

#36.20(1)

12/9/70

Memorandum 70-123

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

Summary

This memorandum presents for repeal subdivision 16 of Section 1238 which declares certain expositions and fairs to be a public use.

Analysis

Attached is a study on subdivision 16 of Section 1238 of the Code of Civil Procedure. This subdivision provides that the power of eminent domain may be exercised on behalf of expositions and fairs in aid of which the Constitution has authorized the granting of public moneys or other things of value. The study concludes that this provision was originally designed with a specific constitutional authorization in mind which has since been repealed.

Subdivision 16 now authorizes public entities to use the power of eminent domain for fairs and expositions, but this authorization duplicates other specific authorizations. Therefore, the subdivision can be repealed without adverse effect on any entity presently authorized to condemn for fair purposes.

Exhibit I (attached) is a staff draft of the repeal of subdivision 16 with an indication in the Comment of the alternate condemnation authority of the state, cities, counties, district agricultural associations, and citrus fruit fairs.

Respectfully submitted,

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EXHIBIT I

CODE OF CIVIL PROCEDURE § 1238

Staff recommendation December 1970

Subdivision 16

~~16.--Expositions-or-fairs-in-aid-of-which-the-granting-of-public
moneys-or-other-things-of-value-has-been-authorized-by-the-Constitution.~~

Comment. Subdivision 16 is not continued because it is obsolete and merely duplicates other specific grants of condemnation authority.

All public entities that might utilize the power of eminent domain for fair or exposition purposes are specifically granted the power of eminent domain. Specific grants are made to the state (Govt. Code § 15853), cities (Govt. Code § 37350.5; see also Govt. Code § 50331), counties (Govt. Code § 25350.5; see also Govt. Code §§ 25900-25908), district agricultural associations (Govt. Code § 15853; see also Agri. Code § 4051), and citrus fruit fairs (Govt. Code § 15853; see also Agri. Code § 4701). Private fair corporations (e.g., Civil Code § 620) do not have the power of eminent domain.

With the repeal in 1949 of all special constitutional grants in aid of private expositions, subdivision 16 became obsolete. (The subdivision was enacted in 1911, apparently as a grant of eminent domain power to the Panama-Pacific International Exposition Company. See former Cal. Const., Art. XI, § 8a.) But see County of Alameda v. Meadowlark Dairy Corp., 227 Cal. App.2d 80, 38 Cal. Rptr. 474 (1964)(subdivision 16 relied upon to authorize condemnation by a county for fair purposes on the theory that the Constitution grants to counties a tax-exempt status which is a "thing of value . . . authorized

by the Constitution" within the meaning of subdivision 16). However, subdivision 16 is no longer necessary because counties now have a specific grant of condemnation authority. Govt. Code § 25350.5. See also Govt. Code §§ 25900-25908.

THE DECLARED PUBLIC USES

Expositions and Fairs

Subdivision 16 was added to Code of Civil Procedure Section 1238 in 1911 to authorize eminent domain on behalf of "expositions or fairs in aid of which the granting of public moneys or other things of value has been authorized by the Constitution."¹ The language today seems unusual since the Constitution contains no provision authorizing the granting of public money or other things of value to fairs or expositions. However, at the time the subdivision was enacted, there was at least one constitutional provision directly granting both public money and other things of value to an exposition. This provision, adopted in 1910, authorized a charter amendment for the City and County of San Francisco to grant the Panama-Pacific International Exposition Company authority to take public bond proceeds and to manage Golden Gate Park and other lands held by the City and County and by the Board of Education until one year after the close of the exposition.² Since that time, the Constitution has made at least one other grant to an exposition: the San Francisco Bay Exposition was in 1938 granted an immunity from all taxes, license fees, and charges of any kind or character.³ Both of these grants were repealed on November 8, 1949.

