

EMINENT DOMAIN STUDY COMMITTEE

Progress Report

House Concurrent Resolution 21, 1969 Session of the Sixty-third General Assembly, directed that the Legislative Research Committee or its successor create a study committee to conduct a comprehensive study of the Iowa Code "relating to eminent domain . . . in order to provide for an up-dated and equitable law relating to eminent domain." The Concurrent Resolution directed that legislative members be chosen from appropriate standing committees of the House of Representatives and the Senate and that nonlegislative members known for special knowledge in the field of eminent domain be selected.

Accordingly, the Eminent Domain Study Committee was established by the Legislative Council in July, 1969. Legislators named to serve on the Study Committee were:

- Senator James Briles, Corning
- Senator Andrew Frommelt, Dubuque (Appointed to succeed Senator J. Donald Weimer who resigned.)
- Senator Herbert L. Ollenburg, Garner
- Representative William J. Gannon, Mingo
- Representative Edgar H. Holden, Davenport
- Representative Delwyn Stromer, Garner

The following persons were named as nonlegislative advisory members to the Committee:

- Mr. Ira Delk, Sioux City
- Mr. Robert Mickle, Des Moines
- Mr. William Pappas, Mason City (Appointed to succeed Mr. Jack Frye who resigned.)
- Mr. Hugo Schnekloth, Eldredge

The Committee was directed by HCR 21 to submit a report to the second session of the Sixty-third General Assembly, but because of the wide scope of the study and the complexity of the present laws relating to eminent domain, the Committee finds that it is impossible to complete the project and for this reason is requesting that the study be continued through the next interim. The Committee submits this progress report to inform the General Assembly of its accomplishments to date, and its plans for completion of the project during 1970.

The Committee's organizational meeting was held on August 12, 1969, with Senator James Briles serving as temporary Chairman. The Committee elected Representative Edgar H. Holden as permanent Chairman, Senator James Briles as Vice Chairman, and Diane Devin, Research Analyst, Legislative Service Bureau, as Secretary. Mr. Burnette Koebnick, Legal Counsel, Legislative Service Bureau, serves as legal advisor to the Committee.

Eminent Domain has been defined as "The power of the nation or a sovereign state to have, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon the payment of a just compensation." A legislative body itself may exercise the power of eminent domain or it may delegate the power to a governmental subdivision, public agency, or private agency. Chapter 472 of the Code of Iowa outlines the general condemnation procedures to be used by most agencies which have been granted the right to exercise eminent domain. However, five other condemnation procedures are authorized in the Code: county boards of supervisors may condemn for changes in roads, streams, or dry runs; cities or towns for existing public utility plants; cities for existing bridges; individuals for drainage purposes; and persons, firms, corporations, or municipalities for dams or the development or utilization of water power.

Prior to the organizational meeting of the Study Committee, the Legislative Service Bureau conducted a computer search of the Code in order to identify all agencies and entities which have been granted the right to exercise eminent domain, and prepared a listing of such agencies and entities for Committee members.

At its organizational meeting the Committee decided to hold hearings and to invite representatives of the governmental agencies and subdivisions which have the power of eminent domain and representatives of the utility companies which may petition the Iowa State Commerce Commission for the right to exercise eminent domain, to attend a meeting, present written statements to the Committee, and to justify uses of eminent domain and explain the procedures used. Copies of all written statements received are available in the Legislative Service Bureau office.

Representatives of the following agencies and entities appeared at the Committee hearings: Executive Council, Board of Regents, Conservation Commission, Highway Commission, and Natural Resources Council. Counties were represented by persons from the County Engineers Association, and cities were represented by the Director of the League of Iowa Municipalities. Also appearing were representatives from: the Iowa Railway Committee, electric utilities, gas pipelines, other pipelines, and telephone companies.

Because there appeared to be dissatisfaction among landowners of procedures used in condemnation proceedings, the Committee invited representatives of the Iowa Farm Bureau Federation and the Iowa Farmer's Union to appear. In addition, many landowners from throughout Iowa who had land condemned during the past few years appeared or presented written statements outlining problem areas in present condemnation procedures and possible amendments to provide more equitable procedures.

Except for public utility companies, most agencies have been given an outright grant to exercise eminent domain. The general condemnation procedure established by Chapter 472 of the Code authorizes a six-man condemnation commission, commonly known as the sheriff's jury, to determine the condemnation award. After

the acquirer determines that he cannot obtain the land that is needed by negotiation and purchase, he institutes condemnation by filing an application with the sheriff of the county in which the land sought to be condemned is located, and a commission of six men is appointed to assess damages to the property being condemned. The Iowa Code establishes two separate procedures for selecting sheriff's jury members. The county sheriff appoints jurors if the jury's award is not payable from the state treasury, and when the jury's award is payable from the state treasury, the Chief Justice of the Iowa Supreme Court appoints jurors. Jurors selected by the county sheriff must be resident freeholders of the county in which they serve, but jurors selected by the Chief Justice must be residents of adjoining counties.

