

9/14/60

Memorandum No. 76 (1960)

Subject: Study No. 36(L) - Condemnation (Moving Expenses and
Incidental Business Losses)

REIMBURSEMENT FOR MOVING EXPENSES

GENERAL COMMENT

The Commission's recommendation has stirred a considerable amount of interest. Attorneys for condemners disagree on the basic policy decision to compensate condemnees for moving expenses. Condemnees' attorneys are generally in favor of such compensation.

The State Bar indicates that our proposal may be discriminatory in favor of those who have incurred indebtedness over those who have not but have suffered loss notwithstanding. (Bar (2) 25-29.) The State Bar also suggests that temporary takings in the state courts are infrequent and of a minor nature. (Bar (2) 29-31.) The conclusion is not expressed but it may be inferred that it is thought that no legislation is necessary in regard to temporary takings.

Public Works is opposed to compensation for moving expenses generally. (PW (39) 17 - (41) 46). The Los Angeles County Counsel's Office also expresses opposition to this proposal. (LA (52) 42-54). Both agencies argue that moving expenses are reflected in market value, especially when residential property is involved. Both agencies make the further point that a condemnee does not have to pay many expenses of sale that

are paid by an ordinary seller of real property. Public Works argues that the proposal will make administrative review and supervision of the amounts to be offered for property acquisition much more difficult. Public agencies will be unable to budget accurately for their acquisitions. Los Angeles believes that if an indemnity theory of compensation is to be followed, and compensation for moving costs is an aspect of indemnification, then the government should be able to offset benefits against the total award to be paid instead of against severance damages only.

So far as the administrative difficulty and expense argument is concerned, it may be argued the government should properly bear any administrative costs necessary to treat its citizens fairly. Moreover, it is not unlikely that as public agencies gain experience with moving expenses, they will be able to estimate quite accurately as to the amount to be budgeted for that purpose. Hence, the basic question is whether it is fair to provide compensation for moving expenses.

The argument that moving expenses are presently included in market value because all sellers must take moving expenses into consideration in fixing their selling prices is not sustained by the facts so far as they are known. In the Palo Alto Times for July 30, 1960, there appeared an article on families moving into and out of the Bay Area. The article states, upon the basis of a survey of the records of local moving van companies:

Not one family in five pays its own freight to get here if it uses a moving van service. Private companies pick up the tab for about three of every five moves (the proportion has been rising steadily for several years). The remaining one move in five is at government expense - for transfers of military and civilian employees.

The article also indicated that families are less willing to pay their own

way to leave the Bay Area than they are to come into the Bay Area. Hence, the proportion of employer-paid moves for families leaving is even higher.

The article indicates that the situation seems to be the same across the country:

A headquarters spokesman for Allied Van Lines, which has 800 agents across the country, reports that "For the past several years, Allied has maintained the ratio of 25 per cent military business to 75 per cent civilian business. Of the civilian business, about 90 per cent of the moves have been paid for by corporations."

This leaves, then, only seven or eight per cent of Allied's moves to be paid for by private individuals.

An official of National Van Lines (500 offices in the U.S.) says of its moves last year, "Approximately 40 per cent of all moves into California were made at government expense. An additional 25 per cent were paid by corporations. The balance of 35 per cent went forward C.O.D., but this is not truly indicative, for many of these individuals were reimbursed by their companies or by the government."

Although a condemnee does not have to bear some expenses that a seller must bear, such as a broker's commission, a condemnee has legal fees and expenses which may exceed the expenses of an ordinary sale. In at least one case, State of California v. Westover Company, 140 Cal. App.2nd 447 (1954), it was held that an attorney was entitled to a fee amounting to approximately 10 per cent of the entire award. This is far in excess of the usual broker's commission.

From the foregoing it does not appear that a condemnee is in a more favorable position from an expense standpoint than is an ordinary seller of property. Moreover, it appears that in the great majority of residential sales the seller does not have to consider his moving expenses in his sales price. Therefore, providing moving expenses in condemnation actions appears to be warranted, and most of the authors of the letters coming to the Commission agree.

