

**[J-86-2002]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

IN RE: INTEREST OF ROBERT W. : No. 161 MAP 2001  
FORRESTER :  
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: Appeal from the Order of the  
: Commonwealth Court entered on 5/2/01 at  
: No. 1299 CD 2000 which affirmed the  
: Order of the Court of Common Pleas of  
: Franklin County, Civil Division, entered on  
APPEAL OF: RODNEY J. MCKENRICK, : 5/4/00 at No. 1997-390  
BONNIE F. MCKENRICK, HAROLD S. :  
FORRESTER, AND HELEN B. :  
FORRESTER : ARGUED: May 15, 2002

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**Decided: November 20, 2003**

I share the view expressed by Madame Justice Newman in her dissenting opinion that interpreting the Private Road Act, 36 P.S. §§2731-2891, as implicating little or no public interest undermines its ostensible constitutionality. Cf. Pratt v. Allen, 455 N.Y.S.2d 904, 906-07 (N.Y. 1982) (analyzing a proceeding under New York’s private road enactment as entailing an exercise of eminent domain, which must be grounded in a public purpose to meet constitutional requisites).<sup>1</sup> Nevertheless, I believe the

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<sup>1</sup> Notably, various courts disagree about the constitutional validity of enactments along the lines of the Private Road Act. Compare Pratt, 455 N.Y.S.2d at 905-07, with Tolksdorf v. Griffith, 626 N.W.2d 163, 168 (Mich. 2001) (concluding that Michigan’s Private Roads Act was unconstitutional, as permitting the “state’s power of eminent domain to convey an interest in land from one private person to another”). One point of general agreement, however, is that some public purpose must be discerned in order for the legislation to survive constitutional scrutiny. See Pratt, 455 N.Y.S.2d at 905-07; Tolksdorf, 626 N.W.2d at 168.

Commonwealth Court's decision may be affirmed on an alternate ground, without the need to effectively delineate the Private Road Act as unconstitutional in this case.

In this regard, the focus of Section 913 of the Agricultural Area Security Law ("AASL"), 3 P.S. §913, is upon "an agency of the Commonwealth having or exercising powers of eminent domain..." or a "political subdivision, authority, public utility or other body having or exercising powers of eminent domain..." 3 P.S. §913 (a), (b). Notably, the legislative findings underlying the AASL indicate a concern with "urban pressure from expanding metropolitan areas." 3 P.S. §902. Perhaps for this reason, the relevant provisions of the AASL are directed at those entities with which the power of eminent domain is traditionally associated. Thus, although I conclude that a proceeding under the Private Road Act represents an exercise of eminent domain power, see generally Application of Little, 180 Pa. Super. 555, 558, 119 A.2d 587, 589 (1956), I view it as equally material that in this case such exercise was not accomplished by one of the entities delineated in the AASL. Rather, the eminent domain power was carried out through a court of common pleas on behalf of an individual property owner, Appellee, via the discrete and singular statutory mechanism embodied in the Private Road Act.

As observed by the dissent, there may be valid reasons that would support extending the provisions of the AASL to Private Road Act proceedings. Since, however, there are policy considerations militating to the contrary, and given the present framework of Section 913, I believe that any adjustment in the area is best left to the General Assembly.