From testimony received at the hearings, the Committee concluded that the sheriff's jury should be retained because its nonadversarial proceedings appear to be equitable for both landowners and condemnors. The costs of the sheriff's jury are paid by the condemnor and because procedures are informal, it is not necessary for either party to be represented by an attorney. However, landowners objected to the method of selection of the sheriff's jury. In addition, they objected to the titles "sheriff's jury" and "condemnation commission" and suggested that the title be changed to "compensation commission".

The Committee recommends that the name of the sheriff's jury be changed to "compensation commission". It further recommends that the two different methods of selection of compensation commissioners be retained, but that members of compensation commissions, when the condemnor is an agency utilizing funds from the state treasury, be residents of the county in which the property to be condemned is located. The Committee recommends that the board of supervisors in each county annually appoint a compensation commission pool of not less than twenty-four men from which a judge of the District Court, or the Chief Justice of the Iowa Supreme Court, shall select six individuals to serve on each compensation commission. The twenty-four men shall all be resident freeholders of the county and one-third shall be owners of agricultural property, one-third realtors, and one-third men having knowledge of property values in the county. The compensation commissions, composed of six persons, shall be selected with the same proportion of farmers, realtors, and men having knowledge of property values as the original list.

The Committee considered allowing the condemnor and the condemnee to each strike one name from the six members of the compensation commission, but rejected such a plan. The Committee decided that since sheriffs' juries presently may determine the damages and value of several parcels of land at one time, allowing each landowner to strike one person does not appear feasible. The Committee believes that the additional requirements for selection of such commissions will improve the procedures.

Although it is not required that either party be represented by legal counsel at hearings held by the compensation

commission, landowners who are represented by legal counsel and who may employ appraisers or other experts are not compensated for such expenses. The Committee recommends that if legal counsel has been employed by the landowner and other expenses have been incurred, and if the compensation commission awards the landowner at least 110 percent of the final offer of the condemnor before condemnation was instituted, reasonable attorney fees and other expenses which the condemnee may have incurred should be paid by the condemnor. The condemnor must submit his final offer in writing.

Testimony at hearings indicated that the procedures followed by sheriff's juries vary due to the fact that no uniform instructions for members are available. The Committee recommends that the Supreme Court provide for the preparation of a uniform set of instructions for members of condemnation commissions. Copies of the instructions must be distributed to commission members at the hearing and the instructions must be read orally. The Committee further determined that the compensation paid members of sheriff's juries varies, and recommends that members of compensation commissions receive \$50 per day and reasonable and necessary expenses.

Testimony at hearings indicated that landowners object to offers of lump-sum payments by governmental subdivisions and agencies for land to be used for highway and road purposes. The Committee recommends that upon request of the landowner, the governmental subdivision or agency make available information relating to actual land value, value of damages, and value of loss of access.

Condemnation procedures in which the condemnor is an electric utility or a pipeline company differ because such utilities are not given an outright grant of eminent domain, but must secure the right to exercise eminent domain from the Iowa State Commerce Commission for each specific project. Chapters 489 and 490 of the Code outline the specific procedure which must be used. At the hearings, it was disclosed that both electric utility companies and pipeline companies attempt to purchase as many easements as possible before applying to the Commerce Commission for a franchise or permit to construct the line. If all easements can be purchased, the company will not request the right to exercise eminent domain. Landowners expressed objection to such a procedure, since electric utility and pipeline companies infer in negotiations with landowners that the right to exercise eminent domain has already been, or will be, granted. In addition, Chapter 489 of the Code authorizes the Commerce Commission to examine the proposed route, or cause any engineer selected by it to do so, to determine whether the proposed route is necessary to serve a public use. The factors to be considered in determining a public use appear to be unclear.

In order that the landowner may become more knowledgeable about the project before he has been approached for purchase of an easement, the Committee recommends that legislation be enacted providing that every electric utility company and pipeline company send notice by certified mail to persons owning land affected by

any project prior to purchasing land or securing easements. The notice will inform landowners of an informational meeting which will be held in each county where land is located which is affected by the project. Representatives of the utility company or pipeline company and the Commerce Commission will be present at each informational meeting to explain the purposes of the project, the potential route of the project, the condemnation procedures, and owners' rights. The certified letter containing notification of the meeting will also outline the rights of the landowners. Landowners will be allowed to ask any questions relating to the project and condemnation procedures. Informational meetings will be required before construction of any electric transmission line of 34.5 kilovolts or more and longer than one mile, and for construction of any pipelines carrying greater than 125 pounds pressure per square inch and longer than ten miles.

