

4/16/70

First Supplement to Memorandum 70-37

Subject: Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238(21)--Slum Clearance and Low-Rent Housing)

Since preparation of Memorandum 70-37, the staff has been considering the problem of "necessity." We have concluded that the provisions to be added to the Health and Safety Code to deal with land chest corporations should deal with the problem of necessity. Accordingly, we suggest that the statutory provisions attached hereto as Exhibit I be substituted for Section 35167 recommended by the staff in Exhibit I of Memorandum 70-37. The statutory provisions attached hereto are the same as those that apply to limited dividend housing corporations. In addition to conforming the two statutes, the staff believes that the public hearing--conclusive evidence of necessity scheme is a good one to use to deal with the necessity problem in takings by land chest corporations.

Commissioner Gregory has noted a recent judicial development in connection with Article XXXIV of the California Constitution (mentioned on page 3 of the background research study attached to Memorandum 70-37):

A three-judge court in the Northern District of California, made up of District Judges Peckham and Levin and Circuit Judge Hamlin, held the provisions of Article XXXIV of the California Constitution invalid under the equal protection clause of the United States Constitution (Valtierra v. Housing Authority of San Jose, No. 52076, and Hays v. Housing Authority of San Mateo, No. C-69-1).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

HEALTH & SAFETY CODE § 35167

Staff recommendation

LAND CHEST CORPORATIONS

§ 35167. Acquisition of property

Sec. . Section 35167 is added to the Health and Safety Code,
to read:

35167. When the commissioner has approved a housing project,
the corporation may acquire the property necessary for the project
by gift, bequest, purchase, or eminent domain.

Comment. Sections 35167-35171 retain the substance of subdivision 21
of former Code of Civil Procedure Section 1238 insofar as that subdivision
may have applied to land chest corporations (nonprofit corporations formed
for the purpose of providing "housing in rural and suburban areas for fami-
lies of low income"). Sections 35167-35171 use the same language as Sec-
tions 34874-34878 relating to limited dividend housing corporations (cor-
porations formed for the purpose of providing housing for families of low
income or reconstructing slum areas).

HEALTH & SAFETY CODE § 35168

Staff recommendation

LAND CHEST CORPORATIONS

§ 35168. Eminent domain; authorization by commissioner

Sec. . Section 35168 is added to the Health and Safety Code,
to read:

35168. The power of eminent domain shall not be exercised by
a corporation except with the specific authorization of the commis-
sioner.

Comment. See the Comment to Section 35167.

HEALTH & SAFETY CODE § 35169

Staff recommendation

LAND CHEST CORPORATIONS

§ 35169. Certificate of authorization

Sec. . Section 35169 is added to the Health and Safety Code, to read:

35169. The authorization shall be contained in a certificate of the commissioner specifying that after public hearing the commissioner has determined that the acquisition of the property by eminent domain and the construction of the housing on the property is in the public interest and necessary for the public use.

Comment. See the Comment to Section 35167.

HEALTH & SAFETY CODE § 35170

Staff recommendation

LAND CHEST CORPORATIONS

§ 35170. Public hearing

Sec. . Section 35170 is added to the Health and Safety Code, to read:

35170. The hearing shall be held at a time and place designated by the commissioner. At least 10 days prior to the hearing the corporation shall give notice of the hearing by publication in a newspaper designated by the commissioner and published or circulated in the city or county where the property is located.

Comment. See the Comment to Section 35167.

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HEALTH & SAFETY CODE § 35171

Staff recommendation

LAND CHEST CORPORATIONS

§ 35171. Effect of certificate

Sec. . Section 35171 is added to the Health and Safety Code, to read:

35171. A certified copy of the certificate of the commissioner is conclusive evidence of the matters certified in it in any proceeding in eminent domain to acquire the property or any part of it set forth in the certificate.

Comment. See the Comment to Section 35167.