#36 9/11/67

First Supplement to Memorandum 67-50

Subject: Study 36 - Condemnation Law and Procedure (Condemnee's Expenses Upon Abandonment)

Attached are 21 exhibits containing comments on this recommendation. Both public agencies and lawyers who represent property owners approve of the recommendation.

One public agency--City of Fullerton--suggests that expenses and fees incurred prior to the resolution to acquire the property by condemnation should not be recoverable. This would be an undesirable limitation. Many agencies adopt a resolution only after efforts to acquire the property by negotiation have been unsuccessful.

A number of lawyers suggest that the property owner should be entitled to expenses and lawyer's and experts' fees even when a condemnation proceeding is not abandoned. This suggestion will be considered in the course of our study of this subject. The suggestion involves difficult and controversial problems. Adoption of the suggestion might tend to invite litigation and probably would substantially increase the cost of property acquisition.

Exhibit XIII notes that the case law makes attorney's fees not recoverable in the even of a purely contingent fee contract. We do not propose to change this rule. The solution is to provide in the contingent fee contract for a fee in the event of abandonment.

See Exhibit XV suggesting that an attorney's fee be allowed when the attorney is retained to convince the condemning body that the property to be acquired is not the best property or the most economical property. The Recommendation would allow the attorney's fee only to the extent that the services are "reasonably and necessarily incurred

to protect the defendant's interests in the proceeding."

The staff recommends that no substantive change be made in the Recommendation. However, we have checked the galley proofs of the Recommendation and suggest the following revisions:

(1) Letter of transmittal--change "recommendation and legislation were not directed to" to read "legislation was only incidentally concerned with."

(2) Footnote 1 (page 4) add at end of footnote: "People v. Bowman, 173 Cal. App.2d 416, 343 P.2d 267 (1959)."

(3) Page 5, second line, change "should" to "will."

(4) Various other typographical errors should be corrected: Transpositions appear in the Note on page 2 and in the text on page 5; the word "court" should be "Court" in the first line after the indented quote on page 6.

Respectfully submitted,

John H. DeMoully
Executive Secretary

1st supp. Memo 67-50 EXHIBIT I

CHAMBERLAIN & CHAMBERLAIN
ATTORNEYS AT LAW
BANK OF CALIFORNIA BUILDING
P. O. BOX 32
AUBURN, CALIFORNIA 95603
TELEPHONE 885-4523
AREA CODE 916

C. L. CHAMBERLAIN
1868 - 1913
T. L. CHAMBERLAIN
T. L. CHAMBERLAIN, JR.
PAUL H. CHAMBERLAIN

OF COUNSEL
R. L. CHAMBERLAIN
SAN FRANCISCO
THOMAS G. CHAMBERLAIN
NEW YORK CITY

August 28, 1967

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law,
Stanford, California - 94305

In re: Recovery of Expenses on Abandonment of Eminent Domain Proceeding

Dear Mr. DeMoully:

I want to acknowledge receipt of your communication dated August 23, 1967 and the attached material on proposed amendment to CCP Section 1255a.

Our office participates in a good many condemnation proceedings and of course, we were most pleased to see this proposal come forward. We have never felt that the 40 day period was realistic and of course, as pointed out in the material you sent, a big part if not most of the work in getting ready for trial, takes place soon after the property owner knows that his property is in line with a proposed project which may be months or even a year or more before a complaint is filed.

We would add our endorsement to the proposal.

I cannot close this letter without adding the further comment that I hope some day the Commission will have an opportunity to study and make a recommendation on the question of allowing attorneys' fees, appraiser's fees and expenses as "costs" to the defendant after the condemnation proceeding has been tried where the defendant at least does "better" than the final offer of the condemning authority. Such legislation has been proposed in the past. I think was always opposed by the Division of Highways in particular but those of us who try these cases feel that such an allowance or the threat of this allowance would give the defendant a bargaining position somewhat more equal to that of the condemning authority. Unfortunately, it has been our

experience that the condemning authorities know that a defendant will be told of the considerable expense he faces and that these costs will not be recoverable so something should be done we feel in that field as well.

Very truly yours,

CHAMBERLAIN & CHAMBERLAIN

By: T. L. Chamberlain, Jr.

