

RESOLUTION 6-83

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LAKE SHASTINA COMMUNITY SERVICES DISTRICT ADOPTING SECTION 1094.6 OF GOVERNMENT CODE.

RESOLVED, by the Board of Directors of the Lake Shastina Community Services District, Siskiyou County, California, as follows:

WHEREAS the District has employees who have the right of judicial review of any District Board decision regarding the disciplining of said employees and,

WHEREAS the California Special Districts Labor Relations Information Service has apprised the District that unless the governing board adopts an ordinance or resolution making section 1094.6 of State law applicable to the Lake Shastina Community Services District any District employee would have up to four years to file appeals in Court for any disciplinary action taken by the District and,

WHEREAS the District desires to limit the time for judicial review to only 90 days,

NOW THEREFORE BE IT RESOLVED:

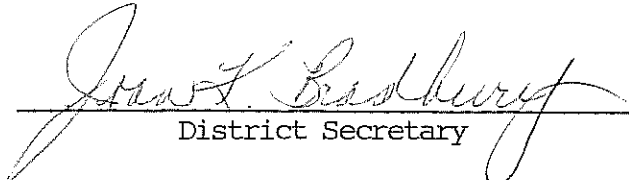
That the Lake Shastina Community Services District formally adopts Section 1094.6 of Code of Civil Procedure as District policy regarding judicial review of any administrative determinations of the District.

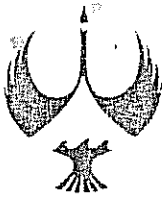
I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Board of Directors of the Lake Shastina Community Services District, Siskiyou County, California, at a meeting thereof held on the 11th day of October 1983, by the following vote of the members thereof:

AYES, and in favor thereof, Directors Barbier, Spahr, Trager and Worsnop

NOES, None

ABSENT, Director Dutro


District Secretary



Lake Shastina Community Services District

CERTIFICATE OF POSTING

RESOLUTION NO. 6-83

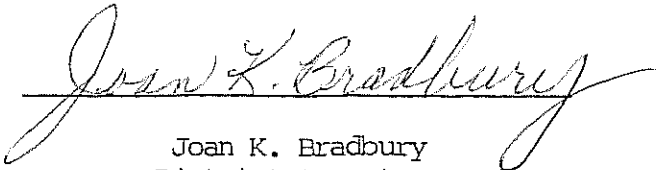
JOAN K. BRADBURY, under penalty of perjury, certifies as follows:

That she is, and during all times herein mentioned was, the duly appointed and qualified Secretary of the Lake Shastina Community Services District, Siskiyou County, California;

That on the 21st day of October, 1983, she caused to be posted a full, true and correct copy of Resolution No. 6-83, A Resolution

in the official office of the District, 15440 "C" Juniper Peak Road, Weed, California located in the Lake Shastina Mutual Water Company construction yard.

Executed this 21st day of October, 19 83.


Joan K. Bradbury
District Secretary

THE COURTS

STATUTE OF LIMITATIONS ON DISCIPLINE APPEAL

Section 1094.6 of the Code of Civil Procedure provides that requests for judicial review of a decision by certain local agencies (including Special Districts) regarding the disciplining of an employee must be filed not later than 90 days after the decision becomes final. The "decision" refers to the result of an adjudicatory administrative hearing which results in disciplining an employee. However, the 90-day limitation only applies if the agency's governing board adopts an ordinance or resolution making that section of State law applicable. Otherwise, employees would have up to four years to file appeals in Court.

In this case, a County employee was discharged in 1976. His discharge was upheld at a hearing in 1977. In 1978, the County adopted by ordinance the applicability of Section 1094.6. The County informed the ex-employee that, under the new regulation, he had only 90 days to seek judicial review.

In July, 1981, the ex-employee filed a Writ of Mandate in Superior Court challenging his discharge. The Superior Court ruled, and the Court of Appeal affirmed, that the ex-employee was simply too late.

A Special District which has not formally adopted Section 1094.6 by resolution should seriously consider doing so. Otherwise, disgruntled ex-employees will be able to challenge disciplinary actions (including suspensions and demotions) later in the Courts. Adoption of 1094.6 can be applied retroactively if previously-disciplined employees are notified of the new regulation and informed that they have only 90 days to seek judicial review.

(Foster v. Civil Service Commission, 142 Cal. App. 3d, 444).

agency and of the trial court. The board is required to make findings under the provisions of Gov C § 18682, and a failure to make the findings justifies an appropriate remand. *Robinson v State Personnel Board* (1979) 97 CA3d 994, 159 Cal Rptr 222.

