

1959

Constitutionality of State Payment to Relocate Utilities

Roger A. Langenheim
University of Nebraska College of Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Roger A. Langenheim, *Constitutionality of State Payment to Relocate Utilities*, 38 Neb. L. Rev. 553 (1959)
Available at: <https://digitalcommons.unl.edu/nlr/vol38/iss2/10>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

CONSTITUTIONALITY OF STATE PAYMENT TO RELOCATE UTILITIES

The Interstate Highway Act of 1956 provided that when a State paid for the cost of relocating utility facilities, Federal funds could be used to reimburse the State in the same proportion that Federal funds were expended on the overall highway project, provided that such State payment violated neither State law nor contracts between the State and the Utility. To take advantage of these Federal funds, numerous States, including Nebraska, enacted legislation authorizing such State payment. In 1958, however, such legislation was tested in the courts of three States, and found unconstitutional in both Tennessee and New Mexico. In the following comment, the student author examines these cases, analyses the pertinent arguments, and evaluates the constitutionality of the Nebraska statute.

The Editors

I. INTRODUCTION

Extensive Federal aid on a share basis to construct highways has prompted states to take measures to obtain the greatest amount of aid possible. One facet of the Federal road building legislation calls for reimbursement of utility companies for relocating their facilities along Federal Highway rights-of-way. To secure Federal funds available for this purpose, a number of states, since 1956, passed enabling statutes permitting the expenditure of state money for this purpose. The constitutionality of these acts was first questioned in *Minneapolis Gas Company v. Zimmerman*,¹ decided in July of 1958. Within six months after the Minnesota case holding the statute of that state constitutional, *State of Tennessee ex rel. Leech v. Southern Bell Tel. & Tel. Co.*² and *State Highway Commission of New Mexico v. Southern Union Gas Co.*³ were decided. The later cases struck down the enabling statutes, holding them to be repugnant to state constitutional provisions preventing the state from giving or lending its credit in aid of private individuals or corporations.

¹ *Minneapolis Gas Company v. Zimmerman*, — Minn. —, 91 N.W.2d 642 (1958).

² *State of Tennessee ex rel. Leech v. Southern Bell Tel. & Tel. Co.*, — Tenn. —, 319 S.W.2d 90 (1958). Rehearing denied, 319 S.W.2d 94.

³ *State Highway Commission of New Mexico v. Southern Union Gas Co.*, 64 N.M. —, 332 P.2d 1007 (1958).

II. BACKGROUND

The Federal-aid Highway Act⁴ passed by Congress in 1956 creates a network of 41,000 miles of interstate and defense highways to be constructed by the several states, but paid for by Federal funds in the minimum amount of ninety per cent of the total construction cost. The act also provides for the construction of secondary and primary roads. As part of the construction cost, the Federal act specifically provides that a utility—whether publicly, privately, or cooperatively owned—which in the course of such highway construction, is required to change the location of any of its facilities on the right-of-way shall be paid the nonbetterment cost of such relocation out of Federal funds.⁵ The act was amended in 1958 to require states to submit proof of payment of relocation costs before being eligible for Federal aid.⁶

A number of states,⁷ including Nebraska, in order to qualify for Federal reimbursement for relocation costs upon Federal-aid

⁴ 70 Stat. 374 (1956), 23 U.S.C. § 151 (1958).

⁵ 70 Stat. 383 (1956), 23 U.S.C. § 162 (1958) which provides:

“(a) Subject to the conditions contained in this section, whenever ever a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project; Provided, that Federal funds shall not be apportioned to the States under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State.

“(b) For the purposes of this section, the term ‘utility’ shall include publicly, privately, and cooperatively owned utilities.

“(c) For the purposes of this section, the term ‘cost of relocation’ shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.”

⁶ 72 Stat. 95 (1958) added to paragraph (a), note 2 supra., the following:

“Provided further, that such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to the date of enactment of the Federal-Aid Highway Act of 1958 for work, including relocation of utility facilities.”

⁷ A summary of the states’ action is found in U.S. Code Cong. and Adm. News, 85th Cong., 2d Session, pp. 744-746 (1958).

highways within their borders, have found it necessary to enact enabling legislation to meet the conditions and terms prescribed by Congress. The Nebraska statute,⁸ similar to those in other states, provides for the payment to utilities of the nonbetterment cost of relocating their facilities when such relocation is made necessary in furtherance of the Federal road construction program.

