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EXPROPRIATION

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AUTHORITY TO EXPROPRIATE

There were legislative additions to the law of expropriation during the year which have been dealt with in another symposium.[1] Reference should be made to that symposium for comment on the separate statute for expropriations by municipalities which has been restored after two years of reliance upon the general expropriation law. Restoration was probably prompted by the 1974 delegating clause which seemed to eliminate the need for negotiations prior to resort to expropriation.[2] It should also be noted that, in adopting substantial revisions to the Civil Code articles on servitudes, the legislature did not disturb its recent codification of the *St. Julien* rule which overruled *Lake, Inc. v. Louisiana Power and Light Co.*[3]

In *Wood v. Board of Commissioners*[4] the Fourth Circuit Court of Appeal held that where title to land is in the state at the time levees are constructed thereon, a servitude for levee development arises which negates the need for appropriation or expropriation in the event further construction work on the levees is necessary after the lands have passed into private hands.

In *State v. Jeanerette Lumber and Shingle Co.*[5] the Louisiana Supreme Court held that the issue whether property was taken for a highway

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1. *The Work of the Louisiana Legislature for the 1977 Regular Session—Expropriation*, 38 LA. L. REV. 115 (1977).

2. LA. R.S. 19:101-115 (Supp. 1977).

3. 330 So. 2d 914 (La. 1976). The *Lake* decision was overruled in LA. R.S. 19:14 (Supp. 1976). In comment (e) to Louisiana Civil Code article 740 it is noted that "[t]he modes of acquisition of servitudes under the Civil Code are not exclusive of other modes of acquisition to the same extent as heretofore recognized under the law. See e.g. *Lake v. Louisiana Power & Light Company*, 330 So. 2d 914 (La. 1976), and R.S. 19:14." In the Exposé Des Motifs incorporated in Act 514 of 1977 there is the further comment that under article 740, *apparent* servitudes may be acquired by prescription or by destination of the owner, even though they might have been considered discontinuous under the regime of the 1870 Code and thus insusceptible of such modes of acquisition.

4. 338 So. 2d 744 (La. App. 4th Cir. 1976).

5. 350 So. 2d 847 (La. 1977).

purpose, as distinguished from merely a public purpose, was properly raised by a timely motion to dismiss. The court also announced that the issue of the necessity of the taking was properly raised if accompanied by allegations of arbitrariness, capriciousness, or bad faith in determining the necessity of the taking.[6] Thus on judicial review it was held that the taking of a canal right of way for use in the construction of interstate highway through the Atchafalya Floodway was for highway purposes but that use of the canal thereafter for access to recreational waters was not. In *State v. Olinkraft, Inc.*,[7] the Louisiana Supreme Court announced that a timely motion to dismiss would properly put in issue whether the taking was not only for a public purpose but also for a highway purpose. The court further held, however, that an allegation of lack of public purpose in a taking in full ownership, as distinguished from a servitude, did not relate to purpose but only to necessity and that such an issue would not be considered on judicial review except for the purpose of determining whether the expropriating agency acted arbitrarily or in bad faith in deciding that the taking was necessary. Finding a rational basis for the decision and an absence of bad faith, the court refused to substitute its judgment for that of the agency.[8] The result of these holdings is to require the state to make a showing that a taking is not merely for a public purpose but specifically for a highway purpose under the language of both the 1921 and 1974 constitutions and the enabling legislation thereunder.[9] The further result is to modify the decision in *State v. Guidry*,[10] which precluded review of the issue of necessity of a taking for highway purposes, so as to provide for judicial review of that issue, when timely raised on a motion to dismiss, to the extent of determining "whether the expropriating agency acted arbitrarily, capriciously, or in bad faith in determining the necessity of the taking . . . ."[11]

THE NATURE OF THE INTEREST TAKEN

The extent of the interest taken for an airspace servitude and the resulting remaining rights of the expropriatee came up in a context which is increasingly commonplace as airspace takings become necessary around

6. *Id.* at 863.
7. 350 So. 2d 865 (La. 1977).
8. *Id.* at 874-75.
9. La. Const. of 1921, art. VI, § 19.1; LA. CONST. art. I, § 2, *as implemented by* LA. R.S.. 48:446, 460 (Supp. 1975).
10. 240 La. 516, 124 So. 2d 531 (1960).
11. State v. Olinkraft, Inc., 350 So. 2d 865, 873 (La. 1977).

