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COMMITTEE ACTIVITY

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LAND ACQUISITION
MEMORANDUM #194

194-1 SUPREME COURT OF THE STATE OF WASHINGTON UPHOLDS CONSTITUTIONALITY OF STATE'S BILLBOARD CONTROL STATUTE AND THE VALIDITY OF THE REGULATIONS ADOPTED THEREUNDER BY THE HIGHWAY COMMISSION

The plaintiffs (appellants) were 10 outdoor advertising companies comprising virtually the entire outdoor advertising industry in the State of Washington. The original complaint alleged that the State Highway Advertising Control Act of 1961 and the Regulations adopted thereunder by the Highway Commission on May 18, 1961, were unconstitutional. Plaintiffs filed their suit praying for a declaratory judgment and a temporary injunction on February 26, 1964. The injunction was granted on March 9, 1964, and up to the time of the filing of this appeal on March 26, 1968, the Commission was prevented from enforcing orders issued under the Act requiring the removal of certain advertising signs. The trial of this case occupied 15 days, during which time 26 witnesses testified and 122 exhibits were introduced. The statement of facts exceeds 1,900 pages. The Supreme Court set aside the injunction and held for the Washington State Highway Commission.

The advertising structures involved were erected prior to the 1961 State statute. Some are located in rural areas, some in suburban areas outside incorporated cities and towns, some within the corporate limits of cities and towns, and others within areas where the land is zoned for commercial or industrial use. As a rule, the structures are located along high-volume highways in positions deemed best able to attract motorists' attention. None of the signs along interstate or scenic routes advertise activities conducted on the premises upon which they are located. These structures are only a portion of each advertising company's plant, and are employed primarily for the advertising of nationally distributed products by nationally operating firms. The plaintiffs engage in the business of outdoor display advertising in Washington. Their "plants" include outdoor advertising signs which they own and maintain on land leased for the purpose.

The Washington Highway Commission ordered the owners to remove the advertising structures which do not comply with the State's law, with intent to enforce the orders without paying compensation to the persons affected.

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2101 CONSTITUTION AVENUE, N.W. WASHINGTON, D.C. 20418

The case was tried by the trial court, sitting without a jury, and judgment was given for the defendant Washington State Highway Commission. The court entered extensive findings of fact:

1. The defendant's evidence permits reasonable men to find that a reasonable relationship exists between outdoor advertising and traffic safety. Outdoor advertising structures contribute to traffic accidents.

2. Signs located more than 660 feet from the highway are less obtrusive and less likely to constitute a traffic safety hazard.

3. Driving for pleasure is the most popular outdoor recreational activity and modern highways are designed with this fact in mind.

4. Roadside advertising in scenic areas is detrimental to the appearance of these areas and is inconsistent with the purpose for which these areas were established.

5. A factual distinction exists between signs advertising activities conducted on the premises and signs advertising activities being conducted off-premises.

6. A 12-mile distance is a reasonable limit within which to permit local and roadside businesses to use advertising signs.

7. In passing the Highway Beautification Act of 1965, the Congress of the United States did not intend to pre-empt the subject of highway advertising control. Instead, Congress intended to encourage the States to control highway advertising by making it financially advantageous for a State to do so.

The judgment entered on the trial court's findings of fact and conclusions of law determined that this State law is constitutional and that the regulations of the Highway Commission are valid. The trial court also ordered that the temporary injunction issued at the commencement of the suit be dissolved. Nine of the advertising firm plaintiffs perfected the appeal from this judgment.

In their appeal, the plaintiffs first contended that the 1965 Federal Act invalidated the State law, since the language in the Federal law provides "just compensation shall be paid upon the removal of . . . . Outdoor advertising signs, displays, and devices" while the State law regulates billboards under the police power without requiring payment for losses caused. Further, that the Federal law does not reach outdoor advertising in areas zoned industrial or commercial. Also, the Federal law provides a 5-year grace period before billboards must be removed but the State law allows a shorter time. The State Supreme Court determined that the Congress did not invoke the Supremacy Clause by pre-empting the field of regulation covered by the State law; that the Federal law is directory, and does not interfere with the State law.

The plaintiffs further contended that the State law is an unconstitutional exercise of the police power. The State Supreme Court held that the purposes of the Act are within the legitimate scope of the police power.

