

## Chapter 281

### Condemnation for Public Use; Relocation Assistance

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CASE CITATIONS: *Hewitt v. Lane County*, (1969) 253 Or 669, 456 P2d 967.

LAW REVIEW CITATIONS: 46 OLR 130.

#### 281.010

##### NOTES OF DECISIONS

A verdict awarding compensation in condemnation proceedings by a city and empowering the city to condemn property, is a "general verdict." *Skelton v. City of Newberg*, (1915) 76 Or 126, 132, 133, 148 P 53.

LAW REVIEW CITATIONS: 46 OLR 128, 133.

#### 281.210 to 281.260

LAW REVIEW CITATIONS: 46 OLR 131, 132.

#### 281.220

##### NOTES OF DECISIONS

This statute authorizes a proceeding in the name of the state for the condemnation of real property for a public use. *State v. Hawk*, (1922) 105 Or 319, 208 P 709, 209 P 607.

The commencement of an action to condemn land for salmon fish culture work was conclusive proof that the state, through its fish commission, had decided and declared the necessity of taking defendant's land for public use. *State v. Mohler*, (1925) 115 Or 562, 237 P 690, 239 P 193.

ATTY. GEN. OPINIONS: When State Board of Forestry can condemn land to create a right of way, 1948-50, p 408; condemnation of federal lands by State Land Board, 1948-50, p 358.

#### 281.240

ATTY. GEN. OPINIONS: Paying tax liens from award, 1960-62, p 208.

#### 281.250

##### NOTES OF DECISIONS

This section is in effect an explicit pledge of faith and credit of the state. *State v. Mohler*, (1925) 115 Or 562, 237 P 690, 694, 239 P 193.

#### 281.310 to 281.380

LAW REVIEW CITATIONS: 46 OLR 131-134, 157.

#### 281.310

##### NOTES OF DECISIONS

A county could not institute condemnation suits for county road purposes until the enactment of this section.

*Barrett v. Union Bridge Co.*, (1926) 117 Or 566, 245 P 308, 45 ALR 527.

An owner is not entitled to damages for property not included within the limits of a highway unless there has been some physical invasion of the property itself. *Id.*

Every step necessary to obtain jurisdiction under this section must appear from the record; a resolution and notice thereof are essential before a county court has jurisdiction to condemn land for a road. *Kerns v. Union County*, (1927) 123 Or 103, 261 P 76.

ATTY. GEN. OPINIONS: Right of county commissioners to condemn a roadway through land owned by University of Oregon, 1926-28, p 257; condemnation of land owned by a cemetery association, 1948-50, p 414; land for county fair, 1956-58, p 159.

LAW REVIEW CITATIONS: 16 OLR 155.

#### 281.320

##### NOTES OF DECISIONS

This section is inapplicable to state highways. *Barrett v. Union Bridge Co.*, (1926) 117 Or 566, 245 P 308, 45 ALR 527.

An owner is not entitled to compensation for damages to property not included within the limits of the highway, unless there has been some physical invasion. *Id.*

#### 281.330

##### NOTES OF DECISIONS

This section does not apply to the establishment of county roads by petition. *Re Petition of Reeder*, (1924) 110 Or 484, 222 P 724.

The denial of an allowance for attorney's fee in resisting condemnation proceedings does not constitute the taking of property without compensation under Ore. Const. Art. I, §18. *Id.*

This section cannot be applied in cases other than condemnation by a county for purposes of a county road. *Barrett v. Union Bridge Co.*, (1926) 117 Or 566, 245 P 308, 45 ALR 527.

There can be no recovery of consequential damages where no part of property is taken. *Id.*

The right to attorney's fees is determined by the court, and a showing of entitlement must be made to the court. *Douglas County v. Myers*, (1954) 201 Or 59, 268 P2d 625.

Upon a voluntary nonsuit, defendant cannot be allowed attorney's fees. *Multnomah County v. Burbank*, (1963) 235 Or 616, 386 P2d 444.

The judgment for the attorney's fee was final, not conditioned by the county's election to take the property. *Portland Meadows, Inc. v. Multnomah County*, (1968) 249 Or 629, 439 P2d 1017.

FURTHER CITATIONS: *Brink v. Multnomah County*, (1960) 224 Or 507, 356 P2d 336.

**281.340**

**NOTES OF DECISIONS**

While it was proper for the county to protect its bridge and highway leading thereto by the construction of a jetty in a stream, it was required to pay the owner of private property which was destroyed or taken in the process. *Morrison v. Clackamas County* (1933) 141 Or 564, 18 P2d 814.

**ATTY. GEN. OPINIONS:** County demonstration farm, to

be supported by federal, state and county funds as an "institution" for which county may condemn land as an exercise of the power of eminent domain, 1926-28, p 521; expenditure of public money by a county for an airport, 1934-36, p 278; land for use of county fair, 1956-58, p 159; authority to condemn land for courthouse parking lot, 1964-66, p 84.

**281.520**

**LAW REVIEW CITATIONS:** 46 OLR 131.