

Memorandum 76-14

Subject: Study 36.60 - Condemnation (Relocation Assistance)

The Commission has previously approved a recommendation relating to relocation assistance by private condemners. The recommendation is now in the process of printing and introduction in the Legislature.

The Commission has received several new comments on this recommendation. A private attorney (see Memorandum 76-12, Exhibit I (blue)) supports the recommendation.

The City of Los Angeles (Exhibit I--blue) suggests that a private condemnor be required to pay relocation assistance not only when it acquires property by eminent domain, but also when it acquires property by negotiation; otherwise, the condemnor will negotiate a favorable settlement with the property owner, thereby depriving tenants, who may really need it, of relocation assistance. The staff believes that this is a good point, but that it would be impossible to implement. It would clearly be unfair and possibly unconstitutional to require a nonprofit college or hospital to provide relocation assistance every time it happens to purchase a piece of property. If relocation assistance is required only where the purchase is made "under threat of condemnation," there will be difficulty in determining when a threat exists, since the quasi-public entity has the power of eminent domain only after a public entity consents to the acquisition and only after it proves to the court the public necessity for the acquisition. The only practical solution the staff is able to suggest is to require relocation assistance in cases of negotiated purchase after adoption of a resolution consenting to the condemnation by a public entity;

7276. A person acquiring real property by eminent domain, purchase or otherwise, after adoption of a resolution under Section 1245.330

consenting to the acquisition of such property by eminent domain, shall provide relocation advisory assistance and shall make any of the payments required of public entities by this chapter. This section does not apply to public utilities which are governed by Section 600 of the Public Utilities Code or to public entities which are governed by this chapter.

Comment. . . . Section 7276 extends their application to eminent domain acquisitions , and to negotiated settlements after adoption of a resolution consenting to the condemnation of the property under Section 1245.330, by private condemnors other than public utilities. . . .

The California Office of Planning and Research (Exhibit II--yellow) approves the purpose of the recommendation but believes that the statute should be tailored to fit nonpublic entity condemnors so that adoption of rules and regulations and provision for replacement housing will not be necessary. The staff notes that the recommendation requires quasi-public entities to "provide relocation advisory assistance" and "make any of the payments" required of public entities. The Commission in the past has chosen to avoid the problems involved in tailoring the section by simply duplicating the language of Public Utilities Code Section 600; if the rules governing public utilities are adequate, so too will be the rules applied to quasi-public entities. Moreover, these rules will be no more burdensome on a nonprofit hospital than they are on a small hospital district, no more burdensome on a nonprofit college than on a community college district, and no more burdensome on a mutual water company than on a small water district.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT I

OFFICE OF
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BURT PINES
CITY ATTORNEY

November 26, 1975

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, Calif. 94305

re: Recommendations Relating to
 Relocation Assistance by Private
 Condemnors, and Recommendation
 Relating to Condemnation for
 Byroads and Utility Easements

Dear Mr. DeMouilly:

This letter is comment regarding the referenced recommendations.

First, regarding relocation assistance, I do not believe that your recommendation goes far enough. Your proposed Section 7276 relates only to a person utilizing eminent domain procedures to acquire real property. However, eminent domain does not necessarily include acquisitions by negotiated purchase. I am not even sure whether it would include an acquisition by a deed, made after an eminent domain action is commenced, in settlement of the action.

When a public entity acquires private property for public use, it must provide relocation advisory assistance and make relocation payments notwithstanding that no eminent domain action is ever commenced. This is established by Section 7260 (c) which provides that a "displaced person" means any person who moves from real property, or who moves his personal property from real property, as a result of the acquisition of said real property, in whole or in part by a public entity or by any person having an agreement with or acting on behalf of a public entity," It is also established by



Mr. John H. DeMouilly
Stanford Law School
re: Relocation Assistance

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Section 7262 which provides "as a part of the cost of acquisition of a real property for a public use a public entity shall compensate a displaced person"

The language you propose in 7276 would lead to the unjust situation of the condemning private entity and the property owner reaching a mutually beneficial agreement to them whereby the property owner is paid an amount above market value - and the property is acquired by deed - in exchange for the property owner or the acquiring private entity not having to pay relocation assistance. Thereby, the buyer and seller both benefit, the tenants are the only ones who lose. Your proposal provides benefits for owners only, and ignores others connected with the property.

I believe this is unjust. I believe 7276 should provide that relocation payments and services must be provided whenever property is acquired for public use by an entity having a power of eminent domain granted by California Statute.

I do not have any criticism relating to the recommendation providing for condemnation for byroads and utility easements. I believe this is a good addition to the law of condemnation in California.

Thank you for advising of these recommendations.

