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Public Law: Expropriation

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preme court decisions like *Crum*, which further establish the appropriate meaning and scope of a phrase or word (such as "concealed") in a statute.

EXPROPRIATION

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Authority to Expropriate

The recent litigation before the First Circuit in *Louisiana Power & Light Co. v. City of Houma*[1] will probably stand for some time as an example of unparalleled brashness on the part of a private utility in its relations with a municipally owned utility. Tiring of its role as supplier of standby capacity to the municipality as the latter took on additional customers outside of its municipal limits, the private utility sought to expropriate the municipal property outside such limits. There is of course unquestioned statutory power to expropriate private property for the public use of developing and transmitting electricity for power and other uses. The general expropriation statute does not, however, speak to the question of power to expropriate property already devoted to a public use.[2] While the statute conferring expropriation power on the highway department was explicit in vesting power to expropriate public as well as private property,[3] in the statute at hand there is no such explicitness; it is consequently necessary to explore whether the Louisiana courts have developed a doctrine of expropriation power vested by necessary implication. The First Circuit turned to common law authorities for guidance and concluded that there could be no such implied authority save that arising from a necessity so absolute that without it the grant itself would be defeated or rendered meaningless; if applicable, however, the doctrine would apply whether or not the new use be the same or different from the present use.[4] The court's research also indicated that the rule that power to expropriate property already in public use must be express or implied by necessity was subject to an exception termed a "greater public interest" rule, providing that

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1. 229 So.2d 202 (La. App. 1st Cir. 1969), *cert. denied*, Dec. 11, 1969, *rehearing denied*, Dec. 22, 1969.

2. LA. R.S. 19:2(9) (1950).

3. LA. R.S. 48:303 (1950).

4. 229 So.2d 202, 207-08 (La. App. 1st Cir. 1969).

authority to expropriate would be implied (in a setting where the grant of power would not necessarily be defeated or rendered meaningless) if the further public use for which expropriation was sought was of such great importance as to require the existing public use to yield to it and it could be accomplished in no other practical way.[5] Having thus formulated a rule for its guidance, the court turned to the facts before it and found that the private utility proposed to use the expropriated property for the same purpose for which it was presently employed and that a mere allegation that the private utility could furnish more dependable, better, and less expensive service did not fulfill the requirement that the new use be of such great importance to the public as to necessarily imply authority to take property already in public use.[6]

While proceedings to take property in Louisiana must generally be conducted before a district court, there is an exception in the case of property sought to be taken via the police power from a railway under the jurisdiction of the Public Service Commission.[7] Thus, the litigation in *Kansas City Southern Railway v. Louisiana Public Service Commission*[8] had its origin in a proceeding before the Public Service Commission brought by the Department of Highways against a railroad, seeking a right of way across its property. Since the right of way was sought to be taken under the state police power, the requirement of payment of compensation was eliminated.[9] Our supreme court found the railroad subject to such a taking, since a railroad does not hold its right of way in perfect ownership but subject to the implied charter condition that the state, exercising its police power, may damage its property if necessary to establish "new works" necessary to the convenience and safety of the citizenry.[10] Having established the power of the Department of Highways to proceed, the court considered whether the commission had abused its discretion since the crossing point approved was more hazardous than alternative crossing points. The court so concluded and set aside the commission order.[11]

5. *Id.* at 211.
6. *Id.* at 212.
7. LA. CONST. art. VI, § 4; LA. R.S. 45:841 (1950); Illinois Cent. R.R. v. Louisiana Pub. Serv. Comm'n, 224 La. 279, 69 So.2d 43 (1953).
8. 254 La. 160, 223 So.2d 132 (1969).
9. 254 La. 160, 168-69, 223 So.2d 132, 135 (1969); 224 La. 279, 284-85, 69 So.2d 43, 45-46 (1953).
10. 254 La. 160, 168-69, 223 So.2d 132, 135 (1969).
11. *Id.* at 168-78, 223 So.2d at 135-38.