At common law, utility companies are required to relocate their facilities, which are located within public highways by permission and license of the state, at their own expense whenever public health, safety or convenience require change to be made.⁹ The Legislature may however make provisions for the future recognition of claims for damages founded on equity and justice, although such claims would otherwise be *damnum absque injuria* and unenforceable against the state.¹⁰ With this common law background in mind, the Legislatures of the several states considered the passage of reimbursement acts to pay utility companies to relocate their facilities.

The constitutionality of a state enabling act providing for reimbursement of utility companies for relocation expenses was first litigated in the Minnesota case of *Minneapolis Gas Company v.*

⁸ Neb. Rev. Stat. § 39-1304.02 (Supp. 1957). State highways; Federal aid; relocation of public utilities; cost. If any projects are undertaken by virtue of the Legislative assent given by section 39-1304.01, it shall be on condition that whenever any utility facility which now is, or hereafter may be located in, over, along, or under any highway or urban extension thereof which is a part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, and qualifying for aid as an interstate and defense highway or urban extension thereof under such federal act, the cost of such alteration, change, moving, or relocation, and the expense of acquiring lands, or any rights and interests in land or any other rights acquired to accomplish such alteration, change, moving, or relocation, shall be paid by the state as a part of the expense of such federally aided projects except when such payment to the utility would violate a legal contract between the utility and the state, or between the utility and a county, city, or village of the state, under the express terms of which contract the utility specifically agrees to pay or assume such costs of alteration, change, moving, or relocation after deducting therefrom any increase in value of the new facility and any salvage value derived from the old facility.

⁹ *Detroit Edison Co. v. City of Detroit*, 332 Mich. 348, 51 N.W.2d 245 (1952); *Jamaica Water Supply Co. v. New York*, 280 App. Div. 834, 114 N.Y.S.2d 79, affirmed 304 N.Y. 917, 110 N.E.2d 739 (1915); 12 *McQuillin, Municipal Corporations* §§ 34.74, 34.77 (3rd ed. 1950).

¹⁰ *Oswego & Syracuse R. Co. v. State*, 226 N.Y. 351, 124 N.E. 8 (1919).

Zimmerman.¹¹ The court held that the Minnesota statute did not violate the state constitution by diverting funds for a non-highway purpose¹²; by authorizing the expenditure of funds for a private purpose¹³; by contracting debts for works of internal improvement¹⁴; by granting to a corporation a special or exclusive privilege, immunity, or franchise¹⁵; or by impairing the obligation of a contract.¹⁶

III. RELOCATION AS A NECESSARY HIGHWAY COST

In holding that the reimbursement act did not violate the Minnesota constitutional prohibition against the diversion of certain funds for non-highway purposes, the court was aided by the broad definition of a highway which was set down in *Cater v. Northwestern Tel. Exch. Co.*¹⁷ and followed in *Minneapolis Gas Co. v. Zimmerman*.¹⁸ The court said:

Clearly since the *Cater* decision in 1895, Minnesota has been definitely committed to the view that the use of rights-of-way by utilities for locating their facilities is one of the proper and primary purposes for which highways are designed even though their principal use is for travel and the transportation of persons and property.

The court then held that nonbetterment relocation costs are a normal and necessary part of highway construction and recon-

¹¹ — Minn. —, 91 N.W.2d 642 (1958). The plaintiff-utility company brought the action for declaratory relief adjudging the reimbursement act to be constitutional and for a peremptory writ of mandamus to compel the Commissioner of Highways to ascertain the cost of relocating utility facilities, to certify the costs thereof to the bureau of roads and to pay the cost out of state highway funds in a sum which would not exceed the amount on which the Federal government based its reimbursement to the state for such relocation. The division engineer of the U.S. Public Roads Administration had approved Federal aid for the project subject to the condition that the state certify by an attorney general's opinion or court decision that payment by the state to the utility company does not violate the law of the state or a legal contract with the gas company in existence at the time the project was approved for Federal participation.

¹² Minn. Const. art. 16, §§ 2, 6.

¹³ Minn. Const. art. 9, §§ 1, 10.

¹⁴ Minn. Const. art. 9, § 5.

