

MLG
12/9/60

Memorandum No. 105 (1960)

Subject: Study No. 36(L) - Condemnation (revisions of previously approved recommendations)

The Commission has previously approved three recommendations relating to eminent domain. A copy of each such recommendation is attached. The staff believes that certain revisions (indicated below) should be made in the recommendations. Additional comments by Mr. Tarr, Chairman of the State Bar Committee on Condemnation, are set out as Exhibit I and Exhibit II, attached. Exhibit III, attached, contains two points made by the Department of Public Works before the Assembly Committee on Judiciary - Civil.

Evidence Recommendation

The staff believes that the discussion on page 6 of the recommendation in support of the recommendation that offers or options to buy or sell the property to be taken or other property is not as strong an argument as can be made. Because of the time schedule for printing this recommendation, the staff has revised paragraph (c) on page 6 of the recommendation to read as follows:

(c) Offers or options to buy or sell the property to be taken or damaged or any other property by or to third persons should not be considered on the question of value except to the extent that offers by the owner of the property subject to condemnation constitute admissions.

Oral offers are often glibly made and refused in mere passing conversation. Because of the Statute of Frauds such an offer cannot be turned into a binding contract by its acceptance. The offeror risks nothing, therefore, by making such an offer and there is little incentive for him to make a careful appraisal of the property before speaking. Thus, an oral offer will often cast little light upon the question of value of the property. Another objection to permitting oral offers to be considered is that they are easy to fabricate.

An offer in writing in such form that it could be turned into a binding contract by its acceptance is better evidence of value than an oral offer. But written offers should not be considered because of the range of the collateral inquiry which would have to be made to determine whether they were an accurate indication of market value. Such an offer should not be considered if the offeror desired the property for some personal reasons unrelated to its market value, or if, being an offer to buy or sell at a future time secured by an option, it reflected a speculative estimate rather than present value, or if the offeror lacked the necessary resources to complete the transaction should his offer be accepted, or if it was subject to contingencies. Not only would the range of collateral inquiry that would be necessary to determine the validity of a written offer as a true indication of value be great, but it would frequently be very difficult to make the inquiry because the offeror would not be before the court and

subject to cross examination.

In view of these considerations and the fact that the value of such evidence is slight, the Commission has concluded that offers should be excluded entirely from consideration as a basis for determining market value except that an offer to sell which constitutes an admission should be admissible for the reasons that admissions are admissible generally.

Moving Expense Recommendation

The staff has not made any change in this recommendation. However, the definition of "moving" on page 6 was strongly criticized at the public

hearings held on this bill. Some members of the legislative committees seemed to agree with the attorneys for condemners who contend that the word "installing" is ambiguous. For example, it was claimed that this provision might require that the condemner would have to pay for wiring a house for 220 volt current for a dryer as a part of the expense of "installing" the dryer in its new location. One possible revision that the Commission might want to make in this bill would be to revise the definition of "moving" as indicated below:

(e) "Moving" means dismantling, removing, packing, loading, transporting, unloading, unpacking, reassembling and installing personal property but does not include improvements to the site to which the personal property is moved.

Taking Possession Recommendation

One page 8 of the recommendation, fourth line from the bottom of the page, the words "and special assessments" should be deleted. The Commission deleted special assessments from the statute and the recommendation should conform.

On page 31 of the recommendation, a paragraph (c) should be added to Section 1255b(1) to read:

(c) The date the plaintiff was authorized to take possession of the property under an order authorizing the plaintiff to do so. This suggested revision is consistent with the language used in other parts of the bill. (See last portion of previous section.) Moreover, it

reflects the policy decision actually made by the Commission. The Commission originally determined that title should pass on the date that the plaintiff was authorized to take possession of the property under an order of immediate possession. Interest was to run from the date title passed. This decision was later changed and the staff in revising Section 1255b failed to insert the language suggested above. Under the existing law, interest runs from the "effective date" of the order of immediate possession. A case is now on appeal where the plaintiff obtained an order of immediate possession. Thereafter the defendant moved off the property. The plaintiff did not, however, take physical possession of the property for two years. The defendant claims interest from the "effective date" of the order.

In his statement prepared for the Assembly Interim Committee on Judiciary -- Civil, Mr. Tarr suggests a somewhat different revision of Section 1255b(1). He would revise Section 1255b(1)(b) to read:

(b) The date that [~~the~~] an order for possession of the property sought to be condemned is served upon the defendant entitled to or in lawful possession of the property [~~taken~~] or the damage thereto occurs, however, if such defendant continues in actual possession after such date and receives rents, issues and profits from the property, the value of such rents, issues and profits shall be off-set against such interest, to the extent of such interest.

On page 39 of the recommendation, in paragraph (a) about the middle of the page, the words ", including any damages that may be sustained by the defendant if the property is not finally taken for public use" should be deleted. This phrase is not consistent with the statute recommended

by the Commission. (See Section 1243.5(1), pages 15-16 of recommendation). Since we are allowing the defendant to draw down the entire deposit, it seems that what he should receive is the probable just compensation that will be awarded for the property. If this suggested revision is not acceptable to the Commission, an adjustment should be made in Section 1243.5(1) to make it consistent with the proposed change in the Constitution.

The Legislative Counsel suggests additional changes in the proposed constitutional amendment. The staff is willing to accept these changes but presents this matter to the Commission for its consideration. The portion of the constitutional amendment that would be changed is set out below. The changes from the constitution as amended by the Commission are shown in strike out and underscoring.

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner. [~~Except as otherwise provided in Section 23a of Article XII of this Constitution,~~]
Such just compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law [~~✓~~]; except that [~~however,~~] the Legislature may [~~✓~~] by statute [~~✓~~] authorize the plaintiff in a proceeding in eminent domain to take immediate possession of and title to the property sought to be condemned, whether the fee thereof or a lesser estate, interest or easement be sought. [~~✓~~ provided that] Any such statute shall require [~~{a}~~] that the plaintiff shall first deposit such amount of money as the court determines to be the probable just compensation to be made

for the taking and any damage incident thereto [~~including any damages that may be sustained by the defendant if the property is not finally taken for public use,~~] and [(b)] that the money deposited shall be paid promptly to the person entitled thereto in accordance with such procedure and upon such security as the Legislature may prescribe. [~~Subject to the limitations contained in this section,~~] The Legislature may by statute prescribe the manner in which, the time at which, the purposes for which, and the persons or entities by which, immediate possession of property sought to be condemned may be taken.

On page 24 of the recommendation, the staff suggests that a change be made in Section 1253. Under the statute as revised by the Commission, possession prior to the entry of judgment may be taken under Section 1243.5 (immediate possession) and possession pending appeal may be taken under Section 1254. Thus, Sections 1243.5 and 1254 are intended to provide the exclusive procedure whereby the condemner may obtain possession prior to final judgment. Accordingly, Section 1253 should be amended to delete the word "When" at the beginning of the section and insert "After final judgment, when". This revision will prevent the following: Condemner pays amount of judgment into court and either condemner or condemnee appeals; condemner obtains final order of condemnation; files order and obtains title; condemner now seeks to obtain possession pending the appeal because condemner has obtained title. Section 1253 was not intended to permit the condemner to

obtain possession in this manner and the suggested revision will make
it clear that the condemner cannot do so.

Respectfully submitted,

John H. DeMouly
Executive Secretary

Mtg.

EXHIBIT I

RECOMMENDATIONS
OF
LESLIE R. TARR
AND
RICHARD L. HUXTABLE

RELATING TO RECOMMENDATIONS OF LAW REVISION COMMISSION ON
EVIDENCE IN EMINENT DOMAIN CASES

GENERAL. The recommendations of the Law Revision Commission relating to Evidence in Eminent Domain Cases are generally very well done, and their adoption into law will greatly increase the frequency of justice in such proceedings. The expansion of the field of evidence will now permit quick and direct presentation of various forms of evidence which, in past years, were brought before the jury by slow and indirect methods, often confusing the jury and prolonging the trial.

SECTION 1248.1 (a) - Page 8. This section states the existing rule that value may be proved by opinions of qualified persons and that the owner is "presumed" qualified. This section can be clarified in two respects:

----- (1) The words "presumed to be" should be deleted. This will remove the condemners' objections to the use of the word "presumed" and will remove any doubt as to the quality of such qualification. A presumption is often rebuttable and it could be contended under the present language that an owner, upon a showing that he doesn't live on the property, or did not purchase the property but inherited it, should

not be permitted to express his opinion. Such interpretation would, for example, make it impossible for an absentee owner of limited means to litigate his case, and could be unconstitutional; and

----- (2) The provision should expressly permit an officer of a corporation which owns the property or property interest to testify.

Section 1248.1 (a), the last sentence SHOULD READ:

".....The owner or an officer of a corporate owner of the property to be taken or injuriously affected is (~~presumed-to-be~~) qualified to express such opinions."

SECTION 1248.2 (b)-Page 9. This provision makes it proper for an expert to consider sales "or contract to sell" comparable property. This provision is necessary, however, it should be qualified to prohibit consideration of a contract to sell which is not intended to effect possession or title in a reasonable time. These contracts to sell in the future with no present change of possession are almost always influenced by tax considerations and personal motivations, and are accompanied by collateral contracts and leases which are not matters of public record. It has been held that a sale resulting from the enforcement of a contract by specific performance is not an open market transaction. How then, can we consider a sale that has not taken place under a contract which may not be enforceable. McCormick on Evidence as quoted in County of Los Angeles v. Faus, 48 Cal. 2d 672, 678 (June 1957) suggests that the price "must be actually paid or substantially secured." The authority cited by Mr. McCormick for this proposition is a contract for sale case.

Section 1248.2 (b) SHOULD READ: "The price and other terms of any sale of, or contract to sell, comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation, and the sale or contract has effected or will effect title or possession to the comparable property within such time and if the consideration for title or possession has already been paid or substantially secured."

SECTION 1248.2 (e)-Page 10. This provision permits consideration of capitalization of rents but not of "income or profits attributable to any business conducted thereon." This provision resolves a long conflict and permits the appraiser to rely upon the considerations which are the actual basis for the determination of most buyers and sellers either to buy or to sell, and at what price. It is fundamental that a property which is bought to produce income is bought in consideration of that income. However, modern custom and usage in many commercial classes of property fixes rents at percentage or other measurable portion of gross sales or business on the property. Such is a rental and is not related to the speculative element of "profits" yet the language presently proposed would seem to exclude such capitalization. This should be corrected as follows:

Section 1248.2 (e) SHOULD READ: "The capitalized value of the reasonable net rental attributable to the property or property interest to be taken or injuriously affected, including reasonable net rentals customarily fixed by a percentage or other measurable portion of gross sales or gross income of a business which may reasonably be conducted

on the premises, but as distinguished from the capitalized value of the income or profits attributable to any business conducted thereon."

SECTION 1248.2 (f)-Page 10. This provision permits consideration of the cost of reproducing improvements where the improvements "enhance the value of the land for its highest and best use." As an example, if the land would be worth \$50,000 if vacant and available for industrial use, but is only worth \$40,000 for commercial use because of a \$1,000,000 office building on the property, it is obvious that the building, considered separately, does not "enhance the value of the land for its highest and best use." If this section is based upon logic, then the \$1,000,000 office building is worthless, and the land is worth \$50,000. Yet the true value of the property is \$1,040,000. Thus, the rule must be that if the value of the land is impaired by a "non-conforming" improvement, such should be considered in fixing the value of the land in the first instance, and then the cost of reproducing such improvements may be considered, whether or not they conform to highest and best use.

Section 1248.2 (f) SHOULD READ: "The value of the property or property interest to be taken or injuriously affected as indicated by the value of the land together with (1) the cost of reproducing the improvements thereon, if the improvements enhance the value of the land, (~~for-its-highest-and-best-use~~) less whatever depreciation or obsolescence the improvements have suffered, (2) the price which the improvements will sell for, in place, to be moved, when the highest and best use economically requires the existing improvements to be removed."

