

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 318

June 23, 1966

INVOLUNTARY CONVERSION: EMINENT DOMAIN POWER OF PUBLIC UTILITY

Syllabus:

A public utility which has purchased property subject to a leasehold interest may acquire the interest of the lessee under its power of eminent domain.

A public utility purchased for their use a building which was subject to a lease. Subsequently the company purchased the interest of the lessee. The lessee contends that it sold its interest under the threat of condemnation. Advice is requested as to whether or not a public utility can acquire the interest of a lessee under its power of eminent domain.

It has long been established that a leasehold is private property of the tenant and cannot be taken or damaged for a public use without just compensation. McCauley v. Weller (1859) 12 c. 500. 17 Cal. Jr. 2d Eminent Domain § 36, states: "The tenant holds the leasehold subject to the exercise of the power of eminent domain, but he is guaranteed just compensation before he can be divested of the leasehold under that power." See also 98 ALR § 254. Accordingly, it is concluded that a public utility can acquire the interest of a lessee under its power of eminent domain.