

**Summary of SC92717, *State of Missouri ex rel. Velma P. Jackson and Alicia D. Seabaugh, Co-Trustees of the Lyle James Lambert a/k/a James Lyle Lambert and Jessie P. Lambert Family Trust Dated October 27, 2010 v. Hon. David A. Dolan***

Proceeding originating in the Scott County circuit court, Judge David A. Dolan  
Argued and submitted March 5, 2013; opinion issued May 28, 2013

**Attorneys:** The trustees were represented by Mark G. Arnold and Caroline L. Hermeling of Husch Blackwell LLP in St. Louis, (314) 480-1500, and Raymond C. Leible, an attorney in Sikeston, (573) 471-7007. The port authority was represented by James M. Hux of Hux & Hux in Sikeston, (573) 471-1737.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Private owners of land seek an order prohibiting condemnation of their land by a public port authority. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri makes permanent its writ (order) prohibiting the condemnation. Although the port authority's taking of the private land does not violate the state constitution, the taking does violate a state statute that prohibits taking of private property "for solely economic purposes." The record shows the purpose for the taking by the port authority is solely for economic development. As such, the taking is unauthorized by law.

**Facts:** In their capacity as trustees of a family trust, Velma Jackson and Alicia Seabaugh own undeveloped land that abuts land owned by the Southeast Missouri Regional Port Authority. The port authority, which operates a port district encompassing Cape Girardeau and Scott counties, also operates a six-mile railroad that enables area businesses to transfer freight between barges and trains at the port authority's harbor. To expand its facilities, the port authority decided to build a loop track that would enable it to handle trains of about 100 cars. To fund construction of the loop track, the port authority – which is authorized by section 68.025.1(17), RSMo Supp. 2012, to use the power of eminent domain to acquire property necessary to its purposes – sought to acquire the trustees' land, which it then planned to lease to private entities. The port authority planned to use the money resulting from the leases to build the loop track on land it already owns. When negotiations with the trustees failed, the port authority sought condemnation of the trustees' land in the circuit court, which ordered the condemnation. The trustees seek this Court's writ prohibiting the condemnation.

**WRIT MADE PERMANENT.**

**Court en banc holds:** (1) The port authority's taking of the trustees' land does not violate article I, section 28 of the state constitution, which provides "[t]hat private property shall not be taken for private use with or without compensation, unless by consent of the owner ..." and that, "when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public." Economic development is a legitimate public use under the takings clause of the Fifth Amendment to the federal constitution. *Kelo v. City of New London*, 545 U.S. 469, 484 (2005). Missouri's constitutional provisions relating to takings are

nearly identical to the federal takings clause. *See Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006). There is no reason at this point to deviate from the United States Supreme Court's holding with regard to the constitutional validity of takings for the purpose of economic development. Here, the port authority presented evidence that it wished to promote growth in employment and commerce through the use of the additional rail facilities it intended to fund by leasing the condemned property. Accordingly, the port authority's stated purpose of economic development serves a public purpose, thereby satisfying the public use requirement of article I, section 28.

(2) The taking violates section 523.271, RSMo Supp. 2012, which the legislature, as a matter of public policy, enacted to rein in the use of condemnation for economic development approved in *Kelo*. Section 523.271.1 provides: "No condemning authority shall acquire private property through the process of eminent domain for solely economic development purposes," which section 523.271.2 defines as "a use of ... property ... which would provide an increase in the tax base, tax revenues, employment, and general economic health ...." "Solely," as used in the statute, is plain and unambiguous: section 523.271 prohibits a taking only if the sole purpose for the taking is economic development and no other purpose supports the taking. Further, this Court must apply the term "economic development" as the legislature defines it and must give meaning to every word or phrase of the legislative enactment. As written, "economic development" is defined as an increase in all four of the factors listed in the definition. The condemning authority, which bears the burden of proving that a particular taking serves a public purpose, also bears the burden of proving that its taking is not solely for economic development purposes. Here, the port authority presented evidence that the taking would facilitate construction of a loop track to handle unit trains to expand and enhance the authority's transportation facilities and would improve river commerce – one of the means the port authority is using to achieve its goal of economic development. As such, this is not a purpose in addition to economic development. The record also demonstrates the only manner in which the taking will improve river commerce is by drawing more economic development into the area. As such, this also is not a purpose that is in addition to economic development. Because the port authority's taking is "for solely economic purposes," it violates section 523.271 and is unauthorized by law.