

Land May Be Taken for Economic Development

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On June 23, in *Kelo v. City of New London*, the United States Supreme Court held that a municipality could condemn private property in order to further its economic interests.

The plaintiffs in *Kelo* owned property within New London, Connecticut. A Connecticut statute authorized takings for economic development. Nevertheless, when the defendant announced its intention to condemn the plaintiffs' property to further a redevelopment plan, the plaintiffs sought injunctive relief. The plaintiffs alleged that the condemnation would violate the "public use" restrictions of the Fifth Amendment to the federal Constitution. ("Nor shall private property be taken for public use, without just compensation.") The area in question was not blighted. The proposed redevelopment, however, was "projected to create in excess of 1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city...."

The trial court held for the plaintiffs, but the Connecticut Supreme Court found that the proposed taking was valid. The U.S. Supreme Court affirmed that decision. The plaintiffs' definition of "public use" was too restrictive according to the Court:

Those who govern the City were not confronted with the need to remove blight. . . , but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including—but by no means limited to—new jobs and increased tax revenue. As with other exercises in urban planning and development, the City is endeavoring to coordinate a variety of commercial, residential, and recreational uses of land, with the hope that they will form a whole greater than the sum of its parts.

To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development. Given the comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of our review, it is appropriate for us. . . to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.

To avoid this result, petitioners urge us to adopt a new bright-line rule that economic development does not qualify as a public use. Putting aside the unpersuasive suggestion that the City's plan will provide only purely economic benefits, neither precedent nor logic supports petitioners' proposal. Promoting economic development is a traditional and long accepted function of government. There is, moreover, no principled way of distinguishing economic development from the other public purposes that we have recognized. . . .

Tennessee has no statute like the one in *Kelo*. Under TCA 13-20-201 and -202, however, municipal housing authorities may condemn and redevelop real property within "blighted areas" (areas in which the building and improvements are dilapidated, obsolete, or otherwise "detrimental to the safety, health, morals or welfare of the community").

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Clearing the Air at the Legislative Plaza

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The “Battle of the Ethics Panels” has just entered the first round, and Tennesseans everywhere are waiting to see what it will all mean. There is no doubt that the public was disgusted by this year’s closing days of the Legislature and the FBI sting. Add in the on-going saga this past session of charges against former Senator John Ford (D-Memphis) and the inaction by the Legislature, and you have a public that has real doubts about the legislature’s ability to fix itself.

So far, we have the House of Representatives’ ad hoc panel on ethics, the Joint Legislative Panel on Ethics and the Governor’s Special Panel. The meetings have begun and the public is waiting with total skepticism. Will any of these panels actually make proposals that fundamentally improve how legislative business is conducted in Tennessee or will they just try stir the pot enough to change the public’s perception of it? The business community is watching with the same concerns.

The Joint Legislative Committee began meeting in mid-July and plans to meet throughout the fall, but that could change if the Governor succeeds in calling a special session to deal with ethics. At their first meeting, members took a look at the ethics committees and how their powers compare with the ethics agencies and commissions in other Southern states. As you might guess, Tennessee came up short. The Governor’s special panel began meeting August 1 with a deadline of September 30 for recommendations, setting the stage for a fall special session.

We must believe that there is a sincere effort on the part of the governor and legislative leaders of both parties to identify some meaningful ethics reform. Yet, no one is sure where these panels and their recommendations will lead us.

There are, however, some issues that have been on the table since the Legislature began talking about reform earlier this year—primarily lobbyists’ salaries, lobbyists’ expenditures, lobbyists’ activities, lobbyists’ clients. There has been little said about the corresponding responsibility of the elected official. A reporter, in casual conversation, asked me last month about ethics law changes and whether “they could shut the Chamber down.” I had to laugh because it is just not an issue; operating ethically is the only way we know how to do business.

There is, however, the perception that every individual or organization engaging in governmental advocacy must be spending big bucks, buying legislators and votes and going home at night—after a long night out hobnobbing—to roll in the money. Those perceptions are ones we must recognize and address, but it must be done in a way that doesn’t restrict that constitutionally guaranteed right of every citizen to petition his or her elected officials.

