S T A T E O F T E N N E S S E E
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Opinion No. 08-07

Payment of Just Compensation for Structures Situated on Land Taken by Eminent Domain

QUESTION

Is the State of Tennessee obligated under Tenn. Const. Art. I, § 21 to pay just compensation for the taking of a structure built by a private landowner who chooses to build that structure on his land even though he has prior knowledge that the structure may be taken by the State of Tennessee to facilitate the construction of a state highway?

OPINION

It is the opinion of this office that the State of Tennessee is obligated under Tenn. Const. Art. I, § 21 to pay just compensation for the taking of any structure that was situated on private land on the date of the taking of that land even though prior to the building of the structure the owner of the structure had knowledge that the structure might be taken by the State of Tennessee to facilitate the construction of a state highway.

ANALYSIS

The Tennessee Constitution declares "that no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor." Tenn. Const. Art. I, § 21. Taking real property for public highway use is regarded as a "taking"within this constitutional context, and just compensation must be paid. *Central Realty Co. v. Chattanooga*, 89 S.W.2d 346, 47 (Tenn. 1935). In *Alloway v. City of Nashville*, the Tennessee Supreme Court defined just compensation as the fair market value, in cash, of the land actually taken, at the date of appropriation. 13 S.W. 123 (Tenn. 1890). More specifically, fair market value is estimated as if the owner were willing to sell and the taker willing to purchase that particular quantity of land at that place and in that form, together with such incidental damages as a result, naturally and proximately, to other lands of the same landowner at the date of taking. *State ex rel. Department of Transp. v. Brevard*, 545 S.W.2d 431, 434 (Tenn. Ct. App. 1976). Consideration should be given to everything that depreciates or enhances the land, including the physical characteristics of the land and the improvements situated thereon. *Alloway*, 13 S.W. at 124. Tennessee eminent domain law clearly requires that just compensation must be measured from the date of taking, not from any other event such as settlement or the completion of the road project at issue.

While Tennessee eminent domain law does not directly address the issue submitted by the

requestor, one opinion of the Court of Appeals of Tennessee offers guidance. In *East Park United Methodist Church v. Washington County*, a jury awarded the plaintiff $15,000 in an inverse condemnation action asserted against Washington County. 567 S.W.2d 768, 769 (Tenn. Ct. App. 1977). The church owned a parcel of land at a major intersection in Johnson City where the Tennessee Department of Transportation constructed a new highway. The Department of Transportation condemned an adjoining property, closed one of the streets abutting the plaintiff's property, and thereby interfered with the plaintiff's recognized property right of ingress and egress to the closed street and its easement of way to the next intersecting street. On appeal, Washington County argued that the jury should have been instructed that "individuals purchasing property near public roads do so with notice that they may be changed in the public interest without compensation to the owner." *Id.*, at 771. The Court of Appeals found this argument to be meritless and held that the jury should not have been instructed that notice of a possible taking for a proposed highway improvement would relieve the State from paying just compensation. *Id*. The Court opined that "whether or not the church is charged with notice of a possible taking does not deprive the church of its right to compensation for the taking of its property without its consent." *Id*.

Tennessee eminent domain law clearly states that if the State of Tennessee condemns private land for a public purpose, the landowner must receive just compensation. The amount of such compensation is determined as of the date of taking; and everything that enhances or depreciates the fair market value of the property taken, including the physical characteristics of the land and the improvements situated thereon, must be considered. *Alloway,* 13 S.W. at 124. Whether the landowner receives notice of a possible taking of his land for a future public improvement and then decides to build a structure thereon that might be taken in the future is immaterial. In Tennessee the landowner is entitled to receive just compensation for his condemned property, including any structures or other improvements that are situated thereon on the date of taking.

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