

HIGHWAY RESEARCH CIRCULAR



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LAND ACQUISITION
MEMORANDUM #183

183-1 HIGHEST COURT OF KANSAS DECIDES NO COMPENSATION IS PAYABLE TO ABUTTING PROPERTY OWNERS WHO NO LONGER HAVE DIRECT ACCESS TO A MAIN HIGHWAY BUT WHO HAVE REASONABLE ACCESS THERETO BY MEANS OF A FRONTAGE ROAD

In 1952 the Kansas State Highway Commission condemned an easement for a highway right-of-way over a portion of the property of the owners involved in this case. (Abutters' rights of access were not condemned.) The next year the commission constructed a divided concrete four-lane highway, with separate eastbound and westbound traffic lanes, which was designated as U. S. Highway No. 54, a part of the State highway system. This highway abutted the entire south boundary of the owners' land and was constructed wholly within the easement previously condemned.

In 1959 the highway commission converted U. S. Highway 54 into a controlled-access facility and, as a part of that highway, constructed a frontage road at a location north of the westbound traffic lanes of that highway adjacent to the owners' property. No portion of the frontage road was situated on their property since it was located entirely within the easement condemned for highway purposes in 1952.

At all times since the construction of the frontage road, the owners have had and continue to have access thereto at all points where the north edge of that road was adjacent to their property. They have had and now have access to the westbound traffic lanes of the main highway only at points of connection between the frontage road and the westbound traffic lanes constructed in 1953. The points of connection between the frontage road serving their property and the main highway were approximately 1,067 feet apart.

The highway commission constructed the frontage road for the purpose of making U. S. Highway 54 safer, less dangerous and for the welfare of the people, following a study and recommendation by its safety department.

The owners brought an action to recover damages for the value of their property rights alleged to have been appropriated by the highway commission without condemnation and without the payment of just compensation. The trial court entered a summary judgment for the commission on the ground that there was no compensable taking of the owners' right of access. They appealed to the supreme court of the State, which affirmed the judgment.

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2101 CONSTITUTION AVENUE, N.W. WASHINGTON, D.C. 20418

The highway commission argued that the power to regulate within the police power of the State gave it the power to act in the public interest without incurring liability for compensation, even though property rights of citizens might be affected. The appellate court quoted from its decision in *Smith v. State Highway Commission*, 346 P.2d 259 (1959) to show the distinction between the police power and the power of eminent domain as they affected access rights:

The basic problem in every case involving impairment of the right of access is to reconcile the conflicting interests -- i.e., private v. public rights. The police power is the power of government to act in furtherance of the public good, either through legislation or by the exercise of any other legitimate means, in the promotion of the public health, safety, morals and general welfare, without incurring liability for the resulting injury to private individuals. [Citations omitted] Eminent domain on the other hand, is the power of the sovereign to take or damage private property for a public purpose on payment of just compensation. [Citations omitted]

Since there is no doubt that the right of access, like any other property can be taken, for public purpose under eminent domain upon payment of just compensation, the interesting question is how far the public can proceed under the police power. Determination of whether damages are compensable under eminent domain or noncompensable under the police power depends on the relative importance of the interests affected. The court must weigh the relative interests of the public and that of the individual, so as to arrive at a just balance in order that government will not be unduly restricted in the proper exercise of its functions for the public good, while at the same time giving due effect to the policy in the eminent domain clause of insuring the individual against an unreasonable loss occasioned by the exercise of governmental power.

The supreme court stated that the right of access of an abutting property owner upon a public highway was merely a right to reasonable, but not unlimited, access to and from the abutting property. As applied to controlled-access facilities, where a frontage road had been provided to which the abutting owners of property had direct access, and they had reasonable access from their abutting property via the frontage road to the through-traffic lanes of the controlled-access highway, the abutters' rights of access had not been taken by the highway commission, but merely subjected to regulation under the police power of the State, and their damages, if any, were noncompensable.

Where property owners were afforded complete ingress and egress to a frontage road upon which their property abutted, and they had reasonable access via the frontage road to the main traveled lanes of a controlled-access facility, any inconvenience suffered by them was merely noncompensable circuitry of travel. Under these circumstances, any decline that had occurred in the value of their property which was the result of a diversion of traffic was also noncompensable. An abutting owner of property had no right to the continuation of a

flow of traffic in front of his property.

The question in the instant case, therefore, resolved into whether the points of connection between the frontage road serving the owners' property and the westbound traffic lanes of U. S. Highway 54 provided the owners with reasonable access from their abutting property to the through-traffic lanes of that main highway. These points of connection were approximately 1,067 feet apart. One point was about 155 feet east of the east boundary of the subject property and the other point was 714 feet west of the west boundary of that property. Under these facts, the appellate court held as a matter of law that the owners had reasonable access from their abutting property to the through-lanes of U. S. Highway 54. They were afforded complete ingress and egress from their abutting property to the frontage road, and reasonable access from their property via that frontage road to the main highway. It followed that their rights of access had not been taken or appropriated by the highway commission, but merely subjected to regulation under the police power of the State, and their damages, if any, were not compensable. (Ray v. State Highway Comm'n, 410 P.2d 278, January 1966)

183-2 SUPREME COURT OF COLORADO RULES OWNERS NOT ENTITLED TO COMPENSATION FOR CIRCUITY OF TRAVEL AND DIVERSION OF TRAFFIC

The owners of property brought an inverse condemnation action in which they alleged that they were damaged in the amount of \$75,000 and in which they also sought exemplary damages for an alleged wilful and wanton disregard of their rights caused by the construction of a complex interchange. They owned and operated a large warehouse, showrooms and storerooms on West Colfax Avenue in the City and County of Denver where they sold hotel and institutional furnishings and equipment and provided design services to the public. They employed a substantial number of people and had a clientele that came primarily from the downtown Denver area or from its motel areas.

They alleged that their principal and only practical access to their place of business from the east and downtown areas had been over West Colfax Avenue and through Larimer Street and the Larimer Street Viaduct Extension. They claimed that the construction of the interchange for a freeway had substantially destroyed both their ingress and egress to their property. They contended that both customers and employees found it was now almost impossible to locate them and that it was difficult to move their merchandise in and out of their place of business. They also contended that distances in driving in order to reach their premises had been increased via one route from three-fourths of a mile to one and one-quarter miles, and by other routes from one block to one and three-quarters miles, and by still another from 200 feet to one and one-quarter miles.

The trial court rendered a judgment adverse to the owners and they appealed to the supreme court, which affirmed the judgment. The latter court stated that the trial court correctly held that the owners' land did not abut in direct fashion on the closed portions of West Colfax Avenue nor upon the Larimer Street Extension. Because of this the rule that damages occasioned an owner in front of his land was not one suffered by the public generally did not apply. Owners of premises abutting on a highway had certain rights in and to the use of the public way distinct from the public's easement of passage. However, in this case the owners' right to recover had to rest upon the rule which permitted recovery only when an owner