

170-4 HIGHEST COURT OF ARIZONA RULES THAT UTILITY COMPANY MUST PAY
RELOCATION COSTS NECESSITATED BY STREET IMPROVEMENTS MADE BY
IMPROVEMENT DISTRICT

In 1951, the Board of Supervisors of Maricopa County gave a franchise to the Paradise Valley Water Company for the purpose of constructing, maintaining, and operating water lines for a period of 25 years along, upon, under and across the public highways, roads and alleys within the portion of the county described in the franchise. Thereafter, the water company installed certain mains under a dirt road known as Lincoln Road. Several years later, in January of 1957, an improvement district was organized by the owners of property on either side of Lincoln Road, pursuant to authority contained in a statute, for the purpose of paving that portion of the road. The plan of improvement and the subsequent contract let by the improvement district did not provide for the cost of relocating the water company's lines made necessary by the road improvement.

On May 29, 1957, the Board of Supervisors of the county passed a resolution requiring that whenever a utility operating under a franchise granted by the Board was required to relocate its facilities because of road improvements, the utility had to bear the expense of such relocation. The county made a demand on the water company to relocate the lines and when the company refused to do so, the lines were relocated by the county at an expense of \$4,671. Thereafter, the county and the improvement district jointly commenced an action against the water company for a judgment declaring that the franchise granted by the Board to the company required the company to remove and relocate its distribution system at its own expense. Both the trial court and the supreme court made such a declaration.

The highest court noted that it was well settled that a public utility accepted franchise rights in public streets subject to an implied obligation to relocate its facilities therein at its own expense when necessary to make street improvements. However, this obligation was expressly spelled out in the franchise granted to the company since it was provided therein that the Board of Supervisors should have the power at any time to impose such restrictions and limitations upon the use of the public roads as it deemed best for the public safety or welfare. As noted above, the Board of Supervisors passed a resolution in May 1957 which specifically required utility companies to bear the expense of moving their distribution systems when necessary to make road improvements.

The water company did not argue with the general rule that a city or county had the police power to require a utility to relocate its facilities at its own expense for road improvements made by that city or county, but it contended that this rule did not apply to county improvement districts. The company maintained that the entity known as a county improvement district did not possess this police power and also that such a district was organized to solely benefit the inhabitants of the district, and not the public generally.

The appellate court stated that these arguments were without merit for several reasons. First, the statutes authorizing the creation of county im-

provement districts specifically provided that "the district shall be a body corporate with the powers of a municipal corporation for the purposes of carrying out the provisions of this article." Secondly, the Board of Supervisors had the discretion in the first instance to create the improvement district. If the Board found "that the public convenience, necessity or welfare will be promoted by the establishment of the district" it should create it. The petition for the creation of an improvement district had to set forth, among other things, "(t)hat the public convenience, necessity or welfare will be promoted by the establishment of the district and that the property to be included therein will be benefited." In addition, the board of supervisors of a county was also the board of directors of an improvement district.

Thirdly, the purposes for which an improvement district might be formed were limited to those which "the public interest or convenience requires." The statute listed the many specific purposes for which public improvements might be undertaken which were generally concerned with street and sewer improvements and projects related thereto. By the very nature of such improvements, they were not only of special benefit to the public throughout the county and the State.

The court concluded that an improvement district was an agency created by a county and, therefore, had the same police power as a county did to require the payment of relocation costs by a utility. (Paradise Valley Water Company v. Hart, 395 P.2d 716, October 1964)