

could allege and prove special damage to his property which differed in kind, and not merely in degree, from that sustained by the general public. Admittedly, there had been a rather drastic change in the principal traffic pattern serving the owners' business location. But the trial court found that the north-south access was not directly affected and that the change only resulted in less convenient approaches from other directions. The owners suffered no greater loss in kind than the general public, although they may have possibly suffered a greater degree of injury due to the particular type of business they were engaged in. They were, therefore, not entitled to be compensated for any damages resulting from circuity of travel or diversion of traffic. (Radinsky v. City & County of Denver, 410 P.2d 644, January 1966)

183-3. SOUTH CAROLINA SUPREME COURT DECIDES RELOCATION COSTS OF WATER AND SEWER FACILITIES MUST BE PAID BY THE SUB-DISTRICT WHICH OWNED THEM

The Parker Water and Sewer Sub-District was a body politic and corporate created by an act of the South Carolina General Assembly and charged with the duty of providing, among other public functions, a public water system, sewer system and fire protection for the sub-district, with the power to levy taxes and issue bonds for such purposes. In 1934 or 1935 the sub-district constructed water and sewer lines within the existing right-of-way and beneath the traveled portion of Pickens Street, which was then a county road. This was apparently done with permission of Greenville County. Since that time the utility lines had been operated and maintained by the sub-district, pursuant to the public duties imposed upon it by statute, for the health, safety and welfare of the residents of the sub-district.

In 1963 Pickens Street became a part of the State highway system when the South Carolina State Highway Department undertook the construction of a State secondary road in Greenville County which included a section of that street. The construction was done as a Federal-aid secondary project, with the Federal Government bearing 50 percent of the cost. The portion of the right-of-way of Pickens Street within which the sub-district had placed its utility lines was embraced within the construction undertaken by the highway department, necessitating the relocation of the utility lines lying within the highway right-of-way. The highway department demanded that the sub-district pay the cost of the relocation but it refused to do so. This action was brought for a determination as to which party had to pay those costs. The trial court ruled that the sub-district had to reimburse the department (which had already paid the costs) and the sub-district appealed to the supreme court which affirmed the decision.

The latter court noted that the highway department was an agency of the State which was charged with the duty of constructing and maintaining the State system of highways. It pointed out that a number of States had enacted statutes permitting reimbursement for the cost of relocating utility facilities, apparently to implement the Federal-Aid Highway Act which contained a provision to reimburse any State which had paid a public utility for the cost of relocating its facilities because of Federal-aid highway construction, in the same proportion as Federal funds expended on the particular project. One section of that act provided that "Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State." Since the availability of Federal funds for reimbursement was specifically conditioned upon liability for such costs

under State law and since the State of South Carolina had not enacted a statute upon the subject (nor had it entered into any agreement to pay such costs), the common law rules applied.

Public policy required that highways be maintained for the general public and primarily for the passage of travel thereover. When Greenville County, and subsequently, the highway department, assumed jurisdiction of the public road in question, the right and duty arose to maintain and improve it so as to make the road serve the primary purpose for which it was intended; and any other use granted of the highway was at all times subject to the exercise by the State of this paramount right.

The sub-district contended, however, that the foregoing rule did not apply to it since it was a political subdivision and derived its income through taxes. The appellate court stated that no sound reason appeared to draw such distinction. The permissive construction by the sub-district of its utility lines within the right-of-way did not in any way subordinate the primary purpose of the highways or the right of the State to exercise the police power in furtherance of such primary purpose. The obligation of the State with reference to the use of the highways by the sub-district was no different than that owed any other utility under similar circumstances. Such use was subservient to the reasonable exercise of the paramount right of the State to reconstruct the road to meet the changing needs of highway traffic. (South Carolina State Highway Dep't v. Parker Water & Sewer Sub-District, 146 S.E.2d 160, January 1966)