

The governing statute which prescribes the form of the commissioners' report simply requires that a report be made accompanied by the minutes of any testimony taken. Beyond that, the statute is silent as to the format or content of the report. The claimants object that the terseness of the report prevents the filing of specific exceptions. Further, the report is attacked as being against the weight of the evidence introduced at the hearing and is otherwise grossly inadequate.

The Supreme Court noted that the commissioners were not bound by any particularized format but nonetheless concluded that there were certain minimum standards of clarity, certainty and explicitness which governed any submitted report. These standards were largely responsive to the particular facts of a given case but in all instances required that the report contain adequate information to permit a reviewing court to relate the commissioners' conclusions to both the assertions of the parties and the evidence taken at the hearing. The report in the instant case did neither.

The impossibility of intelligent review was highlighted by the issue of a preexisting nonconforming use. The claimant had asserted that prior use of the property in part as a machine shop constituted an enhancement of the overall value of the property taken. Since this would alter the highest and best use and consequently the fair market value of the property, the owner was entitled to either a favorable finding or sufficient negative conclusions to enable him to frame an appeal. The silence of the report on this issue left it unclear whether the commissioners had found such a use and simply ascribed a lower value to it or whether they had completely rejected it.

While the reports of commissioners with regard to valuations are ordinarily given a high degree of presumptive validity, this case indicates the minimum content which such reports must have in order to warrant such judicial deference. The case is unusual in that the normal objection to a commissioners' report involves the nature of the evidence necessary to rebut it. But even this indicates that a certain amount of factual underpinning is expected in such appraisals and a failure to so provide it necessitates a remand for further hearings and documentation.

199-5 ALABAMA SUPREME COURT RULES THAT CONDEMNEE IS NOT ENTITLED TO DAMAGES AND ATTORNEY'S FEES WHERE THE CONDEMNING AUTHORITY HAS DISMISSED THE PROCEEDINGS PRIOR TO THE ASSESSMENT OF DAMAGES AND COMPENSATION. Pappas v. City of Eufaula, 210 S2d 802 (Ala. 1968).

The City of Eufaula instituted eminent domain proceedings against the condemnees, who thereupon engaged legal counsel to represent them in the proceedings. Before the court could assess the condemnation damages and measure of compensation, the city dismissed the proceedings. The relevant Alabama statute governing the payment of attorney's fees in condemnation cases requires that the condemning authority shall be liable for such costs when it fails to pay the "damages and compensation assessed at any time within six months after the assessment thereof." Plaintiffs maintain that such an obligation is triggered by

institution of the condemnation proceeding and therefore in any proceeding which does not culminate in the assessment of damages and compensation, the city will be liable. The city, on the other hand, maintained that the statute first requires the actual assessment of damages and compensation before the city can be penalized for failure to promptly pay it.

Both parties concede that a failure to pay an assessed amount within six months will result in all costs being charged to the city. In broadest terms, therefore, the condemnees were urging that the statute be interpreted to read that the city is liable for costs and fees whenever it institutes an eminent domain proceeding which is terminated in any other manner than by payment of an award to the landowner within six months. Such an interpretation would be purely of statutory creation and in complete derogation of the prior common law on the subject. The Alabama Supreme Court observed that any statute which is an innovation on the common law "will not be extended further than is required by the letter of the statute." From this initial premise, the court ruled that the statute imposes such costs and damages only where there is an assessment of damages and compensation in the eminent domain proceeding. The court noted that the only exception to these rules has been to prevent recovery against the State on a theory of sovereign immunity. In distinguishing a Florida case reaching an opposite result, the court pointed out that the Florida statute did not have the phrase "upon such failure" acting as a limitation upon the granting of costs.

The case is a good example of the majority rule permitting the condemning authority broad power to institute and terminate proceedings without fear of incurring private expenses.