TLC Jr./alt

1ST SUPP. Memo 67-50 EXHIBIT II

ALBERT J. FORN
ATTORNEY AT LAW
SUITE 401 COAST FEDERAL BUILDING
315 WEST NINTH STREET
LOS ANGELES, CALIFORNIA 90015
TELEPHONE 622-4577

August 30, 1967

California Law Revision Commission
School of Law
Stanford, California

Gentlemen:

My commendations for a job well done on the proposed revisions of CCP Section 1255a. I think it is a long needed improvement which will help correct one of the abuses that many landowners in my personal experience have had to contend with. I certainly hope that the State Legislature enacts your recommended change exactly as you have worded it.

Sincerely yours,

ALBERT J. FORN

AJF/trs

1st Supp. Memo 67-50

EXHIBIT III

THOMAS B. ADAMS
ATTORNEY AT LAW
15 EAST THIRD AVENUE
SAN MATEO, CALIFORNIA 94401
(415) 342-6686

August 28, 1967

California Law Revision Commission
School of Law
Stanford, California 94305

Attention: Mr. John H. DeMoully,
Executive Secretary

Re: Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding

Gentlemen:

I agree 100% with the recommendations of the Law Revision Commission.

Yours very truly,

Thomas B. Adams

TBA:mb

1st supp. Memo 67-50

EXHIBIT IV

AUBREY B. FAIRFAX
FRANK B. CLIFF
KELVIN L. TAYLOR

LAW OFFICES
FAIRFAX & CLIFF
WHITE BUILDING
750 WELCH ROAD
PALO ALTO, CALIFORNIA 94304

TELEPHONE
321-1486

August 30, 1967

California Law Revision Commission
School of Law
Stanford, California 94305

Attention: Mr. John H. DeMoully
Executive Secretary

re Condemnation Law and Procedure Recommendation

Dear Sir:

Responding to your form letter received August 28, 1967 addressed to Persons Interested in Condemnation Law and Procedure, and your request therein for comments on the enclosed tentative recommendation, please be advised that I am in favor thereof.

You are to be commended for your very excellent work in this area.

Very truly yours,

FAIRFAX & CLIFF

Frank B. Cliff

FBC:bb

LST Supp Memo 67-50 EXHIBIT V

TADINI BACIGALUPI 1881-1962
CHARLES DE Y. ELKUS 1881-1963
HERBERT H. SALINGER
CLAUDE N. ROSENBERG
CHARLES DE Y. ELKUS, JR.
TADINI BACIGALUPI, JR.
ALVIN H. PELAVIN
ROBERT C. ELKUS
WILLIAM G. FLECKLES
PETER K. MAIER
ROBERT M. HARLICK
MICHAEL B. FOLEY
GAYLE NIN ROSENKRANTZ
PAUL J. MATZGER
PHILIP K. JENSEN
DALE B. METCALF

LAW OFFICES
BACIGALUPI, ELKUS, SALINGER & ROSENBERG
300 MONTGOMERY STREET, SUITE 1030
SAN FRANCISCO 94104

TELEPHONE 362-7575
AREA CODE 415

August 30, 1967

John H. DeMoully, Esq.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Re: Condemnation - Expenses of Abandonment

Dear Mr. DeMoully:

I approve of the tentative recommendations you make on the above subject, with only one comment: Since condemnation proceedings are involuntary, I see no reason why the condemning power should not pay the owner's reasonable expenses in all cases regardless of whether litigation is instituted. Such expenses would be attorneys' fees, appraisal fees, other experts, and moving and relocation costs. Although Highways and now BARTD can pay for the latter, no local agency will even consider such expenses.

Obviously Highways, Water Resources, and the Attorney General would oppose any such payments, so I would not expect any such recommendation to pass the legislature. In reality, most of such expenses other than trial fees are expended prior to the commencement of litigation.

I have two other comments on condemnation law outside of this area that you have undoubtedly already considered. First, the condemning authority should pay the defendant's filing fees when the complaint is filed. The defendant could then file his answer with no costs out-of-pocket. As the condemning authority is liable for these costs in any event, the defendant should not have to put them up in the first instance.

Second, orders of immediate possession should be issued only upon a show-cause hearing where the Court could weigh the relative hardships of the parties. Some authorities use the "O.P." as a threat to force settlement.

