

Memorandum 68-41

Subject; Study 65 - Inverse Condemnation (Requisitioning in Emergencies)

Introduction

This Memorandum is concerned with the portion of Professor Van Alstyne's research study that deals with the "requisitioning" of property by a public entity or public officer during an emergency (pages 40-43 of the study). At this time, the Commission should consider the policy questions involved with a view to determining the approach to be taken on the subject.

The major policy questions are:

(1) Should a statute dealing with the requisitioning of property be formulated by the Commission?

(2) Should the statute provide a measure of damages only, or should it also provide guidelines for determining when property may be commandeered? If the latter approach is taken,

(a) Who may commandeer property?

(b) What may be commandeered, and under what circumstances?

(3) What should be the measure of damages? Should the value of personal services (or lost wages) be included where personal services are required?

(4) Should the statute replace the limited provisions in the Disaster Act, or should it be drafted as a supplementary provision?

In addition, the Commission should consider the advisability of including both requisitioning and denial destruction in one statutory scheme.

Discussion

In times of great emergency or disaster, public officials may find it necessary to "commandeer" or "requisition" private property in order to protect the public safety. As in the situation involving denial destruction, the public officer is personally immune from tort liability for damage or loss of the property if his actions were taken in good faith and under reasonably apparent necessity.

The general rule developed by federal and state courts is that public entities are liable for requisitioning because it is a taking for "use."

Some of the problems of ascertaining whether liability exists for emergency uses of private property have been resolved by legislation in California. Under the California Disaster Act, the Governor has been given broad emergency powers during a state of extreme emergency or a state of disaster. See Exhibit I (pink). Military and Veterans Code Section 1585 provides that in the exercise of these powers the Governor

is authorized to commandeer or utilize any private property or personnel deemed by him necessary in carrying out the responsibility . . . vested in him as Chief Executive of the State and the State shall pay the reasonable value thereof.

The consultant points out that the Disaster Act has several deficiencies that might be remedied. First, its application is limited to those narrow situations that meet the technical definitions of "state of extreme emergency" or "state of disaster." Second, it is uncertain whether the Governor can delegate his authority to commandeer in advance of a state of emergency or disaster. Third, the

language of Section 1585 fails to indicate the pecuniary extent of the state's liability when private property is "utilized" by the Governor and ultimately returned to the owner either undamaged or damaged but still in salvageable condition.

The consultant recommends a general statutory provision governing the responsibility for payment of just compensation when property is summarily commandeered or requisitioned for use in an emergency. The statute should fully define the owner's right to reimbursement including any right to incidental damages. Finally, he suggests that the statute could include general guidelines defining the circumstances under which a commandeering of private property is authorized.

One problem that is not analyzed by the consultant is whether a person whose services are requisitioned should have a right to recover lost wages or compensation for the services. It has been suggested that the commandeering of personal services should be considered just as much a taking of property as the commandeering of other private property (Broeder, Torts and Just Compensation: Some Personal Reflections, 17 Hastings L. J. 217, 246-262 (1965)), but the cases do not support that view. One California statute takes this approach. Public Resources Code Section 4155 provides that any person who is summoned to fight a forest fire shall be paid according to the uniform rates determined by the federal agency in charge of establishing such rates. Under Section 4160, violation of a summons is a misdemeanor. Similar statutes exist in other states with respect to forest fires, flood control, and civil defense.

Most of the other states have Civil Defense Statutes similar to the California Disaster Act. None of these statutes spells out the amount of compensation for any particular taking. Rather, most of the statutes provide that the Governor has a specified time, i.e., 30 days, in which to offer the property owner a reasonable compensation. If the property owner refuses the offer, he has a specified time in which to file an action for compensation. The action is tried, and compensation awarded, as if it were an ordinary condemnation action. See Exhibit II (yellow).

