

# HIGHWAY RESEARCH CIRCULAR

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Subject Area: Land Acquisition

## COMMITTEE ACTIVITY

Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Department of Economics, Finance and Administration, Highway Research Board

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LAND ACQUISITION  
MEMORANDUM #173

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173-1 NEBRASKA SUPREME COURT RULES OWNER NOT ENTITLED TO COMPENSATION FOR DECREASE IN ACCESS TO PROPERTY IF REASONABLE ACCESS REMAINS NOR FOR DENYING ACCESS TO PROPERTY FROM ONE DIRECTION

The property of the owner abutted on U. S. Highway 6 for about 677 feet. A driveway from the highway to the property was 140 feet in width. The owner carried on a commercial truckline operation with facilities for servicing the trucks on the premises. It also operated thereon a retail and wholesale lumber and building supply, or hardware business. The owner operated 10 or 11 large trucks, some of which with their trailers were 60 feet in length.

Part of the owner's property was condemned in order to reconstruct Highway 6. Prior to the reconstruction, the highway was a two-lane surfaced road. Trucks proceeding west could turn directly to the left into the owner's premises and those going east could do the same by turning to the right. On reconstruction Highway 6 was made a four-lane paved road which had a median strip in the center which extended the full length of the premises. Two lanes were restricted to westbound traffic and the other two to eastbound traffic. A concrete curb about 8 inches in height was placed along the owner's land. A new driveway giving access to the premises was constructed in the approximate center of the old 140-foot entrance to the premises. The new entrance was 58 feet wide as it left the roadway and narrowed to 31 feet on entering the premises. The result was that only vehicles coming from the west could enter the premises directly and it might be difficult for large trucks to execute a right turn because of the proximity of the median to the curb.

The jury in the trial court awarded \$2,000 for the appropriation of the land taken and \$3,000 for damages to the remainder. The owner appealed claiming that the inability of the drivers of westbound trucks to turn left and drive directly into its premises, or to turn west on leaving the premises, constituted a substantial special damage to the remaining land which was compensable. The appellate court affirmed the lower court's ruling that the State had a legal right to control traffic on the highways for the purpose of promoting safety in their use under the police power. The supreme court stated that an abutting owner had no vested interest in the flow of traffic past his premises. Ordinarily the mere diversion of traffic alone, regardless of the fact that a part of

an owner's land was taken for which compensation was paid, would not support a judgment for damages to the remaining land. The fact that an owner or those desiring to enter his property might have to travel a circuitous and longer route to reach certain points because of traffic regulations changing the direction of traffic did not give rise to an injury different in kind from that sustained by the general public, and afforded no basis for an action for damages.

The supreme court also did not agree with the owner's contention that, as a matter of law, it was entitled to access to the highway along the entire border of its property, or at least to the full 140-foot entrance that it used before the condemnation. The court stated that an owner of property abutting a highway had a property right in the nature of an easement in the street for ingress and egress to and from his property which he could not be deprived of without compensation for his loss, but that the measure of the access right was reasonable ingress and egress under all the circumstances. Whether the right of access to the highway had been destroyed or materially impaired was a question of fact for the jury to determine. (W. E. W. Truck Lines, Inc. v. State. 132 N.W.2d 782, January 1965)

173-2 NORTH CAROLINA SUPREME COURT DENIES DAMAGES TO OWNERS OF PROPERTY  
ABUTTING ON A STREET THAT WAS CLOSED BY A CUL-DE-SAC BELOW THEIR  
LAND

Prior to the construction of the North-South Expressway through Winston-Salem the landowners and their corporate tenants had access (via 21st Street at an intersection 200 feet from their land) to Liberty Street -- one of the main arteries of travel to the other sections of the city. The North Carolina Highway Commission cut off 21st Street about 100 feet from the landowners' property creating a cul-de-sac and eliminating their access by way of that street to Liberty Street. The nearest access to Liberty Street was now at 25th Street, four blocks north of 21st Street.

The landowners alleged that they had a "public and private easement" in 21st Street in both directions and that the blocking of that street amounted to a taking without compensation.

The trial court ruled that the blocking of 21st Street did not constitute an appropriation of plaintiffs' property rights and that they had suffered no compensable injury.

The Supreme Court of North Carolina affirmed the trial court's decision and discussed the problem of recovery for circuitry of travel caused by cul-de-sacs. Heretofore recovery had been permitted in urban areas under Hiatt v. City of Greensboro, 160 S.E. 748 (1931), which was based upon private property rights that arose from ownership of property contiguous to a street. These rights included the right to have the street kept open at both ends as a thoroughfare to the whole community for the purpose of travel.

In Snow V. North Carolina State Highway Comm'n, 136 S.E.2d 678 (1964), the property rights of an abutting landowner were restricted to the right of