

**177.420 Acquisition of property -- Condemnation -- Possession -- Special provisions for condemning railroad property.**

- (1) The department is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of KRS 177.390 to 177.570, such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the Commonwealth, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the Commonwealth for the use and benefit of the department.
- (2) Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the department is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, or municipality or political subdivision, deemed necessary or convenient for the construction or the efficient operation of any project or necessary in the restoration of public or private property damaged or destroyed. Any such proceedings shall be conducted, and the compensation to be paid shall be ascertained and paid, in the manner provided by the Constitution and laws of the Commonwealth then applicable which relate to condemnation or to the exercise of the power of eminent domain by the department. Title to any property acquired by the department shall be taken in the name of the Commonwealth for the use and benefit of the department. In any condemnation proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the department and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the department to accept any pay for the property, but neither such undertaking or security nor any act or obligation of the department shall impose any liability upon the Commonwealth except as may be paid from the funds provided under the authority of KRS 177.390 to 177.570.
- (3) If the owner, lessee or occupier of any property to be condemned shall refuse to remove his personal property therefrom or give up possession thereof, the department may proceed to obtain possession in any manner now or hereafter provided by law.
- (4) With respect to any railroad property or right-of-way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting

structures and appurtenances, nor any traffic upon it, shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under such railroad property or right-of-way, plans and specifications of the proposed project showing compliance with the above-mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within thirty (30) days to approve the plans and specifications so submitted, the matter shall be submitted to the Public Service Commission of Kentucky whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Said overhead or undergrade structure and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the Public Service Commission as the case may be. A copy of the plans and specifications approved by the railroad or the Public Service Commission shall be filed as an exhibit with the petition for condemnation.

**History:** Created 1950 Ky. Acts ch. 157, sec. 5.