



CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE
RECEIVED
JAN 31 1980

January 31, 1980

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JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF ADRIANNE SMITH

Members in Session:

SUMMARY

Adrienne Smith has applied for leave to present a late claim. We are of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Ms. Smith has applied for leave to present a late claim. The claim seeks money damages for loss of personal property alleged to have been wrongfully removed from her yard by City refuse collectors.

Government Code Section 911.2 provides that a claim based upon injury to personal property shall be presented within 100 days of the accrual of the cause of action. In this case applicant's cause of action accrued on July 22, 1979, the date of the alleged incident. The 100-day filing period expired on or about October 31, 1979. Applicant presented her claim on December 24, 1979 approximately seven weeks late.

Applicant states that her claim was late because she was not informed of a time limit within which her claim must be filed. She points out that the instructions which accompanied the claim forms mailed to her by the City's adjusters did not state that there is a time limit for the presentation of a claim.

FEB 12 1980

2-12-80

ANALYSIS

A person seeking to file a late claim must show that the failure to file a claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)(1)). In order to obtain relief on any of such grounds it must appear that the applicant acted reasonably under the circumstances (Roberts v. State of California (1974) 39 Cal. App.3d 844).

Petitioner knew that a claim had to be presented to the City. She states that she thought there might be a time limit within which the claim had to be filed; apparently she did not pursue the matter further in order to inform herself of the 100-day filing period.

She obtained the claim form and appears to have prepared and signed it on or before October 31, 1979. Then, for some unexplained reason, she waited more than seven weeks before presenting the claim to the City Clerk. This does not appear to be the conduct of a reasonably prudent person who is aware of her claim against the city, is aware of the claim filing requirement, and who knows that presentation of the claim may be subject to a time limit.

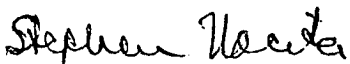
The courts have repeatedly held that mere ignorance of the 100-day filing period is not a sufficient basis to require acceptance of a late claim. (Tsingaris v. State of California (1979) 91 Cal. App. 3d 312; Roberts v. State, supra). The application of Ms. Smith for leave to present a late claim fails to set forth facts showing that she has acted with reasonable prudence in pursuing her claim or that she is otherwise entitled to the relief requested.

RECOMMENDATION

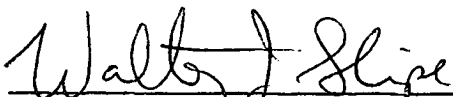
For the foregoing reasons it is recommended that the application of Adrienne Smith for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
CITY ATTORNEY


STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

JAN 3 12 30 PM '80

Adrienne Smith
1709-37th St.
Sacramento, CA 95816

Dec 29, 1979

Lorraine Magana
City Clerk
915 I St.
City Hall Rm 203
SACTO, Ca 95814

Dear Ms. MAGANA,

This is my application for leave to present a late claim:

My claim was late because I was never informed of a time limit in which to file my claim against the city. I thought there might be a limit (either the end of the calendar year or one year from the date of the claim), so I submitted it by the end of the year.

I was told that I should file a claim against the city, by Brown Brothers Adjusters. They mailed me five copies of the claim form and one copy of instructions (attached). No where in the instructions does it state that there is a time limit for the presentation of a claim. I

therefore request that I be
allowed to resubmit my claim
against the city.

Sincerely,

Adrianne Smith



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 448-6428

LORRAINE MAGANA
CITY CLERK

December 26, 1979

Adrienne Smith
1709 - 37th Street
Sacramento, CA 95816

Dear Ms. Smith:

We are returning your claim against the City of Sacramento which was received in this office on December 24, 1979.

California State law requires claims against a public entity be filed within one hundred days from the date of action giving rise to the claim. Therefore, your claim was not timely filed, and was not evaluated by the City Attorney.

If you wish to refile this claim, you must also submit an application for leave to present a late claim stating why your claim was not timely filed. If you wish to do so, you should act promptly in order to preserve other rights under the California Government Code.

Cordially,


Lorraine Magana
City Clerk

LM/jl

Enclosure

cc: City Attorney

CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that (1) Aleianne Smith, whose Post Office address is (2) 1709-37th Street, SACTO, CA 95816

claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) \$206³⁵. This claim is

based upon : (4) () personal injury; property damage or loss; () other, specify property was taken from my yard, which occurred on or about (5) July 22, 19 79, in the vicinity of (6) _____

1709-37th Street under the following circumstances: (7) I removed property from my car into my yard, went into my house. When I came out to gather my things they were gone! I called garbage collection who conducted investigation. The men recalled taking my things, crushing them + disposing of them.

The name of the city employee or employees causing the claimant's injury or loss under the circumstances described is (8) unknown

The amount of damages claimed as of the date of this claim is computed as follows: Damages incurred to date: (Itemize)

(10)	<u>2680 pieces of fabric cut for 2 quilts</u>	<u>\$104⁰⁰</u>
	<u>12 yard of fabric</u>	<u>\$ 48⁰⁰</u>
	<u>Childrens clothing + toys</u>	<u>\$ 14³⁵</u>
	<u>1 Imported basket</u>	<u>40⁰⁰</u>
(11)	<u>Estimated prospective damages as far as known:</u>	
	<u>None</u>	<u>\$ —</u>
	"	<u>\$ —</u>
	"	<u>\$ —</u>

(12) Total amount claimed as of date of presentation of claim \$206³⁵

All notices and communications with regard to this claim should be sent to claimant at (13) 1709-37th St. SACTO, CA 95816

DATED: (14) Oct 31, 19 79.

(15) SIGNED: Aleianne Smith
Claimant or Attorney for Claimant



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

February 13, 1980

Adrainne Smith
1709 - 37th Street
Sacramento, CA 95816

Dear Ms. Smith:

You are hereby notified that your application for leave to present a late claim was denied by the Sacramento City Council on February 12, 1980.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you that your application is rejected.

Sincerely,

Lorraine Magana
City Clerk

LM:1

cc: City Attorney
Finance Administration (2)

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WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.5 (claims presentation requirement). See Government Code Section 946.6. Such a petition must be filed with the court within six (6) months of the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