In *Dixie Pipeline Co. v. Barry*[12] the defense was raised that the company was without authority to expropriate because it was not subject to the jurisdiction of the Public Service Commission and therefore not a public utility. The defendants also urged that the company was not a common carrier because the use of its pipeline facilities was limited to customers tendering 10,000 barrels or more of propane gas per month; since the company did not carry gas for all those offering gas it could not be a common carrier.[13] The Third Circuit rejected both of these arguments, noting that the company was not subject to the jurisdiction of the Public Service Commission because it was an interstate common carrier and that a common carrier against whom there was a general public right to a definite use of property did not lose that status by virtue of imposing conditions, applicable to all shippers alike, as to the use of its facilities.[14]

In *Grayson v. Commissioners of Bossier Levee District*[15] the Second Circuit applied a constitutional interpretation limiting the appropriation power (as distinguished from the expropriation power) of a levee district to lands riparian in character when first separated from the state.[16] While the section of land in question would have been riparian had it been separated from the state as a part of a larger parcel located on the river, where the section was lying away from the river and was sold first it could no longer be reached by the appropriation power.[17] The policy of the constitutional interpretation generally appears to be one favoring the spreading of levee burdens as broadly as possible, subject however to the rather erratic effect of the prior sales of sections lying away from the river but contiguous with original grants from the public domain; however large the grant, if riparian in character at the time of its purchase from the public domain it remained subject to the rule.[18] The court also corrected a misapprehension stemming from an early decision granting to levee districts control over drainage chan-

12. 227 So.2d 1 (La. App. 3d Cir. 1969), *rehearing denied*, Oct. 17, 1969.
13. *Id.* at 5-6.
14. *Id.* at 6-7.
15. 229 So.2d 139 (La. App. 2d Cir. 1969), *rehearing denied*, Jan. 6, 1970.
16. LA. CONST. art. XVI, § 4 permits property subject to the appropriation power to be taken in exchange for a payment of the assessed value of the property as compensation.
17. 229 So.2d 139, 142-45 (La. App. 2d Cir. 1969).
18. Jeanerette Lumber & Shingle Co. v. Board of Comm'rs, 249 La. 508, 187 So.2d 715 (1966).

nels for a space of 100 feet on each side of the channel. This action had been erroneously referred to as an exercise of the police power and hence arguably an exercise of appropriation power by the district. However, the Second Circuit pointed out that the statute actually provided for mere maintenance of drainage channels and not for vesting of power to appropriate. As a consequence, the property owner was deemed entitled to recover the fair market value of the servitude taken for such purposes on the sides of the newly constructed canal.[19]

Damages

In *Michigan Wisconsin Pipeline Co. v. Miller*[20] the Third Circuit ruled that the addition of a *second* pipeline servitude resulted in a thirty per cent loss in market value and that, consistent with prior jurisprudence, this percentage loss would be deemed to affect adjacent footage along the servitude.[21] Earlier in *Dixie Pipeline Co. v. Barry*[22] the Third Circuit had held that the taking of a *third* servitude was deemed to further reduce adjacent property values. While it is not clear from the *Miller* opinion exactly what is the jurisprudence with which it is sought to be consistent, there is quoted in the *Barry* case an appraiser's statement that the "Veterans Administration . . . will not accept a residence for financing within 300 feet from a pipeline," a factor which, if applicable, would seem to sustain the additional damage deemed to result in *Miller* from widening the existing servitude.[23]

Where a partial taking in conjunction with rerouting a highway results in a diversion of traffic, the general rule is to the effect that such damages as may be suffered by the rerouting are *damnum absque injuria.* Our supreme court adhered to this rule in *Cerniglia v. City of New Orleans.*[24] The rule was again applied in *State, Department of Highways v. Chesson*[25] over the argument of the expropriatee that the rerouting resulted not only in compensable damages from the diversion of traffic but in special damages to his property in that only the rear of his service station faced the highway after the partial taking. None-

19. 229 So.2d 139, 142-45 (La. App. 2d Cir. 1969).
20. 229 So.2d 182 (La. App. 3d Cir. 1969), *rehearing denied,* Jan. 7, 1970, *cert. denied,* 255 La. 482, 231 So.2d 395 (1970).
21. *Id.* at 184.
22. 227 So.2d 1 (La. App. 3d Cir. 1969).
23. *Id.* at 10.
24. 234 La. 730, 101 So.2d 218 (1958).
25. 229 So.2d 763 (La. App. 3d Cir. 1969).

theless, a majority of the Third Circuit held that the general rule was applicable since the state had the right to change highway locations without being responsible in damages to those fronting on the former highway.[26] However, in a concurring opinion one of the judges noted an exception to the *Cerniglia* rule permitting a property owner to recover damages if harmed by a taking in a way particular to him. The concurring judge would have applied the exception here, where as a result of a combination of partial taking with rerouting, damages not shared by others in the vicinity had been suffered by the owner.[27]