It really doesn’t seem that difficult. There seems to be four basic elements that would go a long ways in changing the moral climate in the Legislative Plaza and reassuring Tennesseans that government is being conducted free of bribes, scandals and paid-for influence.

1. Shine sunshine on the process in a way that we never have before. A public that can see and understand who is spending what—and who is taking what—is a public that can feel comfortable with what is going on or, at the next election, they can throw the bums out. That means reports by both lobbyists and legislators need to be revisited in terms of content and information, reports need to be filed regularly, reports must be understandable and complete with much of the shorthand information and lack of information not allowed, and reports should be available on line within weeks of being filed. Then the media, citizens, watchdog groups and others can pour over the reports and see how business is being conducted.



STAR Award Companies Put Safety First

Tennessee Department of Labor & Workforce Development Commissioner Jim Neeley announced that ITW Dynatec in Hendersonville was chosen to receive the Volunteer STAR (Safety Through Accountability and Recognition) Award. Commissioner Neeley presented the STAR Award to executives and employees during a special ceremony June 21, 2005. (See related photograph on page 4.)

A nationally recognized program, the Volunteer STAR Award is the state's highest honor for workplace safety and health. Companies participate in the STAR program to improve their safety and health programs, which helps reduce accidents and injuries. Participating employers are removed from programmed compliance inspection lists for three years. A certificate of recognition is awarded to the STAR participant, as is a flag that can be flown at the site.

Congratulations



ITW Dynatec, Hendersonville

Joining an elite group of Tennessee Chamber of Commerce & Industry members that have earned the Volunteer STAR Award

**Bridgestone/Firestone Inc.,
Morrison**

**Eastman Chemical Co.,
Kingsport**

**DuPont – Old Hickory
Old Hickory**

**E. I. DuPont,
New Johnsonville**

Frito-Lay, Inc., Fayetteville

Frito-Lay Inc., Pulaski

**International Paper,
Memphis**

**International Paper – Royal
Blue Chip Mill, Pioneer**

**John Deere Power Products,
Greeneville**

**Johnson Controls, Inc.,
Athens**

**Manufacturing Sciences
Corporation, Oak Ridge**

**Marvin Windows and Doors
of Tennessee, Ripley**

**Olin Chlor Alkali Products,
Charleston**

TRW Automotive, Cookeville

According to Dan Bourget, General Manager Worldwide for ITW Dynatec, the significance of the award goes far beyond the right to display the STAR logo. "It was never about the flag," said Bourget. "It's just important to us that our people go home in the same condition in which they came in to work."

Company executives are not the only group committed to creating a safe workplace. "A great safety record never happens by accident," said Denise Steiner, ITW Dynatec's Human Resources Manager. "It was a true team effort all the way. Every single person at ITW Dynatec is involved in safety. When you have a group of people who are committed, you end up with an environment that makes it possible to achieve such a prestigious award."

ITW Dynatec designs, manufactures and sells a wide range of cold and hot melt adhesive application equipment for non-wovens, converting, product assembly and packaging industries worldwide. The company's Total Case Incident Rate (TCIR) is 62 percent below the average rate for companies engaged in this type of operation.

For information on the Volunteer STAR Award program, contact TOSHA at 1-800-325-9901.



Workers' Compensation Reform Effort Receives National Recognition

McNeely Pigott & Fox Public Relations has been awarded a top national honor by the Public Relations Society of America for its role in a statewide workers' compensation reform effort last year. MP&F won the coveted national "Silver Anvil," as the best program in its category, for the campaign it conducted with the Tennessee Chamber of Commerce & Industry.

The successful campaign saw the Tennessee General Assembly last year overwhelmingly approve the reform pushed by Governor Phil Bredesen, the Tennessee Chamber and a grassroots coalition of businesses statewide.

"A Silver Anvil is the highest award given in our business," said MP&F Senior Partner Mark McNeely. "The award places a heavy emphasis on research and results. Our team conducted original research, placed the issue in front of the public and conducted a grassroots outreach effort that resulted in widespread legislative support in the face of fierce opposition from trial lawyers and organized labor."

