to waive reimbursement by the recipient if the unemployment insurance overpayment was not due to fraud and was received without fault by the recipient and where recovery would be against equity and good conscience.
- Unemployment Insurance Code Section 803(c) provides that cost of benefits charged to an employer shall include benefits overpaid as a result of an error of any type made by EDD whether or not such error could be anticipated.

Discussion:

The City Attorney submitted this proposal in reaction to a case that occurred during 1980 when EDD overpaid a former City employee, who was receiving a City pension, \$558 and held the City liable by waiving reimbursement under the provision of Unemployment Insurance Code Section 1375. The City then became liable for the overpayment under Unemployment Insurance Code Section 803(c). EDD's decision to waive reimbursement was made without notice to the City. The City attorney's proposal would allow the City to contest such a waiver and present evidence of fraud or fault, if applicable.

As a part of the 1982 Sponsorship Program, the City sponsored AB 3438 (L. Stirling) dealing with four unemployment insurance issues. One portion of the bill would have held the City harmless for any EDD errors. Subsequently, AB 3438 was referred to an interim hearing of the Unemployment Insurance/Disability Insurance subcommittee of the Assembly Committee on Finance, Insurance and Commerce chaired by Assemblyman McAlister. At the November 5 interim hearing here in San Diego, statewide experts discussed in detail many aspects of unemployment insurance procedures. Based on those discussions, the committee consultant is in the process of drafting a consensus bill to introduce early next session.

Given the relatively infrequent occurrence and small dollar amounts associated with this type of unemployment insurance overpayment, coupled with the illusive burden of proving fraud on the part of the recipient, perhaps an administrative rather than legislative approach is more justified. In fact, after conferring

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with the Finance, Insurance and Commerce Committee consultant regarding this current proposal by the attorney, we believe an administrative solution may exist. Specifically, we recommend that the attorney draft correspondence to Assemblyman McAlister which discusses this issue. Assemblyman McAlister's staff has indicated that they would then request EDD to state why a notice to local government could not be instituted administratively.

Issues:

Since Governor-elect Deukmejian will appoint a new director, would it be advantageous to delay contacting EDD about an administrative remedy until the new EDD Director is appointed? Perhaps the new director will be more sympathetic to our concerns.

Recommendations:

Ask the City Attorney to draft correspondence for Assemblyman McAlister so that with our follow up he can pursue an administrative solution with EDD.

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Passed and adopted by the Council of The City of San Diego on JAN 10 1983,
 by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uvaldo Martinez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Vacant

AUTHENTICATED BY:

BILL CLEATOR
 Deputy Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

By Ellen Board, Deputy.

Office of the City Clerk, San Diego, California

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