

#63.70

6/13/77

Memorandum 77-33

Subject: Study 63.70 - Evidence (Exclusion of Evidence of Sales to
Condemning Agencies)

At the last meeting, it was agreed that the staff would prepare a brief questionnaire relating to whether any change should be made in the existing rule that excludes evidence of sales to condemning agencies in determining fair market value of property. The questionnaire would be sent to interested persons and organizations and the responses would be reviewed before the Commission would determine the changes, if any, that it would propose in the existing rule.

Attached are two copies of the questionnaire the staff proposes to send out to interested persons and organizations. Please mark your editorial revisions on one copy to turn in to the staff at the July meeting.

Assemblyman Calvo has again indicated his interest in the Commission's study of this matter. See his letter attached as Exhibit 1.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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Memorandum 77-33
Study 63.70

EXHIBIT 1
Assembly
California Legislature

CHAIRMAN
Resources, Land Use and
Energy Committee
Air Quality Subcommittee

MEMBER
Finance, Insurance, and Commerce
Committee
Transportation Committee
Energy Subcommittee
Land Use Subcommittee

VICTOR CALVO

ASSEMBLYMAN, TWENTY-FIRST DISTRICT

June 9, 1977

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

Dear Mr. DeMouilly:


Thank you for your letter of May 24, 1977, concerning AB 1166 and for the Recommendation and Study document you enclosed.

I am particularly pleased that the Commission plans to review Section 822 of the Evidence Code to determine whether any revisions are needed. Accordingly, if I proceed with AB 1166 it will be in January 1978. Hopefully, your recommendations for revision, if any, will be available for my review and consideration.

With reference to the Recommendation and Study document, dated October 1960, I believe many of the abuses which led to the recommendations of the Commission and to the current standards in Section 822 were the same abuses that led to the passage in 1969 of Chapter 16 (commencing with Section 7260) of Division 7, Title 1 of the Government Code, concerning the conduct of state agents in the purchase of property.

I look forward to the receipt of materials you produce and copies of comments you receive. Again, my thanks for your interest and attention.

Sincerely,



VICTOR CALVO
Assemblyman, 21st District

VC:tjm

CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL

STANFORD, CALIFORNIA 94305

(415) 497-1731



July 12, 1977

To: Persons interested in Law Revision Commission evidence, eminent domain, and inverse condemnation studies

Subject: Questionnaire concerning revision of subdivision (a) of Evidence Code Section 822

Section 822 of the Evidence Code provides in part:

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

(a) 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.

The Commission has received a suggestion that this provision--which excludes evidence of sales to condemning agencies in determining fair market value of property in eminent domain and inverse condemnation cases--should be revised to permit admission of such sales under certain specified circumstances.

The Commission solicits the views of interested practitioners and judges as to whether any change is desirable in subdivision (a) of Section 822 and has prepared the attached questionnaire to facilitate your response. In this connection, it should be noted that the Commission recently distributed a tentative recommendation proposing that the scope of Evidence Code Sections 810-822 be expanded to cover all procedures in which the fair market value of property is in issue.

The Commission will appreciate your assistance.

Sincerely,

John H. DeMouilly
Executive Secretary

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305

Your Name _____

Address _____

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____

Private property owners _____

Both condemning agencies and private property owners _____

Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") _____

3. If you answered question 2 "NO," please state your reasons for your answer below. If you answered question 2 "YES," please state below the specific change you recommend and the reasons you recommend such change.