

Eminent Domain vs. Police Power

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,

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

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Eminent Domain vs. Police Power

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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]

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. Morarity*, 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).

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