

Memorandum 68-8

Subject: Study 65 - Inverse Condemnation (Confiscation, Forfeiture, and Destruction to Enforce Regulatory Policies)

This memorandum is concerned with a portion of Part III of the research study on inverse condemnation (pages 81-102, relating to confiscation, forfeiture, and destruction to enforce regulatory policies).

A substantial number of California statutes authorize the uncompensated seizure, forfeiture, or destruction of private property as an enforcement measure in aid of regulatory policies calculated to prevent harmful activities involving the present or prospective use of the property. An illustration of this type of statute is the one that provides for the forfeiture of an automobile used unlawfully to transport or keep narcotics. These statutes incorporate a legislative judgment that a forfeiture of private property rights expediently supplements the more usual sanctions for violations of legislative policy.

The California statutory provisions relevant to this problem (listed on pages 82-89 of the study) incorporate the same diversity of procedural approach as do the measures--considered in Memorandum 68-6--dealing with health and safety hazards. Summary seizure, destruction or forfeiture is sometimes authorized; other provisions require a form of notice, and an interval of time in which remedial proceedings may be instituted by the owner; still others require formal judicial proceedings as a prerequisite to forfeiture; and a few provisions are ambiguous or uncertain.

The constitutional validity of uncompensated confiscation or destruction rests upon a judicial assessment of the reasonableness of the legislative decision to destroy the private property interests at stake in order to promote more effective law enforcement. In this balancing process, the courts necessarily allow the legislature a considerable latitude of choice, and only invoke constitutional limitations in extreme cases.

An examination and analysis of the existing California statutes discloses inconsistencies and incongruities in the authorization of destructive sanctions that present substantial issues of reasonableness deserving of legislative reconsideration. The consultant has concluded that a careful section-by-section consideration of the propriety, desirability, and fairness of uncompensated destruction authorizations could lead to revisions that would substantially improve the rationality and uniformity of the statutory pattern.

A review of the inconsistent standards of procedural administration of seizure, forfeiture, and destruction sanctions demonstrates the need for the development of uniform and efficient procedural techniques for advance adjudication of the existence of facts justifying destruction.

It is apparent that difficult and important problems exist in this area of inverse condemnation law. However, since the problem is closely related to destruction of health and safety menaces (Memorandum 68-6), the staff suggests that consideration of this aspect of inverse condemnation law be deferred until the Commission determines to give detailed study to destruction of health and safety menaces.

Respectfully submitted,

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