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Memorandum No. 24 (1960)

Subject: Study No. 36 - Moving Expenses.

Attached to this Memorandum is a revised recommendation and statute relating to moving expenses caused by the acquisition of property for public use.

Respectfully submitted,

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Assistant Executive Secretary

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to

Moving Expenses in Eminent Domain Proceedings

The California Constitution provides that private property shall not be taken for public use without "just compensation" having first been made. The statutes implementing this provision provide that the person whose property is taken for public use is entitled to be paid only for its market value. No compensation is provided for the expenses of moving to another location when property is taken for public purposes.

In some states, the courts have tried to alleviate this hardship by permitting the cost of moving to be considered in determining the market value of the property taken. However, the concept of "market value," correctly interpreted, does not include moving expenses. Courts in other states, taking a more direct approach, have held that "just compensation" is not made unless the owner is compensated for his moving expenses.

Neither of these judicial solutions to the problem is satisfactory, in part because neither insures that the person who must bear the burden of moving -- the occupant of the land -- will receive reimbursement for his necessary expenses. Leases of ten provide that if the property is condemned, the lessee will receive no share of the award. Consequently, the Federal Government and several states have enacted legislation providing for the payment of moving expenses.

The Commission believes that the occupant of land acquired for public use should not be asked to bear alone the expense of moving his

personal property off the land. Inasmuch as this expense must be incurred because the property is taken for the public's benefit, the public should bear at least a substantial part of the burden imposed by reimbursing a person for moving expenses. Such a change in the law would more nearly effectuate the constitutional ideal of "just compensation." Moreover, the public will derive certain advantages. In some instances out of court settlement may be facilitated, for the condemning agency will be able to reimburse a property owner for an element of damage that cannot be compensated at the present time. In such cases, the court expenses saved may exceed the additional compensation given. Accordingly, the Commission recommends:

1. When property is taken for public use, the occupants should be reimbursed for the actual and reasonable costs necessarily incurred in moving personal property off the property taken, subject to certain limitations discussed below. Reimbursement must be limited to the "reasonable" costs actually incurred, so that the public cannot be compelled to pay exorbitant moving costs.

2. Reimbursement for moving expenses should be provided only for transporting the personal property to another location within the same general area as the real property taken, i.e., within 25 miles. If the person moving desires that the property be moved a greater distance, he should bear the additional mileage costs himself. Of course, packing, unpacking and other costs of moving, other than transportation in excess of 25 miles, should be borne by the public no matter how far the property is moved, for these expenses must be incurred whether the property is relocated within the same general area or not.

3. Reimbursement should be limited to 25 percent of the amount paid for the real property. Usually there is a rough correlation between the value of the property taken and the moving expenses that are incurred. A percentage limitation on the amount that may be expended for moving costs will give the condemning agency an approximation of the amount that must be budgeted for this purpose and thus assist it in planning its acquisitions. Several federal statutes permitting reimbursement for moving expenses impose a 25 percent limitation on the amount that may be given for this purpose.

This limitation should not apply, however, when a term only is acquired for public use, for there is less likely in such cases to be a correlation between the value of the taking and the cost of moving. Again, this limitation should not apply to negotiated settlements. The condemning agency may be relied upon to protect the public interest and it may facilitate settlement if moving expenses can be included. If the limitation were applicable to negotiated settlements moving expenses could not be paid to any occupant until all were paid.

4. When property is taken for public use for a term only, a person who is obligated to move and who has a right to reoccupy the property at the end of the term should be reimbursed for moving his personal property off the land, for storing his personal property and for relocating it upon the land at the end of the term.

5. Where the parties cannot agree on the amount to be paid, determination of the amount of reimbursement should be made in a summary judicial proceeding separate from the principal condemnation action. In many cases the occupant of the property does not have to move until after

the condemnation action has been tried. In other cases, the property may be acquired by purchase without a condemnation action. Therefore, a special proceeding should be provided for the determination of the amount of moving expense involved. Such a proceeding should not have all the formalities of the principal condemnation action, for it would be unfair to compel a person to submit to two complete trials to obtain full compensation.

Before instituting a judicial proceeding to obtain reimbursement for moving expenses, a person should first file a claim with the condemning agency so that the claimant's rights may be settled at the administrative level, if possible. Claims against the State and its agencies should be submitted in compliance with statutes governing presentations of claims against the State.¹ A comprehensive claims statute applicable to local public entities was enacted by the Legislature in 1959. To maintain uniformity in claims procedure, claims for moving expenses against such condemning agencies should be presented in accordance with the provisions of this law.² Of course, some condemners are not public entities and subject to the claims statute. But in order that the procedure for enforcement of the right to reimbursement for moving expenses may be uniform, the procedures provided in the local public entities claims statute should apply to claims for moving expenses against non-public entities that acquire property for public use.

¹ Government Code Sections 640 et seq.

² Government Code Sections 710 et seq.

