

Kansas Attorney General's Guidelines for Evaluating Proposed Governmental Actions to Identify Potential Takings of Private Property—2000 Update

The following cases contain analysis of issues tangential to that of private property takings. Pursuant to K.S.A. 77-704 of the Private Property Protection Act, this summary of decisions constitutes the 2000 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. The 1997 Update may be found in Volume 16, Number 52 of the Kansas Register, published December 25, 1997. The 1998 Update is located in Volume 17, Number 53 of the Kansas Register, published December 31, 1998 and the 1999 Update is in Volume 18, Number 52 of the Kansas Register, published December 30, 1999.

On October 10, 2000, the United States Supreme Court granted certiorari in the case of ***Palazzolo v. State of Rhode Island***, No. 98-333 [on appeal from 746 A.2d 707 (R.I. 2000)]. The issue in this case is whether a landowner's claim is ripe if he has not exhausted his state remedies. The plaintiff landowner sought permission from the state's Coastal Resources Management Council to utilize his land along the Atlantic seaboard in Westerly, Rhode Island. Upon denial of his request, he sued for compensation in a takings action. The Rhode Island Supreme Court affirmed the trial court's decision that compensation was not due because plaintiff's property was not taken for a public use. The court also determined that plaintiff's claim was not ripe, in part because he had not applied for approval of less intrusive development plans.

In re Condemnation of Land for State Highway Purposes [Carlson v. Westoff], 269 Kan. 128, 3 P.3d 1268 (2000).

The Kansas Supreme Court held that neither additur nor remittitur are appropriate in a partial takings condemnation case when the jury's verdict is outside the range of the evidence.

For general discussions of Constitutional takings in the context of land use and zoning, see ***Sowell v. City of Coppell***, 2000 WL 968782 (N.D.Tex. July 12, 2000) and 83 Am. Jur. 2d *Zoning and Planning* § 43 (2000).