SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19558

COLLINS BUS SERVICE, INC., DATTCO, INC., NASON PARTNERS LLC, DBA KELLEY TRANSIT COMPANY, and THE NEW BRITAIN TRANSPORTATION COMPANY
Plaintiffs/Appellants

v.

JAMES REDEKER, COMMISSIONER OF TRANSPORTATION OF THE STATE OF CONNECTICUT
Defendant/Appellee

BRIEF OF DEFENDANT/APPELLEE

For the Defendant/Appellee

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2. Does Conn. Gen. Stat. § 13b-34(c) authorize the Commissioner of Transportation to condemn the Plaintiffs' Certificates of Public Convenience and Necessity?

3. Does Conn. Gen. Stat. §13b-23 in conjunction with either § 13b-36(a) or 13b-34(c) authorize the Commissioner of Transportation to condemn the Plaintiffs' Certificates of Public Convenience and Necessity?

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III. INTRODUCTION AND STATEMENT OF THE CASE

This case presents the question of whether the Commissioner of the State of Connecticut Department of Transportation ("Commissioner" or "DOT") has either the express or implied authority under Title 13b, Chapter 242 of the General Statutes of Connecticut to condemn Certificates of Public Convenience and Necessity ("Certificates") held by the four plaintiff bus companies ("Bus Companies" or "Plaintiffs"). The Commissioner submits that Title 13b, Chapter 242 provides him with ample authority to condemn the Certificates in order to implement legislative policy to develop and improve mass transportation services, such as CTfastrak (also known as the Busway), and to competitively bid bus services, thus reducing subsidization costs for Connecticut taxpayers.

Specifically, Conn. Gen. Stat. §13b-36(a), authorizes the Commissioner to "purchase or take and, in the name of the state, may acquire title in fee simple to, or any lesser estate, interest or right in, any land, buildings, equipment or facilities which the commissioner finds necessary for the operation or improvement of transportation services." P.App.A742. Moreover, the Legislature has afforded the Commissioner "such additional powers, incidental to the express powers granted under this chapter . . . . as may be necessary or proper for the effective performance of his powers and duties." Conn. Gen. Stat. § 13b-23. Appendix ("A")18. Where the Commissioner has the power to take all the concomitants of a bus company -- its land, buildings, equipment and facilities -- in order to operate or improve transportation service in Connecticut, it defies logic to conclude that the Commissioner may not take the Certificates themselves, which while remaining in the

possession of the holder, arguably precludes the Commissioner from operating or improving bus service over the routes set forth in those Certificates.

The Commissioner also has the power to condemn the Certificates pursuant to Conn. Gen. Stat. §§13b-34(c), which authorizes the Commissioner to acquire property "to the extent necessary to carry out his powers and duties. . . . .". Plaintiffs' Appendix ("P.App.") A740. The Commissioner thus has broad powers to implement the legislative policies articulated in Conn. Gen. Stat. §§13b-4 and 32. By condemning the Certificates, the Commissioner is carrying out those express powers to improve and innovate transportation.

IV. COUNTER STATEMENT OF FACTS AND PROCEDURE

On March 26, 2014, the Commissioner issued Notices of Condemnation and Assessments of Damages ("Notices") against Certificates of Public Convenience and Necessity ("Certificates") held by the Plaintiffs Collins Bus Service, Inc. ("Collins"), DATTCO, Inc. ("DATTCO"), Nason Partners LLC d/b/a Kelley Transit Company ("Nason"), and New Britain Transportation Company ("NBT")(collectively referred to as the "Bus Companies"). P. App. A42-51. The Bus Companies, in separate lawsuits consolidated before the trial court below, challenged the Commissioner's authority to condemn the Certificates. After hearing argument on cross motions for summary judgment, the trial court (Shortall, J.) granted summary judgment to the Commissioner, holding that Conn. Gen. Stat. §13b-36(a) granted him the authority to condemn the Certificates. P. App. A17.

The trial court held that "[i]n the circumstances of this case, where the legislature's grant of the power of eminent domain to the commissioner permits his taking of all of the companies' physical assets, the court has no doubt that, 'by necessary implication,' the

term 'facilities' found in that same grant permits the taking of the certificates which authorize the companies to employ those assets in the provision of public bus transportation." P.App.A17. The Bus Companies appealed from that decision. More factual, procedural and statutory background will be provided and discussed below.

V. ARGUMENT

A. STANDARD OF REVIEW.

"Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." Arras v. Regional School Dist. Number 14, 319 Conn. 245,255 (2015) (citations omitted; internal quotation marks omitted.)

B. CONNECTICUT STATUTES ARTICULATE LEGISLATIVE POLICY THAT BUS TRANSPORTATION IS AN ESSENTIAL PUBLIC SERVICE WITHIN THE COMMISSIONER'S PURVIEW.

Like many modes of public transportation, bus service has historically been considered a public utility in this state.[1] Recognizing that the public interest is served well by the availability of affordable and convenient public transportation, the legislature has created two distinct statutory bases for the provision of bus service in Connecticut: by a private entity or by a governmental entity.

A private entity may operate a motor bus in Connecticut after obtaining a certificate of public convenience and necessity[2] from the DOT pursuant to Conn. Gen. Stat. §13b-80,

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[1] This is illustrated by the fact that Conn. Gen. Stat. §13b-80 was preceded by Conn. Gen. Stat. § 16-309, which gave the Department of Public Utilities Control authority to issue certificates. The legislature transferred the regulation of bus service to DOT in 1979 in Public Act 79-610. Language in the current statute requiring a certificate is substantially similar to that in its predecessor, Conn. Gen. Stat. §16-309. A63.

[2] Black's Law Dictionary, (10th Ed. 2014) defines a "certificate of convenience and necessity" as "[a] certificate issued by an administrative agency granting operating authority

specifying the route over which the bus must operate. P.App.A743. The legislature has also authorized governmental entities to provide bus service in Connecticut. In 1969 the legislature passed the State Transportation Act (Public Act 768), which established the DOT. Subsection (a) of Public Act 768 provided in part that DOT may "by itself, or in concert with others, provide all or a portion of any such service, share in the costs of or provide funds for such service, . . ." Those powers are now codified at Conn. Gen. Stat. § 13b-34. P.App.A740. Pursuant to Conn. Gen. Stat. §§7-273e and k, transit districts may also provide bus service.

Over the years, the increased usage of automobiles has dramatically decreased the public's use of public transportation, such as buses. See, e.g., Gray Line Bus Co. v. Greater Bridgeport Transit Dist., 188 Conn. 417, 426 (1982) ("Like many public transportation companies, the plaintiff has been a victim of the growth in automobile transportation."). Nonetheless, public transportation has remained an important part of the State's overall transportation plan, although maintaining bus service at affordable rates in an era of decreased usage has posed fiscal challenges.

Thus, pursuant to its authority under Conn. Gen. Stat. §13b-34, DOT began contracting with private bus operators to subsidize ever increasing operating deficits as a matter of public policy: with NBT in October 1976 and DATTCO in April, 1977. P. App., A427. At that time, DOT not only subsidized the fares, but also leased buses to the Bus Companies to operate the routes. P. App.A427. In 1976, the DOT also acquired the Connecticut Company, which had been providing transit service in Hartford, New Haven

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to a utility or transportation company. — Also termed certificate of public convenience and necessity."

and Stamford, forming Connecticut Transit ("CTTransit") operating as HNS Management Company. P.App.A392; P.App.A821, ¶4.

Over the years, DOT has continued to purchase its own bus fleet. Currently, all of the buses operated by the Bus Companies under contract with DOT are owned by DOT and leased to the Bus Companies for $1.00. See., e.g., P.App.A301.[3] In addition, DOT heavily subsidizes various routes pursuant to a contract and pays the Bus Companies' expenses that exceed revenues. P.App.A305. The DOT pays the insurance on all state owned busses used by the Bus Companies. P.App.A313, ¶16 II. The DOT determines the rates of fare, routes and scheduled service. P.App.A303, ¶5. The Bus Companies are provided a "management fee" in each contract that guarantees that they cannot lose money. P. App.A304-305.

Unlike when the Bus Companies first obtained their Certificates, today fixed route bus service is provided to the public either directly by, or pursuant to a contract with the DOT or a transit district, not by private bus companies funding their own operations. This substantial support of public dollars stands in stark contrast to a time when bus companies operated a private bus service and faced all of the financial risks inherent in providing a purely private, albeit regulated, commercial service.

As this Court has observed with regard to a different carrier:

> The bus service run by the defendant[HNS Management] is not a private enterprise operated for the purpose of generating profit, but is a government service created for the benefit of the public pursuant to the legislature's determination that such services are essential to the general welfare of the state.... It is reasonable to conclude that the state took over the private bus companies because it made a policy determination that the provision of an

[3] Plaintiff DATTCO operates as part of both the CTfastrak and CTTransit systems and NBT operates as part of the CTTransit system. See P.App.A847, ¶4 and A802, ¶4.

> adequate bus system is essential for the general welfare and that the government, rather than private companies, should determine what is adequate. See General Statutes § 13b–32. The state itself does not make a profit on the enterprise.

Gordon v. HNS Management Co., Inc., 272 Conn. 81, 102-103 (2004).

As a result, today Commissioner currently both operates bus transportation service through its contracting authority in Conn. Gen. Stat. §13b-34 and retains regulatory authority over motor bus service pursuant to Conn. Gen. Stat. §13b-80[4]. All of this is in pursuit of commissioner's "general powers, duties and responsibilities", among other things:

> (1) To coordinate and develop comprehensive, integrated transportation policy and planning to include a long-range master plan of transportation for the state;
> (2) To coordinate and assist in the development and operation of a modern, safe, efficient and energy-conserving system of highway, mass transit, marine and aviation facilities and services;
> (3) To promote the coordinated and efficient use of all available and future modes of transportation...

Conn. Gen. Stat. § 13b-4 (emphasis supplied).

Title 13b provides the Commissioner with many specific grants of authority and responsibility to advance these missions – several of which will be discussed specifically to support the action taken here. But in addition, so as not to thwart the Commissioner's efforts, the legislature has also declared:

> The commissioner shall have such additional powers, incidental to the express powers granted under this chapter and title 13a, as may be

[4] Essentially, regulation under Conn. Gen. Stat. §13b-80 only exists on paper since motor bus service in Connecticut today is operated today pursuant to a contract with a government entity. For example, Nason is the only one of the Bus Companies that has applied to the DOT for authority since the DOT assumed regulation from the Department of Public Utility Control in 1979. Nason obtained charter authority from the DOT pursuant to Conn. Gen. Stat. §13b-94a even though the application was mislabeled as motor bus authority under Conn. Gen. Stat. §13b-80. See A122.

necessary or proper for the effective performance of his powers and duties.

Conn. Gen. Stat. §13b-23 (emphasis supplied).

C. THE DISPUTE WITH THE BUS COMPANIES ARISES FROM THE COMMISSIONER'S NOTICE TO COMPETITIVELY PROCURE BUS SERVICE FOR THE CONVENIENCE OF THE PUBLIC.

All of the Bus Companies claim that they have a Certificate of Public Convenience and Necessity either directly issued to them or subsequently transferred to them pursuant to Conn. Gen. Stat. § 13b-80. Although DOT has challenged the validity of some of these Certificates, DOT has assumed for purposes of the taking that all of the Bus Companies had some valid interest in a Certificate. For example, Dattco claims it has Certificate No. 11, originally issued by Connecticut Public Utilities Control Authority in 1945 and last amended on or about March 13, 1979. A97. NBT is the holder of Certificate No. 10 originally issued by Connecticut Public Utilities Control Authority in 1965 and was last amended on or about April 17, 1979. A125. Nason's claimed Certificate is Certificate No. 3, which was originally issued to Kelley Transit Company, Inc. ("Kelley") by Connecticut Public Utilities Control Authority in 1921.[5] A122. Collins claims they have two Certificates. The first, Certificate No. 303 was issued by the Connecticut Public Utilities Commission on February 28, 1946 and was last amended on or about January 20, 1953.

[5] In 2005 Nason bought Kelley and the two companies filed a joint application with DOT to transfer Certificate No. 3. DOT issued a decision dated November 3, 2005 regarding the transfer. DOT approved the transfer of Certificate No. 3, but reissued the Certificate to provide Nason with authority "to operate motor vehicles in intrastate charter bus transportation from a headquarters in Torrington in accordance with 13b-94(a)." A24 and 122. See footnote 7.

A79. The second is Certificate No. 466 issued by the Greater Hartford Transit District on or about August 30, 1983.[6] A92. All of these Certificates were issued to the Bus companies by a government agency to benefit the public. As stated earlier, most of these Certificates were issued at a time when the State did not subsidize bus transportation.

Today, the Commissioner seeks to improve and lower the costs of state subsidies for bus transportation by combining or altering routes, or competitively procuring those services through a free market in order to provide the Connecticut taxpayer with better value for the service. The Bus Companies have reacted by seeking thwart the Commissioner's efforts by asserting that their Certificates preclude the Commissioner from operating any service over their certificated routes, despite the fact that they are not profitable and require State subsidies for continued operation.

First, the Bus Companies brought an action against the Commissioner (hereinafter "Initial Case")[7] to enjoin him from competitively bidding bus service over various routes, asserting that as the holders of the Certificates issued pursuant to Conn. Gen. Stat. §13b-80 (or its predecessors) they are entitled to exclusive rights to operate motor bus service over specific routes identified in their Certificates. The Bus Companies sought and obtained a temporary injunction prohibiting DOT or any other entity from operating motor bus service over any of the routes subject to dispute in the Initial Case. Specifically, the trial court, (Levine, J.T.R.) concluded that "a plaintiff has a property right in any certificate" containing the language `permitted and authorized to operate' which also "carries exclusivity," granting an exclusive right to operate over that route. P.App.A890.

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[6] The Greater Hartford Transit District no longer regulates motor bus service.

[7] DATTCO Inc. et al. v. State of Connecticut, Dept. of Transp., HHB-CV10-6007261-S.

The Commissioner disputes the conclusion that the Certificates are "exclusive," but was unable to appeal that determination initially as there was no final judgment. The trial court had bifurcated that case and issued a memorandum of decision, ruling on the legal issues and reserving judgment on the factual dispute over whether a right to operate a particular route had been awarded to a particular plaintiff. P.App.888. Thus, the temporary injunction is still in effect while the Initial Case is still pending and there remains in the Initial Case a substantial dispute between the parties concerning which, if any, of the routes currently being enjoined are covered by the Certificates. A152 .

After the issuance of the injunction in the Initial Case, the Bus Companies filed a Pretrial Memorandum on March 1, 2013, which reads in relevant part "[t]he State is, of course, able to condemn those routes, for which the Plaintiffs expect that they will be compensated the fair market value of their certificates." A161. To eliminate further litigation in the Initial Case over the remaining factual dispute about whether a right to operate a particular route had been awarded to a particular Plaintiff, the Commissioner issued the notices of condemnation to each of the Bus Companies, taking "any and all rights" of the Bus Companies in each of the Bus Companies' Certificates.[8] The Commissioner found that the Certificates had no value[9] and deposited with the Superior

[8] On September 4, 2014, the Commissioner filed amended notices of condemnation and assessments of damages ("amended notices"). See A142 - 151.