The Marin County Counsel states that he is in full accord with the

Commission's recommendation. (Marin (71) 24-44.) He suggests, however, that the court should be required to instruct the jury in the principal case that it shall not take into consideration the question of reimbursement for moving expenses. The Inglewood City Attorney makes the same suggestion. (Inglewood (74) 32-41.) The City Attorney of San Francisco also agrees that there should be compensation for moving expenses. (S.F. (84) 29-43.) Judge Lawrence (Lawrence (88) 24-25) and Robert McNamee (at (91) 49-51), both of whom are or were condemners' attorneys also agree that moving expenses should be paid for by the condemner. Naturally there has been no objection from the condemnees' attorneys to this proposal. However, Richard L. Huxtable believes that there should be compensation for at least one form of incidental business loss in addition to moving expenses. (Huxtable (108) 36-51.)

In view of these considerations, there appears to be no compelling reason to alter the Commission's basic recommendation that reimbursement be given for moving expenses in condemnation cases.

SUGGESTED AMENDMENTS

SECTION 1270.

1270. As used in this title:

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

(2) "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.

(3) "Person" includes a natural person, corporation, association, 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.

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

(5) "Relocating" includes unloading, unpacking, reassembling, installing and all other acts incidental to the placement of personal property upon a new location and making it ready for use.

(6) "Removing" includes dismantling, packing, wrapping, loading and all other acts incidental to the removal of personal property from its location.

Subdivision (3)

The Attorney General (at (23) 27) recommends the deletion of the word "State." He is afraid that the use of the term will give rise to the argument that State property is subject to condemnation. However, it is necessary to include the State in this definition of "person" for subdivision (1) defines an "acquirer" as a "person" who acquires real property for public use. Therefore, the State must be included in the definition of "person" if it is to be liable for moving expenses. Nothing in the statute grants anyone the right to condemn or subjects anyone to condemnation. Therefore, it is recommended that the subdivision be left unchanged.

Subdivision (5)

The Attorney General (at (23) 33-39) and Public Works (at (42) 21-32) both believe that the definition of "relocating" is too broad. They fear that the words "all other acts incidental to the placement of personal property upon a new location and making it ready for use" may be construed to include the expense of seeking a new location, preparing that location to receive the property, renovating and remodeling existing building, etc. The Attorney General believes that under this definition the condemner might be required to pay more for moving the condemnee than it must pay for the property acquired. Public Works suggests that the definition be revised to clearly limit reimbursement to the actual packing, transporting and unpacking

of the personal property involved.

The objections made are reasonable. It is impossible to predict what a court might deem to be included within "all other acts incidental to the placement of personal property upon a new location and making it ready for use." However, Public Works' suggested alternative seems a little too narrow. A more reasonable provision would be to provide reimbursement for dismantling, packing, loading, transporting, unloading, unpacking and reassembling.

Recommendation

It is recommended that subdivisions (5) and (6) be deleted and that a new subdivision (5) be substituted to read:

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

SECTION 1270.1

1270.1. Subject to Section 1270.3, a person lawfully occupying real property when such property or any interest therein is acquired for public use is entitled to reimbursement from the acquirer for his actual and reasonable costs necessarily incurred as a result of the acquisition in:

- (1) Removing his personal property from the real property acquired or from the larger parcel from which the part acquired is severed.
- (2) 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.
- (3) Transporting such personal property.
- (4) Relocating such personal property at the location to which it is transported.

1. Compensation to All Occupants

Both the Attorney General (at (23) 41 - (24) 12) and Public Works

(at (42) 48 - (43) 36) object to the proposal to compensate all occupants of property for moving expenses. They point out that it is the practice of the State not to name as defendants tenants at will or lessees whose interests are about to expire. The State takes the lessors' interests subject to such leases and permits them to expire. The proposed statute discriminates against the State and other condemners, for the statute requires them -- and no other landlords -- to pay the moving expenses of their tenants when the leases expire. The Attorney General and Public Works see no reason why the State should not be permitted to step into the shoes of the landlord and be entitled to the same rights.

The Attorney General and Public Works also point out that the proposed statute will create a considerable administrative problem in dealing with all of the tenants of an apartment house or hotel. It will be difficult to deal with all of the various tenants, and it will be difficult, too, to properly supervise the amount of compensation to be given each one.

Accordingly, Public Works recommends that compensation for moving expenses be given only to a person forced to move by condemnation before his tenancy is legally terminated.

The staff believes that the objection of Public Works is reasonable. A tenant who has come to the end of his term is not forced to move by the condemnation but by the terms of his own agreement. Therefore, he should have no claim for moving costs against the State or other public entity merely because he has a public instead of a private landlord.

The Commission was originally concerned about certain licensees or tenants at will who have made substantial investments in improvements to property owned by another. It seems likely that most of these individuals

are either on United States government land, or land belonging to the State or other public land. It seems unlikely that a person would make a substantial investment on privately owned land unless the owner is legally bound to let him remain there. Furthermore, Federal lands are not subject to condemnation. If lands belonging to a State or local governmental body are acquired, it is not unlikely that the owner of the lands will require the tenant to quit the premises prior to the acquisition. Hence, the proposal to compensate all occupants probably will not afford any relief to licensees or tenants at will on these lands.

The harassment that may be caused a condemner can be great. As tenants at will are required to be compensated, the condemner will be required to find and commence actions against every tenant of each apartment house, hotel, motel or similar establishment who happens to be in the building when it is taken by eminent domain. Certainly, most of these will be entitled to virtually no moving expense reimbursement; but the penalty for failing to file an action against one who does seek to recover the cost of moving a few personal belongings is the attorney's fees.

To eliminate these problems, it is recommended that Public Works' suggestion be approved and that compensation be given only to persons whose interest in the condemned property is taken.

2. Assignment of Claims

Both the Attorney General (at (24) 14 - 20) and Public Works (at (43) 37 - 48) point out that many leases contain a provision assigning to the lessor any right to compensation or damages to which the lessee may become entitled as a result of the condemnation of the property. A

provision of this sort might possibly result in an assignment of the lessee's right to be reimbursed for moving costs. Thus, although the lessee would incur the expense, the lessor would get the money.

To preclude this possibility, it is recommended that a provision be added to the statute preventing the assignment of the right of reimbursement prior to the time the costs are incurred.

3. Temporary storage

Several objections were made to the proposal to reimburse for temporarily storing personal property until the new site is available for occupancy. The Attorney General (at (24) 22 - 30) complains of the vagueness of the term "temporarily." He points out that in some cases several months might elapse before the new property is available for occupancy. Newport Beach suggests that there be a specified limit to the temporary storage. (Nprt Bch (80) 41 - 50.) Judge Lawrence points out the difficulties in determining when a relocation site is "available." (Lawrence (88) 36 - 40.) He points out, too, that the delays may be within the condemnee's control -- such as intentional selection of property not immediately available. Mountain View thinks the provision is unnecessary. (Mtn Vw (78) 10 - 20.) If immediate possession is not taken, the condemnee will have ample notice of the fact that he must move. If the Commission's immediate possession recommendation is enacted, the condemnee will be given at least 20 days' notice that he must move, and he may obtain a further delay to prevent "unnecessary hardship." Therefore, the condemnee should have ample time to locate property to replace that taken so that temporary storage will be unnecessary. Mountain View argues that this provision will

open the door to "spite" expenses and will give condemnees an unfair bargaining weapon -- the threat of incurring such expenses.

In view of these comments, it is recommended that the provision for temporary storage be deleted.

4. Removal by Condemner

Two writers (Mtn Vw (78) 22 - 30; McNamee (91) 53 - 56) suggest that the condemner be authorized to move the personal property itself. This would enable the condemner to call for bids and thus secure a lower cost for the public and would probably circumvent some featherbedding.

