

1/19/70

## Memorandum 70-12

Subject: Study 36 - Condemnation (Right to Take--The Right to Condemn for Educational Purposes).

A relatively simply part of the right to take aspect of condemnation is the right to condemn for educational purposes. It is covered by the attached staff prepared background study.

This memorandum is concerned only with the statement of the right to condemn. It is not concerned with the property interest to be acquired, with the public necessity for the taking, or other matters; these are matters that will be considered separately.

The statutory provisions herein recommended by the staff are designed (1) to supersede condemnation authority granted by Section 1238 of the Code of Civil Procedure (which we must repeal) and (2) to provide a clear statement of the condemnation authority so that disputes may be avoided as to whether such authority exists in particular cases.

SCHOOL DISTRICTS

Exhibit I (pink) contains the provisions needed to cover the grant of the power of eminent domain to school districts.

Section 1047. Section 1047 is a general provision that states the power of a school district to condemn necessary property. For a discussion of the effect of the section, see the Comment to the section.

Section 1048. This section continues existing law. It is included here merely so that related provisions will be collected in the appropriate part of the Education Code.

Repeals. The reason for the repeal of the various sections set out in Exhibit I is stated in the Comment to each such repealed section.

#### STATE COLLEGE SYSTEM

Exhibit II (yellow) contains the provision needed to cover the grant of the power of eminent domain to the Trustees of the California State Colleges. Section 23619 is consistent with other grants of condemnation authority to the trustees and probably merely clarifies, rather than expands, their condemnation authority. Nevertheless, the clear grant will avoid disputes that might arise from a detailed listing of various projects for which the power of eminent domain may be exercised.

#### UNIVERSITY OF CALIFORNIA

Exhibit III (green) amends Education Code Section 23151 to make clear that the Regents of the University of California may condemn any property necessary to carry out the functions of the University. The amendment probably merely clarifies, rather than expands, their condemnation authority. Nevertheless, the clear grant will avoid disputes that might arise as to whether the phrase "buildings and grounds" is broad enough to cover all uses for which property might be sought. It is assumed that a general provision in the comprehensive statute will make clear that "property" includes "any interest in property."

#### NONPROFIT EDUCATIONAL INSTITUTIONS OF COLLEGIATE GRADE

Exhibit IV (gold) contains the provision needed to cover the grant of the power of eminent domain to private colleges. This provision continues existing law. In the case of condemnors that are not public entities, we plan to state in the condemnation authorization statutes the property interest that they may acquire for public use.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

EXHIBIT I

SCHOOL DISTRICTS

§ 1047. Power of eminent domain

Sec. . Section 1047 is added to the Education Code, to read:

1047. Subject to any limitations specifically imposed by statute, the governing board of any school district may condemn any property necessary to carry out any of the powers or functions of the district.

Comment. Section 1047 supersedes the grant of condemnation authority formerly contained in subdivision 3 of Section 1238 of the Code of Civil Procedure (condemnation authorized for "public buildings and grounds for the use . . . of any . . . school district"). It continues the prior authority of school districts to condemn for school purposes. E.g., Hayward Union High School Dist. v. Madrid, 234 Cal. App.2d 100, 121, 44 Cal. Rptr. 268, (1965)("The district had the right to condemn for any school purpose and on acquisition, to change to some other school purpose any time during its ownership of the property."). Kern County High School Dist. v. McDonald, 180 Cal. 7, 179 P. 180 (1919). See also Anaheim Union High School Dist. v. Vieria, 241 Cal. App.2d 169, 51 Cal. Rptr. 94 (1966) (future use); Hayward Union High School Dist. v. Madrid, supra (temporary use for school purposes with resale to follow within several years); Woodland School Dist. v. Woodland Cemetery Ass'n, 174 Cal. App.2d 243, 344 P.2d 326 (1959)(school purposes may be a more necessary public use than private cemetery).

The introductory clause of Section 1047 recognizes that specific limitations may be imposed on the exercise of the power of eminent domain. See Education Code Section 1048.

Section 1047 grants a school district (defined in Section 41) the power of eminent domain to acquire any property necessary to carry out any of the powers or functions of the district. Thus, for example, a school district may condemn property outside its boundaries, subject to such limitations as are provided by statute, even though the pertinent statute does not expressly grant the district the power of eminent domain. E.g., Education Code Section 15009. It should be recognized, however, that a school district is an agency of limited authority and may engage in only those functions authorized by statute. E.g., Yreka Union High School Dist. v. Siskiyou Union High School Dist., 227 Cal. App.2d 666, 39 Cal. Rptr. 112 (1964); Uhlmann v. Alhambra City High School Dist., 221 Cal. App.2d 228, 34 Cal. Rptr. 341 (1963).

