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COMMITTEE ACTIVITY

Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Department of Economics, Finance and Administration, Highway Research Board

LAND ACQUISITION MEMORANDUM #178

178-1 SUPREME COURT OF NORTH CAROLINA RULES TRIAL COURT ERRED IN HOLDING HIGHWAY COMMISSION WAS UNREASONABLE IN CONDEMNING SCHOOL PROPERTY FOR A CONTROLLED-ACCESS FACILITY

The Greensboro City Board of Education owned a 129.19-acre tract of land on which was located three schools. The State highway commission condemned about four acres of this tract for a controlled-access facility. The condemnee contended that the commission "has no specific legislative authorization, nor any legislative authorization of unmistakable intent to condemn land owned" by it. It alleged that the part of its lands which was condemned was in actual public use for school purposes, or might hereafter become necessary and vital for the operation of the three schools.

The trial judge found that the commission had the right, generally, under eminent domain to condemn the property owned by the board of education, but it held that under the facts of the case the commission did not have authority, either specifically or by implication, to condemn and take for highway purposes the property of the board of education which it attempted to condemn because such action was unreasonable and without justification. It wondered why the commission could not move the road about 50 feet and take public property which was being used as a golf course. The trial judge decreed that the highway commission had acquired no land owned by the board of education. It dismissed the action, ordered that the deposit of compensation be returned to the commission, and enjoined the commission from permanently entering upon the property of the board in connection with the highway project involved. Thereupon the highway commission appealed to the supreme court.

The appellate court noted that the board of education's defense was that the highway commission did not have specific legislative authorization, nor any legislative authorization of unmistakable intent to condemn land owned by it. However, a statute provided that the commission could acquire private or public property for controlled-access facilities in various ways, including condemnation. The court then pointed out that the board of education did not raise any issue of bad faith or of arbitrary, capricious or fraudulent action on the part of the highway commission, nor was it contended that the action of the commission was unreasonable and without justification. The court stated that there was no evidence in the record to support the trial court's finding that "*** The proposed project of the State Highway Commission can be accomplished even if the proposed right of way is moved northwardly so that all of it is removed from the property of The Greensboro City Board of Education and will not materially affect this project."

The supreme court stated that it was well-settled law in the State of North Carolina that the highway commission was vested by statute with broad discretionary authority in the performance of its statutory duties, and the court could not substitute its judgment for that of the commission. The exercise by the commission of its discretionary authority and powers was not subject to judicial review unless its action was so clearly unreasonable as to amount to oppressive and manifest abuse, but the board of education raised no issue of abuse of the commission's discretion, nor was there any evidence that the commission's action amounted to an oppressive and manifest abuse of such discretion.

The supreme court remanded the case to the trial court for a determination of the amount of compensation to be paid for the property which the commission had taken from the board of education. (State Highway Comm'n v. Greensbora City Bd. of Educ., 143 S.E.2d 87, July 1965)

178-2 NEBRASKA SUPREME COURT RULES TAKING OF EASEMENT FOR SIGN CONTROL CANNOT BE SEPARATEDLY EVALUATED BECAUSE OWNERS ONLY ENTITLED TO DECREASE IN VALUE OF LAND CAUSED BY THE TAKING

The taking of control of outdoor advertising on land was made compensable by Chapter 39, article 13, Rev. Stats. Neb., Supp. 1963. In two cases the State took permanent easements on farm lands to control advertising, although there were no signs on any of the land.

In the first case, counsel for the owner tried the case on the theory that the proper measure of damages was the difference between the value of the land before and after the taking. The court agreed with this theory but awarded no compensation because it held that the value of the property had not been diminished by the taking. It stated that although there was evidence to the contrary, the State had produced evidence that there was no difference in the value of the land before and after the taking; that the use of the land for advertising purposes would interfere with its use for agricultural purposes to some extent; and that the income which might be produced from advertising use would be so small in comparison to the income received from agricultural use that in the negotiation of a sale of the land the income from the advertising use would be disregarded.

One judge dissented, stating that the statute providing for the control of advertising considered that the taking of an easement for that purpose was the taking of a right and that the State and Federal Constitutions provided that no property should be taken or damaged for public use without payment of just compensation. He stated the question was "What has the owner lost? not, What has the taker gained?" Since the owner had lost the right to sell or lease advertising rights, she should be compensated for such loss. (This dissent also applies to the next case.) Fulmer v. State, 134 N.W.2d 798, April 1965)

In the second case, the owner had agreed, in consideration of $1.00, to give the exclusive right to an advertising company to lease either of two undesignated sign sites for a rental of $40.00 per site per year, for a