[9] If operating expenses exceed operating revenues, the Bus Companies are losing money. See Guida v. Public Utilities Commission, 166 Conn. 328, 334 fn.4 (1974). "[A] public body in an eminent domain proceeding ought not to be required to pay more for property than would be raised in an ordinary sale between private parties. Where the evidence indicates that a public utility is doomed to operate at a loss or at a return not commensurate with the value of its physical assets, it is difficult to see why any allowance should be made for the

Court the nominal fee of $1.00 for each Certificate. Each of the Bus Companies appealed the Commissioner's assessment of damages, seeking additional payment for the alleged value of those Certificates.[10]

Subsequent to the Initial Lawsuit and the filing of the lawsuit in this case, DATTCO and NBT filed additional lawsuits for injunctive relief, claiming, pursuant to their Certificates, exclusive rights to operate over certain routes associated with the CTfastrak and CTTransit systems, including CTfastrak's dedicated 9.4 mile guideway between Hartford and New Britain.[11] The parties negotiated a stipulation with Dattco and NBT. [12]

D. THE COMMISSIONER'S AUTHORITY TO CONDEMN THE BUS COMPANIES' CERTIFICATES IS COMMENSURATE WITH HIS BROAD LEGISLATIVELY CONFERRED AUTHORITY AND VITAL MISSION.

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right to operate the business which the franchise represents." Gray Line Bus Co. v. Greater Bridgeport Transit Dist., 188 Conn. 417, 423 (1982)(citations omitted).

[10] Thus nothing in this lawsuit will affect the Bus Companies' right to seek just compensation for the value of the Certificates. The trial courts have stayed the appeals from the assessment of damages pending resolution of this appeal. See Comm. of Transp. v. Collins Bus Serv. Inc., HHD-CV14-5037653; Comm. of Transp. v. Collins Bus Serv. Inc., HHD-CV14-505037654; Comm. of Transp. v. DATTCO, Inc., HHB-CV14-5015967; Comm. of Transp. v. New Brit. Transp. Co., HHB-CV14-5015968; St. of Ct. Dept. of Transp. v. Nason Partners, LLC, LLI-CV14-5007493.

[11] See HHB-CV14-6026255-S and HHB-CV15-6028323-S. DATTCO's Certificate 11 and NBT's Certificate 10 specifically provide for fixed route bus service along the specified roads listed therein. Nowhere in the Certificates, each last amended in 1979, is there any mention of the recently constructed CTfastrak dedicated 9.4 mile guideway, which opened in March 2015. Nonetheless, DATTCO claims the exclusive right to operate over the 9.4 mile guideway. "...DATTCO's Certificate grants it the exclusive right to operate the New Britain to Hartford Route..." A164, ¶16.

[12] In an effort to operate the newly created CTfastrak system and implement certain efficiencies in both the CTfastrak and CTTransit systems for the convenience of the public, the Commissioner negotiated a stipulation with the two affected Bus Companies, which allows DOT to provide the service during the pendency of this appeal in exchange for extending the contracts and increasing the service provided by DATTCO and NBT. The stipulations also stay all other pending litigation between the parties.

Despite their earlier admission that the State can condemn the Certificates, the Bus Companies' argument appears to be that the Legislature has not bestowed that authority on the Commissioner specifically. This argument is belied both by express statutory language and by the legislature's broad grants of authority to the Commissioner to carry out his transportation mission in the public's interest.

It is true that "[w]hen [the legislature] delegates to another the power to exercise the right of eminent domain, the extent of the power is limited by the **express terms** or **clear implications** of the statute authorizing its exercise." (Emphasis added. Internal citation omitted.) Northeastern Gas Transmission Co. v. Collins, 138 Conn. 582, 592 (1952). But, as the trial court properly determined, the Certificates fall with the scope of the term "facilities" included in Conn. Gen. Stat. §13b-36(a), and the Commissioner therefore had specific authority to condemn them. P.App.A34-35. Conn. Gen. Stat. §§ 13b-34(c) also supports this condemnation authority, bestowing upon the Commissioner the power "to . . . acquire . . . property to the extent necessary to carry out his duties. . . . " Thus, the Court can easily conclude that the power to condemn the Certificates is expressly contained in or clearly implied from §§13b-36(a) or 13b-34(c).

Moreover, these specific statutes must be read in the context of – and indeed are buttressed by -- the Commissioner's broad powers and duties to improve and modernize transportation services in Connecticut, a mission vital both to the State's economy and to the welfare of its citizens. This is not mere rhetoric, but articulated legislative policy. Conn. Gen. Stat. § 13b-32 declares the state's public transportation policy:

> Improvement in the transportation of people and goods within, to and from the state by rail, motor carrier or other mode of mass transportation on land is essential for the welfare of the

> citizens of the state and for the development of its resources, commerce and industry. The development and maintenance of a modern, efficient and adequate system of motor and rail facilities is required. The department shall assist in the development and improvement of such facilities and services and shall promote new and better means of mass transportation by land.

To achieve these and other public policy goals, the legislature has conferred upon the Commissioner the general powers, duties and responsibilities quoted above, including to coordinate, develop assist and promote "integrated transportation policy," "a modern, safe, efficient and energy-conserving system of . . . mass transit" and "efficient use of all available and future modes of transportation." Conn. Gen. Stat. §13b-4 (1) – (3).

Finally, in as broad a grant of authority as perhaps the legislature confers, as stated earlier, Conn. Gen. Stat. §13b-23 provides the Commissioner with "such additional powers, incidental to the express powers . . . as may be necessary or proper for the effective performance of his powers and duties." The Commissioner's delegated authority is therefore broad, and intentionally so. The Court should not lightly conclude, as the Bus Companies contend, that the legislature intended to confer privileges upon private entities that would unduly impede the Commissioner's authority to act in the public interest to innovate and improve the delivery of transportation services. Clearly the statutes permit him to condemn the Certificates in furtherance of this mission, and any interpretation that limits the Commissioner's authority to condemn the Certificates under Conn. Gen. Stat. §§13b-36(a) and 13b-34(c) misconstrues those statutes, especially in light of the clear declarations of legislative transportation policy.

E. THE TRIAL COURT CORRECTLY CONCLUDED THAT CONN. GEN. STAT. SEC. 13b-36(a) AUTHORIZES THE COMMISSIONER TO CONDEMN THE CERTIFICATES.

To carry out his duties to develop and improve public transportation services and promote new and better means of mass transportation by land, the legislature has conferred upon the Commissioner specific authority to acquire property. Conn. Gen. Stat. §13b-36(a), provides:

> The commissioner may purchase or take and, in the name of the state, may acquire title in fee simple to, or any lesser estate, interest or right in, any land, buildings, equipment or facilities which the commissioner finds necessary for the operation or improvement of transportation services. The determination by the commissioner that such purchase or taking is necessary shall be conclusive. Such taking shall be in the manner prescribed in subsection (b) of section 13a-73 for the taking of land for state highways.

The Bus Companies contend that this statute does not authorize the Commissioner to "take" the Certificates. The trial court disagreed, determining that the Certificates of public necessity and convenience were "facilities" within the contemplation of § 13b-36(a).

"General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes." Location Realty, Inc. v. Colaccino, 287 Conn. 706 (2008). In this case, § 13b-36(a) must be read in relationship to at least Conn. Gen. Stat. §§ 13b-4,13b-23, 13b-32 and 13b-34. A16 – 19; P.App. 740.

> If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.... The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.... When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.... The issue of statutory interpretation presented in this case is a question of law subject to plenary review.

Lieberman v. Aronow, 319 Conn. 748, 756-57 (2015)(Citations omitted; internal quotation marks omitted).

Statutes must be construed for their intended purposes and not to lead to absurd results; Department of Public Safety v. State Bd. Of Labor Relations, 296 Conn. 594, 599-600 (2010); and therefore "[w]hen one construction thwarts the purpose of an enactment and another does not, the latter construction, where possible, is preferred." Chatterjee v. Comm'r of Revenue Services, 277 Conn. 681, 691-92 (2006).