In *State, Department of Highways v. Mason*[28] the expropriatee argued that severance damages should be measured by the "cost to cure," consisting of the full cost of restoring the service station to the condition existing prior to the taking of a ten-foot frontal strip. Our supreme court rejected this "cost to cure" concept, noting that such an approach has relevance to the measure of damages "only . . . to demonstrate a diminution in market value resulting from the partial taking. . . ."[29] It further noted the approach should be used only "in special instances wherein the ascertainment of market value of the facility is not possible."[30] The rule as approved by the court was stated to be "the measure of compensation when part of the tract is taken is the difference between a fair market value of the whole tract before the taking and the fair market value of what remains after the taking."[31] Under this "before and after rule" the court found that the expropriatee had demonstrated no diminution of value in the remainder, and affirmed an award limited to the fair market value of the expropriated land and improvements.[32]

In *Reymond v. State, Department of Highways*[33] our supreme court limited the liability of a public body for property damaged but not included within the actual expropriated area "to those instances where there is a physical taking or damage to that property or a special damage peculiar to the particular property and not general damage sustained by other properties similarly

26. *Id.* at 764-65.
27. *Id.* at 766-67.
28. 254 La. 1035, 229 So.2d 89 (1969), *rehearing denied*, Dec. 15, 1969.
29. *Id.* at 1046, 229 So.2d at 93.
30. *Id.* at 1046-47, 229 So.2d at 93.
31. *Id.* at 1045, 229 So.2d at 93.
32. *Id.* at 1047-50, 229 So.2d at 94.
33. 255 La. 425, 231 So.2d 375 (1970).

located."[34] Applying that rule to the facts presented, it disallowed damages both for impairment of access and damages due to traffic noise as not being special damages entitled to be recovered. Such unrecoverable damages were not limited to the expropriatee and her neighbors or even to the neighborhood; all owners of nearby property suffered the noise of traffic and the necessity of viewing less pleasant surroundings.[35] The court also stated that physical damage recoverable must be approximately caused by the improvement or be the immediate direct and necessary result thereof.[36] Consequently, the court limited the award to a sum representing diminution in market value of plaintiff's residence by reason of structural damage attributable to vibration from pile driving activity.[37] The court rejected an argument that article 667 of the Civil Code was applicable, confining that article to damages stemming from structural changes in or on the land and not to work carried on thereon.[38]

Methods of Valuation

Over a period of many years, valuation of expropriated leasehold interests has presented the courts with perplexing problems. Last term, in *State, Department of Highways v. Holmes*,[39] our supreme court corrected a leasehold valuation approach earlier approved which resulted in duplication of compensation to the expropriatees. In that case it was decided that where there had been a valuation of the entire estate, including the leasehold interest, the state's obligation to pay just compensation was discharged by the payment of that entire value. Since the value of the leasehold advantage was included in the value of the entire estate, the expropriator could properly apportion that value between lessor and lessee but additional payment to the lessee was error.[40] The *Holmes* jurisprudence was applied in *State, Department of Highways v. D & J Realty Co.*,[41] resulting in reversal of a Second Circuit decision which had awarded the value of the leasehold advantage to the lessee

34. *Id.* at 447, 231 So.2d at 383.
35. *Id.* at 448-49, 231 So.2d at 384.
36. *Id.* at 450, 231 So.2d at 384.
37. *Id.*
38. *Id.* at 438-45, 231 So.2d at 380-83.
39. 253 La. 1099, 221 So.2d 811 (1969). *See* Note, 30 LA. L. REV. 285, 346 (1969); *see also* M. DAKIN AND M. KLEIN, EMINENT DOMAIN IN LOUISIANA 285 (1970).
40. 253 La. 1099, 1110-11, 221 So.2d 811, 815 (1969).
41. 254 La. 1149, 229 So.2d 344 (1969), *rehearing denied*, Dec. 15, 1969.

in addition to awarding the value of the entire property to the lessor.[42]

The *D & J Realty Co.* decision may also be regarded as approval of the method of valuation used in arriving at the value of the leasehold advantage, although the method was not a matter for court consideration. Thus, whereas in some earlier cases the leasehold advantage had been valued by calculating the advantage in dollars per month and multiplying this amount by the number of months for which the leasehold was to be held, in this case the leasehold advantage was properly valued by arriving at the leasehold advantage per month and discounting such monthly amounts as an annuity at an appropriate interest rate reflecting the risks applicable to the particular leasehold.[43]

