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Venue: Actions against the State, Its Officers and Agencies: Code of Civil Procedure Section 401

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codes. Section 411 (7) shows a proper approach to the problem with its treatment of state boards and commissions, and another subdivision could easily be added to section 411. Section 411 (5), covering counties, cities and towns, however, is not entirely adequate, and amendment seems desirable. The class of officers there authorized to receive service is a very narrow one; there is no good reason why such officials as the mayor, the district attorney, the city attorney and the city manager should not be included. In fact, the language used in this section sounds a trifle archaic when applied to present day California political subdivisions. Here again, New York has an excellent code section, enumerating officials to be served in actions against each of the various types of municipal corporations. California would do well to enact a similar section.

IV. CONCLUSION

While several substantive changes have been suggested, and some are believed necessary, the major and most essential change to be recommended is one of form rather than substance. Even assuming that present provisions are adequate in substance, they are set forth in an illogical and inconvenient manner. The most desirable solution calls for a consolidation and restatement of all the present provisions in one place in California's statutes, so that the practitioner and individual citizen may readily ascertain the applicable law.

Alan C. Furth and John A. Sproul

VENUE: ACTIONS AGAINST THE STATE, ITS OFFICERS AND AGENCIES: CODE OF CIVIL PROCEDURE

SECTION 401

California Code of Civil Procedure sections 392-398, the basic venue provisions, specify the proper place for the trial of most civil actions. Particular statutes designate the proper place of trial for certain actions against the State, its agencies and officers. But an action may be begun in any court having jurisdiction, subject to defendant's

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2 Cal. Code Civ. Proc. § 396(b); Goodwin v. Irwin (Cal. Dist. Ct. 1857) 2 Lab. 85. The process of the superior courts runs throughout the state. Cal. Const. Art. VI, § 5. Thus the superior court of any county may acquire jurisdiction over the person by personal service anywhere in California. See Hohson v. Metropolitan Casualty Ins. Co. (1931) 114 Cal. App. 349, 353, 300 Pac. 87, 89. However, in certain actions subject-matter jurisdiction is lodged only in certain courts. Note 4, infra. Most actions against the State, its officers and agencies are triable only in superior courts either because a statute so provides (e.g., Cal. Code Civ. Proc. § 1272a) or because plaintiff desires "extraordinary" relief which cannot be granted by an inferior court. Cal. Code Civ. Proc.
right to have the venue changed to a proper county.\(^3\) Except in the case of certain actions affecting real property,\(^4\) defendant may waive this right and permit the action to be tried where begun.\(^5\) This comment will discuss the applicability of the basic and particular venue provisions to suits against the State, its officers and agencies.

**ACTIONS AGAINST THE STATE\(^6\)**

Claims against the State arising out of express contracts\(^7\) or for negligence\(^8\) must be presented to the State Board of Control.\(^9\) If disallowed, the claimant has six months in which to bring a civil action\(^10\) governed by the ordinary rules of civil procedure.\(^11\) Thus, the suit may be begun in any court of competent jurisdiction,\(^12\) subject to the

\(^3\) CAL. CODE CIV. PROC. § 397(1).

\(^4\) Actions to recover possession of, quiet title to, or enforce liens upon real property must be begun and tried where the land lies. CAL. CONST. ART. VI, § 5; Waters v. Pool (1900) 130 Cal. 136, 62 Pac. 385; Grangers' Bank v. Superior Court (1983) 4 Cal. Unrep. 130, 33 Pac. 1095; see Maguire v. Cunningham (1923) 64 Cal. App. 536, 541, 222 Pac. 838, 840. In private party litigation, it has been held that the requirement is jurisdictional and cannot be waived. Rogers v. Cady (1894) 104 Cal. 288, 38 Pac. 81; Fritts v. Camp (1892) 94 Cal. 393, 29 Pac. 867 (cited with approval in Dougherty v. California Kettleman etc. (1937) 9 Cal. (2d) 58, 75, 69 P. (2d) 155, 164); Urton v. Woolsey (1890) 57 Cal. 38, 25 Pac. 154. The other local actions, including an action for damage to realty, are controlled by CAL. CODE CIV. PROC. § 392, and, though properly tried where the land is located, are subject to the usual rules of waiver. Miller & Lux v. Madera Canal Co. (1909) 155 Cal. 59, 99 Pac. 502. The balance of this comment ignores the special problems involved in local actions, and is not applicable to those local actions in which venue is jurisdictional.