It is recommended that this suggestion be approved.

Recommendation

In view of the foregoing comments, it is recommended that Section 1270.1 be amended to read:

1270.1. Subject to Section 1270.3, a person [~~lawfully-occupying~~] whose real property [~~when-such-real-property~~] or [~~any~~] interest therein is acquired for public use is entitled to reimbursement from the acquirer for his actual, but not exceeding the [~~and~~] reasonable, costs necessarily incurred as a result of the acquisition in [+]

[~~(1)-Removing~~]

moving his personal property from the real property acquired or from the larger parcel from which the part acquired is severed.

[~~(2)--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.~~]

[~~(3)--Transporting-such-personal-property.~~]

~~[(4)--Relocating such personal property at the location to which it is transported.]~~

The following provisions should also be added to the statute:

(1) The right of any person to reimbursement for costs under Section 1270.1 or 1270.2 is not assignable to any other person prior to the time such costs are incurred.

(2) In lieu of reimbursing a person under Section 1270.1, the acquirer may provide for the moving of the personal property at its own expense. In lieu of reimbursing a person under Section 1270.2, the acquirer may provide for the moving and storage of the personal property at its own expense.

SECTION 1270.2

1270.2. (1) A person is entitled to reimbursement under this section only if:

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

(b) 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.

(2) Subject to Section 1270.3, a person described in subdivision (1) of this section is entitled to reimbursement from the acquirer as provided in Section 1270.1, and, in addition, is entitled to reimbursement from the acquirer for his actual and reasonable costs necessarily incurred as a result of the acquisition in:

(a) 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.

(b) Removing such personal property from storage after the expiration of the term for which the real property was acquired for public use.

(c) Transporting such personal property to and relocating such personal property upon the real property after the expiration of the term for which the real property was acquired for public use.

The City Attorney of Newport Beach suggests that the length of time which goods may be stored at public expense under either 1270.1 or 1270.2 be limited. He suggests a limit in terms of a percentage of the value of the goods or a specific time limit. (Npt Bch (80) 41 - (81) 10.) Judge Lawrence doesn't believe a condemnee should be permitted to store machinery that will be obsolete when it is moved back to the property. (Lawrence (88) 42-45.)

This problem will rarely arise. A limitation on the amount of reimbursement will probably solve the difficulties that do come up. Such a limitation should be provided in Section 1270.3.

If "moving" is defined as suggested under Section 1270, subdivision (2)(b) of this section should be deleted and subdivision (2)(c) amended to read:

~~[(e)]~~ (b) ~~[Transporting]~~ Moving such personal property to ~~[and relocating-such-personal-property-upon]~~ the real property acquired after the expiration of the term for which the real property was acquired for public use.

SECTION 1270.3

1270.3. (1) Subject to subdivision (2) of this section, a person is entitled to reimbursement under subdivision (3) of Section 1270.1 for transporting his personal property a distance of not more than 25 miles by the most direct practical route and is entitled to reimbursement under subdivision (2)(c) of Section 1270.2 for transporting his personal property a distance of not more than 25 miles by the most direct practical route.

(2) The limitation contained in this section does not limit the amount the acquirer may agree to pay a person entitled to reimbursement under Section 1270.1 or Section 1270.2.

1. Limitation on Amount of Reimbursement

Public Works (PW (44) 4 - 30) and Richard Huxtable (at (108) 28-34) both suggest that the allowance of moving expenses be limited to the value of the goods. Public Works believes that the limitation should apply both to judicial proceedings and to negotiated settlements. Public Works suggests that such a limitation is necessary to prevent the moving of junk at public expense. The City Attorney of Inglewood believes that the limitation should not be the value of the goods but should be a percentage of the value of the goods. (Inglewood (74) 4-13.) Inglewood suggests a dollar limitation as an alternative. Public Works also suggests a dollar limitation instead of a mileage limitation (PW (44) 20-30), but it did not include such a limitation in its statute. The City Attorney of San Francisco also suggests that there be a limitation of some sort which should be applicable to negotiated settlements as well as to judicial matters. (SF (84) 40-51.) However, San Francisco recognizes that the Commission's present proposal would be more equitable than a flat dollar limitation.

