

4/3/80

Second Supplement to Memorandum 80-27

Subject: Legislative Program (AB 2121--Application of Evidence Code
Property Valuation Rules in Noncondemnation Cases)

The Commission's recommendation to apply the Evidence Code property valuation rules uniformly to all property valuation cases is embodied in Assembly Bill 2121 (McAlister), a copy of which is attached to this memorandum. This bill is opposed by both the State Bar Committee on Administration of Justice (CAJ) and the California Association of Realtors (CAR). The staff has spoken personally with representatives of both CAJ and CAR in an effort to ascertain the precise bases of their concern. As a result of these discussions, the staff proposes a number of amendments to AB 2121, which the staff believes will take care of the problems raised by both groups.

Application of Evidence Code Rules in Small Cases

The major concern of CAJ with the Commission's recommendation is that it requires expert opinion testimony in all valuation cases. They indicated that in practice the great majority of real property cases do involve expert testimony, but the great majority of personal property cases do not. The personal property case (frequently a breach of contract, fraud, or incidental tort claim) tends to be fairly small and is somewhat informally litigated. It often falls within the municipal court jurisdiction. Requiring expert testimony and applying the special evidentiary rules in such cases will simply result in added delay and expense without helping the dispute resolution process.

The staff found their argument persuasive, and would add a provision removing personal property cases from the scope of the Evidence Code valuation rules except where real and personal property are being valued in the same action:

811. As used in this article, "value of property" means market value of any of the following:

- (a) Real property or any interest therein.
- (b) Tangible Real property or any interest therein and tangible personal property valued as a unit.

Comment. Subdivision (b) of Section 811 is amended to include personal property only when valued together with real property. The effect of this amendment is to limit the scope of the evidence of market value provisions to actions involving real property or

real and personal property combined. See Section 810 (article provides rules applicable to action in which "value of property" to be ascertained). Actions involving personal property alone are governed by the general rules of evidence prescribed in this code, although where appropriate the court may look to the special rules prescribed in this article.

Use of Offers, Listings, Options, Exchanges, Etc.

Evidence Code Section 822 prohibits the use of certain types of evidence of market value. Matters that are not admissible under Section 822 include offers to buy and sell property, purchases made by public entities, and options to buy property. The reason such matters are excluded by Section 822 is that although they are some evidence of value, their probative value is relatively low and they have the potential of being unduly prejudicial. The public entities have been successful in keeping such matters out of eminent domain trials altogether, for this reason.

CAR points out that to exclude this evidence is unrealistic--appraisers and brokers look to these indices of value as part of the market and they should be admissible and given whatever weight they deserve. CAJ points out that listings and offers can help to bracket the high and low parameters of value and that in unusual cases this may be the only evidence of value available.

The staff believes this is basically a political problem calling for a political solution. The staff would keep the Section 822 exclusions for eminent domain cases and would permit the general rules of evidence to control in noneminent domain cases. Thus, the general rules of relevance, prejudice, and weight would govern admissibility of offers and the like in noneminent domain cases. As so revised, Section 822 would read:

822. (a) Notwithstanding the provisions of Sections 814 to 821, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property in ~~the action~~ an eminent domain or inverse condemnation proceeding :

~~(a)~~ (1) 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.

~~(b)~~ (2) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which such property or interest

was optioned, offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.

~~(c)~~ (3) The value of any property or property interest as assessed for taxation purposes or the amount of taxes which may be due on the property, but nothing in this subdivision prohibits the consideration of actual or estimated taxes for the purpose of determining the reasonable net rental value attributable to the property or property interest being valued.

~~(d)~~ (4) An opinion as to the value of any property or property interest other than that being valued.

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

~~(f)~~ (6) The capitalized value of the income or rental from any property or property interest other than that being valued.

(b) Nothing in this section makes admissible as evidence any matter described in subdivision (a) that is not otherwise admissible, or authorizes to be taken into account as a basis for an opinion any matter described in subdivision (a) that may not otherwise be taken into account, in an action other than an eminent domain or inverse condemnation proceeding.

Comment. Subdivision (a) of Section 822 is amended to limit its application to eminent domain and inverse condemnation cases despite the general expansion of this article to cover real property valuation cases generally. See Sections 810 and 811 and Comments thereto. The introductory portion of subdivision (a) is also amended to make clear that subdivision (a) regulates only the bases for an opinion of value admissible in evidence; it does not purport to prescribe rules or regulations governing the practice of the appraisal profession outside of expert testimony in a case.

Subdivision (b) makes clear that the exclusion of the matters listed in subdivision (a) in eminent domain cases should not be deemed to imply that those matters may be included in other cases. The rules governing admissibility of listings, offers, options, and the other matters listed in subdivision (a) are the general Evidence Code provisions relating to relevance, prejudice, and the like.

Special Purpose Properties

One other significant point made by CAJ is that some of the Evidence Code rules may be unduly restrictive when applied to special use or special purpose properties which are transferred relatively infrequently. For example, the general rule of Section 816 is that an opinion may be based on sales of comparable properties if the sales are sufficiently near in time and the properties are sufficiently similar

and located in sufficient proximity to the property being valued to shed light on its value. CAJ notes that if a property such as a brewery or a free-standing parking structure is being valued, it may be necessary to go to Texas or New York to find a comparable sale. Yet under Section 816, geographic proximity appears to be required.

We have taken care of this problem by a special provision in the Eminent Domain Law aimed at special purpose properties such as schools, churches, cemeteries, parks, and utilities. The staff recommends that a provision be added to the Evidence Code valuation provisions based on the eminent domain special purpose property provision, as follows:

823. Notwithstanding any other provision of this article, the value of property for which there is no relevant market may be determined by any method of valuation that is just and equitable.

Comment. Section 823 is drawn from Code of Civil Procedure Section 1263.320(b) (fair market value in eminent domain proceeding of property for which there is no relevant market). Under Section 823, for example, if the property being valued is so unusual that evidence of value must be sought from comparable property geographically distant, such evidence may be proper notwithstanding Section 816 defining comparability for valuation purposes.

Respectfully submitted,

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