"in the manner and time for taking appeals from the orders establishing highways generally" says nothing, in express language, about the method of procedure after appeal is taken. After quoting its Wormley and Jones cases the Supreme Court of Iowa therein affirmed the trial court's refusal to allow attorney fees.

The plaintiff-appellant landowner Frost pointed out that in section 472.33 the term tribunal is used rather than commissioners and assert that the legislature intended this section to cover all condemnation proceedings whether under section 306.21 et seq., or the general eminent domain provisions of the Code, Chapter 472. The same wording was in the statute construed in Nichol v. Neighbor. The landowner thus sought a strained construction of this statute in an effort to show an expressed statutory provision for allowance of attorney fees.

The Supreme Court of Iowa, however, found no merit in this contention and affirmed the trial court's ruling and order.

204-2 IN THE CONSTRUCTION OF AN INTERSTATE FREEWAY THE STATE CAN CONDEMN INTERESTS IN REAL PROPERTY TO PROVIDE ACCESS TO OTHERWISE LANDLOCKED PARCELS. Department of Public Works and Buildings v. Bozarth, 242 N.E.2d 54 (Appellate Court of Illinois, Fourth District, November 18, 1968).

This is an action of eminent domain by the State of Illinois in connection with Federal-aid Interstate Route No. 74 in McLean County. At a point about four miles southeast of Bloomington, the State sought to acquire an easement of a 30-foot strip across a farm tract of defendant Bozarth which would provide access to Township Highway 296 from a 46.7-acre farm tract of Harris Trust and Savings Bank. The Harris tract is bordered on the north and east by that of Bozarth. The Interstate goes on a diagonal across the Harris tract and cuts through the Harris tract. Before construction of the Interstate, the entire Harris tract had access onto Township Highway 296, which after construction is no longer available to the parcel of the Harris tract north of the Interstate.

The circuit court dismissed the petition and suit as to the proposed easement-taking, holding it was not for a public use but to provide access to private property. As a result of this appeal, the Appellate Court of Illinois reversed the trial court's verdict and remanded with directions.

The question as stated in this appeal is whether the State can condemn interests in real property to provide access to parcels landlocked by the construction of an interstate highway which was designated a freeway. The Appellate Court held that the State can, saying that it is the right of the public to use, not its exercise of the right, that constitutes a public use. Under the Eminent Domain Statute, the State may acquire the fee or a lesser estate. In the case at bar, the State deemed that an easement is sufficient for the intended use. The Appellate Court felt that there was nothing arbitrary in the State's position.

The Appellate Court observed that in 1965 the State's legislature amended chapter 121, section 8-105, of the statutes with reference to laying out local service drives in connection with the development of freeways so as

to add the purpose of providing "access to any existing highway, road, street, alley or other public way from adjacent areas," and that this amendment covers the very type of project here involved. The fact that acquisition of the easement here sought, providing access to Township Highway 296 from an otherwise landlocked area, does not prevent the taking from being a public use simply because it will benefit an individual landowner. The easement sought is expressly authorized by the 1965 amendment, and any contention that granting the easement would be unwise could more properly be directed to a legislative forum. The judgment of the Circuit Court of McLean County was held to be in error and reversed and the cause was remanded by the Appellate Court with directions for further proceedings.

204-3 COURT MAY NOT INTERFERE WITH EXERCISE OF MUNICIPAL LEGISLATIVE DISCRETION OR SUBSTITUTE ITS JUDGMENT FOR THAT OF LEGISLATIVE ACTION EXCEPT WHERE LEGISLATIVE ACTION IS SO ARBITRARY AND CAPRICIOUS AS TO BE UNREASONABLE. Hunter v. City of Shreveport, 216 So.2d 140 (Court of Appeal of Louisiana, Second Circuit, October 31, 1968).

This action was initiated to enjoin construction of two parallel highway bridges over Cross Lake as a part of Interstate 220, a limited-access bypass around Shreveport. Cross Lake had been dedicated as a city water supply reservoir. The First Judicial District Court, Parish of Caddo, denied relief and plaintiffs-appellants Hunter appealed. The Court of Appeals affirmed this judgment and denied rehearing December 3, 1968, holding that the city and department of highways did not abuse discretion, and their decision to permit construction of highway bridge over lake was not arbitrary and capricious.

The plaintiffs-appellants based this proceeding upon the propositions that the action of the defendants city and State in selecting the route traversing the Shreveport water supply reservoir is arbitrary and unreasonable, constituting a threat to the health and safety of the inhabitants of the city through contamination of the water supply to the extent that the lake's purpose as a water supply reservoir will be curtailed or destroyed; and the defendants are estopped from taking the action contemplated which would interfere with or impair the use of the lake, intended by its dedication, and relegate its use to other purposes. Upon the appeal from an adverse judgment, plaintiffs assigned as error the trial court's failure to sustain these propositions.

The paramount question is whether the proposed bridge construction is so inconsistent with the dedication of Cross Lake as a water reservoir to the City of Shreveport as to be incompatible therewith. The acts of the legislature of the State of Louisiana, whereby it ceded Cross Lake to the City of Shreveport for a cash consideration, specifically provided that title to the lake would revert to the State upon a refund of the purchase price when and if the lake ceased to be used as a water supply reservoir for the city. These legislative acts did not prohibit any other use of the lake not inconsistent with its use as a source of water supply. This has been the interpretation placed upon the language of the statutes by the city in permitting the lake's use as a recreational area for boating, skiing, swimming, and fishing, as well as for a landing strip for pontoon-equipped airplanes.