

CONSTITUTIONAL OBJECTIONS TO THE CREATION OF STATE AUTHORITIES

Recent years have seen a rapid increase in the number of state authorities established as agencies for the financing, construction, and administration of public works.¹ A major reason for this rapid growth has been the interest of state legislatures in avoiding prohibitions of unusual state expenditures imposed by stringent constitutional debt limitations.² Even public projects which could be fully financed from their own revenues may be barred if directly financed by the state, because requiring large initial capital outlays. But because the authority, unlike other state administrative agencies, is outside the regular structure of the state government,³ its debt obligations are at least in form not those of the state, and its use may make projects of this type, and perhaps others, legally possible.

Authorities have been said to have demonstrated important functional advantages as well.⁴ They may be more likely than traditional state agencies to provide long-term programs of public construction with continuity of planning and administration;⁵ they may serve to insulate the management of public works from the pressures of state politics;⁶ and they may provide means for the simplification of joint projects by groups of states.⁷

¹ The public authority device may be used to finance and construct a particular project or a general authority may be organized for the purpose of constructing virtually any public improvement such as schools, roads, or airports. See the description of the Pennsylvania General State Authority, page 162, *infra*. The growth of the public authority was greatly stimulated by the public works policies developed during the early years of the New Deal. In order to avail themselves of large grants of federal aid, the states established public authorities for the purpose of financing the remainder of the cost of the public projects.

² E.g., Ohio Const. Art. VIII, § 1: "The State may contract debts, to supply casual deficits or failures in revenues, or to meet expenses otherwise not provided for; but the aggregate amount of such debts, direct or contingent . . . shall never exceed seven hundred and fifty thousand dollars. . . ." See Ga. Const. Art. § 2-5601. Other states have provided that "[f]or the purpose of defraying extraordinary expenses and making public improvements, the state may contract public debts; but such debts shall never, in the aggregate exceed one million dollars. . . ." Kansas Const. Art. XI, § 6. See Idaho Const. Art. VIII, § 1.

³ The public authority has been defined as a "corporate body created by legislative enactments to function outside of the normal structure of government in the construction or operation of revenue producing enterprises." Griffenhagen, *Highway Finance and Taxation in New York 78-79* (1950). Governmental bodies which have the power to levy taxes or special assessments are excepted from this definition. Nehemkis, *The Public Authority: Some Legal and Practical Aspects*, 47 *Yale L. J.* 14 (1937); Gulik, *Authorities and How To Use Them*, 8 *Tax L. Review* 47 (1947).

⁴ Nehemkis, *op. cit. supra* note 3; Resolution of Governors' Conference, *Proceedings of the Governors' Conference* 192 (1952).

⁵ "Since the authority depends for economic survival upon its own earnings rather than upon legislative largess, a greater degree of operating efficiency necessarily results." Nehemkis, *op. cit. supra* note 3.

⁶ See Resolution of Governors' Conference, *op. cit. supra* note 4.

⁷ The New York Port Authority is an excellent example of the results of interstate cooperation obtained through the use of the authority device. See Nehemkis, *op. cit. supra* note 3, at 30-31.

However, the growth of use of authorities has been retarded by recurrent constitutional challenges. The major attack has been that the debt of the authority is in fact not distinct from that of the state, and should not be exempted from the constitutional debt limit. Unconstitutionality has also been urged on grounds: (1) that the operation of the authority would involve state participation in prohibited "internal improvements"; (2) that the enabling act would authorize developments "special and local" in character; (3) that the enabling act creates a corporation by special enactment; (4) that the act envisages violation of constitutional provisions against donation of state property to private corporations; and (5) that the creation of the authority constitutes an unlawful delegation of legislative power.⁸

As the public authority is a comparatively recent development, courts have turned for guidance on these constitutional objections to precedents in the fields of municipal corporations, state institutions, and administrative agencies.⁹ The purpose of this comment is to examine and evaluate the most important conclusions which have been reached.

I

The initial outlays of state authorities are ordinarily financed by the flotation of revenue bonds. The question immediately arises whether the bonds are to be considered a debt of the state in excess of the constitutional limitation.

