



State of North Carolina
Department of Justice

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ATTORNEY GENERAL

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RALEIGH
27602-0629

28 July 1982

MEMORANDUM

TO: D. R. Holbrook, Director
Ad Valorem Tax Division

FROM: Myron C. Banks *MB*
Special Deputy Attorney General

RE: Exclusion of highway right-of-way from real property
subject to ad valorem taxes.

You have asked my opinion as to whether any land within a highway right-of-way should be included within the owner's (or former owner's) taxable property. There are some minor misconceptions stated in your memo, and in Mr. Holloway's memo to you, which would make a formal opinion somewhat awkward to write so, unless you wish otherwise, I will give you my conclusions informally.

As I understand it, and as E. A. Smith, Senior Deputy who heads our Highway Division has confirmed, property obtained by the State for highway construction is acquired either in fee simple or by an easement in perpetuity. The Supreme Court has held that there is virtually no difference between the two interests, and an owner is compensated for either as if the fee had been acquired. See SHC v. Black (1953) 239 NC 198. Consequently, when either a fee or an easement in perpetuity is acquired by the Department of Transportation, the rights of the former owner have for all practical purposes ceased and, in my opinion, none of the property within the limits of the right-of-way should be considered taxable to that owner. Neither is it taxable to the State. In re UNC (1980) 300 NC 563.

So far as I can determine, there is no such thing as the "perpetual lease" to which Mr. Holloway refers, and I suspect that what he really has in mind is the "easement in perpetuity." If so, I have already addressed that question.

As to DOT's designating land as "future right of way," I am not aware of any such formal procedure although clearly future highway plans can and do become known and that knowledge may certainly influence decisions made by an owner with respect to his property. However, until title to the property has actually been transferred, it is solely that of the owner and taxable as such. I can imagine, however, that information such as that might have a bearing upon the value of the property.

I believe that the term may be used in connection with some local planning maps, and that sometimes local authorities will not issue building permits for such areas. Even where this may be the case, title is still in the owner and the property is taxable to him, even though again value may be affected by the designation.

Where DOT has already acquired its interest it may designate part of its right-of-way as a "proposed future lane," as in the case where two lanes have been built and two more are planned. In that case, however, DOT already owns the property and the designation could have no bearing either on taxability or value.

To illustrate the totality of DOT's control of land area within a right-of-way, Mr. Smith has pointed out to me that DOT by regulation prohibits certain uses that can be made of such land, and G.S. 136-93 requires a permit for certain other uses, all without distinction between fee and easement. This seems to confirm my conclusion that such land area must properly be excluded from an owner's taxable land for ad valorem tax purposes.

MCB:jmd

cc: E. A. Smith

JAMES B. HUNT, JR.
GOVERNOR



STATE OF NORTH CAROLINA
DEPARTMENT OF REVENUE

P. O. BOX 25000

RALEIGH, N. C. 27640

MARK G. LYNCH
SECRETARY

JAMES P. SENTER
DEPUTY SECRETARY

June 28, 1982

MEMORANDUM

TO: Mr. Myron C. Banks
Attorney General's Office

FROM: D. R. Holbrook, Director
Ad Valorem Tax Division *DRH*

SUBJECT: Treatment of property in highway rights of way on property record
cards of private owners

I am enclosing a draft copy of an inquiry submitted to me by Mr. Don Holloway, Director of Land Records Management Program, concerning the taxable status of land acquired by the Department of Transportation (DOT) for the construction of a road.

It seems obvious that any property acquired by DOT should be removed from the card of the former owner. There is apparently a great deal of confusion, however, about the status of property in highway rights of way because of the manner in which they are acquired. We have construed a right of way acquisition by DOT as a purchase of the land, notwithstanding that there may be a reversion to the private owner in the event the highway is abandoned. We have been advised, however, that, in some cases, DOT designates land alongside a highway as future right of way and thus puts the owner and potential purchasers of the land on notice that it may be included in the highway right of way if, and when, the highway is widened. As I understand it, there is no transfer of title and the private owner retains ownership and full use of the property until some action is taken. I do not fully understand this procedure nor am I familiar with any "perpetual leases," as referred to in paragraph 5 of Mr. Holloway's inquiry.

I will appreciate your reviewing this matter and advising us of your opinion regarding the status of property acquired or controlled by DOT as outlined in the inquiry.

DRH:ml

Enclosure