Further, this Court has often recognized that the legislature's broad grant of power may be interpreted to include the conferral of such lesser included powers as are necessary to fulfill a legislative mandate. Southern New England Tel. Co. v. DPUC, 261 Conn. 1, 30 (2002); Nelseco Navigation Co. v. Dept. of Liquor Control, 226 Conn. 418, 424 (1993); Daly v. DelPonte, 225 Conn. 499, 510 (1993). In the area of transportation, this judicial presumption finds its voice in the legislature's own specific language: "[t]he commissioner shall have such additional powers, incidental to the express powers granted under this chapter and title 13a, as may be necessary or proper for the effective performance of his powers and duties." Conn. Gen. Stat. §13b-23.

1. THE BUS COMPANIES' CERTIFICATES ARE "FACILITIES" WITHIN THE MEANING OF CONN. GEN. STAT. §13b-36(a).

Conn. Gen. Stat. §13b-36(a) authorizes the Commissioner to take "any land, buildings, equipment or facilities, which the Commissioner finds necessary . . . ."(emphasis added). Plainly this statute authorizes the Commissioner to take any of the Bus Companies buses or equipment under this statute. Of course, the State already owns the buses and most of these assets. The trial court correctly interpreted Conn. Gen. Stat.

§13b-36(a) to include authority to take the Certificates of public convenience and necessity as "facilities".

Conn. Gen. Stat. §13b-36(a) is contained in Chapter 242 of the general statutes, entitled "DEPARTMENT OF TRANSPORTATION," which contains the DOT enabling legislation and lists the broad powers granted to the Commissioner. The term "facilities" is not defined in Chapter 242. "When a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage...To ascertain that usage, we look to the dictionary definition of the term." (internal quotation marks omitted.) Potvin v. Lincoln Service and Equipment Co., 298 Conn. 620, 633, 6 A. 3d 60 (2010).

Black's Law Dictionary, Rev. 4th Ed. defines "facilities" as:

> That which promotes the ease of any action, operation, transaction, or course of conduct.
>
> As applied to carriers, means everything necessary for the convenience of passengers and the safety and prompt, safe, and impartial performance of the duties to the public at large imposed by the state, in the proper exercise of its police power, upon transportation or transportation companies. As applied to a ferry franchise, everything incident to the general, prompt, and safe carriage of passengers, boats in good repair, appliances answering the purpose, and readiness and willingness to perform the services incident to the grant. Fraters v. Keeling, 20 Cal.App.2d 490, 67 P.2d 118, 119.
>
> As used in statute giving Public Service Commission control over service and facilities of public service companies, means something owned by and under the control of a public utility. Borough of Swarthmore v. Public Service Commission, 277 Pa. 472, 121 A. 488, 489.

Black's Law Dictionary 4th Ed. Rev'd (emphasis added)A72. The trial court (Shortall,J.) observed that "Merriam-Webster's Third New International Dictionary defines "facility" as

"something that makes an action, operation or course of conduct easier," noting that it is usually used in the plural. P.App.A27.

The Certificates held by the companies to provide a public service indisputably fit within an appropriate construction of "facilities." As the trial court held: "[n]ot only do they make the companies' activities in operating a bus service easier; they are *essential* to those operations. See § 13b-80."(emphasis in original).[13] P.App.27. Thus, the "Certificates" plainly fall within the definition of "facilities," no matter which dictionary definition is referenced.

Consistent with such a broad dictionary definition of the term "facilities", the Second Circuit, in a public utilities case, held: "It should be noted that the word 'facilities' is generally regarded as a widely inclusive term, embracing anything which aids or makes easier the performance of the activities involved in the business of a person or corporation." Hartford Electric Light Co. v. Federal Power Comm.,131 F.2d 953, 961 (2d Cir. 1942). In Hartford Electric Light Co. the issue was whether the federal agency had jurisdiction over the plaintiff's operations. The court had to determine whether the plaintiff owned or operated any facilities subject to the agency's jurisdiction and whether the company had any interstate facilities used for wholesale sales of electricity. The court stated:

> If the Commission has no jurisdiction under Sec. 201(b) over generation facilities, then that part of that section conferring jurisdiction over facilities for interstate wholesale sales becomes meaningless – unless there is a third category of facilities, i.e., those used neither for transmission or for generation. We must, therefore look for that third category. We find it in petition's corporate organization, contracts, accounts, memoranda, papers and other records, in so far as they are utilized in connection with such sales.

[13] A Certificate is only essential for a bus company looking to operate pursuant to § 13b-80. The Commissioner does not issue a Certificate to itself (or its contractors) when providing service pursuant to Conn. Gen. Stat. §13b-34 on routes not covered by any Certificate.

Id at 961 (1942).

Thus, the 2d Circuit construed the term "facilities" to include several types of intangibles, including corporate organization, contracts, and accounts.

In the case of the Bus Companies, any tangible assets such as the buses are assets the State already owns. It would be absurd for the legislature to grant the Commissioner the authority to expend taxpayers dollars to take all of the Bus Companies' land, buildings and equipment for the operation and improvement of transportation services, yet not grant him the authority to provide those transportation services because he cannot take the Certificates, which the Bus Companies' claim give them the "exclusive right to operate" bus service over the routes listed in the Certificates. Such a construction of Conn. Gen. Stat. §13b-36(a) would preclude the Commissioner from operating, improving or modernizing transportation services, contrary to the legislative purpose behind Conn. Gen. Stat. §13b-36(a), as well as Conn. Gen. Stat. §§13b-4 and 32. Nor could the bus company operate the service with only the Certificates. Barrett v. Montesano, 269 Conn. 787, 797 (2004)(courts should avoid nonsensical results)(citations and quotation marks omitted). Thus, the trial court correctly determined that the term "facilities" has a very broad meaning and includes the Certificates.

That the legislature would confer such authority on the Commissioner should not be surprising and is consistent with a long history in Connecticut of franchises being taken for a public purpose. In The Enfield Toll Bridge Company v. The Hartford and New-Haven Rail-Road Company, 17 Conn. 40 (1845), this Court reviewed the existing case law in the United States at that time and determined that franchises could be taken upon payment of just compensation, stating that "if the exigencies require that the franchise...should be

taken away or impaired, this might lawfully be done, making due compensation to the proprietors." Id. at 59-60, citing to the United States Supreme Court in Charles River Bridge v. Warren Bridge, 11 Peters 506, 638 (1837)(reindexed as 36 U.S. 420). See also Gray Line Bus Company v. Greater Bridgeport Transit District, 188 Conn. 417, 423 (1982) where the transit district condemned the bus line's franchise. Thus there is ample authority to support the proposition that governmentally granted operating authority, such as the certificate, may be taken in a condemnation proceeding by eminent domain.

The Bus Companies suggest that the definition of "facility" found in Conn. Gen. Stat. §4b-23[14] should guide the Court's interpretation of "facilities" in Conn. Gen. Stat. §13b-36. Specifically, they attempt to link the §4b-23 definition of "facility" to Gen. Stat. §13b-34(g), which was repealed in 1981 by Section 8 of Public Act 81-421.[15] A64. It is true that, prior to its repeal in 1981, Conn. Gen. Stat. §13b-34(g) generally referenced Conn. Gen. Stat. §4-26b, (which was transferred to Conn. Gen. Stat. §4b-23 in 1989). Significantly, however, the definition of "facility" that appears in Conn. Gen. Stat. §4b-23 today was not contained in that section until the passage of Public Act 89-294 (A70), eight years after the repeal of Conn. Gen. Stat. §13b-34(g). Therefore, the definition of "facility" contained in Conn. Gen. Stat. §4b-23 today never applied to Conn. Gen. Stat. §13b-34g. Moreover, it would not

[14] Referred to as 4-23 in the Bus Companies' Brief on page 15.

