



## SUPREME COURT DECISION IN THE DATTCO CASE

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### ISSUE

Summarize the state Supreme Court's December 27, 2016 decision in *Dattco Inc. et al v. the Commissioner of Transportation*.

### SUMMARY

In a 4-2 decision, the state Supreme Court ruled that the state Department of Transportation (DOT) improperly exercised its eminent domain power when it condemned documents that permitted four private bus companies to provide service on particular routes, including some routes now traveled by CT Fastrak. In doing so, the court found that a law granting DOT eminent domain power applies to tangible assets, such as land and buildings, and not to intangible operating rights.

In doing so, the court reversed a Superior Court ruling and directed the lower court to decide whether to issue an injunction blocking the condemnation and barring the DOT commissioner from operating buses over the private companies' routes.

### BACKGROUND AND CASE HISTORY

The condemnation case decided by the Supreme Court is one of two cases involving DOT and four bus companies. By law, bus companies in Connecticut operate under "certificates of public convenience and necessity" (certificates) that give a company the right to operate buses on a specific route.

Each of the four companies -- Dattco Inc., Collins Bus Service, Kelly Transit Co., and the New Britain Transportation Co. (NBT) -- operated under certificates first issued decades ago by the (now defunct) Public Utilities Commission.



The DOT commissioner condemned the certificates in 2014 under a law that authorizes him to take “any land, buildings, equipment or facilities” that he believes necessary to operate or improve state transportation services ([CGS § 13b-36\(a\)](#)). A Superior Court judge upheld the state’s condemnation action in December 2014 and the bus companies appealed to the Supreme Court.

The condemnation action occurred in connection with a second, separate case, not yet decided, involving the four bus companies and DOT in which the companies are trying to prevent DOT from awarding their routes to other companies.

## **SUPREME COURT DECISION**

### ***Explicit Statutory Authority***

In ruling against DOT, the court considered the DOT commissioner’s specific exercise of its eminent domain power under [CGS § 13b-36\(a\)](#) and the broader eminent domain power he has in overseeing the state’s transportation system.

The court’s decision largely turned on the meaning of the word “facilities” in the statute. The bus companies contended the proper definition of “facilities” refers to tangible items, in the same way as do the statute’s accompanying words (land, buildings, and equipment). But DOT interpreted the word more broadly, saying “facilities” also covers intangible items that promote “the ease of any action,” such as certificates permitting bus operations.

The Supreme Court rejected DOT’s interpretation, stating that the certificates, more than merely facilitating the bus companies’ operations, provided “the important, fundamental authority to conduct the [bus] service in the first place.”

“Interpreting ‘facilities’ to refer not just to what makes an action easier, but also to the very authority that authorizes the action...would unduly stretch the meaning of that term too far,” the court said. It said that doing so would also contradict the court’s responsibility to strictly interpret the scope of the state’s eminent domain power in favor of property owners.

The court said this interpretation was bolstered by other statutory language, such as that explicitly allowing transit districts to acquire transit company franchises. The court noted that “no similarly clear language authorizing the taking of a company’s operating rights appears in the statutes governing the [DOT] commissioner’s eminent domain power, further indicating that the legislature did not intend for his takings power to extend to the certificates at issue.”

### ***Commissioner's Broad Powers***

The court also addressed the commissioner's contention that he has broad, implicit authority to condemn the certificates, regardless of whether [CGS § 13b-36\(a\)](#) grants him explicit authority to do so.

The commissioner argued that since the law allows him to take a bus company's tangible assets, it stands to reason that he can also condemn its right to operate. The court agreed that the law gives the commissioner the power to suspend or revoke a certificate for cause, and that his broad condemnation power (over tangible assets) can supplement those actions.

"If the commissioner should need to revoke a bus company's certificate for poor performance and choose to have the state or another company operate over certain routes," the court said, "[CGS § 13b-36\(a\)](#) also permits him to take the bus company's tangible assets for use in continuing to provide bus service...with a different operator."

But the court said it is possible the legislature may not have intended to give DOT the ability to take a bus company's operating rights when it transferred regulatory authority over bus routes from the Public Utilities Commission to DOT in 1979, 10 years after it enacted [CGS § 13b-36 \(a\)](#).

"Given that the [DOT] commissioner had no power to regulate either the certificates or the services provided by bus companies when [§ 13b-36 \(a\)](#) was enacted," the court said, "it would not be absurd for the legislature to allow the commissioner to take tangible items necessary to improve transportation systems but not to condemn rights that he was not otherwise expressly permitted to grant or regulate."

While "the legislature may ultimately deem it good policy for the commissioner to have the power to condemn certificates," the court held, "we conclude that the legislature has not yet granted that power to the commissioner."

### **DISSENT**

The two dissenting justices accepted the state's interpretation of "facilities" to include the bus companies' certificates because, they wrote, "they aid or facilitate the operation of the plaintiffs' businesses by granting them rights to operate their buses on the designated routes." Doing so, they wrote, "aids the commissioner in executing his statutory mandate to promote and coordinate public transportation in the state, including ventures such as the Hartford-New Britain busway."

To rule otherwise, they warned, would “foster the impermissibly bizarre result of handcuffing the commissioner by allowing him to take a bus company’s fleet or buildings, but not its operating rights... including for the purpose, as in this case, of lowering the states’ transit subsidy expenses by allowing for those new routes to be competitively bid on the open market.”

## **DISPOSITION**

The Supreme Court directed the Superior Court to conduct further proceedings on whether to grant an injunction and what form it should take, in part because an injunction might affect the second case involving the four bus companies and DOT.

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