85. —Licenses

When the trial court has employed the independent judgment test in an administrative mandate proceeding, evidentiary review at the appellate level is confined to determining whether the trial court's findings are supported by substantial evidence. The appellate court focuses on the findings of the trial court, rather than those of the administrative agency, and will uphold the trial court's judgment if there is any substantial evidence in support of it. *Thompson v Department of Motor Vehicles* (1980) 107 CA3d 354, 165 Cal Rptr 626.

86. In General

A judgment in an administrative mandate proceeding upholding the discharge of a police officer for lying to departmental investigators, required reversal where the trial court applied the substantial evidence standard of review approved by cur-

rent decisional law, but where, while an appeal of the judgment was pending, the Supreme Court rendered a decision holding that an order or decision of an agency substantially affecting a fundamental vested right is to be reviewed by the trial court exercising its independent judgment on the evidence, which rule was specifically made applicable to all pending appeals. Furthermore, the appellate court could not conduct the de novo review in place of the trial court, in the interest of expediency, since it did not have the same power as the trial court in reviewing the administrative proceeding, but was limited to determining whether substantial evidence supported the trial court's findings. *Brush v Los Angeles* (1975) 45 CA3d 120, 119 Cal Rptr 366.

87. Harmless and Reversible Error

In mandamus proceedings involving the review of a municipality's board of pension commissioners' denial of a policeman's application for a disability retirement pension, it was reversible error for the trial court to apply the substantial evidence test, rather than making an independent evaluation of the evidence. *Craver v Los Angeles* (1974) 42 CA3d 76, 117 Cal Rptr 534.

SUGGESTED FORMS

Order To Produce Record of Proceedings

Editor's Note—At line 3 of paragraph #3 on page 637, add: The cost of preparing the record shall be borne by _____ [petitioner or respondent].

§ 1094.6. [Time limit for seeking review of administrative determinations: Preparation of record: Application in local agency]

(a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is made. If there is such provision for reconsideration, the decision is final for the purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 90 days after he has filed a written request therefor. The local agency may recover from the petitioner

its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means adjudicatory administrative decision made, after hearing, suspending, demoting, or dismissing an officer or employee, revoking or denying an application for a permit or a license, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit or license has been revoked or whose application for a permit or license has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section shall be applicable in a local agency only if the governing board thereof adopts an ordinance or resolution making this section applicable. If such ordinance or resolution is adopted, the provisions of this section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter.

Added Stats 1976 ch 276 § 1.

The trial court erred in granting the petition of former city employee for an order requiring the city to provide him, without cost, a copy of the transcript of administrative proceedings that resulted in denial of his claim for service connected retirement disability benefits, despite the employee's declaration of indigency, where the city had refused to cooperate in the preparation of a written statement or refused to present to the court for its review any available tapes of the proceedings, and where the record revealed that the employee had been afforded the essentials of due process in regard to notice, opportunity to be heard, and a fair hearing. The declaration of indigency did not affect the requirement of a city under the section relating to judicial review of administrative proceedings that a party requesting a transcription of the tape recordings of a proceeding pay for such transcript. *Sacramento v Superior Court* (1980) 113 CA3d 715, 170 Cal Rptr 75.

A taxpayer's action filed for the purpose of obtaining a review of proceedings leading to an approval of a proposed sale of Redevelopment

Agency (Agency) real property by the appropriate legislative body for the community in which the property is located and for the purpose of enjoining the sale is not subject to a statute of limitations defense under Code Civ. Proc., § 1094.6, or Code Civ. Proc., § 526, subd. (a). The 90-day limitations period specified in Code Civ. Proc., § 1094.6, for certain proceedings filed under Code Civ. Proc., § 1094.5, does not apply to an action attacking the proposed sale of Agency property. The provision of Code Civ. Proc., § 526, subd. (a), for the bringing of certain actions by specified parties within one year before commencement of the action is not a statute of limitations, but a description of a class of persons entitled to bring such actions. *Nolan v Redevelopment Agency* (1981) 117 CA3d 494, 172 Cal Rptr 797.

While in a mandamus proceeding the statute of limitations begins to run when the petitioner's right first accrues, where a claim of improper discharge is involved, it is more precise to view the claim as accruing on the date of the actual discharge and to consider the statute of limitations as

"tolled" while the claimant pursues available administrative remedies. Accordingly, in a proceeding for administrative mandamus (Code Civ. Proc., § 1094.5) following the discharge of a city employee, although the period of limitations on the employee's cause of action technically accrued on the date of the notice of final action, the statute of limitations was tolled by the employee's timely

request for a legally required hearing and did not commence to run until his request was refused 70 days after the date of the notice. Since the petition for writ of mandate was filed 29 days after the date of refusal, it was filed within the 90-day period of limitations specified in Code Civ. Proc., § 1094.6. *Farmer v City of Inglewood* (1982, 2d Dist) 134 Cal App 3d 130, 185 Cal Rptr 9.

