



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Writ of Inquiry

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://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,

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Writ of Inquiry

Reference Number: MTAS-1273

Writ of Inquiry (Jury of View Procedure)

At the time the petition is presented to the court for the issuance of the writ of inquiry, which cannot occur until 30 days after the defendant has been given notice of the filing of the petition, the condemner should submit a motion to sustain the condemner's right to take the property under the power of eminent domain. This motion asks the court to issue the writ of inquiry and fix a time and place for the inquest. Any challenge to the condemner's right to take must be asserted at this stage of the proceedings. ^[29]

If no challenge to the condemner's right to take is made, the court will sustain the condemnation proceedings and order the issuance of the writ of inquiry of damages. T.C.A. § 29-16-202. This order should recite that:

- The petition for condemnation has been properly filed and notice given to the defendants;
- The condemner has the right to acquire the property as disclosed in the order;
- The clerk should issue a writ of inquiry to appear on a fixed date and place and that no further notice will be given;
- Upon selection of the jury of view the jury will proceed to the property, examine it, and hear testimony of witnesses, but no argument of counsel, and will set apart by metes and bounds the property to be condemned and assess the damages as required by law; and
- That the jury of view will reduce its report to writing and deliver it to the sheriff, who will return it to the court. ^[30]

If the defendant challenges the condemner's right to take, the court must first resolve this challenge before it may order issuance of the writ of inquiry. T.C.A. § 29-16-202. ^[31] If the court finds that the condemner has the right to take the property, it will sustain the condemnation proceedings and order issuance of the writ of inquiry of damages. T.C.A. § 29-16-202. The order directing the issuance of the writ of inquiry is not a final order and, therefore, is not appealable. ^[32]

The writ of inquiry is issued by the clerk and directed to the sheriff, commanding him to summon a panel of jurors to appear on a fixed date and place. T.C.A. § 29-16-202. ^[33] The sheriff thereafter summons a panel from 12 to 15 potential jurors from which the jury of view will be selected. The sheriff should return the writ to the clerk of court, specifying the names of the persons on whom the writ of inquiry was served. ^[34]

Notes:

[29] *Wilkerson*, *The Institution and Prosecution of Condemnation Proceedings*, 26 Tenn. L. Rev. 325 (1959); Griffith and Stokes, *supra*, at p. 23.[]

[30] *Wilkerson*, *supra*, at p. 328.

[31] The right to take is considered in detail in *The Right to Take* [1].

[32] *Tennessee Central Railroad Co. v. Campbell*, 109 Tenn. 655, 73 S.W. 112 (1903); *Camp v. Coal Creek & Winter's Gap Railroad Co.*, 79 Tenn. 705 (1883).

[33] As an alternative, the parties may agree on the persons who will serve on the jury of view, or the judge will select the jurors and the names of these jurors will be specified in the order directing the writ of inquiry. T.C.A. § 29-16-109. The sheriff will thereafter serve the writ of inquiry on the agreed-upon jurors.

[34] *Wilkerson*, *supra*, at p. 328.

Links:

[1] <https://www.mtas.tennessee.edu/reference/right-take>

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.

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