

February 16, 1971

Time

February 19 - 7:00 p.m. - 10:00 p.m.
February 20 - 9:00 a.m. - 4:00 p.m.

Place

State Bar Building
1230 W. Third Street
Los Angeles 90017

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

February 19-20, 1971

1. Minutes of January 15-16 Meeting (sent 1/26/71)
2. Administrative Matters
3. Study 39.20 - Attachment, Garnishment, Execution (Discharge From Employment)
Memorandum 71-8 and attached Revised Tentative Recommendation
(sent 1/22/71)
First Supplement to Memorandum 71-8 (enclosed)
4. Study 36.60 - Condemnation (Relocation Assistance)
Memorandum 71-7 (sent 2/11/71)
Tentative Recommendation (attached to Memorandum)
5. Study 36.20(2) - Condemnation (Tentative Statute)
Memorandum 70-111 (sent 12/10/70)
Comprehensive Statute (hard cover binder)(you have this)
6. Study 36.201 - Condemnation for Utility Purposes (Sewer System Corporations)
Memorandum 70-117 (sent 12/10/70)
7. Study 36.201 - Condemnation for Utility Purposes (Terminal Facilities for
Certain Common Carriers)
Memorandum 70-120 (sent 12/10/70)
8. Study 36.35 - Condemnation (Interim Financing for the Condemnee for
Relocation)
Memorandum 70-114 (sent 12/10/70)
9. Study 36.20(1) - Condemnation (The Declared Public Uses)
Memorandum 70-83 (sent 12/10/70)

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10. Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238)

Memorandum 70-121 (sent 12/10/70)

11. Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238--Cemeteries)

Memorandum 70-122 (sent 12/10/70)

12. Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238--Expositions and Fairs)

Memorandum 70-123 (sent 12/10/70)

13. Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238--Fish Conservation)

Memorandum 70-124 (sent 12/10/70)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

FEBRUARY 19 AND 20, 1971

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on February 19 and 20, 1971.

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman
G. Bruce Gourley
Noble K. Gregory
John N. McLaurin
Marc W. Sandstrom

Absent: Alfred H. Song, Member of Senate
Carlos J. Moorhead, Member of Assembly
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, E. Craig Smay, and Nathaniel Sterling, members of the Commission's staff, also were present.

The following observers were present for the portions of the meeting indicated:

Friday, February 19, 1971

W. J. Cody, Creditor's Service of Los Angeles
Glen Woodmansee, Orange County Legal Aid Society

Saturday, February 20, 1971

Robert F. Carlson, Department of Public Works
Norval Fairman, Division of Highways
David L. Price, Assistant Legislative Representative, State Bar
of California
Charles E. Spencer, Department of Public Works

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ADMINISTRATIVE MATTERS

Approval of Minutes of January 15-16, 1971, Meeting. The Minutes of
the January 15-16, 1971, meeting were approved as submitted.

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STUDY 36.20(1) - CONDEMNATION (THE DECLARED PUBLIC USES--
DISPOSITION OF SECTION 1238)

The Commission considered Memorandum 70-121 presenting for repeal Code of Civil Procedure Section 1238, subdivisions 6 (condemnation for byroads), 9 (condemnation for traction engines or road locomotives), and 10 (oil pipelines). The Commission approved the repeal of these subdivisions as set out in Exhibit I to Memorandum 70-121, except that the words "is not continued because it" were deleted from the first sentence of the Comment to subdivision 9.

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STUDY 36.20(1) - CONDEMNATION (THE DECLARED PUBLIC USES--
DISPOSITION OF SECTION 1238--CEMETERIES)

The Commission considered Memorandum 70-122 presenting for repeal subdivision 14 of Section 1238 declaring cemeteries a public use. The Commission determined not to add the staff-proposed language set out at page 3 of the memorandum to the Comment to Government Code Section 37350.5. The Commission approved for repeal subdivision 14, as set out in Exhibit I to Memorandum 70-122, with the Comment adjusted to delete any reference to the authority of a county to condemn for cemetery purposes.

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STUDY 36.20(1) - CONDEMNATION (THE DECLARED PUBLIC USES--
DISPOSITION OF SECTION 1238--EXPOSITIONS AND FAIRS)

The Commission considered Memorandum 70-123 and attached study on the power to condemn for expositions and fairs. The Commission approved for repeal subdivision 16 of Code of Civil Procedure Section 1238 as set out in Exhibit I to Memorandum 70-123, with the words "not continued because it is" deleted from the first sentence.

