

Takings Prior to Condemnation

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,

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Where a condemner appropriates private property prior to instituting formal condemnation proceedings, a taking obviously occurs. Thus, a taking occurred where electric transmission lines were constructed before a condemnation proceeding was filed ^[45]. In that situation the appropriation is illegal until just compensation is paid to the property owner, and the condemner acquires only a possessory right that is not transferable. ^[46] Takings have also been found where a condemner filed condemnation proceedings but nonsuited the proceedings before paying just compensation to the property owner, ^[47] where a municipality annexed a subdivision and asserted ownership over the water and sewer system serving it without paying just compensation to its owners, ^[48] where the condemner failed to acquire the interest of the lessee of property conveyed to the condemner by the lessor, ^[49] and where the condemner failed to acquire the property interests in certain restrictive covenants from the residents of a subdivision before constructing a public improvement in violation of those covenants. ^[50] The property owner's sole remedy for these takings is an inverse condemnation action, as the courts have specifically rejected attempts to enjoin ^[51] or eject ^[52] the condemner who has taken the property without instituting condemnation proceedings.

Notes:

[45] *Rogers v. City of Knoxville*, 40 Tenn. App. 170, 289 S.W.2d 868 (1955).

[46] *Rogers v. City of Knoxville*, *supra*.

[47] *Armistead v. Clarksville-Montgomery County School System*, 222 Tenn. 486, 437 S.W.2d 527 (1969).

[48] *Zirkle v. City of Kingston*, 217 Tenn. 210, 396 S.W.2d 356 (1965).

[49] *Hopper v. Davidson County*, 206 Tenn. 393, 333 S.W. 2d 917 (1960).

[50] *City of Shelbyville v. Kilpatrick*, 204 Tenn. 484, 322 S.W.2d 203 (1959).

[51] *Pleasant View Utility District v. Vradsenburg*, *supra*; *Zirkle v. City of Kingston*, *supra*; *Sweetwater Valley Memorial Park, Inc. v. City of Sweetwater*, *supra*; *Armstrong v. Illinois Central Railroad Co.*, 153 Tenn. 283, 282 S.W. 382 (1926); *Rogers v. City of Knoxville*, *supra*.

[52] *Emory v. City of Knoxville*, 214 Tenn. 228, 379 S.W.2d 753 (1964); *Tennessee Coal, Iron & Railroad Co. v. Paint Rock Flume & Transportation Co.*, 128 Tenn. 227, 160 S.W. 522 (1913); *Doty v. American Telephone & Telegraph Co.*, 123 Tenn. 329, 130 S.W. 1053 (1910); *Rogers v. City of Knoxville*, *supra*.

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