[15] The primary focus of Public Act 81-421, An Act Expanding the Powers of the Commissioner of Transportation Regarding Capital Improvements was to eliminate the role of the Department of Administrative Services in planning or construction of transit, marine and aviation projects (Section 1- 6) while preserving State Property Review Board ("SPRB") oversight over acquisitions other than condemnations (Section 3(12)).

have made sense to link §4b-23 and §13b-34 because §4b-23 describes property under jurisdiction of the SPRB, which does not include property subject to condemnation.

2. CONN. GEN. STAT. §13b-36(a), ESPECIALLY WHEN READ TOGETHER WITH §13b-23, INCLUDES THE POWER TO CONDEMN CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY BY CLEAR IMPLICATION.

Even if the phrase "any land, buildings equipment or facilities" were determined to not to expressly include the Certificates within their scope, Conn. Gen. Stat. §13b-23 provides that the Commissioner's authority – including his authority to condemn -- extends beyond any particular, express legislative grant: "The Commissioner shall have such additional powers, incidental to the express powers . . . as may be necessary or proper for the effective performance of his powers and duties." Conn. Gen. Stat. §13b-23 (emphasis supplied). This incidental power has been cited repeatedly as the basis for taking property. See Tolland Enterprises v. Commissioner of Transp., 36 Conn.App. 49 (1994); South Farms Associates Ltd. Partnership v. Burns, 35 Conn. App. 9 (1994).

This broad legislative grant of power to the Commissioner is consistent with this Court's approach to construing legislative grants of condemnation authority, as reflected in two cases cited by the trial court in its decision:

> "[W]hen [the legislature] delegates to another the power to exercise the right of eminent domain, the extent of the power is limited by the express terms or clear implications of the statute authorizing its exercise." Northeastern Gas Transmission Co. v. Collins, 138 Conn. 582, 592 (1952)(Emphasis added. Internal citation omitted). See also State v. McCook, 109 Conn. 621, 629 (1929)("It must appear that the government intended to exercise this high sovereign right, by clear and express terms, or by necessary implication, leaving no doubt or uncertainty respecting such intent.")(Emphasis added. Internal citation omitted.). P.App.A34.

In State v. McCook, 109 Conn. 621 (1929), the property owner challenged the taking of the real property pursuant to a public act, claiming the act was nothing

more than an appropriation act without an express provision for the taking of the property nor an express declaration of the necessity for the taking. The Court looked to the legislative purpose of the act and stated:

> The purpose in the act before us is the acquiring by condemnation of a defined tract of land for a state institution, which is open to the public without discrimination. The intention of the Legislature to take this land and its intention that its legislative act should express the necessity for the taking are, as it seems to us, as necessarily implied as though they had been directly expressed in suitable words.

State v. McCook, 109 Conn. 621, 147 A. 126, 128 - 129 (1929).

Even though the language of the public act arguably did not expressly grant the power to take the land, the Court in McCook looked at the legislative intent to determine that language used by the legislature necessarily implied the ability to do so.

In Northeastern Gas Transmission Co. v. Collins, 138 Conn. 582, 592 (1952), the Court reviewed a challenge to a taking of land for the construction of a gas pipeline. One of the questions before the Court was the authority of the gas company to take a temporary easement in conjunction with the construction of the pipeline.

> It is within the province of the legislature to determine both the quantity and the quality of the estate which a condemnor may acquire. Thus, authority may be granted to take the fee or an easement. The legislature may likewise authorize the taking of an interest which is either permanent or temporary. However, when it delegates to another the power to exercise the right of eminent domain, the extent of the power is limited by the express terms or clear implications of the statute authorizing its exercise. Since a public use indefinite in duration differs from one that is temporary, authority to take an interest of the former kind does not necessarily imply the power to take one of the latter. The statute, however, should not be interpreted in such a way as to thwart the purpose for which it was enacted.
>
> It is often necessary to take private property temporarily for public purposes. Statutes which have failed to grant that authority in express terms have frequently been construed to do so by implication.

Id. at 592 (citations omitted; quotation marks omitted). The Court in Northeastern Gas held that the right to take property for the construction of the pipeline included by clear implication the right to take the temporary easement in order to facilitate the construction of that pipeline. Id. at 593.

Courts are always obliged to read statutes together when they relate to the same subject matter; Felician Sisters of St. Francis, of Connecticut, Inc. v. Hist. Dist. Com'n of Town of Enfield, 284 Conn. 838, 850 (2008); and presume that the legislature intended to create a harmonious and consistent body of law. Hartford/Windsor Healthcare Props., LLC v. City of Hartford, 298 Conn. 191, 198 (2010). Even without reference to §13b-23, this Court interprets broad legislative grants of power to include the conferral of lesser powers as are necessary to fulfill the legislative mandate. Southern New England Tel. Co. v. DPUC, 261 Conn. 1, 30 (2002). Here, the legislature has made both the grant of power and the admonition to interpret it broadly even more explicit in §13b-23. That section grants the Commissioner additional power, including the authority to take the Certificates, incidental to his express powers (such as in Conn. Gen. Stat. §13b-36(a) and §13b-34) to further his legislative mission of operating and improving transportation services in Connecticut.[16] .

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[16] The Bus Companies argue that the mere fact that after the trial court's decision competing bills were introduced in the legislature seeking to clarify Gen. Stat. § 13b-36(a) shows that the statute is not clear. A75-76; P.App.762. None of the bills passed, however, and this Court has declined "to attach significance to a legislative committee's inaction because 'in most cases the reasons for that lack of action remain unexpressed and thus obscured in the mist of committee inactivity.' In Re Valerie D., 223 Conn. 492, 518 n. 19, 613 A. 2d. 748 (1992)." Desrosiers v. Diageo North America, Inc., 314 Conn. 773, 793-794 (2014) Moreover, the Court has refused to rely "on a legislative committee's rejection of a proposed bill as evidence of the intent of the entire General Assembly, which never voted on or discussed the proposal." (Internal quotation marks omitted). State v. Salamon, 287

Thus, the trial court correctly held that "[i]n the circumstances of this case, where the legislature's grant of the power of eminent domain to the commissioner permits his taking of all of the companies' physical assets, the court has no doubt that, 'by necessary implication,' the term 'facilities' found in the same grant permits the taking of the Certificates which authorize the companies to employ those assets in the provisions of public bus transportation." P.App.A34-35.

3. LIMITING THE COMMISSIONER'S CONDEMNATION AUTHORITY UNDER § 13b-36(a) ONLY TO TANGIBLE PROPERTY, AND NOT TO INCLUDE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, WOULD RENDER THE TERM "FACILITIES" SUPERFLUOUS AND DEFEAT THE COMMISSIONER'S ABILITY TO COMPETITIVELY OPERATE, INNOVATE AND IMPROVE BUS SERVICE.

The Bus Companies argue that the term "facilities" means "buildings and real property" and that the term cannot refer to intangibles,[17] such as the Certificates. Brief, p. 14. This argument ignores the fact that the words "land and buildings" are already included in the statute. "We ordinarily do not read statutes so as to render parts of them superfluous

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Conn. 509, 526 n. 14, 949 A. 2d 1092 (2008). Thus, at best, the fact that competing bills were introduced but not enacted means that neither side can draw any inferences from the inaction. In fact, even though an insufficient amount of time has perhaps not passed to give rise to an inference of legislative acquiescence, an arguably more reasonable inference from this inaction is that the legislature concluded no action was necessary in light of the trial court decision. Regardless, the Bus Companies reliance on Vincent v. City of New Haven, 285 Conn. 778, 791, n. 15 (2008) is unavailing as the Court noted in that case that "it is too soon to draw any firm conclusion from legislative inaction, especially in view of the possibility that the pendency of this appeal itself may have provided the legislature with a reason to refrain from taking any action in response to the decisions of the board."

