

Memorandum 70-9

Subject: Study 36.¹⁰⁵ - Condemnation (Right to Take--Joint Exercise of Power of Eminent Domain)

The Joint Powers Agreements Act provides a procedure whereby several public agencies may jointly exercise a power common to all the agencies. For example, sewerage facilities might be required for a state park, for several cities, and for residents of several special districts. All of these agencies have the power to provide for sewerage facilities. They could, therefore, under the Joint Powers Agreements Act, enter into an agreement to provide a single, joint facility that would serve all the agencies.

The extent of the right of eminent domain under a joint powers agreement is not clear. Apparently, each of the public agencies must have authority to condemn for the particular use if the joint exercise of the power is to be permitted under the agreement. (But see Education Code Section 15007.5, discussed below.)

The joint acquisition of a particular parcel will often be of significant benefit to several agencies not only where a joint facility is contemplated but also where each of the agencies requires a portion of the parcel for its own purposes. Such joint acquisition avoids the need for several separate condemnation actions, minimizes the cost of acquisition (since the entire parcel is taken in one action and the need to determine "severance damages" and "special benefits" is avoided), and facilitates joint planning for the development of the parcel so acquired.

There is no general authority for joint acquisition under the Joint Powers Agreements Act unless the condemnation power being exercised is a power common to all the agencies. However, where a school district is involved,

Education Code Section 15007.5 permits joint exercise of the powers of eminent domain, whether or not possessed in common, for the acquisition of real property. Section 15007.5 provides:

15007.5. The governing board of any school district may enter into an agreement with the governing body of any public agency for the joint exercise by such school district and such agency of their respective powers of eminent domain, whether or not possessed in common, for the acquisition of real property as a single parcel. Such agreement shall be entered into and performed pursuant to the provisions of Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, and each public agency therein designated is authorized to enter into such an agreement with the governing board of any school district for such purpose.

There are a number of other special statutes that contemplate joint projects involving the exercise of the power of eminent domain.

If the authority provided in Section 15007.5 were generalized to apply to all public agencies under the Joint Powers Agreements Act, there should be a saving to public agencies in property acquisition, a benefit to the public from increased joint planning and utilization of property to be acquired for public use, and no detrimental effect on the property owner whose property would be acquired pursuant to such authority. Accordingly, the staff recommends that a section be included in the comprehensive eminent domain statute, to read:

(a) As used in this section, "public agencies" includes all those agencies included within the definition of "public agency" in Section 6500 of the Government Code.

(b) Two or more public agencies may enter into an agreement for the joint exercise of their respective powers of eminent domain, whether or not possessed in common, for the acquisition of real property as a single parcel. Such agreement shall be entered into and performed pursuant to the provisions of Chapter 5

(commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

If this section were enacted, Section 15007.5 of the Education Code could be repealed.

The Joint Powers Agreements Act (Government Code Sections 6500-6514) is attached as Exhibit I to permit convenient reference.

If the Commission concludes that general legislation on this matter is desirable, the staff will prepare a tentative recommendation for consideration at the March meeting with the hope that it can be distributed for comment after the March meeting.

Respectfully submitted,

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GOVERNMENT CODE PROVISIONS

Article 1

JOINT POWERS AGREEMENTS

Sec.

- 6500. Public agency definition.
- 6501. Approval of department or director of general services.
- 6502. Authority for agreement; out of state agencies.
- 6503. Contents of agreement.
- 6504. Contributions; payments and advances; use of personnel, equipment or property.
- 6505. Accountability; reports.
- 6505.1 Bonding persons having access to property [New].
- 6505.5 Treasurer; designation as depository; duties; auditor [New].
- 6506. Agency to administer agreement; providing or exchange of services.
- 6507. Administering agency as separate public entity.
- 6508. Power of administering agency, scope and exercise.
- 6508.1 Obligations of agency [New].
- 6509. Power of administering agency, restrictions.
- 6509.5 Investment of surplus funds [New].
- 6510. Duration; method of rescission or termination.
- 6511. Disposition of property.
- 6512. Surplus money.
- 6512.1 Repayment or return of contributions, payments or advances.
- 6513. Privileges and immunities; exemptions, benefits.
- 6514. Agencies relating to mentally retarded; authority to enter into agreements.

Article 1 was added by Stats.1949, c. 84, p. 329, § 1.

§ 6500. Public agency, definition

As used in this article, "public agency" includes the federal government or any federal department or agency, this state, an adjoining state or any state department or agency, a county, county board of education, city, public corporation, or public district of this state or an adjoining state.

(Amended by Stats.1968, c. 874, p. 1665, § 1.)