Very truly yours,

BACIGALUPI, ELKUS, SALINGER & ROSENBERG

By

Philip K. Jensen

PKJ:llw

1st Supp. Memo 67-50 EXHIBIT VI

LAW OFFICES OF
O'NEILL, HUXTABLE & COSKRAN
ONE WILSHIRE BUILDING · SUITE 1212
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 627-5017

FRANCIS H. O'NEILL
RICHARD L. HUXTABLE
WILLIAM G. COSKRAN

LESLIE R. TARR
OF COUNSEL

August 31, 1967

Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Recommendation relating to Condemnee's Expenses on Abandonment of Eminent Domain Proceeding.

Gentlemen:

I have received distribution of your recommendation relating to the above subject and have reviewed the same.

As an individual practicing attorney with practice generally oriented toward property owner representation, I feel that the legislation proposed is highly desirable. As you are aware, C.C.P. §1255a was adopted in 1915 containing a legislative oversight which did not permit recovery of the condemnee's expenses during trial. That oversight was corrected by 1961 legislation sponsored by your Commission. The corrections suggested by your September, 1967 recommendation are necessary to effect the original purpose of the provision under modern conditions of expense and calendar congestion.

Very truly yours,

RICHARD L. HUXTABLE

RLH:NS

1st Supp. Memo 67-50 EXHIBIT VII

HAROLD B. LERNER
ATTORNEY AT LAW
ONE FOX PLAZA
CIVIC CENTER
SAN FRANCISCO 94102
(415) 626-4474

August 31, 1967

California Law Revision Commission
School of Law
Stanford, California 94305

ATTN: John H. DeMoully,
Executive Secretary

Gentlemen:

I approve of the tentative recommendations proposed by the Commission.

Very truly yours,

Harold B. Lerner

HAROLD B. LERNER

HBL:mp

1st Supp. Memo 67-50 EXHIBIT VIII

SAUL N. ROSS
ROBERT S. WEBBER
GORDON W. HACKETT

ROSS AND WEBBER
ATTORNEYS AT LAW

600 EL CAMINO REA
P.O. BOX 23
SAN BRUNO, CALIFORNIA 940
(415) 588-03

August 31, 1967

California Law Revision Commission
School of Law
Stanford, California

Gentlemen:

I was interested in your recommendation to revise Section 1255a so as to provide the recovery of costs on abandonment without limitation by the 40-day provision. I believe your recommendation is very sound and far more realistic than the present section and should be endorsed by the Bar.

May I suggest, however, that there is one phase of this problem which has not been considered in either the old section or the proposed revision. That is, a standard as to what does, in fact, constitute abandonment. I have in mind particularly the instance where the condemnor amends its suit so as to change the nature or quantity of the taking as opposed to a complete dismissal of the action. I have had at least two instances of this situation, one in which I represented a property owner and another in which I represented the condemnor, the latter being now presented to the Court. It would seem to me that this section should adopt some standard to the effect that if the condemnor changes its suit so as to materially change the character or quantity of the taking and if the property owner can show that by reason of the change he has incurred fees and expenses over and above that which would in any event be incurred by reason of preparation for the suit as it stands at the time of trial, then such expenses may be recoverable to the extent that it can be shown that they are, in fact, additional expenses which were lost or needlessly incurred in trial preparation.

Thank you for your consideration. It had been my intention to write some time ago asking whether my name was still on your mailing list inasmuch as I know there has been some material issued in condemnation which I have not received. I would appreciate a check to see that my name and address are on your active mailing list.

Sincerely,

ROSS AND WEBBER

Robert S. Webber

RSW/ews

1st Supp. Memo 67-50 EXHIBIT IX

G. J. CUMMINGS
PROFESSIONAL ENGINEER
LICENSE M. E. 3424
648 CARLSTON AVENUE
OAKLAND, CALIFORNIA 94610

PHONE 832-4843

SEPT. 2-67.

CALIF. LAW REVISION COMMISSION,
SCHOOL OF LAW,
STANFORD, CALIFORNIA.

ATT: MR. JOHN H. DEMOULLY.

GENTLEMEN:

REGARDING YOUR LETTER AND ENCLOSURE OF AUG. 28TH, I WOULD RECOMMEND THE ENACTMENT OF CHANGE IN THE 40 DAY PROVISION.

