10/19/79

First Supplement to Memorandum 79-50

Subject: Priorities and Schedule for Work on Topics

The Eminent Domain Law (Code Civ. Proc. §§ 1230.010-1273.050) was enacted upon recommendation of the Commission in 1975, and the Commission has maintained a continuing review of the law. One of our consultants on the eminent domain project, Tom Dankert, has written to us concerning two technical problems he has encountered under the new law. See Exhibit 1. The staff suggests we send a copy of his letter to the State Bar Condemnation Committee, which has a mandate to assist the Commission, requesting their comments concerning the problems raised by Mr. Dankert and what, if anything should be done about them. When we receive the comments of the State Bar Committee we will be in a better position to decide what action to take. Development of a recommendation for the 1981 legislative session would be a relatively simple matter.

Respectfully submitted

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

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October 8, 1979

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

RE: Eminent Domain Law

Dear Mr. DeMoully:

As you will recall, I was a consultant on eminent domain to the Commission from 1973 through June 30, 1979. This included the time period during which the new eminent domain law (C.C.P. §§1230.010, et seq) was under consideration. Since the effective date of the eminent domain law of July 1, 1976, I have had the opportunity to file on behalf of some dozen plus public agencies numerous condemnation cases. As might be expected, I have found some minor technical problems in the original legislation two of which I wish to comment upon at this time.

C.C.P. §1268.030, Subdivision (3) provides for service of the Final Order of Condemnation and its recordation on all parties affected thereby. This is a simple procedure to follow in those cases where there are only a few property owner defendants. Unfortunately, we periodically come across cases where there are numerous defendants. As of this writing I have filed at least four cases in which there were over twenty defendants with minor interests. Some of these, for example, are tenants who after being relocated simply disappear from the scene, but whose names nonetheless appear and are technically parties affected by the Order.

In one bizarre case, I was retained by the Port Hueneme Redevelopment Agency to extinguish an easement of access over a parcel to be redeveloped. Due to a title blunder, each owner of the adjacent and contiguous apartment house condominium had been individually given easements of access over the prescribed route. There were approximately 180 condominium units. Each unit had to be separately traced in the chain of title. Many of the property owners were ultimately served by publication because they were non-resident Los Angeles owners and personal service was never affected on them. All of these parties were technically parties affected by the Final Order.

The provision of giving notice of the recording of the Final Order does seem unnecessary since any title company will tell you over the phone whether or not a final order against a piece of property has, in fact, been recorded. Furthermore, the recordation itself is an act of notice. The giving of notice of recordation, therefore, really serves no useful purpose. (The statute is silent on the effect of failing to comply with the statutory directive.) The actual party litigants to a contested proceeding have notice of all matters entering up to and including the entry of the Judgment in Condemnation. It is the Judgment which determines their rights. The Final Order is simply an anticlimatical act. It is recommended, therefore, that the requirement of notice be dispensed with since it really serves no useful purpose.

A further technical problem is caused by the provisions of the Eminent Domain Law dealing with service of summons, C.C.P. §§1250.120-1250.130. Section 1250.130 engrafts an additional requirement on obtaining such service. Posting of the property is required where process is served by publication. In the condominium project which was described in the preceding paragraph, it would have been necessary to nail a notice on the door of each apartment house in the condominium project. It is suggested that a sentence be added providing that "for good cause shown" the Court may excuse the posting requirement where the requirement is burdensome.

It is important to remember that the typical condemnation suit is not a large case. The probable majority of the parcels of land filed upon are for utility, flood control and road widenings for

realignments of same along or near property boundaries.[1] Frequently the appraised value of the easement parcel is under $1,000.00. The law of condemnation procedure should take this into account where reasonable to do so.

Your attention to the above problem would be appreciated.

Very truly yours,

THOMAS M. DANKERT

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[1]The filing is necessary on these parcels because many property owners simply refuse to sign away an easement. In addition, to qualify for grant or loan funding, it usually is necessary to meet a construction deadline imposed by granting and/or lending authorities. This necessitates, in turn, filing suit to get an Order for Prejudgment Possession. Most local utility, road and flood control projects are heavily financed by grants from the Federal or State government.