In *Arkansas Louisiana Gas Co. v. Louisiana and Arkansas Railway*[44] the Second Circuit valued a servitude across a railroad right of way at $62.00 by using the "going rate" for the property rights taken.[45] In an earlier instance, the same railroad had persuaded the court to accept evaluation of a similar right of way based upon discounting an annual rental of $20.00 in perpetuity at six per cent for a present value of $333.00. The railroad urged that the same approach be used.[46] The court refused and disposed of its prior jurisprudence by noting that it had not intended to establish an exclusive method of assessing value. It did not attempt to reconcile the disparate results except to note that the present servitude was in a country area whereas the prior servitude was in an urban area, a circumstance probably irrelevant in the expropriation of railroad right of way.[47] More relevant would have been a recognition that the previously capitalized rental was excessive in terms of the value now arrived at on the basis of comparable sales.

In *State, Department of Highways v. Cefalu*[48] a tract of unimproved land had been leased for $350.00 per month because of its position adjacent to a projected interchange; some eleven per cent of the tract was taken as a temporary work servitude

42. *Id.* at 1160-61, 229 So.2d at 348.
43. *Id.*
44. 234 So.2d 231 (La. App. 2d Cir. 1970).
45. *Id.* at 233. *Cf.* Michigan Wis. Pipeline Co. v. Fruge, 227 So.2d 606 (La. App. 3d Cir. 1969), *rehearing denied*, Oct. 22, 1969, *second rehearing denied*, Oct. 23, 1969, *cert. denied*, 255 La. 149, 229 So.2d 732 (1970).
46. Arkansas La. Gas Co. v. Louisiana and Ark. Rwy., 165 So.2d 317 (La. App. 2d Cir. 1964), *cert. denied*, 246 La. 831, 167 So.2d 664 (1964).
47. 234 So.2d 231, 232 (La. App. 2d Cir. 1970).
48. 233 So.2d 273 (La. App. 1st Cir. 1970), *rehearing denied*, April 13, 1970, *cert. denied*, 256 La. 373, 236 So.2d 502 (1970).

in connection therewith. During the construction period, it was estimated that the rental of the entire tract for storage purposes would not be more than $50.00 per month, and the trial judge concluded that the lessee would thus lose $300.00 per month for the work period; therefore, he was entitled to severance damages of $10,500. The First Circuit designated such loss as *damnum absque injuria* and disallowed it.[49] There was evidence in the record, however, that comparable sales of property, made without taking the improvement into account, had been at the rate of forty cents per square foot, and on this basis the court arrived at a fair market value of $2,600 for the tract taken; it then allowed a ten per cent return on this sum for a period of three years as damages.[50] Awarding the undiscounted value for three years ignores the fact that no informed investor would pay such undiscounted amount; he would pay only the present value of the payments treated as an annuity and discounted at an appropriate rate of interest.[51]

In *Cypress-Black Bayou Recreation and Water Conservation District v. Conger*[52] the land taken was conceded to have as its highest and best use development as a residential subdivision. The trial judge had accepted as the fair market value of the property an estimate based on sale of the raw acreage as residential lots less development costs. The Second Circuit rejected this approach as placing too great an emphasis on the price at which individual residential lots could be sold and consequently as indulging in assumptions too uncertain and conjectural. It annulled the award and remanded the case for a determination of the "value [of] the property on an acreage basis, in its present condition as raw land suitable for subdivision purposes, that is, what a developer would pay for the unimproved land."[53] Despite rejection by the court, the so-called "subdivision residual method" has been used in Louisiana; the validity of its use will of course turn on the reality of deductions for developers' costs.[54]

49. *Id.* at 275.

50. *Id.* at 278.

51. State, Dept. of Highways v. Cockerham, 182 So.2d 786 (La. App. 1st Cir. 1965), *cert. denied*, 249 La. 110, 185 So.2d 219 (1966); *see also* M. DAKIN AND M. KLEIN, EMINENT DOMAIN IN LOUISIANA 285 (1970).

52. 234 So.2d 212 (La. App. 2d Cir. 1970), *rehearing denied*, April 28, 1970.

53. *Id.* at 215.

54. State, Dept. of Highways v. Colomb, 225 So.2d 280 (La. App. 4th Cir. 1969), *rehearing denied*, July 31, 1969, *cert. denied*, 254 La. 839, 227 So.2d 589 (1969). *See* cases collected in M. DAKIN AND M. KLEIN, EMINENT DOMAIN IN LOUISIANA 203 and following (1970).

