

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NEW JERSEY**

### **Norfolk Southern Ry. Co. v. Intermodal Properties, LLC**

**Supreme Court of New Jersey - August 6, 2013 - A.3d - 2013 WL 3984516**

Railroad filed petition for authorization to acquire property adjacent to railyard for use in intermodal freight operations through exercise of power of eminent domain. The Department of Transportation (DOT) authorized railroad to commence condemnation proceedings.

The Supreme Court of New Jersey held that:

- Railroad's proposed use of property it sought to acquire through its power of eminent domain was not incompatible with the public interest;
- Property owner could not invoke the prior use doctrine in defense of railroad's attempt to exercise its power of eminent domain; and
- Railroad was not required to prove urgency, immediacy, or emergency of its need for land as a prerequisite to exercising its condemnation power.

Railroad's proposed use of property it sought to acquire through its power of eminent domain was not incompatible with the public interest, even if property owner's proposal for the use of the property might have been more in the public's interest. Statutory provision that governed the power of condemnation by a public utility, including a railroad, demanded that the focus of the proposed use be on the proposed use identified by the contemnor, and in the absence of a previously existing public use, did not permit a comparative analysis of any competing public purpose proposed by property owner.

The "prior public use doctrine" operates to deny the exercise of the power of condemnation when the proposed use will destroy an existing public use or prevent a proposed public use unless the authority to do so has been expressly given by the Legislature or must necessarily be implied. The application of the doctrine, therefore, is both specific and narrow. The prior public use doctrine does not automatically apply merely because property is already being used for a public purpose.

Railroad was not required to prove urgency, immediacy, or emergency of its need for land as a prerequisite to exercising its statutory condemnation power on the basis of the legislature's use of the phrase "as exigencies of business may demand" in statutory provision that governed a railroad's power of eminent domain. The legislature meant the phrase "exigencies of business" to be understood in the way it was used at the time when the language was chosen, which was understood to describe generally the needs of a business, rather than to allude to an emergent, urgent, immediate, or pressing need.