

meeting.

Memorandum No. 3(1960)

Subject: Study No. 36 - Condemnation.

At the January meeting the Commission directed the staff to draft two statutes which would embody the recommendations of the Commission in regard to evidentiary problems in eminent domain cases. Draft I (attached as Exhibit I) provides that value can be proven by opinion evidence only. Draft II (attached as Exhibit II) provides that evidence of market data, income, and reproduction cost less depreciation, etc. is independent evidence of value upon which the trier of fact may base a finding.

Section numbers have been given to the proposed sections, for we believe that it may be necessary to submit portions of our recommendations in regard to eminent domain to the Legislature before the entire study is completed. If it is possible to draft a more comprehensive eminent domain statute prior to the submission of our recommendations to the 1961 Legislature, the numbers of these sections can be revised. Therefore, the suggested numbers may be regarded as tentative.

Section 1845.5 is repealed because its provisions have been incorporated in both drafts.

At the December meeting, motions were adopted indicating that nothing in the proposed statute is to prevent bringing out the reasons for an expert's opinion, whether those reasons are such that a reasonable buyer or seller would rely upon them or not. Therefore, both statutes have been drafted from the viewpoint that the listing of competent evidence -- market data, income, and reproduction cost -- is not an exclusive list. To determine what else is

competent, it will be necessary to refer to existing case law. With this approach, there should be no doubt that evidence of zoning matters, which is admissible now to show highest and best use, will continue to be admissible for the same purpose.

At the December meeting also, it was suggested that a section be included indicating that an expert may give his opinion as to the value of the property as determined by each separate approach, and that each opinion should be regarded as independent evidence of value. Our consultant has recommended that this be omitted from Draft I for the following reasons:

"Customarily the witness expresses one opinion of value, in the formulation of which he had considered the values arrived at by the three approaches. It would undoubtedly be productive of confusion if the expert could say he had three opinions of value."

Of course, such a provision would be redundant in Draft II as all evidence is independent evidence of value in that Draft. If the Commission believes a provision of this nature should be included in Draft I, the following section may be inserted in the statute:

A witness qualified to express an opinion as to the value of the property may separately state his opinion as based upon subsection (1), subsection (2), and subsection (3) of Section 1248.3. Each opinion shall be independent evidence of the value of the property upon which the trier-of-fact may base a finding of the value of the property.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

EVIDENCE IN EMINENT DOMAIN PROCEEDINGS

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

SECTION I. Section 1248.1 is added to the Code of Civil Procedure, to read:

1248.1. The value of the property or property interest sought to be condemned, the damages to property not sought to be condemned but injuriously affected in all cases where such damages are allowed as provided in Section 1248 of this code, and the benefit to property not sought to be condemned from the improvements proposed by the condemnor, may be shown only by the opinions of witnesses qualified to express an opinion as to the value of the property.

SEC. 2. Section 1248.2 is added to the Code of Civil Procedure to read:

1248.2 A witness qualified to express his opinion of the value of the property may, on direct or cross-examination, give the reasons for his opinion. The testimony of the witness as to the reasons for his opinion shall not be barred by the rule against hearsay. The witness may be fully cross-examined upon the reasons for his opinion and upon all matters mentioned on direct examination.

SEC. 3. Section 1248.3 is added to the Code of Civil Procedure to read:

1248.3. The opinion of a witness qualified to express his opinion of the value of the property may be based upon any competent evidence showing the market value of the land for any use to which it is adapted and for which it is available, including but not limited to:

(1) The amount paid or contracted to be paid for the property or property interest sought to be condemned or for any comparable property or property interest in the vicinity thereof if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation.

(2) The capitalized value of the fair income attributable to the property sought to be condemned as distinguished from any business conducted thereon; except that the owner of the property taken or to be taken is not by reason of such ownership qualified to express an opinion of the value of the property upon this basis.

(3) The value of the land, together with the cost of reproducing the improvements thereon, less whatever depreciation the improvements have suffered, functionally or otherwise, if the improvements are adapted to the land; except that the owner of the property sought to be condemned is not by reason of such ownership qualified to express an opinion of the value of the property upon this basis.

