

7/11/60

3/11/60

Memorandum No. 25 (1960)

Subject: Study No. 36 - Taking Possession and Passage of Title

A number of policy questions are presented by the Study on Taking Possession and Passage of Title. They may be considered as set forth below:

1. Should the right to immediate possession be extended to all condemners, governmental as well as private? Should a constitutional amendment be sought to insure the validity of the proposed extension of the right?

2. Assuming the right to withdrawal of the deposit by the condemnee is constitutionally required, how should the amount of the deposit be determined? By ex parte hearing on application by condemner? By hearing upon notice to all parties? By ex parte hearing on application by condemner with a right given the condemnee to request a preliminary hearing if the amount set on ex parte application is inadequate?

3. Should the hearing on deposit be held before possession is granted to condemner?

4. Should the deposit be in the amount of the probable compensation or in excess of that amount because of the likelihood that the ultimate award will be in excess of the amount determined?

5. Should title pass with possession in immediate possession cases?

6. How much notice of the immediate possession should be given a condemnee? The consultant's suggestion is to provide a ten day notice which will give the occupant time to petition for a stay in hardship cases or to petition for an increase in the deposit if it is inadequate.

7. Should the condemnee be permitted to withdraw the deposit? If so, what percentage?

8. Should the condemner be permitted to abandon condemnation if granted immediate possession?

9. From what date should interest run? From the date the order of immediate possession is made? From the date that the condemner has the right to take physical possession of the property?

10. When should interest stop running on the deposit? When made? When withdrawn? When the condemnee has the right to withdraw?

11. Should a condemner be permitted to pay an award into court in order to obtain possession and still appeal?

12. When should the risk of loss shift from condemnee to condemner? Upon commencement of proceedings? Upon final order of condemnation? Upon possession?

13. When should the condemnee lose the right to make improvements for which he may be compensated? Upon notice of a pending taking? Upon summons? Upon commencement of the trial?

14. Should interest be the measure of compensation for delay in payment by the condemner?

15. When should interest start running where immediate possession is not taken? From the date of the interlocutory judgment? From the date the right to appeal expires or the appeal is exhausted? From the date of the final order of condemnation? From possession?

16. When should interest stop running? On deposit of the award in court for the condemnee? On withdrawal?

17. Should the condemnee be permitted to withdraw the deposit made

pending appeal?

18. When should a condemnee cease to be liable for taxes? Upon final order of condemnation? Upon possession? Upon either, whichever is earlier?

19. Should taxes which are a lien on the property be prorated? If so, what date should be used as the date of proration -- the date of trial? the date possession is taken? the date of the final order of condemnation?

20. If taxes have been paid at the date of proration, should the condemner be required to include in the sum paid for the property the amount of taxes apportionable to the part of the fiscal year after the date of proration?

21. See pages 69 and 70 of the Study. There are pointed out several problems existing under Revenue and Taxation Code Section 4968. Should consideration of these problems be undertaken at the present time, or should more experience be accumulated under this section first?

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary