Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs

2001

National Advertising Company v. Utah State Road Commission, Henry C. Helland, Ralph C. Anderson and Mercer D. Smith : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2

 Part of the Law Commons

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.
Gordon L. Roberts; Parsons, Behle, and Latimer; Attorneys for Respondent .
Vernon B. Romney; Donald S. Coleman; Attorneys for Appellants.

Recommended Citation
Brief of Respondent, *National Advertising Company v. Utah State Road Commission*, No. 12198.00 (Utah Supreme Court, 2001).
https://digitalcommons.law.byu.edu/byu_sc2/688

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

SUPREME COURT
BRIEF
DOCKET NO. 12198 R

of Utah

NATIONAL ADVERTISING COMPANY, a corporation,
Plaintiff-Respondent,

—vs.—

THE UTAH STATE ROAD COMMISSION, HENRY C. HELLAND, Director of Highways; RALPH C. ANDERSON, Coordinator, Outdoor Advertising Controls, and MERCER D. SMITH, Permit Control Officer,
Defendants-Appellants.

Case No. 12198

RESPONDENT'S BRIEF

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STEWART M. HANSON, DISTRICT JUDGE, PRESIDING

GORDON L. ROBERTS
of and for
PARSONS, BEHLE & LATIMER
520 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Respondent

VERNON B. ROMNEY
Attroney General
and
DONALD S. COLEMAN
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Appellants

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

CASES CITED

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS — Continued

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

In the Supreme Court of the State of Utah

NATIONAL ADVERTISING COMPANY, a corporation,
Plaintiff-Respondent,

—vs.—

THE UTAH STATE ROAD COMMISSION, HENRY C. HELLAND, Director of Highways; RALPH C. ANDERSON, Coordinator, Outdoor Advertising Controls, and MERCER D. SMITH, Permit Control Officer,
Defendants-Appellants.

Case No. 12198

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

The Road Commission of the State of Utah determined, at an administrative hearing, that one of the sign or advertising structures maintained by Respondent, 3M National Advertising Company, was illegal and ordered the removal of the sign. Thereafter, Respondent brought an action in the Third District Court seeking (1) reversal by appeal of the decision of the Highway Commission and (2) independently seeking injunctive relief preventing the removal of the sign.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

DISPOSITION IN LOWER COURT

The statement contained in the Brief of Appellants in this respect is essentially accurate.

RELIEF SOUGHT ON APPEAL

The statement contained in Appellants' Brief in this connection is essentially accurate also.

STATEMENT OF FACTS

In 1964, National Advertising constructed and installed a sign at the quadrant of 21st South and Redwood Road. The sign faced Redwood Road. (R. 98) (Photograph — Ex. 1-P). As of May, 1967, the Highway Beautification Act became effective. In approximately September of 1967, Mr. Neil Christiansen of National Advertising and Mr. Mercer Smith of the State Road Commission reviewed and inspected the site of the original "Farmers" sign. (R. 99, et seq.). There were various conversations between the gentlemen at this time regarding changing the direction of the sign, the size of the sign, and the location of the sign. (R. 99-101; 120-23). Subsequently, an application for a permit was filed by National Advertising with the Utah State Department of Highways. (See Ex. 3-P). The permit was issued. (Ex. 3-P — It will be noted that the application bears an endorsement as having been approved by the District

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Engineer). A new sign facing 21st South, being larger than the previous sign, and being located some 35 feet north of the previous sign, was constructed as of January 26, 1968. (R. 100-02). The old sign was not removed for approximately 60 days following the completion of the new sign due to muddy ground conditions at the situs of the old sign. (R. 103).

The new sign, referred to as the American Oil sign, cost approximately $5,000.00 to construct (R. 103), and is the subject of a long-term contract with American Oil Company which will expire in February of 1972. (R. 104). American Oil Company pays $180.00 per month to National Advertising for this advertising space. (R. 104).

Ultimately, the State Road Commission challenged the legality of the American Oil sign and a hearing was held before the Road Commission. (R. 40-53). A decision was issued in which the Road Commission found that the sign was illegal. (R. 54-55).

There followed a series of negotiations, letters, and further hearings culminating on July 11, 1969 in a final decision by the Road Commission that it would not change its original opinion. (The exact dates and transcript references in this respect are contained in Point I of the Brief hereinafter.)

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

On July 22, 1969, plaintiff filed its complaint in the District Court of Salt Lake County, State of Utah containing two causes of action — the first being an appeal from the decision of the Road Commission, and the second challenging the constitutionality of the threatened action of the Road Commission to remove the sign. (R. 1-5). Trial was held before the Honorable Stewart M. Hanson who ruled that the appeal was not timely but that the sign nonetheless was lawful and could not be removed. Judge Hanson issued an injunction accordingly. (See (R. 79-84).

It is the basic position of Respondent herein that Judge Hanson erred in determining that the appeal had not been timely filed and we herewith make a cross-assignment of error to that effect. It is also our position that, regardless of the timeliness of the appeal, the sign is valid and the injunction should remain in effect.

POINT I

THE DISTRICT COURT HAD JURISDICTION TO HEAR THIS APPEAL AND ERRED IN FINDING THAT A NOTICE OF APPEAL HAD NOT BEEN TIMELY FILED.

The state urges in its Brief (Point I) that the notice of appeal from the decision of the Road Commission was untimely and thus the District Court should not have

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

summarily dismissed the case. To the contrary, we submit that the record undeniably points to the conclusion that the District Court had jurisdiction to hear the matter, that the notice of appeal was timely filed, and that, in all events, the Regulation upon which the State relies is invalid.

(a) *Road Commission Regulation* 25.

A decision by the Road Commission under the Highway Beautification Act is subject to judicial review by statute. (*Utah Code Annotated,* §27-12-136.9). The statute does not specify any time limit in which the appeal must be filed. However, the Road Commission purported to enact its own legislation on the subject which appears in Regulation 2 5(R. 12) as follows:

> "25. Notice of appeal from the Commission decision shall be in writing, directed to the Director of Highways, postmarked or filed prior to the 30th day from receipt of the Findings, Conclusions and Decision of the Commission."

It is significant to note that the State here bases its case on Regulation 25 (see State's Brief at p. 4), and that Judge Hanson likewise rested his decision as to the timeliness of the appeal on the same Regulation. (R. 82 — Finding (1); R. 83-4 — Conclusion (1)). We believe that there is an excellent answer to both the State and Judge Hanson: *it has been judicially determined in a final*

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

order of the Third District Court (Judge Emmett L. Brown presiding) *that Regulation* 25 *"is invalid and of no force and effect* because the Utah State Highway Commission had no power, statutory or otherwise, to promulgate said Regulation." (R. 21).

This matter came up in connection with a motion to dismiss filed by the Road Commission on the same ground which it is now urging on appeal (R. 10-11) and Judge Brown invalidated the Regulation. No appeal has been taken by the State from Judge Brown's order and certainly Judge Hanson had no appellate jurisdiction to overrule Judge Brown. Thus, the Brown order is final and unimpeachable — anything in Judge Hanson's Findings to the contrary is superfluous and the State's case on this appeal must fail — this is the law of the case.

(b) *In all events, National Advertising timely notified the Road Commission of its appeal.*

Even assuming, arguendo, that there is some applicable thirty-day time limit in which to perfect an appeal from the Road Commission, Respondent here has met that limit and timely filed its action in District Court.

The brevity of the State's brief, although commendable, is really somewhat misleading as to the true factual background in connection with the timeliness of the appeal. The State merely points out—

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

(1) The decision of the Road Commission was sent certified mail on January 20, 1969 (State's Brief — p. 3).

(2) Plaintiff filed its action in District Court on July 22, 1969 — well over 30 days past January 20, 1969. (State's Brief — p. 4).

These harsh facts, alone, would certainly tend to support the State's position (again assuming arguendo some legal requirement for filing within 30 days), but the State has simply ignored a whole host of interstitial facts which change the picture entirely. The exact chronology, undisputed of record, is:

(1) Regardless of when the order was in fact sent by the Commission, plaintiff first learned of it on *March 31, 1969*. (R. 106).

(2) National Advertising *promptly* requested an extension of time in which to appeal by letter of *April 3, 1969*. (R. 37).

(3) The Road Commission granted a formal extension of time to National per its letter of *April*

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

8, 1969 — said extension to run to May 8, 1969. (R. 36).*

(4) Prior to May 8th, 1969, a representative of National Advertising, Mr. Christiansen, had a further discussion with Ralph C. Anderson, Coordinator of Outdoor Advertising Controls for the Road Commission. (R. 102). They discussed a possible solution to the matter by trading off another sign location. The matter was left open (R. 109), and pursuant to the discussion an application to change was filed on *May 13, 1969.* (R. 35). This clearly pertained to the sign here under litigation as may be seen from the paragraph at the bottom of the application. (See also accompanying letter — R. 34).

(5) On *June 3, 1969* a letter was sent by the Road Commission to National Advertising (R. 33) advising that the proposed trade could not be approved.

---

*Counsel for the State may quibble about whether the State's letter (R. 36) is in fact an extension for time to appeal as opposed to an extension of time in which to tear the sign down. Taken in the context of the April 3rd letter (R. 37) to which it responds, the April 8th letter clearly grants an extension on the appeal — note that specific reference to "appeal" time is made in the April 3rd letter.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

(6) A letter dated *June 11, 1969* was sent which can fairly be construed as a final order for removal of the sign by *June 20, 1969*. (R. 32).

(7) Mr. Christiansen of National again met with LeVaun Cox, Commissioner of the Road Commission, whereat Commissioner Cox indicated he would present the sign matter to the whole Commission on *July 11, 1969* at its meeting. (R. 111, R. 31).

(8) A letter in the nature of a petition for reconsideration was filed by National with the Commission on *July 10, 1969*. (R. 31).

(9) National was advised following the *July 11* Commission meeting that the Commission refused to reverse its decision. (R. 112).

(10) Suit was filed on *July 22, 1969*. (R. 1).

Our position is quite simple — the administrative action was never final until the Commission meeting of July 11, 1969, when, for once and for all, the Commission refused to reconsider or reverse its decision. The appeal was filed promptly thereafter. It seems clear that the time for appeal runs not from the original order but from a denial of a petition for reconsideration. *Atlantic Greyhound Corp. v. Public Service Commission,* 132 W. Va. 650, 54 S.E. 2d 169.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

It must be remembered that we are not dealing with a court of law where post-trial procedures have a certain aura of formality and definiteness about them. There are explicit and definite rules on new trial (Rule 59), relief from judgment (Rule 60) or judgment (Rule 50). Lawyers are familiar with these practices and the entire procedure is predictable and definite. An administrative agency, however, functions differently. The very purpose of such agencies is to allow parties to iron out problems within the scope of "administrative expertise" in a very informal manner, *without laywers in many cases,* without formal motions and rules, and without clear rules which define the procedural aspects of the proceeding. This Court has expressly dealt with the distinction between administrative and judicial proceedings and has clearly supported our contentions in this respect. In *Entre Nous Club vs. Toronto,* 4 Utah 2d 98, 287 P.2d 670 (1955), the court noted:

> "The Utah Rules of Civil Procedure are the rules for the Government of the courts adjudicating formal contest between adverse parties, U.R.C.P., Rule 1 (a) and Rule 81, Vol 9, UCA 1953; clearly they are inapplicable to a proceeding before an administrative body seeking to regulate activities burdened with the public interest. Differences in the parties, the experience of the hearing officer in the particular matter, the considerations involved, and the objects to be obtained point up the need for more flexible procedure before agencies and administrative officers than is utilized in the trial of a case at law. *Federal*

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 142-143, 60 S. Ct. 437, 84 L.Ed. 656."