Recommendation

Although it may be more difficult to apply, the mileage limitation contained in the present statute is more equitable than a dollar limitation would be. For the reasons stated in the comments, though, it is recommended that an additional limitation -- that reimbursement may not exceed the value of the property moved -- be added. This additional limitation, together with the right of the condemner to move the property, should be sufficient to protect condemners against unwarranted claims. It is also

recommended that the mileage and value limitations be applicable generally. As the Commission has abandoned the percentage of the award limitation, there is no difficulty in providing that the limitations are applicable to all situations, including those in which there is no award.

If these recommendations are approved, the statute would be amended to read:

1270.3. (1) Subject to subdivision (2) of this section, a person is entitled to reimbursement under [~~subdivision (3) of~~] Section 1270.1 for transporting his personal property a distance of not more than 25 miles by the most direct practical route and is entitled to reimbursement under subdivision (2) [~~(e)~~] (b) of Section 1270.2 for transporting his personal property a distance of not more than 25 miles by the most direct practical route.

(2) Reimbursement under Section 1270.1 and Section 1270.2 may not exceed the value of the personal property moved. [~~The limitation contained in this section does not limit the amount the acquirer may agree to pay a person entitled to reimbursement under Section 1270.1 or Section 1270.2.~~]

SECTION 1270.4

1270.4. (1) Unless a person entitled to reimbursement and the acquirer have agreed as to the amount of reimbursement to be made to such person under Section 1270.1, and unless the person entitled to reimbursement has commenced a civil action to recover the reimbursement under subdivision (3) of this section, the acquirer shall commence a civil action to determine the amount of reimbursement to be made to such person under Section 1270.1 on or after the day the acquirer takes possession of the real property or the day the acquirer is given written notice by such person that the real property has been vacated by such person, whichever is earlier.

(2) Unless a person entitled to reimbursement and the acquirer have agreed as to the amount of reimbursement to be made to such person under Section 1270.2, and unless the person entitled to reimbursement has commenced a civil action to recover the reimbursement under subdivision (4) of this section, the acquirer shall commence a civil action to determine the amount of reimbursement to be made to such person under Section 1270.2 after the term for which the real property was acquired for public use expires.

(3) If the acquirer does not commence a civil action to determine the amount of reimbursement to be made to a person entitled thereto under Section 1270.1 within 90 days after the acquirer takes possession of the real property or within 90 days after the acquirer is given written notice by such person that the real property has been vacated by such person, whichever is earlier, the person entitled to reimbursement may bring a civil action to recover the reimbursement to which he is entitled under Section 1270.1 and is entitled to recover his reasonable attorney's fees in the manner provided for the recovery of costs.

(4) If the acquirer does not commence a civil action to determine the amount of reimbursement to be made to a person entitled thereto under Section 1270.2 within 90 days after the term for which the real property was acquired for public use expires, the person entitled to reimbursement may bring a civil action to recover the reimbursement to which he is entitled under Section 1270.2 and is entitled to recover his reasonable attorney's fees in the manner provided for the recovery of costs.

(5) An action commenced under this section is subject to the provisions of this code relating to actions at law for the recovery of money only.

