

An abstract graphic on the left side of the slide, consisting of a network of white lines and small circles on a blue gradient background. The lines and circles resemble a circuit board or a stylized tree structure, with some lines extending vertically and others branching out horizontally and diagonally.

EMINENT DOMAIN AND UTILITIES

PAUL MOOMAW – SOUND TRANSIT

SETTING THE STAGE

- New public works project requires relocation of utilities.
- Utility infrastructure situated in private easements.

SHOULD YOU CONDEMN?

- **Three options:**

1. Work with the utility early on. Get an agreement to extinguish the existing utility easement and replace the utility facilities in a new easement area.
2. Acquire the underlying property subject to the utility easement and plan to work with the utility later to resolve its rights.
3. Condemn out the easement. Name the utility in the condemnation petition when you are acquiring the underlying property.

- **Often some combination of Option 1 and Option 3.**

CAN YOU CONDEMN?

- **Statutory power to condemn public property**

- *King County v. Seattle*, 68 Wn.2d 688, 414 P.2d 1016 (1966).

Statutes that delegate condemnation authority to the state's political subdivisions must be strictly construed. The power to condemn must be given in express terms or by necessary implication.

Washington supreme court concluded that King County could not condemn city-owned property, because there was no express authority to do so in the statute granting the county its condemnation authority.

- 1960 Op. Atty Gen. Wash. No. 69.

Opined that City does not have authority to condemn property in another city for a sewer system.

City condemnation authority under RCW 8.12.030 extends to “state, county, and school lands and property.” AG reasoned that since property belonging to another city is not state, county, or school lands, the city did not have authority to condemn it.

- **Prior public use doctrine**

- *Central Puget Sound Regional Transit Authority v. WR-SRI 120th North LLC*, 191 Wn.2d 223, 422 P.3d 891 (2018).

Sound Transit's enabling statute allows for condemnation of public property, including a Seattle City Light (SCL) easement.

The easement area was subject to a prior public use, even though SCL was not yet using the easement for utility infrastructure.

The prior public use doctrine does not bar condemnation if the new proposed public use is compatible with the prior public use.

Remanded for a determination of compatibility.

IF YOU CONDEMN

- **What are you condemning?**
 - Fully extinguish rights?
 - Condemn an amendment to the existing easement.
- **Compensation considerations**
 - Value of the easement rights being condemned, with an offset to reflect the new easement rights being granted.
 - Easement into franchise?

UTILITY RELOCATION AGREEMENTS

- Scope of work, schedule, cost allocation, dealing with betterments, plan for coordination, etc.
- Legal counsel should get involved early.