

Kansas Attorney General's Guidelines for Evaluating Proposed Governmental Actions to Identify Potential Takings of Private Property--1997 Update

The following United States Supreme Court, Tenth Circuit and Kansas Supreme Court cases, rendered after the effective date of the Attorney General's 1996 update to the takings guidelines, contain private property takings analysis. Pursuant to K.S.A. 1995 Supp. 77-704 of the private property protection act, this summary of decisions constitutes the 1997 update to the Attorney General's Guidelines. The original guidelines may be found in Volume 14, Number 51 of the Kansas Register, published on December 15, 1995. The 1996 update may be found in Volume 16, Number 1 of the Kansas Register, published January 2, 1997.

Babbitt v. Youpee, 519 U.S. ____, 136 L.Ed.2d 696, 117 S.Ct. 727 (1997)

Section 207 of the Indian Land Consolidation Act which escheats to a tribe upon the owner's death certain real estate allotments works an unconstitutional taking.

Tahoe Regional Planning Agency, 65 USLW 4385, 137 L.Ed.2d 980, 117 S.Ct. 1659 (1997)

A regulatory taking claim brought against a state entity in federal court is not ripe for the federal court's review unless the plaintiff can demonstrate that he or she has received a final decision regarding application of the challenged regulations to the property at issue *and* has sought compensation through any procedures the state has provided for doing so (usually inverse condemnation proceedings). The Court held the landowner's claim was ripe for review in this case, since the state agency had no discretion to exercise over the landowner's right to use land in that the agency had finally determined that the land was in an area that rendered it ineligible for development.

SK Finance SA v. La Plata County, Board of County Commissioners, No. 96-1291, 1997 WL 602729 (C.A.10 1997)

Takings claim was held not ripe for review by federal court because plaintiff had not availed itself of state's procedure for obtaining compensation for inverse condemnation.

Board of County Commissioners of Douglas County v. Cashatt, 23 Kan.App.2d 532 (1997)

Taxation of property does not constitute a public taking as contemplated by the Fifth Amendment to the United States Constitution.

Also of interest are H.R. 992, introduced by Congressman Smith, and H.R. 1534, introduced by Congressman Gallergly, during the 105th Congress' first session. Both bills deal with procedural issues in private property takings cases.