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STUDY 36.20(1) - CONDEMNATION (THE DECLARED PUBLIC USES--
DISPOSITION OF SECTION 1238--FISH CONSERVATION)

The Commission considered Memorandum 70-124 and attached study on the power to condemn for fish conservation purposes. The Commission approved for repeal subdivision 19 of Code of Civil Procedure Section 1238 as set out in Exhibit I to Memorandum 70-124 with the following changes:

- (1) The words "is not continued because it" were deleted from the first sentence of the Comment;
- (2) The following sentence was added immediately preceding the final sentence of the Comment:

See, e.g., Monterey County Flood Control and Water Conservation Dist. v. Hughes, 201 Cal. App.2d 197, 20 Cal. Rptr. 252 (1962), in which the district's power to condemn for recreational purposes was upheld based upon a general condemnation power in its authorizing statute plus policy statements in the Water Code that fish and wildlife values, both economic and recreational, were to be given consideration in any flood control or water conservation program.

STUDY 36.60 - CONDEMNATION (RELOCATION ASSISTANCE)

The Commission considered Memorandum 71-7 and the Tentative Recommendation attached thereto. The Executive Secretary reported that the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 had finally been enacted and would be fully applicable to all federal and federally-assisted projects on July 1, 1972. The Commission determined, however, that it should not limit itself merely to conforming California law to the federal act. Instead, the Commission decided to review this recommendation with a view towards preparing a relocation assistance recommendation which would be most suitable for California--its condemnors, condemnees, and citizens generally. Provision should, however, be made to permit California entities to conform to federal requirements where desired to secure federal financial assistance.

The staff was directed to redraft the tentative recommendation to implement the following decisions regarding specific sections:

(1) Preliminary portion. The preliminary portion of the recommendation must be revised to reflect the basic approach of the recommendation. In addition, the impact of the federal law, including its effective date, should be fully explained. The review of California law should include a more complete reference to the present law governing the Department of Public Works.

(2) Section 7260. Approved without change. The Comment to the Chapter title was revised to delete the last sentence of the second paragraph and the extended quote.

(3) Section 7261. The application of the statute should be restricted

preliminarily to public entities. The staff was directed to study the problems associated with making the statute applicable to public utilities as well as nonprofit hospitals and educational institutions and to prepare the necessary background information and statutory changes required to make the latter generally subject to the statute. Consideration should be given to treatment of acquisitions by donation, to the method of review of the acquirer's decisions, and to the drafting of regulations for these special entities.

(4) Section 7262. This section should be deleted but its substance should be incorporated into Section 7310.

(5) Section 7263. Deleted. Section 7281 should be revised to require the term "average annual net earnings" to be defined by regulation.

(6) Section 7264. Section 7264 was revised to read:

7264. (a) "Business" means any lawful activity, except a farm operation, conducted primarily:

(1) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public; or

(3) By a nonprofit organization.

(b) Solely for the purpose of Section 7290, "business" also includes any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display, whether or not such display is located on the premises on which any of the above activities are conducted.

(7) Section 7265. Section 7265 should be revised to require lawful occupancy by the displaced person; with this exception, the section was approved as drafted. The Comment should be revised to indicate that this

section is more restricted than the comparable federal provision. The Comment should point out that only those persons who are on the property at the time of acquisition, and who move immediately thereafter as a result of the acquisition, are eligible for relocation assistance. Persons who move onto the property after acquisition, as well as those who are allowed to remain on the property until their rights to possession terminate independently--and, hence, not as a result of the acquisition--are not eligible for relocation assistance.

(8) Section 7266. Deleted. See paragraph (3) above.

(9) Section 7267. Approved without change.

(10) Section 7268. Section 7268 was revised to read:

7268. In the case of the state, "governing body" means the State Board of Control.

(11) Section 7269. Deleted.

(12) Section 7270. Deleted. Section 7281 should be revised to require the term "mortgage" to be defined by regulation.

(13) Section 7271. Deleted.

(14) Section 7272. Approved without change.

(15) Section 7273. Deleted. See paragraph (3) above.

(16) Section 7274. Section 7274 was revised by deleting the phrase "against which claims are paid by warrants drawn by the Controller."

(17) Section 7280. Deleted.

(18) Section 7281. Section 7281 was revised to require the State Board of Control to adopt rules and regulations for the state, including regulations relating to definitions of the terms "average annual net earnings" and "mortgage."

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- (19) Section 7282. Approved without change.
- (20) Section 7283. Approved without change.
- (21) Section 7284. Section 7284 was revised to read substantially

as follows:

7284. If federal financial assistance will be used to finance a project in whole or in part and the appropriate federal agency determines that giving effect to any provision of this chapter would result in limiting or denying federal financial assistance otherwise available for the project, such provision shall, at the election of the public entity, become inoperative to the extent that it is not in conformity with federal requirements and, in such case, the public entity is authorized to provide payments and assistance in accordance with the federal requirements.

- (22) Section 7285. The policy of this section was approved; the staff was directed to revise the section to clarify its purpose.

- (23) Section 7286. Section 7286 was revised to read:

7286. This chapter does not apply to acquisitions by the Department of Public Works or to any acquisition for a state highway or federal-aid highway project.