Where the principle and interest of the bonds are to be paid from a special fund derived exclusively from the operation of the authority, rather than from funds of the state, the authority is considered self-liquidating and its debt not that of the state.¹⁰ To secure this result it is usually necessary to provide in such

⁸ Other constitutional objections which have not been upheld by the courts include: (1) that the state tax exemption granted the authority violates the constitutional prohibition against the granting of state tax exemptions to corporations. *Application of Oklahoma Turnpike Authority*, 203 Okla. 335, 221 P. 2d 795 (1950); *Meisel v. Tri-State Airport Authority*, — W.Va. —, 64 S.E. 2d 32 (1951); *Kelley v. Earle*, 325 Pa. 337, 190 Atl. 140 (1937); (2) that there has been an unconstitutional appropriation of state funds. *Geboski v. Montana Armory Board*, 110 Mont. 487, 103 P. 2d 679 (1940); *Syverton v. Jones*, 74 N.D. 465, 23 N.W. 2d 54 (1946); *Washington Toll Bridge Authority v. Yelle*, 195 Wash. 636, 82 P. 2d 120 (1938); (3) that the title of the enabling act violates the constitutional mandate that every act of the legislature shall embrace but one subject which shall be clearly expressed in the title. *Application of Oklahoma Turnpike Authority*, 203 Okla. 335, 221 P. 2d 795 (1950); *Clarke v. South Carolina Public Service Authority*, 177 S.C. 427, 181 S.E. 481 (1935); *Washington Toll Bridge Authority v. Yelle*, 195 Wash. 636, 82 P. 2d 120 (1938).

⁹ Unlike municipal corporations, the public authority has no power to levy taxes or special assessments; while unlike state administrative agencies, the authority is a body corporate existing outside the structure of state government.

¹⁰ *California Toll Bridge Authority v. Wentworth*, 212 Calif. 298, 298 Pac. 485 (1931); *Application of Oklahoma Turnpike Authority*, 203 Okla. 335, 221 P. 2d 795 (1950); *New Jersey Turnpike Authority v. Parsons*, 3 N.J. 235, 69 A. 2d 875 (1949); *People v. Chicago Transit Authority*, 392 Ill. 77, 64 N.E. 2d 4 (1945). The Idaho courts have held that the special fund doctrine is not the law of the state and that the debt of the Water Conservation Board is a debt of the state. *State Water Conservation Board v. Enking*, 56 Idaho 722, 58 P. 2d 779 (1936).

bonds that the credit of the state is not pledged;¹¹ thus the holder can ordinarily look only to the income and properties of the authority for security.

Although courts are agreed that if "general funds" of the state are directly available to an authority's bondholders, the bonds constitute state debt,¹² there is disagreement as to what constitutes "general funds." Some courts have held that all tax revenues fall within this category.¹³ Others have excepted certain special taxes whose revenues are to be used solely to service and redeem the obligations of the authority.¹⁴ This latter view permits the debt to remain outside the constitutional limit even though the authority is not internally self-liquidating. However, the revenues from such special tax must not be comingled with other state funds,¹⁵ or with revenues derived from the same tax before it was earmarked for the authority's use.¹⁶

Where a special tax is comparable in incidence to fees, service charges or other revenues which might be directly derived from the authority's operation, this similarity in treatment seems justified. A tax upon motor fuel to provide for the improvement of public highways is not strikingly different from a toll whose revenues service and retire turnpike construction bonds. Where the relationship between the incidence of the tax and the use of the authority's facilities is remote, the application of the special fund doctrine may be more suspect if the policy of the constitutional limitation is to be respected.

Where the user of the facilities of the authority is not the toll- or tax-paying public, however, but the state itself, courts have found difficulty in considering the project self-liquidating within the meaning of the special fund doctrine. In these situations "rentals" paid by the state to the authority provide the fund from which the debt is serviced and redeemed. General funds of the state may be wholly or in part the source of the monies paid as rent. Courts have differed

¹¹ *Kelley v. Earle*, 320 Pa. 449, 182 Atl. 501 (1936); *Public Institutional Building Authority v. Griffith*, 135 Ohio St. 604, 22 N.E. 2d 200 (1939). See *New Jersey Turnpike Authority v. Parsons*, 3 N.J. 235, 69 A. 2d 875 (1949). In South Carolina, however, pledging the credit of the state will not constitute the bonds of the authority a debt of the state so long as it can be shown that the revenues derived from the operation of the authority will be sufficient to service and redeem the bonds. *Crawford v. Johnston*, 177 S.C. 399, 181 S.E. 476 (1935); *Clarke v. South Carolina Public Service Authority*, 177 S.C. 427, 181 S.E. 481 (1935).

