

court pointed out that the statute was silent as to the right of a landowner or lessee to recover damages for loss of direct access and was not determinative of the question presented. The right of a landowner or lessee to just compensation for property taken or damaged for public use was guaranteed by the constitution of the State. An abutting property owner to a highway had an easement of ingress and egress to and from his property which constituted a property right. It, therefore, followed, according to the court, that the State could neither take nor damage such easement belonging to an abutting property owner without just compensation.

When a controlled-access highway was constructed upon the right-of-way of a conventional highway and the owner's ingress and egress to abutting property had been destroyed or substantially impaired, he might recover damages therefor. The damages might be merely nominal or they might be severe. Other means of access such as frontage roads, as in the instant case, could be taken into consideration in determining the amount which would be just under the circumstances. However, the fact that a frontage road was constructed did not, as a matter of law, deprive the tenants of their right to damages, if any. The granting of a new trial to determine whether there had been a substantial impairment of access to the property was, therefore, upheld by the appellate court. (Balog v. State, 131 N.W.2d 402, November 1964)

170-2 DAMAGES TO PROPERTY CAUSED BY PLACING ISLANDS IN STREET NONCOMPENSABLE, RULES SUPREME COURT OF NEBRASKA

The Nebraska Department of Roads acquired a 3-foot strip of land along the west side of the condemnees' land for the purpose of widening a street. Prior to the acquisition, the owners had direct access to the highway from all points of their property. However, after construction of the improvement, egress and ingress was limited to three 30-foot curb cuts. The condemnees did not contend that this limitation of access was unreasonable. However, they argued that the island placed in the street at the same time the street was widened, which prevented southbound traffic from turning left into their property, had caused a large diminution in the value of their property. The jury returned a verdict for the condemnees in the amount of \$286.92 with interest and they appealed.

The supreme court noted that the owners were entitled to recover damages to the part of their land which was not taken which resulted from the condemnation of the 3-foot strip of ground and putting it to public use. However, the construction of the islands and the change of traffic direction was not the result of the taking of the 3-foot strip and damages resulting from the control of traffic were not compensable.

The court stated that the general rule was that an abutting landowner had no vested interest in the flow of traffic pass his premises and that any damages sustained because of a diversion of traffic was not compensable. This rule applied to the control of turns by double lines, islands, and median strips. Mere circuitry of travel to and from real property, resulting from a lawful exercise of the police power in controlling traffic, did not of itself

constitute an impairment of the right of ingress and egress to and from such property where the resulting interference was but an inconvenience shared in common with the general public and was necessarily in the public interest in making highway travel safer and more efficient. If the owner had the same access to the general highway system as before, this injury was the same kind as that suffered by the general public and was noncompensable. The fact that the construction of the island in the instant case was concurrent with the construction of the widened street was not a material factor. The rule was the same as if the island had been constructed without the taking of any property by eminent domain. (Painter v. State, 131 N.W.2d 587, December 1964)

170-3 SUPREME COURT OF IDAHO RULES OWNERS RETAINING DIRECT ACCESS TO OLD HIGHWAY CONVERTED INTO FRONTAGE ROAD PARALLELING NEW CONTROLLED ACCESS HIGHWAY NOT ENTITLED TO DAMAGES

Owners of a business which had facilities for food, drinks, lodging, and camping brought an inverse condemnation action against the State to recover damages for alleged deprivation of access to their business property by construction of a new highway. They sought \$40,000 damages for loss of value to their property as a result of the alleged impaired access to it. The trial court dismissed the action and the owners appealed. The supreme court affirmed the trial court's action, stating that there was no issue of damages if the owners were not entitled to compensation.

The evidence showed that the owners' property abutted on U.S. Highway 10 to which they had direct access. When a new controlled access highway was constructed parallel to the old highway, the latter was converted into a frontage road which had access in both directions to the new highway. However, the owners complained that west bound traffic had to get off of the new highway onto the frontage road three-fourths of a mile before reaching their property; that east bound traffic had to pull off the main highway and follow a winding and twisting overpass, proceeding one and one-fourth miles to their business, after which they had to return by the same route to get back onto the freeway; and that there were no signs on the main highway advising travelers of their business. They contended that the interference with business access was a "taking" of property.

The appellate court pointed out that the owners still had the same access to the old highway although they had to use a somewhat circuitous route to reach the new highway. Their complaint was directed to the asserted lack of access to and from the main stream of traffic which no longer flowed directly in front of their place of business, and not to mere lack of access to the State highway system. The court held that diversion of traffic occasioned by the relocation of the highway did not cause a compensable injury because the owners had no property right in any flow of traffic over a particular highway. Also damages for depreciation in the value of their property, by reason of business loss, occasioned by the change in route and traffic flow brought about by the construction of the new highway were noncompensable. The court stated that the owners had no cause of action without a showing of a substantial impairment of access. (James v. State, 397 P.2d 766, December 1964)