

169-2 OWNER HAVING ACCESS TO HIGHWAY NOT ENTITLED TO COMPENSATION WHEN  
CUL-DE-SAC WAS CONSTRUCTED BELOW PROPERTY, RULES HIGHEST COURT OF  
NORTH CAROLINA

The owner's land abutted old Highway 52 for a distance of 105 feet. This highway, at a point approximately 1200 feet southeast of the owner's land, intersected a highway constructed in 1953 which was designated U.S. Highway 52. In 1960 the North Carolina State Highway Commission converted U.S. 52 into a limited-access dual land highway. To eliminate the intersecting of the two highways, 750 feet of old Highway 52 was discontinued. At a point 450 feet south of the owner's property line old Highway 52 was "dead-ended" and barricaded but a circular turn-around was constructed. The owner's property was thus left on a cul-de-sac. The barricading of old Highway 52 did not interfere in any way with travel northwardly from the owner's property on the old highway, but it increased by about one mile the distance one had to travel to reach points south thereof. In making the highway improvement, no part of the owner's property was taken and she still had unlimited access to the old highway at all points along the property's frontage.

The owner contended that the barricading of old Highway 52, leaving her property on a dead-end road, and the circuitous route required for travel to points south of her property, constituted a taking of and interference with her property rights and right of access. The trial court held, as a matter of law, that there was no taking or interference with any property or property rights so that there was no issue of damages to submit to a jury. On appeal by the owner, this decision was affirmed by the supreme court of the State.

The appellate court stated that a landowner would be entitled to damages where a portion of a highway was closed if he had suffered an injury different in kind from that suffered by the general public -- that is, he had to show that land had been taken or physically damaged, or that some easement or right appurtenant to the land had been taken or interfered with. It pointed out that in North Carolina it was recognized that the owner of land abutting a highway had a right beyond that which was enjoyed by the general public -- a special right of easement in the highway for access purposes. This right of access was an easement appurtenant which could not be damaged or taken without compensation. However, in the instant case no land had been taken or physically damaged, and the owner's access to old Highway 52, the highway upon which her land abutted, had not been limited or interfered with in any way.

The court went on to state that an individual owner had no right to insist that the entire volume of traffic that would naturally flow over a highway be undiverted. Also an abutting property owner was not entitled to compensation because of circuitry of travel, so long as he had access to the highway which abutted his property.

The General Assembly had found, determined, and declared that controlled-access highways were necessary for the preservation of the public peace, health and safety, the promotion of the general welfare, the improvement and development of transportation facilities in the State, the elimination of hazards at grade intersections, and other related purposes. The court held that when the Highway Commission acted in the interest of public safety, convenience and general welfare, in designating U.S. Highway 52 a controlled-access highway, its action was the exercise of the police power of the State. The impairment of the value of property by the exercise of such power, where property was not taken, did not entitle the owner to compensation. (Snow vs North Carolina State Highway Commission, 136 S.E.2d 678, June 1964)