In January 2004, MP&F was retained by the Chamber to assist the Chamber and a broad-based coalition of employers in backing meaningful workers' compensation reform legislation. MP&F served as a central information contact, culled and analyzed large amounts of workers' compensation research from Tennessee and other benchmark states, attended dozens of legislative committee meetings, helped develop a consistent message for reform, supported and helped coordinate lobbying efforts, executed proactive and reactive media relations, wrote and coordinated internal and external communications, and planned and executed outreach activities to target groups of employers, local chambers of commerce, municipal and county government officials and legislators.

This year's competition featured 660 total entries, 100 finalists, and 45 Silver Anvil winners. MP&F was the only Tennessee agency to win a Silver Anvil, taking top honors in the Public Affairs-Government category. MP&F is the largest public relations firm in Tennessee and one of the largest independent public relations firms in the Southeast.



Employees of ITW Dynatec in Hendersonville proudly raise the Volunteer STAR Award flag recognizing the company's commitment to safety and health in the workplace. Tennessee Department of Labor and Workforce Development Commissioner Jim Neeley presented the award to ITW Dynatec in June. Only 19 Tennessee companies have earned the prestigious Volunteer STAR Award.



State Maternity Leave Law Changes

Joycelyn A. Stevenson, Esq. ★ Boulton Cummings Connors Berry, PLC

The Tennessee Maternity Leave Act was recently amended to allow “maternity leave” for female and male employees. The amended law, which went into effect on May 27, 2005, changes the gender specific language to include employees generally, and also includes leave for adoptions, which had not been previously covered.

The law provides that employees, who have been employed by the same employer for at least 12 consecutive months as full-time employees, may be absent for a period not to exceed 4 months for adoption, pregnancy, childbirth and nursing an infant. The adoption period begins to run at the time an employee receives custody of the child.

Reinstatement is generally required for those employees who give at least 3 months’ notice of their anticipated leave, the length of the leave and their intention to return to full-time employment at the end of the leave. These employees should maintain the same status, pay, service credit and seniority where applicable.

If notice of an adoption was received less than 3 months in advance, an employee’s rights are not forfeited. Leave under this Act generally may be with or without pay according to the employer’s discretion.

While on its face the amended law provides the same benefit to male employees as female employees, the practicality of all aspects of the law

applying to male employees has yet to be tested. For example, may a male employee take leave under the Act for “pregnancy” prior to the birth of his child? As the law is implemented throughout Tennessee workplaces, many more questions will undoubtedly arise on how the Act will impact the rights and responsibilities of male employees.

The law does not apply to employers who employ fewer than 100 full-time employees on a permanent basis. Additionally, the provisions of the law must be included in employee handbooks published after May 27, 2005.

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Use of Personality Tests May Violate ADA

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The *Americans With Disabilities Act* of 1990 (ADA) prohibits employers from discriminating against individuals with disabilities. Under the ADA, the definition of disability is not limited to physical impairments, but also includes mental or psychological impairments.

To help prevent disability discrimination in the employment context, the ADA limits employers’ ability to use medical examinations and inquiries by prohibiting the use of tests which screen out (or tend to screen out) people with disabilities, pre-employment medical tests, and medical tests that lack job-relatedness.

To that end, the U.S. Equal Employment Opportunity Commission defines medical examinations as procedures or tests that seek information about an individual’s physical impairments or health.

In a recent case, the Seventh Circuit Court of Appeals ruled that an employer’s administering of the Minnesota Multiphasic Personality Inventory Test (MMPI) as a part of its promotion process violated the ADA’s prohibition against the use of tests which screen out (or tend to screen out) people with disabilities.

Although the MMPI is a personality test, it also measures traits such as depression, hypochondriasis, hysteria, paranoia, mania, and certain psychiatric disorders. Because the MMPI is designed, at least in part, to reveal mental illness, the court found that it was a medical examination. For this reason, the court found that the employer’s administering of the MMPI violated the ADA.

So does this mean that the use of all personality/psychological tests violates the ADA? Not exactly. Psychological tests that are designed to identify a mental disorder or impairment qualify as medical examinations, but psychological tests that measure traits such as honesty, preference, and habits do not.

If you are using psychological/personality tests, you should consult your legal counsel to discuss whether your test qualifies as a medical examination prohibited by the ADA.