In some cases, a particular statute may expressly grant school districts the power of eminent domain for a particular purpose. E.g., Education Code Section 6726. These specific grants of condemnation authority are not to be construed to limit the broad grant of such authority under Section 1047.

Private schools which are not of the collegiate grade may not exercise the power of eminent domain. Yeshiva Torath Emeth Academy v. University of So. Calif., 208 Cal. App.2d 618, 25 Cal. Rptr. 422 (1962). It is also not permissible for a private citizen to acquire property by eminent domain for the operation of a public school. People v. Oken, 159 Cal. App.2d 456, 324 P.2d 58 (1958).

§ 1048. Acquisition of property for utility purposes

Sec. . Section 1048 is added to the Education Code, to read:

1048. The governing board of a school district may acquire property in an adjoining school district by lease, or purchase and dispose of such property in the same manner as property within the boundary of the district is purchased and disposed of, where the acquisition of such property is deemed necessary by the governing board for use as garages, warehouse, or other utility purposes.

The power of eminent domain shall not be applicable and such acquisitions by purchase shall be subject to the approval of the governing board of school district in which the property is located.

Comment. Section 1048 continues without change the provisions of former Education Code Section 16003.

§ 1238

Code of Civil Procedure Section 1238

Note: Section 1047, to be added to the Education Code, will supersede the phrase "school district" in subdivision 3 of Section 1238 of the Code of Civil Procedure. Since it is planned to repeal all of Section 1238 as a result of the Commission's comprehensive study, no conforming amendment of Section 1238 is set out here.

§ 1238.7

Sec. . Section 1238.7 of the Code of Civil Procedure is repealed.

~~1238.7.--Subject-to-the-provisions-of-this-title,-the-right  
of-eminant-domain-may-be-exercised-in-behalf-of-the-following  
public-uses:~~

~~1.--Property-as-a-source-of-earth-fill-material-for-use-in-the  
development-of-a-school-site-by-a-school-district-which-is-situated  
wholly-or-partly-within-a-city-or-city-and-county-having-in-excess  
of-750,000-population-and-an-average-population-per-square-mile-of  
more-than-4,500-persons.~~

Comment. Section 1238.7 is repealed as unnecessary since Section 1047, which is added to the Education Code, permits condemnation of any property necessary to carry out the functions of the district and therefore would permit condemnation of an earth fill source.

§ 15007.5

Sec. . . Section 15007.5 of the Education Code is repealed.

~~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.~~

Comment. This section will be superseded by a general provision in the comprehensive condemnation statute.



§ 16003

Sec. . Section 16003 of the Education Code is repealed.

~~16003.--The governing board of a school district may acquire property in an adjoining school district by lease, or purchase and dispose of such property in the same manner as property within the boundary of the district is purchased and disposed of, where the acquisition of such property is deemed necessary by the governing board for use as garages, warehouse, or other utility purposes.~~

~~The power of eminent domain shall not be applicable and such acquisitions by purchase shall be subject to the approval of the governing board of school district in which the property is located.~~

Comment. Section 16003 is superseded by Section 1048 of the Education Code.

EXHIBIT II

STATE COLLEGE SYSTEM

Sec. . Section 23619 is added to the Education Code, to read:

23619. Subject to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the trustees may condemn any property necessary to carry out any of the powers or functions of the state colleges.

Comment. Section 23619 supersedes subdivision 2 of Section 1238 of the Code of Civil Procedure ("public buildings and grounds for the use of a state, or any state institution") insofar as that subdivision may relate to the state college system. The phrasing of Section 23619 is based in part on subdivision (a) of Section 24503 of the Education Code, which grants the right of eminent domain to acquire property necessary for dormitories or other housing facilities, boarding facilities, student union or activity facilities, vehicle parking facilities, or any other auxiliary or supplemental facilities for individual or group accommodation for use by students, faculty members, or other employees of any one or more state colleges. Section 23619 covers not only the facilities covered by Section 24503 but also all other buildings and grounds necessary to the state college system.

