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2/27/69

Memorandum 69-49

Subject: Study 36 - Condemnation Law and Procedure (Moving Expenses)

Attached to this memorandum is a background research study which was prepared by the Hastings Law Journal at the request of the Commission's staff. *see Note Hastings L.J. Vol 20 No 2 p 749 (Jan. 1969)*

The staff believes that the Commission should recommend to the 1970 Legislature that moving expenses be reimbursed in all cases where property is acquired for public use. Under existing California law, where property is acquired by certain state agencies or for certain purposes, reimbursement for moving expenses is permitted, but not required. Of all the areas where compensation in eminent domain cases is inadequate, the staff believes that the area of reimbursement for moving expenses is most in need of immediate attention.

The Commission's reaction to the following policy questions would guide the staff in preparing a tentative recommendation for consideration at a future meeting:

1. Should moving expenses (actual expenses, reasonably and necessarily incurred) be allowed in all cases, not just cases where the acquisition is by a particular department or for a particular purpose?

2. Should there be any dollar limits on recovery of moving expenses? (In most cases, under existing California law, fixed dollar ceilings are imposed.)

3. Should there be a maximum limit on the number of miles of the move?

The background research study recommends: "A maximum limit of 50 miles"

reimbursable transportation expense. The condemnee could, of course, move further, but only at his additional expense."

4. The background study recommends: "No distinction between fee owners and owners of leasehold interests unless there existed written documentation that the leaseholder (of whatever kind, even at will) had been informed prior to the condemnation that his leasehold interest would be terminated lawfully. Lawful occupation would serve as the criterion for receipt of payment for moving expenses."

5. The problem of reimbursement for temporary takings should be covered.

6. Moving expenses should be compensation in addition to market value.

7. Should moving expenses be exempt from state personal and corporate income taxation.

The attached bill (introduced at the current legislative session to provide for payment of moving expenses in connection with airport acquisitions) would probably be used by the staff as a basis for preparing a draft statute for consideration at a future meeting.

Respectfully submitted,

John H. DeMouly
Executive Secretary

ASSEMBLY BILL

No. 375

Introduced by Assemblyman Brathwaite

February 5, 1969

REFERRED TO COMMITTEE ON COMMERCE AND PUBLIC UTILITIES

An act to add Article 4.5 (commencing with Section 21690.5) to Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, relating to airport relocation and development.

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

1 SECTION 1. Article 4.5 (commencing with Section 21690.5)
2 is added to Chapter 4 of Part 1 of Division 9 of the Public
3 Utilities Code, to read:

4 Article 4.5. Airport Relocation and Development

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6 21690.5. This article may be cited as the "California Legis-
7 lature Airports, Airways and Airport Terminals Development
8 and Relocation Act of 1969."
9

LEGISLATIVE COUNSEL'S DIGEST

AB 375, as introduced, Brathwaite (C. & P.U.). Airport relocation and development.

Adds Art. 4.5, Ch. 4, Pt. 1, Div. 9, P.U.C.

Establishes program under Department of Aeronautics to provide relocation assistance and information to owners of homes, businesses and farms taken for purposes of airport expansion and development. Authorizes the department to make compensation for actual and reasonable moving expenses together with dislocation allowances in certain instances to compensate for the effect of dislocation on a business or farm operation. Provides for certain fixed sums in lieu of such allowances under certain circumstances. Establishes a differential allowance payable to homeowners who repurchase other homes within one year and to renters under some conditions. Provides for the finality of the department's decisions hereunder, and authorizes the promulgation of rules and regulations necessary for implementation of the program. Specifies that payments made hereunder shall not be considered taxable income.

Vote—Majority; Appropriation—No; Sen. Fin.—Yes; W. & M.—Yes.

