

8/25/69

First Supplement to Memorandum 69-86

Subject: Study 36.55 - Condemnation (Arbitration)

You will recall at the last meeting the Commission approved the recommendation relating to arbitration of just compensation for printing. The Commission directed that the recommendation be sent to the various persons and organizations who submitted comments on the earlier tentative recommendation for any additional comments they might wish to make. The topic was to be included on the agenda for the September meeting so that any such comments could be examined before the recommendation is finally printed.

Attached to this Memorandum are four letters commenting on the recommendation. Exhibit I is a letter from Tom Stevens, Regional Director, Los Angeles, of the American Arbitration Association. He believes that the bill is desirable and that the facilities of the Association would be fully available to handle arbitrations for agencies and owners that might wish to use its facilities. Exhibit II is another letter from Gerald B. Hansen, who you will recall wrote a long letter (previously considered) pointing out the undesirable aspects of arbitration in general and expressing the view that it should not be used in eminent domain cases. Exhibit III is a letter from the Chairman of the State Bar Committee on Governmental Liability and Condemnation. The Chairman indicates that the Committee will not have an opportunity to further comment on this subject prior to our September meeting but that individual members will send us any comments they may desire to send. (We received none.) Exhibit IV is a letter from Robert D. Charlebois, Regional Director, American Arbitration

Association, San Francisco. He believes that the recommendation is desirable legislation except he would require payment of one-half of the expenses of the arbitration by the condemnee unless the parties otherwise agree or the arbitrator otherwise determines. You will recall that the Commission devoted a considerable amount of time to the discussion of this particular problem. The staff suggests that no change be made in the recommendation in response to this comment.

The staff suggests that the recommendation be finally approved for printing as set out in the attached galley proof (after any typographical errors are corrected).

Respectfully submitted,

John H. DeMouilly
Executive Secretary



american arbitration association

TOM STEVENS
REGIONAL MANAGER

2333 BEVERLY BOULEVARD • LOS ANGELES, CALIFORNIA 90057
(AREA CODE 213) 381-6511
PLEASE REPLY TO P. O. BOX 57994

August 19, 1969

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

This is to reply to your letter of July 31, 1969, in connection with your Commission's recommended bill as to Arbitration of Just Compensation.

I have reviewed the recommendation and explanatory material with Robert Coulson, Executive Vice President of this Association. We believe that the bill would provide a useful alternative to condemning agencies and land owners, under which prompt and equitable evaluations could be obtained to their mutual benefit. Passage of such a bill would therefore be a public service. The facilities of this Association would be fully available to handle arbitrations for agencies and owners that wish us to administer such cases.

Very truly yours,

Tom Stevens
Regional Director

TS/rf

HEADQUARTERS

140 WEST 51ST STREET, NEW YORK, N. Y. 10020

REGIONAL OFFICES IN

BOSTON • CHARLOTTE • CHICAGO • CINCINNATI • CLEVELAND • DALLAS • DENVER • DETROIT • HARTFORD • LOS ANGELES • MIAMI
MINNEAPOLIS • NEW YORK • PHILADELPHIA • PITTSBURGH • SAN DIEGO • SAN FRANCISCO • SEATTLE • SYRACUSE • WASHINGTON, D. C.

RICHARD V. BRESSANI
(1984-1989)

LAW OFFICES OF
BRESSANI, HANSEN, SHUH & BLOS
1205 BANK OF AMERICA BUILDING
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 294-0808

GERALD B. HANSEN
CLARENCE J. SHUH
RICHARD B. BLOS

August 1, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: John H. DeMouly, Executive Secretary

Re: Voluntary Arbitration in Condemnation

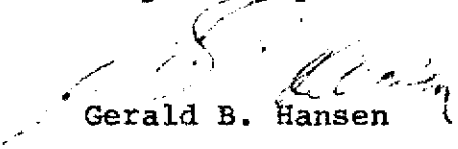
Gentlemen:

In response to your suggestion for comment on your tentative recommendation as of July 31, 1969, please be advised that I think the Commission should be addressing itself to more important problems.

I still believe the six specific substantive objections listed in my letter of April 14, are still valid.

If the Commission believes in the rule of law, as I do, to obtain a just rather than an arbitrary result, why does it move in the direction of an arbitrary proceeding called arbitration?

