Judgment rendered October 29, 2012.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 47,321-CA
No. 47,322-CA
(Consolidated Cases)

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

No. 47,321-CA

JOHN CREIGHTON WEBB, JR., ET AL.
Plaintiffs-Appellants

Versus

FRANKS INVESTMENT CO., ET AL.
Defendants-Appellees

No. 47,322-CA

ERIC W. ALLEN, ET AL.
Plaintiffs-Appellants

Versus

CHESAPEAKE LOUISIANA, LP, ET AL.
Defendants-Appellees

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 530,547

Honorable Ramon Lafitte, Judge

* * * * *

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* * * * *

Before BROWN, CARAWAY, MOORE, LOLLEY, and SEXTON (*Pro Tempore*), JJ.

CARAWAY, J., concurs with written reasons.

MOORE, J., dissents and assigns written reasons.

BROWN, CHIEF JUDGE

These consolidated cases arise out of disputes over the mineral rights in two separate tracts of land in Caddo Parish, Louisiana. In both cases, in the early 1900s, a strip of land was dedicated for a public road. Both tracts were bisected by the roads. The ownership of the roadbeds is critical in determining who now owns the minerals underlying the roads and whether the mineral servitudes have prescribed through non-use. The district court consolidated the two cases and heard arguments on all motions for summary judgment pertaining to the ownership of the roadbeds. The trial court rendered separate opinions, and found, as a matter of law, that Caddo Parish owned both roadbeds. Thus, the mineral servitudes on both tracts were divided. The trial court rendered partial summary judgments in both cases, designated them as final judgments and expressly determined that there was no just reason for delay. La. C.C.P. art. 1915B(1). This appeal followed. We reverse, render and remand.

Discussion

"It is relevant to note that prior to the advent of the mineral industry in Louisiana, the subject of public ownership of dedicated property was important only insofar as it governed the use to which dedicated property could be put." *Garrett v. Pioneer Production Corp.*, 390 So.2d 851, 855, (La. 1980). The dedications in these cases were made in 1913, 1914, 1924, and 1928. Today, these tracts are in the Haynesville Shale, and there are large bonuses and royalties at issue.

The Webb Tract and Flournoy-Lucas Road

The Webb case involves a strip of land across a 1,750-acre tract in south Caddo Parish. On September 11, 1913, J.W. Railsback executed a standard form dedication ("the 1913 dedication") with the preprinted language, "I ... do hereby dedicate to the public use for a public road, the following described land," followed by a handwritten description of a 25- to 50-foot strip of land, "part of what is known as the Lucas-Forbing Road[,]" under which appears the preprinted statement, "The said property to be used for public road purposes only."

On June 14, 1914, F.F. Webb executed an identical standard form dedication ("the 1914 dedication") with a handwritten description of a 25-foot strip running diagonally across the lots described in Sections 4 and 5, T 16 N, R 13 W.

On February 22, 1924, F.F. Webb executed yet another standard form dedication ("the 1924 dedication") with a typewritten description which "supercedes [sic] part of the previous deed[.]" The strip of land described in these dedications is now known as Flournoy-Lucas Road, which runs east-west across the middle of the tract.

In May 1979, Webb's successors partitioned the tract but retained the minerals; wells drilled north of Flournoy-Lucas Road have been maintained without any 10-year lapse. By cash deeds in 1985 and 1997, Franks Investment acquired mineral rights and surface rights, in the tract, and leased them to Twin Cities Development, which subleased to Chesapeake. These entities ("the Franks defendants") maintained that the 1913, 1914,

and 1924 dedications conveyed to Caddo Parish full ownership of the roadbed of Flournoy-Lucas Road, thus splitting the mineral servitude pursuant to La. R.S. 31:73. They contended that operations conducted north of Flournoy-Lucas Road did not interrupt prescription as to the land south of the road; in essence, that the mineral servitude affecting the land south of the road prescribed for nonuse. Webb's successors countered that Caddo Parish had only a right of passage or servitude that did not divide the tract. Thus, operations north of the road maintained the mineral servitude to the south.

The Allen Tract and Blanchard-Furrh Road

The Allen case involves a strip of land across a 295-acre tract north of Shreveport. Jacobs Land Company is the common ancestor in title for all parties. On January 31, 1928, Jacobs Land Company executed the same standard form dedication as in the Webb case ("the 1928 dedication") with the same preprinted language, "I ... do hereby dedicate to the public use, for a public road, the following described land," followed by a typewritten description of a 100-foot wide strip traversing the tract, "known as the Blanchard-Furrh Road[,]" creating a northwest and southeast portion. Finally, the form provided, "The said property to be used for public road purposes only."

In 1991, Jacobs Land Co. sold the tract but retained the minerals; Allen and 42 others are the current surface owners. In 2003, Jacobs Land Co. sold the mineral rights to Huddleston Energy Reserves, which later (after the announcement of the Haynesville Shale) leased the minerals to

Chesapeake. Allen and the other surface owners, however, maintained that the 1928 dedication conveyed to Caddo Parish full ownership of the roadbed of Blanchard-Furrh Road, thus splitting the mineral servitude.

Applicable Law

A.N. Yiannopoulos, Property § 96, in 2 *Louisiana Civil Law Treatise* (4th ed. 2001) wrote:

> Gradually, it became settled that the public may acquire in Louisiana an interest in the land on which a road is built or in the use of a road in a variety of ways. Thus, the public may acquire land or a servitude for the construction and maintenance of a public road by one of the methods of the Civil Code by which ownership or servitudes are acquired, including purchase, exchange, donation, expropriation and prescription. Most frequently, however, the public acquires an interest in a road by dedication.

The dedication of private property to a public use may be accomplished in a number of ways. Sometimes perfect ownership of the land passes to the public body; sometimes only a servitude is established in favor of the public. At issue in these consolidated cases is whether a servitude or fee title was given in the formal dedications of the roads. This will determine who owns the minerals underlying the roads and on each side of the roads. These dedications were all on a standard preprinted form used by the Caddo Parish Police Jury and were executed in 1913, 1914, 1924 and 1928. The parties are in agreement that these were formal dedications to the Caddo Parish Police Jury (now Caddo Parish Commission) for road purposes.

