



# Iowa General Assembly

## 2005 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.

### EMINENT DOMAIN - ECONOMIC DEVELOPMENT

Filed by the United States Supreme Court  
June 23, 2005

Kelo v. City of New London  
04-108

<http://www.supremecourtus.gov>

The City Council of New London, Connecticut, approved a redevelopment plan for the wharf area of the city. The redevelopment plan was to include commercial, residential, and recreational uses. Most of the property in the redevelopment area was purchased by the City from willing sellers. The City began condemnation proceedings against those property owners in the redevelopment area who had not voluntarily sold their property to the City. The property owners either lived in the property to be condemned or had purchased the property as an investment. Connecticut law authorizes the use of eminent domain to promote economic development. The property owners challenged the City's authority to exercise the power of eminent domain for economic development purposes and averred that such takings violated the "public use" restriction in the Fifth Amendment's Takings Clause. The Takings Clause reads as follows: "[N]or shall private property be taken for public use, without just compensation."

The Connecticut Supreme Court upheld all of the proposed takings and the decision was appealed to the United States Supreme Court (Court). The Court affirmed the decision of the Connecticut Supreme Court.

#### Issue

The issue before the Court was whether a city's decision to take property for the purpose of economic development satisfies the "public use" requirement of the Takings Clause of the Fifth Amendment to the United States Constitution.

#### Analysis

The Court ruled on a 5 to 4 vote that the City's proposed disposition of the property qualifies as a "public use" within the meaning of the Takings Clause. The Court stated that the scope of its review in this case is limited because of the Court's policy of giving deference to legislative judgments in determining what public needs justify the use of the eminent domain power. The Court further stated that in its decisions from the 19<sup>th</sup> century to the present, the meaning of the term "public use" has evolved from a literal requirement that condemned property be put to use for the general public to the broader interpretation of public use as meeting a public purpose. The Court said that because the redevelopment plan is intended to promote economic development and the Connecticut Legislature has determined that promoting economic development is a public purpose as it relates to government's exercise of its eminent domain authority, the public use requirement of the Takings Clause has been satisfied. The Court noted that it is reasonable for the Connecticut Legislature to identify economic development as a public purpose because promoting economic development is a "traditional and long accepted governmental function." Two other factors identified by the Court as significant in finding that the takings by the City were valid were that the redevelopment plan adopted by the City was comprehensive and integrated and that thorough deliberation regarding the plan preceded its adoption by the City.

The Court cited three cases, two involving real property takings, to show that its policy has been to give legislatures broad latitude in determining what public needs justify the use of eminent domain. In *Berman v. Parker*, 384 U.S. 26 (1954), the Court upheld a redevelopment plan that called for condemning an area of Washington, D.C., and using the land to build streets and public facilities and leasing or selling the remainder of the land to private parties for the purpose of redevelopment, including the construction of low-income housing. The takings under this plan had been challenged by a department store owner whose store was located in the area and was not itself in a blighted condition. The Court ruled

that creating a “better balanced, more attractive community” through implementation of a single community redevelopment program was a valid public purpose justifying the use of eminent domain.

In Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984), the Court upheld a Hawaii statute that transferred fee title from lessors to lessees for just compensation, ruling that the state's goal of reducing the concentration of land ownership was a valid public purpose justifying the use of eminent domain to achieve such purpose.

#### Dissent

In a dissent joined by three other justices, Justice O'Connor stated that the public use requirement places the following limitation on the scope of the eminent domain power: “Government may compel an individual to forfeit her property for the *public's* use but not for the benefit of another private person.” Justice O'Connor opined that this limitation is necessary because it “promotes fairness as well as security.” Justice O'Connor's dissent listed three categories of takings identified in case law that comply with the public use requirement:

- 1) Government may transfer private property to public ownership for roads, hospitals, military bases, etc.;
- 2) Government may transfer private property to private parties to make the property available for the public's use, such as for railroads, utilities, and stadiums;
- 3) Government may take private property for subsequent private use in extreme circumstances where the precondemnation use of the private property was causing harm to society.

Justice O'Connor noted that two of the cases cited by the majority included specific instances where the Court upheld governmental intervention because “private property use had veered to such an extreme that the public was suffering as a consequence” and halting this negative use was determined by the legislative body to be a public purpose. In Berman, the neighborhood targeted for redevelopment had deteriorated to the point where 64.3 percent of its dwellings were beyond repair and other blighted conditions existed in the neighborhood, all of which Congress determined, threatened the health and safety of the inhabitants. The Court in that case gave deference to Congress' decision to treat redevelopment of the neighborhood as a whole rather than lot by lot. In Midkiff, the Hawaii Legislature had determined that the pattern of land ownership was skewing the market for residential property, was inflating land prices, and was causing harm to the public. Forty-seven percent of the land on the islands comprising Hawaii was owned by 72 private landowners. State and Federal governments owned 49 percent. In both cases, “the extraordinary, precondemnation use of the targeted property inflicted affirmative harm on society.” Justice O'Connor's dissent noted that in the present case there was no evidence, nor did the City claim, that the properties targeted for condemnation were the source of any social harm.

#### Iowa Law

In the majority opinion, the Court stated that “nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.” Some states already impose stricter public use requirements and a number of states are considering legislation to further restrict the eminent domain power in light of the Court's ruling in this case.

The authority of cities and counties to exercise eminent domain is found in Article I, §18, of the Iowa Constitution and Iowa Code §6A.4. Section 6A.4 provides that the right to take private property for public use is conferred upon cities and counties “for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon” cities and counties. The process of taking private property for public use is termed “condemnation.” The process under Iowa law is found in Iowa Code Chapter 6B, “Procedure under Eminent Domain.”

Legislation enacted in 1999 provided that the terms “public use” and “public purpose” do not include the authority to condemn agricultural land for private development purposes unless the owner of the agricultural land consents to the condemnation. “Private development purposes” is defined as “construction of, or improvement related to, recreational trails, recreational development paid for primarily with private funds, housing and residential development, or commercial or industrial enterprise development.” However, exceptions to this limitation were also enacted. They include acquiring property in a slum or blighted urban renewal area (defined in Code §403.17), property acquired for certain industry (defined in Code §260E.2), acquiring property for roads (including federal mitigation requirements), railways, or airports, and property acquired by any utility which has statutory authority to condemn property. The 1999 legislation also provided greater procedural protection to the owner of land in condemnation proceedings and made aspects of the proceedings more publicized or open.

Iowa Code §364.4 provides that a city may “[a]cquire, hold, and dispose of property outside the city in the same manner as within.” The Iowa Supreme Court has ruled that this provision allows a city to exercise its power of eminent domain outside its corporate boundaries. Banks v. City of Ames, 369 N.W.2d 451(1985).

Iowa Code Chapter 403, “Urban Renewal,” authorizes a city or county to acquire property by condemnation if it is deemed “necessary for or in connection with an urban renewal project” and if the city has adopted an urban renewal plan for the area. However, the restrictions on, and exceptions to, condemnation of agricultural land found in Chapter 6A apply to Chapter 403. A city or county may sell, lease, or otherwise transfer property acquired by condemnation for purposes of urban renewal and, in most cases, it is required to be sold, leased, or otherwise transferred for not less than its fair market value. The transferee is required to use the real property only as specified in the urban renewal plan (Iowa Code §403.8). “Urban renewal plan,” “urban renewal project,” and “economic development area” are defined in Code §403.17.

Iowa Code §403A.20 allows a city or county to acquire property by condemnation if deemed necessary for municipal housing projects for low-income families.

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