\(^5\) CAL. CODE CIV. PROC. § 396(b).

\(^6\) Because of the concept of sovereign immunity, a suit may be maintained against the State only if a statute or constitutional provision permits it. CAL. CONST. ART. XX, § 6; Whitaker v. County of Tuolumne (1892) 96 Cal. 100, 30 Pac. 1016; see generally, People v. Superior Court (1947) 29 Cal. (2d) 754, 178 P. (2d) 1; cf. Rose v. State (1942) 19 Cal. (2d) 713, 123 P. (2d) 505.

\(^7\) It is said that statutes authorizing suit against the State will be strictly construed. See State v. Superior Court (1936) 14 Cal. App. (2d) 718, 721, 58 P. (2d) 1322, 1324, hearing denied; cf. Rose v. State, supra note 6. Thus CAL. GOV. CODE § 16041 apparently allows tort actions against the State only for negligence; it is clear that section 16041 does not permit an action on an implied contract. County of Los Angeles v. Riley (1942) 20 Cal. (2d) 652, 128 P. (2d) 537; Berryessa Cattle Co. v. Sunset Pacific Oil Co. (C. C. A. 9th 1937) 87 F. (2d) 972.

\(^8\) Although CAL. GOV. CODE § 16041 is not in terms so limited, the State has been held liable under it for the negligence of employees only if the State has been engaged in a so-called "proprietary" function. People v. Superior Court, supra note 6. But under certain circumstances the State is liable for any negligent operation of its vehicles. CAL. VEH. CODE § 400. The venue in all negligence actions against the State is controlled by CAL. GOV. CODE § 16050.

\(^9\) CAL. GOV. CODE § 16041.

\(^10\) CAL. GOV. CODE § 16044. A longer period is allowed in some cases brought under CAL. VEH. CODE § 400. CAL. GOV. CODE § 16043.

\(^11\) CAL. GOV. CODE § 16042. This is true only to the extent that sections 16040-16054 of the Government Code do not provide otherwise.

\(^12\) See discussion in note 2, supra, and related text.
right of the Attorney General (who defends these actions)\textsuperscript{13} to demand a change of venue to Sacramento.\textsuperscript{14} The recently enacted section 401 of the Code of Civil Procedure provides, however, that if an action against the State is removable to Sacramento, the action may also be commenced and tried in any city in which the Attorney General has an office.\textsuperscript{15} As a result an action on an express contract or for negligence is properly tried in Sacramento, Los Angeles or San Francisco, the cities in which the Attorney General now has offices.\textsuperscript{16}

Section 16050 of the Government Code provides that the proper place for the trial of an action against the State for the taking or damaging of private property is the county in which the property is situated. These actions are defended by counsel for the Department of Public Works,\textsuperscript{17} and, as contrasted with actions on contracts or for negligence, no provision is made for their removal to Sacramento. Although the requirement that such actions be begun where the property is located might be held jurisdictional,\textsuperscript{18} it seems more plausible to assume that suit may be begun in any county, subject to a motion to change the venue.\textsuperscript{19} Even if the action may be begun in Sacramento, or is properly tried in Sacramento because the property is situated there, section 401 should have no application. To apply it would enable Sacramento property owners to sue in Los Angeles and San Fran-

