

#65(L)

9/24/65

First Supplement to Memorandum 65-64

Subject: Study No. 65(L) - Inverse Condemnation

Attached (pink page) is a letter from Carley V. Porter, Chairman of the Assembly Interim Committee on Water requesting information concerning the nature and scope of the Commission's study on inverse condemnation and an indication of the tentative schedule and procedures the Commission plans to follow on this project.

Also attached (green pages) is the letter I propose to send to Mr. Porter in response. I will defer sending this letter until after the October meeting in order that the Commission will have an opportunity to consider whether the letter correctly outlines the Commission's plans with respect to this topic. (We will correct the typo in the letter before sending it to Mr. Porter.)

Respectfully submitted,

John H. DeMouilly
Executive Secretary

CALIFORNIA LAW REVISION COMMISSION

ROOM 30, CROTHERS HALL
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305



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September 24, 1965

Honorable Carley V. Porter, Chairman
Assembly Interim Committee on Water
Assembly Box 38
State Capitol, Sacramento

Dear Assemblyman Porter:

This is in response to your recent letter requesting information concerning the nature and scope of the Law Revision's study on the subject of inverse condemnation and an indication of the tentative schedule and procedures the Commission plans to follow in this project.

As you know, the 1965 legislative session adopted Senate Concurrent Resolution No. 80 which directs the Law Revision Commission to study:

Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to liability for inverse condemnation resulting from flood control projects. The study of this topic is necessary because of the magnitude of the potential liability for inverse condemnation under recent decisions of the California courts.

I am delighted to report that the Commission has been able to obtain Professor Arvo Van Alstyne as our consultant on this topic. Professor Van Alstyne is without a doubt the outstanding authority in the United States on the subject of governmental liability. He served as the Commission's consultant on the study of sovereign immunity which resulted in the enactment in 1963 of a series of statutes dealing with that subject.

Professor Van Alstyne plans to commence work early in January 1966 on a comprehensive study covering all of the aspects of inverse condemnation. The first portion of the study will be concerned with the power of the legislature to enact legislation that would limit the liability that now exists for inverse condemnation. We hope to have this portion of the study in the hands of the Commission in time for the Commission to draft a proposed constitutional amendment for the 1967 legislative

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session if it is determined that a constitutional amendment is needed or desirable. The remainder of Professor Van Alstyne's report should be in the hands of the Commission during the early months of 1967.

The Commission hopes to be able to submit its recommendation on this subject to the 1969 legislative session. The Commission contemplates that this recommendation will be the result of a consideration of all aspects of the subject of inverse condemnation. The matters considered will, of course, include problems arising out of flood control projects and flood control damage. If you wish, we can provide you with a more detailed statement of the scope of the study as soon as our research consultant has had an opportunity to prepare an analysis of the problems that are involved.

The Commission plans to request the State Bar to appoint a special Committee to work with the Commission on this project. We also plan to solicit the cooperation of all interested public agencies, organizations, and persons. We anticipate that representatives of the Department of Public Works, the Department of Water Resources, and the office of the Attorney General will attend Commission meetings when this subject is considered and will provide the Commission with information and comments on possible alternative solutions to problems. In addition, we contemplate a wide distribution of tentative recommendations to all interested persons. The comments and suggestions received as a result of this distribution will be taken into account when the recommendation to the Legislature is prepared. Thus, the Commission's recommendation to the Legislature will be made only after all interested persons and organizations have had several opportunities to make known their views on the various aspects of this subject.

Although the procedure outlined above results in a schedule that does not permit the submission of a recommendation to the Legislature prior to 1969, the Commission believes that it is essential that all interested agencies, organizations, and persons be provided with an ample opportunity to make known their views on various aspects of the subject. To a large extent, the same procedure was followed in making the recommendation that resulted in the enactment of the 1963 governmental liability statute which cut down the liability that was created by the court decisions that abolished the doctrine of sovereign immunity.

If possible, the Commission plans to have any recommended legislation available in the form of a preprinted bill prior to the 1969 legislative session in order to permit one or more hearings to be held by interim committees prior to the 1969 session.

We will be delighted to provide you with any additional information you need concerning this project.

Sincerely,

John H. DeMouilly
Executive Secretary