Recommendation

The staff recommends that the Commission undertake formulation of a statute on requisitioning in accord with the consultant's recommendation. However, the staff recommends that the statute not spell out the right to commandeer but merely provide the measure of damages if property is taken. To encompass all possible cases involving requisitioning, the statute should be general. The alternative would be to devote a great deal of time and study to determine what circumstances should give rise to authority to commandeer, including the degree of necessity and the persons authorized to exercise the discretion in each case. And, at best, the undertaking would involve the difficulties inherent in attempting to anticipate matters which, in their nature, cannot be fully anticipated. On the other hand, a general section on compensability and damages can be enacted without spelling out the specific instances allowing a taking. At the same time, the provisions in the Disaster Act can be revised to provide for the specific problems raised by the consultant.

Respectfully submitted,

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EXHIBIT I

(Pertinent provisions of "California Disaster Act." -
MIL. & VET. CODE §§ 1500-1600)

§ 1500. Disasters; finding and declaration by legislature

The State has long recognized its responsibility to mitigate the disasters which result from such calamities as air pollution, flood, fire, earthquake, pestilence, war, sabotage and riot. It is hereby found and declared that the provisions of this chapter are necessary, to enable the State: to effectively discharge that responsibility; to more effectively join with political subdivisions, municipal corporations and other public agencies of the State, in coping with conditions which may result in extreme peril to life, property and the resources of the State; generally to protect the health and safety and preserve the lives and property of the people of the State; in times when the United States of America is engaged in war, to assist the Federal Government in the successful prosecution thereof; and to obtain the maximum advantage of those implements and methods, organizations and arrangements that have already been developed through wartime experience to deal with possible future disasters. (As amended Stats.1956, 1st Ex.Sess., c. 53, p. 433, § 1.)

§ 1505. "State of extreme emergency", "state of disaster", "local peril", "local emergency", "local disaster" defined

As used in this chapter, "state of extreme emergency" means the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the State caused by an enemy attack or threatened attack by land, sea, or air, or when upon the advice of the commanding general of this area, such an attack is imminent, an air raid alarm, sabotage, or other cause such as air pollution, fire, flood, storm, epidemic, riot or earthquake, which conditions by reason of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county, city and county, or city and require the combined forces of a "mutual aid region or regions" to combat. "State of extreme emergency" does not include nor does any provision of this chapter apply to any condition resulting from a labor controversy.

As used in this chapter, "state of disaster" means the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the State caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, or other conditions except as a result of war-caused disaster, which conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat. "State of disaster" does not include nor does any provision of this chapter apply to any condition resulting from a labor controversy.

As used in this chapter "local peril," "local emergency" or "local disaster" shall mean the existence of conditions, within the territorial limits of a local agency, in the absence of a duly proclaimed state of extreme emergency or state of disaster, which conditions are a result of an emergency created by great public calamity such as extraordinary fire, flood, storm, epidemic, earthquake or other disaster which is, or is likely to be, beyond the control of the services, personnel, equipment and facilities of that agency and require the combined forces of other local agencies to combat. (As amended Stats.1956, 1st Ex.Sess., c. 53, p. 439, § 2; Stats.1959, c. 1330, p. 3601, § 1.)

§ 1505.5 Existence of state of extreme emergency; ending of period

A "state of extreme emergency" exists immediately and without a proclamation thereof by the Governor whenever this State is attacked by an enemy of the United States or upon receipt by the California Disaster Office of a warning from the Air Force or other authorized federal agency indicating that such an enemy attack is probable or imminent. A period of a state of extreme emergency existing as provided in this section shall be ended in the same manner as a state of extreme emergency proclaimed by the Governor. (As amended Stats.1957, c. 1753, p. 3152, § 1.)

§ 1506. "Period of a state of extreme emergency" defined

As used in this chapter, "period of a state of extreme emergency" means the interval of time between the duly authorized proclamation of the existence of a state of extreme emergency and the proclamation by the Governor or the concurrent resolution of both houses of the State Legislature declaring it at an end. (As amended Stats.1937, c. 1761, p. 3155, § 1.)

§ 1506.1 "Period of a state of disaster", defined

As used in this chapter, "period of a state of disaster" means the interval of time between the duly authorized proclamation of the existence of a state of disaster and the proclamation by the Governor or the concurrent resolution of both houses of the State Legislature declaring it at an end. (Added Stats.1957, c. 1761, p. 3155, § 2.)