¹⁵ Minn. Const. art. 4, § 33.

¹⁶ Minn. Const. art. 1, § 11; U.S. Const. art. I, § 10.

¹⁷ 60 Minn. 539, 63 N.W. 111 (1895).

¹⁸ — Minn. —, 91 N.W.2d 642 (1958).

struction costs which might properly be paid out of the highway fund. An opposite view was taken by the court of Maine¹⁹ in answer to a question propounded by the Senate to the justices relating to the constitutionality of that state's statute²⁰ authorizing reimbursement of utilities for relocation costs prior to its passage. The Maine court held that an act reimbursing utilities for relocation costs was constitutional, but funds used for payment of the company would have to come from a source other than the highway fund. The court said:

We do not commonly consider that a power company in erecting a pole line or a water district in laying a pipe in a highway is constructing a highway. To an even lesser degree would we consider the construction of a pole line or a water pipe across country to be the construction or reconstruction of a highway, although the reason for the relocation was occasioned solely by changes in the highway.

The New Hampshire court, in answer to the same question propounded by the Senate, was of the opinion the Legislature, if it chooses to do so, may validly declare that relocation of utility facilities is a part of the cost of highway relocation and construction and shall be paid out of highway funds.²¹ The act was not passed.²²

IV. PUBLIC PURPOSE ARGUMENTS

The definition of a highway is also important in considering whether or not the expenditure of funds by the state to reimburse utility companies for relocation of their facilities along highway rights-of-way is in violation of constitutional provisions prohibiting a state from lending or giving its credit in aid of individuals, associations or corporations.²³ Historically, the establishment and maintenance of highways has been considered a governmental function that serves and benefits the citizens of a state as a body.²⁴ If the relocation of utilities can be properly considered as the construction of a highway or a necessary incident thereto, there is

¹⁹ Opinion of the Justices, 152 Me. 449, 132 A.2d 440 (1957).

²⁰ 23 Rev. Stat. Maine § 23A (Supp. 1957).

²¹ Opinion of the Justices, — N.H. —, 132 A.2d 613 (1957).

²² U.S. Code, Cong. & Adm. News, 85th Cong., 2d Session 746 (1958).

²³ Nebraska Constitution, Art. XIII, § 3 (Reissue 1956) is similar to provisions found in other state constitutions. It provides: "The credit of the state shall never be given or loaned in aid of any individual, association, or corporation."

²⁴ Minneapolis Gas Company v. Zimmerman, — Minn. —, 91 N.W.2d 642 (1958).

little doubt that expenditure of tax funds for such purpose does not amount to a giving or lending of a state's credit to a private corporation. Under the broad Minnesota definition of a highway, the cost of relocating utility facilities is *a fortiori* an expenditure for a public purpose, since highway construction is a governmental function and highways are designed to be used by utilities. Maine,²⁵ New Mexico,²⁶ Georgia,²⁷ and Tennessee²⁸ took the view that the cost of utility relocation was not a necessary expense of constructing highways and was not an expenditure for a public purpose as such. The Nebraska definition of a road²⁹ means a public way "for the purposes of vehicular travel, including the entire area within the right-of-way."

The court in *State of Tennessee ex rel. Leech v. Southern Bell Tel. & Tel. Co.*³⁰ followed the test promulgated by its earlier case of *Bedford County Hosp. v. Browning*.³¹ The court said the test to determine whether a statute violates the section of the constitution regarding the giving or lending of the state's credit to anyone of the prohibited classes is not the authorization or retention of title by the state, but rather the right to use by the state for its benefit. Since the state did not have the ". . . right of use . . ." of the facilities, the court concluded that reimbursement for adjusting or removing the utility facilities from publicly owned rights-of-way so that a state highway may be improved "is primarily for the benefit of subscribers of utilities or their stockholders, and is neither a state nor a public purpose". A state's right to use the object of a public expenditure was also a test applied in the New Mexico³² and Georgia³³ cases.

Additional arguments that expenditure of public funds for relocation of utility facilities is an expenditure for a public purpose exist even if the relocation cannot be considered a valid expense

²⁵ Opinion of the Justices, 152 Me. 449, 132 A.2d 440 (1957).

²⁶ *State Highway Commission of New Mexico v. Southern Union Gas Co.*, 64 N.M. —, 332 P.2d 1007 (1958).