I WOULD ALSO RECOMMEND A CHANGE IN THE CONDEMNATION PROCEDURE WHERE AN INDIVIDUAL OR A PRIVATE CORPORATION ACQUIRES PROPERTY BY USING THE PUBLIC POWER OF CONDEMNATION TO ACQUIRE PROPERTY FOR PRIVATE USE.

THE CITY ACQUIRES A PROPERTY THRU CONDEMNATION AND SELLS THE PROPERTY AT CONDEMNATION COST TO A PRIVATE INDIVIDUAL OR CORPORATION. THERE SHOULD PROBABLY BE A CRIMINAL PENALTY FOR THE MISUSE OF THE POWER OF CONDEMNATION.

SINCERELY

G. J. Cummings

1st Supp. Memo 67-50

EXHIBIT X

OFFICE OF THE CITY ATTORNEY

CITY OF SAN JOSE

CALIFORNIA

September 5, 1967

FERDINAND P. PALLA
CITY ATTORNEY

TELEPHONE
292-3141

RICHARD K. KARREN
ASSIST. CITY ATTORNEY

HARRY KEVORKIAN
FRANKLIN T. LASKIN
DONALD C. ATKINSON
KEITH L. GOW
ROY W. HANSON
ROBERT R. CIMINO
ROBERT W. HURLEY
DEPUTY CITY ATTORNEYS

California Law Revision Commission
School of Law
Stanford, California

Gentlemen:

We approve of your tentative recommendation for amendment of Section 1255a of the Code of Civil Procedure.

Very truly yours,

FERDINAND P. PALLA
City Attorney

By Donald C. Atkinson
Deputy City Attorney

FPP:DCA:lb

1st supp. Memo 67-50 **EXHIBIT XI**

Law Offices of

REGINALD M. WATT

CARL B. LEVERENZ

116 WEST SECOND STREET
CHICO, CALIFORNIA 95926
TELEPHONE (916) 343-7962

September 6, 1967

State of California
California Law Revision Commission
School of Law
Stanford, California

Attention: Mr. John H. DeMoully
Executive Secretary

Dear Mr. DeMoully:

This will acknowledge your letter of August 31, 1967 and the enclosed copies of the Law Revision Commission's recommendations relating to recovery of condemnees' expenses on abandonment of an eminent domain proceeding.

I am heartily in accord with the recommendations of the California Law Revision Commission which you forwarded to me relating to the recovery of condemnees' expenses on abandonment.

May I respectfully suggest that unless the underlying principles which you here apply to abandonment are likewise applied to completed condemnation cases, a person whose property is not taken is "made whole" while a person whose property is taken is not "made whole".

Should not condemnees' expenses "reasonably and necessarily incurred" be paid by the condemning agency whether there is an abandonment or a completion of an eminent domain proceeding?

Thank you for letting me see this material.

If I can be of any help at any time, please feel free to call on me.

Very sincerely,

Reginald M. Watt

REGINALD M. WATT

RMW/rd

1st Supp. Memo 67-50 EXHIBIT XII

OSWALD C. LUDWIG
ATTORNEY AT LAW
3746-30TH STREET
SAN DIEGO, CALIFORNIA 92104
296-5604

RESIDENCE
4312 ATHENS DRIVE
SAN DIEGO, CALIFORNIA 92115
582-4495

September 6, 1967.

California Law Revision Commission,
School of Law,
Stanford University,
Stanford, California. 94305.

Dear Sirs:

Your tentative recommendation for California Law Revision as to Section 1255a was received today, and I find I must answer by Sept. 8, so, without much study, I am answering:

So far as the proposed amendment goes, it appears O. K. However, Section 1255b Interest Payable, etc., this should not be subject to any change by stipulation of the parties, because recently, when I was ill, and needed a continuance, the attorneys would not grant me a continuance without a fight, unless I would stipulate that the interest should commence from the date of the judgment, rather than from the date of the taking which had previously occurred. In other words, before I asked for a continuance, the State had taken possession of the property, and had the use of it while the whole matter was pending. I think this is wrong and contrary to the Constitutional Provisions. The owners cannot rent the property to anyone else if it is vacent prope as this property I mention was.

