

#36.201

11/18/70

Memorandum 70-117

Subject: Study 36.201 - Condemnation for Utility Purposes (Sewer System Corporations)

Chapter 1109 of the Statutes of 1970 created a new type of public utility-- "sewer system corporations." (See Exhibit I attached.) These public utilities are subject to the jurisdiction, control, and regulation of the Public Utilities Commission. Also, it seems fairly clear that portions of subdivisions 3, 4, and 8 of Section 1238 of the Code of Civil Procedure, operating in conjunction with Civil Code Section 1001, grant sewer system corporations the power of eminent domain.

Consistent with the action taken with respect to other public utilities, the staff recommends that Section 1238 be repealed insofar as it relates to the condemnation authority of sewer system corporations and that the condemnation authority of these public utilities be clearly stated in the Public Utilities Code. Attached (Exhibit II) is a draft of a section recommended for inclusion in the comprehensive statute.

We have still not dealt with the power of a private individual to condemn for a sewer easement to his own property. The proposed section will not assist this individual because the last sentence of Section 230.5 of the Public Utilities Code (defining "sewer system") provides: "'Sewer system' shall not include a sewer system which merely collects sewage on the property of a single individual." We will deal with the right of a private individual to condemn property in a separate memorandum.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

PUBLIC UTILITIES—SEWER SYSTEM CORPORATIONS

CHAPTER 1109

SENATE BILL NO. 443

An act to amend Section 216 of, and to add Sections 230.5 and 230.6 to, the Public Utilities Code, relating to sewer system corporations.

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

SECTION 1. Section 216 of the Public Utilities Code is amended to read:

216.

(a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, or heat corporation performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such common carrier, toll bridge corporation, pipeline corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service or delivers any commodity to any person, private corporation, municipality or other political subdivision of the state, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof, such person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

SEC. 2. Section 230.5 is added to the Public Utilities Code, to read:

230.5.

"Sewer system" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including any and all lateral and connecting sewers, interceptors, trunk and outfall lines and sanitary sewage treatment or disposal plants or works, and any and all drains, conduits, and outlets for surface or storm waters, and any and all other works, property or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. "Sewer system" shall not include a sewer system which merely collects sewage on the property of a single owner.

SEC. 3. Section 230.6 is added to the Public Utilities Code, to read:

230.6.

"Sewer system corporation" includes every corporation or person owning, controlling, operating, or managing any sewer system for compensation within this state.

SEC. 4. The provisions of this act shall become operative July 1, 1971.

Approved and filed Sept. 15, 1970.

deletions by asterisks * * *

EXHIBIT II

PUBLIC UTILITIES CODE § 624

Staff recommendation December 1970

§ 624. Sewer system corporations

624. A sewer system corporation may condemn any property necessary for the construction and maintenance of its sewer system.

Comment. Section 624 grants a "sewer system corporation" (defined in Section 230.6) the right of eminent domain to acquire property necessary for the construction and maintenance of its "sewer system." "Sewer system" is defined in Section 230.5 to include all property used in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes. Thus, Section 624 authorizes condemnation of any property necessary to carry out the regulated activities of sewer system corporations. Section 624 does not, however, authorize condemnation for a sewer system which merely collects sewage on the property of a single individual (Section 230.5); nor does it authorize condemnation by anyone other than a public utility subject to the jurisdiction, control, and regulation of the Public Utilities Commission.

Section 624 supersedes portions of subdivisions 3, 4, and 8 of Section 1238 of the Code of Civil Procedure insofar as those portions relate to condemnation by privately owned public utilities.