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## PREPARATION AND TRIAL OF A CONDEMNATION CASE—THE CITY

A. C. VAN SOELEN\*

The acquisition by cities and towns of private property, and to some extent public property also, is provided for in Chapter 8.12 RCW, which enumerates the public purposes for which such property may be acquired upon payment of "just compensation." The statement of public purposes included in that chapter relate in the main to the furtherance of the governmental as distinguished from the proprietary functions of cities and towns. Said chapter is implemented and supplemented as to the latter functions by Chapter 80.40 RCW, which relates to the needs of cities and towns in the exercise of their proprietary functions, notably electric light and power, water, mass transportation, and sewerage. Procedure in Chapter 8.12 RCW controls.

### PROCEDURAL STEPS REQUISITE TO CITY'S TAKING

In making an acquisition the first step required by law is the enactment of an ordinance declaring a public "necessity" for the acquisition of the property and property rights sought. The ordinance must be in line with the authority granted by the legislature. The ordinance need not specify the source from which payment will be made unless the legislative authority at the outset proposes that the cost be recovered by "special assessment" on property benefited.

A formal pleading must be filed in the superior court of the county in which the property to be acquired is located. The pleading is in the form of a petition based on the ordinance. The petition must include a description of the property, and there must be attached a certified copy of the ordinance declaring the public necessity for acquisition. Included with the petition is a summons containing the names of all parties having any interest in the property sought to be acquired, as certified (usually by a title company) to the city or town. The names of such persons also appear in connection with the various property descriptions included in the petition.

These matters are discussed in some detail because they are jurisdictional and form the basis for the entry, upon notice prior to

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trial, of an order adjudicating public use. The order is a condition precedent to the taking or damaging, and the entry of the order involves a "judicial" question.

The summons is in the usual form, including the statement that if the "respondents" to the petition do not appear, etc., judgment will be taken against them. Just compensation must always be paid, however, and in the absence of an appearance by respondents formal proof will be produced by the city before a directed verdict will be entered.

#### ATTORNEY'S ROLE IN CITY CONDEMNATION PROCEEDINGS

So far as I am concerned this is a "bread and butter" talk which I will try to gear, from this point on, to the interest of the lawyer in private practice who is called upon by a respondent in such proceeding. The court has held that the only "proper" pleading on the part of a respondent in such a case is an "appearance" filed with the clerk, which raises all the issues properly addressed to the court. Inasmuch as the law contemplates that no "statutory costs" (including costs on appeal) may be assessed against the respondents in such a case, and that the appearance fee and statutory attorney's fees are recoverable as a matter of law, it is suggested that you should in all cases enter an appearance so that you and your client may be properly notified of subsequent proceedings. An appearance need not necessarily be filed within the time stated in the summons and will be respected if filed at any time prior to trial. We also try to notify all respondents, particularly as to the appraisers' figures and of their availability for discussion, some time prior to trial even where no appearance is filed. There are often misunderstandings in this respect, however, and we would rather deal with the attorneys than with the respondents direct, which is another reason for an appearance.

The city of course prepares all the necessary maps showing the effect of the condemnation on the property. These are available during the period of negotiations prior to the trial. You, along with your client, will have an opportunity to meet with the appraisers and give your point of view. You may waive a jury, in which case findings of just compensation will be entered by the court on an agreed basis, or as the result of a contest. Some 90% or more of condemnation cases are settled on the basis of agreed findings or

agreed verdicts, and in these cases your responsibilities are at an end.

If your client is not willing to settle, you must of course meet the evidence which will be produced by the appraisers in the role of expert witnesses for the city at the trial. A respondent, particularly a property owner, may testify as to the amount of "just compensation" without qualification. This is, in many cases, all the evidence that the respondent will produce. If the amount involved justifies it, you should of course employ one or more expert witnesses.

The issues required to be submitted to the jury, or to the court in case you waive a jury, are pretty well prescribed by Chapter 8.12 RCW, and the instructions are pretty well standardized. Such issues deal with the elements of "just compensation." In the case of a "damaging" only—as distinguished from a taking—the measure of compensation is the difference in the value of the property before and after the damaging. No "claim" for a damaging or taking of property under the constitution is required.

The only strictly legal question that can properly be raised is with respect to the city's motion for an adjudication of public use. The question of "necessity" for the acquisition is ordinarily foreclosed by the legislative declaration. However, on the question of public use, which is a judicial question, the city is limited to the uses prescribed by Chapter 8.12 RCW and Chapter 80.40 RCW. A demonstration of a possible objection is the following:

The city sought to acquire certain private property adjacent to the Civic Auditorium and Ice Arena for the off-street parking of automobiles. Mr. D——, a local attorney, objected to the entry of the adjudication of public use on the ground that there was no statutory authority in the city to acquire property for such use. The city contended that the statutory authority included "other public uses" and that off-street parking facilities were fairly within such language, and also that the parking area was required as an adjunct and facility for the Civic Auditorium. The trial court sustained the city on both grounds and entered the order. Mr. D——'s only remedy at this stage of the proceedings was certiorari to the Supreme Court, of which he did not avail himself.

Under Chapter 8.12 RCW there are three possible elements of damage for which compensation must be made: damage caused by the taking, damage to the remainder by reason of severance, and

“gross” damage. The first two elements of damage are self explanatory, but what constitutes “gross” damage is not so clear. It may be a third element where there is a taking and a remainder. Or, there may be a gross damage without a taking, as for example by a change of grade without the extension of slopes or without fills on the property “damaged.” Just compensation is a question of fact, and the amount is determined by the application of the three elements mentioned, or so many of them as may be applicable in a particular case.

A respondent may appeal in a condemnation case, but the appeal does not interrupt the improvement. Title passes upon payment pursuant to the judgment drawn down by the respondent, or payment into court. Judgments include 6% interest from date of the “award.” No “costs” on appeal or otherwise can be assessed to the respondent.

The city has another privilege under RCW 8.12.530, which provides that at any time within six months from the date of rendition of the last judgment awarding compensation, or if any appeal be taken, within two months after the final determination of the appeal, the city may discontinue the proceedings by ordinance “before making payment or proceeding with the improvement” by paying the taxable costs.

#### ASSESSMENT OF SPECIAL BENEFITS TO PROPERTY IN CITY CONDEMNATION PROCEEDINGS

There is one more portion of Chapter 8.12 which may be of interest to the private practitioner. RCW 8.12.260-350 provides for a supplemental proceeding which may be brought after the judgment to assess special benefits to property. These assessments are to pay the cost of the property acquired by condemnation, provided the proper foundation to such a proceeding is laid in the ordinance ordering condemnation. Pursuant to the city’s petition, the court appoints a Board of Eminent Domain Commissioners of three members and directs them to delineate the outer boundaries of a district deemed to be benefited by the condemnation. The Board assesses the special benefits to each parcel of property in such district and notifies the property owners of the amount of the assessment and that they will be heard before the court, without a jury, on a day certain. Objections may be filed up to the day before the hearing, and the question of fact of special benefits will be adjudicated by

the court. The court may annul, modify or confirm the assessments, or may refer the roll back to the commissioners for reconsideration and a subsequent hearing. The legal presumptions are in favor of the validity of the assessments and the burden is on the objectors to prove, as a matter of law and fact, a lack of special benefit in the amount assessed.