6. Evidence of moving expenses should be incompetent and inadmissible in an eminent domain proceeding upon the question of the compensation to be paid for the property to be taken. Such a provision is necessary to preclude the possibility that a person might be compensated twice for the same loss.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to add Title 7a (beginning with Section 1270) to Part 3 of the Code of Civil Procedure, and to add Section 1248.5 to the Code of Civil Procedure, relating to compensation and damages payable when property is acquired for public use.

The people of the State of California do enact as follows:

SECTION 1. Title 7a (beginning with Section 1270) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 7a.

REIMBURSEMENT FOR MOVING WHEN PROPERTY ACQUIRED FOR PUBLIC USE

[New] 1270. As used in this title:

(1) "Acquisition" means the acquiring of real property or an interest therein either by the consent of the owner or by proceedings under Title 7 of Part 3 of this code.

(2) "Person" means a natural person, corporation, association, partnership, joint venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind and includes the State, or a city, county, city and county, district or any department, agency or instrumentality of the State or of any governmental subdivision in the State.

(3) "Public use" means a use specified in Title 7 of Part 3 of this code.

(4) "Removing" includes dismantling, packing, wrapping, loading and all other acts incidental to the removal of property from its location.

(5) "Relocating" includes unloading, unpacking, reassembling, installing and all other acts incidental to the placement of property upon a new location and making it ready for use.

[Revised] 1270.1. Subject to Section 1270.2, a person lawfully occupying real property whose occupation is interrupted as the proximate result of the acquisition of the real property or any interest therein for public use is entitled to reimbursement from the person acquiring the real property or interest therein for his actual and reasonable costs necessarily incurred as a direct result of the acquisition in:

(1) Removing his personal property from the real property acquired or from the larger parcel from which the part acquired is severed.

(2) Transporting such personal property for a distance of not more than 25 miles by the nearest road or roads. If the personal property is transported more than 25 miles by the nearest road or roads, a person is entitled to reimbursement for the cost of transporting such personal property a distance of 25 miles only.

(3) Relocating such personal property at the location to which it is removed.

[Revised] 1270.2. (1) Subject to subdivision (3) of this section, reimbursement under Section 1270.1 may not exceed 25 percent of the total

compensation and damages paid by the person acquiring the real property or interest therein for all interests in the property. As used in this subdivision, "total compensation and damages" means the total of the compensation and damages described in subdivisions 1, 2, 3 and 4 of Section 1248, excluding interest or other compensation paid as a result of the taking of immediate possession.

(2) If the total reimbursement claimed under Section 1270.1 exceeds the limitation provided in this section, such distribution of the available fund as may be equitable shall be made among the claimants.

(3) The limitation contained in this section does not apply if:

(a) The real property or interest therein is acquired for a term only; or

(b) The person acquiring the real property or interest therein and the occupant thereof agree (i) upon the compensation and damages to be paid to the occupant for his interest, if any, in the real property and (ii) upon the amount of reimbursement to which the occupant is entitled under Section 1270.1.

[Revised] 1270.3. (1) A person is entitled to reimbursement under this section if:

(a) He is lawfully occupying real property when such property or any interest therein is acquired for public use for a term only; and

(b) He has, at the time of the acquisition, the right to the possession of the real property immediately after the term acquired for public use.

(2) A person described in subdivision (1) of this section is entitled to reimbursement from the person acquiring the real property or

interest therein for his actual and reasonable costs necessarily incurred as a direct result of the acquisition in:

(a) Removing his personal property from the real property acquired or from the larger parcel from which the part acquired is severed and transporting such personal property for a distance of not more than 25 miles by the nearest road or roads. If the personal property is transported more than 25 miles by the nearest road or roads, a person is entitled to reimbursement for the cost of transporting such personal property a distance of 25 miles only.

(b) Storing such personal property during the period of time the real property is occupied by the person acquiring the real property or interest therein.

(c) Transporting such personal property for a distance of not more than 25 miles by the nearest road or roads and relocating such personal property upon the real property at the end of the term for which the real property was acquired for public use. If the personal property is transported more than 25 miles by the nearest road or roads, a person is entitled to reimbursement for the cost of transporting such personal property a distance of 25 miles only.

[New] 1270.4. (1) Subject to Section 1270.5, if the person that acquired the real property or interest therein for public use is the State or any office, officer, department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller, a claim for reimbursement arising under Section 1270.1 or Section 1270.3 shall be presented and acted upon in accordance with the provisions of Article 3 (beginning with Section 640) of Chapter 1 of

Division 3.5 of Title 1 of the Government Code relating to the presentation of claims against the State for the taking or damaging of private property for public use.

(2) Subject to Section 1270.5, if the person that acquired the real property or interest therein for public use is a local public entity within the meaning of Section 700 of the Government Code, a claim for reimbursement arising under Section 1270.1 or Section 1270.3 shall be presented and acted upon in accordance with the provisions of Article 2 (beginning with Section 710) of Chapter 2 of Division 3.5 of Title 1 of the Government Code.