Corrected 2-14-69

1 21690.6. The Legislature hereby finds that the state's air-
 2 port and airway system is inadequate to meet current and
 3 projected growth in aviation and that substantial expansion
 4 and improvement of the system is required to meet the de-
 5 mands of interstate and intrastate commerce, the postal service
 6 and the national defense. The Legislature finds that users of
 7 air transportation are capable of making a greater financial
 8 contribution to the expansion and improvement of the system
 9 through increased user fees. The Legislature finds, however,
 10 that such users should not be required to provide all of the
 11 funds necessary for future development of the system, and
 12 that revenues obtained from the general taxpayer will continue
 13 to be required to pay for the use of such facilities by the
 14 military and for the value to national defense and the general
 15 public benefit in having a safe, efficient airport and airway
 16 system available and fully operational in the event of war or
 17 national emergency. The Legislature also finds that the con-
 18 tinued development and expansion of an adequate and up-to-
 19 date comprehensive state airport and airway system will re-
 20 quire the acquisition of agricultural, residential, commercial,
 21 industrial and miscellaneous types of properties for the same;
 22 and that many persons and businesses will have to be relocated.
 23 The Legislature finds further that it is in the best interests of
 24 the people of the State of California to help all those persons
 25 forced to relocate when airport expansion and construction
 26 requires them to lose their businesses and homes. It is the
 27 purpose of this act to provide the means by which adequate
 28 compensation and immediate assistance will be provided for
 29 relocation and moving expenses and other costs involved in the
 30 necessary moving of a business or home to make way for air-
 31 port expansion and development.

32 21690.7. (a) "Displaced person" means any individual,
 33 family, business or farm operation which moves from real
 34 property acquired for state or federal airport expansion and
 35 development.

36 (b) "Individual" means a person who is not a member of
 37 a family.

38 (c) "Family" means two or more persons living together
 39 in the same dwelling unit who are related to each other by
 40 blood, marriage, adoption or legal guardianship.

41 (d) "Business" means any lawful activity conducted pri-
 42 marily for the purchase and resale, manufacture, processing or
 43 marketing of products, commodities, or other personal prop-
 44 erty, or for the sale of services to the public, or by a nonprofit
 45 corporation.

46 (e) "Farm operation" means any activity conducted pri-
 47 marily for the production of one or more agricultural products
 48 or commodities for sale and home use, and customarily pro-
 49 ducing such commodities or products in sufficient quantity to
 50 be capable of contributing materially to the operator's support.

(f) "Airport expansion and development" means the con-
 1 struction, alteration, improvement, or repair of airport hang-
 2 ars; airport passenger or freight terminal buildings and other
 3 buildings required for the administration of an airport; public
 4 parking facilities for passenger automobiles; roads within the
 5 airport boundaries; and any acquisition of land adjacent to or
 6 in the immediate vicinity of a public airport, including any
 7 interest therein, or any easement through or any other interest
 8 in airspace, for the purpose of assuring that activities and
 9 operations conducted thereon will be compatible with normal
 10 airport operations.

11 21690.8. The payment of moving expenses shall be made
 12 to eligible persons in accordance with the provisions of this
 13 act and such rules and regulations as shall be adopted by the
 14 department.

15 21690.9. The department is authorized to adopt rules and
 16 regulations to implement the payment of moving expenses as
 17 authorized by this act. Such rules and regulations may include
 18 provisions authorizing payments to individuals and families of
 19 fixed amounts not to exceed two hundred dollars (\$200) in lieu
 20 of their respective reasonable and necessary moving expenses.

21 21690.10. The department is authorized to give relocation
 22 advisory assistance to any individual, family, business or farm
 23 operation displaced because of the acquisition of real property
 24 for any state or federal airport project.

25 21690.11. In giving relocation advisory assistance, the de-
 26 partment may establish a local relocation advisory assistance
 27 office to assist in obtaining replacement facilities for individ-
 28 uals, families and businesses affected by airport expansion or
 29 development.

30 21690.12. (a) As a part of the cost of construction the
 31 department may compensate a displaced person for his actual
 32 and reasonable expenses in moving himself, family, business or
 33 farm operation, including moving personal property.

34 (b) Any displaced person who moves from a dwelling may
 35 elect to receive in lieu of his actual and reasonable moving
 36 expenses a moving expense allowance, determined according to
 37 a schedule established by the department not to exceed two
 38 hundred dollars (\$200), and in addition a dislocation allow-
 39 ance of one hundred dollars (\$100).

40 (c) Any displaced person who moves or discontinues his
 41 business or farm operation may elect to receive in lieu of
 42 his actual and reasonable moving expenses a fixed relocation
 43 payment in an amount equal to the average annual net earn-
 44 ings of the business or farm operation, or five thousand dollars
 45 (\$5,000), whichever is lesser. In the case of a business, no pay-
 46 ment shall be made under this subdivision unless the depart-
 47 ment is satisfied that the business cannot be relocated without
 48 a substantial loss of patronage, and is not a part of a com-
 49 mercial enterprise having at least one other establishment, not
 50 being acquired, which is engaged in the same or similar busi-
 51 ness. For purposes of this subdivision, the term "average
 52

1 annual net earnings" means one-half of any net earnings of
 2 the business or farm operation, before federal, state and local
 3 income taxes, during the two taxable years immediately preced-
 4 ing the taxable year in which such business or farm operation
 5 moves from the real property acquired for such project, and
 6 includes compensation paid by the business or farm operation
 7 to the owner, his spouse, or his dependents during such two-
 8 year period. To be eligible for the payment authorized by this
 9 subdivision the business or farm operation must make its state
 10 income tax returns available and its financial statements and
 11 accounting records available for audit for confidential use to
 12 determine the payment authorized by this subdivision.