How can a person be paid the reasonable cash value of their property taken if the appraiser, the attorneys, and other expenses are not added to the damages to be paid the owners? I have a case where the state wilfully appraised the property at a low figure.

Yours very truly, O. C. Ludwig. O.C.L

1st Supp. Memo 67-50 EXHIBIT XIII

LAW OFFICES OF
BRESSANI AND HANSEN
1806 BANK OF AMERICA BUILDING
TELEPHONE 294-0303
SAN JOSE, CALIFORNIA 95113

RICHARD V. BRESSANI
(1894-1959)

GERALD B. HANSEN
CLARENCE J. SEUH
RICHARD B. BLOS

September 6, 1967

State of California
CALIFORNIA LAW REVISION COMMISSION
School of Law, Stanford University
Stanford, California, 94305

RE: Tentative Recommendation on Recovery of Condemnee's Expenses on Abandonment of Eminent Domain Proceedings.

Gentlemen:

After study, and after some deep experience in this matter in a recent case, we definitely approve of your tentative recommendation.

Elimination of the forty day requirement is necessary as work is often done, and must of necessity often be done, long before that time limit arises. The same is often true before suit is filed. I have just finished a case with the County wherein the Court found a partial abandonment during trial, and we had our fees assessed. In another case, the condemnor has specifically requested we have our appraisers work on the matter and submit a proposition. This encourages settlement and justified making all expenses and all fees, even incurred before complaint is filed, recoverable in the event of entire or partial abandonment.

I would suggest a change in the case law that makes attorney's fees not recoverable in the event of a purely contingent fee contract. The condemnor should not receive a windfall of release of its normal liability because of the largesse of the condemnee's attorney. Our Senior Superior Court judge has stated from the bench that that rule is horribly unjust.

Maybe if this gets through then the Commission will push as I have been espousing and pushing for years, that appraiser's fees and attorney's fees be payable by the condemnor in all condemnation cases. This is incorporated in my moving cost amendments.

Very truly yours,

GBH: f

Gerald B. Hansen

1st Supp. Memo 67-50 EXHIBIT XIV

Miller, Morton, Wright & Caillat
Attorneys at Law
500 The Swenson Building
777 North First Street
San Jose, California 95112

Telephone
292-1765

Harvey C. Miller
Richard W. Morton
James A. Wright
Charles V. Caillat
Lin J. Venator
Conrad L. Rushing

September 6, 1967

California Law Revision Commission
School of Law
Stanford, California 94305

Re: Condemnation Law and Procedure
Attention: John H. DeMoully
Executive Secretary

Gentlemen:

Thank you for the recent forwarding of proposed recommendations in connection with the above entitled matter.

It is my opinion that the proposed recommendations are sound. The inequitable situation that has existed in the past would appear to be corrected by the proposed code amendment. The change is a necessary one and should be adopted.

I am still extremely interested in whatever changes might be recommended with respect to the allocation, determination and recovery of damages as between landlord and tenant. The situation under the present law is a deplorable one and must be corrected.

Very truly yours,

Richard W. Morton

RICHARD W. MORTON

RWM:mj

1st Supp. Memo 67-50

EXHIBIT XV

LAW OFFICES
HANSEN & DOLLE
SUITE 2114
606 SOUTH OLIVE STREET
LOS ANGELES, CALIFORNIA 90014
MADISON 8-1245

HODGE L. DOLLE
VICTOR R. HANSEN
HODGE L. DOLLE, JR.
WARREN K. PETERSON

September 5, 1967

California Law Revision Commission
School of Law
Stanford, California

Re: Tentative recommendation relating to recovery of condemnee's expenses on abandonment of an eminent domain proceeding (September 1967).

Gentlemen:

In answer to your request for comments, I submit the following:

On several occasions, in the defense of property owners whose property is under a threat of condemnation, it has been incumbent upon the attorney to attempt to convince the legislative body of the condemnor that the property contemplated was either unfit for the purpose or was a great deal more expensive than originally contemplated. One specific example involved an appearance before the State of California Allocation Board for a presentation designed to convince the Board that money should not be allocated for the acquisition of a particular school site by a local School District. The reasons presented were compelling and the School District subsequently abandoned the site and condemnation action that had been filed.