\textsuperscript{13} CAL. GOV. CODE § 16049(b).
\textsuperscript{14} CAL. GOV. CODE § 16050.
\textsuperscript{15} CAL. CODE CIV. PROC. § 401, quoted in text at note 22, infra. It can be argued that section 401 permits an action to be begun only in the cities in which the Attorney General has an office. This is supported by considering section 401 as a dispensation, and saying that one suing the State must accept the State's terms. But CAL. GOV. CODE § 16050 requires a written motion to change the venue, and section 16042 makes the rules of civil practice—including necessarily the rule of waiver of CAL. CODE CIV. PROC. § 396(b)—applicable to suits against the State if not otherwise provided. Further, section 401 provides that if a suit shall or may be begun in Sacramento, it may be begun wherever the Attorney General has an office.
\textsuperscript{16} Presumably, if the Attorney General establishes other offices, actions within the scope of CAL. CODE CIV. PROC. § 401 will become properly triable at the new locations. It seems clear that if plaintiff files suit in San Francisco or Los Angeles, the Attorney General cannot successfully move to change the venue to Sacramento. But suppose plaintiff begins the action elsewhere, e.g., San Diego. If demand is made for removal to Sacramento, can plaintiff insist that the trial be had in Los Angeles or San Francisco? This possible second choice difficulty could be avoided, with some inconvenience, by dismissing the action and starting over. CAL. CODE CIV. PROC. § 581.
\textsuperscript{17} CAL. GOV. CODE § 16048(b).
\textsuperscript{18} Two grounds may be argued to support this: (1) the State has consented to be sued where the property is situated only; (2) CAL. GOV. CODE § 16042 makes the rules of civil practice applicable only if not otherwise provided and here it is otherwise provided. Note 11, supra. If the action involves real property, the problem of note 4, supra, may appear.
\textsuperscript{19} CAL. GOV. CODE § 16050 uses the language of the basic venue provisions, i.e., "proper" court. Compare CAL. CODE CIV. PROC. § 1272a, which gives the Sacramento court "full and exclusive jurisdiction." Courts are not apt to find that they are without jurisdiction unless clearly so required. See Dougherty v. California Kettleman etc., supra note 4 and cases cited.
Cisco, a privilege which others would not share, and would frustrate the probable legislative intent to confine such actions to the county in which the property is located.

**Joint Defendants:**

A further question is presented if plaintiff joins the State and an individual as defendants. If the only defendants are individuals, plaintiff can insist that the action be tried at the residence of any of them. But suppose the State is vicariously liable for the negligence of an employee who resides in Alpine County. If the defendants were joined and sued there, could plaintiff successfully resist the motion to remove to Sacramento? This seems doubtful, because the State may consent to suit on its own terms, and Government Code section 16050 provides that if the Attorney General makes written demand, the venue shall be changed to Sacramento.

**Actions Against State Officers or Agencies**

The basic venue system, complicated enough when applied to the ordinary civil litigation for which it was designed, is seriously deficient when applied to proceedings against state officers and agencies. The legislature, recognizing that at least some of these suits deserve special treatment, enacted section 401 of the Code of Civil Procedure. It states in part: "Whenever it is provided by any law of this State that an action or proceeding against the State or a department . . . officer or other agency thereof shall or may be commenced in, tried in, or removed to the County of Sacramento, the same may be commenced and tried in any city . . . in which the Attorney General has an office."

This legislation was the result of a feeling in the State Bar that it was unfair to litigants to require that all suits be tried in Sacramento. Its purpose was to make more accessible forums available. The section has not yet been interpreted by an appellate court. Its scope is uncertain.

The obvious inference to be drawn from the reference to the Attorney General's offices is that the Attorney General will defend the officer or agency sued. In most cases this is true, but some agencies are authorized to employ their own counsel. At first glance it is dif-

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20. Cal. Code Civ. Proc. § 395. This is subject to qualification if the action is against both necessary and proper parties defendant. Text at note 72, infra.


icult to see why venue in suits against these agencies should be fixed
with reference to the offices of the Attorney General. Although these
agencies seem to be outside the sense of section 401, the legislature
could well have believed that a litigant's convenience is an overriding
consideration despite the burden cast upon the agencies which are not
defended by the Attorney General.

