

36.201

7/8/70

Memorandum 70-42

Subject: Study 36.201 - Condemnation (The Declared Public Uses--Condemnation for Utility Purposes)

At the March 1970 meeting, the Commission tentatively approved the addition of Section 621 to the Public Utilities Code. This section would merely authorize a street railroad corporation to condemn property for the construction and maintenance of its terminal facilities and would, accordingly, supersede subdivision 22 of Section 1238 of the Code of Civil Procedure insofar as that subdivision applies to privately owned street railroad corporations. (See attached Exhibit I.) However, the apparent basis for this decision was that Section 621 as approved would simply state existing law. This may not be entirely accurate.

Public Utilities Code Section 7801 provides that "street railroads are governed by the provisions of Chapter 1 of this division, so far as they are applicable, unless such railroads are therein specially excepted." The chapter referred to deals with railroads generally and subdivision (g) of Section 7526, contained therein, grants "every railroad corporation" the power to condemn property necessary for the construction and maintenance of its road. This section is probably the major source of condemnation authority for railroads and, under Section 7801, presumably provides identical authority to street railroads. The Commission's actions to date have in no way affected this statutory arrangement. However, the Comment to Section 611 ("611. A railroad corporation may condemn any property necessary for the construction and maintenance of its railroad.") states that that section supersedes provisions formerly contained in the Public Utilities Code and Code of Civil

Procedure, including Section 7526(g). Eventually, the Commission will perhaps repeal the latter subdivision. Whether or not this is done, the Commission may desire to conform the authority granted to street railroads to that granted to railroads generally. Such action would seem consistent with the general policy to codify existing law with respect to the condemnation authority granted to privately owned public utilities. The staff has prepared a revised version of Section 621 (attached hereto as Exhibit II) which would provide general condemnation authority for street railroads if this is the Commission's desire.

Respectfully submitted,

Jack I. Horton
Associate Counsel

§ 621. Street railroad corporations

621. A street railroad corporation may condemn any property necessary for the construction and maintenance of terminal facilities for the receipt, transfer, or delivery of the passengers or property it carries.

Comment. Section 621 grants "street railroad corporations" (as defined in Section 232) the right of eminent domain to acquire property necessary for its terminal facilities. The section supersedes subdivision 22 of Section 1238 of the Code of Civil Procedure insofar as that subdivision applied to privately owned street railroad corporations.

EXHIBIT II

PUBLIC UTILITIES CODE § 621

Revised staff recommendation April 1970

§ 621. Street railroad corporations

621. A street railroad corporation may condemn any property necessary for the construction and maintenance of its street railroad.

Comment. Section 621 grants "street railroad corporations" (defined in Section 232) the right of eminent domain to acquire property necessary for the construction and maintenance of its "street railroad" (defined in Section 231). It replaces in substance the authority formerly found in subdivision (g) of Section 7526 and incorporated by reference by Section 7801 and in Section 1238 of the Code of Civil Procedure. See the Comment to Section 611.