

4/6/60

Memorandum No. 32 (1960)

Subject: Study No. 36 - Moving Expenses in Eminent Domain
Proceedings

Attached is a revised moving expense statute and recommendation with the 25% limit and claims procedure eliminated. Revisions from the previous draft are shown in strike-out and underline, except in the title where added material is shown by omitting underscoring. Sections 1270.3 and 1270.4 are new, so there is no underscoring. The amendment of Government Code Section 703 is also new, and the revision indicated is the revision of the existing section.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION
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T E N T A T I V E

RECOMMENDATION AND PROPOSED LEGISLATION

Relating to

Moving Expenses in Eminent Domain Proceedings

NOTE: This is a tentative recommendation and proposed statute prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to

Moving Expenses in Eminent Domain Proceedings

The California Constitution provides that private property shall not be taken for public use without "just compensation" having first been made. The statutes implementing this provision provide that the person whose property is taken for public use is entitled to be paid only for its market value. No compensation is provided for the expenses of moving to another location when property is taken for public purposes.

In some states, the courts have tried to alleviate this hardship by permitting the cost of moving to be considered in determining the market value of the property taken. However, the concept of "market value," correctly interpreted, does not include moving expenses. Courts in other states, taking a more direct approach, have held that "just compensation" is not made unless the owner is compensated for his moving expenses.

Neither of these judicial solutions to the problem is satisfactory, in part because neither insures that the person who must bear the burden of moving -- the occupant of the land -- will receive reimbursement for his necessary expenses. Leases often provide that if the property is condemned, the lessee will receive no share of the award. Consequently, the Federal

Government and several states have enacted legislation providing for the payment of moving expenses.

The Commission believes that the occupant of land acquired for public use should not be asked to bear alone the expense of moving his personal property off the land. Inasmuch as this expense must be incurred because the property is taken for the public's benefit, the public should bear at least a substantial part of the burden imposed by reimbursing a person for moving expenses. Such a change in the law would more nearly effectuate the constitutional ideal of "just compensation." Moreover, the public will derive certain advantages. In some instances out of court settlement may be facilitated, for the condemning agency will be able to reimburse a property owner for an element of damage that cannot be compensated at the present time. In such cases, the court expenses saved may exceed the additional compensation given. Accordingly, the Commission recommends:

1. When property is taken for public use, the occupants should be reimbursed for the actual and reasonable costs necessarily incurred in moving personal property off the property taken, subject to certain limitations discussed below. Reimbursement must be limited to the "reasonable" costs actually incurred, so that the public cannot be compelled to pay exorbitant moving costs.

2. Reimbursement for moving expenses should be provided only for transporting the personal property to another location

within the same general area as the real property taken, i.e., within 25 miles. If the person moving desires that the property be moved a greater distance, he should bear the additional mileage costs himself. Of course, packing, unpacking and other costs of moving [~~;-other-than-transportation-in-excess-of-25 miles;~~] should be borne by the public no matter how far the property is moved, for these expenses must be incurred whether the property is relocated within the same general area or not.

This limitation should not apply, however, to negotiated settlements. The condemning agency may be relied upon to protect the public interest, and settlement may be facilitated if there is no mileage limitation upon negotiated settlements. As a practical matter, any limitation on the amount to be paid for moving expenses in negotiated settlements would be ineffectual, for the condemning agency, if it wished to avoid the limitation when negotiating a settlement, could raise the amount to be paid for the real property.

3. When property is taken for public use for a term only, a person who is obligated to move and who has a right to re-occupy the property at the end of the term should be reimbursed not only for moving his personal property off the land, but also for the actual and reasonable costs of storing his personal property and of relocating it upon the land at the end of the term.

4. Where the parties cannot agree on the amount to be paid, determination of the amount of reimbursement should be made in a

judicial proceeding other than the principal condemnation action. In many cases the occupant of the property does not have to move until after the condemnation action has been tried. In other cases, the property may be acquired by purchase without a condemnation action. Therefore, a separate action should be provided for the determination of the amount of moving expense involved. Of course, if the occupant is compelled to move before the trial of the condemnation action, it would be possible to consolidate the moving expense action with the condemnation action for purposes of trial.

