The supreme court stated that it was well-settled law in the State of North Carolina that the highway commission was vested by statute with broad discretionary authority in the performance of its statutory duties, and the court could not substitute its judgment for that of the commission. The exercise by the commission of its discretionary authority and powers was not subject to judicial review unless its action was so clearly unreasonable as to amount to oppressive and manifest abuse, but the board of education raised no issue of abuse of the commission's discretion, nor was there any evidence that the commission's action amounted to an oppressive and manifest abuse of such discretion.

The supreme court remanded the case to the trial court for a determination of the amount of compensation to be paid for the property which the commission had taken from the board of education. (State Highway Comm'n v. Greensbora City Bd. of Educ., 143 S.E.2d 87, July 1965)

178-2 NEBRASKA SUPREME COURT RULES TAKING OF EASEMENT FOR SIGN CONTROL CANNOT BE SEPARATEDLY EVALUATED BECAUSE OWNERS ONLY ENTITLED TO DECREASE IN VALUE OF LAND CAUSED BY THE TAKING

The taking of control of outdoor advertising on land was made compensable by Chapter 39, article 13, Rev. Stats. Neb., Supp. 1963. In two cases the State took permanent easements on farm lands to control advertising, although there were no signs on any of the land.

In the first case, counsel for the owner tried the case on the theory that the proper measure of damages was the difference between the value of the land before and after the taking. The court agreed with this theory but awarded no compensation because it held that the value of the property had not been diminished by the taking. It stated that although there was evidence to the contrary, the State had produced evidence that there was no difference in the value of the land before and after the taking; that the use of the land for advertising purposes would interfere with its use for agricultural purposes to some extent; and that the income which might be produced from advertising use would be so small in comparison to the income received from agricultural use that in the negotiation of a sale of the land the income from the advertising use would be disregarded.

One judge dissented, stating that the statute providing for the control of advertising considered that the taking of an easement for that purpose was the taking of a right and that the State and Federal Constitutions provided that no property should be taken or damaged for public use without payment of just compensation. He stated the question was "What has the owner lost? not, What has the taker gained?" Since the owner had lost the right to sell or lease advertising rights, she should be compensated for such loss. ( This dissent also applies to the next case.) Fulmer v. State, 134 N.W.2d 798, April 1965)

In the second case, the owner had agreed, in consideration of $1.00, to give the exclusive right to an advertising company to lease either of two undesignated sign sites for a rental of $40.00 per site per year, for a

period of five years, with renewal privileges for five more years. Counsel for the owners (who were also counsel in the preceding case) candidly stated that since their "before and after" method of measuring damages was unsucessful in the Fulmer case, they were trying this case on the theory that the correct measure of damages was the potential sign rental income, capitalized at a normal rate of interest.

Appraisers awarded the owner $1,500 and the State appealed to a district court. When that court ruled the owner was not entitled to any compensation, he appealed to the supreme court.

The appellate court held that the "before and after" method was the proper measure of damages and that the value of the easement could not be determined separately. It pointed out that there was no evidence that the land was worth any less after the taking than before because its agricultural productivity was unaffected and no inconvenience resulted from the taking. It was not shown that the control of advertising would to the slightest degree influence a prospective purchaser's estimate of the fair market value of the farm land. There was never a sign on the land and no promise that one would ever be erected on it. The owner received no sign rental income and whether or not he would ever receive any was very speculative.

The court, therefore, ruled that the owner was not entitled to any substantial damages. He might have been entitled to nominal damages in recognition of a legal wrong but he never asked for any. (Mathis v. State, 135 N.W.2d 17, May 1965)

178-3 FEDERAL DISTRICT COURT RULES GAS COMPANY NOT ENTITLED TO COMPENSATION WHEN FORMER STREET UNDER WHICH ITS PIPELINE WAS LAID WAS CONDEMNED

The United States condemned a parking lot that was owned by the City of Portsmouth, New Hampshire. Allied New Hampshire Gas Company had a pipeline running under the lot, which it was required to relocate. The company claimed a part of the compensation awarded for the land as damages sustained in relocating its pipeline. All parties (the Federal Government, the city, and the company) had stipulated as to the fair value of the property, including the pipeline. The Government was a mere stakeholder which asked the United States District Court, D. New Hampshire, to determine whether it should pay the entire compensation to the city, or whether the company was entitled to a certain portion.

The record showed that the pipeline site, which was presently a parking lot, had formerly been a street which was platted and dedicated to the public in 1834. The pipeline was laid in that street by the company's predecessor in 1851 after it had received authority to do so under an act of incorporation passed by the New Hampshire Legislature in 1850. There were no recorded grants of easement rights to the predecessor from landowners who abutted the street at the time, and apparently no record of any legal action by abutters against the predecessor.