Of equal importance is the doctrine of "exhaustion of remedies" which pertains to administrative but not judicial proceedings. In the instant situation, for example, assume that a suit was filed by National in latter June when one of the Road Commissioners had indicated that the matter would be presented for reconsideration to the entire Commission. Had a suit been filed at that time, it would clearly have been subject to dismissal on the grounds that the matter was still pending before the Commission, that it was not ripe for judicial review, and that plaintiff had not exhausted its administrative remedies. (There are numerous cases so holding — see, e.g., *Hegeman Farms Corp. v. Baldwin,* 293 U.S. 163, 79 L.Ed. 259, 55 S. Ct. 7; *P. F. Peterson Baking Co. v. Bryan,* 290 U.S. 570, 78 L. Ed. 505, 54 S. Ct. 277).

Another facet of this case bears on the equities of the State's position. Representatives of the plaintiff were clearly lulled into a false sense of security. They assumed, and reasonably so, that the matter was still pending before the Commission until July 11, 1969. At no time did the Commission or its representatives indicate that the matter was final or that judicial review was precluded. Under these circumstances, it hardly behooves the State to seek a hypertechnical, hyperformal application of stringent time limits on appeal. Indeed, were

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

the State not clothed with its "King can do no wrong" aura, it should surely be estopped from asserting this defense at all.

* * * * *

We submit, therefore, by way of cross assignment of error, that Judge Hanson erred (a) in finding that the appeal was not timely and (b) in applying a Regulation which was previously held to be invalid. Judge Hanson did have appellate jurisdiction to hear the cause.

POINT II

THE ROAD COMMISSION HAD NO POWER WHATSOEVER TO REMOVE THE SIGN IN QUESTION.

A. *Background of the Act*

This case involves the so-called Highway Beautification Act. It requires but a brief look at the Utah statute (commencing *Utah Code Annotated,* §27-12-136.1) to see that the "Utah Outdoor Advertising Act" is nothing more or less than a response to the Federal Government for legislation Indeed, the purpose of the Act as set forth in *Utah Code Annotated,* §27-12-136.2 makes specific reference to "Title 23 of the United States Code" and the "Federal Highway Beautification Act of 1965." U.S. Code references are also contained in the definitions (27-12-136.3), the Congress of the United States and the Secretary of Commerce are mentioned prominently in

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

the minimum standards section (27-12-136.5), the Federal Highway Beautification Act is again mentioned in 27-12-136.6, indeed the power of the Highway Commission is restricted by the "minimum national standards promulgated by the Secretary pursuant to Title 23 U.S. Code (supra). The amazing thing is that although in response to the Federal Government and in order to obtain highway funds, the State of Utah has enacted a complex maze of legislative and regulatory provisions regarding highway beauty, placement of signs, junk yards etc., to our knowledge not one nickel of funds has been appropriated for the purpose of paying just compensation to anyone whose sign is taken down. The Legislature must have been apprehensive about this problem since in Section 27-12-136.11 it specifically provided:

> *"Despite any contrary provision in this Act, no sign shall be required to be removed unless at the time of removal there are sufficient funds, from whatever source, appropriated and immediately available to this State with which to pay the just compensation required under this Section,* and unless at such time the Federal funds required to be contributed to this State under Section 131 of Title 23, United States Code, have been appropriated and are immediately available to this State." (Ephasis added.)

It is a well known fact which has been the subject of substantial national publicity that no funds have been

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

appropriated under Section 131 of Title 23 for the State of Utah. Indeed, Judge Hanson so found. (R. 83).

B. *The proceedings below*

Our first position in this case is, as set forth in Point I, that Judge Hanson erred in determining that our appeal was not timely and thus his decision has the effect of reversing that of the Road Commission.

Should the Court determine that we did not timely file our appeal, we submit that the thirty-day appeal provision is inapplicable to our second cause of action which attacks the Road Commission on broader grounds. The Second Cause of Action (R. 3-4) is meant to challenge the constitutionality of any action on the part of the Highway Commission in interfering with or removing the sign in question. There is eminent and clearly analogous authority to the effect that under these circumstances, a statute limiting time for appeal is inapplicable. In the case of *Hadden vs. Aitken,* 156 Neb. 215, 55 N.W. 2d 620, 35 ALR 2d 1003 (1952), a very similar question was presented. The act in question in that case, involving motor vehicle licenses, required the filing of a Petition for Appeal within 60 days following the receipt of an order. The plaintiff in the case failed to comply with this provision and the Appellant, as here,

