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Eminent Domain -- Limited Access Highways

Boyd B. Massagee

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by reason of failure to state an essential element of the crime charged in the count.\textsuperscript{16} It appears that the court is no longer willing to sustain a general verdict of guilty to an indictment containing mutually exclusive counts when one of the counts is defective.\textsuperscript{17}

EMMANUEL M. PATURIS

Eminent Domain—Limited Access Highways

In a recent note in this Law Review,\textsuperscript{3} a question was raised as to what authority the State Highway and Public Works Commission has to create limited-access highways in this state. This question was before the North Carolina Supreme Court for the first time in \textit{Hedrick v. Graham}.\textsuperscript{2} In this case, an owner of land which abutted on a public highway requested an injunction to prohibit the Commission from restricting access to that highway except at certain designated points. The lower court sustained the Commission's demurrer and the supreme court affirmed. In so ruling, the court veered from its policy of strictly construing eminent domain statutes against the state.\textsuperscript{3} Instead, the court emphasized the benefits to the public that emanate from a limited-access highway, liberally construed statutes then in effect, and found that the Commission had the power to condemn land for limited-access highways.

Three factors in particular were pointed out by the court in reaching

\textsuperscript{16} Although State v. Toole, 106 N. C. 736, 11 S. E. 168 (1890), did not involve counts charging mutually exclusive crimes, the case clearly stated a rule of law which became the basis of later decisions. In that case the court stated that where a general verdict of guilty is rendered against an indictment charging offenses of the same grade and subject to the same or similar punishment, the verdict upon either count, if valid, supports the judgment, "... and it is immaterial that the verdict as to the other counts is not good, either by reason of defective counts, or by the admission of incompetent evidence, or giving objectionable instructions as to such other counts, provided the errors complained of do not affect the valid verdict rendered on this count." \textit{Id.} at 739, 11 S. E. at 169. State v. Carter, 113 N. C. 639, 18 S. E. 517 (1893), also involved larceny and receiving stolen goods; and although both counts were declared to be valid, the court said that if only one of the counts was valid the general verdict of guilty would be placed on the good count.

\textsuperscript{17} It is conceivable that this stand may lead the court to eventually overrule the case of State v. Baker, 63 N. C. 276 (1869). In the \textit{Baker} case the defendant was charged in four separate counts for homicide. Evidence was given as to the first count only. The general verdict of guilty was sustained on the basis that the conviction was presumed to have been upon the valid count. If the same situation would appear in the future, the same reasoning could be applied as was used in the \textit{Meshow} case. Are not counts which state the same offense in different manners as mutually exclusive as the counts of larceny and receiving? Would not all defective counts, regardless of the reason, be equally unable to sustain a conviction? A general verdict of guilty is a verdict of guilty as to each count, but the defendant can be guilty of only one of the counts. If the court is unwilling to presume the conviction rested upon the valid count, there would be a new trial.

\textsuperscript{3} 34 N. C. L. Rsv. 130 (1955).
\textsuperscript{2} 245 N. C. 249, 96 S. E. 2d 129 (1957).
\textsuperscript{5} Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212 (1932).
its decision. First, the Federal-Aid Highway Act of 1956 encourages
the creation of a national highway system and offers federal funds to
those states agreeing to comply with standards prescribed in the act and
to be prescribed by the Secretary of Commerce. One criterion contained
in this act is that states will not add points of access to roads in this
system without approval of the Secretary of Commerce. Our General
Assembly has provided that the Commission "... shall have such powers
as are necessary to comply fully with the provisions of the present or
future federal aid acts."

Second, the court emphasized the importance of the safety aspect in
highway planning and construction. There is no doubt that highways
are safer where access is limited. But this is commonly considered an
argument more appropriately made to the General Assembly than to the
court. It is not usually felt to be sufficient grounds for the court to
disregard obvious legislative intent.

Third, the broad language of chapter 136 of the General Statutes on
Roads and Highways was found to confer the power in question on the
Commission. Concerning the statutes, excerpts from sections 1, 18(b),
18(e), and 19 of chapter 136 are referred to by the court as "not
ambiguous or of doubtful meaning, but are so clear and plain... that
there can be no reasonable doubt as to their meaning....." This
interpretation is contrary to the rule of long standing in most juris-
dictions, including North Carolina, that eminent domain statutes are