5. The condemning agency should initiate the action to determine moving expenses just as it initiates the action to determine the compensation to be paid for the land. If the condemner does not initiate the action within a reasonable period of time, the person that is forced to move should be able to commence the action and recover his attorney's fees in addition to his moving costs. The awarding of attorney's fees if the person forced to move initiates the action will tend to make condemning agencies comply with their statutory duty to initiate the action.

6. Evidence of moving expenses should be incompetent and inadmissible in an eminent domain proceeding upon the question of the compensation to be paid for the property to be taken. Such a provision is necessary to preclude the possibility that a person might be compensated twice for the same loss.

An act to add Title 7a (beginning with Section 1270) to Part 3 of the Code of Civil Procedure, to amend Section 703 of the Government Code, and to add Section 1248.5 to the Code of Civil Procedure, all relating to the payment of compensation and damages [payable] when property is acquired for public use.

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

SECTION 1. Title 7a (beginning with Section 1270) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 7a.

REIMBURSEMENT FOR MOVING EXPENSES WHEN PROPERTY
ACQUIRED FOR PUBLIC USE

[Revised
and re-
arranged
in alpha-
betical
order]

1270. As used in this title:

(1) "Acquirer" means a person that acquires real property or any interest therein for public use.

(2) "Acquisition" means the acquiring of real property or an interest therein for public use either by the consent of the owner or by [~~proceedings under Title 7 of Part 3 of this code~~] eminent domain.

(3) "Person" includes [means] a natural person, corporation, association, joint venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, [~~and includes~~] the State, or a city,

county, city and county, district or any department, agency or instrumentality of the State or of any governmental subdivision in the State.

(4) "Public use" means a use for which property may be taken by eminent domain [~~specified in Title 7 of Part 3 of this code~~].

(5) "Relocating" includes unloading, unpacking, reassembling, installing and all other acts incidental to the placement of personal property upon a new location and making it ready for use.

(6) "Removing" includes dismantling, packing, wrapping, loading and all other acts incidental to the removal of personal property from its location.

[Revised] 1270.1. Subject to Section [1270.2] 1270.3 a person lawfully occupying real property whose occupation is interrupted as the proximate result of the acquisition of the real property or any interest therein for public use is entitled to reimbursement from the acquirer [~~person acquiring the real property or interest therein~~] for his actual and reasonable costs necessarily incurred as a direct result of the acquisition in:

(1) Removing his personal property from the real property acquired or from the larger parcel from which the part acquired is severed.

(2) Transporting such personal property [~~for a distance of not more than 25 miles by the nearest road or roads. If the personal property is transported more than 25 miles by the nearest road or roads, a person is entitled to reimbursement for the cost of transporting such personal property a distance of 25 miles only~~].

(3) Relocating such personal property at the location to which it is transported [~~removed~~].

[Revised.
This was
Section
1270.3
in the
previous
draft.]

1270.2. Subject to Section 1270.3:

(1) A person is entitled to reimbursement under this section if:

(a) He is lawfully occupying real property when such property or any interest therein is acquired for public use for a term only; and

(b) He has, at the time of the acquisition, the right to the possession of the real property immediately after the term acquired for public use.

(2) A person described in subdivision (1) of this section is entitled to reimbursement from the acquirer as provided in Section 1270.1, and, in addition, is entitled to reimbursement from the acquirer [~~person-acquiring-the real-property-or-interest-therein~~] for his actual and reasonable costs necessarily incurred as a direct result of the acquisition in:

[{a)--Removing-his-personal-property-from-the-real-property
acquired-or-from-the-larger-parcel-from-which-the-part-acquired
is-severed-and-transporting-such-personal-property-for-a-dis-
tance-of-not-more-than-25-miles-by-the-nearest-read-or-roads.
If-the-personal-property-is-transported-more-than-25-miles-by
the-nearest-read-or-roads,-a-person-is-entitled-to-reimbursement
for-the-cost-of-transporting-such-personal-property-a-distance
of-25-miles-only.]