Yours very truly,

BURT PINES, City Attorney

By


Norman L. Roberts
Deputy City Attorney

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December 4, 1975

Mr. Marc Sandstrom, Chairman
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. Sandstrom:

Our comments on the revisions proposed by the California Law Revision Commission are:

1. Relocation Assistance by Private Condemnors

The purpose of this amendment is laudable, but it will have to be more carefully drafted to fit in with the relocation statute. A private condemnor should not necessarily be made responsible for providing replacement (new) housing, in the event that existing relocation housing is not available. See Government Code Sec. 7264.5 (making relocating entity responsible for construction of replacement housing). Moreover, it is doubtful that a private condemnor could be made an administrative body of the State, as provided in Government Code Sec. 7264.5. It may also be inappropriate to require private condemnors to adopt rules and regulations for relocation assistance as required by Government Code Sec. 7267.8.

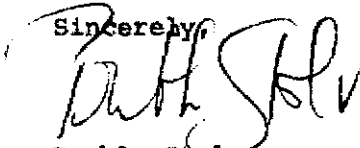
2. Condemnation for Byroads and Utility Easements

I'm not convinced that this authority is necessary. The common law "way of necessity", as I understand it, still offers a practical alternative to the landlocked property owner.

If condemnation power is to be granted, the reviewing legislative body [CCP 1245.325(b)] should be required to make an additional finding that consolidation of neighboring access roads or utility services is not feasible.

I hope that these thoughts will prove useful to you. If we can be of further assistance, please do not hesitate to contact me.

Sincerely,


Preble Stolz
Director

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Relocation Assistance by
Private Condemnors

October 1975

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

CALIFORNIA LAW REVISION COMMISSION

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October 11, 1975

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 130 of the Statutes of 1965 to study and make recommendations relating to condemnation law and procedure. The Commission has previously submitted recommendations concerning various aspects of condemnation law and procedure, including the recently enacted Eminent Domain Law (Cal. Stats. 1975, Ch. 1275). The Commission submits herewith a recommendation dealing with another aspect of its study--relocation assistance by private condemners.

Respectfully submitted,
MARC SANDSTROM
Chairman

RECOMMENDATION

relating to RELOCATION ASSISTANCE BY PRIVATE CONDEMNORS

California's general relocation assistance statute¹ was enacted primarily to implement the requirements imposed on the state by the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970² and to more adequately compensate persons whose property is taken for public use. One major purpose of the statute was to assure a uniform policy of relocation assistance to all persons in the state regardless of the acquiring entity.³

By its terms, the relocation assistance statute applies only to acquisitions by public entities. But, in California, private persons also may exercise the power of eminent domain to acquire private property for public use.⁴

Of the private condemnors, only privately owned public utilities acquiring real property by eminent domain must comply with relocation assistance provisions applicable to public entities.⁵ Such private condemnors as nonprofit hospitals, nonprofit colleges, nonprofit cemeteries, nonprofit housing corporations, and mutual water companies are not required to comply with the relocation assistance provisions.

The Law Revision Commission recommends that all private condemnors

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1. Govt. Code §§ 7260-7275.
 2. 42 U.S.C. §§ 4601-4655 (1971).
 3. Comment, Relocation Assistance in California: Legislative Response to the Federal Program, 3 Pac. L.J. 114, 118 (1972).
 4. See, e.g., Pub. Util. Code §§ 610-624 (Cal. Stats. 1975, Ch. 1240, § 65)(public utilities); Health & Saf. Code § 1260 (Cal. Stats. 1975, Ch. 1240, § 43)(nonprofit hospitals); Educ. Code § 30051 (Cal. Stats. 1975, Ch. 1240, § 14)(nonprofit colleges); Health & Saf. Code §§ 8501 (Cal. Stats. 1975, Ch. 1240, § 45)(nonprofit cemeteries), 34874 (limited dividend housing corporations), 35167 (Cal. Stats. 1975, Ch. 1240, § 55)(land chest corporations); Pub. Util. Code § 2729 (Cal. Stats. 1975, Ch. 1240, § 68)(mutual water companies).
 5. Pub. Util. Code § 600.

be required to comply with the relocation assistance provisions imposed on public entities. This will assure that every person in the state whose property is acquired by eminent domain will be treated fairly and equally and that the burdens of compensation accompany the right of condemnation.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to add Section 7276 to the Government Code, relating to relocation assistance by private condemners.

The people of the State of California do enact as follows:

SECTION 1. Section 7276 is added to the Government Code, to read:

7276. A person acquiring real property by eminent domain shall provide relocation advisory assistance and shall make any of the payments required of public entities by this chapter. This section does not apply to public utilities governed by Section 600 of the Public Utilities Code or to public entities governed by Sections 7260 to 7275, inclusive.

Comment. Section 7276 is new. The relocation assistance provisions of Sections 7260-7275 are applicable by their terms only to public entities. Section 7276 extends their application to eminent domain acquisitions by private condemners other than public utilities. Public utilities are covered by Public Utilities Code Section 600. Private condemners that would be covered by Section 7276 include nonprofit hospitals (Health & Saf. Code § 1260), nonprofit colleges (Educ. Code § 30051), nonprofit cemeteries (Health & Saf. Code § 8501), limited dividend housing corporations (Health & Saf. Code § 34874), land chest corporations (Health & Saf. Code § 35167), and mutual water companies (Pub. Util. Code § 2729).