Code of Civil Procedure Section 1238

Note: Section 23619, to be added to the Education Code, will supersede the phrase "public buildings and grounds for the use of a state, or any state institution" in subdivision 2 of Section 1238 of the Code of Civil Procedure insofar as that subdivision relates to the buildings and grounds of the state college system. Since it is planned to repeal all of Section 1238 as a result of the Commission's comprehensive study, no conforming amendment of Section 1238 is set out here.

EXHIBIT III

UNIVERSITY OF CALIFORNIA

Sec. . Section 23151 of the Education Code is amended to read:

23151. The Regents of the University of California may condemn any property ~~or interest therein for the public buildings and grounds~~ necessary to carry out any of the powers or functions of the University of California ~~under the provisions of the Code of Civil Procedure relating to eminent domain~~ . The Regents of the University of California shall not commence any such proceeding in eminent domain unless it first adopts a resolution by a two-thirds vote declaring that the public interest and necessity require the acquisition, construction or completion by the Regents of the University of California of the public improvement for which the property or interest therein is required and that the property or interest therein described in such resolution is necessary for the public improvement.

Comment. Section 23151 is amended to make clear that the condemnation authority of the Regents of the University of California is broad enough to acquire all property necessary to carry out the functions of the University of California even though the property is to be acquired for a project that does not clearly fall within the former language "public buildings and grounds of the University of California."

A general provision in the comprehensive eminent domain statute will make clear that "property" includes "any interest in property."

EXHIBIT IV

NONPROFIT EDUCATIONAL INSTITUTIONS OF COLLEGIATE GRADE

Sec. . Chapter 3 (commencing with Section 30051) is added to Division 21 of the Education Code, to read:

Chapter 3. Eminent Domain

30051. Any educational institution of collegiate grade, within this state, not conducted for profit, may exercise the right of eminent domain to acquire any property or interest therein necessary for the construction and maintenance of its buildings and grounds.

Comment. Section 30051 continues without substantive change the grant of condemnation authority formerly found in subdivision 2 of Section 1238 of the Code of Civil Procedure ("Public buildings and grounds for the use of . . . any institution within the State of California which is exempt from taxation under the provisions of Section 1a, of Article XIII of the Constitution of the State of California"). See University of So. Calif. v. Robbins, 1 Cal. App.2d 523, 37 P.2d 163 (1934), cert. den., 295 U.S. 738 (1935); Redevelopment Agency v. Hayes, 122 Cal. App.2d 777, 266 P.2d 105 (1954). Private schools which are not of the collegiate grade may not exercise the power of eminent domain. Yeshiva Torath Emeth Academy v. University of So. Calif., 208 Cal. App.2d 618, 25 Cal. Rptr. 422 (1962).

Code of Civil Procedure Section 1238

Note: Section 30051, to be added to the Education Code, will supersede the phrase "any institution within the State of California which is exempt from taxation under the provisions of Section 1a, of Article XIII of the Constitution of the State of California" in subdivision 2 of Section 1238 of the Code of Civil Procedure. Since it is planned to repeal all of Section 1238 as a result of the Commission's comprehensive study, no conforming amendment of Section 1238 is set out here.

1/22/70

THE RIGHT TO CONDEMN FOR  
EDUCATIONAL PURPOSES\*

\*This study was prepared for the California Law Revision Commission by Mr. Clarence B. Taylor of the Commission's legal staff. No part of this study may be published without prior written consent of the Commission.

The Commission assumes no responsibility for any statement made in this study, and no statement in this study is to be attributed to the Commission. The Commission's action will be reflected in its own recommendation which will be separate and distinct from this study. The Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature.

Copies of this study are furnished to interested persons solely for the purpose of giving the Commission the benefit of the views of such persons, and the study should not be used for any other purpose at this time.

## BACKGROUND STUDY

### THE RIGHT TO CONDEMN FOR EDUCATIONAL PURPOSES

#### School districts

Since its adoption in 1872, subdivision 3 of Section 1238 of the Code of Civil Procedure has provided that the power of eminent domain may be exercised in behalf of "public buildings and grounds, for the use of any . . . school district . . . ." Section 1238.7, which was added to the Code of Civil Procedure in 1957,<sup>1</sup> provides that the power of eminent domain may be exercised to acquire property as a source of earth fill by a school district situated wholly or partly within a city having in excess of 750,000 population and an average population per square mile of more than 4,500 persons.<sup>2</sup> A 1949 amendment to subdivision 2 of Section 1241 provides that a resolution (adopted by vote of two-thirds of the governing board of a school district) determining that the public interest and necessity require the acquisition, construction, or completion of a project, and that the property sought to be taken is necessary for that purpose, is conclusive evidence of the necessity of the taking if the property being taken is located within the territorial limits of the district.<sup>3</sup>

