



**THE ATTORNEY GENERAL
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September 28, 1973

The Honorable B. L. DeBerry
Texas Highway Department
11th and Brazos
Austin, Texas 78701

Opinion No. H-113

Re: The status of signboards
as realty or personalty
for condemnation purposes.

Dear Mr. DeBerry:

You have requested our opinion on the following question:

"In our condemnation proceeding, should signboards which are interred in the ground on the property of the landowner, lessor, be treated the same as any other realty such as fences, etc., or should such signboards be treated as personalty because of the special terms of the lease agreements between the landowner and the lessee,"

Your question is prompted by the rule of law that, under normal circumstances, personalty, because of its removable character is not included in determining compensation for condemnation purposes.

The sample "leases" attached to your letter provide in one way or another that "all signs and improvements placed on the above mentioned property pursuant to this lease are now and forever the exclusive property of the lessee and may be removed by them at any time." This "lease" provision would indicate that between the parties the signs are considered personalty.

Whether the agreements are actually "leases," or only licenses, generally, if the signs were erected and interred in the ground, they would be considered realty for condemnation purposes. In Texas, the character of property as realty or personalty, for condemnation proceedings, is not affected by any private agreement designating its character. Texas Pig Stands v.

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Krueger, 441 S. W. 2d 940 (Tex. Civ. App., San Antonio, 1969, err. ref., n. r. e.); Brazos River Conservation and Reclamation District v. Adkisson, 173 S. W. 2d 294 (Tex. Civ. App., Eastland, 1943, err. ref). In the Adkisson case, the question presented was:

"Did the Court properly require the district to pay appellee for the property taken, including casing and other fixtures affixed to the leasehold estate, where the lease, producing wells, and such equipment were inundated by waters of the district's reservoir, even though as between the Appellee as Lessee and the original landowners as Lessors, Appellee had the privilege of removing such fixtures at the termination of the lease?" (emphasis added)

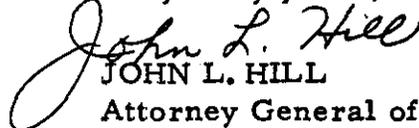
The Court answered in the affirmative because of the rule applied in condemnation cases and approved the following statement: ". . . Where fixtures are of such a character that if put in by the owner, they would constitute a part of the real estate, they must be paid for as 'real estate' by the party condemning the land. "

Accordingly, in condemnation proceedings, in determining whether signboards which are interred in the ground constitute realty or personalty, they should be treated as though they were owned and had been erected by the landowner, notwithstanding private agreements about the matter.

SUMMARY

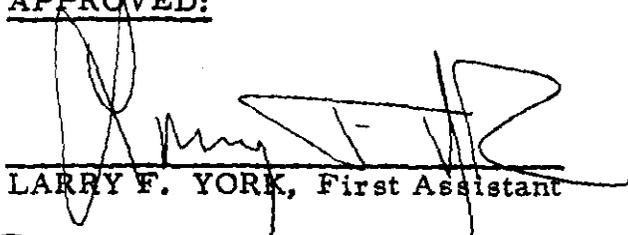
In condemnation proceedings signboards which are interred in the ground should be treated as though they were owned and had been erected by the landowner in order to determine whether they constitute personalty or realty, notwithstanding private agreements about the matter.

Very truly yours,

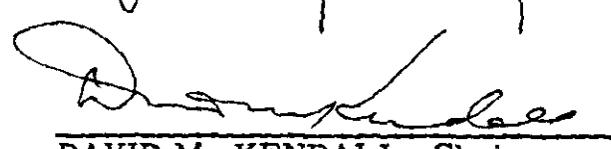

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APPROVED:



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Opinion Committee