

Publications

Eminent Domain Caution

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Thomas H. Fusonie

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Ohio Farmer

Tom Fusonie, a partner in the Vorys Columbus office and a member of the litigation group, authored an article for *Ohio Farmer* on the government's use of eminent domain. In the article, Tom outlines the eminent domain process and warns farmers about a trend he is seeing. According to the article, both local governments and state agencies have seized private property rights from farmers without paying, claiming that they are not obligated to do so under the Ohio Constitution.

The article states:

"Throughout Ohio, farming is an important boost to local, state and national economies. Yet, if you drive around the state, you know that farmland is subject to various forms of property intrusion by the government, from road projects that split farms in two, to the government's frequent and severe flooding of farmland. You can see these projects everywhere, from the Ohio River to Lake Erie. The government is widening roads, expanding roads and making new roads. The government is flooding farmland from its man-made lakes. Such projects almost always involve, in part, the government's power of eminent domain— the power to seize private property for a claimed public use. Under both the Ohio and United States Constitutions, the government has the power to do so if for a public use, but must pay just compensation to the owners of the private property. In addition, under various state and federal statutes, public utilities and telecommunications' providers have certain powers of eminent domain. Farmers must be cognizant of both the government's power and the protections provided by constitutional right and, in Ohio, by statute. They must also be aware of the process by which a governmental entity must condemn private property for public use."

The article also states:

“Unfortunately, we have seen from local governments to state agencies that the government violates the Ohio Constitution’s requirement to compensate a landowner before seizing property rights. We have seen both local governments and state agencies seize private property rights from farmers without paying a penny, claiming that they are not obligated to do so under the Ohio Constitution. The Ohio Department of Natural Resources has done this on multiple occasions for flooding it frequently, severely and persistently caused to farmland downstream of Grand Lake St. Marys. Erie County’s Board of MetroParks did this for a planned bikepath – wrongfully claiming the farmers and other landowners did not own the land seized. Unfortunately, the only resource it seems against such government eminent domain abuse has been for farmers to sue the government and get courts to order that the government pay them for taking their private property.”

The entire article is available in the December 2015 edition of *Ohio Farmer*.