[17] When acquiring a bus system, intangibles such as established phone numbers, radio frequencies, email addresses and websites may all be an important part of the system yet they are not specifically listed in Conn. Gen. Stat. §13b-36. See Hartford Electric Light Co. v. Federal Power Commission, 131 F.2d 953, 961 (2nd Cir. 1942).

or meaningless." State v. Davalloo, 320 Conn. 123, 140 (2016)(Citations omitted; internal quotation marks omitted.)

> "[i]t is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions.... [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous.... Because [e]very word and phrase [of a statute] is presumed to have meaning ... [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant."

Connecticut Podiatric Medical Assn. v. Health Net of Connecticut, Inc., 302 Conn. 464, 471 (2011)(Citations omitted; internal quotation marks omitted.) Denying the Commissioner the right to condemn the Certificates as facilities because they are not considered "buildings" or "land" or "equipment" renders the term "facilities" in Section 13b-36(a) superfluous. As, the trial court correctly reasoned that the term "facilities":

> . . . appears along with "land, buildings, (and) equipment" in listing the permissible objects of the commissioner's condemnation power. If its meaning were to be limited to buildings and real estate, as maintained by the companies, its presence in the statute would be superfluous....the court cannot limit the construction of "facilities" in the manner suggested by the companies. Rather, it concludes that, as used in §13b-36 (a), "facilities" includes intangible property such as the rights the companies hold by virtue of their certificates to provide bus transportation over their specified routes, and the statute grants to the commissioner the power to exercise the state's power of eminent domain over those rights.

P.App.A29. (Citation omitted and internal quotation marks omitted.)

As stated earlier, it would be absurd for the legislature to grant the Commissioner the authority to expend taxpayers dollars to take all of the Bus Companies' land, buildings, equipment and facilities for the operation and improvement of transportation services, yet not grant him the authority to provide those transportation services because he cannot take

the Certificates, which the Bus Companies' claim give them the "exclusive right to operate" bus service over the routes listed in the Certificates.[18]

Conn. Gen. Stat. §13b-79p (a)(2) requires the Commissioner to implement the New Britain-Hartford Busway (CTfastrak). A20. But the CTfastrak is only one piece of the overall transportation system operated by the Commissioner. The Commissioner's ability to innovate or improve the State's transportation system – including CTfastrak -- would be defeated because he "would be able to take by eminent domain all of the concomitants of the companies' franchises to operate public bus service but not the franchises themselves...[and] would then be powerless to substitute other methods of conveyance or other carriers." P.App.A31. Such an interpretation would thwart the legislative purpose of allowing the Commissioner to operate or improve transportation services. As this Court has stated: "any ambiguities should be resolved in a manner that furthers, rather than thwarts, the act's remedial purposes." Vincent v. City of New Haven, 285 Conn. 778, 792 (2008).[19]

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[18] The practical effect of what the Bus Companies arguments would require the Commissioner to contract only with them, which results in a lack of competitive bidding and a restriction upon a free market in which other bus companies can seek to provide the same services at less expense to the taxpayers.

[19] Charter Communications v. University of Connecticut et al, X07CV00072038S, 2000 Conn. Super. LEXIS 3087 (Conn. Super. Ct. Nov. 2, 2000) (P. App.A879) does nothing to support the Bus Companies' argument that "facilities" include only real property or personal property. This unreported superior court case does not mention or discuss the term "facilities" at all. Instead, Charter concerns the issue of whether a cable company had a statutory right to condemn state property under C.G.S. §16-333a. The Court held that since §16-333a "was not made specifically applicable to property owned by the State, its provisions cannot be understood to apply to state owned property." Id. This unremarkable conclusion is consistent with the general rule of construction that "a statutory provision limiting rights is not to be construed as applying to the state unless the statutory language

4. THE COMMISSIONER'S RIGHT TO CONDEMN THE CERTIFICATES UNDER CONN. GEN.STAT. §13b-36(a) IS NOT CONSTRAINED BY CONN. GEN. STAT. §13b-80.

The trial court correctly determined that the Commissioner's authority to condemn the Certificates pursuant to Conn. Gen. Stat. §13b-36 does not render Conn. Gen. Stat. §13b-80 superfluous. The question of whether the Bus Companies have an exclusive franchise in their Certificates pursuant to Conn. Gen. Stat. §13b-80 does not diminish the Commissioner's power to take the Certificates. The legislature created two distinct statutory bases for the cessation of private bus service in Connecticut: revocation and condemnation. The Commissioner or a Transit District may revoke a certificate through the regulatory process under Conn. Gen. Stat. §§13b-80 or 7-273d, respectively, and may also condemn certificates under Conn. Gen Stat. §§13b-36(a), 34 or 23 and Conn. Gen. Stat. §7-273e, respectively.

The Bus Companies fail to recognize, however, distinction between the Commissioner's regulatory role over motor buses pursuant to Conn. Gen. Stat. §13b-80 et seq., and the Commissioner's role in implementing legislative policy to operate and improve transportation services in Connecticut pursuant to Conn. Gen. Stat. §§13b-4, 13b-32, 13b-34 and 13b-36. The Commissioner's regulatory function under §13b-80 is to ensure that a bus company is operating in accordance with the conditions of their certificate and all applicable regulations. For example, if a bus company failed to provide bus service on a route specified in a certificate, the Commissioner could suspend or revoke that company's certificate. When the Commissioner is implementing legislative policy to improve

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expressly or by necessary implication provides otherwise." State v. Lombardo Bros. Mason Contractors, Inc.,307 Conn. 412 (2012).

transportation services in Connecticut pursuant to Conn. Gen. Stat. §§13b-4, 13b-32, 13b-34 and 13b-36, his powers are separate and distinct from his regulatory powers pursuant to Conn. Gen. Stat. §13b-80. Nothing in Conn. Gen. Stat. §13b-80 restricts the Commissioner from exercising his powers to take the Certificates under Conn. Gen. Stat. §§13b-23, 13b-34 and 13b-36 without holding revocation hearings pursuant to Conn. Gen. Stat. §13b-80, as advocated by the Bus Companies.

This case is similar to the case of Gray Line Bus Company v. Greater Bridgeport Transit District, 188 Conn. 417 (1982), in which the transit district, pursuant to Conn. Gen. Stat. §7-273e, took the plaintiff's franchise without first revoking the company's certificate. Just as nothing in the transit district statute requires the transit district to revoking a certificate before taking it, nothing in the general statutes, including Conn. Gen. Stat. §13b-80, prohibits the Commissioner from exercising his authority to take the Certificates.

The Bus Companies further argue that there must be some evidence of public necessity before the Commissioner may take the Certificates and that there is no evidence of such a need here. Brief, p. 20-21. However, the Commissioner did find that "public necessity" compelled him to take the Certificates. In fact, the Commissioner expressly stated in the Notice that:

> Pursuant to the provisions of Section 13b-36 of the General Statutes of Connecticut, as revised, the Commissioner of Transportation of the State of Connecticut hereby finds that, the State's acquisition of any and all rights in Certificate of Public Convenience and Necessity No. 11 for the Operation of Intrastate Motor Bus Service, as amended from time to time, and issued pursuant to Section 16-309 of the General Statutes of Connecticut, presently under authority of Section 13b-80 of the General Statutes of Connecticut, as amended from time to time, is found to be necessary for the operation and improvement of transportation services, and any rights under said Certificate are hereby taken, and notice thereof is hereby filed with the Clerk of the Superior Court in the Judicial District of New Britain in which said Certificate is located.

A142-151 (emphasis supplied).

Moreover, Conn. Gen. Stat. §13b-36(a) expressly provides that the Commissioner's decision is conclusive.