In each of the dedications, the preprinted form states: "I ... do hereby dedicate to the public use, for a public road, the following described land,"

followed by either a handwritten or typewritten description. Finally, the form provides, "The said property to be used for public road purposes only."

The plaintiffs in the Webb case and defendants in the Allen case point out that the granting of the dedications were voluntary, that no compensation was given, that they specifically limited the purpose for which the property could be used and contained no language conveying fee title to the Parish. On the other hand, the proponents of public fee ownership claim that the absence of any language in the instruments to the effect that the grantor retained ownership or that only a servitude was granted vest the Parish with full ownership of the property. In short, the grantors of the dedication would require a written clause in the deed that specifically conveys ownership to the Parish, while the other side would require the grantors to have a written reservation of ownership or specify that only a servitude was given. In this case, the instruments in question have no language either conveying or reserving title to the property.

In *Hatch v. Arnault,* 3 La. Ann. 482 (1848), the supreme court was faced squarely with the issue and held that the public has merely a servitude on the soil on which the road is built. The court grounded its opinion on Article 654 of the Louisiana Civil Code of 1825, which is the same as Article 658(2) of the 1870 Code.

Article 658(2) (1870) provided that “the soil of public roads belongs to the owner of the land on which they are made though the public has the use of them.” In 1978, C.C. Article 457 was enacted. The redactors comments state that this article was based on articles 704 through 706, and

658(2) of the Louisiana Civil Code of 1870 and "[I]t does not change the law."

The question is whether the dedicating instruments granted fee title to the Parish or just a servitude.

In *Jones Island Realty Co. v. Middendorf*, 191 La. 456, 460-461, 185 So. 881, 882 (La. 1939), the court stated that:

> A mere reading of the act of dedication conclusively shows that plaintiff did not intend to convey title in fee to the property described in the act of dedication to the Louisiana Highway Commission, but merely to grant a servitude. . . The consideration is the advantages accruing to it [plaintiff] by reason of the location of the Hammond-New Orleans 461 Highway, through and upon its property . . . and is made for and shall be solely used for the construction and maintenance of a public road from Hammond La. to New Orleans, La. . . . and for no other purpose. [*Noel Estate, Inc., v. Kansas City Southern & Gulf Ry. Co.* et al., 187 La. 717, 175 So. 468 (1938)].

In *Texas & P. R. Co. v. Ellerbe*, 199 La. 489, 492, 6 So. 2d 556, 557 (La. 1942), the supreme court wrote that:

> In *Moore Planting Co. v. Morgan's Louisiana & T. R. & S. S. Co., supra* [126 La. 840, 53 So. 23], we said: 'A right of way may consist either of the fee, or merely of a right of passage and use, or servitude. Whether the one or the other is meant in any particular instrument must be gathered from the instrument as a whole. As a general rule, only a servitude is meant.'

In *Sun Oil Co. v. Stout*, 46 So. 2d 151, 153 (La. App. 2d Cir. 1950), this court through Judge Kennon (later Governor Kennon) observed that:

> It is well-settled in this State that in deciding whether a fee simple title to land has been conveyed or a servitude or right-of-way thereupon has been granted by a deed, the intention of the parties thereto must be determined from the stipulations in the entire instrument, with a view of giving effect to all of the provisions therein contained and thereby avoid neutralizing or ignoring any of them or treating any of them as surplusage.
> . . .

> An examination of all of the above cited cases and of other cases involving the point at issue discloses that generally in right-of-way cases-whether the same be for rail or canal purpose-the Courts have construed the intent of the parties to be to grant a servitude only and have held that the fee title remained in the owner of the land over which the right-of-way was granted. This is in line with the modern practice of companies constructing cross-country pipelines, etc. to acquire only right-of-way rights through the lands over which the lines run. In cases in which the instrument granted a parcel of ground for a particular purpose such as a city market, sugar refinery, or house of worship, the Court has usually found that it was the intent of the parties to grant a fee title subject to the resolutory condition. This is consistent with the usual practice of religious and community service organizations to acquire a regular fee title to the land on which its buildings may rest.

Those claiming that the dedications in the cases *sub judice* gave fee ownership to Caddo Parish argue that Louisiana's law of dedication to public use is summarized in *St. Charles Parish School Bd. v. P & L Inv. Corp.,* 95-2571 (La. 05/21/96), 674 So. 2d at 218, 221 as follows:

> Louisiana has never enacted a comprehensive scheme of dedication to public use. However, Louisiana courts have recognized four modes of dedication: formal, statutory, implied, and tacit. A landowner may make a formal dedication of a road by virtue of a written act, such as a deed of conveyance to the police jury of the parish. The written act may be in notarial form or under private signature. A.N. Yiannopoulos, Property § 95, at 204-205 [2 La. Civ. L. Treatise, 3 ed. 1991]. ***A formal dedication transfers ownership of the property to the public unless it is expressly or impliedly retained.*** Yiannopoulos, Property § 95, at 208-209. If the landowner retains ownership of the property, the public acquires a servitude of public use. (Emphasis added).

From Yinnopoulos's statement, as quoted by the Louisiana Supreme Court, the proponents of fee ownership in the Parish claim that "all formal dedications are, as a matter of law, conveyances of full ownership unless some contrary expression of grantor's intent is provided." They would

require a written retention of ownership by grantor or the inclusion of the word "servitude." We do not agree with such a restricting limitation.

The *St. Charles Parish School Board* case involved a tacit dedication; the school board constructed and maintained the road for more than three years. A tacit dedication arising by operation of statute involves public maintenance of a road or street for a specified period of time. La. R.S. 48:491. The public acquires by virtue of a tacit dedication a servitude of passage. *Gaston v. Bailey*, 39,835 (La. App. 2d Cir. 06/29/05), 907 So. 2d 859. The *St. Charles Parish School Board* case did not involve a formal dedication, as in the instant cases. See *Cenac v. Public Access Water Rights Ass'n*, 02-2660 (La. 06/27/03), 851 So. 2d 1006, which overturned *St. Charles Parish School Board* as to the requirements of a tacit dedication.

