

9/21/84

Fifth Supplement to Memorandum 84-68

Subject: Topics and Priorities for 1985

Attached is a communication from the California Chamber of Commerce raising various issues in connection with eminent domain and requesting information as to whether the Law Revision Commission will be sponsoring legislation on those issues in 1985.

The issues are controversial but important. The staff sees no possibility of the Commission studying these issues in the near future unless other priorities are abandoned. What is the Commission's desire?

Respectfully submitted,

John H. DeMouilly
Executive Secretary



California Chamber of Commerce

September 18, 1984

TO: Members of the Property Rights Subcommittee & Guests
FROM: C.W.H. Solinsky
SUBJECT: Eminent Domain Policy Recommendations

Attention:

John DeHaully

Attached is a copy of the final eminent domain policy recommendations that were submitted to the Chamber's Board of Directors at their September 6, 1984 meeting. Also attached is a copy of comments and objections on the recommendations by board member Cornell C. Maier, Chairman and Chief Executive Officer of Kaiser Aluminum & Chemical Corporation.

The recommendations were withdrawn at the board meeting to allow the full committee and the subcommittee to evaluate the comments if appropriate. Your chairman, William H. Holmes, will notify you at a later date if another meeting of the subcommittee is necessary on this issue.

CWHS:jlt
Attachments

cc: Mr. William H. Holmes
Mr. Joseph Russ, IV
Mr. M. J. Huetter

Dear John:

As you can see by the above memo, the Chamber may or may not initiate legislation on eminent domain in 1985. Larry Kiml and I would very much appreciate it if you would let us know if the Law Revision Committee will be sponsoring legislation on this issue in the next session.

Kip Solinsky

PROPOSED EMINENT DOMAIN POLICY

Action Recommended

That the California Chamber of Commerce SUPPORT legislation to revise eminent domain laws as follows:

- A. The powers of eminent domain shall not be used to condemn property for resale without specific statutory authority;
- B. The powers of eminent domain shall not be exercised to acquire intangible personal property unless authorized by statute or in conjunction with acquisition of other property;
- C. If a governmental agency proposes to acquire extraterritorial property through eminent domain, the resolution of necessity shall not establish an evidentiary presumption in favor of the condemnation;
- D. When eminent domain powers are used to condemn a private business to stop that business from relocating outside of the territorial limits of the condemning agency, the burden of proof of whether or not the condemnation is for a public use shall shift to the condemning party; and
- E. Unless otherwise authorized by statute, government entities may not transfer or sell property acquired by eminent domain.

COMMENTS ON THE REPORT OF THE
STATEWIDE NATURAL RESOURCES COMMITTEE
ON EMINENT DOMAIN

The legislation recommended by the Statewide Natural Resources Committee is a poorly-designed and ill-disguised attempt to stop the City of Oakland's effort to obtain the Raiders' NFL franchise. The only two acquisitions which the report cites as undesirable--acquisition of private property for resale to private parties (Hawaii Housing Authority v. Midkiff), and acquisition to prevent relocation of a business--would not even be affected by the recommended action. The statute in the Midkiff case specifically authorizes resale and similar laws would not be affected by the proposed legislation. Moreover, a city would not be prohibited by this proposal from acquiring a business if the city intended to operate the business itself. No undesirable present or threatened acquisition of property by eminent domain has been noted which the proposed legislation would prevent.

Not only is there no present danger of any governmental abuse of the eminent domain power, there are existing proposed acquisitions with which the business community should be reluctant to interfere. For example, Great America is attempting to sell its entertainment business and facility

to the City of Santa Clara. Under this arrangement the Great America owners will receive fair market value for their property and have up to three years within which to reinvest the proceeds without payment of any federal or state taxes. If the city were unable to acquire this business by eminent domain, these favorable tax advantages would be lost. In the case of a typical business relocation, such as the transfer of a manufacturing concern from a California city to another state or country, it is likely that the business would be grateful for the opportunity to sell to a government entity for cash in hand at fair market value, and obtain the statute-required reimbursement for moving expenses and loss of goodwill. The business could use these funds to set up shop elsewhere, with the attendant tax benefits. The proposed legislation would eliminate these benefits where the government entity anticipates resale of the business to another private entity. At the very least, these concerns suggest the need for a more thorough study of the issue than has yet been undertaken.

Moreover, the recommended action would inhibit transfers of condemned property to private enterprises which might perform the public service much better than the public entity itself. For example, under the Committee's recommendation a city could not acquire land for a hospital, or condemn an existing hospital, if the city intended to resell the property to a private owner. The same would be true of property acquired for parking lots, zoos, historic sites, marinas, auditoriums,

airports, and professional sports stadiums and arenas. Intended resales of ambulances, bus companies, and garbage collection and disposal operations to private enterprises for more efficient performance of public services would likewise be prohibited by the prohibitions on resale contained in paragraphs A and E.

Paragraphs B, C and D are also unnecessary. The proposed prohibition of intangible property acquisitions (paragraph B) appears to have no other purpose than to thwart the City of Oakland's condemnation of the Raiders. Intangible property has always been subject to eminent domain and no reason appears why such property should be treated differently than a person's home or real estate. In any event, such property is normally acquired in conjunction with other property, and therefore specifically would be permitted under the proposed legislation.

The proposed elimination of the evidentiary presumption when extraterritorial property is acquired (paragraph C) is essentially meaningless. The presumption in existing law disappears once any evidence to the contrary is introduced.

Finally, the proposed shift of the burden of proof to the government when it acquires a business seeking to relocate (paragraph D) would not cause a meaningful change in the law. The change in burden of proof would affect only those cases in which the evidence on each side is given equal weight by the court. Such situations rarely, if ever, occur.

The action recommended by the Committee would destroy the state's carefully structured eminent domain system for the apparent sole purpose of helping Los Angeles keep the Raiders. In 1965, the Legislature asked its own Law Revision Commission to conduct a comprehensive study of the eminent domain laws and recommend a statute that would "safeguard the rights of all parties to such proceedings." The Commission's recommendations were approved with minor changes by the Legislature ten years later, in 1975. The Committee's recommended action would be the first step in returning to the old patchwork system of eminent domain laws which the 1975 revisions were intended to eliminate--without even referring the matter to the Law Revision Commission for evaluation.