The term "school district" includes elementary school districts, high school districts, junior college districts, and unified school districts.<sup>4</sup> The Education Code does not provide explicitly for the exercise of the power of eminent domain by school districts although isolated references to condemnation can be found. For example, Education Code Section 6726 provides that any county board of education having



the management and control of a technical, agricultural, and natural resource conservation school may acquire construction sites by exercise of the power of eminent domain. Section 25545.03, subdivisions (a) and (f), provide for the acquisition of property by the board of a school district maintaining a junior college:

(a) To acquire subject to the state law, by grant, purchase, gift, devise, lease, or by the exercise of the right of eminent domain . . . any real or personal property necessary or convenient or useful for the carrying on of any of its powers . . . .

\* \* \* \* \*

(f) To exercise, subject to state law, the right of eminent domain for the condemnation of private property or any right or interest therein.

Education Code Section 15007.5 allows the governing board of any school district to enter into an agreement with the governing body of any public agency for the joint exercise of their respective powers, whether or not possessed in common, for the acquisition of real property as a single parcel.<sup>5</sup> Section 16003 provides that the governing board of a school district may acquire property in an adjoining school district for use as garages, warehouses, or other utility purposes, but specifically provides that the power of eminent domain shall not be applicable for this purpose.

The Education Code contains extensive provisions on the acquisition of property by school districts. Section 1041 provides that "the governing board of any school district may select and acquire sites within the boundaries of the district, and may acquire or construct thereon school facilities, as provided by law." Section 1042 provides that, "the governing board of any school district may acquire property, construct

buildings, and maintain classes outside its boundaries on sites immediately adjacent to school sites of the district within its boundaries."<sup>6</sup> Section 15002 provides that, "the governing board of any school district may, and when so directed by vote of the voters within the district shall, purchase or improve school lands." Numerous other sections specify the procedures to be followed in the acquisition of property.<sup>7</sup>

The selection of a school site by a school board involves an exercise of legislative and discretionary action.<sup>8</sup> The decision is not subject to judicial review unless the board fails to follow prescribed procedures,<sup>9</sup> although the particular procedural requirements of the Education Code are not considered conditions precedent to the institution of an eminent domain proceeding by a school district.<sup>10</sup> The selection may be set aside if the action of the school board was fraudulent, arbitrary, or capricious.<sup>11</sup> However, there is no requirement that a school district compare properties in the district as a condition precedent to the selection of a site.<sup>12</sup>

School districts are agencies of the state for the local operation of the state school system.<sup>13</sup> The property held by school districts is held in trust for the state.<sup>14</sup> Therefore, when a school district brings proceedings in eminent domain, it is an agent of the state in charge of the use for which the land is sought.<sup>15</sup> Because the public school system is of statewide concern, legislative enactments concerning schools take precedence over attempted regulation by local government units.<sup>16</sup> It has been held that the construction of school buildings by a school district is not subject to building regulations of the municipal corporation within which the building is erected.<sup>17</sup> It is also established

that a municipal corporation cannot exclude a school district from desired property by means of zoning ordinances; a school district may condemn land even though the land is contained in an area zoned for residential use only.<sup>18</sup>

A school district has the power to condemn land for any school purpose.<sup>19</sup> Thus, it has been held proper for a school district to condemn a tract of land for the site of a gymnasium or athletic building.<sup>20</sup> The authority to condemn extends to school purposes as defined in the Education Code<sup>21</sup> and would encompass such activities as child care centers<sup>22</sup> and community recreation centers.<sup>23</sup> The taking may be for use for school purposes in the future<sup>24</sup> or for temporary use for school purposes with resale to follow within several years;<sup>25</sup> a school district may change the use of any property acquired to some other school purpose at any time during its ownership or may sell condemned property when it is no longer desirable for school purposes.<sup>26</sup>

The education of youth is considered as a most important public use, vitally essential to our governmental health and purposes.<sup>27</sup> As a result, in Woodland School Dist. v. Woodland Cemetery Ass'n,<sup>28</sup> the court held that, if a school district could show as a matter of fact that the school purposes were of a more necessary public use than a private cemetery, the district could condemn cemetery land.