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

sought to dismiss the case for failure to file a timely Petition for Appeal. We quote from the pertinent part of the decision of the Supreme Court of Nebraska:

> "Appellants again raise their motion to dismiss the proceedings. This motion we have already denied. The basis for the motion is that Appellee did not file his petition during the time within which Section 60-503 RRS 1943, provides that appeals must be taken. (Quoting statute).
>
> "If this proceeding is an appeal from the order of October 30, 1951, then it is out of time and the motion should be sustained. (Citing cases). However, we do not think the petition was for the purpose of perfecting an appeal from the order of October 30, 1951, but that it was filed as an original action in equity seeking to permanently enjoin the enforcement of the order of October 30, 1951, on the grounds that the legislation is, in several respects, unconstitutional."

Therefore, the Court refused to dismiss the appeal on the ground that it sought broader relief than merely appeal — as here, it sought to permanently enjoin unconstitutional administrative action.

We believe this case constitutes sound precedent which should be followed in this case in the event the Court determines that we have not timely perfected our appeal.

C. *The merits of the controversy*

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

It should be noted that Appellant really makes no arguments concerning the merits of the controversy but simply argues (in Point I of its Brief) that the Court had no jurisdiction and (in Point II of its Brief) that procedural due process was granted to National Advertising Company through the hearing at the State Road Commission.

This sterile approach really ignores the factual controversy in the case. The key point in controversy was whether or not the State had issued a permit for the construction of an American Oil sign at the quadrant of 21st South and Redwood Road in Salt Lake County. The Highway Commission originally held that no such permit had been issued. As far as can be determined from the rather cryptic record before the Road Commission, this finding was predicated upon the testimony of one Mercer D. Smith who was the Permit Control Officer for the State. There had originally been a smaller sign reading for an insurance company on Redwood Road. An application was timely filed to change this sign structure into the new structure referred to as the American Oil sign. (See R. 62). The new structure was located in a different place, faced a different direction, and was larger than the previous structure, and the basic question is whether the permit which was granted (R. 62), covered the new sign. Mercer D. Smith originally testified before the Road Commission that he did not intend the permit to cover the new sign. His testimony was as follows:

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

> "The permit, as far as I am concerned, was for the smaller sign and not for this larger one and my idea was to pivot the sign 90° and not remove it now a distance between the initial sign and this sign which is about 35 feet further to the North." (R. 47)

It might be observed that this was a statement given extemporaneously by Mr. Smith at the Road Commission hearing — significantly, he was not cross examined. At the time of the trial, the State presented Mr. Smith as a witness. On cross examination, his testimony was much more elaborate as to just what was and what was not intended by the permit which was granted:

> "Q. So isn't it a fact, Mr. Smith, even based on your own testimony, that when you issued this permit you realized that the sign that was to be constructed had the following differences from the previous sign. One is there would be a 90-degree turn there?
>
> "A. Right. Right.
>
> "Q. And No. 2, it would be a larger sign?
>
> "A. True.
>
> "Q. True. Even tough the permit does not speak in terms of a larger sign you knew that was

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

what tthey were thinking about, and that was what the permit covered?

"A. Right.

"Q. And No. 3, presumably there would have to be additional pole structure to support the larger sign?

"A. True.

"Q. And that is what you intended, is that correct, Sir?

"A. For the same sign, yes.

"Q. And for that the sign would have to be higher?

"A. Yes.

"Q. No question about that?

"A. No question." (R .122-23)

It was on the basis of this clear evidence that Judge Hanson ruled that the permit in fact covered the new sign and therefore that the sign was lawful. In the Court's Memorandum Decision (R. 79), the following finding is found:

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

> "That the permit given for the erection of the sign in question was valid and the construction of said sign was in conformance with the intent and purpose of the permit."

Also significantly, Judge Hanson held that the new sign was merely a "lawful continuation" of the previous sign. (R. 83).

