

#36

10/4/65

Memorandum 65-66

Subject: Study No. 36(L) - Condemnation Law and Procedure (Research Contract)

As you have probably noted from Memorandum 65-44, the research study on the Right to Take is inadequate and incomplete. A great deal of additional research will be required to prepare an adequate research study on this portion of the eminent domain assignment.

The staff recommends that we attempt to secure one or two research consultants to prepare an adequate study that will cover all aspects of The Right to Take (as set out in Memorandum 65-44, supplemented by a list of additional matters that fall within this general topic).

Perhaps the most complete portion of California Condemnation Practice is the portion of "Public Use and Necessity." This portion was written by John P. Sparrow (A.B., 1938, Harvard College; LL.B., 1941, Harvard Law School). Mr. Sparrow, who has served as a deputy district attorney of Alameda County and an Assistant United States Attorney, is an associate counsel of The Regents of the University of California and an instructor of law at San Francisco Law School. We suggest that he be approached to serve as a research consultant on this topic. We also suggest that Wilson R. Ogg, who served as the editor of California Condemnation Practice, be approached to serve as a coauthor of the research study on this topic. Although Mr. Sparrow is associated with the University of California and has a background on the condemning agency side, we believe that he would prepare an adequate study, especially if we can persuade Mr. Ogg to serve as a coauthor.

We plan to publish this study as a law review article and to photo-offset the article in our pamphlet containing our tentative recommendation. The

article would be published in the law review with the following note:

This Article was prepared by the authors for the California Law Revision Commission and is published here with the commission's consent. The Article was prepared to provide the commission with background information to assist the commission in its study of condemnation law and procedure. However, the opinions, conclusions, and recommendations contained in this Article are entirely those of the authors and do not necessarily represent or reflect the opinions, conclusions, or recommendations of the California Law Revision Commission.

We recommend that the Executive Secretary be authorized to approach the two persons named to determine if one or both of them is willing to serve as a research consultant. If they are agreeable to serving as research consultants, or if one of them is willing to so serve, we further recommend that the Executive Secretary be authorized to execute on behalf of the Commission a research contract with one or both of them for a total amount of \$2,500, such amount to be apportioned among the two consultants in such manner as they believe is proper.

If the Commission agrees to such a contract, we suggest that the Commission nevertheless consider Memorandum 65-44 at the October meeting so that we will have in mind the matters involved in this aspect of the study of condemnation law and procedure; however, we would defer preparing a tentative recommendation on this subject until the research study is in our hands. We hope that we can have it in our hands not later than September 1, 1966.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary