#36.35 8/3/70

First Supplement to Memorandum 70-59

Subject: Study 36.35 - Condemnation (Possession Prior to Final Judgment--Constitutional Amendment)

The attached extract from the Report of the Article I Committee of the Constitution Revision Commission will bring you up to date on the efforts of the Constitution Revision Commission to revise Section 14 of Article I of the Constitution. You should be sure to read the Comment set out in Exhibit I attached.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT I

Section 14

Committee Proposal

Private property may not be taken or damaged for public use without just compensation, ascertained by a jury unless waived, having first been paid to, or into court for, the owner. The Legislature may provide for possession of the property by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

Existing Constitution

Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner, and no right of way or lands to be used for reservoir purposes shall be appropriated to the use of any corporation, except a municipal corporation or a county or the State or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefits from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law: *provided*, that in any proceeding in eminent domain brought by the State, or a county, or a municipal corporation, or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation, the aforesaid State or municipality or county or public corporation or district aforesaid may take immediate possession and use of any right of way or lands to be used for reservoir purposes required for a public use whether the fee thereof or an easement therefor be sought upon first commencing eminent domain proceedings according to law in a court of competent jurisdiction and thereon giving such security in the way of money deposited as the court in which such proceedings are pending may direct, and in such amounts as the court may determine to be reasonably adequate to secure to the owner of the property sought to be taken immediate payment of just compensation for such taking and any damage incident thereto, including damages sustained by reason of an adjudication that there is no necessity for taking the property, as soon as the same can be ascertained according to law. The court may, upon motion of any party to said eminent domain proceedings, after such notice to the other parties as the court may prescribe, alter the amount of such security so required in such proceedings. The taking of private property for a railroad run by steam or electric power for logging or lumbering purposes shall be deemed a taking for a public use, and any person, firm, company or corporation taking private property under the law of eminent domain for such purposes shall thereupon and thereby become a common carrier.

Comment

At the April 16th meeting of the Commission, substantive action was taken on the Committee proposal as it appears above. The above proposal was amended to insert a provision describing in general, rather than specific, terms the agencies that have the power of preliminary possession under the existing provision and permitting the Legislature to give that right to other agencies or for other purposes. The Section was referred back to the Article I Committee for redrafting.

The problem, as conceived by the Committee, was to find a generic phrase which would include those agencies specifically entitled to rights of prior possession in the existing Section but which would exclude other agencies.

Following careful investigation by the Staff and study by the Committee, no suitable generic expression could be developed. The Committee therefore concluded that the only manner in which to retain existing powers of prior possession is to list those agencies presently named in the Section.

The alternative is to return to the original Committee recommendation by vesting control over this matter in the Legislature. This has the advantage of eliminating the need for a constitutional amendment for each agency which needs the power of prior possession and avoids the hazards of using an imprecise generic phrase. The Committee favors this treatment.