

#36.300

5/30/75

Memorandum 75-47

Subject: Study 36.300 - Eminent Domain (Settlement Offers)

Attached is a letter from Roger M. Sullivan objecting to the amendment that the Commission has decided to make in Section 1250.410. See the P.S. to the letter.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Memorandum 75-47

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PLEASE REFER TO
OUR FILE NO.

May 23, 1975

John H. Demouilly
Executive Secretary
California Law Revision Commission
Stanford School of Law
Stanford, California 94305

Re: Proposed Section 1250.410 Settlement Offers

Dear Mr. Demouilly:

I've just completed reading Mr. Fairman's letter to you dated May 5 concerning proposed amendments to the above section. I do not agree with Mr. Fairman's characterization of the sections as a "one-way street" and feel that the Commission should be aware that the present CCP §1249.3 has turned out to be a very effective means of promoting settlements. It has been my experience this year to settle two major cases which in my opinion would not have settled had the section not been in effect.

In my opinion, if the additional phrase "in the light of testimony given under Evidence Code Section 813(a)" is added, this will reduce the incentive on the part of the condemnors to make reasonable offers and thereby settle cases prior to trial.

I feel that section 1250.410 is working out in practice to be much better than the comparable Uniform Eminent Domain Code section would. Therefore, having found something that is working, I question the wisdom of tinkering with it.


As Mr. Fairman is aware, the only way that the Section could not be considered a "one-way street" is to deny costs to the property owner if he did not make a reasonable offer. As it is, the property owner stands to lose his liti-

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gation expenses. Inasmuch as these are far in excess of the recoverable court costs, it certainly is not a "one-way street" in this respect.

Yours very truly,


Roger M. Sullivan
of THORPE, SULLIVAN, WORKMAN,
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RMS:mb

P. S. On further examination of the Law Revision Commission minutes of May 13, it appears that the Commission has already decided to recommend amending Section 1250.410 to include the phrase "evidence submitted and the." In my opinion, this amendment is ill-advised for the same reason which applied in Mr. Fairman's proposal. If your goal is to promote settlements, I recommend that this section be left as is.