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Recent Developments

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RECENT DEVELOPMENTS

The "taking" issue is currently of major interest, with many municipalities finding themselves in court over such questions as building regulations and sewer moratoria. At the heart of the controversy is the Fifth Amendment, which provides that private property shall not "be taken for public use without just compensation." Thus the issue becomes the extent to which government may go in regulating a person's property, before the regulation becomes a taking requiring just compensation to be paid.

In a recent district court decision, *Smoke Rise v. Washington Suburban Sanitary Commission*, 9 E.R.C. 1350 (D.C.D. Aug. 19, 1975), it was held not to be a taking requiring compensation where moratoria on public sewer hook-ups were imposed based upon a finding that State waters were being polluted by raw and insufficiently treated sewage from inadequate treatment facilities. The moratoria were seen as designed to relieve a public harm, the pollution of the State's waters, rather than to gain a public benefit; and no compensation is required where a public benefit is not involved (*id.* at 1359-60). The court also found that the restriction did not totally deprive anyone of his property, and that the duration of the moratoria was reasonable, especially considering the necessity of action and the interjurisdictional complexity of the problem (the Washington, D. C., metropolitan area being involved). The court did find, however, that it was a violation of due process for the Washington Suburban Sanitary Commission to fail to give adequate notice of procedures by which property owners could apply for exemptions during the moratoria from front-foot benefit charges (based on lot frontage contiguous to the sewer line and imposed to amortize bonds for the sewer's construction), because during this time the property owners could not benefit from the charges paid by hooking up to the line.