The quote from Yiannopoulos that "A formal dedication transfers ownership of the property to the public unless it is expressly or impliedly retained" must be read together with what Yiannopoulos stated in A.N. Yiannopoulos, 3 Predial Servitude § 130, in 4 *Louisiana Civil Law Treatise* (4th ed. 2004).

> An instrument granting a right of way may contemplate either the creation of a servitude of passage or the transfer of the ownership of a strip of land. Louisiana courts have repeatedly held that "whether the one or the other is meant in any particular instrument must be gathered from the instrument as a whole." The general rule is that "the conveyance of a right of way is generally meant to be merely a servitude, unless the deed itself evidences that the parties intended otherwise."
> . . .
> Quite frequently, landowners granting servitudes employ language and forms generally used in sales of immovable property, coupled with qualifying clauses designating the creation of a servitude rather than transfer of ownership. In a typical case, an instrument declared that a described tract of land had been "sold and conveyed for railroad

> purposes only" and that the grant was "in perpetuity or so long as it is used by said Company, its successors and assigns, for railroad purposes, but if abandoned, for such use and purpose, then said land shall revert to the grantor herein or his heirs and assigns." The court, interpreting the instrument as a whole, reached the conclusion that the intention of the parties was to create a servitude only. [*Texas & P. R. Co. v. Ellerbe*, 199 La. 489, 6 So. 2d 556, 557 (La.1942)].

In the cases *sub judice*, the parties have historically treated the land underlying the roads as servitudes. In April 1930, the Parish Engineer wrote a letter ("the engineer letter") to an out-of-state landowner stating that a deed using the same standard form used in the 1913, 1914, 1924, and 1928 dedications "reads for public road purposes only and the Parish would have no right to exploit the mineral rights[.]"

In 1957, the Caddo Parish Police Jury received an inquiry from a landowner concerning a road created by a standard form deed like those in the present cases. In response, the police jury passed a resolution ("the 1957 resolution") stating that "in order to clear the title to the ownership of the mineral rights under a public road the Caddo Parish Police Jury hereby declares that it makes no claim to the ownership of the mineral rights by virtue of the deed[.]"

Finally, in 1983, the Police Jury passed another resolution ("the 1983 resolution") stating:

> [A]ll dedications of public road rights-of-way ... where the dedication instruments contained statements that the property was to be used for public road purposes only and where the instruments cited no financial consideration in favor of the grantors, shall be henceforth considered by Caddo Parish only to constitute grants of public servitudes and rights-of-way, ... and ***Caddo Parish does hereby waive all present and future claims to fee title and to mineral rights relating to the property described in such instruments***. (Emphasis added).

This Resolution was immediately recorded in the Conveyance Records of Caddo Parish on April 25, 1983; and obviously, for the past thirty years has influenced title work in Caddo Parish.

The court in *Clement v. City of Lake Charles,* 10-703 (La. App. 3d Cir. 12/08/10), 52 So. 3d 1054, 1058, speaking to the difference between statutory and formal dedications stated:

> Statutory dedication and formal dedication are two different modes of dedication. See Yiannopoulos, Property § 97 (4th ed. 2001). A landowner who ordinarily sells his land may never formally dedicate anything to the public use. On the other hand, a landowner who divides his property into lots with streets or alleys between them and then sells the lots must, in addition to performing other duties, dedicate to public use all the streets, alleys, and public squares or plats. La. R.S. 33:5051. Because in formal dedication the act of dedication is voluntary, there is a greater need to guard against a landowner's inadvertent mistakes. Thus, the landowner may impliedly retain ownership of the dedicated land without any specific reservation. *S. Amusement*, 871 So.2d 630; Yiannopoulos, Property § 97 (4th ed. 2001).

Unlike statutory dedication, formal dedications do not require fee ownership of the roadbed. The formal dedication is voluntary and there is no need for the public ownership of roadbeds. The public interest is in the use of the road. These roadbeds were given without compensation for a particular and limited purpose. The fact that the dedications did not include any language conveying fee title to the underlying roadbeds is indicative of an intent to retain ownership.

The dedications in the cases *sub judice*, clearly support the conclusion that only a servitude was given. There was no language dedicating fee title to Caddo Parish; there was no compensation given; there were specific limitations on the purpose for which the property could be

used; and, the dedications have been historically treated as servitudes. The engineer's letter of 1930, the resolution of 1957, and the resolution of 1983 clearly expressed the Caddo Police Jury's (now Caddo Parish Commission's) understanding and intent that these instruments are "only to constitute grants of public servitudes . . ."

Focusing attention on the public policy (there was no need for the Parish to obtain fee ownership), the lack of consideration, stipulations pertaining to the use of the strips of land for road purposes only and the clearly expressed intent of the parties, we conclude that these stipulations are inconsistent with the idea that ownership was intended to be conveyed to the Parish; rather, they indicate strongly that a right of passage or servitude was intended to be given.

The intent of the dedications can be comfortably known from the deeds, but if ambiguous, the extrinsic evidence consisting primarily of the Resolutions and Parish Engineer's letter make clear the intent to give only a servitude.

The 1983 Resolution

The Caddo Parish 1983 resolution states that " ***Caddo Parish does hereby waive all present and future claims to fee title and to mineral rights relating to the property described in such instruments***."

In *State, Dept. of Transp. & Development v. Scramuzza*, 96-1796 (La. 4/8/97), 692 So. 2d 1024, the supreme court held:

> Accordingly, we hold that a formal act of revocation is necessary to revoke a statutory dedication under La. R.S. 48:701. This is consistent with the view expressed by Professor Yiannopolis that "[w]hen the public owns the land on which

> roads and streets are built, as in the case of a formal or statutory dedication, the public interest may be terminated only by a formal act of the parish or municipal authorities." Yiannopolis, *Civil Law Treatise*, Property, Vol. 2, Sec. 104, p. 227 (1980). This view is also consistent with the numerous courts of appeal that have held that a formal act of revocation is necessary to revoke a statutorily dedicated street.