The section applies only if "any law" provides that the action may
be commenced in, tried in, or removed to Sacramento. If "any law"
means a statute specifically naming Sacramento, the section will
have quite limited application inasmuch as very few statutes contain
such a provision. If "any law" is given its broadest interpretation,
the section will extend to almost all actions against the State, its of-
ficers and agencies, because any action may be commenced in Sacra-
mento if the court has jurisdiction. Had the draftsmen intended this
result, the section could simply have said that all transitory actions
against the State, its officers and agencies are properly triable in the
cities in which the Attorney General has an office. If, however, sec-
tion 401 is held to apply to those actions which are properly triable
in Sacramento, the result will be a significant liberalization of the
venue system, which will benefit private litigants by making most
actions properly triable in the major cities of the State without a dis-
tortion of the apparent legislative intent.

No rule of thumb is available to determine the venue in suits
against officers and agencies. Each case must be considered separate-
ly, with attention focused on these questions: (1) Does a statute name
the place of trial? (2) If not, what, if anything, has the officer or
agency done? (3) What relief is plaintiff seeking? (4) Where does
the officer or agency reside? (5) Who may or must be joined as neces-
sary parties defendant?

26 All venue statutes designate a place of trial, e.g., defendant's residence. A statute
which names the place of trial names a certain county.

27 The following statutes, all of which name Sacramento, were called to the atten-
tion of the Senate sponsor of section 401 by the State Bar, which drafted the section:
CAL. REV. & TAX. CODE §§ 6933, 8147, 10277, 11572, 13109; CAL. PUB. RES. CODE § 3431
(all taxpayers' suits); CAL. CODE CIV. PROC. §§ 1272, 1272a, 1274.10 (suits to claim
escheated or abandoned property); Cal. Stats. 1937, p. 169 (suit to challenge forfeiture
of certain lands bought from the State); CAL. GOV. CODE § 16050. This information was
furnished by the Hon. Thomas F. Keating, Chairman of the Senate Committee on Judi-
cracy. From this group of special proceedings, it may be argued that section 401 was,
meant to have only a limited application, despite its broad language.

28 Except those local actions in which venue is jurisdictional. See notes 4 and 18,
supra.

29 Supra note 2.

30 Text at note 1, supra.

31 E.g., if defendant resides in San Francisco, and the action is one in which the
proper place of trial is wholly controlled by residence, only the broadest interpretation
of "any law" will make section 401 applicable.
Place of Trial Named.\textsuperscript{32} For some agencies the legislature has named the place of trial. Taking a group of forty agencies as a sample, venue is thus fixed for only four.\textsuperscript{33} It has been held that if the places of suit are named, such places are exclusive.\textsuperscript{34} If the statute names Sacramento, the case is within the terms of section 401, making the action properly triable wherever the Attorney General has an office.

Actions on Contracts: A suit on an official contract, other than a contract with the State,\textsuperscript{35} is properly tried either in the county in which the contract is made or in that in which any defendant resides. If there is a written contract specifying the county in which the obligation is to be performed, that county is also a proper place of trial.\textsuperscript{36} Thus, if the contract was made or is to be performed in Sacramento, or the defendant resides there, section 401 may apply, thereby making the action properly triable in any of the major cities.

Acts Done by Officers: An action against a public officer for an act done by him while he is engaged in his official duties\textsuperscript{37} is, by section 393 of the Code of Civil Procedure, properly tried in the county in which the cause of action, or part of it, arose.\textsuperscript{38} If section 401 applies whenever an action is properly tried in Sacramento, a suit on a cause of action arising in Sacramento is properly triable in Sacramento, Los Angeles or San Francisco.