The Committee further recommends that in a utility company's request for a franchise or permit, the company must prove that the project reflects a reasonable relationship to an overall plan for the transmission of electric current to serve the public need. The utility company when proving public use must show the relationship of the project to existing development, comprehensive plans which have been developed, the people served at the present time, the future population, the future economic development of the area, existing public utility systems, parallel routes now existing, other proposals of the utility company which are planned for the future, and the investigation of pertinent alternate routes and pertinent alternate methods of supply. The Committee recommends that the utility company also show how the facility will coordinate with existing zoning regulations and future land-use programs, possible use of existing public rights-of-way, the effect of the project on the general economy, and inconvenience to the property owners affected. The Committee recommends that the Commerce Commission be required to examine the proposed routes or cause any engineer selected by it to do so. The Committee further recommends that after the Commerce Commission grants a franchise, the utility company be automatically granted the right to exercise eminent domain for that project.

Testimony by landowners and electric utility companies indicated that it is not necessary that electric utility companies obtain a franchise to construct generating facilities, although the construction of such generating facilities will necessarily require franchises from the Commerce Commission for the construction of lines from the facilities to the consumer. The Committee recommends that electric utility companies be required to obtain franchises for the construction of generating facilities.

The Committee decided that the procedure for appeal from a decision of the Commerce Commission on the granting of an electric transmission franchise is unclear, and it recommends that an appeals procedure be added to Chapter 489 of the Code similar to the procedure set forth in sections 490A.12 through 490A.19 of the Code.

Representatives of the Iowa State Highway Commission stated that relocation assistance is paid to landowner when home-

steads are taken for projects which involve federal funds. The Committee discussed such a procedure, but decided to defer to the Federal Highway Programs Study Committee for recommendations.

After holding hearings, the Committee studied the grant of eminent domain to each agency and entity and recommends that the power of eminent domain be repealed for the following: The Armory Board for armories; counties, cities, and towns for sites for memorial halls or monuments; county boards of supervisors for limestone quarries; the Highway Commission for rights-of-way for farm-to-market roads and for acquisition of rights-of-way for flight strips; county boards of library trustees for public libraries; persons and corporations for the removal of water covering coal resources; persons and corporations for utilizing water power in the state; county fair societies and county or district agricultural societies for fairgrounds; and any person and corporation for the construction of channels, roads, and bridges.

The Committee considered requiring the establishment of utility corridors and the concept of an annual rental for easements, but after study determined that no recommendations should be made.

During the course of the study, the Legislative Service Bureau prepared and distributed to Committee members the following materials:

1. Compilation I, Information Relating to Condemnation Commissions in Selected States.
2. Compilation II, Provisions Relating to Compensation and Damages.
3. Compilation III, Provisions Relating to Public Convenience and Necessity in Selected States.
4. Sections of the Code relating to condemnation procedures specified in addition to Chapter 472 of the Code.
5. Copies of the Eminent Domain Code of Pennsylvania.
6. List of recommendations submitted to Eminent Domain Study Committee by persons and organizations.
7. The power of eminent domain and its exercise by the state of Iowa, its political subdivisions, persons, and corporations.
8. "Contemporary Studies Project: New Perspectives on Iowa Eminent Domain", Iowa Law Review, April, 1969, Volume 54, Number 5.
9. Areas which might be considered in a study of eminent domain law as suggested by the article "Contemporary Studies Project: New Perspectives on Iowa Eminent Domain".

10. "Jury Instructions in Eminent Domain Cases", North Dakota Law Review, May, 1965, Volume 41, Number 4.
11. Copies of bills relating to eminent domain presently in legislative committees for consideration by the 1970 Session of the Sixty-third General Assembly.

These materials, as well as the written statements presented at the Committee hearings and the minutes of all Committee meetings, are available in the Legislative Service Bureau office.

House Concurrent Resolution 21 directs that a report of the study shall be prepared and submitted to members of the Sixty-third General Assembly and that the report be accompanied by legislative bill drafts designed to carry out the recommendations of the Committee. The Committee has determined that it cannot complete a comprehensive revision of eminent domain laws by the date of the convening of the 1970 Session of the General Assembly. It recommends that the Eminent Domain Study Committee be allowed to continue its work during the 1970 legislative interim and submit its final report to the 1971 Session of the Sixty-fourth General Assembly. The Committee hopes to continue its study and recodification of eminent domain laws into one comprehensive chapter of the Code, and its revision of Chapter 472 of the Code. The Committee has not completed its study of procedures relating to damages and compensation to landowners. The Committee has not arrived at a definite conclusion as to whether pipeline companies should continue to exercise the right of eminent domain as presently granted. The Committee wishes to study the additional condemnation procedures outside Chapter 472 of the Code to determine the necessity of retaining six different condemnation procedures.

The following bills have been drafted by the Legislative Service Bureau to implement the recommendations of the Eminent Domain Study Committee:

1. An Act which repeals the power of eminent domain for certain agencies and entities.
2. An Act which establishes procedures for selection and operation of compensation commissions.
3. An Act which relates to the exercise of eminent domain by electric utilities.
4. An Act which relates to the exercise of eminent domain by pipeline companies.
5. An Act which requires the enumeration of damages in land acquisition cases for highway purposes upon the request of the landowner."