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ANALYSIS OF DECISION GIVEN BY THE APPELLATE DIVISION
OF THE NEW YORK STATE SUPREME COURT -- FEBRUARY 19, 1963

On February 19, the Appellate Division of the New York State Supreme Court handed down a 3-2 decision declaring the statute authorizing the Hudson & Manhattan - World Trade Center project unconstitutional. Presiding in the Court were Justices Bernard Botein, Charles D. Breitel, Benjamin J. Rabin, Harold A. Stevens and Aron Steuer. Justices Rabin, Stevens and Steuer concurred in the majority opinion holding the statute unconstitutional and Justices Botein and Breitel, in a dissenting opinion, upheld the constitutionality of the project. Justice Breitel's dissenting opinion notes that the States of New York and New Jersey granted the Port Authority powers they deemed essential to realize the World Trade Center project because they deemed such a project essential to the "maintenance of the hegemony of the Port of New York in the western hemisphere." Judge Breitel's dissent continues, "the vastness of the concept for such maintenance and the unusualness of the proposed implementation do not suggest constitutional invalidity, although one may require acclimatization."

Judge Rabin, in his opinion in which Judge Stevens joined, agrees that "there is no question but that the creation of a World Trade Center, in concept, is a public purpose." However, he goes on in his opinion to "examine the statute to see if the powers granted the Authority to effectuate that concept are not too broad."

The answer is succinctly stated in the dissenting opinion:

"The so-called 'world trade center' concept is simply the development under government aegis of a physical centralization of government and private enterprises serving and regulating foreign commerce at a port of entry. To do this, there is required the assembly of land and erection of structures to house and service the many enterprises and their personnel, as well as those who will come to the center to engage in foreign commerce. This, indeed, is nothing more than a great public market or zone, but instead of serving merely a provincial or even urban region, it must serve the needs of traders on the seven seas at the greatest port in this part of the world. As in a public market, it is private enterprisers who will buy and sell wares and services, but the land and the stalls will be provided by a public corporation on a rental basis. Also, as in a public market, there will have to be auxiliary services available to those who work in, use and trade in the center -- from restaurants to automobile parking areas. These should pay their way and provide revenue to the government-designated and created sponsor of the center.

"Such a center is not a private purpose, but a public purpose, so long as it is reasonably considered essential to the life of the port. It is no more a 'real estate project,' as appellants would characterize it, than is a state fair or a municipal public market. Each involves the use of land, structures, the leasing to private

enterprises, and the expectation of revenue from public uses, leasing, and auxiliary services."

Even in holding the authorizing statute unconstitutional, the majority accepted this basic concept of the World Trade Center. Their precise stated grounds for striking down the entire statute pinpoints a portion of the statutory definition of "world trade center." While the doctrine of incidental revenues from upper stories over a public facility was expressly confirmed, the majority believed that the statute went further and permitted condemnation of property solely for incidental revenues and without any intent to accommodate basic World Trade Center occupants.

As Justice Breitel's dissent points out, "the occasion for statutory language authorizing incidental uses and revenues from surplus space and property otherwise held for a public use, occurs often enough." The powers of the Port Authority to develop such incidental revenues from its public projects, and the necessity for it to do so, were tested and upheld by the New York Court of Appeals in the Bush Terminal case in 1940. The language which the Appellate Division majority focused on is no more than a legislative repetition of a conventional legal principle already expressly declared applicable to Port Authority projects by the New York Court of Appeals. The majority opinion, while confirming the standard doctrine, stretched the meaning of the language beyond its normal intent and well beyond the necessities of Port Authority finance and then struck down the entire Act because the provision went too far.

The opinion conjures up the possibility that the Port Authority, needing, let us say, only one-tenth of the statutorily circumscribed Hudson Tubes - World Trade Center area for purposes of the projects themselves, might nevertheless condemn the entire 13 blocks and improve nine-tenths of the property solely for the use of private persons for the sole purpose of deriving "profit." Again the answer is well stated in the dissenting opinion, - the statute does not purport to authorize any such taking of property solely for the purpose of developing it for revenue. If the Port Authority should ever attempt thus to disobey the statutory restrictions and to violate constitutional limitations, those threatened with injury would be protected by the courts.

All the courts need determine now as Justice Breitel replied in his dissent, is that the World Trade Center project is not prima facie unconstitutional. If and when condemnation of a particular parcel of property allegedly for World Trade Center purposes is sought, the true and precise purpose of the taking will be known and subject to court review. Justice Steuer's separate concurring opinion suggests that he has missed this point. He first concurs in Justice Rabin's reasoning and conclusion. Then he notes that the Port Authority may, as a matter of fact, find it unfeasible to go forward with and be obliged to abandon the World Trade Center project. Noting "that now is the only time that an effectual determination can be made" as to the validity of the World Trade Center project insofar as its basic concept is concerned, Judge Steuer reaches the erroneous conclusion that if the statute is upheld,

the Port Authority could "take the fee and level the buildings" in the entire 13 block Hudson Tubes - World Trade Center area "without further application to any court."

While the majority of the Appellate Division judges choose to base their rejection of the statute on a single phrase at the end of a single definition in one of the Act's 19 sections, the review by the Court of Appeals will, of course, not be confined to this issue. Before the highest state court all the possible constitutional and other legal objections will be asserted against the validity of the statute. These include, in addition to the question of whether the World Trade Center concept is prima facie constitutional, the question of the necessity for additional congressional consent, the validity of the subsidiary corporation, and due process aspects of the condemnation procedures.