§ 1509.6 Powers of governor in carrying out provisions of chapter

In carrying out the provisions of this chapter, the Governor may:

- (a) Procure and maintain offices in such parts of the State as may be necessary or convenient;
- (b) Acquire property, real or personal, or any interests therein;
- (c) Cooperate and contract with public and private agencies for the performance of such acts, the rendition of such services and the affording of such facilities as may be necessary and proper;
- (d) Do such other acts and things as may be necessary and incidental to the exercise of powers and the discharge of duties conferred or imposed by the provisions of this chapter. (As amended Stats.1957, c. 1923, p. 3854, § 1.)

§ 1510. California State Disaster Council; membership

There is hereby created a California State Disaster Council to consist of the following:

- (a) The Governor, or an alternate appointed by him;
- (b) The Lieutenant Governor, or an alternate appointed by him;
- (c) The Attorney General, or an alternate appointed by him;
- (d) One representative of the city governments of the State, and one representative of the county governments of the State, to be appointed by the Governor and to serve at his pleasure, provided these members shall be from different counties;
- (e) A representative of the American Red Cross, to be appointed by the Governor;
- (f) A representative of the city or county fire services of the State, appointed by the Governor and to serve at his pleasure.
- (g) A representative of the city or county law enforcement services of the State, appointed by the Governor and to serve at his pleasure.

The President pro Tempore of the Senate and the Speaker of the Assembly shall meet with and participate in the work of the Disaster Council to the same extent as members of the council appointed by the Governor, excepting when such participation is constitutionally incompatible with their respective positions as Members of the Legislature.

If the President pro Tempore of the Senate does not desire to serve on the Disaster Council, the Senate Rules Committee may appoint a Member of the Senate to serve in his stead. If the Speaker of the Assembly does not desire to serve on the Disaster Council, he may appoint a Member of the Assembly to serve in his stead. (As amended Stats.1961, c. 660, p. 1385, § 1.)

§ 1513. Powers and duties of Disaster Council

It shall be the duty of the Disaster Council, and it is hereby empowered:

To act as an advisory body to the Governor in times of war or disaster and with reference thereto in order to minimize the effects of such occurrences by recommending ameliorative action. The Disaster Council shall meet upon call of the Governor. During any war declared by Congress or during any national emergency proclaimed by the President of the United States, the Disaster Council shall meet not less frequently than once every other month on a day to be designated by the Governor. Notice of such meeting shall be given to each member of the Disaster Council not less than 15 days prior to the day selected by the Governor for the meeting of the council.

It shall also be the duty of the Disaster Council, and it is hereby empowered:

- (a) To consider and recommend for approval by the Governor, rules or regulations or orders which are within the province of the Governor to promulgate;

(b) To consider and recommend to the Governor for approval the boundaries of such "mutual aid regions" of the State as may be designated;

(c) To consider and approve interregional and regional mutual aid plans;

(d) To recommend to the Governor the assignment of any service or activity relative to disaster or disaster planning to a state department having duties related to such service or activity;

(e) To consider and recommend the creation by the Governor of advisory committees in order to make available to the State civilian participation and cooperation in disaster planning and activities;

(f) To consider and recommend the expenditures of moneys appropriated for any of the objects or purposes of this chapter;

(g) To consider and recommend to the Governor for approval a State Disaster Plan built around mutual aid and integrate into such plan the several state departments and agencies whose resources are necessary in coping with disasters;

(h) To encourage the development and maintenance of mutual aid plans and agreements whereunder local agencies may most effectively protect life and property during periods of emergency;

(i) To evaluate and report to the Governor on state communications systems with particular regard to their adequacy in case of disaster. (As amended Stats.1958, 1st Ex.Sess., c. 56, p. 441, § 7; Stats.1957, c. 1769, p. 3153, § 1.)

§ 1518. California disaster office

The Governor shall assign all or a part of his powers and duties under this chapter to such secretaries and personnel in his office as he may designate, and such secretaries and personnel shall be known as, and shall be referred to as, the California Disaster Office. The California Disaster Office is the State Civil Defense Agency. (As amended Stats.1950, 1st Ex.Sess., c. 56, p. 1518, § 9; Stats.1953, 1st Ex.Sess., c. 77, p. 309, § 1.)