¹² *McQuillan*, *Municipal Corporations* § 43.31 (1950), and cases collected therein.

¹³ *Crawford v. Johnston*, 177 S.C. 399, 181 S.E. 476 (1935); *In re Opinions of Justices*, 225 Ala. 356, 143 So. 289 (1932). See *People v. Barrett*, 373 Ill. 393, 26 N.E. 2d 478 (1940).

¹⁴ *Ziegler v. Witherspoon*, 331 Mich. 337, 49 N.W. 2d 318 (1951) (gas tax to redeem bonds of highway commission); *Johnson v. McDonald*, 97 Colo. 324, 49 P. 2d 1017 (1935) (gas tax to redeem bonds of highway commission); *Capitol Addition Building Commission v. Connally*, 39 N.M. 312, 46 P. 2d 1097 (1935) (tax upon civil actions to redeem bonds of building commission).

¹⁵ It is necessary to provide that all of the revenues in the redemption fund are obtained solely from the operations of the improvement. *In re Senate Resolution No. 2*, 94 Colo. 101, 31 P. 2d 325 (1933); *Johnson v. McDonald*, 97 Colo. 324, 49 P. 2d 1017 (1935).

¹⁶ *Public Institutional Building Authority v. Griffith*, 135 Ohio St. 604, 22 N.E. 2d 200 (1938).

as to whether this form of arrangement should be treated as a contract of lease between two distinct entities,¹⁷ or whether the state should be treated as having purchased in an indirect manner an improvement the cost of which may exceed the debt limitation.¹⁸

A common form of the arrangement is a long-term lease or contract in which the state obligates itself to make a series of payments sufficient to cover interest and sinking fund charges on the authority's debt.¹⁹ Thus, the extent of the liability of the state is the same as though it had itself issued the securities, except that the credit of the state is not pledged in case of default. The question most often raised as to these facts is not whether the authority's bonds are to be considered a debt of the state, but whether the obligation of the state under the lease constitutes debt within the constitutional meaning.²⁰ If the court is unwilling to assume that future "surplus revenues" of the state will be adequate to cover the payments and are properly committed by the present legislature for future years, it will designate the arrangement a purchase—on the installment plan—and hold it unconstitutional.²¹ But it will be termed a lease and upheld if the court is persuaded that the obligation bears an appropriate relationship to prospective state income.²² Under this view the courts may go on to say that the source of the authority's income makes no difference and that its operations are considered self-liquidating.²³ Thus neither are the authority's bonds treated as debts of the state.

In *Kelley v. Earle*²⁴ the Pennsylvania court, on successive hearings, adopted first one view and then the other of a thirty year lease, by the state, of an authority's property. The state legislature had established a general state authority with unusually broad functions—"the construction, improvement, maintenance and operation of . . . sewer systems . . . , public buildings . . . , state arsenals, armories and military reserves, State airports and landing fields, State Tuberculosis Sanatoria, additions to present state hospitals, normal schools, teachers colleges, penal or correctional institutions, State highways and bridges . . . , swimming pools and lakes on State-owned land, and low head dams. . . ."²⁵ Nearly half of the cost of the projects was to be paid for by the

¹⁷ *Kelley v. Earle*, 325 Pa. 337, 190 Atl. 140 (1937); *Preston v. Clements*, 313 Ky. 479, 232 S.W. 2d 85 (1950); *Geboski v. Montana Armory Board*, 110 Mont. 487, 103 P. 2d 679 (1940). See *Loomis v. Keehn*, 400 Ill. 337, 80 N.E. 2d 368 (1948).

¹⁸ *McCutcheon v. State Building Authority*, — N.J. —, 97 A. 2d 663 (1953); *Opinion of Justices*, — Me. —, 79 A. 2d 753 (1951); *Public Institutional Building Authority v. Griffith*, 135 Ohio St. 604, 22 N.E. 2d 200 (1939) (semble); *Greening v. Green*, 382 Ill. 577, 47 N.E. 2d 465 (1943).

¹⁹ *Kelley v. Earle*, 325 Pa. 337, 190 Atl. 140 (1937); *McCutcheon v. New Jersey Building Authority*, — N.J. —, 97 A. 2d 663 (1953).

²⁰ Cases cited note 17 supra.

²¹ Cases cited note 18 supra.

²² Cases cited note 18 supra.