State v. Scramuzza, *supra*, does not specifically state that an ordinance is required, only a formal act. Courts have often given binding effect to resolutions, as in *Jaenke v. Taylor*, 160 La. 109, 106 So. 711 (1926); *Gatson v. Bailey*, 39,835 (La. App. 2d Cir. 06/29/05), 907 So. 2d 859; *Torrance v. Caddo Parish Police Jury*, 119 So. 2d 617 (La. App. 2d Cir. 1960); and *Jeffries v. Police Jury of Rapides Parish*, 53 So. 2d 157 (La. App. 2d Cir. 1951). Thus, the 1983 resolution was a formal act sufficient to relinquish the Parish's alleged and contested fee ownership and mineral rights to the strips of land in favor of a servitude. As stated, the Parish had no need of fee ownership. The Parish did not give up these heavily used roads. They maintained the right of passage. The resolution simply recognized "where the dedication instruments contained statements that the property was to be used for public road purposes only and where the instruments cited no financial consideration in favor of the grantors, shall be henceforth considered by Caddo Parish only to constitute grants of public servitudes and rights-of-way."

Conclusion

For the reasons set forth above, we reverse that portion of the trial court's judgment in *Webb, et al. v. Franks Investment Co., et al.* (#47,321-CA) granting partial summary judgment in favor of Franks Investment

Company, L.L.C.; Twin Cities Development, L.P; Chesapeake Louisiana, L.P; and the Parish of Caddo. Likewise, we reverse that portion of the trial court's judgment in *Allen, et al. v. Chesapeake Louisiana, L.P., et al.* (#47,322-CA) granting partial summary judgment in favor of Eric W. Allen, et al.; and the Parish of Caddo.

We reverse that portion of the trial court's judgment in *Webb, et al. v. Franks Investment Co., et al.* (#47,321-CA) denying the motions for partial summary judgment filed by John Creighton Webb, et al.; and Petrohawk Properties, L.P. and grant partial summary judgment in their favor. We reverse that portion of the trial court's judgment in *Allen, et al. v. Chesapeake Louisiana, L.P., et al.* (#47,322-CA) denying the motion for partial summary judgment filed by Chesapeake Louisiana, L.P., et al. and grant partial summary judgment in their favor.

In each case, all costs are to be paid by appellees.

We remand the consolidated cases to the trial court for further proceedings. **REVERSED, RENDERED, AND REMANDED**.

CARAWAY, J., concurring.

This legal conundrum of the extent of the public's ownership from a dedication of "land" for "the public use for a public road" is not aided by the somewhat offhand, yet most pertinent, observation of Civil Code Article 457. "The public may own the land on which the road is built or merely have the right to use it." La. C.C. art. 457. That indecisive codal observation, however, does clearly reveal that the only "public thing"[1] in this case is the use or *usus* right of the ownership of the land as a road. The inalienable character of the public thing involved in this dispute is the public use of the property as a road. In contrast, the additional and non-conflicting use of the property for mineral development will be encumbered by lease and partially alienated as a "private thing"[2] by Caddo Parish (hereinafter "Caddo") in its private capacity if the trial court's verdicts are affirmed. There is no question that the "public thing" component of Caddo's ownership was acquired and remains secure. The "private thing" component of its asserted ownership of these road lands is at the heart of this dispute.

The parties' thorough briefs and their counsel have informed us that the Louisiana Supreme Court has never ruled on the central issue of this case for any dedication grant for a public road using a specific written contract with the basic and brief language of dedication used in the Caddo

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[1]Revision Comment (b) to Civil Code Article 450, defining public things, makes clear that a public thing is dedicated to public use and held in the public trust.

[2]Revision Comment (b) to Civil Code Article 453, defining private things owned by a public subdivision, cites the Supreme Court holding that such private thing "may be dealt with as the [public body] sees fit." La. C.C. art. 453 Revision Comment (c) citing *Anderson v. Thomas*, 166 La. 512, 526, 117 So. 573, 579 (1928).

road form (hereinafter the "Dedication Form"). Indeed, there are no cases where the Supreme Court has addressed this question of the extent of ownership conveyed when a party merely "dedicates land" to a public body "for a public road" in a written grant without any stated monetary payment by the public body.[3] Likewise, I find no cases where the Supreme Court has addressed whether the lack of an authentic act for the dedication or the lack of a written acceptance by the public body might prevent or limit the force of such private, unilateral act of dedication.

Importantly, the high court has ruled on the extent of the public's ownership in two other public road settings. The leading case addressing a dedication by use of a subdivision plat, under what is now La. R.S. 33:5051, held that the public body acquired the entire ownership or "fee" interest. *Arkansas-Louisiana Gas Co. v. Parker Oil Co.*, 190 La. 957, 183 So. 229 (1938). On the other hand, for a public road arising from a so-called "tacit" dedication pursuant to La. R.S. 48:491, the Supreme Court ruled that the public body only acquires a servitude for public road use. *Goree v. Midstates Oil Corp.*, 205 La. 988, 18 So.2d 591 (1944). Thus, in keeping with the codal indifference of Article 457 for the extent of the public ownership of a road, the jurisprudential rulings for plat dedication and tacit dedication reached inconsistent conclusions. Without specific statutory guidance in our law and with the public road use always intact under either result, inconsistent interpretations for the present Dedication Form remain

[3]In contrast, in a case where the object of the dedication grant was specifically described as a "right-of-way," the Louisiana Supreme Court found that only a servitude was conveyed to the public body for a road. *Jones Island Realty Co. v. Middendorf*, 191 La. 456, 185 So. 881 (1939). The object of the conveyance in the Dedication Form is listed as "land."

viable for either Caddo's ownership of a servitude or the "fee." Indeed, this panel's views so demonstrate.