Subdivision 16 thus at one time had some utility as a grant of eminent domain power to certain private fair corporations which might not otherwise have had the power. However, subdivision 16 does have some vitality today: although the Constitution no longer authorizes grants of public moneys and other things of value to fairs and expositions directly, it does authorize grants to entities whose sole function is to conduct fairs and expositions.⁴ Thus, in a roundabout way, subdivision 16 declares fairs and expositions to be a public use if conducted by certain public entities.

It seems likely that fairs and expositions generally would be considered to be a public use even absent California's peculiar statutory and constitutional provisions. Nichols cites at least one case for this proposition:⁵

It has been held that an exposition for works of art and manufacture, and of agricultural and horticultural products, for public education, is a public use for which the right of eminent domain may be exercised. [Citing a Pennsylvania case.]

In California, if subdivision 16 is repealed, it should be made clear that fairs and expositions are a public use allowing the eminent domain power for appropriate condemning agencies. The potential California condemnors for fair purposes are the state, cities, counties, district agricultural associations, citrus fruit fairs, and private fair corporations.

State. The California State Fair and Exposition and the California Exposition and Fair Executive Committee are subdivisions of the Department of General Services and are declared to be state institutions.⁶ As such, they may receive appropriations of public money⁷ and, therefore, have eminent domain power under subdivision 16. However, if subdivision 16 were repealed, these two institutions would have eminent domain power independently through the Property Acquisition Law.⁸

City. Cities, at present, apparently have no eminent domain power under subdivision 16. The Constitution not only limits appropriations to state institutions, but positively prohibits the state from making "any gift, of any public money or thing of value to any individual, municipal or other corporation whatever."⁹ However, the issue of the city's power of eminent domain for fair purposes has never come before an appellate court; if the issue were to arise, it is likely that the city would qualify on the basis of its tax exemption under the rationale of the Meadowlark Dairy case,¹⁰ discussed below under counties. Of course, the problem is of little practical

importance currently, for cities are not active in the fair and exposition field. But it is clear that at least an agricultural fair is a proper city function.¹¹ And, under the Law Revision Commission's proposed eminent domain revision, the cities will be granted the power of eminent domain to carry¹² out proper city functions.

County. The right of counties to condemn is clearer than that of cities,¹³ both under subdivision 16 and absent that subdivision. In Meadowlark Dairy,¹³ the court concluded that a county has the power of eminent domain for the¹⁴ purposes of a county fair.

It is to be noted that the power derives from section 1238, subdivision 16, of the Code of Civil Procedure, which gives the power for use of "Expositions or fairs in aid of which the granting of public moneys or other things of value has been authorized by the Constitution." The Constitution grants an exemption to counties from taxation by the Legislature for county purposes (art. XI, § 12), and to property belonging to a county (art. XIII, § 1). Exemption from taxation is a thing of value. (See City of Ojai v. Chaffee, 60 Cal.App.2d 54, 59 [140 P.2d 116].)

However, absent subdivision 16, the counties would retain their eminent domain power under the Law Revision Commission's proposed legislation. A county may¹⁵ condemn for any proper county function, and the Legislature has made it clear¹⁶ that county fairs are a county function.

District agricultural association. District agricultural associations are¹⁷ state institutions whose purpose is to hold fairs and expositions;¹⁸ they are, therefore, direct beneficiaries of the eminent domain power granted by subdivision 16. However, these associations would have the eminent domain power absent subdivision 16, for Agricultural Code Section 4051 authorizes them to acquire any interest in real or personal property. The acquisition is subject to the Property Acquisition Law and, hence, is accomplished by the¹⁹ State Board of Public Works on behalf of the district.

Citrus fruit fair. Like the district agricultural associations, citrus fruit fairs are state institutions²⁰ whose purpose is to hold fairs and expositions²¹ and, hence, are direct beneficiaries of subdivision 16. Like the district associations, citrus fruit fairs have the same power to construct facilities of general public interest.²² Although there is no express provision for citrus fair land acquisition, the fairs may acquire property through the Property Acquisition Law in the same manner as the district associations since the fairs are also state agencies.

