

## Scope of the Power of Eminent Domain

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

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## Scope of the Power of Eminent Domain

**Reference Number:** MTAS-1264

Eminent domain is the right or power of the sovereign to take private property for the public use; to take ownership and possession thereof upon payment of just compensation to the owner of the property. <sup>[1]</sup> It is an inherent power of a sovereign, which is without limitation or restriction, except for the constitutional limitations that private property must be taken for a public use, <sup>[2]</sup> and the owner of such property must be paid just compensation for the property. <sup>[3]</sup> The legislature has adopted a definition of “public use” codified in T.C.A. § 29-17-102 that precludes private use or benefit or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and employment opportunities. The statute then provides these exceptions: (1) acquisition of land for transportation projects, (2) acquisition of land necessary to the function of a utility, (3) acquisition of property by a housing authority or community development agency for redevelopment in blighted areas, (4) private uses merely incidental to public use, and (5) acquisition of property for an industrial park under T.C.A. Title 13, Chapter 16, Part 2. The General Assembly enacted these restrictions and exceptions in response to the U.S. Supreme Court case of *Kelo v. City of New London*, 126 S. Ct. 326 (2005). Although the power of eminent domain is an inherent power of the sovereign, it lies dormant until the legislature declares the purpose for which it may be exercised and the agencies that may use the power. <sup>[4]</sup> The power of eminent domain may be exercised directly by the legislature by the adoption of a statute identifying the particular property to be acquired for a public use, or it may be delegated to agents who may exercise the power in the manner prescribed in the enabling statute. <sup>[5]</sup>

The power of eminent domain has been delegated to counties, (T.C.A. §§ 29-17-101; 29-17-201), <sup>[6]</sup> and municipalities. T.C.A. §§ 29-17-101; 29-17-301. <sup>[7]</sup> It has been generally delegated to any person or corporation authorized by law to construct railroads, turnpikes, canals, toll bridges, roads, causeways, or other work of internal improvement. T.C.A. § 29-16-101. <sup>[8]</sup> The General Assembly has also delegated the power of eminent domain to the following: <sup>[9]</sup>

- Airport authorities (T.C.A. §§ 42-3-108; 42-3-109; 42-3-204.)
- Beech River Watershed Development Authority (T.C.A. § 64-1-102.)
- Carrol County Watershed Authority (T.C.A. § 64-1-805.)
- Coast and Geodetic Surveys (T.C.A. § 29-17-602.)
- Counties—Airports (T.C.A. § 42-5-108.)
- Counties—Electric plants (T.C.A. § 7-52-105.)
- Counties—Controlled access highways (T.C.A. § 54-16-104.)
- Counties—Industrial parks (T.C.A. § 13-16-203.)
- Counties—Levees (T.C.A. § 69-5-209.)
- Counties—Public transportation systems (T.C.A. § 7-56-106.)
- Counties—Public works projects (T.C.A. § 9-21-107.)
- Counties—Railroad systems (T.C.A. § 7-56-207.)
- Counties—Recreational land (T.C.A. § 11-24-102.)
- Counties—Roads (T.C.A. § 54-10-205.)
- Counties—Schools (T.C.A. §§ 49-6-2001 *et seq.*)
- Counties—Solid waste sites (T.C.A. § 68-211-919.)
- Counties— for the West Tennessee River Basin Authority (T.C.A. § 64-1-1103(14).)
- Drainage and levee districts (T.C.A. § 69-5-201 *et seq.*)
- Hospitals (T.C.A. § 29-16-126.) (Limited applicability)

