

63.70

4/15/77

Memorandum 77-30

Subject: Study 63.70 - Evidence of Market Value of Property

Attached is a letter from Assemblyman Victor Calvo and a copy of AB 1166 proposing a change in Section 822 of the Evidence Code. For an explanation of the bill, see the Legislative Counsel Digest which follows the title of the printed bill.

The staff suggests that the letter and bill be sent to the State Bar Committee on Condemnation for review and comment in connection with the Commission's Tentative Recommendation Relating to Evidence of Market Value of Property. When the State Bar Committee comments are received, the staff will supplement those comments with additional analysis if necessary.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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EXHIBIT 1

California Legislature

Assembly Committee

on

Resources, Land Use, and Energy

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814
PHONE: 916-445-9367

VICTOR CALVO
CHAIRMAN

April 11, 1977

California Law Revision Commission
School of Law
Stanford, California 94305

Gentlemen:

I have completed a review of the tentative recommendation re: Evidence of Market Value of Property, #63.70 and wish to advise you of an amendment to the Evidence Code I have introduced. A copy is enclosed.

The amendment results from a hearing held by the Subcommittee on Parks and Forestry last November concerning state park land acquisition practices and appraisal procedures. In the course of testimony, it became obvious that in certain areas of the state it is very difficult to find reliable comparable private land transactions. This is especially the case in the coastal zone where not only have the private transactions been very limited but also under and subject to unusual sales conditions.

I was pleased to read your second and third paragraphs on page 6 which concluded

"...(I)t is better to have all relevant evidence available to the trier of fact than to have insufficient evidence."

Also the conclusion in the first paragraph on page seven which cites comparable sales as the most reliable valuation technique.

The availability of comparable sales information is particularly critical for proposed public purchases on the coast. The state will be spending over \$110 million to acquire properties as a result of the recently approved bond issue.

California Law Revision Commission
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The Subcommittee was provided with testimony indicating serious problems of valuation, as well as other procedural matters emerging for coastal acquisitions.

The amendment, I believe, can assist in achieving equitable settlements. It provides safeguards that along with the procedures required in the state's relocation and acquisition practices Act and regulations will protect the seller from any pressure from the threat of use of eminent domain. This is accomplished by limiting applicability to those comparables for which no resolution of necessity had been adopted. The amendment further limits the proportion of public use acquisitions which can be used in evidence.

I would appreciate your review, comment, and support of this very important and timely change.

Sincerely,

A handwritten signature in black ink, appearing to read "Vic Calvo", written in a cursive style.

VICTOR CALVO

VC:dn

Enclosure

ASSEMBLY BILL

No. 1166

Introduced by Assemblyman Calvo

March 29, 1977

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 822 of the Evidence Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

AB 1166, as introduced, Calvo (Jud.). Eminent domain: evidence.

Existing law makes inadmissible as evidence and an improper basis for an opinion as to the value of property in eminent domain and inverse condemnation proceeds the price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain.

This bill would make the foregoing evidence of an acquisition inadmissible and an improper basis for an opinion as to the value of property in eminent domain and inverse condemnation proceedings only if the acquisition was one for which the governing body of a public entity seeking to condemn such property had adopted a resolution of necessity or the acquisition was one for which, prior to July 1, 1976, a complaint had been filed commencing a condemnation proceeding. The bill would make admissible as evidence and a proper basis for an opinion as to value the price or other terms and circumstances of an acquisition or acquisitions of property or a property interest for a public use if the acquisition

or acquisitions represent not more than one-half of the number of acquisitions offered by a party to the action for admission as evidence and as a basis for an opinion of value.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 822 of the Evidence Code is
2 amended to read:

3 822. Notwithstanding the provisions of Sections 814 to
4 821, the following matter is inadmissible as evidence and
5 is not a proper basis for an opinion as to the value of
6 property:

7 (a) The price or other terms and circumstances of an
8 acquisition of property or a property interest if the
9 acquisition was for a public use for which the property
10 could have been taken by eminent ~~domain~~ *domain and*
11 *for which the governing body of the public entity*
12 *proposing to acquire the property had adopted a*
13 *resolution of necessity pursuant to Article 2*
14 *(commencing with Section 1245.210) of Chapter 4 of*
15 *Title 7 of the Code of Civil Procedure or, prior to July 1,*
16 *1976, had filed a complaint in the superior court pursuant*
17 *to Section 1243 of the Code of Civil Procedure.*

18 (b) The price at which an offer or option to purchase
19 or lease the property or property interest being valued or
20 any other property was made, or the price at which such
21 property or interest was optioned, offered, or listed for
22 sale or lease, except that an option, offer, or listing may
23 be introduced by a party as an admission of another party
24 to the proceeding; but nothing in this subdivision permits
25 an admission to be used as direct evidence upon any
26 matter that may be shown only by opinion evidence
27 under Section 813.

28 (c) The value of any property or property interest as
29 assessed for taxation purposes, but nothing in this
30 subdivision prohibits the consideration of actual or
31 estimated taxes for the purpose of determining the
32 reasonable net rental value attributable to the property

1 or property interest being valued.

2 (d) An opinion as to the value of any property or
3 property interest other than that being valued.

4 (e) The influence upon the value of the property or
5 property interest being valued of any noncompensable
6 items of value, damage, or injury.

7 (f) The capitalized value of the income or rental from
8 any property or property interest other than that being
9 valued.

10 (g) *The price or other terms and circumstances of an*
11 *acquisition or acquisitions of property or a property*
12 *interest for a public use by any party to the action if such*
13 *acquisition or acquisitions represent not more than*
14 *one-half the number of acquisitions offered for admission*
15 *by such party as evidence and as a basis for an opinion.*

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CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL

STANFORD, CALIFORNIA 94305

(415) 497-1731



April 14, 1977

Honorable Victor Calvo, Chairman
Assembly Committee on Resources, Land Use, and Energy
State Capitol
Sacramento, California 95814

Dear Assemblyman Calvo:

I will bring your letter of April 11 (concerning the bill you introduced as Assembly Bill 1166) to the attention of the Law Revision Commission at its May 12-14 meeting.

I do not know what action the Commission would take with respect to this matter. The Commission as a matter of policy does not support or oppose bills; it limits its recommendations to those which it submits to the Legislature in the form of printed recommendations and the bills introduced to effectuate those recommendations. However, your letter does identify a problem that the Commission may wish to consider in connection with possible revisions of its tentative recommendation relating to evidence of market value (which has been set out for review and comment by interested persons and organizations).

I will advise you further after the Commission's May meeting.

Sincerely,

John H. DeMouilly
Executive Secretary

JHD:vh