burgeoning airports. In *Greater Baton Rouge Airport District v. Hays*,[12] the court had to decide whether an avigation servitude or a clear zone servitude was being taken in order to appraise the adequacy of the award. The court's decision that the taking involved an avigation servitude meant a greater award and greater severance damage since the remaining uses of the property are thereby limited by more extensive building restrictions.[13]

EXPROPRIATION V. EXERCISE OF POLICE POWER

Drawing the line between an exercise of the police power and an expropriation continues to be troublesome. In *Arkansas-Louisiana Gas Co. v. City of Minden*,[14] for example, the court held that requiring a utility servitude owner to lower a pipeline, so that a natural drain could be deepened, was an expropriation rather than a mere exercise of the police power and required compensation to be paid. The action required by the city, the court noted, was not taken because the utility's pipeline constituted a menace or hazard to the public safety but was required in the course of fulfilling a duty by the city to clear and improve a natural drain. To bring the requirement of such action within an exercise of the police power would be "to extend . . . a potentially dangerous power beyond the limits of reason and the necessities of public purpose."[15] On the other hand, in *Skye Realty Co. v. State*,[16] where the abutting owner had been occupying an existing unused right of way for parking and access to other parking, the damage suffered when such right of way was fully utilized by the state was non-compensable as not a "taking" but an exercise of the police power.[17] Nor was the damage compensable independent of a taking since the injury to the owner was suffered in common with all other owners along the widened street and was not special or peculiar to his property.[18]

DAMAGES

The principle of offset to severance damages for benefits stemming from an improvement is subject to limitations as to the character of such benefits. To be offset, such benefits must inure exclusively to a property

12. 339 So. 2d 431 (La. App. 1st Cir. 1976).
13. *Id.* at 434, 437-40.
14. 341 So. 2d 607 (La. App. 2d Cir. 1977).
15. *Id.* at 609.
16. 345 So. 2d 249 (La. App. 3d Cir. 1977).
17. *Id.* at 252.
18. *See also* Reymond v. State, 255 La. 425, 231 So. 2d 375 (1970).

or properties. The benefits must, in other words, be special to particular properties and not shared generally by the community.[19] Thus a remainder tract so situated after the taking as to have a unique or peculiar advantage from the new interchange would enjoy a special benefit whereas the convenience enjoyed by the neighborhood in having an interstate entrance nearby would affect all values and would be a general benefit.[20] The distinction was applied by the Louisiana Supreme Court in *State v. Wells*[21] in disallowing an offset of value increase urged as special where evidence established the increase was one common to all property in the vicinity.[22] *Wells* also provides an authoritative statement as to the legislative intent of the provision in the highway quick-taking statute that allows severance damages to be determined at trial which must be held within a year from notification of acceptance of the project.[23] This provision, the court notes, was not intended to move the general valuation date to the time of trial but only "to specify . . . that the damages the remainder suffers should be reduced by special benefits which result to it from the completion of the highway construction . . . ."[24] This advantage to the state cannot be insured, however, since the remainder owner is free to litigate the issue of severance damages at the time of taking. *State v. Regent Development Corp.*[25] illustrated this recently when severance damage was allowed without offset of special benefits because the benefits were "speculative, conjectural, and uncertain as of the date of trial."[26] Such speculation was enhanced in *Regent* since the expropriation was characterized as an "advance taking" with the construction not yet approved and litigation to stop the project pending.[27] Special benefits, when urged by the state, must now be specially pleaded.[28]

19. M. DAKIN & M. KLEIN, EMINENT DOMAIN IN LOUISIANA 86-87 (1970).
20. *Id.*
21. 308 So. 2d 774 (La. 1975).
22. *Id.* at 776.
23. LA. R.S. 48:451(1) (1950).
24. 308 So. 2d at 776. In 1974 the language of the statute was amended to make this meaning clearer. LA. R.S. 48:453 (Supp. 1974) now reads: "The measure of damages, if any, to the defendant's remaining property is determined on a basis of immediately before and immediately after the taking, taking into consideration the effects of the completion of the project in the manner proposed or planned." *See also* Comment, *Expropriation by Ex Parte Order for Highway Purposes in Louisiana*, 26 LA. L. REV. 91, 102-03 (1965).
25. 344 So. 2d 46 (La. App. 4th Cir. 1977).
26. *Id.* at 52.
27. *Id.* at 51.
28. LA. R.S. 48:456.1 (Supp. 1974).