Thus a suit in tort resulting from an official act is properly tried

\textsuperscript{32} Supra note 26.
\textsuperscript{33} The forty agencies are listed in Cal. Gov. Code § 11501(b). They may be subject to some or all of the adjudication provisions of the California Administrative Procedure Act. The four agencies for which places of trial are named are: Board of Medical Examiners (Cal. Bus. & Prof. Code § 2109); Board of Nurse Examiners (Cal. Bus. & Prof. Code § 2715); Board of Osteopathic Examiners (Cal. Bus. & Prof. Code, app. I, § 6); Board of Chiropractic Examiners (Cal. Bus. & Prof. Code, app. II, § 1).
\textsuperscript{34} McPheeters v. Board of Medical Examiners (1946) 74 Cal. App. (2d) 46, 168 P. (2d) 65 (containing a dictum that courts in counties other than those named have no jurisdiction); Gill v. Johnson (1930) 103 Cal. App. 234, 284 Pac. 510.
\textsuperscript{35} E.g., a contract of insurance made with the State Compensation Insurance Fund. Yedor v. Ocean Accident & Guarantee Corp. (1948) 85 Cal. App. (2d) 698, 194 P. (2d) 95. Actions on State contracts are treated supra note 7 and related text.
\textsuperscript{36} Cal. Code Civ. Proc. § 395. These rules are equally applicable to government agencies operated in corporate form, because, not being private corporations, they are not governed by Art. XII, §16 of the Constitution. Yedor v. Ocean Accident & Guarantee Corp., supra note 35.
\textsuperscript{37} Undoubtedly there are actionable wrongs which a person may commit in his official capacity. If this were not so, Cal. Code Civ. Proc. § 393 would be meaningless. But an officer's conduct may be so foreign to his duties as to be simply the act of a private individual. Reed v. Molony (1940) 38 Cal. App. (2d) 405, 101 P. (2d) 175. Compare the agency doctrine of "frolic and detour." This comment deals only with actions against officials who have acted or threatened to act in their official capacities.
\textsuperscript{38} Cecil v. Superior Court (1943) 59 Cal. App. (2d) 793, 140 P. (2d) 125, Shaw, J. dissenting. Hearing denied.
where the cause of action arises. Should an official be liable for non-feasance constituting negligence, the action would probably be properly tried either where the injury occurred or at the residence of any defendant.

**Mandamus to Compel Action:**

Several cases make it clear that a refusal to act, followed by a suit for mandamus to compel action, does not create a situation cognizable under section 393. If the officer or agency has refused to act, and a contract is not involved, a suit to compel action is properly tried only at the residence of the officer or agency.

**Mandamus to Review Orders:**

Assuming the officer has acted, the place where the cause of action arose must be determined. This is not difficult if, for example, a state highway patrolman making an arrest uses excessive force. What is the situation, though, if the Director of Agriculture signs an order in Sacramento directing a Los Angeles milk distributor to pay a certain sum or suffer the revocation of its license without further agency action? In Cecil v. Superior Court a milk company was served with such an order, which it sought to have annulled by bringing a mandate action in Los Angeles. The trial court denied the Director's motion to change the venue to Sacramento. The district court of appeal, over a dissent,

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39 A discussion of the circumstances in which a state officer or agency is liable in tort is beyond the scope of this comment. See notes 6, 8 and 37, supra.

40 Cal. Code Civ. Proc. § 395. This section controls certain enumerated actions and “all other cases” not provided for elsewhere. See generally, Smith v. Smith (1891) 88 Cal. 572, 26 Pac. 356. As to the applicability of Cal. Code Civ. Proc. § 401, see text at note 54, infra.

41 State Commission in Lunacy v. Welch (1908) 154 Cal. 775, 99 Pac. 181 (action to compel a county treasurer to pay money); McMillan v. Richards (1858) 9 Cal. 365, 420 (suit to compel sheriff to execute a deed); Bloom v. Oroville-Wyandotte Irrigation District (1939) 34 Cal. App. (2d) 102, 93 P. (2d) 164 (suit to compel district to pay money due on bonds). The value of these cases as precedents in actions against state agencies may be weakened by the fact that in none of the cases was defendant a state officer. Although these cases held that a county official must be sued in his county, it does not follow that a state-wide agency must be sued in Sacramento.

42 Cal. Code Civ. Proc. § 395. If the officer or agency resides, or is assumed to reside, in Sacramento, and section 401 applies to actions properly triable in Sacramento, (see text at note 30, supra) these actions will be properly triable in Sacramento, San Francisco or Los Angeles. The question of official residence is discussed in the text under a subheading infra.


44 Supra note 38.
affirmed on the theory that section 393 applied and that part of the
cause of action arose in Los Angeles, where the order, if given effect,
would have hurt petitioner.