Although education is an important public function, it has been established that private schools which are not of the collegiate grade may not exercise the power of eminent domain.<sup>29</sup> It is also not permissible for a private citizen to acquire property by eminent domain for

the operation of a public school.<sup>30</sup> In such cases, the plaintiff must prove that he is authorized to take the property, and neither Civil Code Section 1001 nor Code of Civil Procedure Section 1238(3) authorize a taking by a private citizen or institution.<sup>31</sup>

A new section--Section 1047--should be added to the Education Code specifying the right of school districts to exercise the power of eminent domain to acquire any property necessary to carry out the functions of the district. The reference to school districts should be deleted from subdivision 3 of Code of Civil Procedure Section 1238, specifying public uses.

The recommended new section would cover, in addition to "buildings and grounds" now covered by Code of Civil Procedure Section 1238, certain incidental purposes such as the building of streets in connection with school sites. For example, Education Code Section 15804 authorizes any school district to "acquire" property for this purpose. The authority given by Section 15804 to acquire property would operate in conjunction with the recommended new section to permit condemnation for streets in connection with school sites.

#### University of California

The California Constitution provides that the University of California "shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct."<sup>32</sup> The section does not clearly state whether or not the university has the power of eminent domain.

That power is clearly stated in Education Code Section 23151:

The Regents of the University of California may condemn any property or interest therein for the public buildings and grounds of the University of California under the provisions of the Code of Civil Procedure relating to eminent domain. The Regents of the University of California shall not commence any such proceeding in eminent domain unless it first adopts a resolution by a two-thirds vote declaring that the public interest and necessity require the acquisition, construction or completion . . . of the public improvement for which the property or interest therein is required and that the property or interest therein described in such resolution is necessary for the public improvement.

A second power is conferred upon the Regents by the University of California Dormitory Revenue Bond Act of 1947.<sup>33</sup> The Regents are authorized to acquire property by eminent domain necessary to complete the projects provided for by that act.<sup>34</sup> Such projects include dormitories or other housing facilities, boarding facilities, student union facilities, vehicle parking facilities, any other auxiliary or supplementary facilities for individual or group accomodation, hospitals, clinics, medical and nursing facilities, and related facilities.<sup>35</sup>

Education Code Section 23152 provides that the resolution of the Regents of the University of California shall be conclusive evidence of the public necessity of the proposed improvement, that such property or interest therein is necessary therefor, and that such public improvement is planned or located in a manner which is compatible with the greatest public good and the least private injury. Either Section 23152 should be amended to clarify whether the conclusive presumption is available under other statutes such as the University of California Dormitory Revenue Bond Act of 1947 or the grant of condemnation authority given by Section 23151 should be broadened to cover all the functions of the university.

### State College system

It does not appear that the Trustees of the California State Colleges have any broad, independent power of eminent domain for State College purposes. Rather, Education Code Section 24503 authorizes the Trustees to acquire property by the exercise of the power of eminent domain subject to the Property Acquisition Law.<sup>36</sup> A similar provision is found in Education Code Section 23752 which authorizes the Trustees "to acquire, pursuant to the Property Acquisition Law . . . or by lease or other means, real property and to construct, operate and maintain motor vehicle parking facilities thereon for state college officers, employees, students, or other persons." A general condemnation authority, subject to the Property Acquisition Law, should be given to the Trustees of the California State Colleges for state college functions.

### Private colleges and universities

The Code of Civil Procedure provides that the power of eminent domain may be exercised in behalf of "public buildings and grounds for use of . . . any institution within the State of California which is exempt from taxation under the provisions of Section 1a, of Article XIII of the Constitution of the State of California . . . ."<sup>37</sup> Section 1a of Article XIII of the California Constitution provides that, "any educational institution of collegiate grade within the State of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, its securities and income used exclusively for the purposes of education." These sections are

construed to give a private university which is included within the constitutional provision the power of eminent domain even though it is not specifically mentioned in the Education Code.<sup>38</sup>

Leland Stanford Junior University is provided for in the Education Code.<sup>39</sup> Section 30031 provides that, "the exemption from taxation of the Leland Stanford Junior University is as provided in Section 1a of Article XIII of the Constitution . . . ." Thus, Stanford University has the power of eminent domain.

The authority of private nonprofit educational institutions of collegiate grade to exercise the right of eminent domain should be continued without substantive change.

THE RIGHT TO CONDEMN FOR EDUCATIONAL PURPOSES

FOOTNOTES

1. Cal. Stats. 1957, Ch. 1136, § 1, p. 2430.
2. The application of Section 1238.7 apparently is limited to San Francisco.
3. Code Civ. Proc. § 1241(2).