²³ Cases cited note 17 supra.

²⁴ 320 Pa. 449, 182 Atl. 501 (1936), rev'd on rehearing, 325 Pa. 337, 190 Atl. 140 (1937).

²⁵ 320 Pa. 449, 451, 182 Atl. 501, 502 (1936).

Federal Emergency Relief Administration, which would also purchase the authority's revenue bonds to finance the difference.

On first hearing, the court held that the lease, payments under which were to finance construction of certain waterworks, was unconstitutional. The court recognized that "a contract of a municipality which is within the current revenues of the municipality does not constitute a debt within the meaning of the constitutional restriction thereon. . . ."²⁶ However, it went on to say: "Where it does not appear . . . that an obligation incurred by a municipality can be met out of current revenues, the obligation must be considered a debt . . . if it in fact represents an extraordinary or capital expenditure, even though it may be arranged so as to appear to be an ordinary and usual expense."²⁷ The court applied this theory to the present leasing arrangement, pointing out, first, that no means of insuring the payment of future installments had been provided; second, that it could not be assumed that there would be sufficient "surplus revenues" in each biennium to meet the contemplated payments; and finally, that under the arrangements, bondholders might, in case of default, take in satisfaction of their claims property conveyed by the state to the Authority, and which was to be returned in its improved condition to the state at the expiration of the lease.²⁸ On rehearing, however, the court reversed itself, and upheld the legality of the Authority.²⁹ In the interim several changes had been made in the arrangements. Most important, in the eyes of the court, were that the property of the Authority was no longer to revert to the state, and that provision had been made in the bonds exempting the land of the Authority from execution in case of default. But central to the court's self reversal was that it was now persuaded that there were to be "sufficient revenues available for such purposes," and that the "Legislature . . . [would] appropriate said sum as an ordinary and current expense of government. . . ."³⁰

Other courts, however, have insisted that long term lease arrangements are subject to the constitutional ban.³¹ For this reason some legislatures have been forced to resort to a series of short term leases to accomplish the same objective. Although the constitutional objection can in this way be avoided,³² practical problems arise. There can be no assurance that legislatures, from term to term, will renew the lease, and should they fail to do so the authority's properties are likely to have few alternative uses which could secure revenue to protect its bondholders. Unless some extra-legal assurance of continuity of the arrangement is present, it is difficult to see how financing could be accomplished.

Even under the long term lease plan there is a similar question as to whether

²⁶ *Ibid.*, at 457 and 504.

²⁹ 325 Pa. 337, 190 Atl. 140 (1937).

²⁷ *Ibid.*, at 457 and 504.

³⁰ *Ibid.*, at 342 and 143.

²⁸ *Ibid.*, at 460 and 505.

³¹ Cases cited note 18 *supra*.

³² *Opinion of Justices*, 252 Ala. 465, 41 So. 2d 761 (1949); *Opinion of Justices*, 256 Ala. 170, 54 So. 2d 68 (1951); *Loomis v. Keehn*, 400 Ill. 337, 80 N.E. 2d 368 (1948).

future legislatures will appropriate funds to meet the periodic rental payments.³³ However, most courts have been willing to assume that obligations under the long term leases will be met.³⁴

The majority opinion in the recent decision of the New Jersey court in *McCutcheon v. State Building Authority*³⁵ refuses to accept either alternative, however. Various departments of the state had undertaken both long and short term leases with a newly formed State Building Authority. The court found the entire arrangement unconstitutional, striking down the enabling act, and declaring that:

While in form a way of providing the State with leasehold interests in building facilities for public use, in reality the design of the act is to enable the State by *contracts of purchase* to acquire for state use buildings possessed and constructed by the Authority by means of bond issues sustained by the State's promise to supply in the guise of rentals sufficient money to liquidate the bonds, available only through the medium of annual appropriations.³⁶

The dissent,³⁷ however, a much more carefully reasoned opinion, distinguished between the short and long term leases and found neither a source of constitutional difficulty. Dealing with the short-term leases, the dissenting judges pointed out that the "State's obligation at most is to pay for current yearly occupancy . . . and it seems frivolous to suggest that such obligation impairs the letter or purpose of the constitutional provision. . . ."³⁸ Treating the long term lease, the dissenting judges pointed to the already existing long term arrangements of the state with private property owners, where the "future rentals" problem was the same as under the similar arrangements with the Authority. These had presented no difficulty and had not been thought to constitute debts of the state. Relying heavily on *Kelley v. Earle*,³⁹ the dissenting judges concluded that "the adverse practical effects and retrogressive action taken by the majority"⁴⁰ should be averted by according the leases with the Authority the same respect as leases with private corporations.