§ 1095. [(Operative July 1, 1983) Applicant's recovery of damages and costs]

If judgment be given for the applicant, the applicant may recover the damages which the applicant has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and a peremptory mandate must also be awarded without delay. Damages and costs may be enforced in the manner provided for money judgments generally. In all cases where the respondent is an officer of a public entity, all damages and costs, or either, which may be recovered or awarded, shall be recovered and awarded against the public entity represented by the officer, and not against the officer so appearing in the proceeding, and are a proper claim against the public entity for which the officer appeared and shall be paid as other claims against the public entity are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in the proceeding in good faith. For the purpose of this section, "public entity" includes the state, a county, city, district or other public agency or public corporation. For the purpose of this section, "officer" includes officer, agent or employee.

Amended Stats 1982 ch 497 § 73, operative July 1, 1983.

Amendments:

1982 Amendment: Substituted the section for the former section.

Law Revision Commission Comment:

Section 1095 is amended to conform to Title 9 (commencing with Section 680.010) of Part 2 (Enforcement of Judgments Law). The other changes are not substantive.

Cal Jur 3d Enforcement of Judgments § 3, Government Tort Liability § 13, Mandamus and Prohibition §§ 52, 53, 54, 121.

In General

The general provisions of Code Civ. Proc., § 1095, allowing damages in mandamus actions, are not intended to prevail over the specific immunities granted to public entities and public employees by Gov. Code, §§ 818.4, 821.2. *State v Superior Court* (1974) 12 C3d 237, 115 Cal Rptr 7, 524 P2d 1281.

Damages

The provisions of the Tort Claims Act, granting immunity to public entities and employees for discretionary acts in general (Gov. Code, §§ 820.2, 5.2, subd. (b)), and for licensing activities in particular (Gov. Code, §§ 821.2, 818.4,) take precedence over the provisions of Code Civ. Proc., § 1095, providing that if a petitioner in a mandamus action recovers judgment, he may also recover damages against the public entity repre-

ented by the officer against whom the action is brought. *O'Hagan v Board of Zoning Adjustment* (1974) 38 CA3d 722, 113 Cal Rptr 501.

4. Costs

Under Code Civ. Proc., § 1095, governing recovery of damages by an applicant for administrative relief, the award of costs to a prevailing applicant in a mandamus proceeding normally lies within the discretion of the court. *Tripp v Swoap* (1976) 17 C3d 671, 131 Cal Rptr 789, 552 P2d 749.

5. —In Specific Instances

In an administrative mandamus proceeding instituted by probationary teachers who had received notices of termination from defendant school district board of trustees pursuant to Ed. Code, § 13447, based on a decline in pupil attendance and planned reductions in services, the tri-

- E. CSD New Accounts (Commercial & Rental): President Worsnop reported he is working on a proposal based on assessed valuation and water usage. The question of charging rental properties higher service fees has been raised. The General Manager noted that fees should be set based on the benefits/services being rendered to the property. Information only, no action required at this time.
- F. District Objectives/General Manager Evaluation: A closed meeting will be held with the Directors and the General Manager at 7:00 p.m. on Tuesday, October 25, 1983 in the District Offices.
- G. Sewer System Capital Improvements: With respect to the Gallop Basin, Director Barbier summarized that inasmuch as the Board has made a concerted effort and attempt to present the gravity proposal, and the property owners have not responded affirmatively, the Board feels they have satisfied their requirements and, therefore, is dropping the matter. The members of the Board concurred.
- I. Ad Hoc Committee on Maintenance: Director Trager read aloud the Committee report, which report by reference is incorporated herein. General Manager Smith stated he would like to recommend going ahead with the implementation of the recommendations even earlier than the Committee has recommended, even if it requires holding closed session to iron out personnel problems. President Worsnop concurred with the General Manager's recommendation.
- J. Ad Hoc Committee on Administration: President Worsnop will initiate a meeting with the Presidents of each of the Associations and the LSMWC to pursue this matter.
- L. Fire Chief's Report/Police-Fire Public Safety: Chief Allen of the LSVFD reported that he would like the Board to drop the matter of an office of public safety at this time, due to a lack of personnel. Director Spahr stated he is still in favor of the concept and would like to see it implemented when feasible. It would be well to wait until a new chief of police has been hired.
- IX. NEW BUSINESS:
- B. Transfer of Funds from General Fund to PD: - Director Barbier moved that the Board transfer sufficient funds from the general fund to the police department fund to cover legal expenses attendant to the resignation of former Chief Bailey and Consultant Anderson's study. The motion was seconded by Director Spahr and upon vote carried.
- C. Resolution 6-83 Statute of Limitations on Discipline Appeal: Moved by Director Barbier, seconded by Director Spahr that the Board approve adoption of the proposed resolution. Upon vote the motion carried.