²⁷ *Mulkey v. McQuilliam*, 213 Ga. 507, 100 S.E.2d 268 (1957).

²⁸ *State of Tennessee ex rel. Leech v. Southern Bell Tel. & Tel. Co.*, — Tenn. —, 319 S.W.2d 90 (1958). Rehearing denied, 319 S.W.2d 94.

²⁹ Neb. Rev. Stat. § 39-1304.02 (Supp. 1957).

³⁰ *State of Tennessee ex rel. Leech v. Southern Bell Tel. & Tel. Co.*, — Tenn. —, 319 S.W.2d 90 (1958). Rehearing denied, 319 S.W.2d 94.

³¹ 189 Tenn. 227, 225 S.W.2d 41 (1949).

³² *Supra*, note 22.

³³ *Supra*, note 23.

of highway construction. The Minnesota court cited these reasons:³⁴

1. The realities of the situation are that the people of Minnesota would suffer economically if the state failed to take advantage of Federal aid made available to the privately and municipally owned utilities of this state. . . .
2. If the utilities located in this state must undertake relocation of their facilities without a right to reimbursement, their costs will be substantially increased and this in turn will be reflected in higher utility rates in Minnesota communities.
3. To the extent that other states effectuate Federal aid to their utilities and Minnesota does not, the people of Minnesota will be paying Federal taxes which will benefit the people of the other states but which will not benefit the people of Minnesota.

Securing Federal aid as a public purpose for the expenditure of state funds is open to some argument. Since utility companies have a common law duty to relocate their facilities when necessary, it might be said that not only are Federal funds being spent unnecessarily, but also state funds are being likewise used.

Department of Highways v. Pennsylvania P.U. Comm.,³⁵ gave this illustration of serving a state purpose by expenditure of funds to secure Federal aid:

. . . Thus, if state 'A' receives from the Federal government 90% of the cost of other utility relocations on interstate highways because the policy of that state is to bear this cost, while state 'B' receives nothing from the Federal government for utility relocations because its policy is not to bear this cost, the citizens of state 'B' will pay on their utility bills for utility relocations in their state, and will also pay in their Federal gasoline tax for a part of the cost of relocating utilities in state 'A'.

This argument is attractive in states that receive Federal aid in a greater proportion than its citizens pay in Federal taxes, but in states that are receiving a lesser amount of Federal aid, the citizens are paying for the relocation of utilities in other states anyway, and it could conceivably be to the advantage of the state to pass up the Federal aid and require their utility companies to do their common law duty.

That the interests of the utility customers was a primary consideration in the passage of the Federal provisions providing for reimbursement of utility companies for relocating their facilities

³⁴ *Minneapolis Gas Co. v. Zimmerman*, — Minn. —, 91 N.W.2d 642 (1958).

³⁵ *Department of Highways v. Pennsylvania P.U. Comm.*, 185 Pa. Super. 1, 136 A.2d 473 (1957).

is apparent from debates on the topic.³⁶ Generally, utility users and the public that uses the highways compose the same group. But when broken down to specific companies, it is apparent that some inequity may arise where a small local company along an interstate right-of-way has to pay the costs of relocating its facilities. Where a large company dominates a state, a utility user and a taxpayer begin to lose their identity and for practical purposes it makes little difference if the public pays for the relocation in the form of higher utility rates or higher taxes. Under a broad view such as adopted by Minnesota and apparently considered by Congress, relocation expenditures can be readily justified as expenditures for a public purpose. New Mexico, Georgia and Tennessee tend to a narrower view of what is a public purpose and look to the company, a private, profit making corporation, as receiving the benefit rather than the user who must ultimately bear the cost.

A. Public Purpose In Nebraska.

Nebraska is apparently committed to a broad definition of a public purpose. In its first case³⁷ construing Article XIII, § 3, of the Constitution of Nebraska, the court stated:

It is the province of the Legislature to determine matters of policy. In appropriating the public funds, if there is reason for doubt or argument as to whether the purpose for which the appropriation is made is a public or a private purpose, and reasonable men might differ in regard to it, it is generally held that the matter is for the Legislature; and to our minds this is the only reasonable conclusion.

In *United Community Services v. The Omaha Nat. Bank*,³⁸ the court stated that legislation authorizing a public power district to contribute its funds for charitable or eleemosynary purposes did not violate the constitutional prohibition against giving or lending the credit of the state in aid of a private individual or corporation.

