

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

March 21, 2005

Opinion No. 05-025

Municipal Condemnation of State Property

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**QUESTION**

Can the City of Jackson condemn a group home and surrounding property on North Highland Avenue when the State of Tennessee has a leasehold interest in the property until 2006 and an option to renew the lease until 2011?

**OPINION**

No. The City of Jackson does not have the power to condemn State property absent specific statutory authorization. The Department of Children's Services' leasehold interest in the group home is a property interest which would preclude the City of Jackson from condemning the property.

**ANALYSIS**

The power of eminent domain is an attribute of sovereignty inherent in the state. *Georgia v. City of Chattanooga*, 264 U.S. 472, 44 S.Ct. 369, 68 L.Ed. 796 (1924). The State of Tennessee is immune from suit in its state courts except to the extent that the legislature specifically provides to the contrary. Tenn. Code Ann. § 20-13-102(a) provides that:

No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea, or demurrer of the law offices of the state, or counsel employed for the state.

The power of eminent domain may and has been delegated to municipalities by the legislature. Tenn. Code Ann. §§ 6-2-201(9) and 29-17-201. However, a municipality's power of eminent domain is limited to the express terms or clear implication of its statutory grant. *Rogers v. City of Knoxville*, 40 Tenn. App. 170, 289 S.W.2d 868 (1955). The power of eminent domain is strictly construed by courts against the condemnor. *City of Chattanooga v. State of Georgia*, 151

Tenn. 691, 272 S.W. 432 (1925).

The City of Jackson, Tennessee, was established by private act. Priv. Acts 1993, ch. 101. Pursuant to its charter, the City of Jackson has the power to:

condemn property, real or personal or any easement, interest, or estate or use therein, either within or without the city, for present or future public use; such condemnation to be made and effected in such manner as may be provided by general law.

*Id.* at Section 12(9). This charter does not specifically grant the City of Jackson the power to condemn state property.

It is also a general rule of law that one governmental entity has no power to condemn the property of another governmental entity devoted to a public use unless the legislature has specifically granted the condemning governmental entity that power. *Town of Dandridge v. Patterson*, 827 S.W.2d 797 (Tenn. Ct. App. 1991). This rule of law is known as the intergovernmental immunity doctrine. *Id.* The City of Jackson's charter does not specifically grant the City of Jackson the power to condemn property devoted to an existing public use.

The group home on North Highland Avenue in Jackson, Tennessee, which is the subject of this opinion, is operated by the Tennessee Department of Children's Services ("DCS"). It is our understanding that DCS has a leasehold interest in the property until 2006 and an option to renew the lease until 2011. DCS has the power to "acquire, hold or alienate property or leaseholds necessary or desirable for the performance of any of its functions which are vested in it by law." Tenn. Code Ann. § 37-5-106(19). DCS is charged with administering, providing, and/or overseeing programs and services required by law or reasonably necessary for unruly, delinquent, dependent and neglected children and their families, and for children either in state custody or at imminent risk of placement in state custody and in need of services. Tenn. Code Ann. § 37-5-106(1) and (2). A court will not generally disturb a legislature's judgment of what constitutes a public use unless the use is without foundation. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984). Therefore, the dispositive issue is whether DCS' leasehold interest in the group home is a property interest which would preclude the City of Jackson from condemning the property.

In *Dandridge v. Patterson*, Jefferson County held an unexercised option to purchase property from a private party for a landfill. 827 S.W.2d at 798. The Court held that this option created a legally protected property interest or right which precluded the town of Dandridge from condemning the land. *Id.* at 799. The Court stated that "it is difficult to say that the County does not possess an equitable interest in the property, be it a lease, license or otherwise. . . . The County's option contract created a legally protected property interest or right. Therefore, another governmental entity is precluded from condemning the land." *Id.* at 800. It is, therefore, the opinion of this office that DCS' leasehold interest in the group home is a property interest which would preclude the City of Jackson from condemning the property.

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