

ARKANSAS STATE HIGHWAY COMMISSION *v.*
Henry W. LILES et ux

74-48

510 S.W. 2d 275

Opinion delivered June 10, 1974

1. EMINENT DOMAIN—TRIAL—COUNSEL'S OPENING STATEMENT AS PREJUDICIAL.—Reference by landowner's attorney in his opening statement to the fact that a prospective purchaser might consider the noise and fumes emanating from the highway was not error where there was no request that the jury be admonished, the court instructed the jury that opening statements of counsel were not evidence, and explained the measure of damages in instructions which could not be construed to include matters touched upon in the remark.
2. EMINENT DOMAIN—OPINION BASED UPON ONE COMPARABLE SALE—SUBSTANTIALITY OF EVIDENCE.—An opinion based upon one comparable sale *held* to be substantial evidence.

Appeal from White Circuit Court, *Elmo Taylor*, Judge; affirmed.

Thomas B. Keys and *Billy Pease*, for appellant.

Boyet & Morgan, P.A., for appellees.

GEORGE ROSE SMITH, Justice. The highway department, in appealing from a verdict and judgment fixing the landowners' compensation in a condemnation case, makes two arguments for reversal.

First, the landowners' attorney, in his opening statement to the jury, apparently made some reference to the fact that a prospective purchaser of the land might consider the noise and fumes emanating from the highway. The court overruled opposing counsel's objection to the statement. We find no error, for a number of reasons: It is not clear from the record just what was said. There was no request that the jury be admonished not to consider the remark. The court instructed the jury, in AMI 101, that the opening statements of counsel were not evidence. The court also explained the measure of damages to the jury, in instructions which could not be construed to include the matters that may have been touched upon in the remark now complained of.

Secondly, the jury's verdict for \$2,501 was in the precise amount fixed by the landowners' expert witness. That witness cited two comparable sales, one at \$300 an acre and the other at \$225 an acre. He used only the higher figure in arriving at his assessment of the damages. The appellant argues that the witness should have selected some intermediate point between the two figures in reaching his conclusion. No doubt that argument was made to the jury, but we certainly cannot say that an opinion based upon one comparable sale falls short of being substantial evidence. *Ark. State Highway Commn. v. Alvin Samuel Gin Co.*, 256 Ark. 669, 510 S.W. 2d 65 (1974).

Affirmed.