- Housing authorities (T.C.A. §§ 13-20-104; 13-20-108 - 109; 13-20-212; 29-17-501 *et seq.*)
- Light, power, and heat companies (T.C.A. § 65-22-101.)
- Metropolitan governments - Energy production facilities (T.C.A. § 7-54-103.)
- Metropolitan governments - Port authorities (T.C.A. § 7-5-108.)
- Metropolitan hospital authorities (T.C.A. § 7-57-305.)
- Mill Creek Flood Control Authority (T.C.A. § 64-3-104.)
- Municipalities—Airports (T.C.A. § 42-5-108.)
- Municipalities—City Manager - Commission (T.C.A. § 6-19-101.)
- Municipalities—Controlled access highways (T.C.A. § 54-16-104.)
- Municipalities—Drainage ditches (T.C.A. § 7-35-101.)
- Municipalities—Electric plants (T.C.A. § 7-52-105.)
- Municipalities—Energy acquisition systems (T.C.A. § 7-39-303.)
- Municipalities—Industrial parks (T.C.A. § 13-16-203.)
- Municipalities—Mayor - Aldermanic (T.C.A. § 6-2-201.)
- Municipalities—Modified City Manager (T.C.A. § 6-33-101.)
- Municipalities—Parks (T.C.A. §§ 7-31-107 *et seq.*)
- Municipalities—Public transportation systems (T.C.A. § 7-56-106.)
- Municipalities—Public works projects (T.C.A. § 9-21-107.)
- Municipalities—Railroad systems (T.C.A. § 7-56-207.)
- Municipalities—Recreational systems (T.C.A. § 11-24-102.)
- Municipalities—Schools (T.C.A. §§ 49-6-2001 *et seq.*)
- Municipalities—Sewers (T.C.A. § 7-35-101.)
- Municipalities—Slum clearance (T.C.A. §§ 13-21-204 - 206.)
- Municipalities—Solid waste sites (T.C.A. § 68-211-919.)
- Municipalities—Streets (T.C.A. §§ 7-31-107 *et seq.*)
- Municipalities—Utilities (T.C.A. § 7-35-101.)
- Municipalities—Water systems (T.C.A. § 7-35-101.)
- Municipalities— For the West Tennessee River Basin Authority (T.C.A. § 64-1-1103(14).)
- North Central Tennessee Railroad Authority (T.C.A. § 64-2-507.)
- Pipeline companies (T.C.A. § 65-28-101.)
- Private roads (T.C.A. § 54-14-102)
- Railroads (T.C.A. §§ 65-6-109; 65-6-123.)
- Railroads—Branch lines (T.C.A. § 65-6-126 *et seq.*)
- Road improvement districts (T.C.A. § 54-12-152.)
- Solid waste authorities (T.C.A. § 68-211-908.)
- State Department of Environment and Conservation (T.C.A. §§ 11-1-105; 11-3-105; 11-14-110; 59-8-215.)
- State Department of Transportation (T.C.A. § 54-5-104; 54-5-208; 54-16-104.)
- State military affairs (T.C.A. §§ 58-1-501 *et seq.*)
- State water and sewer facilities (T.C.A. § 12-1-109.)
- Telegraph companies (T.C.A. § 65-21-204.)
- Telephone companies (T.C.A. § 65-21-204.)

- Telephone cooperatives (T.C.A. § 65-29-125.)
- Tri-County Railroad Authority (T.C.A. § 64-2-307.)
- University of Tennessee (T.C.A. § 29-17-401.)
- Utility districts (T.C.A. § 7-82-305.)
- Water companies (T.C.A. §§ 65-27-101 *et seq.*)
- Water and wastewater authorities (T.C.A. § 68-221-610.)

Such grants of the power of eminent domain are in derogation of private property rights and will be strictly construed against the condemners and liberally in favor of the property owners. <sup>[10]</sup> The General Assembly in T.C.A. § 29-17-101 expresses its intent that the power of eminent domain be used sparingly and that the laws permitting this exercise of the power be narrowly construed. The condemner's right to take property will be denied if the condemner has failed to follow the procedures set forth in the statutes that authorize exercise of the power of eminent domain. <sup>[11]</sup> Also, the condemner will be precluded from acquiring a greater interest in property than is authorized by statute. <sup>[12]</sup>

T.C.A. § 68-211-122 prohibits the use by a municipality of the power of eminent domain to establish a solid waste landfill outside its corporate boundaries unless this is approved by the governing body of the area in which the landfill is to be located. This approval must be given by a majority vote at two (2) consecutive regularly scheduled meetings.

**Notes:**

[1] *City of Maryville v. Edmondson*, 931 S.W.2d 932 (Tenn. App. 1996); *Harper v. Trenton Housing Authority*, 274 S.W.2d 635 (Tenn. App. 1954); *City of Knoxville v. Heth*, 186 Tenn. 321, 210 S.W.2d 326 (1948).

[2] See section on Public Use.

[3] *Edwards v. Hallsdale-Powell Utility District*, 115 S.W.3d 461 (Tenn. 2003); *Rivergate Wine and Liquors, Inc. v. City of Goodlettsville*, 647 S.W.2d 631 (Tenn. 1983); *Southern Railway Co. v. City of Memphis*, 126 Tenn. 267, 148 S.W. 662 (1912); *Allen v. Farnsworth*, 13 Tenn. 189 (1833); *County Highway Commission of Rutherford County v. Smith*, 61 Tenn. App. 292, 454 S.W. 2d 124 (1969).

[4] *Trustees of New Pulaski Cemetery v. Ballentine*, 151 Tenn. 622, 271 S.W. 38 (1924); *County Highway Commission of Rutherford County v. Smith, supra*.

[5] *State ex rel. v. Oliver*, 162 Tenn. 100, 35 S.W.2d 396 (1931); *Anderson v. Turberville*, 46 Tenn. 150 (1868).

[6] *Claiborne County v. Jennings*, 199 Tenn. 161, 285 S.W.2d 132 (1955); *Knox County v. Kennedy*, 92 Tenn. 1, 20 S.W. 311 (1892); *Shelby County v. Armour*, 495 S.W.2d 816 (Tenn. Ct. App. 1971).

[7] *Rivergate Wine and Liquors Inc. v. City of Goodlettsville, supra*; *Duck River Electric Membership Corp. v. City of Manchester*, 529 S.W. 2d 202 (Tenn. 1975); *City of Knoxville v. Heth, supra*; *Zirkle v. City of Kingston*, 217 Tenn. 210, 396 S.W.2d 356 (1965); *City of Memphis v. Wright*, 14 Tenn. 497 (1834).

[8] Provided that these improvements will be put to a public use. *Webb v. Knox County Transmission Co.*, 143 Tenn. 423, 225 S.W. 1046 (1920); *Tennessee Coal, Iron and Railroad Co. v. Paint Rock Flume & Transportation Co.*, 128 Tenn. 277, 160 S.W. 522 (1913); *Alfred Phosphate Co. v. Duck River Phosphate Co.*, 120 Tenn. 260, 113 S.W. 410 (1907); *Ryan v. Louisville & Nashville Terminal Co.*, 102 Tenn. 111, 50 S.W. 744 (1899).

[9] Instances where the power of eminent domain was delegated by private act of the General Assembly are not included.

[10] *American Telephone & Telegraph Co. v. Proffitt*, 903 S.W.2d 309 (Tenn. App. 1995); *Claiborne County v. Jennings, supra*; *Clouse v. Garfinkle*, 190 Tenn. 677, 231 S.W.2d 345 (1950); *Vinson v. Nashville, Chattanooga & St. Louis Railway*, 45 Tenn. App. 161, 321 S.W.2d 841 (1958); *Rogers v. City of Knoxville*, 40 Tenn. App. 170, 289 S.W.2d 868 (1955).

[11] *Alcoa Development and Housing Authority v. Monday*, Docket No 196; 1991 W L 12291. (Tenn. App. 1991).

[12] *Clouse v. Garfinkle, supra; Tennessee Power Co. v. Rust*, 8 Tenn. Civ. App. 368 (1918).

## Eminent Domain vs. Police Power

**Reference Number:** MTAS-1265

The power of eminent domain, or the power to acquire private property for a public use, can generally be distinguished from the police power, which is the power to adopt regulations to promote the public health, safety, and welfare of a community, even though the exercise of either power may impair the fair market value of private property. [13] Where the impairment of value results from the exercise of the police power, courts traditionally find that the loss is not subject to the just compensation requirements of the United States and Tennessee Constitutions. [14] Thus, claims for compensation have been denied where the value of property has been impaired as the result of the imposition of housing regulations; [15] the imposition of zoning regulations; [16] the imposition of utility rate regulations; [17] the change in streets abutting property from two-way streets to one-way streets; [18] or inconvenience, noise, and dirt from construction of a public improvement that interfered with the use of property; [19] and in an annexation in which a city annexed the service area of private trash haulers. [20]

