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STATE GOVERNMENT

State Commission: Condemnation of Public Property

CODE SECTIONS:	O.C.G.A. §§ 50-16-180—50-16-183 (new), 20-3-58 (amended), 22-2-130 (amended), 32-3-4 (amended), 32-6-112 (amended), and 50-16-44 (amended)
BILL NUMBER:	HB 1361
ACT NUMBER:	1565
SUMMARY:	The Act creates the State Commission on Condemnation of Public Property with the authority to determine when state agencies and authorities may acquire public prop- erty by exercise of the power of eminent domain.
EFFECTIVE DATE:	April 7, 1986

History

In 1985, a long-standing legal battle over a proposed transportation project passing through several northeast Atlanta neighborhoods unexpectedly uncovered a broader legal issue involving the power of the State to condemn land. Controversy over the road project began in the 1960's when the Georgia Department of Transportation (DOT) acquired land for a proposed northeast expressway to be named Interstate 485.¹ Several courtroom confrontations ensued during the next two decades.² The still controversial road plan has evolved into a four-lane, 2.4 mile Presidential Parkway (so named because it would pass by the recently constructed Carter Presidential Library, which has been integrated into the road plan).³ However, the Parkway plan requires the acquisition of additional land including several acres of parkland owned by the City of Atlanta.⁴

1. For a history of the road controversy, see *Druid Hills Civic Ass'n. v. Federal Highway Admin.*, 772 F.2d 700 (11th Cir. 1985); *Site of Parkway a Battleground Since 1966*, *Atlanta J. & Const.*, Oct. 13, 1985, at 1D, col. 3.

2. See *Morningside-Lenox Park Ass'n. v. Volpe*, 334 F. Supp. 132 (N.D. Ga. 1971) (construction enjoined pending completion of an Environmental Impact Statement (EIS)); *Druid Hills Civic Ass'n v. Federal Highway Admin.*, 772 F.2d 700 (11th Cir. 1985) (finding the EIS for current road plan inadequate); *Department of Transp. v. Brooks*, 254 Ga. 303, 328 S.E.2d 705 (1985) (voiding land transfer to DOT due to conflict of interest).

3. *Druid Hills Civic Ass'n v. Federal Highway Admin.*, 772 F.2d 700, 704, 706 (1985).

4. *Id.* at 706 (noting that parkway construction would require additional land acqui-

In May of 1985, the Atlanta City Council voted to transfer the park acreage to the DOT.⁵ However, the deed contained a number of restrictions (such as a ban on truck traffic) and a possibility of reverter should any restriction be violated.⁶ The DOT immediately sought to condemn the possibility of reverter the City had retained in the transferred land.⁷ On July 1, 1985, the DeKalb County Superior Court dismissed the condemnation petition, ruling that the DOT could not condemn City property in the manner it proposed, and on September 4, 1985, the trial court voided the land transfer.⁸ In October of 1985, the Georgia Supreme Court affirmed that the land transfer was void, and, in an unprecedented portion of its opinion, the court ruled that Georgia law did not allow the DOT or any state agency to condemn publicly-owned, as opposed to private, property.⁹

In reaching this conclusion, the court first examined the Code sections authorizing the DOT to condemn land. The court noted that although O.C.G.A. § 32-3-3 authorizes the DOT to *acquire* "any property" for public road purposes through lawfully established procedures given in Titles 32 and 22, this does not authorize the DOT to *condemn* any property.¹⁰ The procedure the DOT attempted to use to condemn the parkland was contained in O.C.G.A. § 32-3-4, entitled "Authority to bring condemnation proceedings;" however, the language of this section authorized the condemnation of "private property."¹¹ The court held "that the term 'private property' found in O.C.G.A. § 32-3-4 does not include property owned by a government or governmental entity,"¹² and that "[m]unicipal land . . . is in *all* respects public property."¹³

The court also examined the relevant sections of Title 22, stating that the language of O.C.G.A. §§ 22-2-102 and 22-2-130, (which, respectively, provide for condemnation proceedings before a special master and before the superior court), similarly limited their availability to the taking of "private property." Therefore, the DOT could not use either of these sections to condemn municipal property.¹⁴

The court continued its examination of the meaning of key provisions

sition); Department of Transp. v. City of Atlanta, 255 Ga. 124, 125, 337 S.E.2d 327, 329 (1985) (Parkway to cross portions of four City-owned parks: Dellwood Park, Shadyside Park, Goldsboro Park, and Candler Park).

5. Department of Transp. v. City of Atlanta, 255 Ga. 124, 125, 337 S.E.2d 327, 329 (1985).

6. *Id.*

7. *Id.*

8. *Id.* at 126, 337 S.E.2d at 329.