II

Although the major constitutional objection to the authority form has been in terms of state debt limitations, other bases for attack merit consideration.

³³ *Public Institutional Building Authority v. Griffith*, 135 Ohio St. 604, 22 N.E. 2d 200 (1939). See *Kelley v. Earle*, 320 Pa. 449, 182 Atl. 501 (1936).

³⁴ "If the contract necessitates the continued existence of existing legislation, the future legislatures are barred . . . from modifying that legislation so that the obligation of the contract will be impaired, for one of the powers delegated to the Federal Government was the power to restrict legislation by a state impairing the obligations of contract." *Johnson v. McDonald*, 97 Colo. 342-43, 49 P. 2d 1017, 1026 (1935), referring to U.S. Const. Art. 1, § 10, cl. 1. See *Ziegler v. Witherspoon*, 331 Mich. 337, 49 N.W. 2d 318 (1951); *Boynton v. Kansas State Highway Commission*, 139 Kan. 391, 32 P. 2d 493 (1934). In each of these cases the courts were concerned with funds earmarked for highway bond redemption funds. In other cases, the courts have evidently assumed that future legislatures would appropriate the necessary funds. See *Kelley v. Earle*, 325 Pa. 337, 190 Atl. 140 (1937); *Wyatt v. Beall*, 175 Md. 258, 1 A. 2d 619 (1938).

³⁵ — N.J. —, 97 A. 2d 663 (1953). ³⁷ *Ibid.*, at 673. ³⁹ 325 Pa. 337, 190 Atl. 140 (1937).

³⁶ *Ibid.*, at 668. (Emphasis added.) ³⁸ *Ibid.*, at 677.

⁴⁰ *McCutcheon v. State Building Authority*, — N.J. —, 97 A. 2d 663, 679 (1953).

In several of the states whose constitutions prohibit the state's being a party to, or participant in, any projects of "internal improvement,"⁴¹ the authority has been challenged on this ground.⁴² But in no case has this objection proved fatal. Courts have most often said that the creation of the public authority is simply the appropriate exercise of "police power,"⁴³ that the prohibition does not interdict a project undertaken for the "public benefit,"⁴⁴ or that the ban applies only to a narrowly limited group of projects within which the activities of the authority does not fall.⁴⁵

Neither have objections that the enabling act creating the authority violates a constitutional prohibition of the enactment of laws, "special and local" in character,⁴⁶ been upheld by the courts. The act is not "special and local" merely because it appears that one section of the state is to be particularly benefited by the improvement.⁴⁷ The act will be considered general if there is some substantial basis for the classification, and if it operates uniformly upon all persons coming within the class.⁴⁸ Thus, acts authorizing bridge or public transit authorities have been upheld though they specify that improvements are to be made only in counties of a certain class even where it is obvious that the class has been defined to include only one county.⁴⁹ Acts creating highway authorities have been upheld although roads were to be constructed in only one area, since facilities for vehicular travel throughout the state would be improved.⁵⁰

Objections that the authorizing act contravenes a constitutional provision prohibiting the creation of corporations by special acts⁵¹ have been treated differently by different courts. Although the public authority is usually set up as a body corporate, in many states noncorporate boards have been established with power to issue revenue bonds. In the latter cases the courts have held that,

⁴¹ E.g., Ala. Const. Art. IV, § 93, as amended (1946): "The state shall not engage in works of internal improvement, nor lend money or its credit in aid of such . . . nor shall the state be interested in any private or corporate enterprise . . . or lend money or its credit to any individual, association, or corporation. . . ."

⁴² *Boynton v. Atherton*, 139 Kan. 197, 30 P. 2d 291 (1934); *Opinion of Justices*, 256 Ala. 170, 54 So. 2d 68 (1951); *Erickson v. King*, 218 Minn. 98, 15 N.W. 2d 201 (1944).

⁴³ *Opinion of Justices*, 256 Ala. 170, 54 So. 2d 68 (1951).

⁴⁴ *Boynton v. Atherton*, 139 Kan. 197, 30 P. 2d 291 (1934). The court declared, however, that a failure to specify what improvements were to be undertaken would be fatal since it could then not be determined whether the projects to be constructed were for the public benefit.

