

Gilmer, TX
Gilmer Mirror
Circ. 4400

MAY 21 2003

Infringement on rail property should cause public concern

By MICHAEL QUINN SULLIVAN

"If you give a mouse a cookie" begins a classic children's story involving the ever-expanding problems created by incrementalism. First a cookie, then milk, a straw, and more and more. Havoc is wreaked as the child in the story caves to the mouse's increasingly ridiculous demands.

Unfortunately legislation recently approved by the Texas House and under consideration in the Senate potentially recreates the mouse tale, creating a far more real, and ruinous, situation.

The legislation, HB 2006, carries the boring description of "relating to the construction and maintenance of utility, common carrier, and energy transporter facilities along, over, under, or across a railroad right-of-way."

While it sounds innocuous to many, those who are protective of private property rights find HB 2006 downright chilling. This legislation will turn our free market economy upside-down, as government unilaterally becomes the sole judge of what should be private business decisions regarding land-use.

Most egregiously, the legislation gives utility companies and unregulated pipeline companies the authority to exercise "eminent domain" or "condemnation" power over railroad property. By way of explanation, eminent domain is the government's power to take privately-owned property if it determines the land is needed for a public good.

Likewise, some private companies that provide a public service – like utilities – are granted power to condemn property, but only with close regulation of their activities.

The power has been used wisely by government to create highways, but also has been abused as entities threw people out of their homes and off their farms to create space for corporate developments and other questionable activities. Eminent domain is a frightful power, which must be carefully guarded.

The Cato Institute's recent handbook on federal issues notes that in the 17th and 18th centuries – the period leading up to and encompassing our nation's birth – what we know as eminent domain was called "eminent power." An appropriate description.

The House legislation, HB 2006, dangerously gives the despotic power to pipeline companies and utilities wanting to go over, under or across existing railroad property. So what's the big deal? It's just railroad land, right? This time. The precedent is chilling – if a company can be granted authority to exercise eminent domain to run pipes under railroad tracks this year, will it be your neighborhood next year? Your living room the next?

While the utility companies might be trusted to exercise this new power with the wisdom of Solomon, what other special interests will demand it in years to come? Perhaps radical environmentalist groups will condemn

property to protect algae. Perhaps churches, civic clubs or car dealerships will want it to expand their holdings? The potential for abuse is staggering.

While the U.S. Constitution explicitly requires government to ensure property owners are given "just compensation" when land is taken, the "who" getting to determine what is just is not the property owner. This slender protection creates an untenable situation when government decides, and an impossible one if a private organization gets to set the rules and the "just" compensation according to HB 2006.

At best, the legislation creates a perverse disincentive for railroads to expand their Texas operations. Why should railroads invest more resources in Texas, knowing our state allows their property to be taken by private companies unwilling to compete for land-use in the free-market? With diminishing rail capacity, Texans can expect more truck traffic, worse congestion and increased pollution.

Texas government is poised to concede to the mouse's demand for a cookie – passing legislation that stimulates the all-too-common urge to take more of what ever belongs to someone else.

The rights of property owners – whether a railroad company or an individual – must remain sacrosanct. If someone wants to make a deal, whether it is an individual or a pipeline company, let them compete in the free-market world

of business without the powers of government giving advantage to one side. And if private companies are granted the advantage to condemn another private party's property, make sure those companies have corresponding public duties and service.

As my daughters have learned from their storybook, Texans should tell this mouse "no."

Michael Quinn Sullivan is director of media and government relations for the Texas Public Policy Foundation, a non-partisan think tank with offices in Austin and San Antonio. The Foundation's website is at www.TexasPolicy.com.