



Authority

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Reference Number: MTAS-1287

The Tennessee General Assembly has by statute or private act authorized the exercise of the power of eminent domain by a wide variety of governmental agencies and public service corporations. However, for the condemner to have the right to take a specific piece of property, the entity with the power of eminent domain must determine that the particular property being taken will be put to a public use and that the particular property is necessary for that use. Such action by the entity is essential not only to show that the condemnation proceedings are properly authorized, but, as discussed further below, to eliminate any challenge by the property owner regarding the necessity for the taking of the property.

The municipal or county condemner normally authorizes the acquisition of property under the power of eminent domain through adoption of an ordinance or resolution that authorizes the acquisition of certain parcels of property for a specified municipal or county project. ^[2] If an ordinance is required, a resolution will not suffice. ^[2A] Such an ordinance or resolution should set out the nature of the project being undertaken, recite that the taking is for public use and in the public interest, and state that acquisition of the particular properties identified is necessary for that purpose. ^[3] The ordinance or resolution should specifically authorize the filing of condemnation proceedings to acquire the properties identified. ^[4]

There must be strict compliance with all applicable charter provisions, statutes, and private acts regarding the adoption of ordinances or resolutions. Failure to comply will result in the condemner lacking the authority to condemn the property identified in the ordinance or resolution. ^[5] Also, if the applicable statutory provisions impose pre-conditions to the filing of condemnation proceedings, such as publication of notices, the pre-conditions must be met for the condemner to have the authority to institute condemnation proceedings. ^[6]

A copy of the ordinance or resolution may be attached to the petition for condemnation ^[7] or referenced by ordinance number in the body of the petition. If the right to take is challenged, a certified copy of the ordinance or resolution may be introduced into evidence to establish that the condemner has the authority to take the property in question.

Notes:

[2] *Hawkins County v. Mallory*, Docket No. 91 (Tenn. Ct. App. E.S. January 17, 1985).

[2A] *City of Johnson City v. Campbell*, 2001 WL 112311 (Tenn. App. 2001).

[3] Wilkerson, *The Institution and Prosecution of Condemnation Proceedings*, 26 Tenn. L. Rev. 325 (1959).

[4] Wilkerson, *supra*, at p. 326.

[5] *Brumley v. Town of Greeneville*, 38 Tenn. App. 322, 274 S.W.2d 12 (1954).

[6] *Alcoa Development and Housing Authority v. Monday*, Docket No. 196; 1991 WL 12291 (Tenn. Ct. App. E.S. February 7, 1991).

[7] Wilkerson, *supra*, at p. 326.

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