⁴⁵ See *Erickson v. King*, 218 Minn. 98, 15 N.W. 2d 201 (1944).

⁴⁶ E.g., Ill. Const. Art. IV, § 22; Okla. Const. Art. IV, § 46.

⁴⁷ *Application of Oklahoma Turnpike Authority*, 203 Okla. 335, 221 P. 2d 795 (1950); *Sheldon v. Grand River Dam Authority*, 182 Okla. 24, 76 P. 2d 355 (1938); *Coleman v. Lewis*, 181 S.C. 10, 186 S.E. 625 (1936).

⁴⁸ *Sheldon v. Grand River Dam Authority*, 182 Okla. 24, 76 P. 2d 355 (1938).

⁴⁹ *Tranter v. Allegheny County Authority*, 316 Pa. 65, 173 Atl. 289 (1934); *People v. Chicago Transit Authority*, 392 Ill. 77, 64 N.E. 2d 4 (1945).

⁵⁰ *Coleman v. Lewis*, 181 S.C. 10, 186 S.E. 625 (1936).

⁵¹ E.g., Ohio Const. Art. XIII, § 1; Ill. Const. Art. XI, § 1.

despite their many corporate attributes, such bodies are but agencies of the state,⁵² and that the corporations ban is inapplicable. Where the authority has been incorporated, some courts have held that the prohibition still will not apply if the corporation has been created for a "public purpose."⁵³ Others have held that the authority is in fact a municipal corporation specifically exempted from the constitutional provision.⁵⁴

The constitutional ban against the donation of public property to private corporations⁵⁵ has also been held inapplicable on the grounds that the authority has been set up for a "public purpose."⁵⁶ Since in the usual case the property will revert to the states once the revenue bonds have been retired, the courts have had no difficulty in reaching this conclusion.

Where a full scale attack has been made upon the constitutionality of an authority, one contention has been that the creation of the authority constitutes an unlawful delegation of legislative powers. This objection has not been taken seriously by the courts. It is enough that the limits upon power of the authority are carefully delineated.⁵⁷ Determining where a road should be built,⁵⁸ what tolls or rentals should be charged,⁵⁹ or what quantities of bonds to float,⁶⁰ has been upheld by the courts as a function properly delegable to an authority.

In view of the extensive improvement programs now being carried on or contemplated, the use of the public authority will probably increase. Various constitutional objections will continue to be raised, but it is doubtful whether they will meet with much success. The only objection with substantial merit is that concerned with the debt limitation. But so long as the authority is self-liquidating and no recourse can be had to the funds of the state beyond the constitutional limit, the prohibition should not apply. The state public authority has shown itself to be valuable in terms of efficiency and useful, although not infallible, in avoiding narrow constitutional limitations.

⁵² *Ennis v. State Highway Commission*, — Ind. —, 108 N.E. 2d 687 (1952).

⁵³ *Meisel v. Tri-State Airport Authority*, — W.Va. —, 64 S.E. 2d 32 (1951); *Normile v. Cooney*, 100 Mont. 391, 47 P. 2d 637 (1935).

⁵⁴ *People v. Chicago Transit Authority*, 392 Ill. 77, 64 N.E. 2d 4 (1945).

⁵⁵ E.g., Ala. Const. Art. IV, § 99.

⁵⁶ *Alabama State Bridge Authority v. Smith*, 217 Ala. 311, 116 So. 695 (1928); *Allen v. Ferguson*, 155 Ohio St. 26, 97 N.E. 2d 660 (1951).

⁵⁷ *Johnson v. McDonald*, 97 Colo. 324, 49 P. 2d 1017 (1935); *Normile v. Cooney*, 100 Mont. 391, 47 P. 2d 637 (1935).

⁵⁸ *Normile v. Cooney*, 100 Mont. 391, 47 P. 2d 637 (1935); *Estes v. State Highway Commission*, 235 Ky. 86, 29 S.W. 2d 583 (1930).

⁵⁹ *Kelley v. Earle*, 325 Pa. 337, 190 Atl. 140 (1937); *Ennis v. State Highway Commission*, — Ind. —, 108 N.E. 2d 687 (1952).

⁶⁰ *Coleman v. Lewis*, 181 S.C. 10, 186 S.E. 625 (1936).