flicted despite double-jeopardy limitations, the conduct must be found to constitute two offenses. Before any constitutional question is reached, a legislative intent to divide the conduct in question into separate offenses should be found. Cf. *Blockburger v. United States*, 284 U. S. 299 (1932); *Blackwell v. State*, 48 Ga. App. 221, 172 S. E. 670 (1934); *People v. Spencer*, 201 N. Y. 105, 94 N. E. 614 (1911); see (1924) 37 HARV. L. REV. 912. The court in the instant case hurdled the statutory issue by making venue requirements the basis for its decision that two separate offenses had been committed. Although for venue purposes a fiction has been developed that a multi-county crime is a separate offense in each county where part of the conduct takes place, this fiction has been rejected when invoked for other purposes. See *Harrington v. State*, 31 Tex. Cr. 577, 582, 21 S. W. 356, 357 (1893); cf. *Tippins v. State*, 14 Ga. 422 (1854). Venue requirements in factual situations similar to that of the principal case are normally construed to allow trial in either of the two counties, but not to overcome the former-jeopardy rule which permits only a single conviction. *State v. Roberts*, 152 La. 283, 93 So. 95 (1922); see Note (1931) 16 IOWA L. REV. 261. In determining what constitutes "the same offense" within constitutional prohibitions, the courts have developed both the "same-transaction" and the "same-evidence" tests, neither of which provides a workable guide to decisions. See Notes (1938) 18 ORE. L. REV. 36, (1931) 40 YALE L. J. 462. Regardless of the phraseology used, the basic consideration implicitly controlling judicial division of continuous conduct into separate offenses seems to be an evalution of the amount of punishment necessary to secure compliance with the statute. See *International Harvester Co. v. Commonwealth*, 144 Ky. 403, 413, 138 S. W. 248, 253 (1911); cf. *State* ex rel. *Garvey v. Whitaker*, 48 La. Ann. 527, 19 So. 457 (1896). But cf. *State v. O'Neil*, 58 Vt. 140, 2 Atl. 586 (1886), *writ of error dismissed for want of jurisdiction*, 144 U. S. 323 (1892); see (1924) 37 HARV. L. REV. 912. Although the principal case might be supported on the ground that additional punishment is desirable in order to secure compliance with the law, it is probably better that the fixing of punishment be left to the legislature. But the result in the principal case may be justified on the practical consideration that it affords an incentive to county enforcement and prosecuting officials to secure compliance with the state law in their respective counties. See *State v. Shimman*, *supra* at 537, 172 N. E. at 372 (dissenting opinion).

EMINENT DOMAIN — FOR WHAT PURPOSES PROPERTY MAY BE TAKEN — CONDEMNATION OF CORPORATE LAND HOLDINGS FOR REDISTRIBUTION IN PUERTO RICAN AGRARIAN REFORM PROGRAM UPHELD. — In 1941 the legislature of Puerto Rico created a Land Authority, endowed it with powers of eminent domain, and authorized it to carry

out a far-reaching program of agrarian reform. P. R. Laws 1941, No. 26, pp. 400–23. The Authority was directed to acquire land of non-natural persons in excess of holdings of 500 acres, or to request the insular government to acquire any other lands which might be necessary or advisable for purposes of the Authority. These lands were to be disposed of (1) in small parcels to squatters and slum-dwellers for erection of homes, (2) in parcels of five to twenty-five acres to individuals for subsistence farming, and (3) in larger parcels to qualified persons for operating "proportional-profit" farms. *Id.* at 452–57, 418–19, 444–53, as amended, P. R. Laws 1943, No. 157, pp. 514–17. In 1944 the legislature specifically instructed the Authority to take steps to acquire the lands belonging to the Eastern Sugar Associates and to others on the Island of Vieques for the development of the sugar and liquor industries in order to relieve the acute economic distress of the inhabitants of that island. P. R. Laws 1944, No. 90, pp. 196–99. Pursuant to these statutes and at the request of the Authority, the Governor of Puerto Rico instituted condemnation proceedings in an insular court against the lands of the Associates, setting forth as objects of the taking the three plans for disposal outlined in the 1941 act. On petition of the Associates, the case was removed for diversity of citizenship to the federal district court for Puerto Rico. After hearing arguments of counsel, but without taking evidence, the district court dismissed the petition to condemn, primarily on the ground that the taking was not for a public use or purpose. *Held*, on appeal, that the taking was for a public use and not a deprivation without due process of law. Judgment reversed. *Puerto Rico v. Eastern Sugar Associates*, 15 U. S. L. WEEK 2038 (C. C. A. 1st, June 28, 1946).

This decison considerably broadens the scope of purposes for which private property may be taken under the power of eminent domain. See Nichols, *Meaning of Public Use in the Law of Eminent Domain* (1940) 20 B. U. L. REV. 615. The "public-use" requirement for such takings, as found in the Fifth Amendment and as read into the Fourteenth Amendment, is expressly imposed on the Puerto Rican legislature by the Organic Act. 39 STAT. 951 (1917), 48 U. S. C. § 737 (1940). A recent opinion of the United States Supreme Court has left some doubt as to whether a legislative determination that a taking is for a public use is subject to judicial review. See *United States v. Welch*, 66 Sup. Ct. 715, 717–18 (March 25, 1946). Although the court in the principal case indicated that the legislative discretion in defining public use is considerable, it rested the decision on its own determination that there was a public use. Judicial controversy over what is a public use has chiefly involved the competing doctrines that a physical use by the public or by public agencies is necessary to validate a taking, and that a public benefit will justify a taking even though the physical use be by private individuals. Compare *Ferguson v. Illinois Cent. R. R.*, 202 Iowa 508, 210 N. W. 604 (1926), 54 A. L. R. 1, 7 (1928), with

Board of Water Comm'rs of Hartford v. Manchester, 87 Conn. 193, 87 Atl. 870 (1913), *aff'd per curiam*, 241 U. S. 649 (1916); see Note (1946) 46 COL. L. REV. 108. The Supreme Court, in cases involving the power of the states under the Fourteenth Amendment, has rejected the narrower "use-by-the-public" view when offered to invalidate condemnations. *O'Neill v. Leamer*, 239 U. S. 244 (1915) (drainage ditch to reclaim privately owned lands); *Hairston v. Danville & W. Ry.*, 208 U. S. 598 (1908) (spur track to tobacco factory); *Clark v. Nash*, 198 U. S. 361 (1905) (enlargement of irrigation ditch for benefit of single landowner). However, it has not held that any benefit whatever to the public will justify a taking where the use is to be by private individuals. *Cincinnati v. Vester*, 281 U. S. 439 (1930) (city may not take excess land for resale at advanced prices in order to finance street widening); *Missouri Pac. Ry. v. Nebraska*, 164 U. S. 403 (1896) (railroad cannot be compelled to lease land along right-of-way for privately owned grain elevators). A circuit court of appeals decision in 1935, dismissing condemnation proceedings under the NIRA for a slum-clearance and low-cost housing project, concluded that the powers of the federal government to take are not so broad as those of the states. *United States v. Certain Lands in Louisville*, 78 F.(2d) 684 (C. C. A. 6th, 1935), *cert. dismissed*, 297 U. S. 726 (1936). Contra: *Oklahoma City v. Sanders*, 94 F.(2d) 323 (C. C. A. 10th, 1938). The court in the principal case did not consider the *Louisville* decision applicable to federal authority within the territories, pointing out that the broad powers of the insular legislature are comparable to those of a state, and finding precedent for the taking in cases under the Fourteenth Amendment sustaining state takings for the purpose of developing local resources. *Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527 (1906) (aerial bucket line to transport gold); cf. *Fallbrook Irrigation Dist. v. Bradley*, 164 U. S. 112 (1896) (special assessment to finance irrigation ditch for benefit of private landowners). These cases emphasize the importance of local conditions about which the legislature is particularly competent to judge. See *Green v. Frazier*, 253 U. S. 233, 239–40 (1920) (sustaining North Dakota bond issue to finance state-owned bank, farm machinery factory, grain elevators, and home-building association). That there are conditions peculiar to the economy of Puerto Rico which might call for some sort of special legislative treatment is a fact widely known. See P. R. Laws 1941, No. 26, pp. 388–99 ("Statement of Motives"); *Roig v. Puerto Rico*, 147 F.(2d) 87, 90 (C. C. A. 1st, 1945); GAYER, HOMAN AND JAMES, THE SUGAR ECONOMY OF PUERTO RICO (1936) *passim*. The circuit court of appeals in the present case justifiably took judicial notice of this fact, thereby making it unnecessary for the district court to take evidence as to local conditions. The court considered the argument that the 1944 act authorized the Authority to take and operate lands in direct competition with the former owners, but held that this would not be a denial of due

process even though it might amount to " state socialism." The rationale of the decision is in line with that of a leading case in the New York Court of Appeals sustaining condemnation by the state for low-cost housing purposes on the reasoning that an exercise of the power of eminent domain, like an exercise of the police power or the power to tax, is valid if it meets the usual test of being devoted to a legitimate governmental purpose to which the means are reasonably related. *New York City Housing Authority v. Muller*, 270 N. Y. 333, 1 N. E.(2d) 153 (1936); see *Keyes v. United States*, 119 F.(2d) 444, 448 (App. D. C. 1941), *cert. denied*, 314 U. S. 636 (1941); Note (1941) 130 A. L. R. 1069.

EVIDENCE — OPA CONFIDENTIAL RECORDS HELD NOT PRIVILEGED WHERE RELEVANT TO SHOW BIAS OF GOVERNMENT WITNESSES IN PROSECUTION FOR OPA VIOLATIONS. — Defendants were indicted on August 31, 1944, for selling meat at prices over OPA ceilings. Seeking to discredit the testimony of four retail butchers who appeared as witnesses for the United States by showing that they had previously been disciplined by the OPA, the defendants served a subpoena duces tecum upon the chief clerk of the local ration board, ordering him to produce in court all OPA records pertaining to these witnesses. Objection to the production of the records was made on the ground that they were confidential documents. The Emergency Price Control Act provided that " The Administrator shall not . . . disclose any information obtained under this Act that such Administrator deems confidential . . . unless he determines that the withholding thereof is contrary to the interest of the national defense and security." 56 STAT. 30 (1942), 50 U. S. C. APP. § 922(h) (Supp. 1946). An OPA order promulgated pursuant thereto provided that no record of a price and ration board should be disclosed except where expressly authorized in the public interest by OPA officials. OPA General Order No. 55, April 6, 1944, 9 FED. REG. 3820 (1944). Relying on this order, the district court held the records confidential without inspecting them and refused to order their production. *Held*, on appeal from judgments of conviction, that if the records contained data of previous disciplinary action against the witnesses, they were relevant as tending to prove bias, and that by instituting criminal proceedings the United States had abandoned its claim to privilege. Reversed and remanded. *United States v. Beekman*, 155 F.(2d) 580 (C. C. A. 2d, 1946).

The present case goes beyond prior decisions in holding that the institution of a criminal prosecution by the United States constitutes a waiver of privilege with respect to records officially classified confidential which, although not bearing directly on the guilt or innocence of the accused, are vital in insuring a fair trial. The validity of regulations