

that where the access road was within the main right-of-way, the condemnee was not entitled to compensation, but if it were outside of the right-of-way of the limited access highway, but nevertheless paralleled that highway, the condemnee would be entitled to compensation. The judge believed that this put the access road in its true light, that is, that it was not a part of the main highway. He noted that it was admittedly difficult to draw a clear line of distinction between what was the exercise of the police power and what should be acquisition by eminent domain, and what was loss of access and what was loss of traffic. Loss of access necessarily involved loss of traffic, but loss of traffic did not necessarily involve loss of access. The fact that there was loss of traffic did not mean the owner had no loss of a property right, if there was also a loss of access. He thought that the nature of the access roads illustrated that the abutting property owners had suffered a loss of access for which they should be compensated. (State ex rel. State Highway Comm'n v. Meier, 388 S.W.2d 855, March 1965. State ex rel. State Highway Comm'n v. Brockfeld, 388 S.W.2d 862, March 1965).

174-2 NEW YORK COURT RULES ZONING REGULATIONS RATHER THAN BOUNDARY OF MUNICIPALITY AS OF A CERTAIN DATE WAS DETERMINATIVE OF WHETHER STATE COULD REMOVE BILLBOARD SIGNS

The State brought an action to remove signs of an advertising company that were located within 600 feet of the right-of-way of an Interstate highway. The State Legislature had passed an act authorizing the superintendent of public works to enter into an agreement with the Secretary of Commerce of the United States to control the erection and maintenance of advertising signs within the above distance of the edge of the right-of-way of an Interstate highway. The agreement read that "There shall be excluded from application of the . . . national standards any segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, was clearly established by State law as industrial or commercial."

An amendment to the zoning ordinance of the Town of Clifton Park was made on December 7, 1959, which rezoned the land in question for commercial use. The State argued that the amendment came too late since it was passed some two months after the cutoff date of September 21, 1959. The advertising company argued that the State Highway Law, the rules and regulations promulgated thereunder, and also the Federal rules and regulations should be construed to mean a cutoff date as to the boundaries of municipalities as they existed on September 21, 1959, and not as to the bounds of zoning ordinances as they existed on that date.

A supreme court stated that the language of the State statute and the Federal and State regulations might have been more precisely framed, but it thought the intent was plain. It pointed out that it would strain common sense and violate every canon of practical construction to adopt the argument of the advertising company. The boundaries of towns were seldom changed but ordinances were frequently amended. If the argument of the company was correct every town through which a part of the Interstate System passed could at any time change a zoning ordinance which would render ineffective the agreement between the State and the Federal Government. The plain intent of the language, it seemed to the court, was merely to ease the situation where areas involved were already zoned for commercial.

purposes, and for which advertising devices were to be normally expected. The court held that the rules and regulations promulgated under the State Highway Law superseded the amended ordinance and that, therefore, the State could remove the signs in question. (People v. Ruth Outdoor Advertising Co., 256 N.Y.S.2d 489, May 1964).

174-3 TEXAS COURT RULES PIPELINE COMPANY NOT ENTITLED TO LAY PIPES
UNDER STREETS WITHOUT THE CITY'S CONSENT

The City of San Antonio (a home rule city) brought action against the United Gas Pipe Line Company to enjoin it from using a highway and two public streets of the city for its pipeline without a franchise from the city. The trial court denied the injunction and the city appealed.

The company contended that a franchise from the city was unnecessary because it had a permit from the Southern Pacific Company to lay the pipeline along the railroad's right-of-way and the city had only an easement for the use of the surface at crossings along the right-of-way. It further argued that the statutes, charter and ordinances granting the city the right to control the streets were unconstitutional for a variety of evils, including the deprivation of property rights, indefiniteness, arbitrariness, absence of standards or guides, and denial of equal protection of the law. The appellate court noted that the second contention was an attack upon the city's power to control all of its streets, not just those crossing railroad rights-of-way.

The court stated that Texas courts had consistently held that, regardless of fee ownership, where a utility company desired to install a pipeline, even by tunneling under a city street, a franchise from the city was necessary. It agreed with the city that the city could control the use of its streets whether they were downtown thoroughfares or railroad crossings, whether the fee ownership under the street was in an adjoining landowner or in the railroad, whether the desired use was to operate a bus system on the street or to install utility lines under the street, and whether the railroad or the street was there first. The city's power to control the streets necessarily involved the authority to prohibit the utility's use of the streets entirely if the judgment of the city council dictated it and certainly the duty to do so if the utility had no franchise.

The court went on to state that the legislature, within constitutional limitations, had sovereign control of the streets and highways of the State and the cities. The primary purpose for which highways and streets were established and maintained was for the convenience of public travel. The use of the highways and streets for water mains, gas pipes, telephone and telegraph lines was secondary and subordinate to the primary use for travel, and such secondary use was permissible only when not inconsistent with the primary object of the establishment of the streets and highways. It seemed to the court that, within the fundamental limitations mentioned, the legislative control of the streets and ways for the secondary use was absolute, and that the legislative discretion in this regard was not subject to judicial intervention. The legislature could and did delegate its powers with relation to the ways to municipalities and the City of San Antonio had adopted those powers. The judgment of the trial court was, therefore, reversed and the injunction requested was granted. (City of San Antonio v. United Gas Pipe Line Co., 388 S.W.2d 231, February 1965).