Very truly yours,


Gerald B. Hansen

GBH:bl

JOSEPH D. PEELER
JOHN M. ROBINSON
MELVIN D. WILSON
DAVID P. EVANS
JAMES F. LUDLAM
GERALD G. KELLY
JESSE R. O'MALLEY
BRUCE E. CLARK
MURRAY S. HARVIN
STUART T. PEELER
BRUCE A. BEVAN, JR.
RALPH E. ERICKSON
CHARLES F. FORBES
THOMAS J. REILLY
RICHARD T. APPEL
GEORGE C. HADLEY
THOMAS M. COLLINS
PETER C. BRADFORD
DONALD J. DREW

RICHARD D. DEAR
LEONARD C. CANTRO
J. PATRICK WHALLEY
MICHAEL W. CONLON
MICHAEL M. MURPHY
WILLIAM J. ZIMMEL
EDWARD A. LANZRY
JOHN R. BROWNING
DONALD R. GAIL
C. ROBERT FERGUSON
LAUDER W. WOODS
JOSEPH A. SAUNDERS
RONALD G. TRAINER
JEFFREY R. WATSON
ROBERT E. THOMPSON
ROGER D. BAYMILLER
FRANK V. SMITH, JR.
DALE C. GUTHRIE
LAWRENCE E. STICKNEY

ELLEN MUSICK
1930-1993

CLARA A. GARRETT
1908-1983

MORTIMER A. ALINE
OF COUNSEL

MUSICK, PEELER & GARRETT
ATTORNEYS AT LAW
ONE WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 629-3322
CABLE "PEELGAR"

July 31, 1969

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Committee on Governmental
Liability and Condemnation

Dear Mr. DeMouilly:

I have for acknowledgment your letter of July 30, 1969, concerning the subject matter of litigation expenses in condemnation and the recommendation of your Commission relating to arbitration of just compensation.

For your information, the next meeting of our Committee will not take place until the 3rd Saturday in October next and, accordingly, it will not be possible for this Committee to review your recommendations and advise you in connection therewith by August 27 as you requested. However, I have forwarded this material to each member of the Southern Section of this Committee who may, if they desire, send their individual comments to you which, of necessity, are not to be taken as an expression of the opinion of the Committee.

Very truly yours,

George C. Hadley
Chairman

GCH:mmm

August 21, 1969

State of California
California Law Revision Commission
Attn: Mr. John H. DeMouilly, Executive Secretary
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

I have read the recommendation relating to arbitration in Eminent Domain Proceedings.

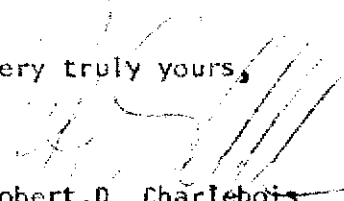
The recommendation appears to be thorough and should be a useful tool for public agencies acquiring land, as well as protecting the rights of condemnees. I do have one suggestion however relating to the costs of arbitration. If the arbitrator's compensation is paid solely by the condemnor, a presumption of bias may be created. It might be a better choice to have the arbitrator make a determination as to who should bear the fees and expenses of the arbitration, excluding his own fee and that of witnesses; and in so doing, remove the possibility of bias. The condemnor however might be required to advance all of the fees for the arbitration, therefore eliminating the possibility of a financial barrier to the condemnee. The better rule would be that which is taken by the American Arbitration Association in Section 47 of their Eminent Domain Arbitration Rules; that is, "all other expenses of the arbitration including required traveling and other expenses of the arbitrator,...the expenses of any witnesses or the cost of any proof produced at the direct request of the arbitrator, and the fees and expenses of the escrow, if any, shall be borne equally by the parties unless they agree otherwise, or unless the arbitrator in his award assesses such expenses or any part thereof against any specified party or parties." The key words being that they are to be borne equally by the parties unless they agree otherwise. Under these circumstances, it would allow the condemnor to enter into an agreement, providing the condemnee is agreeable, where the condemnor would pay all of the expenses as described in Section 1273.02 Subsection A.

An additional reason for requiring some payment by the condemnee is the possibility that many, if not all condemnees, would bring an action for a determination of their property value. The reason for requesting the arbitration being that they would have, in fact, nothing to lose. They would have the initial offer by the condemnor plus the condemnor would be paying for all of the arbitration, and the only question to be resolved by arbitration would be whether the condemnee gets

more than the original offer. This could cause the acquiring agency a considerable increase in costs and time.

I would appreciate receiving any changes or revisions which are made to the recommendation, and will look forward to seeing it introduced in the 1970 legislature.

Very truly yours,


Robert D. Charlebois
Regional Director

RDC/ovj