Savings provision in 1956 act. see note under § 1500.

§ 1518.1 Assistants and employees for California disaster office; salaries; regional coordinators

In addition to the authority conferred upon him by Section 12001 of the Government Code, the Governor may also appoint and fix the salaries of such assistants and employees for the California Disaster Office as he may deem necessary. Salaries within said office shall be fixed as nearly as possible to conform to the salaries established by the State Personnel Board for classes of positions in the state civil service involving comparable duties and responsibilities.

The employees appointed by the Governor shall include a sufficient number of full-time regional coordinators and assistant coordinators to adequately carry out the purposes of this chapter throughout the State. (As amended Stats.1950, 1st Ex.Sess., c. 56, p. 442, § 10; Stats.1957, c. 2435, p. 4000, § 1.)

Savings provision in 1956 act. see note under § 1500.

§ 1518.2 Director of disaster office

The Governor, with the approval of the Senate, shall designate one person in the California Disaster Office to act as the Director of the Disaster Office. The Director of the Disaster Office is the State Director of Civil Defense. The Director of the Disaster Office shall receive an annual salary as provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code and he shall have all of the rights and powers of a head of a department except

those conferred by Section 11154 of the Government Code. When the Governor proclaims a state of disaster within any region or regions of the State, the director shall act as the co-ordinator of all state disaster activities in connection with such emergency, and every state agency and officer shall co-operate with the director in rendering all possible assistance in carrying out the provisions of this chapter. In addition to the powers herein designated, the Governor may delegate any of the powers vested in him under this chapter to the Director of the Disaster Office and to the regional or area co-ordinators appointed by the Governor except the power to make appointments, the power to fix salaries, the power to make, amend, and rescind orders, rules, and regulations, and the power to proclaim a state of extreme emergency or a state of disaster. (As amended Stats.1950, 1st Ex.Sess., c. 50, p. 442, § 11; Stats.1957, c. 2424, p. 4180, § 21; Stats.1958, c. 77, p. 309, § 2.)

§ 1518.3 Proclamation by director of state of extreme emergency or state of disaster

Whenever conditions exist within any region or regions of the State which warrant the proclamation by the Governor of a state of extreme emergency or a state of disaster and the Governor has not acted under the provisions of Section 1530 by reason of the fact that he has been inaccessible, the Director of the Disaster Office may proclaim the existence of a state of extreme emergency or a state of disaster in the name of the Governor as to any region or regions of the State. Whenever the Director of the Disaster Office has so proclaimed a state of extreme emergency or a state of disaster, such action shall be ratified by the Governor as soon as he becomes accessible and in the event the Governor does not ratify the action he shall immediately terminate the state of extreme emergency or the state of disaster as proclaimed by the Director of the Disaster Office. (As amended Stats. 1950, 1st Ex.Sess., c. 56, p. 442, § 12.)

§ 1535. Governor to have powers granted by article. The Governor shall have the powers granted by this article, which powers shall be in addition to any other powers granted to him by this chapter. (Added Stats. 1950, 3rd Ex.Sess., c. 3, p. 9, § 8, effective Oct. 2, 1950.)

§ 1535.3 Powers of governor as to plan and program for mitigation of disaster

The Governor may, in accordance with the plan and program for the mitigation of disaster in this State:

(a) Ascertain the requirements of the State or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack or other disaster.

(b) Plan for and procure supplies, medicines, materials, and equipment.

(c) Use and employ from time to time any of the property, services, and resources of the State for the purposes set forth in this chapter.

(d) Make surveys of the industries, resources, and facilities within the State as are necessary to carry out the purposes of this chapter.

(e) Institute training programs and public information programs.

(f) Plan for the use of any private facilities, services and property and when necessary, and when in fact used, to provide for payment for such use under such terms and conditions as may be agreed upon.

(g) Take all other preparatory steps, including the partial or full mobilization of civil defense and disaster organizations in advance of actual disaster, and including the ordering of test exercises, to insure the furnishing of adequately trained and equipped personnel in time of need.