13 21690.13. In addition to the payments authorized by Sec-
 14 tion 21653.5, the department, as a part of the cost of con-
 15 struction, may make a payment to the owner of real property
 16 acquired for an airport project, which is improved with a
 17 single-, two- or three-family dwelling actually owned and
 18 operated by the owner for not less than one year prior to the
 19 first written offer for the acquisition of such property. Such
 20 payment, not to exceed five thousand dollars (\$5,000), shall be
 21 the amount, if any, which, when added to the acquisition pay-
 22 ment, equals the average price required for a comparable
 23 dwelling determined, in accordance with standards established
 24 by the department, to be a decent, safe, and sanitary dwelling
 25 adequate to accommodate the displaced owner, reasonably ac-
 26 cessible to public services and place of employment and avail-
 27 able on the market. Such payment shall be made only to the
 28 displaced owner who purchases and occupies a dwelling, that
 29 meets standards established by the department, within one year
 30 subsequent to the date on which he is required to move from
 31 the dwelling acquired for the project.

32 21690.14. In addition to the payment authorized by Section
 33 21690.12, as a part of the cost of construction, the department
 34 may make a payment to any individual or family displaced
 35 from any dwelling not eligible to receive a payment under
 36 Section 21690.13, which dwelling was actually and lawfully
 37 occupied by such individual or family for not less than 90
 38 days prior to first written offer for the acquisition of such
 39 property. Such payment, not to exceed one thousand five
 40 hundred dollars (\$1,500), shall be the additional amount
 41 which is necessary to enable such individual or family to lease
 42 or rent for a period not to exceed two years, or to make the
 43 downpayment on the purchase of a decent, safe, and sanitary
 44 dwelling of standards adequate to accommodate such indi-
 45 vidual or family in areas not generally less desirable in regard
 46 to public utilities and public and commercial facilities.

47 21690.15. Any displaced person aggrieved by a determina-
 48 tion as to eligibility for a payment authorized by this act, or
 49 the amount of a payment, may have his application reviewed
 50 by the department, whose decision shall be final and conclusive.

1 21690.16. The department is authorized to adopt rules and
 2 regulations relating to relocation assistance as may be neces-
 3 sary or desirable under state and federal laws and the rules
 4 and regulations promulgated thereunder. Such rules and regu-
 5 lations shall include provisions relating to:

6 (a) A moving expense allowance, as provided in Section
 7 21690.12, subdivision (b), for a displaced person who moves
 8 from a dwelling, determined according to a schedule, not to
 9 exceed two hundred dollars (\$200);

10 (b) The standards for decent, safe and sanitary dwellings;

11 (c) Procedure for an aggrieved displaced person to have
 12 his determination of eligibility or amount of payment reviewed
 13 by the department; and

14 (d) Eligibility for relocation assistance payments and the
 15 procedure for claiming such payments and the amounts thereof.

16 21690.17. No payment received by a displaced person under
 17 this act shall be considered as income for the purposes of the
 18 Personal Income Tax Law or the Bank and Corporation Tax
 19 Law, nor shall such payments be considered as income of
 20 resources to any recipient of public assistance and such pay-
 21 ments shall not be deducted from the amount of aid to which
 22 the recipient would otherwise be entitled under Part 3 (com-
 23 mencing with Section 11000) of Division 9 of the Welfare and
 24 Institutions Code.

25 Sec. 2. Nothing contained in this act shall be construed as
 26 creating in any condemnation proceedings brought under the
 27 power of eminent domain, any element of damages not in
 28 existence on the date of enactment of this act.

29 Sec. 3. If any provision of this act or the application
 30 thereof to any person or circumstances is held invalid, such
 31 invalidity shall not affect the provisions or applications of the
 32 act which can be given effect without the invalid provision or
 33 application, and to this end the provisions of this act are
 34 severable.