

# SUPREME COURT OF LOUISIANA

*No. 97-C-2121*

WYNAT DEVELOPMENT COMPANY,  
AN ORDINARY LOUISIANA PARTNERSHIP,  
AND WYNAT DEVELOPMENT CORPORATION

Versus

THE BOARD OF LEVEE COMMISSIONERS  
FOR THE PARISH OF ORLEANS

LEMMON, J., Dissenting

Prior to 1974, the cause of action for appropriation was provided by La. Const. (1921) art. XVI, §6, which required payment of compensation when property has been appropriated for levee purposes and set the standard for determining such compensation "at a price not to exceed the assessed value of the preceding year." In 1958, the Legislature enacted La. Rev. Stat. 9:5626 to provide a special two-year prescriptive period governing such an action for compensation under La. Const. art. XVI, §6, commencing on the date the property was actually occupied and used.

The majority concludes the 1974 Constitution and subsequent legislation abolished the cause of action for payment of property appropriated for levee purposes created by former La. Const. art. XVI, §6 and established a new cause of action with a different prescriptive period. I disagree.

What actually occurred in 1974 is that the framers of the new constitution continued in effect the constitutional cause of action for payment, but delegated to the Legislature the authority to set the standard for determining such compensation. Three provisions of the 1974 constitution are pertinent:

1. La. Const art. XIV, §16(A)(12), a general provision that continued as

a statute all the provisions of La. Const. (1921) art. XVI, §6.

2. La. Const. art. XIV, §32, a specific provision that also (a) continued the provisions of the La. Const. (1921) art. XIV, §6 as a statute "subject to change by the legislature" and (b) further continued the standard in the 1921 Constitution for determining the amount of compensation "until the legislature enacts a law to effectuate Article VI, Section 42 of this constitution."

3. La. Const. art. VI, §42, a provision that compensation "shall be paid for as provided by law," thereby authorizing the Legislature to fix the standard for determining compensation.

The latter two provisions recognized the authority of the Legislature to fix the standard for determining compensation for appropriation of property used for levee purposes and further maintained the existing standard until the Legislature acted. The framers thus provided that during the interim between the effective date of the 1974 Constitution and the time the Legislature enacted such a statute fixing the new standard for determining the "amount of compensation," the standard set forth in the 1921 Constitution would apply. The Legislature enacted such a statute, La. Rev. Stat. 38:281, in 1978 and in 1979.

In my view, the time limitation in La. Const. art. XIV, §32 was intended only to apply to the standard for determining the "amount of compensation," which the framers authorized the Legislature to fix by subsequent act. In so doing, the framers did not set a time limit on the vitality of the cause of action for compensation under the 1921 Constitution which had been continued as statute. Even after the Legislature acted to fix the standard for determining the amount of compensation, the cause of action under La. Const. (1921) art. XVI, §6 (and continued as a statute) remained viable and subject to the prescriptive period especially enacted for that cause of action.

The framers of the 1974 Constitution and the redactors of the subsequent revised statute did not expressly repeal the cause of action established by La. Const. (1921) art. XVI, §6 and continued as a statute by La. Const. art. XIV, §16(A)(12). Moreover,

implied repeal is highly disfavored. In my view, the majority erred in holding that the specific prescriptive period, which was designed to cover the issue presented here, no longer applies because the underlying cause of action was implicitly repealed in 1974 by La. Const. art. VI, §32, effective upon the enactment of La. Rev. Stat. 38:281 in 1978 and in 1979.