

**EMINENT DOMAIN  
A 60 MINUTE QUICK TAKE  
prepared for  
NORTHEAST LAWYER'S CLUB  
MAY 8, 2015**

By

Timothy M. Burke  
MANLEY BURKE  
tburke@manleyburke.com

**MANLEY BURKE**  
A Legal Professional Association  
[www.manleyburke.com](http://www.manleyburke.com)

## I. The Constitutional Provisions

- A. The United States Constitution, Fifth Amendment "... nor shall private property be taken for public use, without just compensation."
- B. The Ohio Constitution, Article 1 §19 "Private property shall ever be held inviolate, but subservient to the public welfare."

**MANLEY BURKE**  
A Legal Professional Association  
[www.manleyburke.com](http://www.manleyburke.com)

## II. The Key Federal Cases

- A. *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98 (1954). The Acquisition of an unblighted department store in Washington, D.C. Urban Renewal area.
- B. *Hawaii Housing Authority v. MidKiff*, 467 U.S. 229, 104 S.Ct. 2321 (1984). Breaking up the oligopoly of private land ownership in Hawaii.
- C. *Kelo v. City of New London*, 545 U.S. 469, 125 S.Ct. 2655 (2005). The case that created the fire storm.

**MANLEY BURKE**  
A Legal Professional Association  
[www.manleyburke.com](http://www.manleyburke.com)

## III. The Key State of Ohio Cases

- A. *State, ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 110 N.E.2d. 778 (1953). Historical note. The Cincinnati City Solicitor's Office represented both sides.

**MANLEY BURKE**  
A Legal Professional Association  
[www.manleyburke.com](http://www.manleyburke.com)

- B. *Norwood v. Horney*, 110 O.S.3d 353, 2006.
1. 1<sup>st</sup> State Supreme Court decision after *Kelo*.
  2. Property rights important.
    - a) Economic benefit alone is sufficient to meet public use requirement.
    - b) “Deteriorating” is void for vagueness and offends due process rights in that it fails to give adequate notice and engages in speculation regarding a future event.
    - c) Questions “diversity of ownership” as a standard in defining blight.



## IV. Other Ohio Constitutional Provisions Defining Public Interest and Public Purpose

- A. Article VIII §13 “to create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state. . . it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions. . . to acquire . . . property. . . for industry, commerce, distribution and research. . .” (guaranteed loans for industrial development).



- B. Article VIII §16 "to enhance the availability of adequate housing in the state and to improve the economic and general well-being of the people of the state, it is determined to be in the public interest and a proper public purpose for the state or its political subdivisions. . . [to assist in the development of housing]. . . by the acquisition of real property. . . "



- C. Article VIII §2(b) (approved by the voters of Ohio in November 2005) "... the purposes referred to in this division are proper public purposes. . . and are necessary and appropriate means to create jobs and enhance employment and education opportunities; to improve the quality of life and the general economic well-being of all the people in all areas of this state. . . [including] (D)(3) development of sites and facilities for and in support of industry, commerce, distribution, and research and development purposes includes acquisition of real estate and interest in real estate. . . "



## V. Post *Kelo* Legislation Changes to R.C. Chapter 163

- A. Uniform definition of terms:
  - "blighted," "deteriorated"
- B. Can't do it simply because there is a better use.
- C. Can't make blight finding by emergency.
- D. No burden of proof on value.



- E. Additional benefits:
  - i. \$10,000 for moving
  - ii. \$2,500 to find new site
- F. Procedural protections
  - i. must provide appraisal
- G. Fees
  - i. if no justification
  - ii. if award above 125%/150% of offer, but only in limited circumstances



## VI. Regulatory Takings

A. Writ of Mandamus to force eminent domain

- *Hilltop Basic Resources v. Cincinnati*,  
886 N.E.2d 839, 118 Ohio St.3d 131 (2008)

And

- *State ex rel. Gilbert v. Cincinnati*, 928 N.E.2d 207,  
125 Ohio St.3d 385 (2010).



## VII. Litigation

A. Types

1. Quick Take
2. Regular



- B. Challenge to right to take tried to judge
  - 1. *Norwood v. Horney* – no public purpose.
  - 2. Clinton Field – can't complete, no funding for project.
  - 3. *Columbus v. Village of Lockbourne* – no plans.



- C. Valuation – tried to jury
  - 1. View.
  - 2. Photos.
  - 3. Appraiser(s).
  - 4. Other “expert.”
  - 5. Owner.



- D. Division of Award – tried to judge.
  - 1. Mortgage holder.
  - 2. Tenants.

