

8/6/70

Memorandum 70-75

Subject: Research Contracts

Professor James E. Hogan, U.C. Davis Law School, has requested that he be relieved of his obligations under the contract with the Commission to prepare a background study relating to procedural aspects of eminent domain law. He has concluded that the area is far more complex than he contemplated. In addition, although the chances that he would leave law teaching were remote a year or so ago, he states that there is now a "substantial possibility" that he will decide to leave teaching and return to private practice. For these reasons, he wishes to have the contract terminated. His letter is attached as Exhibit I.

The staff suggests that the Commission approve the termination of the contract. Under the circumstances, we do not believe that we would be justified in paying Professor Hogan anything.

The staff believes that condemnation procedure is a top priority area for allocation of research moneys. However, we have not had good experience in obtaining or retaining a consultant. Professor Ayer of Stanford undertook the study, prepared a relatively small portion of it, then asked to be relieved of any further obligations under the contract because he found that it was a far more substantial undertaking than he contemplated and he was "burned out." The Commission agreed to terminate the contract. Professor Hogan's experience is reported in his letter. We hope to be able to suggest another consultant for this topic at the September meeting.

We have written to a law professor suggested by Professor Sneed on the study relating to the problem of the tenant's property when a lease terminates. We also consider this a top priority study. We hope to be able to report the

name of a possible consultant for your consideration at the September meeting.

We have only \$7,000 in our approved budget for research. The contract with Professor Hogan was for \$7,500, and we anticipate that the lessee's property study would call for a minimum of \$1,500 and perhaps as much as \$2,500.

We will have significant savings (perhaps as much as \$7,500) as a result of the vacancy created by the resignation of the Assistant Executive Secretary and the filling of that vacancy by appointment of a Junior Counsel. Before the end of the fiscal year, if all goes well, we hope to be able to use the savings to increase our amount available for research from \$7,000 to \$14,500. (The actual amount used for research during the past fiscal year was \$22,600, but much of this will actually never be paid out since it is paid out only when studies are delivered and consultants frequently fail to complete the studies.) Accordingly, the staff believes that we will have adequate money to finance the studies on condemnation procedure and lessee's property. We do not, however, have any money at this time to finance a study on nonprofit corporations. (The \$10,000 we had planned to use to finance this study during the last fiscal year remained unexpended at the end of the fiscal year and was saved because we could not find a competent consultant to undertake the study.) There is a possibility that the staff will have to do the procedural aspects of condemnation study because we will be unable to find a consultant to prepare the study. This could be a disaster because it might delay submission of our recommendation on the comprehensive eminent domain statute for perhaps a year. Nevertheless, if the staff does the condemnation study, we probably would have the funds needed to finance the nonprofit corporations study if we can find a consultant to do that study.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

UNIVERSITY OF CALIFORNIA, DAVIS

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SCHOOL OF LAW

DAVIS, CALIFORNIA 95616

July 22, 1970

John H. DeMouilly
Executive Director
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

I have decided that I must ask to be relieved of my undertaking with respect to the Law Revision Commission's study of California's law of eminent domain. When I became involved with the project, I relied heavily on your judgment and that of Ed Rabin that my lack of any background in condemnation law was not a disqualifying factor for the type of study the Commission had in mind. I have come to the conclusion that this study entails work that is beyond my expertise, and that it should be conducted by someone who is versed in eminent domain law, rather than by a specialist in evidence and procedure. Our recent telephone conversation left me with the distinct apprehension that the overview of the condemnation field which I have tried to acquire by general background reading is and will probably continue to be inadequate for the Commission's purposes. Moreover, my instincts tell me that in an area of the law dominated by specialists, my recommendations will not carry the weight they should, and my lack of practical experience with condemnation cases could easily become a vulnerable point for any side or group that disagrees with me. I may be wrong in this judgment, but I do not feel justified, either from my standpoint or that of the Commission, in running the risk that I am right.

There is a second and more problematical basis for my decision. At the time I entered into my arrangement with the Commission, the chances that I would leave teaching and return to practice were remote. Events on college campuses last Spring, even the relatively mild disruptions we had here at Davis, upset and distracted me far more than they did my colleagues. The retaliatory action of the Legislature with respect to cost-of-living raises for university faculty is an added irritant and omen. I would say that there now is a substantial possibility that I will decide to leave teaching and return to the Washington area for the purpose of resuming my law practice. I have not reached a decision in this matter, but I want to be completely free to do so, in the event the climate on campus worsens.

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While I have expended a significant amount of my time on the eminent domain project to date, the work has been largely exploratory and preparatory, consisting mainly of trying to acquire ~~the~~ broad familiarity with the field of condemnation law that I felt was indispensable to productive work in any particular problem area. I have also analyzed the present statutory and case law dealing with "public use and necessity," since you indicated to me that this was of immediate interest to the Commission. None of this work is of any immediate value to the Commission, which, of course, has incurred no financial obligation to me under the circumstances.

I regret the disruption that this decision on my part may cause you, but I am convinced that in the long run my withdrawal from the project will prove to have been a wise move from both of our vantage points.

Very truly yours,


JAMES E. HOGAN