SEC. 4. Section 1248.4 is added to the Code of Civil Procedure to read:

1248.4 In rendering his opinion as to highest and best use and market value of the property sought to be condemned the witness may consider and give evidence as to the nature and value of the improvements and the character

of the existing uses being made of the properties in the general vicinity of the property sought to be condemned.

SEC. 5. Section 1248.5 is added to the Code of Civil Procedure to read:

1248.5. The opinion of a witness qualified to express his opinion of the value of the property may not be based on:

(1) The price and other terms of an acquisition of property or interest therein if the acquisition was made by a person or agency that had the power to obtain the property by the power of eminent domain for the purpose for which it was acquired.

(2) An offer made between the parties to the action, or on their behalf, to buy or sell the property or interest therein sought to be condemned, or any part thereof.

(3) The price at which an offer or option to purchase or lease was made, or the price at which property was optioned, offered or listed for sale or lease, except to the extent that an option, offer, or listing to sell or lease the property or interest therein sought to be condemned constitutes an admission of a party to the action.

(4) The assessed valuation of any property.

SEC. 6. Section 1845.5 of the Code of Civil Procedure is repealed.

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

SECTION 1. Section 1248.1 of the Code of Civil Procedure is enacted to read:

1248.1. The value of the property or property interest sought to be condemned, the damages to property not sought to be condemned but injuriously affected in all cases where such damages are allowed as provided in Section 1248 of this code, and the benefit to property not sought to be condemned from the improvements proposed by the condemnor, may be shown by any competent evidence of the market value of the land for any use to which it is adapted and for which it is available, including but not limited to:

(1) The amount paid or contracted to be paid for the property or property interest sought to be condemned or for any comparable property or property interest in the vicinity thereof if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation.

(2) The capitalized value of the fair income attributable to the property sought to be condemned as distinguished from any business conducted thereon.

(3) The value of the land, together with the cost of reproducing the improvements thereon, less whatever depreciation the improvements have suffered, functionally or otherwise, if the improvements are adapted to the land.

SEC. 2. Section 1248.2 is added to the Code of Civil Procedure to read:

1248.2. Evidence of market value, including the evidence mentioned in

Section 1248.1 of this code, is admissible on direct or cross-examination and shall be treated as independent evidence of value upon which the trier of fact may base a finding. Evidence of market value shall not be barred by the rule against hearsay when such evidence is testified to by a witness qualified to express his opinion of value.

SEC. 3. Section 1248.3 is added to the Code of Civil Procedure to read:

1248.3. A witness qualified to express an opinion of the value of the property may base his opinion upon any competent evidence of the value of the property, including the evidence mentioned in Section 1248.1 of this code; except that the owner of the property sought to be condemned is not by reason of such ownership qualified to express an opinion upon the basis of the evidence mentioned in subdivisions (2) and (3) of Section 1248.1 of this code.

SEC. 4. Section 1248.4 is added to the Code of Civil Procedure to read:

1248.4. A witness who has given his opinion of the value of the property may, on direct or cross-examination, state the reasons for his opinion. The witness may be fully cross-examined upon the reasons for his opinion of the value of the property and upon all matters mentioned on direct examination. In rendering his opinion as to highest and best use and market value of the property sought to be condemned the witness may consider and give evidence as to the nature and value of the improvements and the character of the existing uses being made of the properties in the general vicinity of the property sought to be condemned.

SEC. 5. Section 1248.5 is added to the Code of Civil Procedure to read:

1845.5. The following evidence is incompetent upon the issues of market value, damages and special benefits, and a witness qualified to express an opinion of value may not base his opinion upon such evidence:

(1) The price and other terms of an acquisition of property or interest therein if the acquisition was made by a person or agency that had the power to obtain the property by the power of eminent domain for the purpose for which it was acquired.

(2) An offer made between the parties to the action, or on their behalf, to buy or sell the property or interest therein sought to be condemned, or any part thereof.

(3) The price at which an offer or option to purchase or lease was made, or the price at which property was optioned, offered or listed for sale or lease, except to the extent that an option, offer or listing to sell or lease the property or interest therein sought to be condemned constitutes an admission of a party to the action.

(4) The assessed valuation of any property.

SEC. 6. Section 1248.5 of the Code of Civil Procedure is repealed.