S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 01-171

Right of a Pipeline Corporation to Condemn an Easement for its Pipelines for the Transportation and Distribution of Liquid Petroleum Products

QUESTION

Does a pipeline corporation have the right to condemn an easement for its pipelines if the products to be carried by the proposed pipelines are liquid petroleum products such as gasoline, kerosene, home heating oil or jet fuel?

OPINION

It is the opinion of this office that a pipeline corporation has the right to condemn an easement for pipelines that will be used for the transportation and distribution of liquid petroleum products such as gasoline, kerosene, home heating oil or jet fuel.

ANALYSIS

Tenn. Code Ann. § 29-16-101 provides that:

> [a]ny person or corporation authorized by law to construct any railroad, turnpike, canal, toll bridge, road, causeway, or *other work of internal improvement to which the like privilege is conceded*, may take the real estate of individuals, not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein provided [Emphasis added].

The Tennessee Supreme Court has held that the installation of a pipeline by a pipeline corporation is a work of internal improvement. *Shinkle v. Nashville Improvement Co. et al.*, 172 Tenn. 555, 562, 113 S.W.2d 404 (1938).

The Tennessee General Assembly has enacted specific statutes to empower certain corporations to condemn land and easements for purposes of internal improvement. Among those specific statutes is Tenn. Code Ann. § 65-22-101 which provides that:

> Every corporation organized under the laws of any state of the United States and authorized to construct, own, and operate gas or electric plants or both for the purpose of furnishing gas or electricity or both to persons in this state or in this state and elsewhere, or authorized to engage in the business of reducing, generating, and furnishing light, heat, electricity and electrical and mechanical power generated or produced from steam power or water power obtained by a dam or dams across any stream or streams of water, *or authorized to store, transport, or distribute natural or artificial gas or oil to be used in producing light, heat or mechanical power*, for sale to the public generally or to utility corporations for resale to the public generally, *and, for any or all of such purposes, authorized to construct and maintain pipelines,* is empowered to condemn and take upon paying or securing payment thereof, to purchase or otherwise acquire, such lands and interests in and by whomsoever owned as may be necessary or advisable in the construction, maintenance, and operation of either its gas or electric plants or both, and likewise to acquire the right to use, employ, and divert such water flowing in and running into any stream or watercourse as may be necessary or advisable in the exercise of its charter powers, such lands and interests in lands as may be necessary or advisable for establishing and maintaining its power houses, canals, flumes, conduits, *pipelines*, reservoirs, ponds, dams, transmission lines and other works, the rights-of-way for lines of poles, towers, wires, and transmission lines through any and all lands between its reservoirs, ponds, dams, power houses and other works and the cities and towns and other points at which its light, heat, water, electricity and electrical and mechanical or gas power may be transmitted, consumed or disposed of, such lands and interests in lands as may be necessary or advisable to place its electric wire, conductors, conduits, ditches, canals, flumes, *pipelines*, and transmission lines either above or underground; and every such corporation may at any time enter thereon and repair same or when deemed necessary or advisable may place additional equipment, appliances or appurtenances; provided, that such electric wires, conductors, conduits, ditches, canals, flumes, *pipelines* and transmission lines shall be placed in such manner as to do as little injury to the property of private persons as possible; and provided further, that every such corporation shall make compensation to the owners of the real estate condemned or taken through which its electric wires, conductors, conduits, ditches, canals, flumes, pipelines and transmission lines may be placed. If the owner and the corporation cannot agree upon the amount of compensation which should be paid, the taking shall proceed and the damages or compensation to be paid shall be assessed in the manner provided by title 29, chapter 16 [Emphasis added].

The Tennessee General Assembly has also enacted a statute that specifically grants a pipeline

corporation the right to appropriate easements in "lands necessary for its pipelines." Tenn. Code Ann. § 65-28-101 provides in pertinent part as follows:

> A pipeline corporation has the right, in pursuance of the general laws authorizing condemnation of private property for works of internal improvement, to appropriate as an easement of right-of-way of lands necessary for its pipelines; . . .