**Injunction to Restrain Official Action:**

Petitioner in the *Cecil* case also sought an injunction to restrain
interference with the Company's business under the order, despite
the case of *Bonestell, Richardson & Co. v. Curry*, in which the
California Supreme Court held that suits to enjoin future official acts
are not controlled by section 393. Although the injunction request was
not discussed by the majority in the *Cecil* case, the holding, which
allowed the trial court to hear the petition, is contrary to the *Bonestell*
case. However, allowing the trial court to hear the mandate action
was not contrary to any prior law, because that device was used to
review a *completed act*, issuance of the original order, not to enjoin
possible future acts.

**Review of Rules:**

In *Brock v. Superior Court* petitioner sued where his business
was located for an injunction to restrain the enforcement of regula-
tions signed in Sacramento. The trial court denied the officer's motion
for a change of venue, but the district court of appeal granted a writ
of prohibition to prevent further proceedings, on the authority of
the *Bonestell* case. The *Cecil* case was distinguished on the ground
that there the official act was an order, directed specifically at plain-
tiff, whereas in the case before the court the act was a regulation,
applying to all persons similarly situated. This opinion was super-
seded when the California Supreme Court disposed of the case on an-
other ground, without expressing any view on the merits of the venue
controversy. Mr. Justice Spence, joined by Shenk and Schauer, JJ.,
said in a concurring opinion: "... I am satisfied that the trial court
properly denied the motion for change of venue ...." Thus, at least

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45 (1903) 153 Cal. 418, 95 Pac. 887.
46 This inconsistency was one of the bases of the Attorney General's unsuccessful
petition for hearing. Petition for Hearing in the Supreme Court, p. 10.
47 The proper "form of action" to review rules is declaratory judgment. Cal. Gov.
48 (1947) 29 Cal. (2d) 629, 177 P. (2d) 273.
49 (1946) 165 P. (2d) 59.
50 *Supra* note 45.
51 The distinction between rules and orders for venue purposes may have been sug-
gested by the opinion in the *Cecil* case, which made it clear that that case involved an
order. There is no statutory basis for the distinction; issuance of a rule is as much an
official act as is issuance of an order. But from a policy standpoint it may be argued that
rules generally affect a large class of persons, and if each person were allowed to sue
where his business was located, the burden cast upon the Attorney General or agency
counsel would be too great.
52 *Supra* note 48 at 639, 177 P. (2d) at 278.
three members of the present court may be willing to permit injunction suits against agencies to be tried where the administrative action will affect the person regulated, whether the case involves an order or a rule.53

Applicability of Section 401:

State business and, presumably, official residences are largely concentrated in Sacramento, and thus actions properly triable there by virtue of residence, or official acts systematically performed at the seat of government, fall within a reasonable construction of section 401. It seems, however, that actions are not within the probable intent of the section if they are properly triable in Sacramento only because of the fortuitous circumstance that an act unrelated to the seat of government was done there, or a contract was expressly made performable there.54

Venue Controlled by Defendant's Residence:

In all cases other than those discussed,55 the proper place of trial is wholly controlled by the residence of the defendants or one of them.56 To be tried at home is "an ancient and valuable right" and one seeking to avoid the rule must bring himself within an exception.57 An officer, as an individual, resides somewhere. But the type of suit being investigated here is, in substance, not one against an individual but against an office. Conceivably the venue may be fixed either by individual residence or by the residence of the office or agency. Where does an office or agency "reside"?

By statute, some agency heads are required to reside in Sacramento.58 It is assumed in some decisions that state-wide agencies reside in Sacramento.59 And the recent Yedor case holds, over a strong dissent, that the State Compensation Insurance Fund, a government agency, resides in San Francisco because Insurance Code section

53 The law announced in injunction suits brought to restrain possible future acts of enforcement is not necessarily controlling in declaratory judgment suits brought to attack the rules themselves, which are "acts done." Although mandamus suits are proper to review orders and rules may be reviewed in declaratory judgment proceedings, that difference alone should have no effect on venue. Notes 43, 47, 51, supra.

54 Compare discussion of actions against the State in text at note 19, supra.

55 I.e., if no statute names the place of trial; an officer or agency has not acted; a rule or order has not been issued; the suit is not on a contract, or for actionable nonfeasance causing personal injury or injury to personal property or constituting negligence.

