

# HIGHWAY RESEARCH CIRCULAR

Number 27

Subject Classification: Land Acquisition

June 1966

## 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 #179

## REPORT OF COMMITTEE ON LAND ACQUISITION AND CONTROL OF HIGHWAY ACCESS AND ADJACENT AREAS

179-1 HIGHEST COURT OF KANSAS HOLDS ABUTTING LANDOWNERS NOT ENTITLED TO COMPENSATION FOR LOSS OF DIRECT ACCESS TO A HIGHWAY AS LONG AS REASONABLE ACCESS IS PROVIDED.

The Kansas State Highway Commission constructed a frontage road on land previously acquired from the landowners by condemnation and converted U. S. Highway 24 into a controlled-access highway. No appeal had been taken from the appraisers' award for the land taken. However, when the highway was changed to a limited-access facility, the landowners claimed damages for the taking of their right of access to the main highway.

Prior to the construction of the frontage road, four business establishments holding leases from the landowners had direct access to U. S. Highway 24. After the construction, access to the four lanes of the highway was at two points at each end of the tract of land. The landowners maintained that the highway commission had taken their pre-existing right of access and that it was error for the trial court not to grant a directed verdict in their favor. The supreme court affirmed the decision denying compensation to the owners. It pointed out, however, that the trial court erred in permitting the jury to decide whether there had been a taking of access because whether the State had exceeded its police power and taken private property for public use was a question of law for the determination of the court under the existing facts and circumstances of the particular case.

The appellate court agreed with the landowners that under common law the highway commission's actions did amount to a taking of the right of access. However, such law was developed before there was a need for controlled-access highways. Roads were historically constructed for the use and benefit of local property owners. Speedways, Interstate highways, freeways, and other thoroughfares were not contemplated when the right of access law developed. As the needs of commerce and the traveling public changed so did the common law right to use of highways. Realizing this, the Kansas Legislature authorized the creation of controlled-access highways and the acquisition, by condemnation of the right of access. The court held that the statute did not make it mandatory

for the State to condemn access rights since it did not attempt to restrict the State's existing right to control access under its police power.

In this case the landowners enjoyed access to the main highway at two points only 575 feet apart. They had complete access to the frontage road at all points since there was no barrier between it and the land. There was no contention that the frontage road was not of proper quality. The landowners' access to a controlled-access highway was subject to the State's exercise of police power, and in this case the limitation of access was reasonable and not compensable.

A dissenting judge stated that the controlled-access highway statute made it mandatory to acquire property rights, including the right of access of an abutting property owner. He pointed out that this construction of the statute had previously been made by the supreme court and since such construction had stood for over seven years and the legislature had not seen fit to change it, it had to be assumed that the legislature approved the previous interpretation of the statute. (Brock v. State Highway Comm'n, 404 P.2d 934, August 1965)

179-2 SOUTH CAROLINA SUPREME COURT DECIDES CONDEMNEE ENTITLED TO COMPENSATION FOR LOSS OF ACCESS TO EXISTING HIGHWAY BUT FRONTAGE ROAD CAN BE A MITIGATING FACTOR

The condemnee owned a tract of land containing some 40 acres which fronted to the east on what was known as the "Old Greenville Road." U. S. Highway No. 29 was constructed, some years ago, over the rear or western portion of the property. The instant condemnation proceeding was instituted in connection with the acquisition of a right-of-way for Interstate 85, a controlled-access facility, one lane of which was to be constructed on top of U. S. Highway 29. The condemnee had had access to Highway 29 along the entire western extremity of his property prior to the taking. After the taking he would have identical access to a frontage road being constructed in conjunction with the Interstate highway. By traveling seven-tenths of a mile south of his property on this frontage road, the condemnee would be able to enter Interstate 85, as well as the rest of the general highway system. His access to the Old Greenville Road at the eastern extremity of his property was not affected.

The trial court handed down a judgment in favor of the condemnee and the highway department appealed to the supreme court. The sole question to be decided was whether a landowner was entitled to compensation for the loss of access to an existing highway, when a controlled-access facility was constructed on top of it, where a frontage road was provided along the entire extremity of the landowner's property. By answering in the affirmative, the supreme court affirmed the decision of the lower court.

The appellate court held that the landowner was entitled to compensation for the loss of access, at least to the extent that such loss adversely affected the fair market value of his remaining property. The construction of the frontage road was in the nature of a benefit and, as the trial judge charged the jury, was