

## CPLR 316: Notice Effected by Advertisements and Handbills in Condemnation Proceedings Deemed Adequate in View of the Circumstances

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mining whether the "substantial revenue" requirement was satisfied. Undoubtedly, however, there is an urgent need for a legislative or an appellate pronouncement regarding minimum amounts under either test in order to prevent needless, time-consuming litigation.

*CPLR 316: Notice effected by advertisements and handbills in condemnation proceedings deemed adequate in view of the circumstances.*

The United States Supreme Court considered the constitutional requirements regarding notice in *Schroeder v. City of New York*.<sup>18</sup> Therein, condemnation proceedings were brought to acquire the right to divert a portion of a river some twenty-five miles upstream from plaintiff's summer home. Notice was attempted only by publication in local newspapers and by posting signs on trees and poles along the river during the winter. The Court ruled that this mode of service was constitutionally deficient with respect "to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question."<sup>19</sup>

*In re Massapequa—Woodbury Road*<sup>20</sup> claimants, owners of a gas station adjacent to a condemned street, contended that they had not received actual notice of the condemnation proceedings. The court nonetheless ruled that the required advertisement and the posting of handbills on or near the property to be acquired satisfied the notice requirements of the Constitution under the facts of this particular case.<sup>21</sup>

At first glance, it seems incongruous to hold that the plaintiff in *Schroeder*, whose property was twenty-five miles from the condemned area, was entitled to actual notice, while the claimants in the instant case, owners of property abutting the taking area, do not have the same right. Nonetheless, the criterion for notice consistent with the due process clause is that "reasonably calculated, under all the circumstances, to apprise interested parties" of the pendency of an action.<sup>22</sup> If for no reason other than the fact that the proposed acquisition by the state is likely to be a conversational topic among the local residents, it seems reasonable to presume that a party who owns property in the proximate vicinity will be sufficiently informed of his rights by means of advertisements and handbills.

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<sup>18</sup> 371 U.S. 208 (1962).

<sup>19</sup> *Id.* at 212-13.

<sup>20</sup> 64 Misc. 2d 976, 316 N.Y.S.2d 489 (Sup. Ct. Nassau County 1970).

<sup>21</sup> *Id.* at 979, 316 N.Y.S.2d at 491-92.

<sup>22</sup> *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950).