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## Constitutional Law—Sovereign Immunity

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## Sovereign Immunity

In 1949, by the passage of an amendment to the New York Constitution, the Court of Claims became a constitutional court with jurisdiction "to hear and determine claims against the state or by the state against the claimant or by conflicting claimants as the legislature may provide."<sup>56</sup> Prior to this time, the Court of Claims had been a legislative tribunal set up to hear claims against the state. The Constitutional provision was felt necessary to remove the court from politics and give it permanence.<sup>57</sup>

Under the principle of sovereign immunity, the state may be sued only if it consents.<sup>58</sup> That court, as it existed prior to the 1949 Amendment, was empowered by the State to hear cases against the State or its employees.<sup>59</sup> The term employees was used interchangeably with the word agent and the scope of the court was thereby judicially enlarged to include those agencies which the state had set up, in the exercise of its police power, to meet the public needs and to carry out the functions of government.<sup>60</sup> It was immaterial whether the state chose to act in its own name, or set up an agency or authority to act for it; it could endow this agency with the privileges and powers of a body corporate;<sup>61</sup> but as long as the agency carried on a function recognizable as a state function, it was endowed with the immunity inherent in the sovereign.<sup>62</sup> However, it has been determined that when the state chooses to set up an agency whose functions are not closely allied with a governmental function, the agency itself will be liable and may be sued in any court of competent jurisdiction.<sup>63</sup>

The Court of Appeals recently determined<sup>64</sup> that the New York State Thruway Authority could be sued on a tort claim only in the Court of Claims pursuant

56. N. Y. CONST. art VI, §23 (1949).

57. REVISED RECORDS OF 1938 CONVENTION Vol. III.

58. *Samuel Adler, Inc. v. Noyes*, 285 N. Y. 34, 32 N. E. 2d 781 (1941).

59. N. Y. COURT OF CLAIMS ACT §12a.

60. *Litchfield v. Bond*, 186 N. Y. 66, 78 N. E. 719 (1906).

61. *Breen v. Mortgage Commission*, 285 N. Y. 425, 35 N. E. 2d 25 (1941).

62. *Psaty v. Duryea*, 306 N. Y. 413, 118 N. E. 2d 584 (1945).

63. *Pantess v. Saratoga Springs Authority*, 225 App. Div. 426, 8 N. Y. S. 2d 103 (3d Dep't 1938). It was held that where the state sets up an agency to sell medicinal waters, the agency does not possess sovereign immunity because this is not a governmental function and therefore the agency may be sued in a court other than the Court of Claims. In 1939 the legislature attempted to overrule this decision by giving the Court of Claims authority over the Saratoga Springs Authority. However, it is doubtful if this legislative act will be sufficient to give the claims against the Authority to the Court of Claims since the function of the Authority is not a governmental one and it would seem that when the state enters into this field it does not endow its agency with sovereign immunity and therefore cannot restrict cases against the Authority to the Court of Claims.

64. *Basley v. New York State Thruway Authority*, 1 N. Y. 2d 374, 135 N. E. 2d 572 (1956).

to section 361-b of the Public Authorities Law.<sup>65</sup> The Authority undoubtedly performs a task which is essentially the function of the state itself—the construction and maintenance of its highways. The closeness of its relationship to the state prevented it from being treated as a separate entity for suit purposes.

The Court held that the constitutional amendment relating to the Court of Claims did not limit the court's jurisdiction to suits against the state itself but continued its jurisdiction as it had existed prior to the amendment—extending to the state, its employees and its agencies. There is nothing in the records of the Constitutional Convention evincing a purpose on the part of the amendment's drafters to make a sweeping change in the concept of the court's jurisdiction.<sup>66</sup>

The dissent did not question the immunity of true agents of the state but felt that the Authority was not a state agency but an independent public corporation and hence not within the jurisdiction of the Court of Claims.

Due to the complexities of modern government, it is inconceivable that the amendment was drafted to hamstring the effective workings of the government by forcing the state to act through its central agency and denying it the privilege of acting through agents if it desires to retain its sovereign immunity. The state should be permitted to set up corporate bodies when it feels they are necessary to the carrying on of a function. Both common sense and the history of the amendment appear to support the majority's conclusion that the amendment was not intended to decrease the jurisdiction of the Court of Claims.

## CRIMINAL LAW

### Indictment—Defects

*People ex rel. Hirschberg v. County Court*<sup>1</sup> was an appeal from the dismissal by the Supreme Court of the relator's petitions in habeas corpus and for an order of prohibition. The petitions alleged that the proceedings before the committing magistrate were defective in that they were based on an information that failed to contain three alleged confessions, and, secondly, in that the constitutional rights of the petitioner were violated by police advice to waive counsel and hearing.

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65. Section 361-b conferred exclusive jurisdiction on the Court of Claims to hear and determine all claims against the New York State Thruway Authority for alleged torts and breaches of contract.

66. RECORDS OF 1938 CONSTITUTIONAL CONVENTION Vol. IX, PROBLEMS RELATING TO JUDICIAL ADMINISTRATION AND ORGANIZATION.

1. 1 N. Y. 2d 258, 134 N. E. 2d 818 (1956).