



Public Use

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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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Public Use

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The term “public use” does not have a precise and universally acceptable definition. ^[8] The determination of whether a proposed use constitutes a public use must be based on the facts of each case because the term must remain elastic to meet the growing needs of a complex society. ^[9]

The General Assembly adopted a restrictive definition of “public use” that is codified in T.C.A. § 29-17-102. Generally, the definition precludes the use of eminent domain for private benefit and makes exceptions for certain well-recognized public uses that normally have incidental private benefits.

As noted above, the legislative body makes the initial determination that the taking of private property is for a public use. If the property owner challenges the condemner’s right to take on the grounds that the property will not be put to a public use, the court has the right and the duty to determine whether the proposed use is a public use. ^[10] The determination by the legislative body that the proposed use is a public use is entitled to a strong presumption of correctness, ^[11] but it is not conclusive on the court. ^[12] When the court finds that the proposed use has no significant relationship to the public benefit, it must find that the condemner lacks the right to take private property under the power of eminent domain. ^[13]

Notes:

[8] *Johnson City v. Cloninger*, 213 Tenn. 71, 372 S.W.2d 281 (1963); *City of Knoxville v. Heth*, 186 Tenn. 321, 210 S.W.2d 326 (1948); *Sackman and Rohan*, 2A Nichols' The Law of Eminent Domain, § 7.02 (Rev. 3d Ed. 1990).

[9] *City of Knoxville v. Heth*, supra; *Knoxville Housing Authority v. City of Knoxville*, 174 Tenn. 76, 123 S.W.2d 1085 (1939); *Ryan v. Louisville & Nashville Terminal Co.*, 102 Tenn. 111, 50 S.W. 744 (1899).

[10] *Duck River Electric Membership Corp. v. City of Manchester*, 529 S.W.2d 202 (Tenn. 1975); *Justus v. McMahan*, 189 Tenn. 470, 226 S.W.2d 84 (1949); *City of Knoxville v. Heth*, supra; *Department of Highways v. Stepp*, 150 Tenn. 682, 226 S.W. 776 (1924); *Southern Railway Co. v. City of Memphis*, 126 Tenn. 267, 148 S.W. 662 (1912); *Anderson v. Turberville*, 46 Tenn. 150 (1868); *County Highway Commission of Rutherford County v. Smith*, 61 Tenn. App. 292, 454 S.W.2d 124 (1969).

[11] *City of Knoxville v. Heth*, supra; *Stroud v. State*, 38 Tenn. App. 654, 279 S.W.2d 82 (1955).

[12] *City of Knoxville v. Heth*, supra; *Ryan v. Louisville & Nashville Terminal Co.*, supra.

[13] *Trustees of New Pulaski Cemetery v. Ballentine*, 151 Tenn. 622, 271 S.W. 38 (1924); *Alfred Phosphate Co. v. Duck River Phosphate Co.*, 120 Tenn. 260, 113 S.W. 410 (1907).

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