

STATEMENT OF THE LEGAL ISSUES

The State determined that its construction of the Exit 66 on I-90 uniquely and specially benefited Landowners' property. The State also determined that the special benefit justified a reduction in the compensation paid to acquire the right-of-way easement over Landowners' property for the highway and interchange. Does the State's subsequent closure of Exit 66 result in special damages peculiar to the Landowners' Property and not of a kind suffered by the public generally?

Trial Court: Did not address.

South Dakota Constitution. Art. VI, § 13

*Krier v. Dell Rapids Township*, 2006 S.D. 23, 709 N.W.2d 841 (S.D. 2006)

*State v. Emry*, 90 S.D. 587 (S.D. 1976)

*Filler v. City of Minot*, 281 N.W.2d 237 (N.D. 1979)

*Johnson Brothers Grocery v. State*, 229 N.W.2d 504 (Minn. 1975)

SDCL § 31-19-23

SDCL § 31-8-6

SDCL § 31-8-6 says that one has no right of access to a controlled-access highway except at points designated by the State. The State, in acquiring an easement from the landowner to construct the designated access point at Exit 66, reduced the compensation because of the special benefit conferred by the access point. May the State subsequently remove that access without paying compensation for the loss of the special benefit?

Trial Court: Yes.

*Hall v. State*, 2006 S.D. 24, 712 N.W.2d 22 (S.D. 2006)

*Filler v. City of Minot*, 281 N.W.2d 237 (N.D. 1979)

*Hurley v. State*, 82 S.D. 156, 143 N.W.2d 722 (S.D.1966)

SDCL § 31-8-6

SDCL § 31-19-23

Was it an improper use of the police power, causing Landowners to suffer compensable damages, when the State removed Exit 66 to advance *non-highway* purposes, outside the scope of the State's highway easement, simply as a means to avoid paying compensation for the elimination of Landowners' business use?

Trial Court: Did not address.

South Dakota Constitution. Art. VI, § 13

*Hall v. State*, 2006 S.D. 24, 712 N.W.2d 22 (S.D. 2006)

*Cuka v. State*, 80 S.D. 232 (S.D. 1963)

*United States v. River Rouge Improvement Co.*, 269 U.S. 411 (1926)

*Crance v. State*, 128 N.Y.S.2d 479 (N.Y.Ct.Claims 1954)

Do landowners suffer compensable damages when the State acts to accomplish, in purpose and result, the functional equivalent of a regulation eliminating the landowners' vested right to continue a business use that is neither a nuisance per se, nor causing a nuisance?

Trial Court: Did not address.

South Dakota Constitution. Art. VI, § 13

*City of Marion v. Rapp*, 2002 S.D. 146, 655 N.W.2d 88 (S.D. 2002)

*City of Rapid City v. Boland*, 271 N.W.2d 60 (S.D. 1978)

*Lingle v. Chevron*, 544 U.S. 528 (2005)

*Amen v. City of Dearborn*, 718 F.2d 789 (6th Cir. 1983)

Does a finding of whether Landowners' access to I-90, after the closure of Exit 66, is reasonable or materially impaired, depend upon a factual determination?

Trial Court: Did not address.

*Hall v. State*, 2006 S.D. 24, 712 N.W.2d 22 (S.D. 2006)

*Hurley v. State*, 82 S.D. 156, 143 N.W.2d 722 (S.D. 1966)