The plaintiffs also asserted that the legislature may not declare a "legitimate" business a nuisance under the police power, and that in any event such a declaration may not apply to an existing "legitimate" business. The Supreme Court held that neither of these objections has merit, stating that it is within the police power to declare a previously unregulated business a nuisance in fact and law, along with existing businesses.

The plaintiffs further asserted that the Act is unreasonable because it does not afford a sufficiently long amortization period for their "vested property rights." The Supreme Court said that it is within the legislature's power to forbid a use altogether without providing any amortization period.

The plaintiffs also claimed that a higher standard of "reasonableness" is to be applied when the police power measure being tested is one which regulates a business, not harmful in itself, being conducted on private property. The Supreme Court did not agree that outdoor advertising here is conducted completely on private property. A billboard is located in such a manner as to command public attention. Even though it may be on private property the viewer is on a public way. Both elements, the sign and the viewer is on a public way. Both elements, the sign and the viewer, are essential to the operation of the business. The use prohibited by these statutes is a use of the highway for advertising purposes. The Supreme Court further stated that many other courts, considering like statutes, support the conclusion that the regulation of outdoor advertising is a reasonable and proper exercise of the police power.

The Supreme Court answered the plaintiff's contention that the Act deprives them of due process of law because it authorizes the taking of their property without compensation by stating that when a court determines, as in this case, that the police power has been properly invoked, there is no basis for this contention.

Summary

This case builds upon earlier cases in several respects. There is an extension of the holding of the Ohio Ghaster case where 30 days was allowed for the removal of signs. This case validated a 3-year amortization period in the Washington statute, but said in effect that billboards were in a unique class and no amortization period was required.

Secondly, there was injected into the language of the case the words "scenic" and "recreational" in place of "aesthetic." To support that change is language presenting evidence of the new design of highways related to recreational driving and scenic qualities which were being sought in Washington and under recent federal law.

A third point in this case which extended the area covered by previous cases was the extensive consideration of the various classifications in the

Federal regulations which were generally adopted by the Washington statute. The requirement that activities advertised on permitted signs be within 12 air miles, the spacing and size limitations, on-premise, off-premise, etc., were all questioned as being invalid classifications. This court held each one to be valid.

A new element excepting the most recent Kentucky case was the question of the effect of the 1965 Federal act on the area of State billboard regulation, it being maintained that the Federal Supremacy Clause invalidated the State act because of conflicts between the 1965 Federal act and the Washington State act. The Supreme Court held that there was no intent to occupy the field and therefore no invalidation or limitation of the State act. This decision also develops further the idea that the operation of the billboards is a highway problem and not a regulation of private property since the effect of the billboard takes place upon the highway.

An extensive discussion on the part of the court about the evidence which was introduced. In Washington any findings of the trial court must stand unless it can be shown that those findings are unsupported by substantial evidence. With that rule on appeal, the Highway Commission could not take the chance that would have been present had they not made an active case to secure appropriate findings by the trial court. Consequently, they presented extensive evidence in support of the propriety of the act as a police power measure. (Markham Advertising Company v. State, Washington Supreme Court 39770.)

194-2 THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT, AFFIRMS JUDGMENT THAT AN EASEMENT FOR HIGHWAY PURPOSES ACQUIRED BY THE STATE IN 1930 COULD BE USED FOR A VISTA POINT AND ROADSIDE REST

The plaintiff (appellant) was the owner of an underlying fee of certain lake front property (Lake Tahoe) sought to enjoin defendant State of California, which owned a right-of-way thereover (a portion of State Highway No. 89), from maintaining a vista point and roadside rest on said property.

In 1930 the owner of a 36-acre tract of lakeside property conveyed to the State an easement or right-of-way for highway purposes, containing 1.98 acres, a large portion of which was not then intended to be used solely for the then about-to-be-built 24-foot road, and since it extended to the very lakeshore it could not have been intended ever to be occupied entirely by a roadway proper. The same year the State built a part of State Highway No. 89, including the part crossing the subject property. During the period from 1930 to 1964, no use was made by the State of the remaining lakeshore area within the grant between the easterly edge of the roadway and the shoreline of the lake. In 1964 the State commenced to utilize a portion of the lakeshore area as a vista point and roadside rest.

The plaintiff testified that she had constructed ramps for the launching and retrieving of boats and had kept boats moored in the lake. These facilities had been used by plaintiff, her visitors, and her tenants. This suit was filed in 1965.