In *State, Department of Highways v. Colomb*[55] the Fourth Circuit did in fact apply the "subdivision residual method" rejected by the Second Circuit. In this instance, the court concluded that development of the tract for subdivision purposes was its highest and best use and was reasonably prospective. It accepted an estimate of value based on retail lot sales less only a ten per cent "builder's discount" and rejected an estimate which would have reduced retail lot sale price by a twenty-five per cent developer's profit and a ten per cent advertising and marketing cost estimate, reasoning that a well-informed owner would be best advised to develop the particular property himself and eliminate developer's profit.[56] It should be noted, however, that even though the landowner serves as his own developer, he would still have to take the time to show the land to prospective buyers, and he would incur advertising costs. In addition, the cost of carrying the investment would have to be taken into account. All of these factors are presumably involved in the twenty-five to thirty-five per cent discount alluded to by the Department of Highways and rejected by the court as discount for developer's and marketing costs.[57]

Procedural Matters

In *Columbia Gulf Transmission Co. v. C. J. Grayson, Inc.*[58] a pipeline company, proceeding under the general expropriation statute, obtained a judgment adjudicating the property to the expropriator and awarding compensation to the expropriatee. The expropriator took title but appealed the amount of the compensation award; the expropriatee sought dismissal of the appeal on the ground that the expropriator was appealing from a divisible judgment and had failed to designate the portion complained of pursuant to article 2085 of the Code of Civil Procedure. The Second Circuit, noting that the expropriator was appealing under an expropriation statute[59] which had no provision with respect to specifying the portion of the judgment complained of, found no legislative intent to repeal such existing special appeals statutes in enacting the Code of Civil Procedure.[60]

55. 225 So.2d 280 (La. App. 4th Cir. 1969), *rehearing denied*, July 31, 1969, *cert. denied*, 254 La. 839, 227 So.2d 589 (1969).
56. *Id.* at 283-84.
57. M. DAKIN AND M. KLEIN, EMINENT DOMAIN IN LOUISIANA 208-11 (1970).
58. 232 So.2d 150 (La. App. 2d Cir. 1970).
59. LA. R.S. 19:13 (1950).
60. 232 So.2d 150, 153 (La. App. 2d Cir. 1970).

In *Humble Pipeline Co. v. Roy Aucoin, Inc.*[61] the expropriatee called in cross-examination an appraiser who had been employed by the expropriator to make an appraisal but whose appraisal was not utilized by the expropriator and who was not called as a witness by him. The expropriatee relied upon article 1634 of the Code of Civil Procedure, which provides: "Any party or his representative may be called as a witness and cross examined by an adverse party without the latter vouching for his credibility, or being precluded from impeaching his testimony." The article also defines representative as an "officer, agent or employee having supervision or knowledge of the matter in controversy. . . ." The expropriator maintained that the appraiser was not their representative and therefore should not have been called in cross-examination. On appeal, the First Circuit agreed and overruled the case the expropriatee relied upon as precedent.[62] The error occurred, the First Circuit noted, as a result of an improper extension of *State, Department of Highways v. Cook*,[63] in which the expropriatee was permitted to call in cross-examination, in a procedure under the highway "quick-taking" statute, the appraiser who had signed the certificate of appraisal introduced in the proceeding but who had not been called to testify. In *State, Department of Highways v. Kurtz*[64] the expropriatee was permitted to call in cross-examination an appraiser who had been employed by the expropriator but who had not signed the estimate of just compensation annexed to the expropriator's petition. The First Circuit specifically overruled the *Kurtz* holding and stated that even the *Cook* holding should be limited to the special circumstances prevailing under the highway "quick-taking" statute where an appraiser signs the declaration of just compensation but is not called as a witness by the expropriator.[65] In the instant case under the general expropriation statute,[66] since there was no signing of a declaration of just compensation by the appraiser, there was no basis under the *Cook* holding for calling the appraiser in cross-examination.

In *State, Department of Highways v. Hunt*,[67] our supreme court again applied the *State, Department of Highways v.*

61. 230 So.2d 365 (La. App. 1st Cir. 1969), *rehearing denied*, Feb. 2, 1970.
62. *Id.* at 374.
63. 124 So.2d 221 (La. App. 2d Cir. 1960).
64. 143 So.2d 761 (La. App. 1st Cir. 1962).
65. 230 So.2d 365, 375 (La. App. 1st Cir. 1969).
66. LA. R.S. 19:2.1 (1950).
67. 255 La. 513, 231 So.2d 563 (1970), *rehearing denied*, Feb. 23, 1970.

