

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)