6 N. C. GEN. STAT. § 136-18(1) (1952). This statute raises a question beyond
the scope of this Note, viz., whether or not a grant of legislative power to an ad-
ministrative agency, allowing it to comply with provisions of federal statutes that
may be passed in the future, constitutes an unconstitutional delegation of legisla-
tive power.
7 The legislature has the law making function and the courts will not usurp it.
Elliott v. Elliott, 235 N. C. 153, 69 S. E. 2d 224 (1952); Roberts v. Roberts, 185
N. C. 566, 118 S. E. 9 (1923); State v. Barksdale, 181 N. C. 621, 107 S. E. 505
(1921); Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279 (1909).
8 "The intent and purpose of this section is that there shall be maintained and
developed a State-wide highway system commensurate with needs of the State as
a whole and not to sacrifice the general state-wide interest to the purely local desires
9 The Commission has power "to acquire by gift, purchase, or otherwise, any
road or highway, or tract of land or other property whatsoever that may be neces-
sary for a State highway system." N. C. GEN. STAT. § 136-18(b) (1952).
10 The Commission has power "to make rules, regulations and ordinances for
the use of, and to police traffic on, the State highways... ." N. C. GEN. STAT.
§ 136-18(e) (1952).
11 The Commission may condemn private property "as it may deem necessary
and suitable for road construction, maintenance, and repair, and the necessary ap-
proaches and ways through, and a sufficient amount of land surrounding and
adjacent thereto, as it may determine to enable it to properly prosecute the work."
12 245 N. C. at 260, 96 S. E. 2d at 137.
to be strictly construed. These statutes do not even mention limited-access; in fact, according to a source cited by the court in the principal case, a system of limited-access highways was not provided for by statute in any state until 1938.

Reading the sections as a whole, it appears that the General Assembly was concerned with condemnation of land, not rights of owners of property adjacent to that condemned land. The reasons for allowing the Commission to condemn any more land than necessary for the road itself were for the purpose of drainage, elimination of overhanging trees, etc.

In 1951, the question raised by the Hedrick case was acted on by the General Assembly when a highway bill providing for restriction of highway access by the Commission died in committee. The court considered this in the principal case, but stated that 170 miles of limited-access roads were in use in the state by 1955 and that the General Assembly did nothing to curtail them. It also states as a rule that courts are controlled by the language of the statute, the subject matter, and purpose, rather than what the General Assembly thought the interpretation should be, and that the language of these statutes is so clear as to suggest only one meaning. This bill authorized the acquisition of an entire lot, if advantageous to the public, although not needed for the right of way. The court points out that this may have been the reason the bill was not passed. Finally, the court states that, "Perhaps, the Senate thought that the Commission had the power under existing statutes to construct limited-access roads, and that was the reason it declined to pass the House Bill."

This writer has been able to find only one jurisdiction in the country with a holding similar to the Hedrick case, based on similar fact and statutory situations. In that case, the statute offers stronger support

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10 The sections referred to above, supra notes 8-11, were enacted originally between 1921-33.

12 At common law, condemnation of land for a public road had no effect on the right of access invested in abutting property owners. McCandless v. City of Los Angeles, 10 Cal. App. 2d 407, 4 P. 2d 139 (1931); Minnequa Lumber Co. v. City and County of Denver, 67 Colo. 472, 186 Pac. 539 (1920); City of Atlanta v. Gore, 40 Ga. App. 70, 169 S. E. 776 (1933).

17 House Bill No. 569, Session 1951, N. C. General Assembly.

18 245 N. C. at 260, 96 S. E. 2d at 137.

10 Ibid.

20 Petition of Burnquist, 220 Minn. 48, 19 N. W. 2d 394 (1945).
Fair Labor Standards Act—Wage and Hour—Coverage of New Construction

Plantiffs-workers were engaged in building a $37,000,000 causeway twenty-five miles long across Lake Pontchartrain immediately north of New Orleans. This was a new project designed to relieve traffic congestion on old highways around the east and west shores of the lake. It was physically separated from existing highways, but when completed, it would be an integral part of the state and federal highway system, with four-lane approach roads connecting with east-west and north-south U.S. highways. Plantiffs were also engaged in building a field plant at the job site, which, when completed, would house the casting of huge concrete pillars and deck slabs which were to serve as the base of the causeway.

It was contended by the construction company that this was new construction and that therefore the act was inapplicable to these operations. The Commissioner is authorized "to acquire by purchase, gift or condemnation all necessary right of way needed in laying out and constructing the trunk highway system or any needed in laying out and constructing the trunk highway system in any county," 24 N. C. Sess. Laws 1957, c. 993. Section 5 of this law is as follows: "Acquisition of property and property rights. For the purposes of this Act, the Commission is authorized to acquire any private or public property and property rights for controlled-access facilities and service or frontage roads, including rights of access, air, view and light; by gift, devise, purchase, or condemnation in the manner of any property or property rights in connection with highways..."

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With regard to the issue in the Hedrick case, the 1957 General Assembly has eliminated the problem of statutory construction by passing a law similar to our 1951 highway bill.