> The determination of what property is necessary to be taken in any given case in order to effectuate the public purpose is, under our constitution, a matter for the exercise of the legislative power. When the legislature delegates the making of that determination to another agency, the decision of that agency is conclusive; it is open to judicial review only to discover if it was unreasonable or in bad faith or was an abuse of the power conferred.
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> Gohld Realty Co. v. City of Hartford, 141 Conn. 135 147 (1954).

Thus, contrary to the Bus Companies' representation, the Commissioner did, in fact, make a specific finding that the taking of the Certificates was necessary.

5. CONNECTICUT LAW PROVIDES THE COMMISSIONER MUCH BROADER AUTHORITY TO CONDEMN ON CERTIFICATES THAN TRANSIT DISTRICTS.

The Bus Companies cite to Conn. Gen. Stat. §7-273e(c) as an example of where the Legislature granted authority to transit districts to take intangibles such as the "franchise." From this, they contend, the Court should infer that the Legislature did not intend to authorize the Commissioner to take similar intangible property, such as their Certificates.[20] However a comparison of the language in Conn. Gen. Stat. §§13b-34, 36, 23 and 7-273 actually supports the Commissioner's argument and the legislative policy set forth in Conn. Gen. Stat. §§13b-4, 32, 34 and 36.

Significantly, both the DOT and the transit districts may acquire and operate mass transportation. DOT's authority was conferred pursuant to Conn. Gen. Stat.§§13b-34 and

[20] Using the Bus Companies rationale, if the legislature wanted to use the term "certificate" in Conn. Gen. Stat. §7-273e, it could have done so, but chose to use the term "franchise" instead.

13b-36(a) in 1969, which use the terms "property" and "land, buildings, equipment or facilities". At the same time, the legislature gave the Commissioner any "additional powers, incidental to the express powers . . . as may be necessary or proper for the effective performance of his powers and duties" under Conn. Gen. Stat. § 13b-23. On the other hand Conn. Gen. Stat. § 7-273e, uses very different language and refers only to "property" and "franchises". Most importantly, the transit districts have no authority like that set forth in §13b-23, which provides for any necessary, additional authority incidental to the Commissioner's express powers.

It would be incongruous for the legislature to provide for either the DOT or the transit districts to take, through eminent domain, all assets of the Bus Companies for the purpose of operating a bus transit system, yet only allow the transit districts to take the franchise. Courts are always obliged to read statutes together when they relate to the same subject matter; Felician Sisters of St. Francis, of Connecticut, Inc., supra; and presume that the legislature intended to create a harmonious and consistent body of law. Hartford/Windsor Healthcare Props., LLC, supra.

It would also be illogical for the DOT, as the statewide entity with responsibility for the coordination and development of a comprehensive and integrated state transportation policy to be placed in an inferior position to the transit districts vis-à-vis the inability to take a franchise.[21] DOT bears the responsibility for coordinating and assisting in the

[21] In support of their argument, the Bus Companies provide a quote from the "legislative history of Public Act 74-342, codified in part at Conn. Gen. Stat. §13b-34 and 7-273e." Bus Companies Brief, p. 13. Contrary to the Bus Companies representation, that excerpt is not part of the legislative history of Conn. Gen. Stat. §§13b-34 or 7-273e, but rather a statement by Mr. Lane-Reticker, who was advocating on behalf of the creation of a Greater Hartford Transportation Authority as proposed in Senate Bills 157, 396 and 397.

development and operation of a modern, safe, efficient and energy-conserving system of mass transit services; Conn. Gen. Stat. §13b-4; including the power to modify or overrule a transit district authorization, order or decision that adversely affects state-wide transportation policy. Conn. Gen. Stat. §7-273d(A10). Similarly, the transit district's power to condemn a franchise under Conn. Gen. Stat. §7-273e(c) is contingent upon the Department of Transportation making a determination that the franchise is "suitable for acquisition." Conn. Gen. Stat. §7-273e(b). Thus, nothing in Conn. Gen. Stat. §7-273e(c) undercuts the Commissioner's authority to take the Certificates.

6. ALL RIGHTS THE BUS COMPANIES HAD IN THEIR CERTIFICATES WERE TAKEN IN ACCORDANCE WITH PROCEDURAL DUE PROCESS PROTECTIONS.

The Bus Companies argue that they are not to be deprived of their Certificates, which they contend are property rights, without due process of law. Plaintiffs' Brief, Part V, B. In other words, the Bus Companies seem to argue that the taking of the Certificates was not valid because they did not receive a hearing prior to the notice of taking being filed.

Their argument is misplaced as there is no due process right to a hearing prior to the taking of property. Judge Levine, in his Memorandum of Decision in DATTCO et al. v. State of Connecticut, Department of Transportation, HHB CV10-6007261-S (P.App.A888), determined that the Bus Companies had property rights in their Certificates. Accepting

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P.App.752, Conn. Joint Standing Committee Hearings, Finance and Transportation, Pt. 2, 1974 Session, pp. 323- 326. In contrast, Conn. Gen. Stat. §13b-34 was modified by Public Act 74-342, which arose as Substitute Senate Bill 242 and not Senate Bills 157, 396 and 397. A29 . There were no modifications to Conn. Gen. Stat. §7-273e in 1974. A29-61. Therefore, although Mr. Lane-Reticker's comments are interesting, they do not provide any guidance for the Court in resolving this matter, especially where Mr. Reticker admitted that there was a split among attorneys over whether the franchises needed to be acquired or not.

that conclusion for the purposes of this litigation, the Commissioner took by eminent domain whatever property rights existed in the Certificates. The Commissioner's decision to take the Certificates, is separate and distinct from the issue of just compensation paid for the taking of their Certificates, which does provide for an opportunity to be heard on the amount of compensation for the property rights taken. The condemnation process itself, found in our law and followed by the Commissioner, which gives the Bus Companies the right to contest the compensation at a hearing, is the process they are constitutionally due. There is no legal support for the proposition that they are due a hearing before the taking.

Specifically addressing the context of an eminent domain proceeding, the United States Supreme Court has stated that "...the necessity and expediency of the taking may be determined by such agency and in such mode as the state may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment...." Bragg v. Weaver, 251 U.S. 57, 58 (1919) (citations omitted). The Supreme Court went on to state that "...it is settled by the decisions of this court that where adequate provision is made for the certain payment of the compensation without unreasonable delay the taking does not contravene due process of law in the sense of the Fourteenth Amendment merely because it precedes the ascertainment of what compensation is just." Id at 64 (citations omitted). See also Ment v. Ives, 27 Conn. Supp. 239, 242 (1967).

Since the Bus Companies are not entitled to a hearing on the initial taking of their Certificates but rather will be given an opportunity to be heard on the issue of compensation, there is no basis to their claim that the Commissioner violated the Bus Companies procedural due process rights in taking their Certificates.

The process set forth in the general statutes for the taking of the Certificates complies with the requirements set forth in Bragg. In the present case, the Commissioner filed both the original and the amended notices of condemnation with the courts (See Footnote 4) and provided copies of the notices to the Bus Companies in accordance with the directives provided in Conn. Gen. Stat. §§13b-36(a) and 13a-73. The Bus Companies have availed themselves of the opportunity to apply for a reassessment of damages and have filed appeals on the Commissioner's valuation of the assessment of damages. See Footnote 14. As such, the procedures provided in the general statutes and the Commissioner's actions comport with the Due Process Clause of the Constitution by giving the Bus Companies notice of the taking of their Certificates as provided by Conn. Gen. Stat. §13a-73 (A11) and an opportunity to be heard on the value of those Certificates as provided by Conn. Gen. Stat. §13a-76 (A14) in the application for reassessment of damages, thus providing an adequate remedy at law. The condemnation process followed by the Commissioner in this case, gives the Bus Companies all the process they are constitutionally due.[22] Therefore, there is no legal support for the proposition that the Bus Companies are due a hearing before the taking.