(h) Provide for mobile support units. (As amended Stats. 1950, 1st Ex.Sess., c. 56, p. 443, § 16.)

§ 1540. Assignment by governor of disaster mitigation activities to state agencies

The Governor may assign to a state agency any activity concerned with the mitigation of disaster of a nature related to the existing powers and duties of such agency, and it shall thereupon become the duty of such agency to undertake and carry out such activity on behalf of the State. (As amended Stats. 1950, 1st Ex.Sess., c. 56, p. 444, § 18; Stats. 1957, c. 2085, p. 3706, § 1.)

§ 1571. Local disaster councils; plans; powers of local legislative bodies

Counties, cities and counties, and cities may create disaster councils by ordinance. A disaster council shall develop a plan for meeting any condition of extreme peril or any condition which is specified in Section 1505 as constituting the basis for a declaration of a state of extreme emergency or a state of disaster; such plan shall provide for the effective mobilization of all the resources of the community, both public and private. The legislative body of a county, city and county or city may in such ordinance or by resolution adopted pursuant to such ordinance, provide for the organization, powers and duties, divisions, services and staff of the civil defense and disaster organization. The legislative body of a county, city and county or city may, by resolution, authorize public officers, employees and registered volunteers to command the aid of citizens when necessary in the execution of their duties during a period of a state of extreme emergency.

Counties, cities and counties, and cities may enact ordinances and resolutions and either establish rules and regulations or authorize disaster councils to recommend to the local director of civil defense rules and regulations for dealing with local emergencies that can be adequately dealt with locally; and further may act to carry out mutual aid on a voluntary basis, and to this end may enter into agreements. In the absence of a declaration of a state of extreme emergency or state of disaster, state personnel and equipment may be employed in accordance with any mutual aid plan or agreement, or at the direction of the Governor.

Any war, defense or disaster council established by any county, city and county, or city, existing as of the effective date of this chapter, and previously certified as an accredited war, defense or disaster council by the California State War Council shall, for the purposes of this chapter or any other law of this State, constitute a disaster council.

Neither this chapter nor anything expressed in it is intended to be or is to be construed as a denial of the power of such local agencies to establish such departments pursuant to Article XI, Section 11, of the Constitution. (As amended Stats. 1956, 1st Ex.Sess., c. 56, p. 446, § 22; Stats. 1959, c. 1330, p. 3684, § 6.)

§ 1575. Proclamation of a state of disaster; conditions; effective date

The Governor is hereby empowered to proclaim a state of disaster in an area or region affected or likely to be affected thereby when:

1. He finds that some or any of the circumstances described in Section 1505 exist; and either

2. He is requested to do so (a) in the case of a city by the mayor or chief executive, (b) in the case of a county by the chairman of the board of supervisors; or

3. He finds that local authority is inadequate to cope with the peril.

Such proclamation shall be in writing and shall take effect immediately upon its issuance. As soon thereafter as possible it shall be filed in the Office of the Secretary of State. The Governor shall cause widespread publicity and notice to be given of such proclamation. (Added Stats. 1957, c. 2085, p. 3707, § 2.)

Library references
Sovereign immunity study. Cal. Law
Revision Comm. (1963) Vol. 5, p. 167.

§ 1576. Authority of governor to direct state agencies to utilize state personnel, equipment and facilities

During a state of disaster the Governor may direct all agencies of the State Government to utilize and employ state personnel, equipment and facilities for the performance of any and all activities designed to prevent and alleviate actual or threatened damage due to the disaster, and he may direct such agencies to provide services and equipment to clear and dispose of debris on public and private property resulting from the disaster. Any agency so directed by the Governor may expend any of its moneys in performing such activities which have been appropriated

to it, irrespective of the particular purpose for which the money was appropriated. State personnel, equipment, and facilities may be used to clear and dispose of debris on private property only after the Governor finds: (a) that such use is for a state purpose; (b) that such use is in the public interest serving the general welfare of the State; and (c) that such personnel, equipment and facilities already are in the disaster area. (Formerly § 1543, added Stats. 1953, 1st Ex.Sess., c. 53, p. 445, § 20. Renumbered § 1576, and amended Stats. 1957, c. 2085, p. 3707, § 3; Stats. 1969, c. 1456, p. 3750, § 2.)