Special benefits are subject to the further limitation that they be offset only against severance damages and not against the award for land taken. Considered in combination with the "front land-rear land" rule developed primarily in connection with highway widening projects, the results have not been happy for a highway department concerned with husbanding its resources.[29] Thus a remainder left after a taking may front on a four-lane highway and hence be so valuable that severance damages are out of the question, nothing against which to offset special benefits usually being present. In this posture of the case, the state has attempted to use an "average value" for the land taken rather than its commercial frontage value which may be considerably higher. The state hopes to minimize damage to the public fisc stemming from the fact that no offset is permitted against the award for special benefits conferred on the remainder which has become commercial frontage. However, the Louisiana Supreme Court has now definitively rejected this approach in *State v. Hoyt,*[30] stating:

> The landowner is . . . to be awarded the actual market value of the particular portion of the property taken, valued according to its highest and best use. He is not limited to its average per-acre value as a pro rata portion of the parent tract where the front portion has a different and higher best-use value.[31]

The owner may thus achieve, as he did in *State v. Westport Development Co.*[32] the eminently satisfactory result of being compensated for commercial land taken while enjoying a metamorphosis of the remainder into the same high value commercial frontage. There is apparently no legislative disposition to temper this rule. A recent enactment, albeit unintentionally, actually worked a further detriment to the highway department's attempts at husbandry. In the 1974 amendments to the quick-taking statute there was included a provision for the award of attorney's fees where the court award is more than the amount deposited by the state in the registry of the court.[33] In *State v. Johnson*,[34] the state continued its tenacious resistance to the "front land-rear land" valuation rule, ignoring appellate court holdings and only increasing its deposit under the threat of *Hoyt*. The trial judge nonetheless refused to grant attorney's fees as prayed for under the

29. M. DAKIN & M. KLEIN, *supra* note 19, at 88.
30. 284 So. 2d 763 (La. 1973).
31. *Id.* at 764.
32. 332 So. 2d 918 (La. App. 2d Cir. 1976).
33. LA. R.S. 48:453(E) (Supp. 1974).
34. 341 So. 2d 12 (La. App. 3d Cir. 1976).

new provision. The appellate court whose holdings in the matter had not been followed characterized the action of a trial court judge as an abuse of discretion subject to reversal; the result to the state was payment of the higher value for the land taken plus payment of attorney's fees for engendering pointless litigation.[35]

In *State v. Advance Enterprises*,[36] the court followed *State v. Denham Springs Development Co.*,[37] refusing to distinguish between loss of developed parking area and loss of area available for development, since in each case damage results to the shopping center in the form of inability to supply parking space at the recommended rate of three square feet for each square foot of building space. Damages were calculated by determining the percentage loss in parking space and applying that percentage to the depreciated value of the shopping center.[38] Against severance damages awarded a credit was given for the cost of developing the parking space taken.[39]

In *Louisiana Intrastate Gas Corp. v. Girouard*,[40] additional status was achieved for crawfish as a crop for which there must be compensation if damaged in a taking of servitude for right of way. The highest and best use of the land was rural homesite and agriculture and the crawfish ponds involved were dealt with as part of an agricultural enterprise, it being noted that they were a supplementary crop for rice growers. Severance damage for the crop was based on estimates of per acre harvest and current market price per pound. That amount was reduced, however, for the failure of the owner, without satisfactory explanation, to mitigate his crop loss by repairing levees and reflooding ponds after the taking.[41] The crawfish specialists called to testify were accorded expert fees since their expertise was "of some value to the court."[42]

Last year it was noted in the pages of this Review[43] that the legisla-

35. *Id.* at 16.

36. 332 So. 2d 899 (La. App. 2d Cir. 1976).

37. State v. Denham Springs Dev. Co., 307 So. 2d 304 (La. 1975).

38. 332 So. 2d at 902-03. Compare the method used in *Denham Springs* of calculating the loss in income from loss of parking space and reducing such loss to present value. 307 So. 2d at 306-07.

39. 332 So. 2d at 905.

40. 336 So. 2d 1042 (La. App. 3d Cir. 1976).

41. *Id.* at 1044-45.

42. *Id.* at 1048-49.