Tenn. Code Ann. § 65-28-104 defines various terms that are used in the regulatory context of Tenn. Code Ann. §§ 65-28-101 *et seq.* Section 65-28-104(3) defines "gas" as "natural gas, petroleum gas, flammable gas, or gas which is toxic or corrosive." Section 65-28-104(5) states in pertinent part that "'pipeline systems' means new and existing pipe rights-of-way and any pipeline . . . used by a public utility in the transportation and distribution of gas or the treatment of gas during the course of transportation and distribution, . . ." And section 65-28-104(6) defines "transportation of gas" as "the gathering, transmission, and distribution of natural gas by pipeline, or its storage, and the transmission and distribution of all kinds of gas other than natural gas."

Tenn. Code Ann. §§ 65-28-101 *et seq.* authorizes a pipeline corporation to condemn easements necessary for its pipelines and "to exact and receive the same tolls or charges for the transportation of products as other common carriers." Tenn. Code Ann. § 65-28-102. However, in this statutory context the Tennessee General Assembly has not made a distinction between vaporized gas such as natural gas and "all kinds of gas other than natural gas" which a pipeline corporation may transport by means of its pipeline system upon payment of a toll or charge.

The statutes that regulate the production of oil and gas provide some guidance. Tenn. Code Ann. § 60-1-101(5) defines "gas" as "all natural gas and all other fluid hydrocarbons not defined as oil, including condensate because it originally was in a gaseous phase in the reservoir." Tenn. Code Ann. § 60-1-101(6) defines "oil" as "crude petroleum that was originally in an oil phase in the reservoir." And Tenn. Code Ann. § 60-1-101(3) defines "condensate" as "liquid hydrocarbons that were in the gaseous phase in the reservoir in initial reservoir conditions."

The Petroleum Products and Alternative Fuels Tax Law, which is codified as Tenn. Code Ann. §§ 67-3-1201 *et seq.*, also provides definitions of various liquid petroleum products. Tenn. Code Ann. § 67-3-1203(52) defines "petroleum products" as

> all benzol, gasoline, burning oil, distillate, fuel oil, gas oil, kerosene, naphtha, or any other volatile substance, excluding propane, reflecting a gravity of sixteen degrees (16E) or above on the American Petroleum Institute (API) scale; with the exception of those substances with a kinematic viscosity greater than seventy (70) centistokes at one hundred twenty-two degrees Fahrenheit (122E F) and a flash point greater than

> one hundred fifty degrees Fahrenheit (150E F); produced from petroleum, natural gas, oil shale or coal, by whatever trade name known, or substitutes therefor, including fuel alcohol, sold or used or stored in this state, separately or in combination, for any purpose whatever, by any user or storer, whether or not manufactured in this state; . . . .

Section 67-3-1203(47) defines "motor fuel" as "gasoline, diesel fuel, and blended fuel." Section 67-3-1203(34) defines "gasoline" as "all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel, . . ." And Section 67-3-1203(37) defines "heating oil" as "a motor fuel that is burned in a boiler, furnace, or stove for heating or industrial processing purposes."

The Petroleum Products and Alternative Fuels Tax Law implies that liquid petroleum products may be transported by pipeline. Such products are manufactured in a facility called a "refinery," which is "used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, and from which motor fuel may be *removed by pipeline*, by marine vessel, or at a rack; . . ." Tenn. Code Ann. § 67-3-1203(58). These liquid petroleum products are often stored in a "terminal," which is "a storage and distribution facility for taxable motor fuel, *supplied by pipeline* or marine vessel, which is registered as a qualified terminal by the internal revenue service." Tenn. Code Ann. § 67-3-1203(66). And these liquid petroleum products are often distributed by a "transporter," who is "*any operator of a pipeline*, barge, railroad, or transport truck engaged in the business of transporting petroleum products." Tenn. Code Ann. § 67-3-1203(71). When the Tennessee General Assembly enacted this tax law, they contemplated that liquid petroleum products would be transported via pipelines and established the motor fuel tax collection system accordingly.

The foregoing statutes, when construed *in pari materia*, support the conclusion that a pipeline corporation has the right to condemn an easement for pipelines that will be used for the transportation and distribution of liquid petroleum products such as gasoline, kerosene, home heating oil, and jet fuel.

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