Since under the clear evidence the sign was lawful and a permit had been granted, it follows that the sign could not be removed without the payment of just compensation. (*Utah Code Annotated,* Sec. 27-12-136.11).

It further follows that since the sign was merely a lawful continuation of previously existing outdoor advertising, the statute itself precludes the removal of the sign as follows:

> "Any outdoor advertising lawfully in existence along the interstate or the primary systems on the effective date of this Act and which is not then in conformity with its provisions may not be required to be removed until December 31, 1972, except for violation of Sec. 27-12-136.8 or pursuant to the provisions of Sec. 27-12-136.11." (*Utah Code Annotated,* Sec. 27-12-136.10).

Appellant does not question any of these principles of law nor does it question the basic substantive merits of Judge Hanson's rulings.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

The only possible impropriety that might be raised is that Judge Hanson took additional evidence, beyond that which was received at the administrative hearing. It is unclear whether Judge Hanson's decison was based upon the evidence at the administrative hearing or that which was taken at the time of trial, and we submit that this ambiguity must be resolved in favor of the Respondent under normal rules of appellate presumptions. However, and going further, it seems clear that since the Court was looking to broad constitutional question, as to whether the property rights of plaintiff could be taken without just compensaion, the Court was certainly justified in adducing additional evidence to clarify the admittedly meager record from the administrative proceeding. There is substantial precedent to support such actions. For example, in *Denver & Rio Grande Western Railroad Co., et al, vs. Central Weber Sewer Improvement District,* 4 Utah 2d 105, 287 P.2d 884 (1955), this Court observed:

> "Ordinarily on writ of review the certified record alone is examinable. Not so, however, where the record and determination of the Commission or board are unsupported by some kind of reasonably substantial proof. In such event the judiciary may awaken to question their warrant, and in doing so, may receive, examine and weigh evidence, if necssary, as it did here on stipulated facts, to the end that due process guarantees will maintain." (Citing numerous cases).

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

Likewise, the Supreme Court of the United States in an early decision in *Ewing vs. City of St. Louis,* 104 U.S. 630, 18 L.Ed. 657 (1866), stated as follows:

> "With the proceedings and determinations of inferior boards or tribunals of special jurisdictions, courts of equity will not interfere, unless it should become necssary to prevent a multiplicity of suits or irreparable injury, or unless the proceedings sought to be annulled or corrected is valid upon its face, and the alleged invalidity consists in matters to be established by extrinsic evidence."

Our point is simple. When matters of constitutional significance are involved such as the taking of private property without just compensation, a court of equity has inherent jurisdiction to take additional facts in order to determine the true merits of the controversy.

Moreover, the key testimony was the testimony of Mercer D. Smith on cross examination at the time of the trial. The State put Mr. Smith on the stand (R. 117) and elicited direct testimony from him. Therefore, the State is precluded from objecting to testimony elicited through the cross examination of Mr. Smith and the same was properly before the Court.

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

CONCLUSION

We wish to stress that we are dealing here with property rights of a very substantial nature. The sign in question is placed upon real property for which Nation Advertising pays a rental. It also receives a rental from American Oil Company for the advertising structure in question. Judge Hanson found and it is not disputed that National Advertising has had advertising structures continuously in this same geographical location for several months preceding the effective date of the Highway Beautifaction Act. The State is here seeking to remove such sign and to deprive National Advertising of the revenues which are derived from the sign. Where private property is thus at stake, the full force of the due process clause of Amendment 14 to the United States Constitution and Article 1, Sec. 22 of the Utah State Constitution must be brought to bear. The State should not be allowed to rely upon intricacies of appellate time limits or other hypertechnical rules. Rather, the State should be prepared to meet, in substance, the demand that the sign in question was a lawful sign and its removal must be accompanied by the payment of just compensation. Since the State is clearly unable and unwilling to pay just compensation, the removal of the sign would be unconstitutional. In substance, there is

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

no question but that the sign should remain where it is. Judge Hanson has so held and it is respectfully submited that he should be sustained.

Gordon L. Roberts
of and for
PARSONS, BEHLE & LATIMER
520 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Respondent

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.