Prior to the addition of school districts to subdivision 2 in 1949, school districts did not enjoy the conclusive presumption. *Thiriot v. Santa Clara Elementary School Dist.*, 128 Cal. App.2d 548, 275 P.2d 833 (1954).
4. See Cal. Const., Art. IX, § 14; Educ. Code §§ 1861, 1991; Controller, State of California, Annual Report of Financial Transactions Concerning School Districts of California, Fiscal Year 1967-68, at ix.
5. A similar problem was raised in People v. Garden Grove Farms, 231 Cal. App.2d 666, 42 Cal. Rptr. 118 (1965), in which the court held that it was permissible for the Department of Public Works to condemn a parcel of land to exchange with a school district.
6. A similar provision is contained in Education Code Section 15009, which provides that school districts may acquire sites "contiguous to the boundaries of the district and upon the acquisition of such site it shall become a part of the district."
7. See Educ. Code §§ 15001-15010, 15051-15255.



8. Arthur v. Oceanside-Carlsbad Junior College Dist., 216 Cal. App.2d 656, 31 Cal. Rptr. 177 (1963).
9. Berkeley High School Dist. v. Coit, 7 Cal.2d 132, 59 P.2d 992 (1936).
10. Los Altos School Dist. v. Watson, 133 Cal. App.2d 447, 284 P.2d 513 (1955).
11. Gogerty v. Coachella Valley Junior College Dist., 57 Cal.2d 727, 371 P.2d 582, 21 Cal. Rptr. 806 (1962).
12. Arthur v. Oceanside-Carlsbad Junior College Dist., supra note 8.
13. Hall v. City of Taft, 47 Cal.2d 177, 302 P.2d 574 (1956).
14. Hall v. City of Taft, supra note 13; Pass School Dist. v. Hollywood City School Dist., 156 Cal. 416, 105 P. 122 (1909).
15. Montebello Unified School Dist. v. Keay, 55 Cal. App.2d 839, 131 P.2d 384 (1942).
16. Hall v. City of Taft, supra note 13.
17. Id.
18. Town of Atherton v. Superior Court, 159 Cal. App.2d 417, 324 P.2d 328 (1958); Landi v. Superior Court, 159 Cal. App.2d 839, 324 P.2d 326 (1958)(mem.).
19. Hayward Union High School Dist. v. Madrid, 234 Cal. App.2d 100, 44 Cal. Rptr. 268 (1965).

20. Kern County Union High School Dist., v. McDonald, 180 Cal. 7, 179 P. 180 (1919).
21. Id.
22. Educ. Code §§ 16601-16645.25.
23. Educ. Code §§ 16651-16664.
24. Anaheim Union High School Dist. v. Vieria, 241 Cal. App.2d 169, 51 Cal. Rptr. 94 (1966).
25. Hayward Union High School Dist. v. Madrid, supra note 19.
26. Id.
27. Cal. Const., Art. IX, § 1; University of So. Calif. v. Robbins, 1 Cal. App.2d 523, 37 P.2d 163 (1934), cert. denied, 295 U.S. 738 (1935).
28. 174 Cal. App.2d 243, 344 P.2d 326 (1959).
29. Yeshiva Torath Emeth Academy v. University of So. Calif., 208 Cal. App.2d 618, 25 Cal. Rptr. 422 (1962).
30. People v. Oken, 159 Cal. App.2d 456, 324 P.2d 58 (1958).
31. Compare Yeshiva Torath Emeth Academy v. University of So. Calif., supra note 29, with People v. Oken, supra note 30.
32. Cal. Const., Art. IX, § 9.
33. Cal. Stats. 1947, Ch. 1027, p. 2289 (as amended by Cal. Stats., 1962, 1st Ex. Sess., Ch. 56, p. 346).

34. Cal. Stats. 1947, Ch. 1027, § 3(a), p. 2291, § 3(g), p. 2292.
35. Cal. Stats. 1947, Ch. 1027, § 2(c), p. 2290 (as amended by Cal. Stats., 1962, 1st Ex. Sess., Ch. 56, § 2(c), p. 346).
36. Part 11 (commencing with Section 15850), Division 3, Title 2, of the Government Code.
37. Code Civ. Proc. § 1238(2)(West Supp. 1969).
38. University of So. Calif. v. Robbins, supra note 27.
39. Educ. Code §§ 30001-30032.