

MAINE STATE LEGISLATURE

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W. H. Bradford, Right of Way Engr. State Highway Comm.

L. Smith Dunnack, Asst. Atty. Gen. State Highway Comm.

Land Transferred Subsequent to Condemnation

You have requested my opinion as to whom you should negotiate with and pay damages to in the cases where "after the date of condemnation" the condemnee sells the land before negotiations have started or payments have been made.

Under our statutes, the state obtains title to the land at the time the condemnation papers are filed. The condemnee has a constitutional right to just compensation and the statute provides a method for determining the amount. The land is gone, but the condemnee has a "chose in action", a right to receive compensation for land. (See 159 N.Y. 533; 49 Ohio St. 60; 138 Tenn. 276.) The taking of part of the land leaves the same legal situation. The condemnee has the right to compensation for any diminished value to the remainder, but this is a "chose in action" also. It is a right to obtain damages and not a right in land.

You have requested me to answer five specific questions as to the situation when the deed,

1. describes the land in the exact language of the grantor's original grant without any reservation of the land taken by the state, and without any reference to the taking.

In the first place, the grantee is not a bona fide purchaser. The condemnation is a matter of record. His claim must be that the grantor intended to convey not only the land he owned, but also his 'chose in action' for the land taken by the state. It may be argued that the grantor should have reserved his rights against the state and since he did not, he intended to convey them. However, the grantor did not need to reserve his rights. The state owed the grantor a certain sum of money. The grantor's claim did not depend on continued ownership of the land, but on ownership at the time of taking.

It might be that the grantee could have some equitable claim against the grantor if fraud or mistake actually existed. However, the state owes the grantor for the damages.

2. describes the property in the exact language of the original grant, but excepts and reserves the part taken.

(a) including rights to damages.

This case is clear. In no way can there be any doubt. The state owes the grantor.

(b) but grants the right to damages to the grantee.

Although, the Court does not look with favor at these mixed transactions, the intent of the parties would be clear. The State owes the grantee.

3. describes the property in a manner that might be interpreted as conveying to either old or new right of way limits. There is always a presumption that the parties intended to make a legal transfer. The grantee had no right to convey what he did not have and obviously could not get. He could not lawfully convey land of the state. The state owes the grantor.

4. describes the whole property owned by the grantor before the condemnation, and gives the deed before the date of condemnation, but the grantee does not record the deed before the date of condemnation.

In this case the grantee is a bona fide purchaser, and is the real owner as between the grantor and himself. However, if the state had settled with the grantor before the recording of the deed, the grantee would have to go against the grantor. The state is entitled to rely on the record. However, if the state is apprised of the transfer, it should require the deed to be recorded and pay the grantee.

Since it is possible for an existing deed to be recorded after our original title search, it is important to recheck the record before paying in all cases.

L. Smith Dunnack, Asst. Atty. Gen.

LSD/ek

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