[{b}] (a) Storing his [such] personal property that was
removed from the real property acquired or from the larger
parcel from which the part acquired was severed during the
[period-of] time the real property is occupied by the acquirer
[person-acquiring-the-real-property-or-interest-therein].

(b) Removing such personal property from storage at the
end of the term for which the property was acquired for public
use.

(c) Transporting such personal property [for-a-distance
of-not-more-than-25-miles-by-the-nearest-read-or-roads-and] to
and relocating such personal property upon the real property
at the end of the term for which the real property was acquired
for public use. [If-the-personal-property-is-transported-more-
than-25-miles-by-the-nearest-read-or-roads,-a-person-is-entitled
to-reimbursement-for-the-cost-of-transporting-such-personal
property-a-distance-of-25-miles-only.]

[New] 1270.3. (1) Subject to subdivision (2) of this section, a person is entitled to reimbursement under subdivision (2) of Section 1270.1 for transporting his personal property a distance of not more than 25 miles by the nearest road or roads and is entitled to reimbursement under subdivision (2)(c) of Section 1270.2 for transporting his personal property a distance of not more than 25 miles by the nearest road or roads.

(2) The limitation contained in this section does not apply if the acquirer and the person entitled to reimbursement enter into a binding settlement agreement as to the extent to which moving expenses are to be reimbursed.

[New] 1270.4. (1) Unless a person entitled to reimbursement and the acquirer have entered into a binding settlement agreement as to the extent of reimbursement to be made to such person under Section 1270.1, the acquirer shall commence a civil action to determine the amount of reimbursement to be made to such person under Section 1270.1 not later than 90 days after the acquirer takes possession of the property or 90 days after the acquirer is given written notice by such person that the property has been vacated by such person, whichever is earlier.

(2) Unless a person entitled to reimbursement and the acquirer have entered into a binding settlement agreement as to the extent of reimbursement to be made to such person under Section 1270.2, the acquirer shall commence a civil action to

determine the amount of reimbursement to be made to such person under Section 1270.2 within 90 days after the term for which the property was acquired for public use expires.

(3) If the acquirer does not commence a civil action to determine the amount of reimbursement to be made to a person entitled thereto within the time required in subdivision (1) or subdivision (2) of this section, the person entitled to reimbursement may commence a civil action to recover the reimbursement to which he is entitled under Section 1270.1 or Section 1270.2 and in addition his reasonable expenses of maintaining the action, including reasonable attorney's fees.

(4) An action commenced under this section is subject to the provisions of this code relating to actions at law for the recovery of money only.

(5) A person entitled to reimbursement under Section 1270.1 or Section 1270.2 is not required to present a claim to the State or a local public entity or to any officer or officers thereof under the provisions of Division 3.5 (beginning with Section 600) of Title 1 of the Government Code before commencing an action pursuant to subdivision (3) of this section.

[New] SEC. 2. Section 703 of the Government Code is amended to read:

703. Articles 1 and 2 of this chapter apply to all claims for money or damages against local public entities except:

* * *

(1) Claims for reimbursement arising under Title 7a
(beginning with Section 1270) of the Code of Civil Procedure.

[Revised] SEC. 3. Section 1248.5 is added to the Code of Civil Procedure, to read:

1248.5. Notwithstanding Section 1248.2, the opinion of a witness as to the amount to be ascertained under subdivisions 1, 2, 3, or 4 of Section 1248 is incompetent and inadmissible if it is based, wholly or in part, upon [Evidence-ef] the cost of removing, transporting, storing or relocating personal property which may be reimbursed under Title 7a (beginning with Section 1270) of this Code. [located-on-the-real-property-sought-to-be condemned, -or, -if-the-property-sought-to-be-condemned-constitutes only-a-part-of-a-larger-parcel, -located-on-the-portion-not-sought-to-be-condemned, -is-incompetent-and-inadmissible-upon-the-issues of-the-compensation-and-damages-to-be-assessed-for-the-taking-of the-property-sought-to-be-condemned-under-Section-1248.]