The Private Property Protection Act, K.S.A. 77-701 et seq., requires the Attorney General to compile and annually update guidelines to be used by state agencies in determining whether proposed government action may constitute a taking of private property. These guidelines are to be based on cases decided by the United States Supreme Court and the Kansas Supreme Court. Government action is defined as legislation, regulations or directives, or agency guidelines and procedures for the issuing of licenses or permits. The Act expressly excludes other types of activity, such as the formal exercise of eminent domain.

Under the criteria of the Act, there is one case to include in the 2013 update to the Attorney General's Guidelines:

In Koontz v. St. Johns River Water Management District, 507 U.S. ___, 133 S. Ct. 2586 (2013), a water management district denied a property owner's request for a land use permit but stated that the permit would be approved if the property owner paid for improvements to land owned by the district a few miles away. The property owner sued, claiming that the district's demand violated the U.S. Supreme Court's decisions in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994). These cases held that a taking occurs when the government conditions approval of a land use permit on a property owner's agreement to give up a property interest and there is not a "nexus" and "rough proportionality" between the government's demand and the effects of the requested land use.

The Florida Supreme Court concluded that no Takings Clause violation occurred because (1) Nollan and Dolan only apply when a permit is conditionally granted, not when a permit is denied, and (2) Nollan and Dolan do not govern when the government demands money, rather than an interest in real property, in exchange for a land use permit.

The U.S. Supreme Court reversed, rejecting both of these conclusions. The Justices unanimously agreed that there is no distinction between conditionally granting a land use permit and denying a land use permit while stating that the permit will be approved if certain conditions are met. On the second issue, the Court split 5-4, with the majority concluding that demands for money can give rise to a takings claim. While recognizing that taxes and user fees are not takings, the Court held that monetary exactions that burden a specific parcel of land must satisfy the nexus and rough proportionality requirements of Nollan and Dolan.

---

1 K.S.A. 77-704.
2 K.S.A. 77-703(b)(1).
3 K.S.A. 77-703(b)(2).
4 The original guidelines are published at 14 Kan. Reg. 1690-92 (Dec. 21, 1995).