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Chamber Members Serving Tennessee

One of the many ways Tennessee Chamber members serve the business community and the state is through their appointment to and participation as members of state regulatory and advisory boards. The Chamber is often called on—by the Legislature or Governor's Administration—to nominate Chamber members to serve on a particular board and to lend their time and expertise. Below are those Chamber-nominated members who currently serve on a state regulatory or issue-advisory board. We appreciate their dedication.

Department of Labor and Workforce Development - Medical Care and Cost Containment Committee

Monitors medical costs associated with the state's workers' compensation system.

Members: Quency Holmes, Human Resources Manager, Robert Bosch Corporation - Gallatin. Appointed in 2003
Sharon Stewart, MD, Medical Director, Saturn Corporation - Spring Hill. Appointed in 2003

Department of Labor and Workforce Development - TOSHA Advisory Council

Assists the Department in the development and review of occupational safety and health standards.

Member: Bob Walker, Director of Health and Safety, Bridgestone Americas Holdings, Inc. - Nashville. Appointed in 2005

Tennessee Safety and Health Congress Board of Directors

An annual meeting, now in its 28th year, offering over 60 workshops to 2,000 workplace safety and health professionals.

Members: Keith Harned, DuPont Safety Resources, DuPont - Old Hickory. Appointed in 2001
Carole Chambers, Corporate Manager of Safety and Training, Techmer PM - Clinton. Appointed in 1996

Department of Environment and Conservation - Petroleum Underground Storage Tank Board

Promulgate rules and regulations governing petroleum underground storage tanks, and serves as an appeals board.

Member: Jack Holder, Site Manager, Packaging Corporation of America - Counce. Appointed in 2005

Department of Environment and Conservation - Water Quality Control Board

Establishes, adopts and enforce standards of quality for all waters of the state, and serves as an appeals board.

Member: Eddie Floyd, Environmental Affairs Manager, Glen Springs Holdings - Columbia. Appointed in 1986

Department of Environment and Conservation - Air Pollution Control Board

Promulgates regulations and issues permits regarding air quality, and serves as an appeals board.

Members: Rick Bolton, Senior Project Manager, AMEC Earth and Environmental Engineering - Nashville. Appointed in 1994
Steve Gossett, Environmental Associate, Eastman Chemical - Kingsport. Appointed in 2000
Richard Holland, Environmental Manager, Packaging Corporation of America - Counce. Appointed in 1995

Department of Environment and Conservation - Solid/Hazardous Waste Disposal Board

Establishes rules regarding the handling and treatment of solid and hazardous waste, and serves as an appeals board.

Members: Jack O'Grady, Director of Environmental Affairs, Bowater Newsprint - Calhoun. Appointed in 2003
James P. Newman, Olin Chemical - Charleston. Appointed in 1982

Department of Environment and Conservation - Water and Wastewater Financing Board

Promulgates rules, investigates and determines the financial condition of water systems and wastewater facilities.

Member: Dale Huddleston, Environmental Manager, Alcoa - Knoxville. Appointed in 2003

Department of Environment and Conservation - Municipal Solid Waste Advisory Committee

Advises the TDEC Commissioner on solid waste management issues.

Member: William C. Rankin, Olin Chemical - Charleston. Appointed in 1996



Environmental Conference at Nashville's Maxwell House Hotel

The Chamber's 23rd Annual Environmental Awards Conference is October 20-21, 2005. *The meeting's location has changed to the Millennium Maxwell House Hotel in Nashville.* The program's speakers include: TDEC Deputy Commissioner Paul Sloan, TDEC senior program managers and a U.S. Environmental Protection Agency Deputy Administrator.

A registration form is available at www.tnchamber.org. The "early bird registration," (before September 15) is \$199 for Chamber members. After September 15, the registration is \$225. Conference sponsorships are available for \$500 (sponsorship includes one registration).

For hotel lodging, please contact the Maxwell House at 866-866-8086 or 615-259-4343. Forty-five rooms are reserved at a reduced room rate of \$89, plus tax. This reduced rate, reduced from the regular rate of \$139, is available for hotel registrations made before September 15. Exhibit space is available (up to five eight-foot tables or the equivalent). If you are interested in reserving exhibit space, please contact the Chamber for details.