§ 1577. Suspension by governor of certain statutes and regulations during state of disaster

During a state of disaster the Governor may suspend the provisions of any regulatory statute, or statute prescribing the procedure for conduct of state business, or the rules, regulations or orders of any state agency, where the Governor determines and declares that strict compliance with the provisions of any such statute, rule, regulation or order would in any way prevent, hinder or delay the mitigation of the disaster. (Formerly § 1514, added Stats.1950, 1st Ex.Sess., c. 53, p. 448, § 21. Renumbered § 1577, as amended Stats.1957, c. 2035, p. 3707, § 4.)

§ 1580. Governor may proclaim state of extreme emergency in area or region. The Governor is hereby empowered to proclaim a state of extreme emergency in an area or region affected or likely to be affected thereby when:

1. He finds that some or any of the circumstances described in Section 1505 exist; and either
2. He is requested to do so (a) in the case of a city by the mayor or chief executive, (b) in the case of a county by the chairman of the board of supervisors; or
3. He finds that local authority is inadequate to cope with the peril.

Such proclamation shall be in writing and shall take effect immediately upon its issuance. As soon thereafter as possible it shall be filed in the office of the Secretary of State. The Governor shall cause widespread publicity and notice to be given of such proclamation. (Added Stats.1943, 1st Ex.Sess., c. 1, p. 3384, § 2, as amended Stats.1944, 4th Ex.Sess. c. 55, p. 220, § 27; Stats.1945, c. 1024, p. 1970, § 29.)

§ 1581. Authority of governor during extreme emergency. During a period of a state of extreme emergency the Governor shall have complete authority over all agencies of the State Government and the right to exercise within the area or regions designated all police power vested in the State by the Constitution and the laws of the State of California, in order to effectuate the purposes of this chapter. In exercise thereof he is authorized to promulgate, issue and enforce rules, regulations and orders which he considers necessary for the protection of life and property. Such rules, regulations and orders shall whenever practicable be prepared in advance of a state of extreme emergency and the Governor shall cause widespread publicity and notice to be given such rules, regulations and orders. Rules, regulations and orders issued under the authority of this section and prepared in advance of a state of extreme emergency shall not become operative until the Governor proclaims a state of extreme emergency. Such rules, regulations and orders shall be in writing and shall take effect upon their issuance. They shall be filed in the office of the Secretary of State as soon as possible after their issuance. A copy of such rules, regulations and orders shall likewise be filed in the office of the county clerk of each county any portion of which is included within any one of the protective regions wherein a state of extreme emergency has been proclaimed. Whenever the period of a state of extreme emergency has been ended by either the expiration of the period for which it was proclaimed or by proclamation of the Governor declaring the period of a state of extreme emergency, to be at an end or as provided in this chapter, the rules, regulations or orders promulgated or issued by the Governor during such period shall

be of no further force and effect. (Added Stats.1943, 1st Ex.Sess., c. 1, p. 3385, § 2, as amended Stats.1945, c. 1024, p. 1979, § 30; Stats.1951, c. 1351, p. 3262, § 13, effective July 9, 1951.)

§ 1584. Extreme emergency; public employees and agencies to comply with orders, rules and regulations; penalty. During the period of a state of extreme emergency, every department, commission, agency, board, officer and employee of the State Government and of every political subdivision, county, city and county, city, public district and public corporation of or in this State is required to comply with the lawful rules, regulations, and orders of the Governor made or given within the limits of his authority as provided for herein. Every such officer or employee who refuses or wilfully neglects to obey such rules, regulations or orders of the Governor, or who wilfully resists, delays or obstructs the Governor in the discharge of any of his functions hereunder, is guilty of a misdemeanor. In the event that any such officer or employee shall refuse or wilfully neglect to obey any such rules, regulations or orders, the Governor may by his order temporarily suspend him from the performance of any and all the rights, obligations and duties of his office for the remainder of the period of the state of extreme emergency, and the Governor may thereupon designate the person who shall carry on the rights, obligations and duties of the office for the duration of such suspension.

