

Additional Takings

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,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

Additional Takings	3
--------------------------	---

Additional Takings

Reference Number: MTAS-1309

A significant issue presented in any case where a property owner seeks to recover just compensation for the taking of private property in addition to that previously acquired by the condemner is whether the property owner is estopped by the prior condemnation award or deed to the condemner from recovering additional compensation. ^[53] The condemnation award encompasses all damages, present and future, that the property owner knew or should have known would result from the proper construction or operation of the public improvement. ^[54] The burden of proof of showing an estoppel is on the condemner, unless the language of the condemnation decree or deed is unambiguous. ^[55]

An exception to this rule applies for losses or damage that could not reasonably have been anticipated by either party or, if alleged by the property owner in the condemnation proceeding, would have been rejected as speculative or conjectural. ^[56] Under this exception, recovery has been permitted for landslides onto private property that resulted from cuts made during the construction of a highway, ^[57] for damage to a dam caused by excessive blasting during the construction of a pipeline, ^[58] and for damage to a wall caused by blasting for electric transmission lines. ^[59] Recovery has been denied when the property owner knew or should have known that curbs limiting access to his property would be constructed as part of a highway project ^[60] and where the fill from a street that was elevated by the condemner spread onto adjoining property since the owner knew or should have known that the fill would have encroached upon his property when he conveyed a portion of the property to the condemner. ^[61]

Notes:

[53] *Blevins v. Johnson County, supra*; *Hawkins v. Dawn*, 208 Tenn. 544, 347 S.W.2d 480 (1961); *Hord v. Holston River Railroad Co.*, 122 Tenn. 399, 123 S.W. 637 (1909); *Williams v. Southern Railway Co.*, *supra*; *East Tennessee Natural Gas Co. v. Peltz*, 38 Tenn. App. 100, 270 S.W.2d 591 (1954); *Carter County v. Street*, 36 Tenn. App. 166, 252 S.W.2d 803 (1952); *Jones v. Oman*, 28 Tenn. App. 1, 184 S.W.2d 568 (1944); *Fuller v. City of Chattanooga*, 22 Tenn. App. 110, 118 S.W.2d 886 (1938).

[54] *Blevins v. Johnson County, supra*; *Hawkins v. Dawn, supra*; *Hord v. Holston River Railroad Co., supra*; *Williams v. Southern Railway Co., supra*; *Fuller v. City of Chattanooga, supra*.

[55] *Blevins v. Johnson County, supra*; *Carter County v. Street, supra*.

[56] *East Tennessee Natural Gas Co. v. Peltz, supra*; *Carter County v. Street, supra*; *Jones v. Oman, supra*; *Fuller v. City of Chattanooga, supra*.

[57] *Carter County v. Street, supra*.

[58] *East Tennessee Natural Gas Co. v. Peltz, supra*.

[59] *Jones v. Oman, supra*.

[60] *Blevins v. Johnson County, supra*.

[61] *Fuller v. City of Chattanooga, supra*.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

Source URL (retrieved on 08/20/2019 - 4:52pm): <http://www.mtas.tennessee.edu/reference/additional-takings>