³⁶ 102 Cong. Rec. 7207-7211 (1956). It is interesting to note that Minnesota lobbyists and Congressmen were instrumental in passage of the Federal Act.

³⁷ *Oxnard Beet Sugar Co. v. State*, 73 Neb. 66, 105 N.W. 716 (1905). Cf. *Power Oil Co. v. Cochran*, 138 Neb. 827, 295 N.W. 805 (1941); *State ex rel. Douglas County v. Cornell*, 53 Neb. 556, 74 N.W. 59 (1898); *State ex rel. Custer County Agricultural Society & Live Stock Exchange v. Robinson*, 35 Neb. 401, 53 N.W. 213 (1892).

³⁸ 162 Neb. 786, 77 N.W.2d 576 (1956).

The court quoted, with approval, the following from *Hager, Auditor v. Kentucky Children's Home Society*.³⁹

These authorities clearly settle that the vital point in all such appropriations is whether the purpose is public; and that, if it is, it does not matter whether the agency through which it is dispensed is public or not; that the appropriation is not made for the agency, but for the object which it serves; the test is in the end, not in the means.

Certainly, as indicated by Congressional debate and the contrary decisions, the constitutionality of state reimbursement of utility costs in relocating facilities along Federal highway rights-of-way is a question upon which reasonable men could differ, and might be considered properly left to the Legislature. By looking to the end rather than the means, it is possible the Nebraska court may use reasoning similar to that in *Minneapolis Gas Company v. Zimmerman*⁴⁰ and hold Nebraska's reimbursement statute⁴¹ constitutional. In the case of electrical power facilities, the argument is stronger for constitutionality since the state's electrical power is entirely generated by public power companies. In *State v. Love*,⁴² the court said: "Section 3, art. XII (now XIII) of the constitution, was intended to prevent the state from extending its credit to private enterprises."

V. COSTS OF RELOCATION

The considerable expense of relocating utility facilities was also noted in the Tennessee decision.⁴³ The court said:

The bill charges that in order to participate in the interstate highway program, it was necessary for the State to appropriate and raise large sums of money, necessitating the enactment of Chapter 264, Public Acts of 1957, authorizing the State Funding Board to issue bonds in the amount not exceeding \$30,000,000.00; that the department has estimated that the cost of relocating utility facilities in connection with interstate highway projects in Tennessee will amount to \$15,370,000.00, which is more than one half of the amount which the Legislature authorized the State to borrow for highway purposes under said Chapter 264, Public Acts of 1957.

³⁹ 119 Ky. 235, 83 S.W. 605 (1904).

⁴⁰ — Minn. —, 91 N.W.2d 642 (1958).

⁴¹ Neb. Rev. Stat. § 39-1304.02 (Supp. 1957).

⁴² 89 Neb. 149, 131 N.W. 196 (1911).

⁴³ State of Tennessee ex rel. Leech v. Southern Bell Tel. & Tel. Co., — Tenn. —, 319 S.W.2d 90 (1958). Rehearing denied, 319 S.W.2d 94.

The New Mexico court might very well have given some consideration to the expense involved in relocating utility facilities since the New Mexico statute⁴⁴ authorizes such aid on Federal aid primary and secondary systems as well as the interstate system. The Nebraska⁴⁵ and Minnesota⁴⁶ statutes authorize relocation reimbursement only on interstate highway projects. Tennessee also has a statute providing for relocation reimbursement on Federal-aid primary and secondary system highways.⁴⁷ Of the sixteen relocation laws passed by the end of 1957, nine relate only to projects on the Interstate system,⁴⁸ six relate to all Federal-aid projects,⁴⁹ and one relates to all state maintained highways.⁵⁰ The laws of Massachusetts and Illinois gave the highway authorities discretion in the matter of whether or not the utilities should be paid for relocating facilities. Nebraska and North Dakota have specifically made reimbursement subject to existing contracts between the utilities and the state or local governments. Only New Mexico and Texas provided that existing contracts are not a bar to payment, but it is apparent from the language of the laws of the other states that such contracts are not an obstacle to reimbursement.⁵¹ The Federal-aid primary and Federal-aid secondary systems, by definition⁵² are quite comprehensive while the interstate system is limited to 41,000 miles within the continental United States. The Federal government pays ninety per cent of the cost and the state, ten per cent of the cost of constructing interstate system highways. Federal aid is on a fifty-fifty matching basis for Federal-aid primary and Federal-aid secondary roads. The expense of relocating utility facilities along the interstate route will be much smaller than that required to relocate facilities under all three systems.

