

INDUSTRIAL DEVELOPMENT: A county may not condemn property for
purposes:
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OPINION NO. 192

August 22, 1968



Honorable James Millan
Prosecuting Attorney
Pike County Courthouse
Bowling Green, Missouri 63334

Dear Mr. Millan:

This opinion responds to your inquiry whether cities or counties have power to condemn property for industrial development purposes.

In order to lay a predicate for our conclusions, it is necessary that basic principles of eminent domain be understood. Thus, the power of eminent domain resides in the legislature and may be only exercised through such agencies as it may create, subject to the restrictions imposed by our constitution. See Chicago, B & Q R. Co. v. McCooey, 273 Mo. 29, 200 S.W. 59; State ex rel St. Louis Union Trust Co. v. Ferriss, Mo., 304 S.W.2d 896; and State ex rel Coffman v. Crain, Mo.App., 308 S.W.2d 451. The right of eminent domain must be given in express terms or by necessary implication, as these statutes on eminent domain are strictly construed. The Missouri Supreme Court, en banc, State ex rel Missouri Water Co. v. Bostian, Mo.App., 280 S.W.2d 663, 666, says:

"Statutes granting the right of eminent domain are to be strictly construed. The rule is well settled in this state. The right is not to be implied or inferred from vague or doubtful language but must be clearly given in express terms or by necessary implication. State ex rel. Cranfill v. Smith, 330 Mo. 252, 257, 48 S.W.2d 891, 893, 81 A.L.R. 1066; Southwest Missouri Light Co. v. Scheurich, 174 Mo. 235, 241, 73 S.W. 496, 497; Houck v. Little River Drainage Dist., 343 Mo. 28, 37, 119 S.W.2d 826, 831; 18 Am.Jur., Eminent Domain, Sec. 26, p. 650. In applying the rule, statutes granting the power to take private

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property for public use are strictly construed against those who seek to avail themselves of the benefit of such statutes and the power is not to be extended beyond the plain provisions of the statute relied upon. *Schmidt v. Densmore*, 42 Mo. 225, 234. On the other hand, 'while eminent domain statutes are to be strictly construed so far as the power to condemn is concerned, yet they are not to be construed so as to defeat the evident purpose of the Legislature.' *State ex rel. Siegel v. Grimm*, 314 Mo. 242, 284 S.W. 490, 493; 29 C.J.S., Eminent Domain, § 22, p. 806. Further, the doctrine of strict construction does not exclude a reasonable and sound construction of the statute under consideration. *Kansas City Interurban R. Co. v. Davis*, 197 Mo. 669, 676, 95 S.W. 881."

Insofar as a municipality is concerned, the right of eminent domain cannot be exercised by a city without authority from the state. See *In Re Armory Site in Kansas City*, Mo., 282 S.W.2d 464, 467. Thus, the question of the right of a particular city to exercise eminent domain would depend on whether such right had been delegated to the city by the relevant statutes or under its charter, if any. See *Kansas City v. Ashley*, Mo., 406 S.W.2d 584. Inasmuch as this office is not authorized to advise cities under the statute (Section 27.040, RSMo 1959), we may not therefore properly comment on this area since this function of advising the city is a responsibility of a city attorney or city counselor.

Your question involving the right of the county to condemn for industrial purposes, must be answered in the negative. There exists no authority under the constitution or statutes of Missouri for a county to construct, lease or dispose of industrial development projects as is provided in the case of cities under Sections 23(a) and 27 of Article VI, Missouri Constitution, and Sections 100.010 to 100.200, RSMo Supp. 1967. For this reason we must answer in the negative.

CONCLUSION

It is the opinion of this office that a county may not condemn property for industrial development projects.

The foregoing opinion, which I hereby approve, was prepared by my assistant Richard C. Ashby.

Yours truly,


NORMAN H. ANDERSON
Attorney General