43. *The Work of the Louisiana Legislature for the 1976 Regular Session—Expropriation*, 37 LA. L. REV. 147 (1976).

ture had codified the *St. Julien* rule of estoppel[44] in response to a judicial decision excluding electric transmission line right of way from classification as a continuous and apparent servitude which could be acquired by unopposed use or possession.[45] In *State v. Thurston*,[46] in a taking for highway widening, the state was unopposed in its position that a servitude had been established in the paved surface of a rural highway. However, it was unsuccessful in an attempt to prove that the shoulders and ditches had also been acquired under the *St. Julien* rule and need not be compensated for in the second taking for the purpose of widening the existing highway. The court found no proof of construction or dominion over these areas "which would have clearly indicated to the landowner at that time the dimensions of the land area which the department intended to occupy for a public purpose."[47]

In *Thurston* the issue was raised in the answer of the landowner by contesting the amount of land taken. In *State v. Boss*,[48] however, the issue was raised only in the process of taking evidence without amendment of pleadings. The trial court was reversed in making an award which compensated the owner for more than the land sought to be taken in the expropriation judgment on the basis of non-compliance with the *St. Julien* rule, even though the recorded right of way showed no servitude beyond the paved surface of the road, and there was no evidence of dominion by the state over the shoulder area.[49]

VALUATION

In *Reddel v. State*,[50] another variant of valuation time in inadvertent takings was announced. It is a well-established rule that where there is full knowledge of the expropriation at the time of the taking, as there was in *A.K. Roy, Inc. v. Board of Commissioners*,[51] the date of valuation will be fixed at the date of the actual taking. Where there is no actual knowledge at the time of the taking, and where ownership is asserted promptly upon the acquisition of such knowledge, the date of valuation will be the date of

44. LA. R.S. 19:14 (1950). *See* M. DAKIN & M. KLEIN, *supra* note 19, at 40, 164-65.

45. Lake v. Louisiana Power & Light Co., 330 So. 2d 914 (La. 1976).

46. 338 So. 2d 154 (La. App. 2d Cir. 1976).

47. *Id.* at 156.

48. 335 So. 2d 700 (La. App. 2d Cir. 1976).

49. *Id.* at 702.

50. 340 So. 2d 1010 (La. App. 4th Cir. 1976).

51. *See* A. K. Roy, Inc. v. Board of Commissioners, 238 La. 926, 117 So. 2d 60 (1960).

formal expropriation, deemed in *Koerber v. City of New Orleans*[52] to be the date on which the expropriator filed an answer acknowledging expropriation in the owner's suit for compensation. In *Reddel* the Fourth Circuit Court of Appeal held that where there is no full knowledge at the time of taking, but where there is an unexplained delay in asserting ownership after knowledge, the time of valuation will be fixed at the date the expropriatee acquired such knowledge.[53] In a period of burgeoning land prices the owner in *Reddel* understandably argued for the later valuation date of *Koerber* rather than the earlier date of *Roy*. However, the date of acquiring knowledge of the taking is probably equitable in the circumstances since it makes unprofitable a deliberate delay in suing for compensation in order to take advantage of a higher valuation date.

Where the question of damages to remainders is also involved in an illegal taking, a plea of prescription may arise and the point of time from which prescription will run must be determined. In *Greater Baton Rouge Airport District v. Hays*,[54] prescription was urged in a suit for damages but rejected; since only damages from the taking were being sought and since the legal taking occurred, and prescription began, under the general expropriation act, only upon judgment rendered,[55] there could be no prescription incurred in connection therewith even through the actual taking occurred earlier.[56]

Despite the fact that the jurisprudence has been clear for many years that a highest and best use created by the suitability of land for taker's purposes cannot serve as a basis of valuation,[57] arguments for the use of such a basis continue to surface from time to time. Thus in *Louisiana Intrastate Gas Corp. v. Edwards*,[58] it was urged successfully in the trial court that the highest and best use of the rural land over which a pipeline right of way was sought was precisely that for which it was being taken.[59] The appellate court reduced the award of $5000 per acre for "pipeline servitudes" to $1000 per acre for rural farm land.[60]

52. *See* Koerber v. City of New Orleans, 228 La. 903, 84 So. 2d 454 (1955).
53. 340 So. 2d at 1016.
54. 339 So. 2d 431 (La. App. 1st Cir. 1976).
55. LA. R.S. 19:2.1(B) (Supp. 1974). *See* M. DAKIN & M. KLEIN, *supra* note 19, at 349-50.
56. 339 So. 2d at 435-36.
57. *See* M. DAKIN & M. KLEIN, *supra* note 19, at 178-79.
58. 343 So. 2d 1166 (La. App. 3d Cir. 1977).
59. *Id.* at 1167.
60. *Id.* at 1168.