Accordingly, without any statutory rule and with differing jurisprudential assessments of the public's ownership in other road settings, the Louisiana Supreme Court's last statement on the subject in *St. Charles Parish School Bd. v. P&L Investment Corp.*, 95-2571 (La. 5/21/96), 674 So.2d 218, argued now by the parties, is merely dicta. The case did not address a formal written act of dedication. Citing Professor Yiannopoulos [A.N. Yiannopoulos, Property §95, in 2 *Louisiana Civil Law Treatise* (3d ed. 1991)], the court's general recitation of the law for road dedications stated:

> A formal dedication transfers ownership of the property to the public unless it is expressly or impliedly retained. *Yiannopoulos*, Property §95, at 208-209. If the landowner retains ownership of the property, the public acquires a servitude of public use.

St. Charles Parish School Bd., supra at 221. Nevertheless, from the implications in rulings of the court concerning plat dedications and from the Legislature's early use of the term "dedication" in legislation predating the first Caddo grant in this case, I find that the best legal analysis of this *res nova* question supports the above expression of the law given in *St. Charles Parish School Bd*.

The earliest use of the term "dedication" by the Legislature apparently occurred in Act 134 of 1896 (the "1896 Act"). The 1896 Act is the source statute for La. R.S. 33:5051 for public road dedications involving the use of a plat for the sale of subdivided lots. The subdivider was charged under the 1896 statute to record in the conveyance records a plat or map

containing on its face "[a] formal dedication made by the owner ... of all the streets, alleys and public squares or plats shown on the map to public use." In the Civil Code of 1870, "dedication" was not a category of conveyance, such as "sales" or "donations," by which one might divest himself of ownership. The legislature apparently borrowed the term from prior jurisprudence and the common law and made it clear that such "dedication" was a special category of conveyance "to public use." The 1896 Act did not address the extent of the ownership interest acquired by the public body, and the plat dedication provisions as presently contained in La. R.S. 33:5051 likewise do not specify the extent of the public's ownership. The question was thus left for judicial interpretation of both the statute itself and the subdivider's juridical acts in executing the "formal dedication" and recording the plat.

The next use of the term "dedication" in legislation occurred in 1910 with Act 151 (the "1910 Act"). The 1910 Act is the source statute for La. R.S. 48:701, entitled "Revocation of Dedication." Because of the present dispute concerning Caddo's 1983 resolution for its roads acquired under the Dedication Form, all parties have addressed this statute as applicable to the asserted revocation for the roads in question, with Caddo and the other appellees taking the position that no formal revocation was accomplished by the 1983 resolution as discussed below. Thus, while the 1910 Act unquestionably has application to a plat dedication or "formal dedication" effected pursuant to the 1896 Act, the parties also agree that the scope of the

dedications addressed in the 1910 Act (La. R.S. 48:701) is also broadly applicable to a formal written act of dedication.

The 1910 Act provides to police juries the power to "set aside the dedications of all roads" previously "dedicated to public use" when such roads "are no longer needed for public purposes." Most significantly, the Legislature arguably gave substantive insight into the force and effect of Louisiana "dedications" when it added the following provision in the 1910 Act:

> That upon such revocation, the ownership of the soil embraced in such roads, streets, and alley-ways up to the center line thereof shall revert to the then present owners of the land contiguous thereto.

Therefore, following a period of public use of a dedicated road, which may be a lengthy period of time, the statute recognizes that the adjacent "owners" of land on either side of the dedicated road may no longer be the owner who originally dedicated the roadbed. Nevertheless, the 1910 Act does not return the ownership of the dedicated roadbed upon revocation to the original owner nor provide that such owner's servient interest is freed from a public servitude. Instead, the Legislature chose to convey by operation of law the ownership of the dedicated roadbed after revocation to the then "present owners" of the contiguous lands.

Admittedly, the 1910 Act is far from comprehensive legislation providing a framework for a regime of "dedication" of public roads. However, any "dedication" contract voluntarily executed by a private owner to the public after the 1910 Act should have taken into account the strong implication of that legislation. The quoted provision rests on the premise

that if the owner uses as his expression for a land conveyance the specific verb "dedicate," as opposed to "sell" or "donate," his ownership of the land may be completely conveyed to a public body, allowing for the statutory transfer to other owners in the future upon revocation.

This legislative implication from the 1910 Act was actually noted by the Supreme Court in *Jaenke v. Taylor*, 160 La. 109, 106 So. 711 (1925) in support of its determination of a municipality's ownership of a street created by a town plat dedication. In 1913, the Town of Jennings had abandoned and revoked its rights to the street pursuant to the 1910 Act. Thereafter, at the time of suit, a dispute existed over the ownership of a small warehouse built out to the center of the street by the plaintiff who was the owner of an adjacent lot on one side of the former street. The defendant asserted that the abandoned street remained owned after the revocation by the original subdivider, McFarlain (or his heirs), who had platted the town lots and streets in 1884. Prior to the 1896 Act, the jurisprudence interpreting such plat dedications had indicated, without any statutory guidance, that the original subdivider/owner conveyed complete ownership to the public body. *Livaudais v. Municipality No. 2*, 16 La. 509, 1840 WL 1413 (1840); *The Town of Carrollton v. Jones*, 7 La. Ann. 233, 1852 WL 3598 (1852); *Torres v. Falgoust*, 37 La. Ann. 497, 1885 WL 6096 (1885). That rule was reaffirmed in *Jaenke* with the court utilizing the implication of the 1910 Act as additional legislative support of its "fee" determination, as follows:

> From all of which we conclude that when McFarlain, the owner of the land, laid out the town of Jennings into lots and streets and sold the lots in accordance with his plan and map, without any reservation or restriction indicating an intention to retain the ownership of the land

> covered by the streets, he thereby irrevocably dedicated the said streets to the public and divested himself of the fee as completely as if he had made a direct sale or donation of the said streets to the public.
>
> This has been the construction placed upon such acts of dedication by the Legislature of this state.
>
> Act 151 of 1910 authorizes municipalities, in their discretion, to revoke and set aside the dedication of streets which had theretofore been laid out and dedicated to public use when said streets have been abandoned or are no longer needed for public purposes.
>
> Section 2 of the said act provides:
>
> That upon such revocation, the ownership of the soil embraced in such roads, streets, and alleyways up to the center line thereof shall revert to the then present owners of the land contiguous thereto.

