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Fred Calhoun

rejected the argument used in that case choosing to follow instead the reasoning of the United States Supreme Court in *Liggett Co. v. Baldridge* [14] holding invalid an ordinance requiring that every pharmacy or drug store shall be owned only by a licensed pharmacist, because there was no relationship between mere ownership of a drug store and the public health. So too the mere ownership of a taxicab has no reasonable relation to the public health. Since the amended portions of the ordinance are inseparably related, and the main object of the ordinance—the destruction of the owner-driver system is invalid, the other amendments cannot be sustained.

In the opinion of this writer, the Colorado Supreme Court has once more indicated that regulations issued in pursuance of the police power must be reasonable and must bear a reasonable relationship to the public health, welfare, safety or morals of the community to be valid.

—GERALDINE R. KEYES.

EXPENSES OF MOVING IN EMINENT DOMAIN CASES

FRED CALHOUN*

If land is condemned for public use by eminent domain, the problem arises as to which party will bear the expense of moving a building to another location. This particular question has not been the cause of litigation in Colorado and has been settled in but a few cases in the United States.

There is one good reason why this is true. State constitutions [1] and statutes [2] establish a procedure to follow in condemnation proceedings. If these laws are faithfully followed, it is almost impossible to have "moving compensation" a question for the court to decide. The Colorado statute,[3] which sets out the facts that a jury or commissioners are to report, makes it mandatory to consider the values of a building for compensation purposes, whether the building is to be removed or left on the property condemned.

However, before an owner is entitled to remove a building from land that has been condemned, he must first reserve such right in the preliminary proceedings.[4] It is also true that the condemner can neither make the owner take the building [5] nor remove the building to other property of the owner and deduct the value of the building from the damages to be paid.[6]

[14] 278 U. S. 105, 49 S. Ct. 57 (1928).

* Student, University of Denver College of Law.

[1] Colorado Constitution, Art. II, sec. 15.

[2] '35 C.S.A., Ch. 61.

[3] *Ibid.*, sec. 18.

[4] Corpus Juris, Eminent Domain, sec. 249. Lineburg v. Sandven *et al*, 21 N.W. 2d 808 (1946).

[5] Cumbaa v. Town of Geneva, 235 Ala. 423, 179 So. 277 (1938).

[6] State v. Miller, 92 S.W. 2d 1073 (1936).

If, in spite of these precautions and obstacles, the question must be litigated, the status of the owner of the building will determine which one of two possible courses the owner should pursue to recover damages. The theory of a tenant recovering for removal is entirely different from the theory used to determine damages when the owner of the building is also the owner of the land.

In order for a tenant to receive damages, his rights as a tenant must include some right to the building in question. This right may arise from an agreement that the tenant may remove buildings at the end of his tenancy, from an agreement that the landowner will buy the buildings constructed by the tenant during the tenancy, or even be a right arising after eminent domain proceedings have started, where the owner does not want the building and the condemner does not have any use for it, but the lessee elects to remove the same.

If the latter is the case, indications seem to be that the amount of damages paid by the condemner should be lessened by the fair market value of the building as it stood on the land, such amount to be diminished by the cost of immediate removal because of necessity. This is a nice formula to determine the condemner's liability, but it leaves the owner of the building in the position of losing property without compensation. In actual practice, however, the building is probably worthless to the owner or the tenant has made arrangements with the owner so that the building will be paid for in one form or another.

If the tenant has such rights as may permit him to remove the building, three formulae have been developed to determine damages. First, the damages are awarded as the cost of immediate removal. Second, the cost of removal is determined to be no more than it would have been at the end of the tenancy for the reason that the tenant would have to remove at that time and is entitled to no compensation for moving now. Third, the tenant is entitled to damages equal to the cost of immediately moving the building, such amount to be lessened by the cost of removal at the end of the term. The last method appears to be more fair to both the tenant and the condemner and a majority of the courts use this measurement. The first and second methods have both been used but rarely.

Now, if the owner of the land wants to remove a building, and all preliminary steps have been taken, the courts will allow damages for removal. In this case two formulae have been developed. First, the amount will be the value of the land taken, including the building, less the fair market value of the building, such deduction to be lessened by the cost of moving. Second, the amount will be the value of the land taken, including the building, diminished by an amount equal to the difference in fair market value of the building as it stood on the old location and as it stands on the new location.

A close study of the two methods will show a discrepancy. There are advantages under either method, but there are also

disadvantages. The amount of recovery for moving one building may vary greatly according to the theory used, but there can be one situation where the recovery would be the same. To best illustrate this possibility, it may be well to turn to algebra. Letting D equal damages, V as value, c as cost of removal, x as fair market value on the condemned land, and y as fair market value in the new location, we derive the following equations:

1—D equals $V - (x - c)$

2—D equals $V - (x - y)$

If at any time the cost of removal in the first method is equal to the loss in fair market value in the second method, the recovery will be identical.

A perplexing problem involved in the first method, in which the cost of moving is allowed, is how far can the owner move the building and what methods can he employ? Surely a mover could not relocate the building two or three counties away and expect moving expenses to be paid, nor could the condemner reasonably expect the owner to move just across the property line unless there were other controlling factors. Reasonableness is the answer. The owner should be allowed to move the building to a new location, such location and cost of moving thereto to be within reason.

The second theory has a disadvantage, even if the building is moved only a reasonable distance. Suppose the building to be moved has qualities which make it peculiarly suitable for a certain use. By moving the building to another location where it can be used for the same purposes, it is entirely possible that the fair market value would be the same as before. Must the owner then pay the moving costs? We can carry this example further. Let us assume the new value far exceeds the old value. In this case the owner is better off in that he has theoretically been compensated for the cost of moving by the increase in valuation.

Another assumption, to bring out a point. Suppose the owner of this building moves it to a location where the value of the building, because of its restricted use, is nil. After settlement, is he to be allowed to move the building to the location where the value exceeds that of the original location? Can this not be termed double collection?

Here, again, it seems that reasonableness is a requisite, not only from the owner's point of view, but also from that of the condemner's. The basic theory behind this method is to allow the owner the cost of moving, and neither the owner nor the condemner should try to take too great an advantage lest the court lean towards the other method.

With this reasoning and comparison of both methods, one may draw the conclusion that there is no great difference in damages allowed in either case, especially when reasonableness is considered. With no reported case authority in Colorado, it may be predicted that our court will probably strike a method which will include one of the above, to be limited so that both the owner and the condemner will have a fair assessment of damages.

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