

Amendment upon the ground that other property benefitted by the improvement was not included.⁴⁰⁷

On the other hand, when the benefit to be derived by a railroad from the construction of a highway will be largely offset by the loss of local freight and passenger traffic, an assessment upon such railroad violates due process,⁴⁰⁸ whereas any gains from increased traffic reasonably expected to result from a road improvement will suffice to sustain an assessment thereon.⁴⁰⁹ Also the fact that the only use made of a lot abutting on a street improvement is for a railway right of way does not make invalid, for lack of benefits, an assessment thereon for grading, curbing, and paving.⁴¹⁰ However, when a high and dry island was included within the boundaries of a drainage district from which it could not be benefitted directly or indirectly, a tax imposed on the island land by the district was held to be a deprivation of property without due process of law.⁴¹¹ Finally, a state may levy an assessment for special benefits resulting from an improvement already made⁴¹² and may validate an assessment previously held void for want of authority.⁴¹³

Jurisdiction to Tax

Generally.—The operation of the Due Process Clause as a jurisdictional limitation on the taxing power of the states has been an issue in a variety of different contexts, but most involve one of two basic questions. First, is there a sufficient relationship between the state exercising taxing power and the object of the exercise of that power? Second, is the degree of contact sufficient to justify the state's imposition of a particular obligation? Illustrative of the factual settings in which such issues arise are 1) determining the scope of the business activity of a multi-jurisdictional entity that is subject to a state's taxing power; 2) application of wealth trans-

⁴⁰⁷ *Butters v. City of Oakland*, 263 U.S. 162 (1923). It is also proper to impose a special assessment for the preliminary expenses of an abandoned road improvement, even though the assessment exceeds the amount of the benefit which the assessors estimated the property would receive from the completed work. *Missouri Pacific R.R. v. Road District*, 266 U.S. 187 (1924). See also *Roberts v. Irrigation Dist.*, 289 U.S. 71 (1933) (an assessment to pay the general indebtedness of an irrigation district is valid, even though in excess of the benefits received). Likewise a levy upon all lands within a drainage district of a tax of twenty-five cents per acre to defray preliminary expenses does not unconstitutionally take the property of landowners within that district who may not be benefitted by the completed drainage plans. *Houck v. Little River Dist.*, 239 U.S. 254 (1915).

⁴⁰⁸ *Road Dist. v. Missouri Pac. R.R.*, 274 U.S. 188 (1927).

⁴⁰⁹ *Kansas City Ry. v. Road Dist.*, 266 U.S. 379 (1924).

⁴¹⁰ *Louisville & Nashville R.R. v. Barber Asphalt Co.*, 197 U.S. 430 (1905).

⁴¹¹ *Myles Salt Co. v. Iberia Drainage Dist.*, 239 U.S. 478 (1916).

⁴¹² *Wagner v. Baltimore*, 239 U.S. 207 (1915).

⁴¹³ *Charlotte Harbor Ry. v. Welles*, 260 U.S. 8 (1922).