Id., 160 La. at 117-118. According to *Jaenke*, with the 1910 Act, the Legislature construed acts of road dedication as placing full ownership in the public, allowing that ownership to be transferred to other parties upon revocation of such dedicated roads. Since the 1910 Act has always been broad enough in its language to apply to plat dedications and formal written acts of dedication alike, the Legislature's implication or construction may also be applied to the landowner's voluntary act manifested by the language of Caddo's Dedication Form.

The analogous situation for the complete transfer of ownership by a plat dedication pursuant to La. R.S. 33:3051 also involves a deliberate judicial act by the owner of the land. *Arkansas-Louisiana Gas Co., supra*. On the other hand, the Supreme Court's ruling in *Goree, supra*, determined that a tacit dedication of a road arising from the landowner's mere acquiescence to the public maintenance and use of a road is distinguished from formal dedications and conveys only a servitude. The court said:

> There is a vast difference between a tacit dedication and a statutory dedication of property for public use. A tacit dedication is one which arises from silence, inactivity – one arising without express contract or agreement. A statutory dedication involves some deliberate, affirmative, active step taken in compliance with a statute by the landowner indicating a purpose and intent to dedicate.

Goree, supra, 205 La. at 1002-1003. The *Goree* court therefore distinguished its earlier ruling in *Arkansas-Louisiana Gas Co.* and justified its inconsistent choice for the ownership of tacitly dedicated roads as servitudes on the following conclusion:

> In that case [*Arkansas-Louisiana Gas Co.*] there was a formal, intentional dedication, by the owner of the land, of the streets to the public. In the case at bar there was no formal, intentional dedication. ...

Id. at 1007.

When we compare the Dedication Form to the requisite written statement for "formal dedication" pursuant to the plat dedication of the 1896 Act (now La. R.S. 33:5051), there is much similarity. The "formal dedication" statement on the plat need not be executed as an authentic act, even though the land is conveyed without payment as a virtual donation by the landowner. The "formal dedication" of the plat is unilateral as the statute does not require the signature of a public official expressing the public body's formal acceptance. The plat itself is nothing more than a visual rendering of a metes and bounds description of the street dimensions. Therefore, this unilateral written act with a property description and the landowner's expression of an intent for "formal dedication" of a road or street "to public use" was the Legislature's first definition in our law for public "dedication."

Likewise, the Dedication Form in question is a formal "deliberate," "active step" made as a unilateral act under private signature by each prior landowner of these Caddo roads. The form is a simple, two-sentence document with space for insertion of the metes and bounds description of the road in between the two sentences. No payment by Caddo is stated, and Caddo is not a signatory party.

Accordingly, we might summarize these two formal modes of dedication as follows: The landowner's formal dedication expressed on a plat is a conveyance to the public use for a public road given force and effect by a statute which does not otherwise inform us of the extent of the ownership received by the public. The landowner's formal dedication under the Caddo Dedication Form is a conveyance to the public use for a public road with contractual force and effect independent of any statute, yet still without clear expression of the extent of the ownership received by the public.

With this comparison, the *Jaenke* decision and the Supreme Court's analogous ruling in *Arkansas-Louisiana Gas Co.*, as summarized in *Goree*, quoted above, would require me to hold that the landowners will be deemed to have made a formal, intentional "dedication" that, on the face of the instrument alone, placed complete ownership in Caddo. Yet, such ruling would be far from definitive until such time that our highest court specifically rules. Overall, the rulings for Louisiana roads are inconsistent and the Legislature has given no directive requiring fee ownership in the public, as "the public may own [either] the road ... or merely have the right

to use it." La. C.C. art. 457. Nevertheless, this difficult issue may be pretermitted in this case because of the special facts surrounding the action taken by Caddo in 1983.

With this open question under Louisiana law, Caddo passed the following resolution in 1983 (hereafter the "Resolution"):

> WHEREAS, in the past Caddo Parish has obtained dedications for public roads without purchasing the rights-of-way thereto, by the use of dedication instrument forms including the statement that the property dedicated was to be used for public road purposes only, and
>
> WHEREAS, dedications using such forms have been a source of confusion and dispute as to the fee ownership of the property involved and the mineral rights attributable thereto, and
>
> WHEREAS, the Caddo Parish Police Jury believes the resolution of this problem and the action hereinafter taken to be in the best interest of the citizens of Caddo Parish.
>
> NOW, THEREFORE, the Caddo Parish Police Jury meeting in regular session this 20th day of April, 1983, does hereby resolve that all dedications of public road rights-of-way in Caddo Parish where the dedication instruments contained statements that the property was to be used for public road purposes only and where the instruments cited no financial consideration in favor of the grantors, shall be henceforth considered by Caddo Parish only to constitute grants to the public of servitudes and rights-of-way for the placement of public roads, for the placement or granting of rights of placement of pipelines, cables and utilities, and for other uses normally associated with public road rights-of-way, and Caddo parish does hereby waive all present and future claims to fee title and to mineral rights relating to the property described in such instruments. However, this waiver shall in no way affect the Parish's claims to funds previously received as a result of mineral speculation or production upon such properties, nor shall in no way affect the Parish's claims to funds previously received as a result of mineral speculation or production upon such properties, nor shall this waiver apply to rights-of-way purchased by the Parish or to statutory dedications.

This Resolution was immediately recorded in the conveyance records of Caddo Parish on April 25, 1983.

The phrase "dedication instrument forms" is unquestionably a reference to the same Dedication Form used in the multiple transactions from 1913-1928 in these consolidated cases. In answers to interrogatories, Caddo also stated that to the best of its knowledge "all roadways acquired by the Parish during the 20th century were acquired on the same form as the dedications herein." The phrase "for public road purposes only" is highlighted in the Resolution and is the actual language of the Dedication Form. In the legal vacuum for written dedications, Caddo correctly recognized that the Dedication Form was a "source of confusion" in 1983 as it remains today.