In the valuation process, the role of post-taking comparable sales remains uncertain despite the fact that they may often be sound gauges of value for the purposes of litigation. The court will use such comparables only in a restricted way as, for example, in *State v. Guste*[61] and *State v. DeRouen*[62] where such sales were admitted for the purpose of showing market trends. In *State v. Rosenblum*,[63] however, an attempt to use post-taking comparables to determine directly the market value of expropriated property was rejected.[64] On the other hand, where the problem is one of assessing the magnitude of severance damages as reduced by special benefits as of the time of trial, pursuant to the quick-taking provision which allows the procedure, it seems apparent that post-taking comparables can play a more important role. In *State v. Romano*,[65] involving only severance damages, the court noted that "[i]t is only the value of the property, in its affected state, that is allowed to fluctuate pursuant to the vicissitudes of the market until that amount is determined *as of the time of trial.*"[66] Thus the court amended the trial court judgment to award severance damages based on the difference between the value immediately before the taking and the value at time of trial, taking into account the damage due to lack of access after the taking.[67] Comparable sales of land-locked property were relied upon to fix such value;[68] these might plausibly have been post-taking comparables so long as they were used to establish the effect of land-locking and not other market changes since the date of taking.

The care which must be devoted to use of the income capitalization method of valuation was illustrated in *State v. Ponder*,[69] involving expropriation of allegedly exploitable sand and gravel tracts. The evidence of income which the tracts would produce consisted of testimony concerning royalties produced by another ongoing operation, without relating such testimony to the subject tract's income-producing potential. The value per acre said by the trial court to be based on an income approach was thus rejected as a mere guess; instead, the court used comparable sales data.[70]

61. 319 So. 2d 468 (La. App. 4th Cir. 1975).
62. 228 So. 2d 659 (La. App. 3d Cir. 1969).
63. 344 So. 2d 424 (La. App. 1st Cir. 1977).
64. *Id.* at 425-26.
65. 343 So. 2d 222 (La. App. 1st Cir. 1977).
66. *Id.* at 228.
67. *Id.* at 227-28.
68. *Id.* at 227.
69. 345 So. 2d 106 (La. App. 1st Cir. 1977).
70. *Id.* at 110-11.

State v. Crow,[71] which the trial court cited to buttress its holding, approved the income approach as one of the tools of evaluation, but in that case there was in fact a thoroughgoing development of value on an income basis, utilizing it in conjunction with a cost approach and comparable sales. The criticism to be leveled at the *Crow* case is neglect of the appraisal "buy or build" principle which would, except in unusual circumstances, require rejection of an income capitalization value substantially exceeding depreciated replacement cost new, since an informed buyer would normally reject such a capitalized income price in favor of construction of his own project.[72]

Another vulnerability of the income approach lies in the factors used to construct the estimate of capitalized value. Although the appropriateness of the rate of return and depreciation rates selected are essential to its persuasiveness, courts often give them only the offhand treatment that is illustrated by *Crow*. The factors used are also crucial in arriving at the discounted present value of a lease advantage such as was involved in *State v. Hayward*,[73] since variations in the interest rate used or in the rent to be reserved in lease renewals may make very substantial differences in lessee awards. *Hayward* recognized as essential the discounting of a lease advantage; such discounting has not been uniformly required,[74] although in the most frequently cited case, *State v. Cockerham*,[75] the award to the lessee was the discounted present value of the advantage to be realized by the lessee over the life of the lease.[76]

PROCEDURE

Expert Witness Fees

Perhaps the most frequent procedural point to reach appellate consideration is the magnitude and character of expert fees to be taxed as costs to the expropriator.

Obviously, fees of real estate appraisers are the most commonplace and hence most frequently questioned. The hallmark of legitimacy is that all expert services must aid the court in the disposition of the case.[77]

71. 286 So. 2d 353 (La. 1973).
72. *See* M. DAKIN & M. KLEIN, *supra* note 19, at 240.
73. 338 So. 2d 1171 (La. App. 2d Cir. 1976).
74. *See, e.g.*, State v. Thornton, 220 So. 2d 217 (La. App. 1st Cir. 1969).
75. 182 So. 2d 786 (La. App. 1st Cir. 1965).
76. *Id.* at 801.
77. *See, e.g.*, State v. Allen, 332 So. 2d 922 (La. App. 2d Cir. 1976), and cases cited therein.

