



Public vs. Private Condemner

Dear Reader:

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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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In determining whether a proposed use constitutes a public use, the courts also consider whether the condemner is a public or private entity. For the purpose of this analysis courts have recognized that there are at least three categories of condemners: governmental entities, public service corporations regulated by the state, and private individuals or corporations, and that the standards for public use will differ for each category. ^[19]

If the condemner is a governmental entity, the courts determine whether the public would be entitled to receive and enjoy the benefits of the proposed use. ^[20] The general public need not have access to the property to satisfy this requirement. ^[21] Acquiring property as part of a redevelopment plan under which the property will subsequently be resold to a private developer does not result in the property being acquired for a private purpose when the public receives a benefit from the complete implementation of the redevelopment plan. ^[22]

Where the condemner is a public service corporation regulated by the state, the court must determine whether the public will be given an opportunity to make use of the service provided by the public service corporation at reasonable rates and without discrimination. ^[23] The proposed use must satisfy a public demand for facilities for travel or transportation of intelligence or commodities, and the general public, under reasonable regulations, must have a definite and fixed use of the services of the condemner independent of the will of the condemner. ^[24]

If the condemner is a private corporation or individual, the courts will rarely find that the proposed use is a public use. If the proposed use is absolutely necessary to permit the private individual or corporation to discharge duties owed to the public, a public use may be found. ^[25] Otherwise the court will require the condemner to establish that the general public will be entitled to make a fixed and definite use of the property being condemned, independent of the will of the condemner. ^[26]

The following have been found to constitute public uses when the condemner was a governmental entity:

- Municipal streets; ^[27]
- Street lights; ^[28]
- County roads; ^[29]
- Bridges; ^[30]
- Sewers; ^[31]
- Utility facilities and office buildings; ^[32]
- Waterworks; ^[33]
- Cemeteries; ^[34]
- Golf courses; ^[35]
- Parks; ^[36]
- Greenbelts; ^[37]
- Slum clearance projects; ^[38]
- Redevelopment projects; ^[39]
- Easements across railroad rights of way; ^[40] and
- Schools. ^[40A]

The following have been found to constitute public uses when the condemner was not a governmental entity:

- Railroad tracks and terminal facilities; ^[41]
- Telephone lines and underground fiber optic cables; ^[42]
- Grist mills; ^[43]
- Iron works; ^[44]
- Electric power facilities; ^[45]
- Privately owned turnpikes; ^[46]
- Flumes; ^[47]
- Telegraph lines and poles; ^[48]
- Private water lines; ^[49] and
- Microwave relay towers. ^[50]

Notes:

[19] *Johnson City v. Cloninger*, supra. See also *Sackman and Rohan*, supra, at § 7.18.

[20] *Johnson City v. Cloninger*, supra; *City of Knoxville v. Heth*, supra; *Knoxville Housing Authority v. City of Knoxville*, supra; *Knoxville's Community Development Corp. v. Wright*, supra.

[21] *Johnson City v. Cloninger*, supra.

[22] *Knoxville's Community Development Corp. v. Wright*, supra.

[23] *Webb v. Knox County Transmission Co.*, supra; *Tennessee Coal, Iron & Railroad Co. v. Paint Rock Flume & Transportation Co.*, 128 Tenn. 277, 160 S.W. 522 (1913); *Sackman and Rohan*, supra, at § 7.18 [2].

[24] *Ryan v. Louisville & Nashville Terminal Co.*, supra.

[25] *Derryberry v. Beck*, 153 Tenn. 220, 280 S.W. 1014 (1925); *Bashor v. Bowman*, 133 Tenn. 269, 180 S.W. 326 (1915) (where a landlocked property owner condemned an access road to a public road).

[26] *Memphis Freight Co. v. Mayor & Aldermen of Memphis*, supra.

[27] *City of Chattanooga v. State*, 151 Tenn. 691, 272 S.W. 432 (1925); *Town of Clarksville v. Fairley*, 171 Tenn. 260, 102 S.W.2d 56 (1937).

[28] *Johnson v. City of Chattanooga*, 183 Tenn. 123, 191 S.W.2d 175 (1945).

[29] *Knox County v. Kennedy*, 92 Tenn. 1, 20 S.W. 311 (1892).

[30] *Woodard v. City of Nashville*, 108 Tenn. 353, 67 S.W. 801 (1902).

[31] *Zirkle v. City of Kingston*, 217 Tenn. 210, 396 S.W.2d 356 (1965).

[32] *City of Knoxville v. Heth*, supra.

[33] *Beadle v. Town of Crossville*, 157 Tenn. 249, 7 S.W.2d 992 (1927).

[34] *Town of Pulaski v. Ballentine*, 153 Tenn. 393, 284 S.W. 370 (1925).

[35] *Johnson City v. Cloninger*, supra.

[36] *Shelby County v. Armour*, supra.

[37] *Shelby County v. Armour*, supra.

[38] *Nashville Housing Authority v. City of Nashville*, 192 Tenn. 103, 237 S.W.2d 946 (1950); *Knoxville Housing Authority v. City of Knoxville*, supra.

[39] *Knoxville's Community Development Corp. v. Wright*, supra.

[40] *Town of Collierville v. Norfolk & Southern Railway*, 1 S.W.3d 68 (Tenn. App. 1998).

- [40A] *Pickler v. Parr*, 138 S.W. 3d 210 (Tenn. App. 2003).
- [41] *Collier v. Union Railway Co.*, 113 Tenn. 96, 83 S.W. 155 (1904); *Ryan v. Louisville & Nashville Terminal Co.*, supra.
- [42] *American Telephone & Telegraph v. Proffitt*, 903 S.W.2d 309 (Tenn. App. 1995); *Doty v. American Telephone & Telegraph Co.*, 123 Tenn. 329, 130 S.W. 1053 (1910).
- [43] *Harding v. Goodlett*, 11 Tenn. 41 (1832).
- [44] *Tipton v. Miller*, 11 Tenn. 423 (1832).
- [45] *Webb v. Knox County Transmission Co.*, supra; *Great Falls Power Co. v. Webb*, 123 Tenn. 584, 133 S.W. 1105 (1910).
- [46] *Hadley v. Harpeth Turnpike Co.*, 21 Tenn. 555 (1841).
- [47] *Tennessee Coal, Iron & Railroad Co. v. Paint Rock Flume & Transportation Co.*, supra.
- [48] *Western Union Telegraph Co. v. Nashville, Chattanooga & St. Louis Railway Co.*, 133 Tenn. 691, 182 S.W. 254 (1915); *Mobile & Ohio Railroad Co. v. Postal Telegraph Cable Co.*, 101 Tenn. 62, 46 S.W. 371 (1898).
- [49] *Shinkle v. Nashville Improvement Co.*, 172 Tenn. 555, 113 S.W.2d 404 (1938).
- [50] *Brannan v. American Telephone and Telegraph Co.*, 210 Tenn. 697, 362 S.W.2d 236 (1962).
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