actually taken for the limited access highway, neither that taking nor the project itself had any effect whatsoever upon the owner's easement of access to Howard Road, the only highway upon which, prior to the taking, his land abutted. His damage was caused by the closing of a part of Howard Road at a point some 300 feet from his land. That closing itself involved no taking of any land belonging to the condemnee. He had the same convenient access to Howard Road from all parts of his land, except the small condemned parcel (which did not abut on any road) as he had before, and could use that road as freely in a northerly direction.

The appellate court noted that the injury to the owner was substantial if, as a matter of law, he was entitled to recover the amount of any reduction in the value of his remaining land by reason of the closing of Howard Road and the loss of a short, convenient approach to King Street. It ruled, however, that because there was no taking of any access from the condemnee and there was no showing of special and peculiar damage to his remaining land which was different in kind than that suffered by the general public, the compensable damage to the remaining land from taking of the small area had to be limited to the diminution, if any, in the value of that remaining land caused by the separation of that area. (La Croix v. Commonwealth, 205 N.E.2d 228, March 1965)

173-4 COURT OF APPEALS OF ARIZONA RULES SANITARY DISTRICT MUST PAY FOR RELOCATING SEWER LINE

The right-of-way in which the subject sewer line was located had been obtained by the State sometime prior to 1949. In that year the sanitary district was given permission to place a sewer line in the right-of-way. The permission provided that the district would have to remove the line if the portion of the right-of-way which it occupied was needed by the State. The relocation of a 30-inch interceptor sewer line constructed by the sanitary district in 1949-1950 had to be relocated because of the construction in 1960-61 of an underpass under State Highway 84 for the passage of Grant Road, a public street in the City of Tucson.

The State brought action against the sanitary district and the city to determine which of these public agencies should pay for the cost of relocating the sewer line. The trial court rendered judgment in favor of the State against both of the agencies and they appealed.

The appellate court disposed of the case against the city summarily by holding that although the city obligated itself to "maintain" the sewer line in the exercise of its governmental function, there arose no obligation to remove same. (However, the appellate court indicated that which of the public agencies should pay for the relocation would presumably be determined when the pending cross claim filed by the sanitary district against the city was determined. The trial of this claim had been severed from the issues between the State and the two public agencies and would be determined separately.)

As to the sanitary district, the appellate court first decided that the permission granted to it to lay its sewer line which contained the words: "Expiration date: 9/1/50." did not actually expire on that date. Those words were interpreted to mean that the construction of the sewer line was to be completed

by that date. Therefore, by the terms of the license, the district had obligated itself to remove its sewer line within the right-of-way at any time if this was deemed necessary by the State.

The appellate court went on to point out the fact that a statute granted a sanitary district the right to use a right-of-way whenever it was found by the board of directors to be necessary or convenient for performing its work did not give the district an "easement" for which it had to be compensated when it was interfered with. The same statute granted to the State highway commission complete and exclusive control and jurisdiction of the State highways and gave it permission to prescribe such rules and regulations to govern their use as was deemed necessary for public safety and convenience and to prevent abuse and unauthorized use of the highways. The court stated that the law had been spelled out in Arizona that a public utility had the duty of relocating its lines when such was made necessary by street improvements. If the sanitary district's right to use the highways to lay its lines was not subordinate to the regulatory power of the State highway commission, the district would have the power to interfere with the primary purpose for which the right-of-way was acquired - the use by vehicular traffic - and could interfere with the many uses made by other public agencies of the right-of-way. It would be chaotic if some one public agency did not have the right to regulate the various uses that might rightfully be made of the highways.

In performing its function to exercise exclusive control over the State highways, the highway commission was exercising the police power of the State as delegated to it. That the State, through its authorized agency might generally regulate and direct the flow of vehicular traffic without making compensation therefor was well established. In the instant case, the flow of vehicular traffic was conflicting with the flow of sewerage and the highway commission, in its discretion, had determined that the flow of sewerage must give way.

The fact that the highway department showed the sanitary district its construction plans for the intersection in 1949 and required the sewer line to be constructed in a certain location in its right-of-way was not sufficient to cause the district to believe that it would never be necessary to move its sewer line. Although the cost of relocating the sewer line was made necessary by the need for changing the road, the district could have anticipated that changes might be required over the years. (Sanitary Dist. No. 1 of Pima County v. State ex rel. Willey, 399 P.2d 179, February 1965)