

Mr. George Cobb, Chief Engineer (cont'd)

reasonable regard for the state or municipal interests, and that a court may intervene only to prevent arbitrary action.

Another case, United States vs. City of Tiffin, 190 Fed. 279, arose from the condemnation of an alley. The court laid down the following:

"The rule that land in public use cannot be taken for another and inconsistent public use under general legislative power of condemnation, but that the right must appear, to seize the particular property, by express provision directed toward the special property, in some pertinent legislation or be the inevitable implication arising from such legislation, does not apply to a proceeding by the United States to condemn a portion of a public alley for a post office site, the comparative importance of the contending public uses under such circumstances being a matter for judicial determination."

In this case, also cited by Judge Chesnut, the court stated that the United States has paramount authority in the matter of taking any property within its borders for those public uses which are within the constitutional reservation to the general government. Its rights in this behalf are inherent in its sovereignty and are prior to constitution and statutes.

It is, therefore, my opinion that if the United States Government should really need any land now used as a street, that it could condemn the same, and that such condemnation could only be defeated if the court should decide that public use as a street is more necessary than the use by the United States Government for its own particular purpose.

However, in view of Section 7 of the Baltimore City Charter (1938), which declares the title of the Mayor and City Council in and to its streets, etc., to be inalienable, in my opinion it would be advisable that whenever the United States Government requires a public street for its own use, the same should be closed, or opened and closed, if necessary, by the City in the usual manner, and then after proper ordinance, deeded to the Government.

Very truly yours,

(signed) ALFONSO VON WYSECKI

Assistant City Solicitor

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