(3) Subject to Section 1270.5, if the person that acquired the real property or interest therein for public use is neither the State nor a local public entity within the meaning of Section 700 of the Government Code, a claim for reimbursement arising under Section 1270.1 or Section 1270.3 shall be presented and acted upon in accordance with the provisions of Article 2 (beginning with Section 710) of Chapter 2 of Division 3.5 of Title 1 of the Government Code. In applying this subdivision, the terms "local public entity," "governing body of the local public entity" and "clerk, secretary or auditor of the local public entity" as used in such article mean the person that acquired the real property or interest therein for public use or any authorized agent thereof.

[New] 1270.5. (1) A claim for reimbursement arising under Section 1270.1 or under subdivision (2)(a) of Section 1270.3 shall be presented to the person that acquired the real property or interest therein for public use not later than the one hundredth day after the date the real property is vacated by the claimant.

(2) A claim for reimbursement arising under subdivisions (2)(b) or (2)(c) of Section 1270.3 shall be presented to the person that acquired the real property or interest therein for public use not later than the one hundredth day after the date on which the term taken for public use expires.

(3) The superior court of the county in which the real property is located, or if such property is the subject of a condemnation action the superior court in which such action is pending, shall grant leave to present a claim after the expiration of the time for presenting such claim as specified in subdivisions (1) and (2) of this section if the person against whom the claim is made will not be unduly prejudiced thereby, where no claim was presented during such time and where:

(a) Claimant was a minor during all of such time; or

(b) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or

(c) Claimant died before the expiration of such time.

Application for such leave must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within a reasonable time, not to exceed one year, after the time for the filing of the claim has expired. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the person that acquired the real property for public use in the manner provided by law for the service of summons in an action not less than 10 days before such hearing. The application shall be determined upon the

basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at such hearing.

(4) A claim for reimbursement arising under Section 1270.1 or Section 1270.3 shall be finally acted upon by the person to whom it is presented within 80 days after the date that the claim is presented or after the date judgment fixing the award to be paid becomes final, whichever is later. If the person to whom the claim is presented fails to take final action on the claim within the time permitted in this section, the claim shall be deemed to have been rejected on the last day that the claim could have been acted upon.

[New] 1270.6. (1) If the person that acquired the real property for public use rejects any claim or claims arising under Sections 1270.1 or 1270.3 in whole or in part, the claimant or the person that acquired the property for public use may, not later than the one hundredth day after the time for filing claims has expired or the judgment fixing the award has become final, whichever is later, apply to the superior court by verified petition for an order fixing the amount of the disputed claim or claims or making an apportionment of the fund allowable for reimbursement, or both.

(2) If the property acquired is the subject of a condemnation action, the petition shall be filed in the condemnation action. If the property acquired is not the subject of a condemnation action, the petition shall be filed in the superior court of the county in which the property taken is located. A copy of the disputed claim or claims shall be attached to the petition.

(3) A copy of the petition and the disputed claim or claims and a written notice of the time and place of hearing thereof shall be served upon the parties concerned not less than 30 days before the hearing on the petition. If a party on whom service is made is not a party to a condemnation action in which the petition is filed, service on such party shall be made in the manner provided for the service of summons in an action.

(4) No action or suit may be maintained against any person that acquires property for public use upon a claim arising under Section 1270.1 or 1270.3 except as provided in this section. A petition filed pursuant to this section shall be dismissed if the disputed claim has been allowed in part and the claimant has accepted the amount allowed in settlement of the entire claim. Nothing in this section shall be construed to deprive a claimant of the right to resort to a writ of mandate or other proceeding against the State or a local public entity or the governing body or any officer thereof to compel it or him to pay the claim when and to the extent that it has been allowed. Nothing in this section shall be construed to deprive a claimant of the right to resort to any action or suit against any other person that has acquired property for public use to compel it to pay the claim when and to the extent that it has been allowed.

[Revised] 1270.7. (1) A petition to fix the amount of a disputed claim or claims arising under Section 1270.1 or Section 1270.3 shall be decided upon the basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at the hearing.

(2) The court shall determine the amount the claimant or claimants are entitled to be reimbursed and shall order payment of the claim or claims as determined.

(3) An order for the payment of a claim under this section is a judgment for the payment of money against the person ordered to pay the claim.

SEC. 2. Section 1248.5 is added to the Code of Civil Procedure, to read:

[Revised] 1248.5. Evidence of the cost of removing, transporting, storing or relocating personal property located on the real property sought to be condemned, or, if the property sought to be condemned constitutes only a part of a larger parcel, located on the portion not sought to be condemned, is incompetent and inadmissible upon the issues of the compensation and damages to be assessed for the taking of the property sought to be condemned under Section 1248.