

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.

The Court of Appeals stated that unless there are other factors that make it such, the construction, maintenance, and operation of the highway bridges across the lake as a segment of the interstate bypass is not an inconsistent use of the lake with its main function as a water supply reservoir. The bridges in themselves would not destroy the use intended when the State ceded the lake to the city.

One of such other factors argued was the possibility of pollution or contamination of the city's water supply. It was contended that if these bridges were constructed and if a vehicle carrying noxious and poisonous chemicals or materials should be involved in an accident while traversing the bridges the water supply might possibly be polluted or contaminated. This phase of the case was covered in the testimony of several expert witnesses whose testimony represented a conflict between idealism and realism.

While idealism is not to be abhorred, it must be equated with the facts. The ideal as envisioned was impossible from the moment of the creation of Cross Lake as a water supply. For instance, the railroad embankment which forms a dam for the water reservoir created a problem with respect to the pollution and contamination of the water supply. Trains traverse this dam and while doing so transport carloads of chemicals, poisons, and explosives which could be, in case of a wreck on the dam, dumped in the lake. Highways around the lake constitute a like hazard in a minor degree. An identical threat would be presented in boating accidents. A greater hazard arises from the use of Cross Lake as a landing strip for pontoon-equipped aircraft. The construction proposed would not introduce a new danger to the city's water supply but would merely add to the dangers which presently exist. The possibility of pollution of the water supply through bridge traffic crossing over the lake was a factor considered by both the city and the State highway department, which found the possibility of danger in the construction so remote as to be inconsequential.

The question actually before the court was not whether a danger existed, but whether the decision by the city and State that such danger was not so imminent as to make the proposed construction incompatible with the dedication as a water reservoir was arbitrary and capricious. The Court of Appeals found nothing in the facts established in the record that would warrant a disagreement with the conclusions reached by the City of Shreveport and the State's highway department.

In considering the question of the reasonableness of legislative actions such as the decisions of the City Council of the City of Shreveport and of the State department of highways, with respect to their determination of the route proposed for the construction, there are governing rules. For instance, a presumption exists that a municipal legislative act is valid and the burden of proving the contrary is on him who asserts its invalidity or nullity. *City of New Orleans v. Beck*, 139 La. 595, 71 So. 883, L.R.A. 1918a, 120 (1916); *Ward v. Leche*, 189 La. 113, 179 So. 52 (1938); *State v. Saia*, 212 La. 868, 33 So.2d 665 (1947); *Meyers v. City of Baton Rouge*, 185 So.2d 278 (La. App. 1st Cir. 1966).

Moreover, a court may not interfere with the exercise of legislative discretion or substitute its judgment for that of the legislative body except where the legislative action is so clearly arbitrary and capricious as to be unreasonable. *Blocker v. City of New Orleans*, 50 So.2d 498 (La. App., Orls. 1951); *Archer v. City of Shreveport*, 85 So.2d 337 (La. App. 2d Cir. 1956); *Scott v. City of West Monroe*, 95 So.2d 343 (La. App., 2d Cir. 1957); *La Fleur v. City of Baton Rouge*, 124 So.2d 374 (La. App., 1st Cir. 1960); *Boyle v. New Orleans Public Service, Inc.*, 163 So.2d 145 (La. App., 4th Cir. 1964); 62 C.J.S. Municipal Coporations, Sec. 148-149.

In order for legislative action to be clearly arbitrary and capricious, there must be no room for a difference of opinion and no substantial evidence upon which the legislative action could have been taken. *Torrance v. Caddo Parish Police Jury*, 119 So. 2d 617 (La. App., 2d Cir. 1960).

Another presumption concerns a question as to whether the action of the trial court was an abuse of its discretion in deciding that the proposed construction was not inconsistent with the use of Cross Lake as a water reservoir for the City of Shreveport. As the trial court could not substitute its own discretion for that of the City Council of the City of Shreveport and of the Department of Highways, the Court of Appeals of Louisiana could not substitute its discretion for that of the trial court. The rule involved is known as the doctrine of "manifest error."

The Court of Appeals found no manifest error in the trial court's judgment and affirmed the judgment of the trial court to the effect that there was no basis for concluding there was an abuse of discretion vested in the City Council of Shreveport and in the Department of Highways of the State of Louisiana in selecting the route for a proposed construction of Interstate 220 controlled-access bypass over Cross Lake, or that their actions were arbitrary, capricious or unreasonable.

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PROPERTY TAKEN TO PROVIDE NEEDED PARKING FACILITIES WITHIN URBAN RENEWAL AREA MAY BE SAID TO BE ACQUIRED FOR LEGITIMATE PLANNING PURPOSES UNDER URBAN RENEWAL LAW. *Bowers v. City of Kansas City*, 448 P.2d 6, (Supreme Court of Kansas, December 7, 1968).

The plaintiffs, Bowers, brought this action seeking to enjoin the defendants, the City of Kansas City, Kansas, and the Urban Renewal Agency of Kansas City, Kansas, from taking their property in eminent domain proceedings undertaken in connection with the University-Rosedale Urban Renewal Project.

The trial court entered judgment in favor of the defendants and the plaintiffs have appealed from that judgment. The plaintiffs are the owners of a 65-foot property fronting on West 39th Avenue approximately one block east of the Kansas University Medical Center further identified as 1906, 1908, and 1910 West 39th Avenue. This property was in the process of being purchased from T. Bryant Johnson and Mary F. Johnson by the plaintiffs, Bowers, who operate thereon a tavern.