The deadline for submitting nominations for environmental awards is August 31. Nominations can be submitted for any Chamber member business or industry that has made outstanding accomplishments in Air Pollution Control, Water Quality Control, Hazardous Waste Management, or Solid Waste Management. For any business or industry with multiple accomplishments, a nomination can be submitted for an Environmental Excellence Award. Each of these awards is available for a business or industry with less than 250 employees and for a business or industry with 250 employees or more. The awards will be presented at the dinner October 20.

Upcoming Chamber Events and Seminars

| <u>Date</u> | <u>Topic</u> | <u>Location</u> |
|-----------------------|---|-----------------|
| August 9 | Maintenance-Related TOSHA | Cleveland |
| August 11 | Maintenance-Related TOSHA | Jackson |
| August 18 | Maintenance-Related TOSHA | Nashville |
| August 30 | Workers' Compensation Update | Kingsport |
| August 31 | Workers' Compensation Update | Knoxville |
| August 31-September 1 | Boiler MACT Workshop & Air Permit Compliance | Knoxville |
| September 6 | Workers' Compensation Update | Memphis |
| September 7 | Workers' Compensation Update | Jackson |
| September 8 | Basic Safety | Dyersburg |
| September 14-15 | Boiler MACT Workshop & Air Permit Compliance | Nashville |
| September 15 | Basic Safety | Cookeville |
| September 20 | Basic Safety | Chattanooga |
| September 21 | Workers' Compensation Update | Chattanooga |
| September 27-28 | 10-Hour OSHA Compliance | Jackson |
| September 29 | Basic Safety | Johnson City |
| October 4 | Workers' Compensation Update | Nashville |
| October 5-6 | 10 Hour OSHA | Cleveland |
| October 12 | Basic Safety | Memphis |
| October 14 | Business Tax Update | Nashville |
| October 18-19 | 10-Hour OSHA | Nashville |
| October 20-21 | Environmental Awards Conference | Nashville |

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Clearing the Air

2. Front-line agencies and committees that enforce ethics must have teeth so problems can be stopped before they grow. Take a look at the Senate Ethics committee—which wrestled with escalating complaints against certain senators all year. The power and authority of the Committee are so limited that senators found themselves looking like the bad guys when, in fact, they were hamstrung, looking for the authority to act.

The same is true with the Registry of Election Finance, which monitors three of the four critical areas in ethics and has no investigative power. These groups—and others—are the first-line defense against unethical conduct, yet we have rendered them somewhat powerless. That has been the Legislature's first-line defense in protecting itself. That has to stop. The committees and commissions governing ethics need clearly defined authority and the ability to investigate and act.

3. Lobbyists need to convince legislators with facts, not dollars. Clear and enforced rules on lobbyist spending and detailed reporting are needed. Look at the one-page form at www.tennessee.gov/treff/forms/ss-3042.pdf and decide whether you believe it provides enough information for you, as a citizen, to understand how business is being conducted. Don't get me wrong...any citizen or registered lobbyist has the right to communicate with legislators. Information such as salary, client list, and personal data are not relevant. What is relevant are clear rules that define a person's spending in the course of communicating with government and elected officials and meaningful reporting that shows whether they are adhering to those rules. We need to totally remove lobbyists from making contributions or raising campaign funds.

4. It takes two to tango and elected officials must be subject to meaningful rules of conduct, reporting and enforcement. There has been, as you know, a lot of talk about regulating lobbyists—but the facts cannot be ignored. Five individuals, while members of the Legislature, allegedly accepted bribes in exchange for some level of support. Offering or accepting bribes is illegal. Legislators need, like lobbyists, frequent and meaningful reporting of monies and gifts received, of trips and junkets taken, of conflicts of interest. Again, clear rules and expectations of conduct with meaningful, available reports allows citizens and watchdog groups alike to understand how business is being conducted and to make decisions about it.

As a relative newcomer to Tennessee, I have no doubt that the climate at the Legislative Plaza is a little too lax and, in a few instances, a little too cozy. But it is the exception, not the rule. Unfortunately, the few who bend and stretch the rules—often because they always have—damage the reputations of the entire Legislature and all lobbyists. Good and meaningful rules of conduct, thorough reporting, and quick and decisive enforcement—all coupled with lots of bright sunshine so the citizens and the media know what is going on—can and will change a climate that right now is about as murky as the Plaza's smoky air.

The Tennessee Chamber, for one, will welcome it.



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