56 CAL. CODE Civ. Proc. § 395. Eliminating the actions enumerated in note 55, supra, leaves actions to compel or restrain official action wholly controlled by residence.

57 See Kaluzok v. Brisson (1946) 27 Cal. (2d) 760, 763, 167 P. (2d) 481, 482. Whether this doctrine will result in a strict construction of CAL. CODE Civ. Proc. § 401 remains to be seen. A strict construction will mean that the venue provisions have been liberalized for only a handful of cases (supra note 27), and suits against most agencies will be properly triable in Sacramento only.

58 CAL. CODE §§ 11151, 12040.

59 Brock v. Superior Court, supra note 48; Cecil v. Superior Court, supra note 38.
11781 provides that the Fund’s “principal office for the transaction of ... business ... is located in ... San Francisco.” But plaintiff did not dispute the question of residence and resisted a change of venue on different grounds. The court was influenced by a unanimous supreme court decision holding that a drainage district, created and controlled by the legislature, resided in Sacramento because it was provided that the district should “have its office” in that city. The cases are distinguishable, however, because the Fund is a statewide agency. It is reasonable to hold that a governmental unit operating only locally must be sued at its office, but this does not lead to the conclusion that an agency designed to serve the people throughout the State is suable only at its main office. An agency is an abstraction, like the State, and the residence of neither can be deduced from observable facts. From a policy standpoint the Yedor case has the unhappy result of forcing all persons insured by the Fund to come to a single place to litigate claims. Because the Fund is held not to reside in Sacramento, only the broadest interpretation of section 401 of the Code of Civil Procedure will make actions against the Fund triable wherever the Attorney General has an office.

A cursory examination of typical statutes shows that little reliance can be placed on the “principal office” formula in fixing venue. In only some instances is the location of offices so fixed or is simply instructed to “meet,” or there is no statutory provision for locating the transaction of business.

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60 Doran, J. dissenting: “Section 11781 ... has nothing to do with venue. In my judgment it is not the law that ... an employer ... is required to go to San Francisco to collect ... [from] this agency.” Supra note 35 at 707, 708, 194 P. (2d) at 101.

61 The question of residence was undisputed on appeal in De Campos v. State Compensation Insurance Fund (1946) 75 Cal. App. (2d) 13, 22, 170 P. (2d) 60, 66, on which the court in the Yedor case relied.


63 The Yedor case also holds that the Fund’s insurance contracts are made and performable in San Francisco. Compare text at note 36, supra.

64 Note 31, supra, and related text.

65 E.g., CAL. BUS. & PROF. CODE § 4008.

66 E.g., CAL. BUS. & PROF. CODE § 5016: “The Board [of Accountancy] shall designate the location of its principal office ...”

67 E.g., CAL. BUS. & PROF. CODE § 1607: “The Board [of Dental Examiners] shall meet regularly once each year in San Francisco and ... Los Angeles ... and at such other times and places as the board may designate, for the purpose of transacting its business.”

68 E.g., Cal. State Board of Architectural Examiners, State Board of Barber Examiners. Perhaps the “principal office” rule of the Yedor case will be held to govern agencies which may fix their offices by rule. Whether or not section 401 would apply if an agency fixed its office in Sacramento depends upon whether an agency rule, judicially applied, is a “law of this State.”
Parties Defendant:

In cases in which venue is controlled by residence, the parties defendant must be determined. The question of parties is three-fold: who must be sued, who may be joined, and whose residence may be used to fix venue?

If plaintiff's suit is to be effective, it must be brought against an officer or agency capable of giving the relief sought. But in some cases other officers or agency members may also be joined, even though they alone could not give the desired relief. For example, in a mandate action against a board to annul an order, it has been held that the members of the board, "in their official capacities," are proper parties.

An action in which venue is fixed by residence is, by section 395 of the Code of Civil Procedure, properly tried where "... the defendants, or some of them, reside...." The Code gives no hint that proper parties are not included in the term "defendants," but it has been held that an action cannot be tried at the residence of a proper party over the objection of a necessary party. The factual situation, however, may make one or more officers necessary parties, and it is clear that an action is properly triable at the residence of any necessary party defendant.

