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OFFICE OF THE
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October 15, 2009

Opinion No. 09-165

Condemnation of Easement by Private Corporation for Pipeline

QUESTION

Does a pipeline corporation have the right to condemn an easement for its pipelines if the product to be carried by the proposed pipelines is carbon dioxide?

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 carbon dioxide.

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 a statute that specifically grants a pipeline corporation the right to appropriate easements in and across “lands necessary for its pipelines” in accordance with state law that authorizes the condemnation of private property for works of internal improvement. 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*” (Emphasis added). The foregoing statutes demonstrate the legislative intent of the Tennessee General Assembly to authorize the transportation of “all kinds of gas” via pipeline systems.

Additionally, the federal government has recognized that carbon dioxide can be transported via pipeline systems, and federal law grants the Secretary of the United States Department of Transportation authority to regulate and provide safety standards for the transportation of carbon dioxide via pipeline systems. *See* 49 U.S.C. § 60102(i).

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 carbon dioxide.

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