SECTION 1248.3 (c)-Page 10. This provision prohibits consideration of offers or options to buy or lease the subject property or comparable properties. The reasons advanced for such exclusion is that offers can be fabricated and it is difficult to get accurate information. ALL EVIDENCE CAN BE FABRICATED, thus the law has developed its safeguards,-- the crime of perjury, the statute of frauds, and others. IT IS ALWAYS DIFFICULT TO GET ACCURATE INFORMATION about any sale, yet no one suggests that ALL sales should be excluded. The Supreme Court in County of Los Angeles v. Faus, 48 Cal. 2d, 672, at page 677, quoted with approval the following language of Professor Wigmore in his treatise on The Law of Evidence:

"When the conduct of others indicating the nature of a salable article consists in offering this or that sum of money, it creates the phenomena of value, so-called. For evidential purposes, sale-value is nothing more than the nature or quality of the article as measured by the money which others show themselves willing to lay out in purchasing it. Their offers of money not merely indicate the value, they are the value; . . ."

The Faus Case also approved the dissenting opinion of Justice Traynor in People v. La Macchia, 41 Cal. 2d 738, 756, in which he stated that where an offer is "bona fide and is for the identical property, and is by a purchaser able and willing to buy, evidence of the offer should be admitted."

Prior to the Faus Case, it was held reversible error to restrict cross-examination - even sales were not admissible on direct examination at this time - so as to prohibit inquiry into consideration of an offer to

purchase the property being condemned. People v. Union Machine Co., 133 C.A. 2d 167, 172; People v. La Macchia 41 Cal:2d 738, 748.

After the Faus Case, it has been held that even offers to purchase comparable properties were proper subject for cross-examination. Los Angeles City High School Dist. v. Kita, 169 C.A. 2d 655, 661; Covina Union High School Dist. v. Jobe, 174 C.A. 2d 340, 351-2.

In City of San Diego v. Boggelu, 164 C.A. 2d 1 (Oct. 1958), testimony as to an amount of an offer to buy the subject property was held to support the verdict of the Court.

In People v. Cava, 314 P. 2d 45, 46-7 (July 1957) in reliance upon the Faus Case, the District Court of Appeal held that an offer to buy the subject property was admissible on direct examination. This decision was vacated and no final appellate ruling was ever made. Later, however, the Supreme Court in Pao Ch'en Lee v. Gregorion, 50 Cal. 2d 502, 505, held an offer to buy the subject property in a fraud case admissible on direct examination and even when the offer is by a relative of the defendant and in open Court, the bona fides of the offer being for the "trier of fact".

The proposed rule will CHANGE the existing rule and should not be adopted in its existing form.

An offer to purchase the subject property should be admissible if it is (1) bona fide, (2) by a person who is able and willing to buy, and (3) the terms thereof are such that the transaction, if the offer were accepted, would be reasonably certain of consummation. A form of the statute of frauds could be added requiring that the offer be in writing.

An offer to purchase, or a listing of another property, a prior sale of which has been placed in evidence, should be admissible for the limited purpose of rebuttal of the prior sale.

Section 1248.3 (c) SHOULD READ: "The price at which an offer or option to purchase or lease the property or property interest to be taken or injuriously affected or any other property was made, or the price at which such property or interest was optioned, offered or listed for sale or lease, unless (1) such option, offer, or listing is introduced by a party as an admission of another party to the proceeding (2) such offer to purchase or lease the property or property interest being taken or injuriously affected, or to purchase or lease the larger parcel of which the property or property interest being taken or injuriously affected is a part, is bona fide, made in writing by a person ready, willing and able to buy or lease at the time the offer was made and the terms of the offer are such that the transaction, if the offer were accepted, would have been or would be reasonably certain of consummation, and (3) the offer, option, or listing to purchase or to sell, or to lease another property is offered as rebuttal of a prior sale of that same property. 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 1248.1."

SECTION 1248.3 (e)-Page 11. This provision prohibits the expression of an opinion of the value of other properties in the area. This is a proper statement of present law but should be clarified to permit an appraiser to apportion a sales price of a transaction in evidence between

land and improvements, for purposes of comparison. This is necessary to make sales evidence more meaningful.

Section 1248.3 (e) SHOULD READ: "An opinion as to the value of any property or property interest other than that to be taken or injuriously affected. This subsection shall not prohibit a witness, who has considered any particular sale, contract to sell, or lease, from apportioning the price of that transaction between land and improvements for the purpose of comparison with the property or property interest being taken or injuriously affected."

SECTION 1248.3 (f)-Page 11. This provision makes it improper for the property owner or his witnesses to consider "noncompensable items of damage or injury." This provision should either be deleted or made equitable in its application making it improper for the condemner or its witness to omit a consideration of a compensable item.

Section 1248.3 (f) SHOULD READ: "The influence upon such amount of any noncompensable items of damage or injury, or failure to consider the influence of any compensable item of damage or injury."

EXHIBIT II

RECOMMENDATIONS
of
LESLIE R. TARR
and
RICHARD L. HUXTABLE

Relating to RECOMMENDATIONS OF LAW REVISION COMMISSION

TAKING OF POSSESSION AND PASSAGE OF TITLE IN EMINENT DOMAIN PROCEEDINGS

GENERAL. The field of law relating to the rights of a property owner where the condemner has taken immediate possession has been slow in its development and is in need of change. The writers feel that the right of immediate possession is an extremely coercive force in the hands of the condemner and, therefore, should be limited as much as is possible. We, therefore, do not believe that the Constitutional Amendment should be adopted, nor do we believe that Section 1243.4 (page 15) should be adopted. Sections 1243.5 (page 15) through 1252.1(3) (page 36) and R. & T. C. Section 5096 serve to clarify rights under both the existing Constitutional provision and the proposed Amendment, and should be adopted, under either rule, with the following modifications:

SECTION 1243.4 - page 15. This section should not be adopted unless the proposed Constitutional Amendment is approved by the people.

SECTION 1243.5 (3) (third from last sentence) - page 17, lines 16-19. This provision permits the condemner for good cause to obtain an order permitting it to take immediate possession without having

served a copy of the regular order of possession on a record owner not occupying the property. This provision is proper but should require that notice has been posted on the property.

SECTION 1243.5 (3), third from last sentence, SHOULD READ:

".....The court may for good cause shown by affidavit, and upon showing that a copy of the order of immediate possession has been posted in a conspicuous place upon the property of which possession is being taken, for a period of 20 days immediately prior thereto, authorize the plaintiff to take possession of the property without serving a copy of the order of immediate possession upon a record owner not occupying the property....."

SECTION 1243.5 (4)-Page 18. This provision permits an increase or decrease in the amount of the deposit at any time. It is doubtful that the deposit should be reduced below the amount already withdrawn by the property owner. Usually, the money withdrawn is used to buy a new home or place of business and is not available for refund by the owner. It is possible that the threat of a reduction and resulting refund requirement could be used as a coercive influence.

SECTION 1243.5 (4) SHOULD READ: as proposed, but should be amended to add at the end:

".....Such deposit shall not be reduced to an amount less than that already withdrawn by the owner or owners and other parties in interest."

SECTION 1243.5 (5)(a)-Page 19. This permits the owner to stay the order of possession when there is hardship, but it is doubtful that the owner could prepare a case to show hardship in 3 days as possible under subsection (3) of the same sections, and further, he must prepare for a proceeding from which he has no right of appeal under subsection (6).

SECTION 1243.5 (5)(a) SHOULD READ: as proposed, with the addition of the following language at its end: ".....and upon filing of notice of intention to move to stay the order upon grounds of hardship, the court may temporarily stay such order until such time as a hearing can be had upon the motion."

SECTION 1243.7 (6)-Page 22. This provision relieves the condemner of liability to persons who fail to object to the withdrawal of funds by other defendants, but provides that condemner continues to be liable to owners of record who are not served with notice of the hearing. The condemner is required to give notice BOTH to owners of record and to the occupants (Section 1243.5 (3)), and it is not consistent that plaintiff could cut off its own liability by failure to give notice.

SECTION 1243.7 (6) SHOULD READ: as proposed but the last phrase should be modified as follows: ".....; provided, the plaintiff shall remain liable for said compensation to persons having an interest of record and to occupants who are not so served."

SECTION 1254 (11)-Page 29. This provision is an existing portion of the present section 1254, providing that where a defendant has gotten a new trial and he fails to get greater compensation in the new trial, the

costs of the new trial are assessed against him. This provision is patently illogical, and is unconstitutional. Heimann v. City of Los Angeles, 30 Cal.2d 746, 753, holds that an owner is not given just compensation if he is required to pay costs. This rule should not be changed where he has been denied a fair trial the first time by error or misconduct of the judge or attorney for the condemner. Such rule might be justified where the new trial is obtained upon the grounds of newly discovered evidence, however, it constitutionally is, even then, questionable.

SECTION 1254 (11) SHOULD BE DELETED.

SECTION 1255 a (3)-Page 30. This provision is an existing portion of the present section 1255a, which allows the owner to recover costs of preparing for trial and attorneys fees in the event of an abandonment by the condemner. Because the Legislature neglected to provide for recovery of costs during trial, the courts have ruled that such costs are not recoverable even though the owner, when the case is abandoned after trial, has been wrongfully forced to spend several hundreds of dollars on the fees of expert witnesses during the trial. Metropolitan Water Dist. v. Adams, 23 Cal.2d 770, 773 (Mar. 1944). The intent of 1255a is to restore the owner to the same position he occupied before the action was begun and fails to do so.

SECTION 1255a (3) SHOULD READ: "(3) Upon the denial of a motion to set aside such abandonment or, if no such motion is filed, upon the expiration of the time for filing such a motion (express-or-implied), on motion of any party, a judgment shall be entered dismissing the

proceeding and awarding the defendants their costs and disbursements, which shall include all necessary expenses incurred in preparing for trial and during trial, and reasonable attorney fees....."

SECTION 1255b (1) (b)-Page 31. This provision allows an owner, whose property has been taken under an order of immediate possession, to recover interest from "the date that possession of the property sought to be condemned is taken or the damage thereto occurs." This wording suggests a result contrary to the intention of the Law Revision Commission and which is unconstitutional. The phrase "is taken or the damage thereto occurs", suggests that interest will run only after physical occupancy has been taken by the condemner and such contentions have been made under equally equivocal language of existing cases on the subject. The proper time for the running of interest is the date the order of possession is signed and entered, or, at the very latest, on the date it is served upon the owner. In most cases, the owner will vacate the property at that time or will cease to use the land. If the owner should continue to collect rents, issues and profits subsequent to that date, they should be off-set against the interest. City of Los Angeles v. Aitken, 32 C.A.2d, 524, 533, (May 1939).

SECTION 1255b (b) SHOULD READ: "(b) The date that ~~(the)~~ an order for possession of the property sought to be condemned is served upon the defendant entitled to or in lawful possession of the property (taken) or the damage thereto occurs, however, if such defendant continues in actual possession after such date and receives rents, issues and profits from the property, the value of such rents, issues, and profits will be

off-set against such interest, to the extent of such interest."

SECTION 1255b (1) (c)-NEW RECOMMENDATION for insertion after proposed 1255b (1) (b), page 31. For reasons explained in comment on proposed Section 1252.1(1)- the next comment in order - a new provision providing for the payment of interest should be added, which SHOULD READ:

"(c) In the case of unoccupied property not actually productive of rents, issues and profits, the date of issuance of summons".....

SECTION 1252.1 (1)-Page 35. This provision allocates property taxes upon the date the plaintiff takes possession or the date of passage of title, the entry of the final order of condemnation, whichever is the earlier. This rule ignores the owner of vacant and unproductive land who is economically prohibited from putting his property to use by proposed section 1249.1 (present effect of section 1249) since he cannot build upon the property without losing the improvements without compensation. The same may be true as to the planting of crops. This owner is left with the bare right to pay taxes and has lost the only value his property had, the value to be put to a use. This man should not only be relieved of the obligation to pay taxes from the date of issuance of summons, but should also receive interest from that date.

SECTION 1252.1 (1) SHOULD READ: "As between the plaintiff and defendant, the plaintiff is liable for the payment of any ad valorem taxes upon the property sought to be condemned that (a) are allocable to that part of the fiscal year that begins on the date that the title to the property vests in the plaintiff (~~or~~), the date that the plaintiff takes possession of the property, or, in the case of unoccupied property

not actually productive of rents, issues and profits, the date of issuance of summons, whichever is (~~earlier~~) earliest, except for such taxes allocable to periods during which defendant actually occupies or receives rents, issues and profits from the land, (b) where such taxes are not subject to cancellation under.....etc."

SECTION 5096 (2), R. & T.C.-Page 36. This section allows refund of taxes where the land has been acquired by certain agencies, thus becoming tax exempt. The last sentence of this proposal should be altered to conform to the next preceding recommendation.

SECTION 5096 (2), R. & T.C., the last sentence of the proposal SHOULD READ: ".....If the property was acquired by eminent domain, or after an action in eminent domain had been initiated to acquire the property, the property shall be deemed to have been acquired on the date that the title to the property vests in the plaintiff (~~or~~), the date that the plaintiff takes possession of the property, or, in the case of unoccupied property not actually productive of rents, issues and profit, the date of issuance of summons, whichever is (~~earlier~~) earliest."

ARTICLE I, SECTION 14, CALIFORNIA CONSTITUTION - Page 38. This amendment will permit the Legislature to prescribe the purpose for which the right of immediate possession may be used. This right should not be extended beyond its present limitations, and therefore, the amendment should not be approved. IF, however, this amendment is submitted to the people the following comments might be considered:

Reference to Section 23a, Article XII, should be deleted. That provision denies a jury trial to public utilities and places the issue of the value of public utility property upon the Railroad Commission, now the Public Utility Commission. This creation of a second class citizen, although it has been upheld in past years in State Courts, is believed by many to be a denial of equal protection of the laws under the 14th Amendment of the United States Constitution. If Section 23a, Article XII, is constitutional under the 14th Amendment, it will continue its effect without need of cross-reference in Article I, Section 14. If it is unconstitutional, this reference cannot validate it and this section should not be burdened by it.

The term "plaintiff" in the immediate possession portion should be limited to the state, a county, a public or quasi-public corporation or district, and a public utility. If the Legislature were to be lulled into the trap of the same general language used in the Constitutional provision, the effect of Civil Code Section 1001 would make it possible for the power of immediate possession to be used as a weapon of spite or business rivalry by individuals. This is beyond all necessity. The most that is logical or practical is that the right of immediate possession be extended only to the condemners whose determinations of public necessity are conclusive under C.C.P. Section 1241 (2) with the possible addition of public utilities.

SECTION 1243.4-Page 41. This provision is much too broad and would give virtually every man and woman in the state the power, with the aid of a Court order, to disrupt the lives of his neighbors. The mere self assurance that, "it will never happen," should not permit such legislation to be enacted.

EXHIBIT III

Extract from Statement of Department of Public Works before
Assembly Interim Committee on Judiciary -- Civil

(December 1, 1960)

TAKING POSSESSION AND PASSAGE OF TITLE RECOMMENDATION:

C.C.P. Section 1243.5(8). The Department urges that this subsection be broadened to include not only the amount deposited or withdrawn but also the evidence introduced to alter the deposit and evidence introduced to withdraw the deposit, to read as follows:

(8) No reference shall be made to the amount deposited or withdrawn or evidence introduced in fixing such deposit or withdrawal in the trial of the issue of compensation.

The Highway Research Board, in Special Report 33, indicated that in eight states statutes specifically provide that the amount of the money deposited or withdrawn or the evidence introduced relative to those proceedings have no bearing upon and are inadmissible in the main condemnation proceeding.

C.C.P. Section 1248.2(6). Summation Studies. . . . In addition it is noted that there are two methods used in a summation study which are similar but distinguishable, i.e., replacement with a similar improvement, and reproducing the exact same improvement. This approach to value should not be confined to reproduction costs but should also include

replacement costs, i.e., those costs necessary to replace the functional equivalent of the improvement being taken. Consequently, subdivision (6) would read:

The value of the property or property interest to be taken or injuriously affected as indicated by the value of the land together with the cost of replacing or reproducing the improvements existing thereon, if the improvements enhance the value of the land for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered.

36 (L)

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California

RECOMMENDATION AND PROPOSED LEGISLATION

relating to

EVIDENCE IN EMINENT DOMAIN CASES

November 25, 1960

RECOMMENDATION OF THE CALIFORNIA LAW

REVISION COMMISSION

Relating to Evidence in Eminent Domain Cases

The principal determination to be made in an eminent domain proceeding is the market value of the property that is to be taken or damaged for public use. The generally accepted view has been that this determination should be based on the opinions of persons qualified to form a reliable opinion of the value of the property, i.e., the owner of the property and expert witnesses. In determining the value of property, the modern appraiser considers many factors. Yet the California courts have not permitted expert witnesses in eminent domain proceedings to testify concerning many factors that a modern appraiser takes into consideration in determining the market value of the property. For example, it has been held that an expert may not testify on direct examination concerning the income from business property being condemned or the cost, less depreciation, of reproducing the improvements that enhance the value of the property being condemned. Until the decision of the California Supreme Court in County of Los Angeles v. Faus¹ in 1957, an expert was not permitted to testify on direct examination about the sales prices of comparable property that he considered in reaching his opinion. Restrictive rules of this sort, which prevent witnesses from revealing all that they rely on to determine value in the market place, have been justly criticized by lawyers, judges and appraisers.

¹48 Cal.2d 672.

Although the Faus case eliminated some problems involved in the determination of market value, it created some uncertainties as well. To eliminate these uncertainties, and to bring judicial practice into conformity with modern appraisal practice, the Commission makes the following recommendations:

1. Evidence of value in eminent domain cases should continue to be limited to the opinions of qualified experts.² Since the Faus decision, and particularly since the 1959 amendment to Code of Civil Procedure Section 1845.5, there has been uncertainty whether evidence of comparable sales is direct evidence of value upon which the trier of fact may base a finding or whether such evidence is received merely to explain and substantiate opinion evidence. The practical effect of this uncertainty is that trial courts have made conflicting decisions upon the question of whether a jury can find a value completely outside the range of opinion testimony in reliance upon some evidence of comparable sales that has been introduced.

The value of property has long been regarded as a matter to be established in judicial proceedings by expert opinion. If this rule were changed to permit the court or jury to make a determination of value upon the basis of comparable sales or other basic valuation data, the trial of an eminent domain case might be unduly prolonged as witness after witness

²"Expert" as used here means a person qualified to express an opinion concerning the value of the property that is subject to condemnation. In California, the owner of the property is presumed to be so qualified. The Commission does not recommend that this rule be changed. Therefore, the term "expert" in this recommendation refers also to the owner of the property being condemned.

is called to present such testimony. In addition, the court or jury would be permitted to make a determination of value without the assistance of experts qualified to analyze and interpret the facts established by the testimony and to make an award far above or far below what any expert who testified considers the property is worth - even though the court or jury may know little or nothing of property values and may never have seen the property being condemned or the comparable property mentioned in the testimony. The Commission believes that the net result would be lengthened condemnation proceedings and awards which would often not realize the constitutional objective of just compensation. To avoid these consequences, the long established rule that value is a matter to be established by opinion evidence should be reaffirmed and codified.

2. An expert should be permitted to give the reasons for his opinion on direct examination. An expert's testimony is more meaningful when he can fully explain the reasons for his opinion. If he cannot relate the data relied on in direct examination, the trier of fact may never hear it, for the cross-examiner will ask only about the data most damaging to the expert's opinion.

3. An expert should be permitted to state the facts and data upon which he relied in forming his opinion whether or not he has personal knowledge of such matters. This is the practice at the present time, but it is desirable to make the rule explicit so that it may be clear that the hearsay rule is inapplicable to such testimony when it is introduced solely in explanation of the witness's opinion. It would be virtually impossible to try a condemnation case if all the facts and data introduced in support of opinion testimony had to be established by witnesses with personal knowledge of the facts.

4. In formulating and stating his opinion as to the value of the property, an expert should be permitted to rely on and testify concerning any matter that a willing, well-informed purchaser or seller would take into consideration in determining the price at which to buy or sell the property. As the court is trying to determine the "market" value of the property, it should consider the factors that would actually be taken into account in an arm's length transaction in the market place. In modern appraisal practice, there are three basic approaches to the determination of value. These involve consideration of the sales prices of comparable property and other market data, the capitalization of the income attributable to the property, and the cost of reproducing the improvements on the property less depreciation and obsolescence. Specific statutory recognition should be given to these methods of appraising property as they are relied upon extensively to determine market value outside the courtroom.

While permitting an expert to rely on and testify concerning all factors that would be considered by buyers and sellers generally on the open market to determine the value of the property, this standard would not permit an expert to rely on personal considerations of the owner of the property or the need of the condemner to obtain the property, for these factors are not relevant to the determination of the actual value of the property on the open market.

Nor should an expert in formulating or stating his opinion be permitted to rely on or testify concerning injuries to the property for which compensation may not be given -- such as injuries caused by the exercise of the police power -- even though such injuries may actually

influence market value. Without this limitation, damages might be awarded indirectly for losses for which a condemnee is not entitled to be compensated.³

5. Certain factors that are of doubtful validity in their bearing on value should be specifically excluded from consideration in determining value to remove any doubt concerning the admissibility of an opinion based on these factors under the standards discussed above. These include the following:

(a) Sales to persons that could have acquired the property by condemnation for the use for which it was acquired should be excluded from consideration on the issue of value. Such a sale does not involve a willing buyer and a willing seller. The costs, risks and delays of litigation are factors that often affect the ultimate price. Moreover, sales to condemners often involve partial takings. In such cases valid comparisons are made more difficult because of the difficulty in allocating the compensation between the value of the part taken and the severance damage or benefit to the remainder. These sales, therefore, are not sales in the "open market" and should not be considered in a determination of market value.

(b) Offers between the parties to buy or sell the property to be taken or damaged should also be excluded from consideration. Pretrial

³ This recommendation is not concerned with and makes no change in the elements of damage for which compensation must be made in eminent domain proceedings; it is concerned only with the evidence that may be used to establish the amount of damages for which compensation must be made.

settlement of condemnation cases would be greatly hindered if the parties were not assured that their offers during negotiations are not evidence against them, and they should be excluded under the general policy of excluding evidence of an offer to compromise impending litigation.

(c) Offers or options to buy or sell the property to be taken or damaged or any other property by or to third persons should not be considered on the question of value except to the extent that offers by the owner of the property subject to condemnation constitute admissions. An unaccepted offer is not an indication of market value because it does not indicate a price at which both a willing buyer and a willing seller can agree. An offer often represents a price at which the offeror is willing to begin negotiations. Moreover, offers may be easily fabricated because no one is bound. Offers cannot be said to represent market value until they are accepted, i.e., until both a buyer and seller are willing to bind themselves to transfer the property at the price stated. To the extent that an offer to sell constitutes an admission, however, it should be admissible for the reasons that admissions are admissible generally.

(d) Valuations assessed for purposes of taxation should not be considered on the question of value. It is well recognized that the assessed value of property cannot be relied upon as an indication of its market value.

(e) Opinions as to the value of comparable property should be excluded from consideration in determining the value of property subject to condemnation on the principle of remoteness because their consideration would require the determination of many other collateral questions involving the weight to be given such opinions which would unduly

prolong the trial of condemnation cases. Opinion evidence on value should be confined to opinions of the value of the property being taken or damaged for public use.

6. The foregoing recommendations would supersede the provisions of Code of Civil Procedure Section 1845.5 and that section should be repealed.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to add Sections 1248.1, 1248.2, 1248.3 and 1248.4 to, and to repeal Section 1845.5 of, the Code of Civil Procedure, relating to eminent domain.

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

SECTION 1. Section 1248.1 is added to the Code of Civil Procedure, to read:

1248.1. (a) The amounts to be ascertained under subdivisions 1, 2, 3 and 4 of Section 1248 may be shown only by the opinions of witnesses qualified to express such opinions. Such a witness may, on direct or cross-examination, state the facts and data upon which his opinion is based, whether or not he has personal knowledge thereof, for the limited purpose of showing the basis for his opinion; and his statement of such facts and data is subject to impeachment and rebuttal. The owner of the property or property interest sought to be taken or injuriously affected is presumed to be qualified to express such opinions.

(b) Nothing in this section prohibits a view of the property or the admission of any other competent evidence, including but not limited to evidence as to the nature and condition of the property and the character of the improvement proposed to be constructed by the plaintiff, for the limited purpose of enabling the court, jury or referee to understand and apply the testimony given under subdivision (a) of this section; and such evidence is subject to impeachment and rebuttal.

SEC. 2. Section 1248.2 is added to the Code of Civil Procedure, to read:

1248.2. The opinion of a witness as to the amount to be ascertained under subdivision 1, 2, 3 or 4 of Section 1248 is admissible only if the court finds that the opinion is based upon facts and data that a willing purchaser and a willing seller, dealing with each other with a full knowledge of all the uses and purposes for which the property is reasonably adaptable and available, would take into consideration in determining the price at which to purchase and sell the property or property interest to be taken or injuriously affected, which facts and data may include but are not limited to:

(a) The price and other terms of any sale or contract to sell which included the property or property interest to be taken or injuriously affected or any part thereof if the sale or contract was freely made in good faith within a reasonable time before the date of valuation.

(b) The price and other terms of any sale or contract to sell of comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation.

(c) The rent reserved and other terms of any lease which included the property or property interest to be taken or injuriously affected or any part thereof which was in effect within a reasonable time before the date of valuation.

(d) The rent reserved and other terms of any lease of comparable property if the lease was freely made in good faith within a reasonable time before or after the date of valuation.

(e) The capitalized value of the reasonable net rental attributable to the property or property interest to be taken or injuriously affected as distinguished from the capitalized value of the income or profits attributable to any business conducted thereon.

(f) The value of the property or property interest to be taken or injuriously affected as indicated by the value of the land together with the cost of reproducing the improvements thereon, if the improvements enhance the value of the land for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered.

SEC. 3. Section 1248.3 is added to the Code of Civil Procedure, to read:

1248.3. Notwithstanding the provisions of Section 1248.2, the opinion of a witness as to the amount to be ascertained under subdivision 1, 2, 3 or 4 of Section 1248 is inadmissible if it is based, wholly or in part, upon:

(a) The price or other terms of an acquisition of property or a property interest if the acquisition was made for a public use for which property may be taken by eminent domain.

(b) The price or other terms of any offer made between the parties to the action to buy, sell or lease the property or property interest to be taken or injuriously affected, or any part thereof.

(c) The price at which an offer or option to purchase or lease the property or property interest to be taken or injuriously affected or any other property was made, or the price at which such property or interest was optioned, offered or listed for sale or lease, unless such option, offer or listing is introduced by a party as an admission of another party

to the proceeding. 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 1248.1.

(d) The value of any property or property interest as assessed for taxation purposes.

(e) An opinion as to the value of any property or property interest other than that to be taken or injuriously affected.

(f) The influence upon such amount of any noncompensable items of damage or injury.

(g) The capitalized value of the income or rental from any property other than the property to be taken or injuriously affected.

SEC. 4. Section 1248.4 is added to the Code of Civil Procedure, to read:

1248.4. If the court finds that the opinion of a witness as to the amount to be determined under subdivision 1, 2, 3, or 4 of Section 1248 is inadmissible because it is based in whole or in part upon incompetent facts or data, the witness may then give his opinion as to such amount after excluding from consideration the facts or data determined to be incompetent.

SEC. 5. Section 1845.5 of the Code of Civil Procedure is repealed.

~~In an eminent domain proceeding a witness, otherwise qualified, may testify with respect to the value of the~~

~~real property including the improvements situated thereon
or the value of any interest in real property to be taken,
and may testify on direct examination as to his knowledge
of the amount paid for comparable property or property
interests. -- In rendering his opinion as to the highest and best
use and market value of the property sought to be condemned
the witness shall be permitted to consider and give evidence
as to the nature and value of the improvements and the
character of the existing uses being made of the properties
in the general vicinity of the property sought to be
condemned.~~

SEC. 6. This act does not apply to any action or proceeding that
has been brought to trial prior to the effective date of this act.

(36)

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California

RECOMMENDATION AND PROPOSED LEGISLATION

Relating to

REIMBURSEMENT FOR MOVING EXPENSES
WHEN PROPERTY IS ACQUIRED FOR PUBLIC USE

November 25, 1960

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to

Reimbursement for Moving Expenses

When Property is Acquired for Public Use

The California Constitution provides that private property shall not be taken for public use without "just compensation" having first been made. The statutes and decisions implementing this provision provide that the person whose land is taken for public use is entitled to be paid only for its market value. As a result, no compensation is provided for the expense of moving to another location when land is permanently taken for public purposes.*

In some states, the courts have held that the cost of moving is to be considered in determining the market value of the land taken. Courts in other states, taking a more direct approach, have held that "just compensation" is not made unless the owner is compensated for his moving expenses. Neither of these judicial solutions to the problem is satisfactory. The first is unsatisfactory because the concept of market value correctly

*The United States Supreme Court has held that the moving and storage expenses of a tenant should be considered in determining the value of his interest when property subject to a lease is taken temporarily for public use and the tenant has an obligation to return to the property at the end of the public occupancy. *United States v. Petty Motor Co.*, 327 U.S. 372 (1946); *United States v. General Motors Corp.*, 323 U.S. 373 (1945). There is no reported decision of a California court involving this problem. Thus, it is uncertain at present whether a tenant would be entitled to compensation for moving expenses under these circumstances under California law.

interpreted does not include moving expenses. Neither is administratively feasible because frequently the property owner does not move before the trial of the eminent domain proceeding, and it is, therefore, difficult if not impossible to determine the amount of moving expenses he will necessarily incur when the amount of his compensation is determined. Moreover, these judicial solutions place no limit on the amount of moving expense that must be reimbursed. The Federal Government and several states have enacted legislation providing for the payment of moving expenses in order to recognize the property owner's right to be reimbursed for such expenses, to place limitations on the amount of moving expenses that may be reimbursed and to provide a procedure for claiming such reimbursement.

The Commission believes that, subject to reasonable limitations, the owner of property acquired for public use should be reimbursed for the expense of moving his personal property. Inasmuch as this expense must be incurred because the land is taken for the public's benefit, the public should bear at least a substantial part of the burden imposed by reimbursing a person for moving expenses. Such a change in the law would more nearly effectuate the constitutional objective of "just compensation." Moreover, in some instances out-of-court settlement may be facilitated, for the condemning agency will be able to reimburse a property owner for an element of damage that cannot be compensated at the present time.

Accordingly, the Commission recommends:

1. When land is taken for public use, the owners should, subject to certain limitations discussed below, be reimbursed for the actual and

reasonable costs necessarily incurred in moving their personal property, i.e., dismantling, packing, loading, transporting, temporarily storing, unloading, unpacking, reassembling, and installing such personal property.

2. Reimbursement for the transportation element of moving expense should be provided only for the first 25 miles traveled. If the person moving desires that the property be moved a greater distance, he should bear the additional mileage costs himself. However, packing, unpacking and other costs of moving should be borne by the public no matter how far the property is moved, for these expenses must be incurred whether the property is relocated within the same general area or not. The 25-mile limitation should not apply, however, to negotiated settlements. The condemning agency may be relied upon to protect the public interest, and settlement may be facilitated if there is no mileage limitation upon negotiated settlements.

3. When land is taken for public use for a term only, an occupant who has to move and who has a right to reoccupy the property at the end of the term should be reimbursed not only for expenses incurred in moving his personal property off the land, but also for the actual and reasonable costs necessarily incurred in storing his personal property and moving it back to the land at the end of the term.

4. Where the parties cannot agree on the amount to be paid, the amount of reimbursement to be made for moving expenses should be determined as a part of the condemnation proceeding in a manner similar to that used to determine costs. Such a procedure would permit the determination of moving expenses separately from the determination of compensation for the real property, but would not require the commencement of a distinct judicial proceeding for that purpose.

5. Evidence of moving expenses should be expressly made inadmissible in an eminent domain proceeding upon the issue of the compensation to be paid for the property to be taken. Such a provision is necessary to preclude the possibility that a person might be compensated twice for the same loss.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to add Chapter 2 (beginning with Section 1270) to Title 7 of Part 3 of, and to add Section 1248.5 to, the Code of Civil Procedure, relating to the payment of compensation and damages when property is acquired for public use.

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

SECTION 1. Chapter 2 (beginning with Section 1270) is added to Title 7 of Part 3 of the Code of Civil Procedure, to read:

CHAPTER 2

REIMBURSEMENT FOR MOVING EXPENSES WHEN PROPERTY IS ACQUIRED FOR PUBLIC USE

1270. As used in this chapter:

(a) "Acquirer" means a person who acquires real property or any interest therein for public use.

(b) "Acquisition" means the acquiring of real property or an interest therein for public use either by the consent of the owner or by eminent domain.

(c) "Person" includes a natural person, corporation, association, partnership, joint venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, the State, or a city, county, city and county, district or any department, agency or instrumentality of the State or of any governmental subdivision in the State.

(d) "Public use" means a use for which property may be taken by eminent domain.

(e) "Moving" means dismantling, removing, packing, loading, transporting, unloading, unpacking, reassembling and installing personal property.

1270.1. A person whose real property or interest therein is acquired for public use by eminent domain is entitled as a part of the payment therefor to reimbursement from the acquirer as provided in this chapter for the reasonable costs which he actually and necessarily incurred as a result of the acquisition in:

(a) Moving personal property from the real property acquired or from the larger parcel from which the part acquired is severed.

(b) Temporarily storing such personal property until the real property at which the personal property is to be relocated for use is available for occupancy by such person, but not in any event in excess of 30 days.

1270.2. (a) A person is entitled to reimbursement under this section only if:

(1) He is lawfully occupying real property when such property or any interest therein is acquired for public use by eminent domain for a term only; and

(2) He has, at the time of the acquisition, the right to the possession of the real property immediately after the term acquired for public use.

(b) In addition to any reimbursement to which he may be entitled under Section 1270.1, a person covered by this section is entitled, as part of the payment for the real property or interest therein, to reimbursement from

the acquirer as provided in this chapter for the reasonable costs which he actually and necessarily incurred as a result of the acquisition in:

(1) Storing the personal property that was removed from the real property acquired or from the larger parcel from which the part acquired was severed during the time the real property is occupied by the acquirer.

(2) Moving such personal property back to the real property acquired after the expiration of the term for which the real property was acquired for public use.

1270.3. Whenever a person is entitled to reimbursement under Section 1270.1 for the cost of transporting personal property, such reimbursement may not exceed the cost of transporting such property 25 miles.

Whenever a person is entitled to reimbursement under subdivision (b)(2) of Section 1270.2 for the cost of transporting personal property, such reimbursement may not exceed the cost of transporting such property 25 miles.

Reimbursement under this chapter may not exceed the value of the property moved.

1270.4. A person who claims reimbursement under Section 1270.1 for moving personal property shall serve upon the acquirer and file in the condemnation proceeding affecting the real property on which the personal property was located a verified memorandum of his moving and temporary storage costs. The memorandum shall be filed within 90 days after removal of the personal property from such real property has been completed

and shall state:

(a) The date the removal was completed.

(b) The location from which and the location to which the property was moved.

(c) If the property was stored temporarily, the location where the property was stored and the duration of such storage.

(d) An itemized statement of the costs incurred.

(e) The amount of reimbursement claimed.

(f) That the costs for which reimbursement is claimed are reasonable and were necessarily incurred.

1270.5. A person who claims reimbursement under Section 1270.2 shall serve upon the acquirer and file in the condemnation proceeding affecting the real property from which the personal property was moved a verified memorandum of his moving and storage costs. The memorandum shall be filed not later than the ninetieth day after the term for which the real property was acquired for public use expires and shall state:

(a) The location where the property was stored and the duration of such storage.

(b) An itemized statement of the costs incurred.

(c) The amount of reimbursement claimed.

(d) That the costs for which reimbursement is claimed are reasonable and were necessarily incurred.

1270.6. The acquirer may, within 20 days after service of a memorandum claiming reimbursement under this chapter, serve and file a notice of motion to have the amount of reimbursement determined by the court.

Not less than 10 days' notice of the hearing on the motion shall be given to the claimant, and the notice shall state the acquirer's objections to the amount claimed in the memorandum or other basis for the motion. Upon the hearing the court shall determine the reimbursement to which the claimant is entitled, if any, and shall order the acquirer to pay such amount within 30 days from the date of such order. If the acquirer does not file a notice of motion to have the amount of reimbursement determined by the court, the court shall order the acquirer to pay the amount claimed in the memorandum within 30 days after the date of such order.

1270.7. The acquirer and the person whose real property or interest therein is acquired for public use may by agreement determine the amount of reimbursement to be made for moving and storage costs whether the acquisition is by consent or by eminent domain. The limitations contained in Section 1270.3 do not limit the amount the acquirer may agree to reimburse a person for moving and storage costs under this section.

1270.8. In lieu of reimbursing a person for moving and storage costs under this chapter, the acquirer may provide for the moving and storage of the personal property at its own expense by serving on such person and filing in the proceeding a notice of its election to do so. If the acquirer so elects, such person is not entitled to reimbursement under this chapter except to the extent that such costs are incurred prior to the receipt of the notice.

SEC. 2. Section 1248.5 is added to the Code of Civil Procedure, to read:

1248.5. Notwithstanding any other provision of law, the opinion of a witness as to the amount to be ascertained under subdivision 1, 2, 3 or

4 of Section 1248 is inadmissible if it is based, wholly or in part, upon the cost of dismantling, removing, packing, loading, transporting, storing, unloading, unpacking, reassembling or installing personal property.

SEC. 3. Section 1248.3 of the Code of Civil Procedure as proposed by Senate Bill No. is amended to read:

1248.3. Notwithstanding the provisions of Section 1248.2, the opinion of a witness as to the amount to be ascertained under subdivision 1, 2, 3 or 4 of Section 1248 is inadmissible if it is based, wholly or in part, upon:

(a) The price or other terms of an acquisition of property or a property interest if the acquisition was made for a public use for which property may be taken by eminent domain.

(b) The price or other terms of any offer made between the parties to the action to buy, sell or lease the property or property interest to be taken or injuriously affected, or any part thereof.

(c) The price at which an offer or option to purchase or lease the property or property interest to be taken or injuriously affected or any other property was made, or the price at which such property or interest was optioned, offered or listed for sale or lease, unless such option, offer or listing is introduced by a party as an admission of another party to the proceeding. 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 1248.1.

(d) The value of any property or property interest as assessed for taxation purposes.

(e) An opinion as to the value of any property or property interest

other than that to be taken or injuriously affected.

(f) The influence upon such amount of any noncompensable items of damage or injury.

(g) The capitalized value of the income or rental from any property other than the property to be taken or injuriously affected.

(h) The cost of dismantling, removing, packing, loading, transporting, unloading, storing, unpacking, reassembling or installing personal property.

SEC. 4. Section 3 of this act shall become operative only if Section 1248.3 of the Code of Civil Procedure as proposed by Senate Bill No. is enacted by the Legislature at its 1961 Regular Session, and in such case Section 3 shall become operative at the same time this act becomes operative, at which time Section 1248.5 of the Code of Civil Procedure as added by Section 2 of this act is repealed.

SEC. 5. This act shall become operative on July 1, 1962. This act does not apply to any proceeding in eminent domain commenced prior to its operative date.

(36)

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California

RECOMMENDATION AND PROPOSED LEGISLATION

Relating to

TAKING POSSESSION AND PASSAGE OF TITLE
IN EMINENT DOMAIN PROCEEDINGS

November 25, 1960

(36)

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

Taking Possession and Passage of Title

in Eminent Domain Proceedings

Some of the principal problems in the field of eminent domain are those involved in determining when possession of or title to the condemned property should pass to the condemner. Related problems involve the determination of the time when the condemnee loses the right to place improvements on the property for which he may be compensated, when the risk of loss of the improvements shifts to the condemner, when interest on the award should commence and abate and when taxes should be prorated.

After studying these matters, the Law Revision Commission has concluded that in many instances the existing law is unfair either to condemnees or to condemning agencies or to both. In other instances, the law is uncertain or difficult to ascertain. To remedy these defects, the Commission recommends the following revisions in the law.

Immediate Possession

Among the most important questions in this area of eminent domain law are those involving the respective rights of the parties in immediate possession cases. The Constitution of this State, in Section 14 of Article I, grants certain specified public agencies the right to take possession of property sought to be condemned immediately upon commencement of eminent domain proceedings or any time thereafter if the condemnation is for right of way or reservoir

purposes. The Constitution requires the condemning agency to deposit a sum of money, in an amount determined by the court, sufficient to secure to the owner payment of the compensation he is entitled to receive for the taking "as soon as the same can be ascertained according to law."

The statutes implementing the constitutional provision provide that, at least three days prior to the taking of possession, the condemner must either personally serve on or mail to the owners and occupants of the property a notice that possession is to be taken. The names and addresses of the owners may be ascertained from the latest secured assessment roll of the county in which the property is located. If the condemnation is for highway purposes, the condemnee may withdraw 75 per cent of the deposit.

The Commission has concluded that the law relating to the taking of immediate possession needs to be revised to protect more adequately the rights of persons whose property is taken. Accordingly, the Commission makes the following recommendations.

1. Order of immediate possession. There are now no statutes specifying the procedure to be followed in obtaining an order of immediate possession, but in practice the order of immediate possession is issued upon ex parte application by the condemner. The Commission believes that this procedure does not need to be changed, but it should be explicitly set forth in the statutes. Therefore, the Commission recommends the enactment of statutes providing that the condemner, after issuance of summons, may apply to the court, ex parte, for an order authorizing immediate possession. However, the statutes should indicate

that the order is not to be granted routinely; the court should not issue the order unless it determines that the plaintiff is entitled to take the property by eminent domain and is entitled to obtain immediate possession of the property under the Constitution.

2. Notice of order to owners and occupants. At the present time, both the record owners of the property being taken and the occupants must be notified that possession is to be taken. But the condemner is permitted to give this notice as little as three days before possession is actually taken. The notice may be given either by personal service or by certified mail. If the mail is delayed or if there is an intervening weekend or holiday, an owner or occupant may be deprived of possession without any advance notice. Moreover, under existing law, the condemner is permitted to determine the names and addresses of the owners of the property from the latest secured assessment roll in the county in which the property is located. If the property was sold to a new owner after the tax lien date (the first Monday in March) preceding the commencement of the condemnation proceeding, the actual owner of the property might be sent no notice at all, for his name would not be on the "latest secured assessment roll."

The Commission believes that the present law does not provide assurance that reasonable efforts will be made to notify an owner or occupant in sufficient time to enable him to prepare to vacate the property or to seek relief against the taking.

Accordingly, the Commission recommends that the condemner should not be able to take possession of the property unless the record owners and

the occupants of the property are notified thereof at least 20 days prior to the date possession is to be taken. But the court should have the power to shorten the required notification time if emergencies arise. If the person to be served has not been served with summons and has not appeared, notice should be given by personal service of a copy of the order authorizing immediate possession or, if personal service cannot be made, by mailing a copy of the order to the last known address of the person to be served. Service of the order should be made on the persons revealed by the records to be the owners of the property, whether or not their names appear on the "latest secured assessment roll."

3. Delay in effective date of order. Within the 20-day period after notice is given, the owner or an occupant of the property to be taken should be able to apply to the court for an order postponing the date that immediate possession may be taken if he can demonstrate to the court that the hardship to him of having immediate possession taken clearly outweighs the hardship that a delay may cause the public. There is no provision in existing law that permits the court to relieve a condemnee from such hardship. A condemnee should not have the right to appeal from an order denying such a request because the questions involved would become moot by the time the appeal is decided unless the order of immediate possession were stayed pending the appeal. The order of immediate possession should not be stayed in this situation, for a stay would nullify the right of immediate possession. On the other hand, the condemner should have the right to appeal from an order granting a stay of the order of immediate possession; the right to obtain the possession of the property before the completion of the proceeding would remain valuable to the condemner and, therefore, the question whether the

lower court erred in granting the stay should be subject to review.

4. Withdrawal of deposit. Although the Constitution requires the condemner to make a deposit and gives the condemnee the right to challenge the amount deposited, the right is of little practical value because, unless the property is taken for highway purposes, there is no right to withdraw any of the deposit. If the property is taken for highway purposes, the condemnee is permitted to withdraw only 75 per cent of the deposit, but this often leaves nothing for the owner after lienholders are paid. Thus, in many cases, the condemnee must vacate the property, locate new property to replace that taken and move to the new location at a time when there is little or no money available from the condemnation. To remedy this situation the Commission recommends that the condemnee be authorized to withdraw the entire deposit that has been made by the condemner. This will make the money deposited available to the condemnee at the time that he most needs it. There may in some cases be a danger that the amount ultimately awarded the condemnee will be less than the amount deposited and withdrawn, and the condemner may have difficulty in recovering back the difference. For this reason, the court should have the power in appropriate cases to require the filing of an undertaking to secure the condemner against loss.

5. Vacating the order of immediate possession. There is no provision in the existing law that permits the condemnee to contest the right of the condemner to take the property prior to the time possession is taken. Legally, the condemnee has the right to raise the question whether the condemnation is for a public use in every condemnation proceeding. The question of the necessity for the taking of the particular property

involved may be raised by a condemnee under certain limited circumstances. But the right to raise these questions may be a meaningless right if, at the time the questions are raised, the condemner has already demolished all improvements on the property, denuded the site of all vegetation, constructed pipes, flumes and conduits and inundated the property with water. The Commission recommends, therefore, that the owner or the occupant of the property to be taken be given the right to contest the condemner's right to take the property by eminent domain or his right to obtain immediate possession of the property, or both, by a motion to vacate the order for immediate possession made prior to the time possession is taken. An order vacating or refusing to vacate an order of immediate possession should be appealable. An appeal should not automatically stay proceedings under the order of immediate possession, but either the trial or appellate court should have the right to stay proceedings until the appeal is decided.

Possession Pending Appeal

Under existing law, any condemner is permitted to take possession of the property to be condemned after entry of judgment even though an appeal is pending. However, it has been held that the condemner waives his right of appeal by taking possession of the property. This rule seems unfair to the condemner: if the condemner takes possession, it will have to pay the award even though it is based upon an error by the trial court, but if it chooses to attack the award by appeal, a needed public improvement may be delayed for a period of years or even have to be abandoned if rising costs exceed the amount available for the construction of the improvement.

The present law may cause hardship to condemnees also. The condemner

may refuse to take possession of the property and may withhold payment of the judgment in order to preserve its right of appeal. If so, the period during which the condemnee must go without compensation and is effectively precluded from renting, selling or improving his property will be prolonged until the appeal--and perhaps a new trial--is finally decided. On the other hand, if the condemner may take possession after depositing the amount of the judgment in court and still appeal, the condemner will often do so to avoid further delay in the commencement of the project. This deposit will then be available for the condemnee to use in contesting the condemner's appeal and in carrying out the condemnee's plans for the future.

The Commission recommends that the statutes permitting the condemner to take possession pending appeal be revised to provide that the condemner does not waive its right of appeal by the taking of possession.

Passage of Title

Related to the question of possession is the question of title. At the present time, if immediate possession is not taken, title passes upon the recording of the final order of condemnation. However, if possession is taken prior to that time under an order of immediate possession, title passes to the condemner upon withdrawal of the deposit by the condemnee. There is no similar provision for the passage of title when possession is taken after judgment but pending appeal under Section 1254. To make the rules relating to passage of title uniform, the Commission recommends that title should pass in all condemnation proceedings upon the recording of the final order of condemnation.

Compensation for Improvements

The present law relating to compensation for improvements on condemned property is uncertain. First, while Section 1249 of the Code of Civil Procedure provides that the condemnee is not entitled to compensation for any improvements placed upon the property after the service of summons, there is no explicit provision that the condemnee is entitled to compensation for improvements that are on the property at that time. Second, the first sentence of Section 1249 is open to the interpretation that the value of the real property as enhanced by its improvements is fixed as of the date summons is issued, even though the improvements are destroyed prior to the time the property is actually taken.

The Commission recommends that legislation be enacted providing that the condemnee is entitled to compensation for the improvements on the property on the date of service of summons unless they are removed or destroyed prior to the date the condemner takes title to or possession of the property.

Property Taxes

Property taxes are prorated from the date the condemner either takes title to or takes possession of the property if the condemner is a public agency. However, under present law the condemnee loses the benefit of this proration if he has already paid the taxes and special assessments, for there is no provision for refund by the taxing authority or reimbursement by the condemner. To remedy this, the Commission recommends that a provision for refund be added to the Revenue and Taxation Code.

A condemnee should also be entitled to a proration of property taxes even though the condemner is not a public agency. In such cases, the condemner should be required to reimburse the condemnee for the pro rata share of the taxes that have been paid and are attributable to the portion of the tax year following the date the condemner acquires the title to or the possession of the property.

Abandonment by the Condemner

Under existing law, even though the condemner has taken possession and constructed the contemplated improvement on the property, the condemner may abandon the proceedings at any time until 30 days after final judgment and get back the money it deposited. It is true that the condemner must compensate the owner for the use of the property and any damage to it. But the land owner who has been forced to give up his home or his business and to relocate in another area may find that it is as great a hardship to be forced, in effect, to buy back the original property as it was to be forced to move initially. The deposit may have been withdrawn and expended in the acquisition of a new location; the good will of the business may have been reestablished in the new location; or the original property may be so altered that it is no longer useful to the condemnee.

The Commission recommends that if the condemnee has substantially changed his position as a result of the condemnation and cannot be restored to his original position, the condemner should not have the right to abandon the condemnation. If in other cases the condemnation is abandoned or is not completed for any other reason, provision should be made

for compensating the condemnee for the damage he has suffered and for any loss or injury to his property that may have occurred while the plaintiff was in possession.

Interest

Interest upon the award in eminent domain cases runs from the date of entry of judgment unless possession is taken prior to entry of judgment, in which case interest is computed from the effective date of the order for possession. After judgment, interest ceases upon payment of the judgment to the condemnee or into court for his benefit. Of course, if any portion of a deposit is withdrawn, interest ceases to accrue on the portion withdrawn on the date of its withdrawal. These rules have been established both by cases and statutes but some of them are difficult to find and others have been questioned by some writers.

The Commission recommends the enactment of legislation which would gather the rules on interest in eminent domain cases into one section.

Constitutional Revision

The Commission has concluded that the provisions of Section 14 of Article I of the State Constitution that grant the right of immediate possession should be revised. These provisions grant the right of immediate possession only to specified public agencies in right of way and reservoir cases. As has been shown above, they do not assure the property owner that he will actually receive compensation at the time his property is taken.

When they were adopted these provisions reversed a long-standing policy of this State that property may not be taken unless compensation has first been

made, which was originally adopted as a part of the present Constitution in 1879. Prior to that time, the Constitution had merely required that the owner of property taken for public use be given just compensation, and it was held that payment might be made within a reasonable time after the taking. In 1879, the present Constitution was adopted with the provision that private property may not be taken or damaged for public use "without just compensation having first been made." In Steinhart v. Superior Court¹ the Supreme Court held, in reliance upon this provision, that a statute authorizing a condemner to take possession of property after depositing a sum of money in court was unconstitutional because there was no provision for the payment of any portion of this money to the owner. The provisions of the Constitution that now authorize immediate possession without payment to the owner "having first been made" were adopted to overcome the Steinhart case.

The Commission believes that the policy underlying the Steinhart decision and the original provisions of the 1879 Constitution is sound and the contrary policy of the present provisions of the Constitution is undesirable. A person's property should not be taken from him unless he has the right to be paid concurrently for the property, for it is at the time of the taking that he must meet the expenses of locating and purchasing property to replace that taken and of moving to the new location.

Another defect in the present Constitutional provisions is that they severely limit the agencies by which and the purposes for which immediate possession may be taken. The right of immediate possession is of great value to the public, for it permits the immediate construction of needed public projects. The Legislature should, therefore, have the power to

1. 137 Cal. 575 (1902).

decide from time to time what agencies are to have the power and for what purposes the power may be exercised. It should not be necessary to amend the Constitution each time a change in the needs of the people of the State warrants either an extension or contraction of the purposes for which the right of immediate possession may be exercised.

Therefore, the Commission recommends that an amendment to the Constitution be proposed to the people of the State of California that would contain the following provisions:

1. The Constitution should guarantee the owner the right to be compensated promptly whenever immediate possession of his property is taken.

2. The Legislature should be given the power to determine what agencies should have the right to take immediate possession and the procedure to be followed in such cases, subject to the constitutional right of the owner to be promptly compensated. It should not be necessary to amend the Constitution to alter procedures every time that it is found that the existing immediate possession procedures are faulty.

3. The phrase "irrespective of any benefits to be proposed by such corporation" should be stricken from the Constitution. This phrase is applicable only to private corporations² and precludes such entities, in condemnations for rights of way or reservoirs, from setting off the benefits which will result to the condemnee's remaining land against the condemnee's claim for damages to such land.³ The phrase is discriminatory in that it

2. Moran v. Ross, 79 Cal. 549 (1889); People v. McReynolds, 31 Cal.App.2d 219, 223 (1939).

3. San Bernardino & Eastern Ry. v. Haven, 94 Cal. 489 (1892); Pacific Coast Ry. v. Porter, 74 Cal. 261 (1887).

is not applicable to unincorporated condemners⁴ and may be unconstitutional under the equal protection clause of the Federal Constitution.⁵ The phrase is uncertain in meaning, for some courts have held that it merely states a rule that is applicable to all condemners that "general" benefits may not be set off,⁶ while others have indicated that it refers to "special" benefits which all other condemners are permitted to set off.⁷

Supplementary Legislation

The Commission recommends that legislation be enacted extending the right of immediate possession to all condemners to become effective if and when the Constitution is amended to permit the Legislature to determine who should have the right of immediate possession and the conditions under which the right may be exercised. The right of the condemner to take the property is rarely disputed. But despite the fact that the only question for judicial decision in virtually all condemnation actions is the value of the property, present law permits possession to be taken prior to judgment only when certain public agencies are condemning property for right of way or reservoir purposes. Because possession cannot be obtained in other condemnation actions until judgment, many vitally needed public improvements are delayed even though there is no real issue in the case of the

4. Moran v. Ross, 79 Cal. 549 (1889).

5. See dissenting opinion of McFarland, J., in Beveridge v. Lewis, 137 Cal. 619, 626 (1902); see also concurring opinion of Beatty, C. J., in Moran v. Ross, 79 Cal. 549, 552 (1889).

6. Beveridge v. Lewis, 137 Cal. 619, 624 - 626 (1889); cf. People v. Thompson, 43 Cal.2d 13, 28 (1954) and People v. McReynolds, 31 Cal. App.2d 219, 223 (1939).

7. Cf. Collier v. Merced Irr. Dist., 213 Cal. 554, 571 (1931); People v. McReynolds, 31 Cal.App.2d 219, 223 (1939).

public's right to take the property. Many public improvements are financed by bond issues, and an undue delay in the acquisition of the property may delay construction to a sufficient extent that the improvement cannot be constructed at all with the funds realized by a particular bond issue or must be drastically curtailed in scope.

Moreover, expanding the right of immediate possession will often benefit the landowner. Upon commencement of condemnation proceedings, a landowner is deprived of many of the valuable incidents of ownership. He can no longer place improvements upon the property for which he may be compensated. He is practically precluded from selling or renting the property for few persons wish to purchase a law suit. Yet, no compensation is given for this inconvenience and the compensation for the taking of the property is not paid in the ordinary case until the conclusion of the litigation. But if the condemner takes the property upon the commencement of the proceedings and the condemnee is given the right to withdraw the deposit made by the condemner in order to take possession, the condemnee will have a substantial portion of the compensation available immediately and will be able to make his plans for the future promptly.

The Commission's recommendation would be effectuated by the enactment of the following measures:

An act to amend Sections 1243.5, 1249, 1253, 1254, 1255a and 1255b of, to renumber and amend Sections 1254.5 and 1254.7 of, and to add Sections 1243.4 and 1249.1 to, the Code of Civil Procedure, relating to eminent domain.

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

SECTION 1. Section 1243.4 is added to the Code of Civil Procedure, to read:

1243.4. In any proceeding in eminent domain brought by the State, or a county, or a municipal corporation, or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation, the plaintiff may take immediate possession and use of any right of way or lands to be used for reservoir purposes, required for a public use whether the fee thereof or an easement therefor be sought, in the manner and subject to the conditions prescribed by law.

SEC. 2. Section 1243.5 of the Code of Civil Procedure is amended to read:

1243.5. ~~{a}~~ (1) In any [ease] proceeding in eminent domain, if [which] the [State, -a-county, -a-municipal-corporation, -a-public-corporation, or -a-district-takes-immediate-possession-of-lands-to-be-used-fer-reservoir purposes, -or-a-right-of-way, -pursuant-to-Section-14-of-Article-I-of-the

Constitution-of-this-State,] plaintiff is authorized by law to take immediate possession of the property sought to be condemned, the plaintiff may, at any time after the issuance of summons and prior to the entry of judgment, apply ex parte to the court for an order determining the probable just compensation which will be made for the taking of the property and any damage incident thereto. After depositing the amount so determined in accordance with Section 1243.6, the plaintiff may at any time prior to the entry of judgment, apply ex parte to the court for an order authorizing it to take immediate possession of and to use the property sought to be condemned.

(2) If the court determines that the plaintiff is entitled to take the property by eminent domain and to take immediate possession thereof, and if the court determines that the plaintiff has deposited the amount determined pursuant to subdivision (1) of this section, the court shall, by order, authorize the plaintiff to take immediate possession of and to use the property sought to be condemned. The order authorizing immediate possession shall:

(a) Describe the property and the estate or interest therein sought to be condemned, which description may be made by reference to the complaint.

(b) State the purposes of the condemnation.

(c) State the amount of the deposit.

(d) State the date after which the plaintiff is authorized to take possession of the property.

(3) [the-State,-or-such-county,-municipal-corporation,-public-corporation,-or-district,-as-the-case-may-be,-shall] At least [three] 20 days prior to the time possession is taken, the plaintiff shall [personally] serve a copy of the order on [ex-mail-to] the record owner or owners of the property [,-if-known,] and on the [person-or-persons-in-possession-of-the

property] occupants, if any~~[, either a copy of the order of the court authorizing such possession or a notice thereof]~~. Service of the order shall be made by personal service unless the person on whom service is to be made has previously appeared in the proceeding or has previously been served with a copy of the summons and complaint in the manner prescribed by law, in which case service of the order may be made by mail upon such person and his attorney of record, if any. If it appears by affidavit to the satisfaction of the court that a person upon whom a copy of the order authorizing immediate possession [or notice] is [mailed-it] required to be personally served under this section resides out of the State, or has departed from the State or cannot after due diligence be found within the State, the court may order that in lieu of such personal service the plaintiff send a copy of the order [shall-be-sent] by registered or certified mail [and, if sent to the owners, it shall be] addressed to [them] such person at [their] his last known address. The court may, for good cause shown by affidavit, authorize the plaintiff to take possession of the property without serving a copy of the order of immediate possession upon a record owner not occupying the property. A single service upon or mailing to those at the same address shall be sufficient. [The latest secured assessment roll in the county where the property is located may be used to ascertain the names and addresses of the owners of the property.] The court may, for good cause shown by affidavit, shorten the time herein specified to a period of not less than three days.

As used in this subdivision, "record owner or owners of the property" means both the person or persons in whose name the legal title to the fee appears by deeds duly recorded in the recorder's office of the county in which the property is located and the person or persons, if any, in possession of the property under a written and duly recorded lease or agreement of purchase.

(4) At any time after the court has made an order authorizing immediate possession, the court may, upon motion of any party to the eminent domain proceedings, order an increase or a decrease in the amount that the plaintiff is required to deposit pursuant to this section if the court determines that the probable just compensation which will be made for the taking of the property and any damage incident thereto is different from the amount of the probable just compensation theretofore deposited.

(5) At any time after the court has made an order authorizing immediate possession and before the plaintiff has taken possession pursuant to such order, the court, upon motion of the owner of the property or of an occupant of the property, may:

(a) Stay the order upon a showing that the hardship to the moving party of having immediate possession taken clearly outweighs the hardship of the stay to the plaintiff.

(b) Vacate the order if the court determines that the plaintiff is not entitled to take the property by eminent domain or that the plaintiff is not authorized by Section 1243.4 to take immediate

possession of the property.

(6) The plaintiff may appeal from an order made pursuant to subdivision (5)(a) of this section staying the order authorizing immediate possession. An appeal may be taken from an order made under the provisions of subdivision (5)(b) of this section granting or denying a motion to vacate an order authorizing immediate possession. The appeal does not stay the order from which the appeal is taken or the order authorizing immediate possession; but the trial or appellate court may, in its discretion, stay the order authorizing immediate possession pending review on appeal or for such other period or periods as to it may appear appropriate.

(7) Failure of a party to make a motion to stay or vacate an order authorizing immediate possession is not an abandonment of any defense to the action or proceeding.

(8) The amount required to be deposited by the plaintiff and the amount of such deposit withdrawn by the defendant may not be given in evidence or referred to in the trial of the issue of compensation.

(9) The plaintiff shall not be held to have abandoned or waived the right to appeal from the judgment by taking possession of the property pursuant to this section.

SEC. 3. Section 1254.5 of the Code of Civil Procedure is renumbered and amended to read:

[1254.5+] 1243.6. When money is [~~paid-into-court~~] required to be deposited as provided by Section [~~14-of-Article-I-of-the-Constitution~~] 1243.5, the court shall order the money to be deposited in the State Treasury, unless the plaintiff requests the court to order deposit in the county treasury, in which case the court shall order deposit in the county treasury. If money is deposited in the State Treasury pursuant to this section it shall be held, invested, deposited, and disbursed in the manner specified in Section 1254, and interest earned or other increment derived from its investment shall be apportioned and disbursed in the manner specified in that section.

SEC. 4. Section 1254.7 of the Code of Civil Procedure is renumbered and amended to read:

[1254.7+] 1243.7. (1) At any time after money has been deposited as [~~security-as~~] provided in Section [~~14-of-Article-I-of-the-Constitution~~] 1243.5, [~~for-the-condemnation-of-any-property-or-interest-in-property-for state-highway-purposes,-upon-application,-in-the-manner-hereinafter-provided,~~ ~~of~~] the party whose property or interest in property is being taken [~~]~~ may apply to the court, in the manner hereinafter provided, for the withdrawal of all or any portion of the amount deposited for his property or property interest. Upon such application, the court [may] shall order that portion of the amount applied for, which the applicant is entitled to withdraw under the provisions of this section, to be paid to such applicant from the money deposited in connection with such property or property interest [an-amount-not-exceeding-75-percent-of-the-amount-

~~originally-deposited-for-the-respective-property-or-interest-to-be-paid to-such-party~~].

(2) If the amount sought to be withdrawn by an applicant exceeds the amount originally deposited for his particular property or property interest or 75 percent of the final amount deposited for his particular property or property interest, whichever is greater, the court may require the applicant, before withdrawing any of such excess, to file an undertaking executed by two or more sufficient sureties approved by the court to the effect that they are bound to the plaintiff in such amount as is fixed by the court but not to exceed double the amount of such excess for the return of any amount withdrawn that exceeds the amount to which the applicant is entitled as finally determined in the condemnation proceeding, together with legal interest from the date of its withdrawal.

(3) [Such] The application shall be made by affidavit wherein the applicant shall set forth his interest in the property and request withdrawal of a stated amount. The applicant shall serve a copy of the application on the plaintiff and no withdrawal shall be made until at least [twenty() 20 ()] days after such service of the application, or until the time for all objections has expired, whichever is later.

(4) Within the 20-day period, the plaintiff may object to such withdrawal by filing an objection thereto on the ground that an undertaking should be filed as provided in subdivision (2) of this section or that the sureties upon such an undertaking are insufficient.

(5) Within [said-twenty-(20)-days] the 20-day period, the plaintiff may object to such withdrawal by filing an objection [thereof] thereto in court on the grounds that other persons are known or believed to have interests in the property. In this event the plaintiff shall attempt to

personally serve on such other persons a notice to such persons that they may appear within [~~ten~~] 10 [)] days after such service and object to such withdrawal, and that failure to appear will result in the waiver of any right to such amount withdrawn or further rights against the plaintiff to the extent of the sum withdrawn. The plaintiff shall state in [~~its~~] such objection the names and last known addresses of other persons known or believed to have an interest in the property, whether or not it has been able to serve them with such notice and the date of such service. If the plaintiff in its objection reports to the court that it is unable to personally serve persons known or believed to have interests in the property within [~~said-twenty-~~] the 20 [)] day period, said money shall not be withdrawn until the applicant causes such personal service to be made.

(6) If [~~such~~] the persons [~~so~~] served pursuant to subdivision (5) of this section appear and object to the withdrawal, or if the plaintiff so requests, the court shall thereupon hold a hearing after notice thereof to all parties and shall determine the amounts to be withdrawn, if any, and by whom. [~~7-to-a-total-amount-not-exceeding-75-percent-of-the-amount-deposited-~~] No persons so served shall have any claim against the plaintiff for compensation for the value of the property taken or severance damages thereto, or otherwise, to the extent of the amount withdrawn by all parties; provided, the plaintiff shall remain liable for said compensation to persons having an interest of record who are not so served.

(7) If withdrawn, the receipt of any such money shall constitute a waiver by operation of law [~~to~~] of all defenses in favor of the person receiving such payment except with respect to the ascertainment of the value of the property or interest in the manner provided by law [~~7-and~~

title-to-the-property-or-interest-as-to-which-money-is-received-pursuant
to-this-section-shall-vest-in-the-State-as-of-the-time-of-such-payment].

Any amount so paid to any party shall be credited upon any judgment providing
for payment [and-shall-be-considered-payment-upon-the-judgment-as-of-the
date-the-withdrawal-is-made-so-that-no-interest-shall-be-payable-upon-the
amount-so-withdrawn-after-the-date-of-its-withdrawal].

(8) Any amount withdrawn by any party in excess of the amount to
which he is entitled as finally determined in the condemnation proceeding
shall be returned to the party who deposited it together with legal
interest thereon from the date of its withdrawal, and the court in which
the condemnation proceeding is pending shall enter judgment therefor against
the defendant. If the defendant does not pay the judgment within 30 days
after the judgment is entered, the court may, on motion, enter judgment
against the sureties for such amount together with the interest that may
be due thereon.

SEC. 5. Section 1249 of the Code of Civil Procedure is amended to
read:

1249. For the purpose of assessing compensation and damages
the right [~~thereof~~] thereto shall be deemed to have accrued at
the date of the issuance of summons and its actual value at that
date shall be the measure of compensation for all property to be
actually taken, and the basis of damages to property not actually taken but
injuriously affected, in all cases where such damages are allowed as
provided in Section [~~one-thousand-two-hundred-forty-eight~~] 1248; provided,
that in any case in which the issue is not tried within one year after the

date of the commencement of the action, unless the delay is caused by the defendant, the compensation and damages shall be deemed to have accrued at the date of the trial. [~~Nothing in this section contained shall be construed or held to affect pending litigation,--If an order be made letting the plaintiff into possession, as provided in Section one thousand two hundred fifty four, the compensation and damages awarded shall draw lawful interest from the date of such order,--No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.~~]

SEC. 6. Section 1249.1 is added to the Code of Civil Procedure, to read:

1249.1. All improvements pertaining to the realty that are on the property at the time of the service of summons and which affect its value shall be considered in the assessment of compensation, damages and special benefits unless they are removed or destroyed before the earliest of the following times:

- (a) The time the title to the property is taken by the plaintiff.
- (b) The time the possession of the property is taken by the plaintiff.
- (c) The time the plaintiff is authorized to take possession of the

property under an order authorizing the plaintiff to do so.

No improvements put upon the property subsequent to the time of the service of summons shall be included in the assessment of compensation, damages or special benefits.

SEC. 7. Section 1253 of the Code of Civil Procedure is amended to read:

1253. ⁽¹⁾When payments have been made and the bond given, if the plaintiff elects to give one, as required by [~~the last two~~] Sections 1251 and 1252, the court [~~must~~] shall make a final order of condemnation, which

[~~must~~] shall describe the property condemned, the estate or interest acquired therein and the purposes of such condemnation. A certified copy of the order [~~must~~] shall thereupon be filed in the office of the recorder of the county in which the property is located. [~~, and thereupon~~]

(2) The title to the property described [therein] in the final order of condemnation [shall] vests in the plaintiff for the purposes described therein [specified] upon the date that a certified copy of the final order of condemnation is filed in the office of the recorder of the county.

SEC. 8. Section 1254 of the Code of Civil Procedure is amended to read:

1254. (1) In any case in which the plaintiff is not in possession of the property sought to be condemned, the plaintiff may, at any time after trial and judgment entered or pending an appeal from the judgment [to the Supreme Court, whenever the plaintiff shall have paid] and after payment into court [,] for the defendant of [,] the full amount of the judgment [,] and such further sum as may be required by the court as a fund to pay any further damages and costs that may be recovered in said proceeding, [as well as all damages that may be sustained by the defendant, if, for any cause, the property shall not be finally taken for public use,] apply ex parte for an order authorizing it to take possession of and to use the property sought to be condemned.

(2) If in the judgment the court determined that the plaintiff is entitled to acquire the property by eminent domain, and if the court determines that the plaintiff has made the deposit as required in subdivision (1) of this section, the [superior] court [in which the proceeding was tried

may, upon notice of not less than ten days,] shall, by order, authorize the plaintiff [~~, if already in possession, to continue therein, and if not, then~~] to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and [may] shall, if necessary, stay all actions and proceedings against the plaintiff on account thereof. [~~In an action for condemnation of property for the use of a school district, an order so authorizing possession or continuation of possession by such school district is not appealable.~~]

(3) At least 10 days prior to the time possession is taken, the plaintiff shall serve upon the defendants or their attorneys, either personally or by mail, a copy of the order of the court authorizing it to take possession of the property. A single service upon or mailing to those at the same address is sufficient.

(4) At any time after the court has made an order authorizing the plaintiff to take possession pursuant to this section, the court may, upon motion of any party to the eminent domain proceedings, order an increase or a decrease in the amount that the plaintiff is required to deposit as a further sum pursuant to subdivision (1) of this section.

(5) The plaintiff shall not be held to have abandoned or waived the right to appeal from the judgment by depositing the amount of the judgment and such further sum as may be required by the court and taking possession of the property pursuant to this section.

(6) The defendant, who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the [same] full amount of the judgment at any time thereafter upon obtaining an order therefor from the court. [~~It shall be the duty of~~] The court, or a judge thereof, upon application [~~being made~~] by such defendant, [~~to~~] shall order

and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial ~~[shall-be]~~ is granted. A payment to a defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. ~~[In-ascertaining-the-amount-to-be-paid-into-court,-the-court-shall-take care-that-the-same-be-sufficient-and-adequate.]~~

(7) Any amount withdrawn by any party in excess of the amount to which he is entitled as finally determined in the condemnation proceeding shall be returned to the party who deposited it without interest, and the court in which the condemnation proceeding is pending shall enter judgment therefor against such party.

(8) The payment of the money into court, as hereinbefore provided for, shall not discharge the plaintiff from liability to keep the said fund full and without diminution; but such money shall be and remain, as to all accidents, defalcations, or other contingencies (as between the parties to the proceedings), at the risk of the plaintiff, and shall so remain until the amount of the compensation or damages is finally settled by judicial determination, and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until he is authorized or required by rule of court to take it. If, for any reason, the money shall at any time be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation is finally brought to an end, and until paid over or made payable to the defendant by order of court, as above provided. The court

shall order the money to be deposited in the State Treasury, unless the plaintiff requests the court to order deposit in the county treasury, in which case the court shall order deposit in the county treasury. If the court orders deposit in the State Treasury, it shall be the duty of the State Treasurer to receive all such moneys, duly receipt for, and to safely keep the same in the Condemnation Deposits Fund, which fund is hereby created in the State Treasury and for such duty he shall be liable to the plaintiff upon his official bond. Money in the Condemnation Deposits Fund may be invested and reinvested in any securities described in Sections 16430, 16431 and 16432, Government Code, or deposited in banks as provided in Chapter 4 of Part 2 of Division 4 of Title 2, Government Code. The Pooled Money Investment Board shall designate at least once a month the amount of money available in the fund for investment in securities or deposit in bank accounts, and the type of investment or deposit and shall so arrange the investment or deposit program that funds will be available for the immediate payment of any court order or decree. Immediately after such designation the Treasurer shall invest or make deposits in bank accounts in accordance with the designations.

(9) For the purposes of this section, a written determination signed by a majority of the members of the Pooled Money Investment Board shall be deemed to be the determination of the board. Members may authorize deputies to act for them for the purpose of making determinations under this section.

(10) Interest earned and other increment derived from investments or deposits made pursuant to this section, after deposit of money in the State Treasury, shall be deposited in the Condemnation Deposits Fund.

After first deducting therefrom expenses incurred by the Treasurer in taking and making delivery of bonds or other securities under this section, the State Controller shall apportion as of June 30th and December 31st of each year the remainder of such interest earned or increment derived and deposited in the fund during the six calendar months ending with such dates. There shall be apportioned and paid to each plaintiff having a deposit in the fund during the six-month period for which an apportionment is made, an amount directly proportionate to the total deposits in the fund and the length of time such deposits remained therein. The State Treasurer shall pay out the money deposited by a plaintiff in such manner and at such times as the court or a judge thereof may, by order or decree, direct.

(11) In all cases where a new trial has been granted upon the application of the defendant, and he has failed upon such trial to obtain greater compensation than was allowed him upon the first trial, the costs of such new trial shall be taxed against him.

SEC. 9. Section 1255a of the Code of Civil Procedure is amended to read:

1255a. (1) Subject to the provisions of this section, the plaintiff may abandon the proceedings at any time after the filing of the complaint and before the expiration of thirty days after final judgment, by serving on defendants and filing in court a written notice of such abandonment; and failure to comply with Section 1251 of this code shall constitute an implied abandonment of the proceedings.

(2) The court may, upon motion made within 30 days after such abandonment, set aside the abandonment if it determines that the position of the moving party has been substantially changed to his detriment in justifiable reliance upon the proceeding and such party cannot be restored to substantially the same position as if the proceeding had not been commenced.

(3) Upon the denial of a motion to set aside such abandonment or, if no such motion is filed, upon the expiration of the time for filing such a motion [express-or-implied], on motion of any party, a judgment shall be entered dismissing the proceeding and awarding the defendants their costs and disbursements, which shall include all necessary expenses incurred in preparing for trial and reasonable attorney fees. These costs and disbursements, including expenses and attorney fees, may be claimed in and by a cost bill, to be prepared, served, filed and taxed as in civil actions; provided, however, that upon judgment of dismissal on motion of plaintiff, defendants, and each of them, may file a cost bill within [thirty-(-)] 30 (-) days after notice of entry of such judgment; that said costs and disbursements shall not include expenses incurred in preparing for trial where the [said] action is dismissed forty days or more prior to the time set for the pre-trial [of] conference in the [said] action or, if no pre-trial conference is set, the time set for the trial of the action.

(4) If the plaintiff has been authorized to take possession of the property sought to be condemned and it is determined that the plaintiff does not have the authority to take such property, or a portion thereof, by eminent domain, or if the plaintiff abandons the proceeding as to such property or a portion thereof, the court shall order the plaintiff to deliver possession of such property or such portion thereof to the parties entitled to the

possession thereof and shall make such provision as shall be just for the pay-
ment of damages arising out of the plaintiff's taking and use of the property
and damages for any loss or impairment of value the land and improvements
may have suffered after the date the plaintiff was authorized to take possession
of the property under the order authorizing the plaintiff to do so.

SEC. 10. Section 1255b of the Code of Civil Procedure is amended
to read:

1255b. [~~If the plaintiff in a condemnation proceeding obtains an
order from the court for possession of the property sought to be condemned
prior to the trial of the action, then~~] (1) The compensation and damages
awarded in a condemnation proceeding shall draw [lawful] legal interest
from the [~~effective date of said order~~] earliest of the following dates:

- (a) The date of the entry of judgment.
- (b) The date that the possession of the property sought to be
condemned is taken or the damage thereto occurs.
- (2) The compensation and damages awarded in a condemnation proceeding
shall cease to draw interest on the earliest of the following dates:
 - (a) As to any amount deposited pursuant to Section 1243.5, the date
that such amount is withdrawn by the person entitled thereto.
 - (b) As to any amount deposited pursuant to Section 1254 or deposited
into court after entry of judgment, the date of such deposit.
 - (c) As to any amount paid to the person entitled thereto, the date
of such payment.

SEC. 11. (1) Except as provided in subdivision (2) of this section, this act applies to all actions or proceedings in eminent domain pending in the courts at the time this act takes effect in which no order authorizing the plaintiff to take possession of the property sought to be condemned prior to the final order of condemnation has been made prior to the effective date of this act.

(2) Sections 5 and 6 of this act do not apply to any action or proceeding pending in the courts at the time this act takes effect.

II

An act to amend Section 1248 of, and to add Section 1252.1 to, the Code of Civil Procedure, and to amend Section 5096 of the Revenue and Taxation Code, relating to taxes.

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

SECTION 1. Section 1248 of the Code of Civil Procedure is amended to read:

1248. The court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed;

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff;

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the

construction of the improvement proposed by the plaintiffs; and if the benefit shall be equal to the damages assessed under subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value;

4. If the property sought to be condemned be water or the use of water, belonging to riparian owners, or appurtenant to any lands, how much the lands of the riparian owner, or the lands to which the property sought to be condemned is appurtenant, will be benefited, if at all, by a diversion of water from its natural course, by the construction and maintenance, by the person or corporation in whose favor the right of eminent domain is exercised, of works for the distribution and convenient delivery of water upon said lands; and such benefit, if any, shall be deducted from any damages awarded the owner of such property;

5. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences, along the line of such railroad, and the cost of cattle-guards, where fences may cross the line of such railroad; and such court, jury or referee shall also determine the necessity for and designate the number, place and manner of making such farm or private crossings as are reasonably necessary or proper to connect the parcels of land severed by the easement condemned, or for ingress to or egress from the lands remaining after the taking of the part thereof sought to be condemned, and shall ascertain and assess the cost of the construction and maintenance of such crossings;

6. If the removal, alteration or relocation of structures or improvements is sought, the cost of such removal, alteration or relocation and the

damages, if any, which will accrue by reason thereof;

7. As far as practicable, compensation must be assessed for each source of damages separately;

8. When the property sought to be taken is encumbered by a mortgage or other lien, and the indebtedness secured thereby is not due at the time of the entry of the judgment, the amount of such indebtedness may be, at the option of the plaintiff, deducted from the judgment, and the lien of the mortgage or other lien shall be continued until such indebtedness is paid; except that if such lien is for ad valorem taxes upon the property, the amount of such taxes for which, as between the plaintiff and the defendant, the plaintiff is liable under Section 1252.1 may not be deducted from the judgment.

SEC. 2. Section 1252.1 is added to the Code of Civil Procedure, to read:

1252.1 (1) As between the plaintiff and defendant, the plaintiff is liable for the payment of any ad valorem taxes upon the property sought to be condemned that (a) are allocable to that part of the fiscal year that begins on the date that the title to the property vests in the plaintiff or the plaintiff takes possession of the property, whichever is earlier, and (b) are not subject to cancellation under Chapter 4 (commencing with Section 4986) of Part 9 of Division 1 of the Revenue and Taxation Code or refund under Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code.

(2) If the defendant has paid any taxes for which, as between the plaintiff and defendant, the plaintiff is liable under subdivision (1) of this section,

the plaintiff shall pay to the defendant a sum equal to the amount of such taxes for which the plaintiff is liable.

(3) If the title to the property vests in the plaintiff or if the plaintiff takes possession of the property prior to judgment, the amount the defendant is entitled to be paid under subdivision (2) of this section shall be claimed at the time and in the manner provided for claiming costs. If title to the property does not vest in the plaintiff and if the plaintiff does not take possession thereof prior to judgment, the amount the defendant is entitled to be paid under subdivision (2) of this section shall be claimed within 30 days after the title vests in the plaintiff or within 30 days after payment of such taxes, whichever is later, and shall be claimed in the manner provided for claiming costs.

SEC. 3. Section 5096 of the Revenue and Taxation Code is amended to read:

5096. (1) On order of the board of supervisors, any taxes paid before or after delinquency shall be refunded if they were:

- (a) Paid more than once.
- (b) Erroneously or illegally collected.
- (c) Paid on an assessment in excess of the cash value of the property by reason of the assessor's clerical error.
- (d) Paid on an assessment of improvements when the improvements did not exist on the lien date.

(2) On order of the board of supervisors, there shall be refunded that portion of the taxes paid before or after delinquency which is allocable to that

part of the fiscal year which began on the date the property was acquired
(1) by the United States of America, if such property upon such acquisition
became exempt from taxation under the laws of the United States, or (2) by
the State or by any county, city, school district or other public agency,
and because of such public acquisition became not subject to sale for
delinquent taxes. If the property was acquired by eminent domain, the
property shall be deemed to have been acquired on the date that the title
to the property vests in the plaintiff or the plaintiff takes possession
of the property, whichever is earlier.

SEC. 4. This Act takes effect on July 1, 1962.

III

A resolution to propose to the people of the State of California an amendment to the Constitution of the State by amending Section 14 of Article I thereof relating to eminent domain.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1961 Regular Session commencing on the 2nd day of January, 1961, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 14 of Article I thereof, to read:

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner. [~~and no right-of-way or lands to be used for reservoir purposes shall be appropriated to the use of any corporation, except a municipal corporation or a county or the State or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefits from any improvement proposed by such corporation, which~~] Except as provided in Section 23a of Article XII of this Constitution, such just compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law.

However, the Legislature may, by statute, authorize the plaintiff in a proceeding in eminent domain to take immediate possession of and title to the property sought to be condemned, whether the fee thereof or a lesser estate, interest or easement be sought; provided that any such statute shall require (a) that the plaintiff first deposit such amount of money as the court determines to be the probable just compensation to be made for the taking and any damage incident thereto, including any damages that may be sustained by the defendant if the property is not finally taken for public use, and (b) that the money deposited shall be paid promptly to the person entitled thereto in accordance with such procedure and upon such security as the Legislature may prescribe. Subject to the limitations contained in this section, the Legislature may by statute prescribe the manner in which, the time at which, the purposes for which, and the persons or entities by which, immediate possession of property sought to be condemned may be taken. [~~]-provided,-that-in-any-proceeding-in eminent-domain-brought-by-the-State,-or-a-county,-or-a-municipal corporation,-or-metropolitan-water-district,-municipal-utility-district, municipal-water-district,-drainage,-irrigation,-levee,-reclamation-or water-conservation-district,-or-similar-public-corporation,-the-aforesaid-State or-municipality-or-county-or-public-corporation-or-district-aforesaid-may~~

take-immediate-possession-and-use-of-any-right-of-way-or
lands-to-be-used-for-reservoir-purposes,-required-for-a
public-use-whether-the-fee-thereof-or-an-easement-therefor
be-sought-upon-first-commencing-eminant-domain-proceedings
according-to-law-in-a-court-of-competent-jurisdiction-and
thereupon-giving-such-security-in-the-way-of-money-deposited
as-the-court-in-which-such-proceedings-are-pending-may
direct,-and-in-such-amounts-as-the-court-may-determine-to-be
reasonably-adequate-to-secure-to-the-owner-of-the-property
sought-to-be-taken-immediate-payment-of-just-compensation
for-such-taking-and-any-damage-incident-thereto,-including
damages-sustained-by-reason-of-an-adjudication-that-there
is-no-necessity-for-taking-the-property,-as-soon-as-the-same
can-be-ascertained-according-to-law.--The-court-may,-upon
motion-of-any-party-to-said-eminant-domain-proceedings,
after-such-notice-to-the-other-parties-as-the-court-may
prescribe,-alter-the-amount-of-such-security-so-required-in
such-proceedings.]

The taking of private property for a railroad run by steam or electric power for logging or lumbering purposes shall be deemed a taking for a public use, and any person, firm, company or corporation taking private property under the law of eminent domain for such purposes shall thereupon and thereby become a common carrier.

10/7/60

(36)

IV

An act to amend Section 1243.4 of the Code of Civil Procedure as proposed to be added by Senate Bill No. relating to eminent domain.

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

SECTION 1. Section 1243.4 of the Code of Civil Procedure as proposed by Senate Bill No. is amended to read:

1243.4. In any proceeding in eminent domain [~~brought-by-the-State, or-a-county,-or-a-municipal-corporation,-or-metropolitan-water-district, municipal-utility-district,-municipal-water-district,-drainage,-irrigation, levee,-reclamation-or-water-conservation-district,-or-similar-public corporation,~~], the plaintiff may take immediate possession [and-use] of [~~any-right-of-way-or-lands-to-be-used-for-reservoir-purposes,-required-for-a-public-use-whether-the-fee-thereof-or-an-easement-therefor-be sought,~~] the property sought to be condemned in the manner and subject to the conditions prescribed by law.

SEC. 2. This act shall become effective only if Senate Constitutional Amendment No. is approved by the vote of the people at the next general election, and in such case, this act shall become effective on January 1, 1963.