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Memorandum No. 88(1960)

Subject: Study No. 36 - Condemnation (Moving Expenses and
Incidental Business Losses)

Attached to this memorandum are the recommendation and statute on moving expenses in eminent domain cases. They are submitted to the Commission for final approval. Section 1270.4 has been amplified so that the memorandum of moving costs will provide more information to the condemner. Subdivision (1) of Section 1270.3 has been revised so that it will indicate more clearly that a person is entitled to reimbursement for the first 25 miles traveled.

Respectfully submitted,

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10/7/60

CALIFORNIA LAW REVISION COMMISSION
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T E N T A T I V E

RECOMMENDATION AND PROPOSED LEGISLATION

Relating to

REIMBURSEMENT FOR MOVING EXPENSES
AND INCIDENTAL BUSINESS LOSSES
WHEN PROPERTY IS ACQUIRED FOR PUBLIC USE

NOTE: This is a tentative recommendation and proposed statute prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

(36)

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to

Reimbursement for Moving Expenses and

Incidental Business Losses When Property is Acquired for Public Use

The California Constitution provides that private property shall not be taken for public use without "just compensation" having first been made. The statutes and decisions implementing this provision provide that the person whose land is taken for public use is entitled to be paid only for its market value. As a result, no compensation is provided for the expense of moving to another location when land is permanently taken for public purposes.* Nor is the owner of real property taken by eminent domain compensated for his incidental business losses, such as loss of good will, lost profits and losses from business interruption.

Moving Expenses

In some states, the courts have held that the cost of moving is to be considered in determining the market value of the land taken. 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

* The United States Supreme Court has held that the moving and storage expenses of a tenant should be considered in determining the value of his interest when property subject to a lease is taken temporarily for public use and the tenant has an obligation to return to the property at the end of the public occupancy. United States v. Petty Motor Co., 327 U.S. 372 (1946); United States v. General Motors Corp., 323 U.S. 373 (1945). There is no reported decision of a California court involving this problem. Thus, it is uncertain at present whether a tenant would be entitled to compensation for moving expenses under these circumstances under California law.

of these judicial solutions to the problem is satisfactory. The first is not because the concept of market value correctly interpreted does not include moving expenses. Neither is administratively feasible because frequently the property owner does not move before the trial of the eminent domain proceeding, and it is, therefore, impossible to determine the amount of moving expenses he will necessarily incur when the amount of his compensation is determined. Moreover, these judicial solutions place no limit on the amount of moving expense that must be reimbursed. The Federal Government and several states have enacted legislation providing for the payment of moving expenses in order to recognize the property owner's right to be reimbursed for such expenses, to place limitations on the amount of moving expenses that may be reimbursed and to provide a procedure for claiming such reimbursement.

The Commission believes that, subject to reasonable limitations, the owner of property acquired for public use should be reimbursed for the expense of moving his personal property. Inasmuch as this expense must be incurred because the land 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 objective of "just compensation." Moreover, 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.

Accordingly, the Commission recommends:

1. When land is taken for public use, the owners should, subject to certain limitations discussed below, be reimbursed for the actual and

reasonable costs necessarily incurred in moving their personal property, i.e., dismantling, packing, loading, transporting, temporarily storing, unloading, unpacking, reassembling, and installing such personal property.

2. Reimbursement for the transportation element of moving expense should be provided only for the first 25 miles traveled. If the person moving desires that the property be moved a greater distance, he should bear the additional mileage costs himself. However, packing, unpacking and other costs of moving 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. The 25-mile limitation should not apply, however, to negotiated settlements. The condemning agency may be relied upon to protect the public interest, and settlement may be facilitated if there is no mileage limitation upon negotiated settlements.

3. When land is taken for public use for a term only, an occupant who has to move and who has a right to reoccupy the property at the end of the term should be reimbursed not only for expenses incurred in moving his personal property off the land, but also for the actual and reasonable costs necessarily incurred in storing his personal property and moving it back to the land at the end of the term.

4. Where the parties cannot agree on the amount to be paid, the amount of reimbursement to be made for moving expenses should be determined as a part of the condemnation proceeding in a manner similar to that used to determine costs. Such a procedure would permit the determination of moving expenses separately from the determination of compensation for the real property, but would not require the commencement of a distinct judicial proceeding for that purpose.

5. Evidence of moving expenses should be expressly made inadmissible in an eminent domain proceeding upon the issue 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.

Incidental Business Losses

The Law Revision Commission is not prepared at this time to make a recommendation for or against compensating condemnees for incidental business losses.

Proposed Legislation

The Law Revision Commission's recommendation concerning reimbursement for moving expenses would be effectuated by the enactment of the following measure:

An act to add Title 7a (beginning with Section 1270) to Part 3 of, and to add Section 1248.5 to, the Code of Civil Procedure, relating to the payment of compensation and damages 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 EXPENSES WHEN PROPERTY IS ACQUIRED FOR PUBLIC USE

1270. As used in this title:

(1) "Acquirer" means a person who acquires real property or any interest therein for public use.

(2) "Acquisition" means the acquiring of real property or an interest therein for public use either by the consent of the owner or by eminent domain.

(3) "Person" includes a natural person, corporation, association, joint venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, 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.

(4) "Public use" means a use for which property may be taken by eminent domain.

(5) "Moving" means dismantling, packing, loading, transporting, unloading, unpacking, reassembling and installing personal property.

1270.1. Subject to Section 1270.3, a person whose real property or interest therein is acquired for public use is entitled to reimbursement from the acquirer for his actual, but not exceeding the reasonable, costs necessarily incurred as a result of the acquisition in:

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

(2) Temporarily storing such personal property until the real property at which the personal property is to be relocated for use is available for occupancy by such person, but not in any event in excess of 30 days.

1270.2. (1) A person is entitled to reimbursement under this section only 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) Subject to Section 1270.3, in addition to any reimbursement to which he may be entitled under Section 1270.1, a person described in subdivision (1) of this section is entitled to reimbursement from the

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

(a) Storing the personal property that was removed from the real property acquired or from the larger parcel from which the part acquired was severed during the time the real property is occupied by the acquirer.

(b) Moving such personal property back to the real property acquired after the expiration of the term for which the real property was acquired for public use.

1270.3. (1) Subject to subdivisions (2) and (4) of this section:

(a) Whenever a person is entitled to reimbursement under Section 1270.1 for the cost of transporting his personal property, such reimbursement may not exceed the cost of transporting such property 25 miles.

(b) Whenever a person is entitled to reimbursement under subdivision (2)(b) of Section 1270.2 for the cost of transporting his personal property, such reimbursement may not exceed the cost of transporting such property 25 miles.

(2) Reimbursement under this title may not exceed the value of the property moved.

(3) In lieu of reimbursing a person under this title, the acquirer may provide for the moving and storage of the personal property at its own expense.

(4) The limitations contained in this section do not limit the amount the acquirer may agree to pay a person entitled to reimbursement under this title.

1270.4. (1) A person who claims reimbursement under Section 1270.1 for moving personal property shall serve upon the acquirer and file in

the condemnation proceeding affecting the real property on which the personal property was located a verified memorandum of his moving and storage expenses. The memorandum shall be filed within 90 days after removal of the personal property from such real property has been completed and shall state:

(a) The date the removal was completed.

(b) The location from which and the location to which the property was moved.

(c) If the property was stored temporarily, the location where the property was stored and the duration of such storage.

(d) The actual, but not to exceed the reasonable, costs necessarily incurred.

(2) A person who claims reimbursement under Section 1270.2 shall serve upon the acquirer and file in the condemnation proceeding affecting the real property from which the personal property was moved a verified memorandum of his moving and storage expenses. The memorandum shall be filed not later than the ninetieth day after the term for which the real property was acquired for public use expires and shall state:

(a) The location where the property was stored and the duration of such storage.

(b) The actual, but not to exceed the reasonable, costs necessarily incurred.

(3) The acquirer may, within 20 days after service of a memorandum under subdivision (1) or (2) of this section, serve and file a notice of motion to have the costs determined by the court. Not less than 20 days' notice of the hearing shall be given to the claimant, and the notice shall

state the acquirer's objections or other basis for the motion. Upon the hearing the court shall determine the reimbursement to which the claimant is entitled, if any, and shall order the acquirer to pay such amount within 30 days from the date of such order. If the acquirer does not file a notice of motion to have the costs determined by the court, the court shall order the acquirer to pay the amount claimed in the memorandum within 30 days after the date of such order.

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

1248.5. Notwithstanding any other provision of law, the opinion of a witness as to the amount to be ascertained under subdivisions 1, 2, 3, or 4 of Section 1248 is inadmissible if the court finds that it is based, wholly or in part, upon the cost of moving, transporting, storing or relocating personal property.

SEC. 3. This act takes effect on July 1, 1962. This act does not apply to any proceeding in eminent domain commenced prior to its effective date.