Private fair corporation. Private fairs and fair corporations do not have the power of eminent domain. The Civil Code provides that nonprofit agricultural fair corporations may "purchase, hold, or lease" real property.²³ Of course, if a county contracts with a private fair corporation to run its public fair for it, land may be taken if necessary.²⁴ Otherwise, a private fair or exposition may not condemn land unless there is a specific constitutional grant of aid as expressly envisaged by subdivision 16. Since all constitutional grants of aid to private fairs have been repealed, subdivision 16 may be repealed without adverse effect. Should the occasion arise in the future that a private fair needs the eminent domain power, that power can be given by the Legislature in an express and limited grant.

THE DECLARED PUBLIC USES
Expositions and Fairs

FOOTNOTES

1. Cal. Stats. 1911, Ch. 635, § 1, p. 1206.
2. Cal. Const., Art. XI, § 8a (adopted Nov. 8, 1910).
3. Cal. Const., Art. XIII, § 1.6 (adopted Nov. 8, 1938).
4. For example, Section 21 of Article XIII of the California Constitution provides that no money shall be appropriated from the State Treasury for the benefit of any corporation, association, or other institution that is "not under the exclusive management and control of the State as a state institution." But the Legislature has declared certain fairs to be state agencies and appropriates money to them (see below).
5. 2 P. Nichols, Eminent Domain § 7.5152 (3d ed. 1963).
6. Cal. Agri. Code §§ 3401, 3501.
7. Cal. Const., Art. XIII, § 21.
8. Cal. Govt. Code §§ 15850-15866.
9. Cal. Const., Art. XIII, § 25.
10. County of Alameda v. Meadowlark Dairy Corp., 227 Cal. App.2d 80, 38 Cal. Rptr. 474 (1964).
11. Section 50331 of the Government Code authorizes cities to acquire land "by purchase or otherwise" in order to exhibit agricultural, horticultural, or botanical products.
12. Proposed Government Code Section 37350.5 provides: "The legislative body of any city may condemn any property necessary to carry out any of the powers or functions of the city."
13. Supra, note 10.
14. 227 Cal. App.2d at 84, 38 Cal. Rptr. at .

15. Proposed Government Code Section 25350.5 provides: "The board of supervisors of any county may condemn any property necessary to carry out any of the powers or functions of the county."
16. See generally Govt. Code §§ 25900-25908; "That county fairs are recognized by the Legislature as a county function appears from the statutes which recognize and encourage the county fairs, such as [citing statutes]." [County of Alameda v. Meadowlark Dairy Corp., 227 Cal. App.2d at 84, 38 Cal. Rptr. at .]
17. Cal. Agri. Code § 3953. For a discussion of the historical evolution of the district associations into "state agencies," see People v. San Joaquin Valley Agricultural Ass'n, 151 Cal. 797, 91 P. 740 (1907). See also Melvin v. State, 121 Cal. 16, 53 P. 416 (1898).
18. Cal. Agri. Code § 3951:

Fifty or more persons, who are residents of a district, may form an association to be known as and designated as the District Agricultural Association, for the following purposes:

 - (a) Holding fairs, expositions and exhibitions for the purpose of exhibiting all of the industries and industrial enterprises, resources and products of every kind or nature of the state with a view toward improving, exploiting, encouraging, and stimulating them.
 - (b) Constructing, maintaining, and operating recreational and cultural facilities of general public interest.
19. See, e.g., State v. City of Los Angeles, 256 Cal. App.2d 930, 64 Cal. Rptr. 476 (1967).
20. Cal. Agri. Code § 4701(b).
21. Cal. Agri. Code § 4603.
22. Cal. Agri. Code § 4701(a).
23. Cal. Civil Code § 620.
24. Cal. Govt. Code §§ 25905-25906.