

#36.60

12/19/69

First Supplement to Memorandum 69-148

Subject: Study 36.60 - Condemnation (Relocation Assistance)

Although comments were not specifically solicited, attached to this memorandum is a copy of a letter (Exhibit I) from Mr. Robert McNamee, an attorney who received Memorandum 69-148 through our normal condemnation distribution, commenting on the very tentative suggestions proposed by the staff in regard to relocation assistance.

The contents of the letter are self-explanatory. With respect to the point made concerning the effects of the proposed taking on income-producing property, the staff recognizes Mr. McNamee's concern but does not believe the issue is one properly dealt with in connection with relocation assistance. For example, one possible partial solution would permit the condemnee to compel the taking of immediate possession but this obviously would be, at best, peripheral to the payment of moving expense. The staff suggests that consideration of the problem raised be deferred until the Commission starts work on the broader problem of compensation generally.

The staff feels similarly with respect to Section 7265. As the original memorandum points out, this section has nothing to do with relocation expense. However, contrary to Mr. McNamee's suggestion, we do not believe the section should be eliminated but simply, for the most part, ignored for the time being. The section may permit some owners to be compensated where, without the section, they would not be. We do not think the section will limit compensation that would otherwise be granted.

In short, the "wedge" if there is one, is in favor of, rather than opposed to the property owner, and we believe the section can safely be retained.

Respectfully submitted,

Jack I. Horton
Associate Counsel

1st Supp.
Memo 69-148

EXHIBIT I

McNAMEE, NEIL & MELINO
ATTORNEYS AT LAW
408 WEST HEDDING STREET
SAN JOSE, CALIFORNIA 95110
TELEPHONE 408-295-1866

ROBERT P. McNAMEE
JAMES B. NEIL
JOSEPH C. MELINO

AFFILIATE
WILLYS I. PECK
20468 SARATOGA-LOS GATOS ROAD
SARATOGA, CALIFORNIA 95070
TELEPHONE 408-867-1685

December 17, 1969

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

RE: Your Memorandum 69-148 (Relocation Assistance)

Gentlemen:

I reviewed your memorandum and your proposed changes in the existing law and commend your efforts to obtain relocation assistance for owners and tenants, and I have a few comments to make, perhaps of a minor nature, and one or two about which I feel strongly. The separation of moving expenses from loss of profit reimbursement is desirable. However, I do not think that the loss of profits should be an "in lieu" payment. Obviously, the displaced business in most instances will suffer both moving expenses and loss of profit and I suggest that it should be mandatory that it be compensated for both.

Proposed Section 7264 concerning supplementary payments to occupants who do not own the property is fair in its concept. I do not think the payment should be optional on the part of the acquirer. I do not understand the rationale of limiting payments to individuals who occupy the premises for not less than ninety days prior to the first written offer. Since the offer will go to the owner of the property, the tenant who moves in unknowingly within the ninety day period would be penalized.

I rather strongly object to the failure to give any consideration to a practical problem which to me is very important to the owners of the property in connection with relocation assistance. There is often a long delay between the time of the first offer or commencement of negotiations concerning the property and the time in which the acquirer acquires legal title to the property either through grant deed, judgment or order for immediate possession.

December 17, 1969

Obtaining the replacement facilities by the owner or evacuation of the premises by the tenants puts the owner in the undesirable position of paying taxes and insurance on the premises until the fair market price is agreed upon. Further, the uncertainty of the length of tenancy results either in an increased vacancy factor, or total vacancy or a reduced amount of rent from those who are willing to stay until actually dispossessed. All these factors produce a reduced rental income from the property which is reflected in its value when an income analysis is made. The acquirers adopt the position that the explanation of reduced rental income is because of the effect of the proposed condemnation and is not admissible in a court trial determining the evaluation. This leaves the owner in a position of receiving no income and paying taxes and insurance until he can receive the fair value or receive a reduced income which is used to diminish the effect of the contention of what is the fair value. I think, at least in connection with displacement costs, the acquirer should pay the taxes and insurance from the time the property is vacated.

I agree with your comment that Section 7265 concerning owners of the affected property has no proper place in connection with proposed legislature having to do with displacement costs. Consequently, I do not see the advisability of keeping it in. Moreover, payments to owners of affected property involve two concepts: (1) Are owners of affected property entitled to compensation? and (2) If owners of affected property are entitled to compensation, this is surely a problem of valuation.

Under certain circumstances owners of affected property are presently entitled to compensation. Thus, Section 7265 allows the acquirer to determine both legal rights and valuation which I feel should be handled elsewhere. This section would be an opening wedge to deprive owners of their present right to have their legal rights and valuation determined by courts of law and starts a very undesirable trend to replace the present system with an administrative bureaucracy controlled by the acquirers.

In this latter connection, I think the Law Revision Commission should take a strong and forceful stand by recommending the elimination of Section 7265 and subsequently coming up with a new proposed legislation in harmony with the concept of giving just compensation to owners of affected property. Again, this concept should be enlarged and should be treated in the same manner as the condemnation of any other property interest.

Very truly yours,


Robert F. McNamee