By construing section 401 to include those actions properly triable in Sacramento, and by assuming that state agencies and officers reside in Sacramento unless otherwise provided, many actions become properly triable in any city in which the Attorney General has

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70 In federal cases the officer who can give the relief prayed is termed an indispensable party, and the action cannot be brought without him. See generally, Williams v. Fanning (1947) 332 U.S. 490. Determining who is indispensable is not always easy. (1941) 50 Yale L. J. 909, (1937) 50 Harv. L. Rev. 796, (1945) 158 A. L. R. 1126. Thus far, California appellate courts have expressly recognized indispensable parties only in actions which did not involve the State, its officers or agencies. E.g., Bank of California v. Superior Court (1940) 16 Cal. (2d) 516, 106 P. (2d) 879 and cases cited; Comment (1940) 29 Cal. L. Rev. 731.

71 Moran v. Board of Medical Examiners (July 30, 1948) 32 A. C. 327, 339, 196 P. (2d) 20, 28.

72 Bailey v. Cox (1894) 102 Cal. 333, 36 Pac. 650; Sayward v. Houghton (1890) 82 Cal. 628, 23 Pac. 120; see Hays v. Cowles (1943) 60 Cal. App. (2d) 514, 519, 141 P. (2d), 26, 29. Bonestell, Richardson & Co. v. Curry, supra note 45, seems contra. In the Bonestell case the court held an action against a state official and an individual properly triable at the residence of the individual (who appeared to be at least a proper party), even over the objection of the official. However, the issues of the party-status of the individual and the fixing of venue by the residence of a proper party, if raised, were not discussed.

73 See Moran v. Board of Medical Examiners, supra note 71 at 340, 196 P. (2d) at 29.


75 Text at note 59, supra.

76 "Acts done" will still be properly tried where the cause arises (text at notes 38, 43, supra), and Constitutional local actions are not affected. Supra note 4.
COMMENT

an office. Only if plaintiff seeks a trial outside of these cities, on the theory that one of the officer-defendants resides at the desired place of trial, will it be necessary, for venue purposes, to decide the status of the officer as a party (i.e., necessary or proper) or to determine the location of his residence.

Conclusion:

Courts are still largely free to determine the rules of venue in actions against agencies and officers. In making this determination the controlling principle should be a balancing of conveniences, that is, the efficient operation of the Attorney General's office, which defends most suits against agencies,77 as weighed against the inconvenience to citizens of distant places of trial. The distance to Sacramento from, say, El Centro (about 600 road miles) is certainly a deterrent to the litigant who often must finance the trip for his lawyer or himself. That the State can function efficiently without holding all administrative proceedings at the seat of government is attested by practice and also by both the Federal78 and California79 Administrative Procedure Acts, which make provision for adjudicative hearings to be located with due regard for the convenience of the parties. Those seeking relief against agencies require more protection of their interest in the place of trial than that found in the discretion of the trial judge to change the venue when the convenience of witnesses and the ends of justice would thereby be promoted.80

The Cecil case furnishes such protection by permitting mandamus suits to review orders to be tried wherever the order injures the petitioner. No logical reason appears why the review of rules by declaratory judgment should not be located by the same test.81 But the whole doctrine may go too far and impose an insupportable burden on the Attorney General's office. There is frank recognition in the Cecil case that an official act may hurt a person in several counties. Conceivably, a far-flung corporate enterprise seeking review could decide which of the 58 counties appealed to it most—or to the Attorney General least.82 Yet any drastic restriction of the Cecil case will cause the remotely situated person with limited finances to lose the opportunity to be heard.

Although it is assumed in some decisions that agencies reside in

77 Supra note 24 and related text.
80 Cal. Code Civ. Proc. § 397. The trial judge's disposition of a motion made on this ground will not be interfered with unless clear abuse of discretion is shown. Wrin v. Ohlandt (1931) 213 Cal. 158, 1 P. (2d) 991.
81 Supra note 53.
82 In this situation it would probably be proper for the trial judge to exercise his discretion under Cal. Code Civ. Proc. § 397.