

#36.20(1)

5/13/70

Memorandum 70-60

Subject: Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238(15)--Restoration of Public Records)

At the May 1970 meeting, the Commission tentatively approved the deletion of subdivision 15 from Section 1238 of the Code of Civil Procedure but directed the staff to submit statutory provisions which would afford any public entity the means to restore or replace public records destroyed in a public calamity.

Attached as Exhibit I is a Comment to subdivision 15 and two new articles to be added to the Government Code. Article 7 (consisting of Section 14770) would be added to Chapter 5 (State Records) of Part 5.5 (Department of General Services) of Division 3 (Executive Department) of Title 2 (Government of the State of California). Article 2.5 (consisting of Section 53030) would be added to Chapter 1 (General) of Part 1 (Powers and Duties Common to Cities, Counties, and Other Agencies) of Division 2 (Cities, Counties, and Other Agencies) of Title 5 (Local Agencies) of the Government Code.

Respectfully submitted,

Jack I. Horton
Associate Counsel

EXHIBIT I

CODE OF CIVIL PROCEDURE § 1238

Staff recommendation

Subdivision 15

~~15.--The plants, or any part thereof, or any record therein of all persons, firms or corporations heretofore, now or hereafter engaged in the business of searching public records, or publishing public records or insuring or guaranteeing titles to real property, including all copies of, and all abstracts or memoranda taken from, public records, which are owned by, or in the possession of, such persons, firms or corporations or which are used by them in their respective businesses; provided, however, that the right of eminent domain in behalf of the public uses mentioned in this subdivision may be exercised only for the purposes of restoring or replacing, in whole or in part, public records, or the substance of public records, of any city, city and county, county or other municipality, which records have been, or may hereafter be, lost or destroyed by conflagration or other public calamity; and provided further, that such right shall be exercised only by the city, city and county, county or municipality whose records, or part of whose records, have been, or may be, so lost or destroyed.~~

Comment. Subdivision 15 is superseded by Sections 14770 and 53030 of the Government Code.

Staff recommendation

§ 14770. Restoration of state public records destroyed by public calamity

Sec. . Article 7 (commencing with Section 14770) is added to Chapter 5 of Part 5.5 of Division 3 of Title 2 of the Government Code, to read:

Article 7. Restoration of Records Destroyed by

Public Calamity

14770. (a) As used in this section:

(1) "Acquire" includes acquisition by gift, purchase, lease, eminent domain, or otherwise.

(2) "Public record plant" means the plant, or any part thereof, or any record therein, of any person engaged in the business of searching or publishing public records or insuring or guaranteeing titles to real property, including copies of public records and abstracts or memoranda taken from public records, which is owned by or in the possession of such person or which is used by him in his business.

(b) If public records of any state agency have been lost or destroyed by conflagration or other public calamity, the director may acquire the right to reproduce such portion of a public record plant as is necessary for the purpose of restoring or replacing the records or their substance.

Comment. Section 14770 is new but reflects the same policy as subdivision 15 of former Code of Civil Procedure Section 1238 which applied only to certain local public entities.

The broad authority to acquire the "right to reproduce" lost or destroyed records permits the reproduction of records by such means as making copies, obtaining a computer print-out or other visual representation of records preserved in data processing equipment, or duplicating magnetic tapes or other means for preserving such records in data processing equipment.

Cross Reference:

Similar authority for local public entities, Govt. Code § 53030.

§ 53030. Restoration of local public records destroyed by public calamity

Sec. . Article 2.5 (commencing with Section 53030) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 2.5. Restoration of Records Destroyed by
Public Calamity

53030. (a) As used in this section:

(1) "Acquire" includes acquisition by gift, purchase, lease, eminent domain, or otherwise.

(2) "Local public entity" means any public entity other than the state.

(3) "Public record plant" means the plant, or any part thereof, or any record therein, of any person engaged in the business of searching or publishing public records or insuring or guaranteeing titles to real property, including copies of public records and abstracts or memoranda taken from public records, which is owned by or in the possession of such person or which is used by him in his business.

(b) If public records of a local public entity have been lost or destroyed by conflagration or other public calamity, the local public entity may acquire the right to reproduce such portion of a public record plant as is necessary for the purpose of restoring or replacing the records or their substance.

Comment. Section 53030 is derived from and reflects the same policy as subdivision 15 of former Code of Civil Procedure Section 1238. However, the provision is broadened to cover all local public entities and is limited to acquiring the "right to reproduce" such records and does not permit permanent acquisition of the public records plant itself.

The broad authority to acquire the "right to reproduce" lost or destroyed records permits the reproduction of records by such means as making copies, obtaining a computer print-out or other visual representation of records preserved in data processing equipment, or duplicating magnetic tapes or other means for preserving such records in data processing equipment.

Cross Reference:

Similar authority for state agencies, Govt. Code § 14770.