

Memorandum 99-77

Clarification of Evidence Code Section 822 (Status of 1999 Legislation)

Original Commission Recommendation

The Commission has recommended a technical clarification of a confusing provision in Evidence Code Section 822 (eminent domain valuation evidence):

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, 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:

(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, ~~except that the~~ .The price or other terms and circumstances of an acquisition of property that at the time of acquisition was already appropriated to a public use or a property interest so appropriated shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain was already appropriated. As used in this paragraph, “property appropriated to public use” has the meaning provided in Section 1235.180 of the Code of Civil Procedure.

...
~~(c) The amendments made to this section during the 1987 portion of the 1987-88 Regular Session of the Legislature shall not apply to or affect any petition filed pursuant to this section before January 1, 1988.~~

Comment. Section 822(a)(1) is amended to clarify its meaning. See Code Civ. Proc. § 1235.180 (“property appropriated to public use” in Eminent Domain Law means property already in use for, or set aside for, public purpose). The amendment reverses the interpretation of the provision in *City and County of San Francisco v. Golden Gate Heights Investments*, 14 Cal. App. 4th 1203, 18 Cal. Rptr. 2d 467 (1993).

Subdivision (c) is deleted as obsolete.

Current Status of Proposal

This modest proposal has gone through a remarkable legislative odyssey during 1999, and at one point was included in both a senate bill and an assembly bill. In its present incarnation in AB 321 (Wildman), the provision doesn't look much like it started out — it deletes, rather than clarifies, the offending language, and substitutes a narrower exception:

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, 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:

(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, ~~except that the price or other terms and circumstances of an acquisition of property appropriated to a public use or a property interest so appropriated shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain .~~ The price or other terms and circumstances shall not be excluded pursuant to this paragraph if the proceeding relates to a water system as defined in Section 240 of the Public Utilities Code.

...

~~(c) The amendments made to this section during the 1987 portion of the 1987-88 Regular Session of the Legislature shall not apply to or affect any petition filed pursuant to this section before January 1, 1988.~~

Comment. Section 822(a)(1) is amended to clarify its meaning. See Code Civ. Proc. § 1235.180 (“property appropriated to public use” in Eminent Domain Law means property already in use for, or set aside for, public purpose). The amendment reverses the interpretation of the provision in *City and County of San Francisco v. Golden Gate Heights Investments*, 14 Cal. App. 4th 1203, 18 Cal. Rptr. 2d 467 (1993). delete the special exception relating to property appropriated to public use, in reliance on general evidentiary principles. See, e.g., Section 823 (“Notwithstanding any other provision of this article, the value of property for which there is no relevant, comparable market may be determined by any method of valuation that is just and equitable.”); see also Code Civ. Proc. § 1263.320(b) (fair market value). Thus, evidence of an acquisition that is otherwise inadmissible under subdivision (a)(1) may, in an appropriate case, be admissible under Section 823 if a private market is lacking, e.g., the acquisition involves a special purpose

property such as a school, church, cemetery, park, utility corridor, or similar property.

The new exception added to subdivision (a)(1) is intended to apply in an eminent domain or inverse condemnation proceeding that relates to a public agency's acquisition or taking of all or any part of a water system owned by a water company.

Subdivision (c) is deleted as obsolete.

In this form, the provision still needs more work, since the exception for a proceeding that "relates to" a water system is overbroad. The exception needs to be limited to a proceeding that relates to "the acquisition or inverse condemnation" of a water system, or that relates to "the valuation" of a water system, or a similar refinement.

The bill is a two-year bill. It is on the Assembly floor pending concurrence with Senate amendments. However, the bill is in some danger of failing passage due to another (unrelated) provision of the bill that has engendered a fair amount of controversy. Assembly Member Wildman is attempting to work out the problems on that part of the bill so that it can achieve passage in the 2000 legislative session.

Resurrection of Commission's Original Recommendation

It is possible that Assembly Member Wildman will be unable to work out the problems on AB 321, and the bill may fail passage. In that event, we will be back to square one on the Commission's recommendation.

The staff suggests that, if AB 321 fails passage, we resurrect the Commission's original proposal to clarify, rather than delete, the confusing language in Evidence Code Section 822(a)(1). Although we think that in theory deletion is appropriate, there have been many problems with deletion — it has been difficult to find common ground among CalTrans, the Department of Water Resources, and the California Water Association.

If we go back to the Commission's original proposal, we should also respond to the complaint of the Assembly Judiciary Committee staff that the Commission's proposed clarification is not clear enough. We could revise the Commission's recommendation on this matter to read:

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, 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:

(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, except that the .~~ The price or other terms and circumstances of an acquisition of property appropriated to a public use or a property interest so appropriated for a public use shall not be excluded under this section if the acquisition was for the same public use for which the property could have been taken by eminent domain at the time of the acquisition the property was already appropriated to the same public use. As used in this paragraph, "property appropriated to public use" has the meaning provided in Section 1235.180 of the Code of Civil Procedure.

(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 the 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.~~

(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.~~

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

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

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

(b) In an action other than an eminent domain or inverse condemnation proceeding, the matters listed in subdivision (a) are not admissible as evidence, and may not be taken into account as a basis for an opinion as to the value of property, except to the extent permitted under the rules of law otherwise applicable.

(c) ~~The amendments made to this section during the 1987 portion of the 1987-88 Regular Session of the Legislature shall not apply to or affect any petition filed pursuant to this section before January 1, 1988. As used in this section, "property" includes "property interest".~~

Comment. Section 822(a)(1) is amended to clarify its meaning. See Code Civ. Proc. § 1235.180 (“property appropriated to public use” in Eminent Domain Law means property already in use for, or set aside for, public purpose). The amendment reverses the interpretation of the provision in *City and County of San Francisco v. Golden Gate Heights Investments*, 14 Cal. App. 4th 1203, 18 Cal. Rptr. 2d 467 (1993).

~~Subdivision~~ Former subdivision (c) is deleted as obsolete, and is replaced by a definition of “property”, and conforming revisions are made throughout the section, for drafting simplicity.

This would achieve the same result as the Commission’s original recommendation, but do it in an arguably simpler manner.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary