

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 The court held that the rules and regulations promulgated under the State Highway Law superseded the amended ordinance and that, therefore, the State could remove the signs in question.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).