VI. OTHER CONSTITUTIONAL CONSIDERATIONS

An argument that it is for the Legislature to determine what are and what are not compensable damages, was rejected by the

⁴⁴ N.Mex. Stat. § 55-7-18 (Supp. 1957).

⁴⁵ *Supra*, note 38.

⁴⁶ 12 Minn. Stat. § 161.134 (Supp. 1957).

⁴⁷ Tenn. Code § 54.544 (Supp. 1958).

⁴⁸ Delaware, Florida, Illinois, Maine, Minnesota, Nebraska, North Dakota, Oklahoma and Texas.

⁴⁹ Idaho, Massachusetts, Montana, New Mexico, Tennessee and Utah.

⁵⁰ Connecticut.

⁵¹ U.S. Code Cong. & Adm. News, 85th Cong., 2d Session 746 (1958).

⁵² 23 U.S.C. § 103 (1953).

New Mexico court.⁵³ The court said that to say relocation expense could be classified as damages and that the state could then pay such "damages", would permit the circumvention of the constitution by a "play on words." The court said they could see no benefit accruing to the state, no *quid pro quo*, as found to exist in their earlier case of *White v. Board of Education of Silver City*.⁵⁴

The Minnesota court, in *Minneapolis Gas Company v. Zimmerman*⁵⁵ said the classification made in the reimbursement act is germane to the purpose of that law, "which was to obtain for the citizens of Minnesota the full benefits accruing from Federal legislation and from being connected with a national system of interstate and defense highways", thus rejecting an argument that the law was contrary to a constitutional provision⁵⁶ which prohibits the passage of local or special laws. The Minnesota court listed two reasons for holding there was no merit in a contention that the reimbursement act contravened the state⁵⁷ and Federal⁵⁸ constitutional prohibitions against the impairment of the obligation of contracts. They said there was no impairment of contract since only the state and the utility were affected and no third parties acquired any rights under or pursuant to the contract and that all contracts made by the state are entered into subject to the implied condition that they are always subordinate to a reasonable and proper exercise of the state's inalienable police power.

VII. CONCLUSION

Whether or not a state act providing reimbursement for relocation of utility facilities contravenes a constitutional prohibition against the lending or giving of state aid to a private corporation depends mainly upon the perspective from which a court chooses to view the problem. If the problem is viewed from an "ends" rather than a "means" standpoint, the court might find the act constitutional. If the court chooses to look no further than the corporation that is receiving the payment, it is possible that the act will be found unconstitutional. The size of the sum of money a state

⁵³ *State Highway Commission of New Mexico v. Southern Union Gas Co.*, 64 N.M. —, 332 P.2d 1007 (1958).

⁵⁴ 42 N.M. 94, 75 P.2d 712 (1935).

⁵⁵ — Minn. —, 91 N.W.2d 642 (1958).

⁵⁶ Minn. Const. art. 4, § 33.

⁵⁷ Minn. Const. art. 1, § 11.

⁵⁸ U.S. Const. art. I, § 10.

may be obligated to pay under its reimbursement act may also have some influence upon a court. Under Nebraska's past view of what constitutes a "public purpose", it is probably unlikely that the Nebraska reimbursement statute will be declared unconstitutional.⁵⁹

Roger A. Langenheim, '60

⁵⁹ A recent opinion by Harold S. Salter, Nebraska Assistant Attorney General assigned to the Department of Roads, supports a conclusion that the Nebraska Supreme Court will likely find the Nebraska relocation statute constitutional. Of the Tennessee court's attempt to distinguish its earlier case of *Bedford County Hospital v. Browning*, note 31, *supra*., the opinion states: "It is difficult to follow the reasoning and see why the hospital situation and other previous authorities cited are distinguishable from a utility situation. This results in a weakening of the case and greatly strengthens the position taken in a strong dissenting opinion . . ." *Opp. Neb. Atty. Gen.*, No. 21 (1959).