§ 1585. Commandeering private property; exception

In the exercise of the emergency powers hereby vested in the Governor during a period of a state of extreme emergency or a state of disaster, he is authorized to commandeer or utilize any private property or personnel deemed by him necessary in carrying out the responsibility hereby vested in him as Chief Executive of the State and the State shall pay the reasonable value thereof.

Notwithstanding the provisions of this section, the Governor is not authorized to commandeer any newspaper or newspaper wire service but may, during a period of a state of extreme emergency or a state of disaster, and if no other means of communication are available, utilize any newspaper wire service and the State shall pay the reasonable value of such use. In so utilizing a newspaper wire service, the Governor shall interfere as little as possible with the use of such wire service for the transmission of news. (As amended Stats.1957, c. 1700, p. 3154, § 2.)

§ 1586. Claims for reimbursement for taking or damaging private property

Before payment may be made by the State to any person in reimbursement for taking or damaging private property necessarily utilized by the Governor in carrying out his responsibilities under this chapter during the period of a state of extreme emergency or a state of disaster, or for services rendered at the instance of the Governor under said conditions, such person must present a claim to the State Board of Control in accordance with the provisions of the Government Code of the State of California governing the presentation of claims against the State for the taking or damaging of private property for public use, which provisions shall govern the presentation, allowance or rejection of such claims and the conditions upon which suit may be brought against the State. Payment for such property or services shall be made from any funds appropriated by the State for such purpose. (As amended Stats.1957, c. 1700, p. 3154, § 3.)

§ 1587. Local agencies and employees performing services outside territory; claims for damages to equipment; privileges and immunities; physicians, hospitals, nurses, or dentists, liability of

In the event that the Governor, during the state of extreme emergency or the state of disaster and in the exercise of the emergency powers vested in him, shall order the officers, employees, or agencies of any county, city and county, city or district to perform duties outside of the territorial limits of their respective agencies, any services performed or expenditures made in connection therewith by any such agency, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of such agency. During a state of extreme emergency or a state of disaster in the event that any equipment owned, leased or operated by any county, city and county, city or district, is damaged or destroyed while being used outside of the territorial limits of the public agency owning such equipment, the public agency suffering loss shall be entitled to file a claim for the amount thereof against the State of California in the manner provided in Section 1588 of this chapter. Such agency shall have no claim against the State for services of such personnel or for the rental, use or ordinary wear and tear of such equipment, except such extraordinary services incurred by local governmental agencies in executing mutual aid agreements. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of such officers, agents or employees of any such agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter.

Any physician and surgeon (whether licensed in this or any other state), hospital, nurse, or dentist that renders services during a period of any state of extreme emergency or any state of disaster, at the express or implied request of any state official or agency or state or local disaster council, shall have no liability for any injury sustained by any person by reason of such services, regardless of how or under what circumstances or by what cause such injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission. (As amended Stats.1956, 1st Ex.Sess., c. 50, p. 447, § 22.7.)

§ 1588. Certain powers of Governor not limited. None of the provisions of this chapter shall limit, modify or abridge the powers vested in the Governor under the Constitution and other provisions of this code, by proclamation, to declare any county or city or any portion thereof to be in a state of insurrection, or to proclaim the existence of martial law and to exercise all the powers vested in him thereunder independent of, or in conjunction with, any of the provisions of this chapter. (Added Stats.1943, 1st Ex. Sess., c. 1, p. 3387, § 2.)

§ 1591. Responsibilities and immunities of volunteers; liability of municipal corporations and public agencies for acts of officers and employees

(a) Volunteers duly enrolled or registered with the California Disaster Office or any war, defense, or disaster council of any public agency, or unregistered persons duly impressed into service during a state of disaster or a state of extreme emergency, in carrying out, complying with, or attempting to comply with, any order, rule or regulation issued or promulgated pursuant to the provisions of this chapter or any local ordinance, or performing any of their authorized functions or duties or training for the performance of their authorized functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of counties or cities performing similar work for their respective entities.