It is our feeling that the attorney is obliged to represent the client not only in preparing for a condemnation trial but, in cases where there is merit to the contention, to convince the condemning body that the property to be acquired is not the best property or the most economical property.

It goes without saying that if the attorney is successful he has performed a real service to the client who is obligated to pay for said

service. It is also true that these are legal expenses which the client would not have been obliged to obtain were it not for the anticipated condemnation of his property. Yet the term "all the necessary expenses incurred in preparing for trial" has been held by the local courts to preclude reimbursement to the client for any attorney's fees incurred in activities not strictly relating to the preparation for trial.

In light of the duties of an attorney in a condemnation action to procure an abandonment, or obtain just compensation for the property taken, the restriction appears somewhat arbitrary and too limiting. It is suggested that the language of the Code of Civil Procedure, Section 1255a, be changed to include all attorney's fees for services relating to the proposed acquisition of a client's property.

Yours very truly,

HANSEN & DOLLE

Hodge L. Dolle

Hodge L. Dolle

HLD:ma

1st Supp Memo 67-50 EXHIBIT XVI 8/23/67

Return to

RONALD REAGAN
Governor

STATE OF CALIFORNIA
CALIFORNIA LAW REVISION COMMISSION

Mailing Address:
School of Law
Stanford, California

RECEIVED
SEP 5 1967

WELDON AND HASS
Attorneys at Law
Santa Barbara

To: Persons Interested in Condemnation Law and Procedure

The enclosed tentative recommendation will be considered by the Law Revision Commission at its September 21-23 meeting. At that time the Commission will determine whether it will submit this recommendation for enactment to the 1968 legislative session and, if so, what changes should be made in the tentative recommendation.

The Commission will appreciate receiving any comments you may have on this tentative recommendation. It is just as important to advise us that you approve of the tentative recommendation as it is to advise us of your disapproval or of the changes you believe should be made in the tentative recommendation.

Your comments must be in our hands by September 8, 1967, if the Commission is to have an opportunity to consider them before it determines whether to submit this tentative recommendation to the 1968 Legislature. Please send your comments to: California Law Revision Commission, School of Law, Stanford, California 94305.

Sincerely,

John H. DeMoully
Executive Secretary

Sept-5-1967

Read your proposal - Approve as written - Certainly basic Justice should provide for recovery where the sole decision lies with the Condemning Authority.

John K Hass

1st Supp Memo 67-50

EXHIBIT XVII

CITY OF SAN LUIS OBISPO
CALIFORNIA
CITY ATTORNEY
990 PALM STREET
543-8666

September 5, 1967

California Law Revision Commission
School of Law
Stanford, Calif., 94305

Attention: Mr. John H. DeMoully, Executive Secretary

Gentlemen:

Your letter dated August 23, 1967, forwarding a proposed revision to Section 1255 (a) of the Code of Civil Procedure, was received today and was immediately reviewed in view of your statement that comments must be in your hands by September 8, 1967. It would be appreciated if all persons whose comments are requested could be given a little more lead time to analyze the material.

The proposed amendment to the section relaxing the restrictions on recovery of the condemnee's expenses on abandonment of an eminent domain proceeding appears to have merit. Despite the fact that I represent a condemning local agency, considerations of fairness lead me to the inescapable conclusion that the tentative recommendation of the Commission regarding C.C.P. 1255 (a) should be approved as submitted in draft form.

Very truly yours,

Harold Johnson
City Attorney

/ch

1st supp. Memo 67-50 EXHIBIT XVIII

LEAGUE OF CALIFORNIA CITIES

MEMBER NATIONAL LEAGUE OF CITIES
(Formerly—American Municipal Association)
"WESTERN CITY" OFFICIAL PUBLICATION

Berkeley 94705 . . Hotel Claremont . . 843-3083 . . Area Code 415
Los Angeles 90017 . . 702 Statler Center . . 624-4934 . . Area Code 213

Berkeley, California 94705
September 6, 1967

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear John:

I assume that there are a number of city attorneys who receive your communications, including the last one on condemnation law and procedure. In view of your deadline, I will not have an opportunity to clear with any of them before replying.

In reviewing the Commission's tentative recommendation, I find it perfectly acceptable, but this approval will of necessity have to be subject to comments I may receive during the legislative session from interested city attorneys.

