

11/10/60

Supplement to Memorandum No. 97 (1960)

Subject: Study No. 36 - Condemnation (Pretrial Conferences and Discovery)

Attached to this memorandum is a letter received from the Department of Public Works. The letter forwarded a draft statute which requires the exchange of comparable sales data prior to trial in condemnation cases. The staff has modified the Public Works statute to incorporate suggestions contained in the letters attached to Memorandum No. 97 (1960).

Public Works indicates that it sees no need for discovery legislation in eminent domain, but it suggests that this form of statute would be more acceptable than the statute tentatively approved.

The Public Works statute requires the exchange of sales data for recorded comparable sales. The statute as modified by the staff requires exchange of:

- (1) The names of the witnesses.
- (2) Information concerning any probable change in zoning.
- (3) Both recorded and unrecorded comparable sales.
- (4) Sales of the subject property.

Unless so extended, the staff believes that the statute suggested by Public Works would serve little useful purpose. Only information that could be obtained by the other party from public records would be disclosed; the very information that should be subject to verification prior to trial would be withheld.

The text of the Public Works statute as revised by the staff follows:

An act to amend and renumber Section 1246.1 of, and to add Section 1246.1
to, the Code of Civil Procedure, relating to eminent domain proceedings.

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

SECTION 1. Section 1246.1 of the Code of Civil Procedure is amended and renumbered to read:

[1246.1] 1246.2. Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said property first determined as between plaintiff and all defendants claiming any interest therein; thereafter in the same proceeding the respective rights of such defendants in and to the award shall be determined by the court, jury, or referee and the award apportioned accordingly. The costs of determining the apportionment of the award shall be allowed to the defendants and taxed against the plaintiff except that the costs of determining any issue as to title between two or more defendants shall be borne by the defendants in such proportion as the court may direct.

SEC. 2. Section 1246.1 is added to the Code of Civil Procedure, to read:

1246.1. (a) In an eminent domain proceeding either party may, not later than 30 days prior to the day set for trial, file with the court and serve on all parties a demand to exchange valuation evidence. Thereafter each party shall, not later than 10 days prior to the day set for trial,

lodge with the clerk of the court a sealed envelope containing:

(1) A statement of the information required by subdivision (b) of this section; and

(2) Sufficient copies of such statement to permit the clerk to transmit a copy to each party.

(b) The statement shall contain:

(1) The identity and location of each witness who will be called by the party to present evidence upon the value of any of the property to be taken or damaged.

(2) A list of the sales of property and other transactions which the party intends to use on direct examination of any witness as evidence to support the opinion of that witness as to the value of the property to be taken or damaged.

(3) Any information to be used by the party to show the probability of a change in the zoning laws applicable to the property to be taken or damaged.

(c) The list of sales and other transactions shall include:

(1) Name of the grantor.

(2) Name of the grantee.

(3) Address of the grantor and grantee, if known.

(4) Location of the property.

(5) Date of the sale or other transaction.

(6) If recorded, the date of recording and the volume and page where recorded.

(7) The consideration for the sale or other transaction.

(d) Except as provided in subdivision (f) of this section, if a demand

to exchange valuation evidence is made pursuant to this section:

(1) No witness may be called to testify for any party upon the value of any property to be taken or damaged if the name of such witness is not included on the statement of the party who calls such witness.

(2) No evidence of sales of property or of other transactions or of the probability of a change in the zoning laws applicable to the property to be taken or damaged is admissible on direct examination to support the opinion of a witness upon the value of any of the property to be taken or damaged if such evidence is not included on the statement of the party who calls the witness.

(e) The clerk of the court, after receipt of all sealed envelopes from all parties, shall open each envelope, file the original of each statement and immediately transmit a copy of each statement to all other parties. Until so filed, such statement is not a public record, is not open to public inspection and may not be disclosed to any party to the proceeding.

(f) This section does not prevent the use by a party of:

(1) Any witness or any information not included on the statement of such party solely for the purpose of rebuttal or cross-examination.

(2) Evidence that could not have been discovered in the exercise of reasonable diligence prior to the date the demand was filed.

(g) The statement filed under this section is not admissible in evidence. No reference or comment may be made before the jury concerning:

(1) The contents of any statement filed pursuant to this section.

(2) Whether or not any party filed or failed to file any statement pursuant to this section.

The above draft should be compared with the federal procedure contained in paragraph (h) on pages 8-10 of the study on pretrial conferences and discovery.

Respectfully submitted,

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