1. Separate Judicial Proceeding for Determining Reimbursement

Considerable opposition has been expressed to the proposition that moving costs be determined in a separate proceeding from the condemnation action. The Attorney General suggests (at (24) 36-45) that the matter be handled in the condemnation proceeding. An alternative method would be to handle the matter under a procedure analogous to a cost bill procedure. The State Bar suggests that moving costs be added to subdivision 6 of the Code of Civil Procedure Section 1248 as an item to be determined by the jury in the condemnation action. (Bar (2) 29-40.) The City Attorney

of San Francisco believes that a separate proceeding would unduly increase litigation. (SF (85) 3.) He states that a consolidation of the moving cost hearing with the principal action will result in fairer awards as jurors tend to allow for moving costs in their verdicts. Judge Lawrence, too, believes the separate proceeding a burdensome one. (Lawrence (88) 26-29.) Public Works (PW (44) 33-51) and the Inglewood City Attorney (Inglewood (74) 15-30) both recommend a proceeding similar to a cost bill proceeding. Public Works has even drafted a suggested statute providing such a proceeding. (PW (50) 24 - (51) 9.)

The difficulty with these suggestions is that they cannot be made applicable to all persons entitled to moving costs unless the persons entitled to moving costs are limited to those who must be named in the condemnation action. Public Works recognizes this and recommends such limitation. With this limitation, Public Works points out that all moving cost proceedings could be handled quite expeditiously through a cost procedure without burdening the courts with additional litigation. This, too, would eliminate the need for amending the claims statute. It would also permit the entire statute to be moved into the title on eminent domain.

Of course, a great deal of moving cost litigation under the Commission's proposal would not be in the superior court and would not be adding to the burden of cases in the superior court. Anything under \$500 would be in the justice court and anything under \$3,000 would be in municipal court. These courts should handle virtually all moving expense litigation. It would only be an unusual situation in which moving expenses would exceed the \$3,000 jurisdictional limit of the municipal courts. Virtually all residential moving would be within the jurisdictional limits of the justice courts.

If the right to reimbursement is limited to those persons whose interests are actually curtailed by the condemnation, it is recommended that a cost procedure be followed. However, if all occupants of condemned property are to be reimbursed for moving expenses, the existing scheme is recommended - with certain modifications. The Commission might wish to eliminate Section 1270.4 altogether. The statute, then, would merely create the right. The procedure for enforcement would be supplied by existing claims statutes and civil litigation. If the present statute is retained, an amendment is necessary to exempt the proceeding from the State claims act.

2. Initiating the Proceeding and Attorneys' Fees

The Attorney General argues that it is unfair to impose attorneys' fees upon a condemner for failure to initiate a moving expense action. (AG (24) 47 - (25) 10.) Only the person required to move knows whether any expenses have been incurred and whether an action should be initiated. The condemner must conduct an investigation to determine whether such expenses were incurred. Judge Lawrence (at (88) 31-34) and Robert McNamee (at (92) 10-21) also object to the payment of attorneys' fees. Mr. McNamee points out that in many cases the ownership of the personal property will have to be settled between the landlord and tenant and suggests that the matter of attorneys' fees be left to the discretion of the court. He also suggests (at (92) 5-13) that the condemnee be given a right of action to be enforced any time after the expenses have been incurred.

The problem, of course, will be greatly aggravated if all occupants are compensated. For in apartment and hotel situations the acquiring

agency will have to investigate the moving needs of each tenant.

In accordance with the staff's previous recommendation that compensation for moving costs be provided only to persons owning property interests acquired for public use, the staff further recommends that a cost procedure initiated by the condemnee be substituted. A draft section to carry out this proposal appears below.

If the Commission decides to retain its proposal that all occupants be compensated for moving costs, the staff recommends that the procedure be modified to eliminate the requirement that the acquirer file an action to determine the moving costs in every case where an agreement has not been reached if it wishes to avoid payment of attorney's fees. Such a requirement forces the acquirer to file needless actions in order to protect itself in any case where there is a possibility that moving expenses will be claimed. Moreover, if the acquirer does not file the action within the prescribed time, the attorney for a person who has a moving expense claim is encouraged to file an action rather than present a claim since attorney's fees will be allowed if the action is filed. Because of the occupant's superior knowledge of the reimbursement to be required, he should be required to present a claim to the acquirer setting forth the amount of reimbursement to which he is entitled. If the acquirer disagrees with the amount claimed, it should then be required to commence an action to determine the amount of reimbursement to be made. If the acquirer fails to file such an action or to pay the amount claimed within 90 days, then the claimant should have the right to file an action and recover his attorney's fees. This will eliminate the need for a great deal of fruitless investigation of moving costs and will eliminate the need for many needless actions.

Recommendation

It is suggested that the existing Section 1270.4 be deleted together with the amendment to Government Code Section 703 and the following section be substituted for them:

1270.4. (1) 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 expenses. The memorandum shall be filed within 90 days after the personal property is moved, shall state the date on which the personal property was moved and shall itemize the actual, but not exceeding the reasonable, costs necessarily incurred in moving his personal property.

(2) 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 expenses. The memorandum shall be filed on or before the ninetieth day after the term for which the real property was acquired for public use expires and shall itemize the actual, but not exceeding the reasonable, costs necessarily incurred in moving and storing his personal property.

(3) The acquirer may, within 20 days after service of a memorandum under subdivision (1) or (2) of this section, serve and file a notice of motion to have the costs determined by the

court. Not less than 20 days' notice of the hearing shall be given to the claimant, and the notice shall state the acquirer's objections 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 costs 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.

SECTION 1248.5

1248.5. Notwithstanding [~~Section 1248.2~~] any other provision of law, the opinion of a witness as to the amount to be ascertained under subdivisions 1, 2, 3, or 4 of Section 1248 is inadmissible if the court finds that it is based, wholly or in part, upon the cost of [re]moving, transporting, storing or relocating personal property.

1. Reference to Section 1248.2

In Public Works' suggested statute, the phrase "Notwithstanding any other provision of law" is substituted for "Notwithstanding Section 1248.2". (PW (51) 11-21.) This is a proper amendment because Section 1248.2 exists only in the Commission's proposed evidence statute.

2. Instruction by the Court

As pointed out in the general comments, two writers suggested that the court be required to instruct that moving costs are to be excluded from the consideration of the jury. (Marin (71) 24-44; Inglewood (74) 32-41.) They believe that juries tend to allow for such costs in their awards.

Such an addition to the statute is not recommended. Such an instruction may not be appropriate, and in cases where it is appropriate, there is no reason to believe that the court would refuse to so instruct. There are many matters upon which juries should be instructed, and the question involved here does not seem so unique that it should be made the subject of a mandatory instruction.

ADDITIONAL AMENDMENTS

1. Savings Clause

Both the Attorney General (AG (23) 24) and Public Works (PW (45) 38)

recommend the addition of a section that would exempt condemnation proceedings commenced prior to the effective date of the act. Such a provision is desirable to permit proper budgeting and preparation for the application of the new law.

The following is recommended:

This act takes effect on January 1, 1962. This act does not apply to any proceeding in eminent domain commenced prior to its effective date.

2. Incidental Losses

Mr. Huxtable (at (108) 36 - (110) 9) suggests that the statute be modified to include actual losses resulting from loss of productivity caused by condemnation. He has reference to continuing expenses such as payroll commitments. The work stoppage caused by condemnation prevents the enterprise from meeting these obligations. He suggests that these expenses be reimbursed under our moving expense statute.

The problem is probably not as simple as indicated. Questions would be raised as to whether the business was being run at a profit or a loss and whose accounting system should be used to determine the loss. It is suggested that the Commission make no recommendations relating to compensation for incidental losses.

RECOMMENDED STATUTE

Attached to this memo on the green sheets is a draft of the Commission's statute showing the amendments suggested above. Because Section 1270.4 is entirely replaced in this draft, it is not shown in strike out type.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

An act to add Title 7a (beginning with Section 1270) to 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. Title 7a (beginning with Section 1270) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 7a.

REIMBURSEMENT FOR MOVING EXPENSES WHEN PROPERTY
IS ACQUIRED FOR PUBLIC USE

1270. As used in this title:

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

(2) "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.

(3) "Person" includes a natural person, corporation, association, 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.

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

(5) [~~"Relocating" includes~~] "Moving" means dismantling, packing, loading, transporting, unloading, unpacking [,] and reassembling [, ~~installing and all other acts incidental to the placement of~~] personal property [~~upon a new location and making it ready for use~~].

[~~(6) -- "Removing" includes dismantling, packing, wrapping, loading and all other acts incidental to the removal of personal property from its location.~~]

1270.1. Subject to Section 1270.3, a person [~~lawfully occupying~~] whose real property [~~when such property~~] or [~~any~~] interest therein is acquired for public use is entitled to reimbursement from the acquirer for his actual, but not exceeding the [~~and~~] reasonable, costs necessarily incurred as a result of the acquisition in [+]

[~~(1) -- Re~~]moving his personal property from the real property acquired or from the larger parcel from which the part acquired is severed.

[~~(2) -- 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.~~]

[~~(3) -- Transporting such personal property.~~]

[~~(4) -- Relocating such personal property at the location to which it is transported.~~]

1270.2.

(1) A person is entitled to reimbursement under this section only if:

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

(b) 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.

(2) Subject to Section 1270.3, a person described in subdivision (1) of this section is entitled to reimbursement from the acquirer as provided in Section 1270.1, and, in addition, is entitled to reimbursement from the acquirer for his actual and reasonable costs necessarily incurred as a result of the acquisition in:

(a) 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.

(b) [~~Removing such personal property from storage after the expiration of the term for which the real property was acquired for public use.~~]

~~[(e) -- Transporting]~~ Moving such personal property to [~~and releasing such personal property upon~~] the real property acquired after the expiration of the term for which the real property was acquired for public use.

1270.3. (1) Subject to subdivision (2) of this section, a person is entitled to reimbursement under [~~subdivision (3) of~~] Section 1270.1 for transporting his personal property a distance of not more than 25 miles by the most direct practical route and is entitled to reimbursement under subdivision (2) [~~(e)~~] (b) of Section 1270.2 for transporting his personal property a distance of not more than 25 miles by the most direct practical route.

(2) ~~[The limitation contained in this section does not limit the amount the acquirer may agree to pay a person entitled to]~~ Reimbursement under Section 1270.1 ~~[or]~~ and Section 1270.2 may not exceed the value of the property moved.

(3) The right of any person to reimbursement for costs under Section 1270.1 or 1270.2 is not assignable to any other person prior to the time such costs are incurred.

(4) In lieu of reimbursing a person under Section 1270.1, the acquirer may provide for the moving of the personal property at its own expense. In lieu of reimbursing^s a person under Section 1270.2, the acquirer may provide for the moving and storage of the personal property at its own expense.

1270.4. (1) 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 expenses. The memorandum shall be filed within 90 days after the personal property is moved, shall state the date on which the personal property was moved and shall itemize the actual, but not exceeding the reasonable, costs necessarily incurred in moving his personal property.

(2) 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 expenses. The memorandum shall be filed on or before the ninetieth day after the term for which the real

property was acquired for public use expires and shall itemize the actual, but not exceeding the reasonable, costs necessarily incurred in moving and storing his personal property.

(3) The acquirer may, within 20 days after service of a memorandum under subdivision (1) or (2) of this section, serve and file a notice of motion to have the costs determined by the court. Not less than 20 days' notice of the hearing shall be given to the claimant, and the notice shall state the acquirer's objections 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 costs 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.

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

1248.5. Notwithstanding [~~Section 1248.2~~] any other provision of law, the opinion of a witness as to the amount to be ascertained under subdivisions 1, 2, 3, or 4 of Section 1248 is inadmissible if the court finds that it is based, wholly or in part, upon the cost of [~~re~~]moving, transporting, storing or relocating personal property.

SEC. 3. This act takes effect on January 1, 1962. This act does not apply to any proceeding in eminent domain commenced prior to its effective date.