Hence, an item submitted with great frequency in recent highway takings has been the fees of photographers, but the courts have with almost equal frequency refused such fees as costs since they are rarely of aid to the court.[78] In *State v. Kornman*,[79] another somewhat novel kind of expertise, that of the stone and marble mason, was successfully taxed as a cost because it was in the nature of expert advice to the court. A faint cry of *sic transit gloria* might have been raised here for the appraisal at issue was the worth of a native stone gateway marking the original entrance to the now subdivided Shushan Estate. The cost of workmanship of the gateway was duly appraised by the expert, but since it had no resale value even for momento purposes because of its size and since it added only aesthetic appeal for the owners of the lots, its destruction was allowed to go uncompensated, no erosion in the pecuniary position of the owners being deemed to result therefrom.[80]

Recovery of expert witness fees as costs is also limited when the suit is not one for just compensation, even though based on the absence of just compensation. In *Alexander v. State*,[81] while the owner was successful in rescinding a voluntary sale to the state on the ground of lesion beyond moiety, expert fees were not taxed as costs to the state since the suit was viewed as an ordinary contract claim which permitted only the taxing of the landowner's share of the stenographic costs.[82]

Only when there has been no tender of the true value of the property may expert fees be taxed as costs.[83] In *South Central Bell Telephone Co. v. Marsh Investment Corp.*[84] the court rejected a letter offer as an inadequate tender because the company did not thereby unconditionally submit the true value prior to filing suit.[85] The court suggested such an expropriator might meet the requisites of the statute by following the procedure for tender under the quick-taking statute: a deposit in the registry of the court which may be drawn down by the expropriatee and is thus "unconditionally submitted" to the owner by the state.[86] In *Louisiana Resources Co. v. Fiske*,[87] it was noted that generally costs consisting of expert fees

78. *Id.* at 924.
79. 336 So. 2d 220 (La. App. 1st Cir. 1976).
80. *Id.* at 226-27.
81. 342 So. 2d 1201 (La. App. 2d Cir. 1977).
82. *Id.* at 1205.
83. LA. R.S. 19:12 (1950).
84. 344 So. 2d 6 (La. App. 4th Cir. 1977).
85. *Id.* at 7-8.
86. *Id.*
87. 343 So. 2d 1219 (La. App 3d Cir. 1977).

are incidental to the main demand, charged along with compensation and damages in a decree prior to judgment and hence appealable only in conjunction with such judgment. The court also held, however, that where expert fees are taken under advisement and taxed in a separate judgment subsequent to judgment on the merits, such judgment is separately appealable providing notice and order of appeal are timely made from the entry thereof.[88]

Administration of Relocation Assistance Benefits

The adoption in 1971 of a Relocation Assistance Act administered by the Department of Highways may inject administrative law concepts into an otherwise judicially administered expropriation scheme.[89] Since the act provides no additional funds for relocation, assistance is to be granted in the discretion of the agency and is to be deemed a gratuity, not compensation for any additional element of value.[90] As a way of husbanding its funds against this additional cost, a department regulation imposes a condition on its recipients: in the event they seek judicial increase of an offer for property, any assistance benefits granted will be credited against such judicial increase over the amount offered by the Department and deposited in the registry of the court.[91] Nonetheless, in *Bounds v. State*,[92] the landowner sought to litigate separately the issue of his entitlement to relocation assistance benefits. On appeal it was held that such a suit was premature since an assistance award or the denial of it is made subject to administrative review under authority delegated by the statute.[93] The suit was dismissed without prejudice to allow exhaustion of administrative remedies although the court would seem to have precedent for passing upon the clear question of law presented as to whether the condition imposed in the regulations was within the grant of power to the department.[94]

88. *Id.* at 1221.
89. LA. R.S. 38:3101-3109 (Supp. 1971).
90. *Id.* 38:3108.
91. Bounds v. State, 333 So. 2d 714, 716 (La. App. 2d Cir. 1976).
92. 333 So. 2d 714 (La. App. 2d Cir. 1976).
93. *Id.* at 717.
94. Oestereich v. Selective Serv. Bd., 393 U.S. 233 (1968).