9. *Id.* at 132-36, 337 S.E.2d at 334-37.

10. *Id.* at 131, 337 S.E.2d at 333.

11. *Id.*

12. *Id.* at 132, 337 S.E.2d at 334.

13. *Id.* at 134, 337 S.E.2d at 335.

14. *Id.*

of Title 22, noting that the General Assembly may enact statutes delegating the authority to condemn "any part of the territory of the state."¹⁵ However, any state agency thus authorized must "proceed as set forth in [Title 22]."¹⁶ Moreover, the court observed that the procedural statutes providing for the exercise of the delegated power were originally limited to "private property" and that this limitation had never been changed.¹⁷ The court concluded that "the plain meaning of O.C.G.A. § 22-1-8 authorizes only condemnation of private property pursuant to Title 22,"¹⁸ and, furthermore, that "[p]roperty is still limited to 'private property' for the purposes of O.C.G.A. § 22-2-20."¹⁹

Thus, although the Georgia Supreme Court's holding was limited to the DOT, its opinion was widely viewed as finding that other state agencies were similarly constrained.²⁰ The court pointed the way to untying the DOT's hands when it stated that "[t]he General Assembly may certainly provide the DOT with the authority and the procedure to condemn any municipal property, or this municipal property alone."²¹ The 1986 General Assembly responded by drafting HB 1361. The legislation that was ultimately enacted, while it addressed the "private property" limitation on the DOT's authority, was not directed specifically to the city-owned parkland. Rather, it addressed the private property limitation with respect to all state agencies.

HB 1361

The Act specifically delegates the power to condemn public property to the DOT,²² the Board of Regents of the University System of Georgia,²³ or a state agency acting through the State Properties Commission.²⁴ However, before exercising this power in any given instance, the state agency or authority involved must obtain the approval of the State Commission on the Condemnation of Public Property ("the Commission").²⁵ The

15. *Id.*, 337 S.E.2d at 335-36.

16. *Id.* at 135, 337 S.E.2d at 336.

17. *Id.*

18. *Id.*

19. *Id.*

20. The court's ruling in *Department of Transp. v. City of Atlanta* was seen as having "immense ramifications." Allen, *Loophole Due a Legal Repair*, Atlanta J. & Const., Oct. 13, 1985, at 1C, col. 1; "The decision can have tentacles that would affect us in every agency of state government from prisons to our human resources to our highways to any applications when the state has to have a piece of property." *Legislature Should Protect State Condemnation Power*, Atlanta J. & Const., Nov. 3, 1985, at 2B, col. 1, quoting Governor Joe Frank Harris.

21. *Department of Transp. v. City of Atlanta*, 255 Ga. 124, 136, 337 S.E.2d 327, 337 (1985).

22. O.C.G.A. § 32-3-4(b) (Supp. 1986).

23. O.C.G.A. § 20-3-58(b) (Supp. 1986).

24. O.C.G.A. § 50-16-44(b) (Supp. 1986).

25. O.C.G.A. § 50-16-183 (Supp. 1986). However, the Commission's approval is not

Commission, newly created by the Act, is composed of seven members from within the state government: the Governor, Lieutenant Governor, Secretary of State, State Auditor, and the Commissioners of Agriculture, Insurance, and Labor.²⁶

After a state agency or authority applies to the Commission for approval of a proposed acquisition by condemnation, the Commission may request information for use in its determination.²⁷ The Commission's decision must be made within thirty days of the receipt of the required information or ninety days of the receipt of the application.²⁸ Approval, which requires the affirmative vote of at least four of the seven members,²⁹ must be granted if the Commission finds the proposed condemnation action "is reasonable, necessary, and in the public interest."³⁰ The Commission's determination is "final,"³¹ and the Commission is exempt from the Georgia Administrative Procedure Act.³²

The Act also amends O.C.G.A. § 22-2-130, which sets forth the procedures for condemning property by petition to the superior court, to provide that those procedures apply to the condemnation of public, as well as private, property.

required if the "public property" interest (that is, the property interest held by a governmental entity) is a tax lien or mortgage. *Id.*

26. O.C.G.A. § 50-16-181 (Supp. 1986).

27. O.C.G.A. § 50-16-183(b) (Supp. 1986).

28. *Id.*

29. O.C.G.A. § 50-16-181 (Supp. 1986).

30. O.C.G.A. § 50-16-183(b) (Supp. 1986).

31. *Id.*

32. O.C.G.A. § 50-16-183(e) (Supp. 1986).