

KANSAS ATTORNEY GENERAL'S TAKINGS GUIDELINES FOR EVALUATING PROPOSED GOVERNMENTAL ACTIONS TO IDENTIFY POTENTIAL TAKINGS OF PRIVATE PROPERTY

2011 Update

The Private Property Protection Act (Act), K.S.A. 77-701 *et seq.*, requires the Attorney General to compile an annual guideline on government takings of privately owned real property based upon cases decided by the United States Supreme Court and the Kansas Supreme Court.¹

The government action by a state agency² must take, or restrict or limit the use of, private property such that United States Constitution or the Kansas Constitution requires compensation to the property owner.³ Private property refers only to real property or an interest arising from or relating to any real property in Kansas.⁴ The government action that may constitute a taking is legislation, regulations or directives, or agency procedures for the process of issuing licenses or permits.⁵ The Act expressly excludes as government action other types of activity,⁶ such as the formal exercise of eminent domain.⁷

Under the above criteria of the Act, there are no current cases to include in the 2011 update to the Attorney General's Guidelines.

¹ K.S.A. 77-704.

² K.S.A. 77-703(b)(1) requires that the government action be taken by a state agency. K.S.A. 77-703(d) defines a "state agency" as "an officer, department, division or unit of the executive branch of the state of Kansas authorized to propose, adopt or enforce rules and regulations [but does] include the legislative or judicial branches of the state of Kansas or any political or taxing subdivision of the state of Kansas."

³ K.S.A. 77-703(a).

⁴ K.S.A. 77-703(c).

⁵ K.S.A. 77-703(b)(1)(A), (B), and (C), respectively.

⁶ See K.S.A. 77-703(b)(2).

⁷ K.S.A. 77-703(b)(2)(A).