- (24) Section 7290. Section 7290 was revised to read substantially as follows:

7290. As a part of the cost of the program or project for which the property is acquired, the public entity may, in its discretion, compensate a displaced person for all of the following:

(a) Actual reasonable expenses in moving himself, his family, business, farm operations, or other personal property. The compensable expense of moving tangible personal property shall not exceed the value of such property.

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property.

(c) Actual reasonable expenses in searching for a replacement business or farm.

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(25) Section 7291. Section 7291 should be revised in consideration of the decision to make payment under Section 7290 discretionary.

(26) Section 7292. Section 7292 should be revised in consideration of the decision to make payment under Section 7290 discretionary and also to delete the minimum payment required by federal law. The Comment to this section should indicate that the earnings forming the basis for payment should be those earnings derived from the business or farm operation conducted on the property taken.

(27) Section 7293. Section 7293 should be revised to make clear that only a person who is required to move his business or farm is entitled to also receive payment for the expense of moving from his dwelling.

Time did not permit the Commission to consider the remaining sections. The staff was directed to reexamine these sections in the light of the decisions made above and prepare a revised tentative recommendation for the March meeting.

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STUDY 36.201 - CONDEMNATION FOR UTILITY PURPOSES
(SEWER SYSTEM CORPORATIONS)

The Commission considered Memorandum 70-117 relating to the power of sewer system corporations to condemn property for the construction and maintenance of its sewer system. The Commission approved proposed Public Utilities Code Section 624 with Comment, as set out in Exhibit II of Memorandum 70-117 for inclusion in the comprehensive statute.

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STUDY 36.201 - CONDEMNATION FOR UTILITY PURPOSES (TERMINAL
FACILITIES FOR CERTAIN COMMON CARRIERS)

The Commission considered Memorandum 70-120 relating to the power of water carriers to acquire by eminent domain property necessary for terminal facilities. The Commission approved for repeal Code of Civil Procedure Section 1238(22) with Comment as set out in Exhibit I to Memorandum 70-120. The Commission approved for inclusion in the Comprehensive Statute proposed Public Utilities Code Section 622 with Comment as set out in Exhibit II to Memorandum 70-120; the leadline is altered to read:

§ 622. Motor and water carriers

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STUDY 39.20 - ATTACHMENT, GARNISHMENT, EXECUTION (DISCHARGE
FROM EMPLOYMENT)

The Commission considered Memorandum 71-8, the attached Revised Tentative Recommendation, and the First Supplement to Memorandum 71-8.

Section 2929 on page 8 was revised to read substantially as follows:

Sec. 4. Section 2929 is added to the Labor Code, to read:

2929. (a) As used in this section:

(1) "Garnishment" means any judicial procedure through which the wages of an employee are required to be withheld for the payment of any debt.

(2) "Wages" has the same meaning as that term has under Section 200.

(b) No employer may discharge any employee by reason of the fact that the garnishment of his wages has been threatened.

(c) Where an employment has no specified term, no employer may discharge any employee by reason of the fact that his wages have been subjected to garnishment unless his wages have been subjected to garnishment for more than one judgment during his employment with that employer.

(d) Where an employment is for a specified term, no employee may be discharged by reason of the fact that his wages have been subjected to garnishment unless the contract of employment otherwise specifically provides. A provision of a contract of employment that provides an employee with less protection against discharge by reason of the fact that his wages have been subjected to garnishment than is provided by subdivision (c) is against public policy and void.

(e) Where an employment has no specified term, the wages of an employee who is discharged in violation of this section shall continue until reinstatement notwithstanding such discharge but such wages shall not continue for more than 30 days. The employee shall give notice to his employer of his intention to make a wage claim under this subdivision within 30 days after being discharged; and, if he desires to have the Labor Commissioner take an assignment of his wage claim, the employee shall file a wage claim with the Labor Commissioner within 60 days after being discharged. The Labor Commissioner may take assignment of wage claims under this subdivision as provided for in Section 96.

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(f) Nothing in this section affects any other rights the employee may have against his employer.

(g) This section is intended to aid in the enforcement of the prohibition against discharge for garnishment of earnings provided in the Consumer Credit Protection Act of 1968 (15 U.S.C. §§ 1671-1677).

The staff was directed to determine whether the protection afforded by the section could be extended to cover an administrative withholding order to pay taxes.

The Comment should indicate it is entirely discretionary whether the employee file a claim with the Labor Commissioner; if he wishes, the employee can file a civil suit on the claim.

The Comment should include the substance of the following: "When an employee can be discharged only for 'good cause' and there is no pertinent contractual provision, whether or not two or more garnishments would constitute good cause would depend upon the facts of the case, and the statute does not reflect any policy that two garnishments are grounds for discharge."

A warning should be included in the Comment to note that the quoted material is subject to change.