§ 6501. Approval of department or director of general services. This article does not authorize any state officer, board, commission, department, or other state agency or institution to make any agreement without the approval of the Department of General Services or the Director of General Services if such approval is required by law. (Added Stats.1949, c. 84, p. 330, § 1, as amended Stats.1965, c. 371, p. 1516, § 94.)

§ 6502. Authority for agreement; out of state agencies. If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies may be located outside this State. (Added Stats.1949, c. 84, p. 330, § 1, as amended Stats.1951, c. 680, p. 1888, § 2.)

§ 6503. Contents of agreement. The agreements shall state the purpose of the agreement or the power to be exercised. They shall provide for the method by which the purpose will be accomplished or the manner in which the power will be exercised. (Added Stats.1949, c. 84, p. 330, § 1.)

§ 6504. Contributions; payments and advances; use of personnel, equipment or property. The parties to the agreement may provide that (a) contributions from the treasuries may be made for the purpose set forth in the agreement, (b) payments of public funds may be made to defray the cost of such purpose, (c) advances of public funds may be made for the purpose set forth in the agreement, such advances to be repaid as provided in said agreement, or (d) personnel, equipment or property of one or more of the parties to the agreement may be used in lieu of other contributions or advances. The funds may be paid to and disbursed by the agency or entity agreed upon. (Added Stats.1949, c. 84, p. 330, § 1, as amended Stats.1957, c. 942, p. 2164, § 2; Stats.1963, c. 990, p. 2252, § 1.)

§ 6505. Accountability; reports; audits

The agreement shall provide for strict accountability of all funds and report of all receipts and disbursements.

In addition, and provided a separate agency or entity is created, the public officer performing the functions of auditor or controller as determined pursuant to Section 6505.5, shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every agency or entity. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26300 of the Government Code and shall conform to generally accepted auditing standards.

Where an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the contracting parties to the agreement and also with the county auditor of the county in which each of the contracting parties is located. Such report shall be filed within 12 months of the end of the fiscal year under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this section shall be borne by the agency or entity and shall be a charge against any unencumbered funds of the agency or entity available for the purpose.

All agencies or entities whose annual budget does not exceed five hundred dollars (\$500), may, by unanimous request of the governing body thereof, with unanimous approval of the contracting parties replace the annual special audit with an audit covering a two-year period.

(Amended by Stats.1968, c. 972, p. 1857, § 1.)

§ 6505.1 Bonding persons having access to property

The contracting parties to an agreement made pursuant to this chapter shall designate the public officer or officers or person or persons who have charge of, handle, or have access to any property of the agency or entity and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the contracting parties.

(Added by Stats.1968, c. 972, p. 1858, § 2.)

§ 6505.5 Treasurer; designation as depositary; duties; auditor

If a separate agency or entity is created by the agreement, the agreement shall designate the treasurer of one of the contracting parties, or in lieu thereof, the county treasurer of a county in which one of the contracting parties is situated to be the depositary and have custody of all the money of the agency or entity, from whatever source.

The treasurer so designated shall:

(a) Receive and receipt for all money of the agency or entity and place it in the * * * treasury of the treasurer so designated to the credit of the agency or entity;

(b) Be responsible upon his official bond for the safekeeping and disbursement of all agency or entity money so held by him;

(c) Pay, when due, out of money of the agency or entity so held by him, all sums payable on outstanding bonds and coupons of the agency or entity;

(d) Pay any other sums due from the agency or entity from agency or entity money, or any portion thereof, only upon warrants of the public officer performing the functions of auditor or controller who has been designated by the agreement; and

(e) Verify and report in writing on the first day of July, October, January, and April of each year to the agency or entity and to the contracting parties to the agreement the amount of money he holds for the agency or entity, the amount of receipts since his last report, and the amount paid out since his last report.

The officer performing the functions of auditor or controller shall be of the same public agency as the treasurer designated depositary pursuant to this section. He shall draw warrants to pay demands against the agency or entity when the demands have been approved by any person authorized to so approve in the agreement creating the agency or entity.

The governing body of the same public entity as the treasurer and auditor specified pursuant to this section shall determine charges to be made against the agency or entity for the services of the treasurer and auditor.

(Added by Stats.1968, c. 972, p. 1858, § 3. Amended by Stats.1969, c. 375, p. —, § 1.)

§ 6506. Agency to administer agreement; providing or exchange of services. The agency or entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement or a commission or board constituted pursuant to the agreement or a person, firm or corporation designated in the agreement. One or more of the parties may agree to provide all or a portion of the services to the other parties in the manner provided in the agreement. The parties may provide for the mutual exchange of services without payment of any consideration other than such services. (Added Stats.1949, c. 84, p. 330, § 1, as amended Stats.1957, c. 330, p. 969, § 1; Stats.1963, c. 990, p. 2252, § 2.)