Baddock[68] rule to preclude reduction of the amount deposited in court by the department unless it has been specifically put in issue by the department. In the *Hunt* case, the department appealed an award for compensation and severance damages in excess of deposit and, on appeal, succeeded on original hearing in reducing the award for compensation and eliminating severance damages. On rehearing, however, the First Circuit restored the amount of severance damages included in the original deposit, since the department had failed to apply for a rehearing specifically as to this portion of the judgment. However, since the award of compensation was greater than the amount of the deposit reduced by such severance damages, the court simply added the amount of severance damages to the original deposit.[69] On review, the supreme court affirmed the application of the *Baddock* rule but eliminated the excessive part of the severance damages.[70] The so-called *Baddock* rule provided that " 'should the Department seek at the trial any determination of just and adequate compensation, whether for the land taken or severance damages, lower than the estimate contained in its initial petition, it is incumbent upon the Department to so notify the defendant by filing an amended pleading setting forth this revised sum and give satisfactory reasons therefor at the trial.' "[71] (Emphasis deleted.) A dissenting justice would overrule *Baddock* on the ground that it violates the provision in the statute: "If the compensation finally awarded is less than the amount so deposited, the Court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess."[72] The dissenting justice was of the opinion that the statute would not allow the innovation set forth in *Baddock*.[73]

In *Reymond v. State, Department of Highways*,[74] our supreme court stated: "One of the primary reasons for granting a writ in this case was to clear up the confusion in the appellate jurisprudence as to whether the Department of Highways is immune from suit."[75] In the interim prior to decision, however,

68. 170 So.2d 5 (La. App. 1st Cir. 1964), *cert. denied*, 247 La. 351, 170 So.2d 867 (1965).
69. 219 So.2d 602 (La. App. 1st Cir. 1969).
70. 255 La. 513, 231 So.2d 563 (1970).
71. *Id.* at 526, 231 So.2d at 568.
72. LA. R.S. 48:456 (1954).
73. 255 La. 513, 526, 231 So.2d 563, 568 (1970).
74. 255 La. 425, 231 So.2d 375 (1970), *rehearing denied*, Feb. 23, 1970 .
75. *Id.* at 436, 231 So.2d at 379.

the court decided *Herrin v. Perry*,[76] which held that the constitutional clause[77] and implementing legislation[78] which permitted the department to sue and be sued effectuated a general waiver of the immunity from suit formerly enjoyed. Since the *Herrin* case was a suit in tort, this was deemed to effectively dispose of the argument that the court had never held the phrase to "sue and be sued" to be a waiver of immunity in actions in tort.[79] The court also noted that it had said in *Hamilton v. City of Shreveport*[80] that the scope of the constitutional "amendment cannot be limited by this court since it is clear and precise in its wording. It enumerates all the governmental bodies that are to be affected, and makes the waiver of their immunity from suit and liability '. . . for all purposes . . .' all-inclusive."[81]

STATE AND LOCAL TAXATION

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License Taxes

Amongst the welter of "statutory" provisions contained in our Constitution is one exempting the pursuit of agriculture from occupational license taxes.[1] In *Stanford v. Louisiana Sweet Potato Advertising and Development Commission*,[2] plaintiffs using this constitutional provision attacked a legislative act which prescribed a "tax" on all shipments of sweet potatoes for which the inspection certificates and tags of the Louisiana State Department of Agriculture and Immigration had issued; the tax was to be imposed upon and collected from the shipper.[3] While the supreme court did not preclude the possibility of a constitutional fee covering only the cost of certification of sweet potatoes, here the determination was that the fee, if such it were, clearly exceeded the legitimate cost of regulation and the necessary or probable expenses of licensing, inspecting, and regulating the agricultural pursuit of raising sweet potatoes and was hence really a tax thereon.[4] The fact that the proceeds of the fee were

76. 254 La. 933, 228 So.2d 649 (1969).
77. LA. CONST. art. III, § 35.
78. LA. R.S. 48:22 (1950).
79. 255 La. 425, 437, 231 So.2d 375, 379 (1970).
80. 247 La. 784, 174 So.2d 529 (1965).
81. 255 La. 425, 438, 231 So.2d 375, 380 (1970).

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1. LA. CONST. art. X, § 8.
2. 255 La. 96, 229 So.2d 712 (1969).
3. La. Acts 1942, No. 294.
4. 255 La. 96, 101-02, 229 So.2d 712, 714 (1969).