F. CONN. GEN. STAT. § 13b-34 AUTHORIZES THE COMMISSIONER TO CONDEMN THE CERTIFICATES.

Even if the Court were to find that Conn. Gen. Stat. § 13b-36(a) does not authorize the taking of the Certificates. The Commissioner is empowered to take the Certificates pursuant to Conn. Gen. Stat. §13b-34. When exercising his authority under Conn. Gen.

[22] See argument, infra, page 26. The Commissioner's duties under Conn. Gen. Stat. §13b-80 are different and distinct from his authority under 13b-34 and 13b-36.

Stat. §13b-36(a), the legislature granted the Commissioner the additional powers in Conn. Gen. Stat. §13b-34 which reads, in relevant part:

> (c) When necessary or desirable in the performance of his powers and duties under this section and sections 13b-35 to 13b-38, inclusive, the commissioner shall, in the name of the state, have power (1) to hire, lease, acquire and dispose of property to the extent necessary to carry out his powers and duties hereunder and (2) to contract to perform services for any person, any transit district or other political subdivision or entity, or with any other agency, governmental or private, and to accept compensation or reimbursement therefor.

Conn. Gen. Stat. §13b-34(c)(emphasis added).

This section grants the Commissioner the power to "acquire...property" when exercising his powers under Conn. Gen. Stat. §13b-36(a). The term "acquire" is not defined in the general statutes and therefore it should be given its common meaning. See Conn. Gen. Stat. § 1-1(a); Brown & Brown, Inc. v. Blumenthal, 297 Conn. 710, 722 (2010). Where a statute or regulation does not define a term, court should turn to its common meaning as expressed in the law and dictionaries. Nyenhuis v. Metropolitan District Comm'n, 300 Conn. 708, 720 (2011); Key Air, Inc. v. Commissioner of Revenue Services, 294 Conn. 225, 235 (2009).

Black's Law Dictionary defines "acquire" as "[t]o gain possession or control of; to get or obtain." Black's Law Dictionary, 10th Ed. (2014).A73. The term "acquire" is very broad and does not limit the method of acquisition. "Acquire" encompasses both "purchase" and "take," the terms used in Conn. Gen. Stat. §13b-36(a). In fact, Black's Law Dictionary defines the term "take" as "To acquire (property) for public use by eminent domain; (of a governmental entity) to seize or condemn property the state took the land under its eminent-domain powers." Black's Law Dictionary, 10th Edition (2014)(emphasis added)A74.

Conn. Gen. Stat. §13b-4(11) provides additional support for construing the term "acquire" broadly.[23] In that section, the legislature expressly recognized that "acquisition" would include condemnation and so specifically excluded condemnation from the requirement to have State Property Review Board's approval when it acquiring property. See Felician Sisters of St. Francis of CT, Inc. , supra (where the legislature has used the terms "acquire" and "acquisition" in the same chapter of the general statutes, the court should give the terms similar meanings.)

Where the legislature intended to limit DOT's authority to condemn property, it does so explicitly. For example, in Conn. Gen. Stat. §13a-142a (A15) provides that the Commissioner can "acquire by purchase but not condemnation" land adjacent to a highway for environmental protection. Notably, the legislature did not include any limitation in Conn. Gen. Stat. §13b-34 on the method of Commissioner's acquisition of the Bus Companies' Certificates.

Since the Commissioner's power to acquire property under Conn. Gen. Stat. §13b-34 is authorized when the Commissioner is exercising his powers under Conn. Gen. Stat. §13b-36(a), it is important to look at the context in which the word "acquire" is used in Conn. Gen. Stat. §13b-34 and in conjunction with Conn. Gen. Stat. §13b-36(a). In Conn.

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[23] Conn. Gen. Stat. §13b-4(11)reads, in relevant part:
The commissioner shall have the following general powers, duties and responsibilities...
(11) To provide for the planning and construction of any capital improvements and the remodeling, alteration, repair or enlargement of any real asset that may be required for the development and operation of a safe, efficient system of highway, mass transit, marine and aviation transportation, provided (A) the acquisition, other than by condemnation, or the sale or lease, of any property that is used for such purposes shall be subject to the review and approval of the State Properties Review Board in accordance with the provisions of subsection (f) of section 4b-3...

Gen. Stat. §13b-36(a), the legislature first used the terms "purchase or take" and then went on to refer to them collectively by the term "acquire," thus indicating an intent to include takings within the term "acquire."[24]

Conn. Gen. Stat. §13b-34 also provides the Commissioner with the power to acquire "property." "The word 'property' is defined as '[t]hat to which a person has a legal title.' Webster's New International Dictionary (2d Ed.)...It may include everything which is the subject of ownership." Winslow v. Zoning Bd. of Stamford, 143 Conn. 381, 386-87 (1956)(citations omitted). Therefore, the word property includes property of any kind, real or intangible. As stated in the decision in the initial lawsuit, the Certificates constitute "property." Pursuant to his powers under Conn. Gen. Stat. §13b-34 and §13b-36(a), the Commissioner has "acquired" or "gained possession or control of; gotten or obtained" by means of "taking," the Certificates which had been the intangible property of the Bus Companies.

Thus, the legislature has authorized the Commissioner to take the Certificates, either directly under Conn. Gen. Stat. §13b-36(a) or through his additional powers of acquisition in Conn. Gen. Stat. §13b-34(c).

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[24] Similarly in subsection (a) of Conn. Gen. Stat. §7-273e, the General Assembly authorizes a transit district to "acquire all or a portion of the property and franchises of any company or companies." Later in that same section, the transit districts are authorized to "acquire, by purchase or otherwise....any and all rights of ownership or interest in or to any real or personal property as provided by this section..." In subsection (b), the general assembly uses the term "acquisition" in relation to the "franchise." In subsection (c), the general assembly specifies the uses the term "acquire by eminent domain" in reference to the franchise. Thus, the legislature used the term "acquire" and "acquisition" to include taking by eminent domain. Cf. City of Bristol v. Ocean State Job Lot Stores of Connecticut, Inc., 284 Conn. 1, 14-15 (2007) wherein the Court interpreted the contract language "shall be acquired or condemned by right of eminent domain" to indicate two separate things in the context of the contract.

VI. CONCLUSION

For the reasons stated above, the Commissioner respectfully requests the Court to find that he has the authority to take the Certificates and that the Supreme Court should affirm the trial court's decision on summary judgment.

Respectfully submitted,

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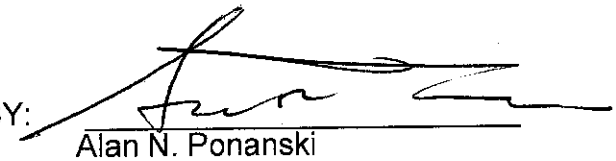
BY: 

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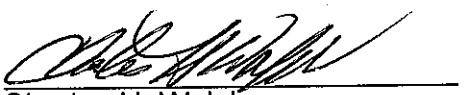
BY: 

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CERTIFICATION OF COMPLIANCE

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate procedure § 67-2, that on this 19th day of February 2016:

(1) The electronically submitted brief and appendix was delivered electronically to the last known e-mail address of each counsel of record listed below for whom an e-mail address was provided; and

(2) The electronically submitted brief and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and

(3) A copy of the brief and appendix was sent to each counsel of record and to any trial judge listed below who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; and

(4) The brief filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and

(5) The brief complies with all provisions of this rule.

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CERTIFICATION OF SERVICE

The undersigned attorney hereby certifies that this brief complies with all provisions of Connecticut Rules of Appellate Procedure 67-2 and that a copy of the foregoing was mailed, first class postage prepaid this 19th day of February, 2016 to:

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