§ 6507. Administering agency as separate public entity. For the purposes of this article, the agency is a public entity separate from the parties to the agreement. (Added Stats.1949, c. 84, p. 330, § 1, as amended Stats.1963, c. 990, p. 2252, § 3.)

§ 6508. Power of administering agency, scope and exercise

The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. If the agency is not one or more of the parties to the agreement but is a public entity, commission or board constituted pursuant to the agreement and such agency is authorized, in its own name, to do any or all of the following: to make and enter contracts, or to employ agents and employees, or to acquire, construct, manage, maintain or operate any * * * building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations, said agency shall have the power to sue and be sued in its own name.

The governing body of any agency having the power to sue or be sued in its own name, created by an agreement entered into after the amendment to this section at the 1960 Regular Session of the Legislature, between parties composed exclusively of parties which are cities, counties, or public districts of this state, irrespective of whether all such parties fall within the same category, may as provided in such agreement, and in any ratio provided in the agreement, be composed exclusively of officials elected to one or more of the governing bodies of the parties to such agreement. Any existing agreement composed of parties which are cities, counties or public districts which creates a governing board of any agency having the power to sue or be sued may, at the option of the parties to the agreement, be amended to provide that the governing body of the created agency shall be composed exclusively of officials elected to one or more of the governing boards of the parties to such agreement in any ratio agreed to by the parties to the agreement. The governing body so created shall be empowered to delegate its functions to an advisory body or administrative entity for the purposes of program development, policy formulation, or program implementation, provided, however, that any annual budget of the agency to which the delegation is made must be approved by the governing body of the Joint Powers Agency.

In the event that such agency enters into further contracts, leases or other transactions with one or more of the parties to such agreement, an official elected to the governing body of such party may also act in the capacity of a member of the governing body of such agency.

(Amended by Stats.1968, c. 972, p. 1859, § 4; Stats.1969, c. 966, p. —, § 1.)

§ 6508.1 Obligations of agency

If the agency is not one or more of the parties to the agreement but is a public entity, commission or board constituted pursuant to the agreement, the debts, liabilities and obligations of the agency shall be debts, liabilities and obligations of the parties to the agreement, unless the agreement shall specify otherwise.

(Added by Stats.1968, c. 972, p. 1859, § 5.)

§ 6509. Power of administering agency, restrictions. Such power is subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement. (Added Stats.1949, c. 84, p. 330, § 1.)

§ 6509.5 Investment of surplus funds

Any separate agency or entity created pursuant to this chapter shall have the power to invest any money in the treasury pursuant to Section 6505.5 that is not required for the immediate necessities of the agency or entity, as the agency or entity determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code.

(Added by Stats.1968, c. 972, p. 1890, § 6.)

§ 6510. Duration; method of rescission or termination. The agreement may be continued for a definite term or until rescinded or terminated. The agreement may provide for the method by which it may be rescinded or terminated by any party. (Added Stats.1949, c. 84, p. 330, § 1.)

§ 6511. Disposition of property. The agreement shall provide for the disposition, division, or distribution of any property acquired as the result of the joint exercise of powers. (Added Stats.1949, c. 84, p. 330, § 1.)

§ 6512. Surplus money. The agreement shall provide that after the completion of its purpose, any surplus money on hand shall be returned in proportion to the contributions made. (Added Stats.1949, c. 84, p. 330, § 1.)

§ 6512.1 Repayment or return of contributions, payments or advances. If the purpose set forth in the agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide (a) for the repayment or return to the parties of all or any part of any contributions, payments or advances made by the parties pursuant to Section 6504 and (b) for payment to the parties of any sum or sums derived from the revenues of said facilities. Payments, repayments or returns pursuant to this section shall be made at the time and in the manner specified in the agreement and may be made at any time on or prior to the rescission or termination of the agreement or the completion of the purpose of the agreement. (Added Stats.1957, c. 942, p. 2164, § 3.)

§ 6513. Privileges and immunities, exemptions, benefits. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extra-territorially under the provisions of this article. (Added Stats.1949, c. 560, p. 1046, § 2.)

§ 6514. Agencies relating to mentally retarded; authority to enter into agreements. Any state department or agency concerned with the provisions of services or facilities to mentally retarded persons and their families may enter into agreements under this chapter. (Added Stats.1965, c. 1244, p. 3112, § 2.)