Despite the "confusion," Caddo has presented no evidence that prior to 1983, it had ever acted to lease for mineral exploration any of these road properties dedicated by its use of the Dedication Form. To the contrary, there was evidence of an earlier 1957 resolution involving one specific road dedication from 1925 on the Lawton family land. In the opinion of an assistant district attorney for Caddo, as noted in the minutes for the 1957 resolution, the Lawton dedication deed provided Caddo "only a servitude for road purposes and did not [provide] any interest in the mineral rights on the property." The Lawton resolution therefore declared that Caddo made "no claim to the ownership of the mineral rights."

The parties now debate the meaning and authority of the Resolution. The argument centers around the road revocation statute, La. R.S. 48:701, the present version of the 1910 Act discussed above. I do not find that this revocation statute is a relevant measure of the authority for Caddo's 1983

action. First, the statute operates upon a finding by the public body that the road use has been abandoned or is no longer needed for public purposes. Only upon those findings may the public's road use end or, more precisely, may the "public thing" held in the public trust become alienable by the operation of the statute itself. That has never occurred in this case as the public use of these roads has been constant, and Caddo made no showing in 1983 of the end of the public's need for these roads. Second, the revocation statute operates on the premise that the public is vested with the entire ownership of the land comprising the roadway as discussed above. Yet, for the simple, non-authentic, unilateral act of dedication now at issue, the jurisprudence of our highest court has never addressed whether Caddo became vested with the entire ownership of the land or merely the right to use it. This open legal issue is itself a unique type of ambiguity arising from the lack of any Civil Code framework governing "dedications." Also, the form language itself may ambiguously limit the "land" (fee) grant to "public road purposes only" (servitude). With that ambiguity, Caddo did not clearly divest itself of any ownership by its Resolution in 1983. Therefore, the circumstances for the public body's use of the revocation statute did not exist in 1983, and La. R.S. 48:701 was not the relevant authority for or limitation upon Caddo's Resolution.

Since Caddo's action in 1983 was not a revocation of the roads and the roads remained secure as public things, a review of Caddo's power to act and contract for the management of its property in its private capacity must be considered. At the time Caddo was contracting for these road

grants, the Louisiana Supreme Court had occasion to discuss the powers of police juries in *American Ice Co. v. Police Jury, Parish of Jefferson*, 162 La. 614, 110 So. 878 (1926). The court recognized that included in the various delegated powers to the police jury were the powers for "public roads" generally, along with power for "making and repairing roads" and "road districts." Also, included in the police juries' powers was the authority "to sue and be sued in certain cases." These legislative powers remain in our revised statutes. La. R.S. 33:1236 and 48:481. In referencing these limited powers, the court stated that police juries "can exercise no power beyond that which is germane or incidental to the powers which have been delegated to them by the Legislature."

In a case rendered at the same time as *American Ice*, this court specifically addressed the policy jury's power over roads stating:

> The police jury is vested with discretion and has plenary authority as to public roads in their respective parishes and the courts are without authority by writ of injunction to direct how the police jury shall use this discretion in advance of its having taken any action whatever.

Cook & Boyett v. Police Jury of Bienville Parish, 5 La. App. 692, 1926 WL 4077 (La. App. 2d Cir. 1926). Another general plenary power of a public corporation, flowing from its right to sue and be sued, is "the power to settle and compromise disputed claims in its favor or against it before or after suit." *Board of Com'rs of Orleans Levee Dist. v. Blythe*, 163 La. 929, 113 So. 150 (1927).

Reviewing the "supremacy" of a police jury for the creation of new public roads in the early twentieth century, the Supreme Court stated that

"the police jury is expressly designated as the governing authority in road districts and subroad districts, and it is given supervisory power in all matters pertaining to road construction, location, and maintenance in such districts." *Donaldson v. Police Jury of Tangipahoa Parish*, 161 La. 471, 109 So. 34 at 39 (1926). Referring to a police jury's power over a road in *Caz-Perk Realty v. Police Jury of Parish of East Baton Rouge*, 213 La. 935, 35 So.2d 860 (1948), the court stated that "[p]olice juries have both legislative and executive functions to perform, and ... are vested with large discretion in their sphere of action," citing *Cruse v. Police Jury of LaSalle Parish*, 151 La. 1056, 92 So. 679 (1922).

From this authority, without following any special statutory procedure in the first place, Caddo acted to draft the Dedication Form contract and to seek from landowners these dedications, exercising its general plenary power to contract for public roads. These disputed contracts were incidental and essential to its broad power over public roads, and no statute directed or limited its plenary contract power in fashioning its Dedication Form.

Offering no payment of a price, Caddo sought from each landowner a type of donation for road use. Addressing dedications in his treatise, Professor Yiannopoulos states that "[i]n a strict sense, a formal dedication is a donation of a thing or of its use to the public." A.N. Yiannopoulos, Property § 97, in 2 *Louisiana Civil Law Treatise* (4th ed. 2012). Louisiana donation law, however, requires the formality of an authentic act and the specific acceptance of the donee. La. C.C. arts. 1541 and 1544, and former

Articles 1536 and 1540, Civil Code of 1870. Of particular note, the donee's acceptance of a donation under the former articles of the Civil Code of 1870 was interpreted by the Louisiana Supreme Court, as follows:

> We hold that the requirement that a donee accept the donation in "precise terms" obligates a donee to use express, formal, and unconditional language in his acceptance. This codal provision, we think, requires an explicit acceptance. A tacit acceptance or an acceptance inferred from the circumstances will not suffice.

Rutherford v. Rutherford, 346 So.2d 669, 671 (La. 1977).

The comparison of a road dedication transaction to Louisiana's donation law for immovables, however, can only go so far. Because a public thing lies at the core of the transaction with expected remunerative value to the landowner, it is very clear from the jurisprudentially developed law for dedications that the authentic act requirement and the donee's acceptance were not essential for Caddo's Dedication Forms. Yiannopoulos, Property § 97, *supra*. In summary, it might best be said that these Caddo transactions were like donations with the landowners receiving no payment for the transfer. Nevertheless, since the public road use was central and that use soon began, our special form rules and other features for donations were not required. *Cf., Orleans Parish School Board v. Manson*, 241 La. 1029, 132 So.2d 885 (1961).

