

Procedural Issues (Right to Take)

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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Since condemnation cases have the dual nature mentioned above, challenges to the condemner's right to take normally are resolved as a preliminary matter before the determination of the amount of just compensation to which the property owner is entitled. ^[62] The condemner has the burden of proof of establishing the right to take. ^[63] The determination of the right to take is a matter for the court and not the jury. ^[64] If the court finds that the condemner has the right to take, and the condemner posts the bond required by statute and takes possession of the property, the judgment on the right to take issue becomes final and must be appealed at that time. ^[65] Thus, there may be two final judgments in any condemnation action. ^[66]

Notes:

[62] *Harper v. Trenton Housing Authority*, *supra*; *Lebanon and Nashville Turnpike Co. v. Creveling*, 159 Tenn. 147, 17 S.W.2d 22 (1929); *City of Nashville v. Dad's Auto Accessories, Inc.*, *supra*; *Department of Highways v. Stepp*, *supra*; *Cunningham v. Memphis Railroad Terminal Co.*, 126 Tenn. 343, 149 S.W. 103 (1912); *Tennessee Central Railroad Co. v. Campbell*, 109 Tenn. 655, 73 S.W. 112 (1902) (Campbell II); *Shelby County v. Armour*, *supra*; *Morgan County v. Jones*, *supra*.

[63] *Alloway v. City of Nashville*, 88 Tenn. 510, 13 S.W. 123 (1890); *Morgan County v. Jones*, *supra*.

[64] *Department of Highways v. Stepp*, *supra*; *Tennessee Central Railroad Co. v. Campbell*, *supra* (Campbell II).

[65] *Georgia Industrial Realty Co. v. City of Chattanooga*, 163 Tenn. 435, 43 S.W.2d 490 (1931); *Cunningham v. Memphis Railroad Terminal Co.*, *supra*; *Tennessee Central Railroad Co. v. Campbell*, *supra* (Campbell I).

[66] *Tennessee Central Railroad Co. v. Campbell*, *supra* (Campbell I).

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