



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

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## Narrow vs. Broad View

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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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# Table of Contents

Narrow vs. Broad View .....	3
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## Narrow vs. Broad View

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Various decisions by the courts on whether a proposed use is a public use have been categorized into two groups: (1) cases in which the courts used a narrow view of the scope of public uses, and (2) cases in which courts used a broad view of the scope of public uses. <sup>[14]</sup> Courts using the narrow view require that the public must be entitled as of right to directly use or enjoy the property taken. <sup>[15]</sup> Under the broad view, the condemnation of the property need be only for the public benefit or common good. <sup>[16]</sup> Under either view, it is not essential that the entire community directly enjoy or participate in the proposed use for the court to find a public use. <sup>[17]</sup> Thus, the extension of utility service to serve a single customer who has the right to service from the utility may constitute a public use that justifies the condemnation of easements necessary to construct the utility line. <sup>[18]</sup>

Under the federal Constitution's public use requirement, a public entity may take private property for transfer to another private party for economic development. <sup>[18A]</sup> Since Tennessee does not have statutes authorizing this except for blight removal and industrial development, however, it is unlikely that the state constitution's public use clause would be interpreted to embrace Kelo takings. Further, the General Assembly passed legislation in response to the Kelo case, generally codified in T.C.A. §§ 29-17-101 *et seq.*, that attempts to ensure that there will be no Kelo takings in Tennessee.

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### Notes:

[14] *Sackman and Rohan*, *supra*, at § 7.02.

[15] *Alfred Phosphate Co. v. Duck River Phosphate Co.*, *supra*; *Memphis Freight Co. v. Mayor & Aldermen of Memphis*, 44 Tenn. 419 (1867).

[16] *City of Knoxville v. Heth*, *supra*; *Knoxville Housing Authority v. City of Knoxville*, *supra*; *Knoxville's Community Development Corp. v. Wright*, 600 S.W. 2d 745 (Tenn. Ct. App. 1980).

[17] *Webb v. Knox County Transmission Co.*, 143 Tenn. 423, 225 S.W.1046 (1920); *Middle Tennessee Electric Membership Corp. v. Batey*, Docket No. 89-233-II (Tenn. Ct. App. M.S. January 31, 1990).

[18] *Middle Tennessee Electric Membership Corp. v. Batey*, *supra*. 18A *Kelo v. City of New London*, Conn., 125 S. Ct. 2655 (2005).

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