Despite these special allowances for a donation-like dedication to the public use, I see nothing in the law preventing Caddo's right to give an express acceptance for these dedications limiting the transfers to only the essential public thing. It was Caddo's prepared contract; Caddo was duly authorized with broad discretion to give its consent and enter the contract;

and Caddo's expressed intent cannot be ignored. Upon receipt of the dedications from the landowners, Caddo could have attached to each of the executed Dedication Forms its separate formal act of limited acceptance of the road use, indicating non-acceptance of any transfer of other components of the land's ownership. Such limitation placed upon its contract with the landowner would not offend any interest of the public protected by our law of public dedications. Just as the landowner could have clearly expressed his intention to give only the public use as a servitude, Caddo, as a veritable donee, could limit its acceptance excluding the "private thing" component of the grant, the underlying "fee" interest. Moreover, Caddo's expression of such limited acceptance of these dedications would not alter the reason or cause which prompted the landowners' dedications. That cause for their donations was for the facilitation of a public road, and any transfer of additional rights in the property unnecessary to ensure the public road use was unclear from their written acts and the law at the time of such acts.

With this understanding of the Dedication Form as a type of donation, the Resolution of 1983 was not prohibited by any cited law restricting a police jury's authority and was within Caddo's contractual power of acceptance of the landowners' grant, clarifying that only the public use or a servitude was intended by the conveyances. On this basis, I concur in the reversal of the trial court's judgments.

As a final matter, I am further persuaded in these conclusions by the significant effect upon land and mineral transactions subsequent to 1983 which the recorded Resolution by the public body certainly caused. Since

1983, many unitized wells drilled in the parish included within those units the road properties obtained for public use by the Dedication Form. For almost thirty years, unit production royalties for those roads have undoubtedly been paid to the private landowners instead of Caddo in reliance upon the Resolution.

MOORE, J., dissents.

I respectfully dissent, remaining of the view that the district court properly interpreted the four dedications and subsequent documents in this case. The majority has adequately laid out the content of the dedications and correctly identified them as formal dedications. However, it has skirted the law in its zeal to avoid an unpalatable result. The supreme court, in its most recent ruling on the subject, *St. Charles Parish School Bd. v. P & L Inv. Corp.*, 95-2571, p. 5-6 (La. 5/21/96), 674 So. 2d 218, at 221, plainly stated:

> A formal dedication transfers ownership of the property to the public unless it is expressly or impliedly retained.

The majority attempts to circumvent this principle by saying that the dedication in *St. Charles* was not really formal but only tacit, and hence *St. Charles* does not govern this case. I do not join in this revisionism of *St. Charles*; the quoted language means what it says, a transfer of ownership. *St. Charles* is also consistent with this court's own jurisprudence in *Walker v. Coleman*, 540 So. 2d 983 (La. App. 2 Cir. 1989), which held that the effect of a dedication "to the public of the streets and alleyways" was to "divest the original owner of title and vest it in the political subdivision."

The four dedications in this case contain no retention or reservation of rights, either express or implied. By contrast, the dedications in *Jones Island Realty Co. v. Middendorf*, 191 La. 456, 185 So. 881 (1939), and in *Texas & Pac. Ry. Co. v. Ellerbe*, 199 La. 489, 6 So. 2d 556 (1942), prominently cited by the majority, plainly dedicated only a "portion of the right of way" and "the right of way now occupied," thus conferring only a

servitude. *Jones Island* and *Ellerbe* do not govern this case. Likewise, the quotation from A.N. Yiannopoulos, 3 Predial Servitudes § 130 (4 ed. 2004), is limited to "instrument[s] granting a right of way" and "granting servitudes" and thus has no application here.

I also am unpersuaded that the provisions "to the public use, for a public road" and "to be used for public road purposes only" in the four dedications retain or reserve any interest to the donors. A statement of purpose merely makes the dedication an onerous donation. *Orleans Parish School Bd. v. Campbell*, 241 La. 1029, 132 So. 2d 885 (1961). A purpose is crucial to the cause of the dedication. *Boutte Assembly of God Inc. v. Champagne*, 00-340 (La. App. 5 Cir. 12/27/00), 777 So. 2d 619. A statement of purpose does not defeat the tenor of the dedication.

Unlike the majority, I would not assign any probative value to the 1930 "engineer letter." It is rank hearsay, being unsigned and its author never identified; even if a parish engineer actually wrote it, relying on it would be akin to asking a nurse's aide whether a surgeon committed medical malpractice, or asking a bank teller whether a certain security is a good investment.

I am equally unconvinced that either the 1957 or 1983 resolution constituted a "formal act" sufficient to revoke the dedications under *State v. Scramuzza*, 96-1796 (La. 4/8/97), 692 So. 2d 1024. A resolution is a "mere expression of an opinion" or "mere expression of a view," not a formal action. *Joint Legislative Comm. v. Strain*, 263 La. 488, 268 So. 2d 629 (1972). The cases relied on by the majority, like *Jaenke v. Taylor*, 160 La.

109, 106 So. 711 (1926), did not question the sufficiency of the public act or distinguish between a resolution and a formal act. (A resolution is often a weak alternative or "consolation prize" when a bill cannot pass the whole legislative body.) Finally, I must observe that the 1983 resolution, even taken at face value, does not say what the majority (and especially the concurrence) makes it say. By its own terms, it applies only to "dedications of public road *rights-of-way*," not to conveyances of full ownership, and affects "all *present and future claims* to fee title," not preexisting rights. This document does not revoke the four dedications in this case.

I certainly understand the majority's indignation at the prospect of declaring that these formally dedicated roadbeds belong to Caddo Parish rather than to the owners of the adjoining land. In light of the serious implications for public policy, it is perhaps time for the supreme court to revisit its pronouncement in *St. Charles* and affirm, clarify or reverse a ruling that seemed less controversial before the Haynesville Shale boom. Until it does so, I would follow the guidance of *St. Charles* and affirm the judgments of the district court.