

4-1930

Eminent Domain-Municipal Corporations-Statutory Construction

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Recommended Citation

(1930) "Eminent Domain-Municipal Corporations-Statutory Construction," *Indiana Law Journal*: Vol. 5 : Iss. 7 , Article 7.

Available at: <https://www.repository.law.indiana.edu/ilj/vol5/iss7/7>

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

EMINENT DOMAIN—MUNICIPAL CORPORATIONS—STATUTORY CONSTRUCTION—The State of Indiana under the provisions of the Indiana State Highway Act (Burns' 1926, Sec. 8268 et seq.) and the general Eminent Domain Act (Burns' 1926, Sec. 7680 et seq.) brought this action to condemn three and nine-tenths acres of the appellee's land in Parke County. Appraisers were appointed and assessed the damages to the land at \$7,000. The State in this action requested instructions to the effect that in arriving at the compensation to be awarded to the appellee that the benefits as well as the damages to the land should be taken into consideration. The court refused this instruction. The State relied on Sec. 7685 of Burns' 1926, reading in part "in case land is sought to be taken by a municipal corporation for public use that confers any benefits on the land, the report shall also state the benefits." The State's contention is in effect that it is a municipal corporation within the contemplation of the above section and that therefore the benefits to the land should have been reported along with the damages. *Held*: The State is not a municipal corporation within the meaning of Sec. 7685, Burns' 1926. *State v. Brubeck*, Supreme Court of Indiana, Feb. 19, 1930, 170 N. E. 81.

The State has the power of eminent domain. *State of Georgia v. City of Chattanooga*, 264 U. S. 472, 44 Sup. Ct. 369. A state has the right to say upon what property or to what extent the right of eminent domain shall be exercised. *Western Union Telegraph Co. v. Louisville and Nashville R. R. Co.*, 258 U. S. 13. A municipal corporation has no inherent power of eminent domain and can exercise it only when authorized and in the manner authorized by the State Legislature. *City of Los Angeles v. Koyer*, 48 Cal. App. 720, 192 Pac. 301.

In Indiana a municipal corporation has been given the right of eminent domain and as an incident to that right has been given the privilege of assessing the benefits as well as the damages to the land in arriving at the compensation to be awarded. Acts of 1905, ch. 48—7680 Burns 1926. The State has the power of eminent domain inherently, but unless it can qualify under the above statute as a municipal corporation it must compensate for the damage done but cannot take advantage of the benefits conferred on the land, to reduce the compensation to be paid for the land.

A municipal corporation is a body corporate and politic created by law

and invested with special powers relating to the government of its own local affairs. *Vaughtman v. Town of Waterloo*, 14 Ind. App. 649. A municipal corporation possesses a corporate capacity distinct from the State. *Hanson v. Cresco*, 132 Iowa 533, 109 N. W. 1109. The State is not a municipal corporation. *Armstrong v. State Bank of Mayville*, 227 N. Y. 563. *Hays v. McDaniel*, (1917) 130 Ark. 52, 196 S. W. 934. 43 Corpus Juris 72, Sec. 10.

Since the State is not a municipal corporation, it must therefore give compensation for damages without being allowed to consider the benefits in determining the price to be paid the property owner.

This is the first decision on this precise point in Indiana and comes at a time when the State's highway improvement projects render it an important decision. The Supreme Court in this case has clearly decided in accord with both principle and authority.

T. H. F.