

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - TEXAS

KMS Retail Rowlett, LP v. City of Rowlett

Supreme Court of Texas - May 17, 2019 - S.W.3d - 2019 WL 2147205 - 62 Tex. Sup. Ct. J. 1038

City filed petition to condemn property owner's private road easement to convert it to public road connecting several commercial retail and restaurant sites, awarding owner damages of \$31,662, and owner objected, claiming that the taking was illegal.

The County Court at Law granted summary judgment to city. Owner appealed. The Dallas Court of Appeals affirmed. Owner filed petition for review.

The Supreme Court held that:

- City's condemnation of easement to convert it to public road was statutorily exempt from prohibitions on takings;
- Condemnation was necessary for a constitutional public use; and
- City's taking of easement for public use was not fraudulent.

Transportation Code section authorizing creation of regional mobility authorities for purpose of constructing, maintaining, and operating transportation projects did not concern similar subject matter and possess same general purpose, as would warrant using Transportation Code's definition of "transportation project" in interpreting Government Code's limitation on taking of private property through use of eminent domain for transportation projects, where Transportation Code defined "transportation project" for limited purpose of delineating types of projects it authorized regional mobility authorities to undertake, while Government Code addressed "transportation projects" only to define exception to statute's applicability.

City's condemnation of property owner's private road easement to convert it to public road connecting several commercial retail and restaurant sites was statutorily exempt from prohibitions on takings, even if public road to be constructed would not comply with standards imposed by city's master thoroughfare plan, where statutory exemption's definition of "public road" did not vary according to standards set by local government entities.

City's condemnation of property owner's private road easement to convert it to public road connecting several commercial retail and restaurant sites was necessary for a constitutional public use, even if it was motivated by request of private property owner to attain private benefit, where, regardless of any ulterior motive, taking was necessary for traffic circulation and cross-access between retail areas.

City's taking of property owner's private road easement for public use was not fraudulent, even if it also conferred private benefit upon owner of neighboring tract of land, where, even if city was motivated to confer private benefit, taking easement to convert it to public road connecting several commercial retail and restaurant sites plainly benefited public at large.