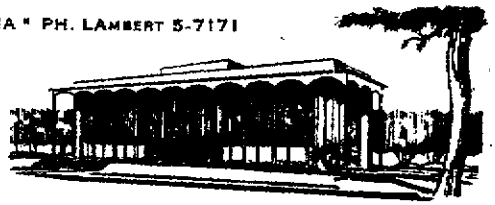
Very sincerely,

Richard Carpenter
Executive Director
and General Counsel

RC:mvb

1st supp. Memo 67-50 EXHIBIT XIX

CITY HALL * 303 WEST COMMONWEALTH AVENUE * FULLERTON, CALIFORNIA * PH. LAMBERT 5-7171



CITY OF FULLERTON

September 5, 1967

California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Attention: John H. DeMoully, Executive Secretary

Dear Mr. DeMoully:

Your letter enclosing the tentative recommendation for Amendment to Section 1255a C.C.P., arrived today.

I believe the tentative draft should be revised to accomplish what is intended, and avoid contrary construction.

It is evident that a condemnation "proceeding" commences when the plaintiff adopts a Resolution to acquire the property by condemnation. The plaintiff thereupon prepares for the purchase of the property under threat of condemnation, as well as for the filing of a complaint, as a necessary step in the condemnation, if the purchase negotiations fail.

Obviously, defendant must prepare for the negotiation stage of the proceedings, as well as for his answer to the complaint if and when it is filed. His need for an attorney, appraiser, and other experts, arising as soon as the Resolution is adopted by the plaintiff, for the acquisition of the property.

Under the proposed Amendment, the filing of the complaint could, and probably would, be construed as the commencement of the proceeding. If this is the intent, then the defendant should be limited to recovery for such legal, appraisal, and other expert services, as were rendered after the plaintiff adopted its Resolution of Intention to acquire the property under threat of, or by, condemnation, rather than at any time, without limit, before the filing of the complaint, which would be highly objectionable if construed to extend to such services rendered pertaining to the property and its value before the plaintiff resolved to acquire it by condemnation.

Conceivably, any number of situations could have arisen, by reason of which an owner could have obtained the services of attorneys, appraisers, and other experts, before the plaintiff indicated any desire to acquire the property. Such services, while probably of great benefit and useful to the defendant after the plaintiff resolved to acquire the property, should not be added to the costs, even though they served to protect the defendant's interests in the proceedings.

I would recommend that the underlined portion on page 7, which now implies that such fees were incurred for services rendered (at any time) before, or after the filing of the complaint, be changed so the last three lines would provide:

> "The proceeding, incurred for services rendered after the plaintiff adopted a Resolution for the acquisition of the property by eminent domain proceedings, including such services rendered before, as well as after, the filing of the complaint."

Respectfully submitted,

D. Reginald Gustaveson
Fullerton City Attorney

jmb

1st Supp. Memo 67-50 EXHIBIT XX

CHRISTOPHER MINOR MOORE
WALTER R. BURKLEY, JR.

LAW OFFICES
MOORE & LINDELOF
417 SOUTH HILL STREET
LOS ANGELES, CALIFORNIA 90013
MADISON 6-1261

GEORGE E. LINDELOF, JR.
(1908-1966)

September 7, 1967

California Law Revision Commission
School of Law
Stanford, California 94305

Re: Tentative recommendation re condemnee's expenses on abandonment

Gentlemen:

I approve the tentative recommendation that you have previously forwarded to me. In fact, until the property owner is allowed to recover reasonable expenses incurred in preparing for trial and during trial in all eminent domain matters, the small case will always place the defendant at an unreasonable disadvantage.

Yours very truly,

MOORE & LINDELOF

Walter R. Burkley, Jr.

WRB/jh

1st Supp. to Memo 67-50 EXHIBIT XXI

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FORREST A. COBB
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September 12, 1967

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding

Gentlemen:

I have read with interest the tentative recommendations of the Law Revision Commission relating to the above subject. I am in favor of the tentative recommendations. It is certainly desirable that landowners threatened with condemnation be encouraged to retain an expert to aid the attorney as soon as condemnation is threatened.

Sincerely,

Robert D. Raven

RDR/mj
Enclosure