(b) No political subdivision, municipal corporation or other public agency under any circumstances, nor the officers, employees, agents, or duly enrolled or registered volunteers thereof, or unregistered persons duly impressed into service during a state of disaster or a state of extreme emergency, acting within the scope of their official duties under this chapter or any local ordinance shall be liable for personal injury or property damage sustained by any duly enrolled or registered volunteer engaged in or training for disaster preparedness or relief activity, or by any unregistered person duly impressed into service during a state of disaster or a state of extreme emergency and engaged in such service. The foregoing shall not affect the right of any such person to receive benefits or compensation which may be specifically provided by the provisions of any federal or state statute nor shall it affect the right of any person to recover under the terms of any policy of insurance. (As amended Stats.1957, c. 1921, p. 3355, § 2.)

EXHIBIT II
(Revised Laws of Hawaii 1955, § 359-21)

§ 359-21. Requisitions; Damages. The governor may requisition and take over any materials, facilities, real property or improvements, required for the purposes of this chapter, or requisition and take over the temporary use thereof. Such requisition shall be made by serving notice thereof, which notice may be served upon any person found in occupation of the premises or having the property in his custody, possession or control; provided, that a like notice shall also be served upon any person who has filed with the governor, or with such person as he may designate for the purpose, a request for notice with respect to such property; provided, further, that whenever all persons entitled to compensation for such property have not been served in the manner aforesaid, the governor shall publish a notice of such requisition at the earliest practicable date.

Whenever the governor requisitions and takes over any property or the temporary use thereof, as in this section provided, the owner thereof, or other person entitled thereto, shall be paid as compensation for such property or use such sum as the governor determines to be fair and just, within twenty days after the same has been requisitioned and taken, provided, that such compensation for such temporary use may be paid in monthly or lesser instalments. If any person is unwilling to accept, as full and complete compensation for such property or use, the sum so determined by the governor, such person shall be paid seventy-five per cent of the sum so determined by the governor, and shall be entitled to sue the Territory for such additional sum as, when added to the sum already received by such person, such person may consider fair and just compensation for such property or use, in the manner provided by chapter 245; provided, that such suit shall be instituted within two years after such requisition in the case of the taking of real property in fee simple, or within one year after such requisition in all other cases, subject, to the provisions of sections 241-12 to 241-15 which are hereby made applicable to such a suit, save that no more than six months shall be allowed for the bringing of such a suit after the appointment of a guardian of the property of the person under disability or the removal of such disability, or after the appointment of executors or administrators, as the case may be; provided, further, that recovery shall be confined to the fair market value of such property or the fair rental value thereof, as the case may be, without any allowance for prospective profits, punitive or other damages. Whenever the owner of property, or other person entitled to compensation on account of the requisitioning of property or the use thereof, is under a disability, or has died, and no guardian, executor or administrator has been appointed, the Territory, acting by and through the attorney general, may apply for the appointment of a guardian of the property of such person, or for the appointment of an administrator.

The governor shall appoint a board of three disinterested appraisers with whom may be filed any claim for damages arising out of any failure to return private property the temporary use of

which was requisitioned, or which was leased, or any claim for damages arising out of the condition in which such private property is returned, provided, that no such claim shall be filed for deterioration of property resulting from ordinary wear and tear, nor for any deterioration or damage except such as shall be shown to have resulted from the taking or use of such property. Such claim shall be filed within thirty days after the return of the property or after the governor shall proclaim that all private property has been returned to the owners, whichever is earlier. The decision of such appraisers shall be final and binding upon both the governor and the claimant, provided, that either party may file a petition in the circuit court within sixty days after the rendering of such decision of the board, praying for the decision of the court upon such claim. Such petition, if filed by the government, shall be entitled in the name of the Territory, by the attorney general, and shall be heard and decided by the circuit court without the intervention of a jury. If filed by any other party, such petition shall be filed, heard and decided in the manner provided for suits against the Territory. A further review by the supreme court may be had in the manner provided by law in such cases. The court may order the joinder of other parties, or may allow other parties to intervene. Any award which has become final shall be paid out of any funds available under this chapter, and if not sufficient, out of the general revenues of the Territory not otherwise appropriated. [R. L. 1945, s. 13187; add. L. 1951, c. 268, pt. of s. 2.]