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From: Robert Vosbein [Robert.Vosbein@arlaw.com]
Sent: Tuesday, December 21, 2004 5:26 PM
To: ABroussard
Cc: CGegenheimer; Dottie Stephenson (E-mail); Roger Benischek (E-mail)
Subject: Expropriation research



Expropriation.doc
(85 KB)

Aaron,

Per your request, our office has researched and determined that Jefferson Parish has the power to expropriate property for a valid public purpose including economic development. I have attached a copy of the legal memorandum citing appropriate legal authorities. I will forward a hard copy by U.S. mail.

Please let me know if you need anything further. Best wishes to you and Karen for a Merry Christmas and a wonderful New Year's Eve party.

Robert

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<<Expropriation.doc>>



Aaron - ASE

Tom
12/22

ADAMS AND REESE LLP

MEMORANDUM

TO: Robert Vosbein, Sr.
FROM: Shera J. Finn
DATE: December 20, 2004
RE: File no. 9361-1
SUBJECT: Expropriation

QUESTION PRESENTED

- 1) The first issue is whether Jefferson Parish has the power to expropriate property.
- 2) The next issue is whether economic development is a valid public purpose.

SHORT ANSWER

Jefferson Parish has the authority to expropriate property under Louisiana

Constitution Article 6 §5, Louisiana Constitution Article 6 §6, and Louisiana Constitution Article 6 §23. Moreover, Louisiana courts have found that economic development is a permissible public purpose.

DISCUSSION

A. Power of Expropriation

The first issue is whether Jefferson Parish has the power to expropriate property. Louisiana Constitution Article 6 §5, Louisiana Constitution Article 6 §6, and Louisiana Constitution Article 6 §23 deal with a parish's power of expropriation. Article 6 §5 states that:

Any local governmental subdivision may draft, adopt, or amend a home rule charter *A home rule charter* . . . shall provide the structure and

organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.

Further, Louisiana's Constitution Article 6 §6 states that the legislature "shall enact no law the effect of which changes or affects the structure and organization or the particular redistribution of the powers and functions of any local governmental subdivision operating under a home rule charter." Thus, a home rule charter grants a parish similar powers exercised by the State, except where limited by the Constitution or the charter itself.

Moreover, Article 6 §23 states that:

Subject to and not inconsistent with this constitution and subject to restrictions provided by general law, political subdivisions may acquire property for *any public purpose* by purchase, donation, *expropriation*, exchange, or otherwise.¹

Thus, these constitutional provisions coupled with a home rule charter confer power upon a parish to expropriate property.

Here, Jefferson Parish Home Rule Charter ("Charter") was drafted under the authority of Article 6, §5, of the Constitution of Louisiana. Jefferson Parish's Charter does not limit the Parish's authority to expropriate property. See The Home Rule Charter for Jefferson Parish, § 1.01-1.16. Since the Constitution confers authority for a Parish to expropriate property and Jefferson Parish's Charter does not limit this authority, Jefferson Parish has the power of expropriation for a valid public purpose.

¹ See also La. R.S. §19:2 (stating that "where a price cannot be agreed upon with the owner, any of the following may expropriate needed property. . . .[t]he state or its political corporations or subdivisions created for the purpose of exercising any state governmental powers"); Cf Parish of Jefferson v. Bonnabel Properties, Inc., 620 So.2d 1168, 1169 (La. 1993) (stating that a parish is a political subdivision).

B. Economic Development as Public Purpose

The next issue is whether economic development is a valid public purpose. Eminent domain is the inherent right of a sovereign to acquire private property for a public purpose without the consent of the owner, provided just compensation is paid. See La. Const. art. 1, § 4. Where the state or its political subdivisions seek to acquire property by the exercise of the expropriation power, the primary question is whether the taking is for a valid public purpose. See Vidalia v. Sherman, 95-580 (La.App. 3 Cir. 10/4/95), 663 So.2d 315, 316. Whether a valid public purpose exists is a factual determination made by the court. Id.

Louisiana courts have defined a permissible public purpose as a purpose that promotes a public benefit. In Town of Vidalia, a defendant town instituted an expropriation suit against the plaintiff landowner. The town wanted to acquire the property "for recreation and tourism purposes" and to promote economic growth. See Vidalia v. Sherman, 95-580 (La.App. 3 Cir. 10/4/95), 663 So.2d 315, 316. ~~The trial court~~ granted expropriation upon the payment of just compensation. The plaintiff appealed, claiming that economic development was not a valid public purpose. In affirming the trial court's decision, the appellate court found that the town's proposed project was a valid public purpose. In reaching its decision, the court noted that: "It was shown that the Project will stimulate economic growth in Concordia Parish, an area which has struggled with a poor economy and high unemployment." Id. at 319. See also Shreveport v. Chanse Gas Corp., 34,959 (La.App. 2 Cir. 8/22/01), 794 So.2d 962 (finding that economic development was a valid public purpose for expropriation).

Moreover, the legislature has declared and courts have held, that economic development is a valid public purpose. See La. R.S. 33:9021(4) (“The maintenance of the economy of the several local governmental subdivisions of the state at a high level is a matter of public policy and the cooperative economic development activities . . . are for a public purpose for which public money may be expended.”); R.S. 33:9012(5) (“the maintenance of the economies of said local political subdivisions at a high level is found and declared to be a public purpose.”); see also Polk v. Edwards, 626 So.2d 1128 (La. 1993) (“The legislature specifically stated that the Casino Act is ‘for a public purpose’—to improve the Louisiana economy, improve tourism, and enrich the public fisc”). For the above-mentioned reasons, economic development is a permissible public purpose.

CONCLUSION

Jefferson Parish has the authority to expropriate property under Louisiana Constitution Article 6 §5, Louisiana Constitution Article 6 §6, and Louisiana Constitution Article 6 §23. Moreover, Louisiana courts have found that economic development is a permissible public purpose.

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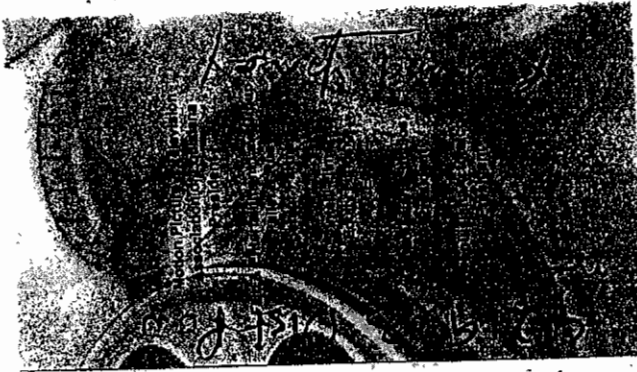
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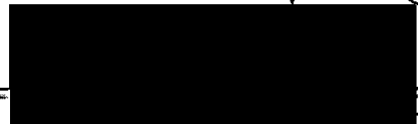


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