This theoretical distinction becomes blurred when the police power regulation impairs the value or use of private property to such an extent that no beneficial use of the property remains. [21] These instances have become more common as local governments have imposed land use regulations upon private property instead of using limited public funds to acquire private property for public use. This problem was first addressed in *Pennsylvania Coal Co. v. Mahon*, [22] where Justice Holmes held that “while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking...(as)... a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

This holding has been applied in Tennessee to a zoning regulation that deprived the owner of the beneficial use of the property. [23] Where such a “regulatory taking” occurs, the property owner is entitled to recover “just compensation” for the taking, not just the invalidation of the regulation that resulted in the taking. [24]

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### Notes:

[13] *City of Clarksville v. Moore*, 688 S.W.2d 428 (Tenn. 1985); *Nashville Housing Authority v. City of Nashville*, 192 Tenn. 103, 237 S.W.2d 946 (1951); *Illinois Central Railroad Co. v. Moriarity*, 135 Tenn. 446, 186 S.W. 1053 (1916); Sackman and Rohan, 1 Nichols' The Law of Eminent Domain, § 1.42 (3d Ed. 1992).

[14] *City of Clarksville v. Moore, supra; Draper v. Haynes*, 567 S.W. 2d 462 (Tenn. 1978); *City of Memphis v. Hood*, 208 Tenn. 319, 345 S.W.2d 887 (1961); *Ambrose v. City of Knoxville*, 728 S.W.2d 338 (Tenn. Ct. App. 1986); Sackman and Rohan, 1 Nichols' The Law of Eminent Domain, § 1.42 [3] (3d Ed. 1992).

[15] *City of Clarksville v. Moore, supra*.

[16] *Draper v. Haynes, supra*.

[17] *In re Billing and Collection Tariffs of South Central Bell*, 779 S.W.2d 375 (Tenn. Ct. App. 1989).

[18] *City of Memphis v. Hood, supra; Ambrose v. City of Knoxville, supra*.

[19] *Ledbetter v. Beach*, 220 Tenn. 623, 421 S.W.2d 814 (1967); *Hadden v. City of Gatlinburg*, Docket No. 97 (Tenn. Ct. App. W.S. at Knoxville, August 28, 1985).

[20] *Hudgins v. Metropolitan Government of Nashville & Davidson County*, 885 S.W.2d 74 (Tenn. App. 1994).

[21] Griffith and Stokes, *Eminent Domain in Tennessee*, p.2 (Rev. Ed. July 1979).

[22] 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

[23] *Bayside Warehouse Co. v. City of Memphis*, 63 Tenn. App. 268, 470 S.W. 2d 375 (1971).

[24] *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed.2d 250 (1987).

## Eminent Domain vs Accidental/Negligent Acts

**Reference Number:** MTAS-1266

A governmental defendant must perform a purposeful or intentional act for a taking to exist, and a taking will not result from unavoidable incidents or negligent acts.<sup>[25]</sup> See T.C.A. § 29-16-201.

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**Note:**

[25] *Edwards v. Hallsdale-Powell Utility District*, 115 S.W.3d 461 (Tenn. 2003).

## Eminent Domain for Industrial Parks

**Reference Number:** MTAS-1267

A municipality may exercise the power of eminent domain to develop an industrial park with respect to property located within the municipality or within the urban growth boundary. A municipality or county, or both, operating a joint park may exercise the power of eminent domain for development of the park within the boundaries of the county and within an urban growth boundary and a planned growth area. A municipality must obtain a certificate of public purpose and necessity from the Department of Economic and Community Development for the exercise of the power of eminent domain even if no funds will be borrowed. The certificate must be based upon a finding that the municipality was unable to acquire the property through good faith negotiations or to acquire any alternative property of comparable suitability. Good faith negotiations are established if the municipality made an offer to purchase the property for an amount equal to or greater than the fair market value determined by the average of at least two appraisals by independent qualified appraisers. T.C.A. § 13-16-207(f).

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