

9.15 CONDEMNATION — TAKING PUBLICLY OWNED PROPERTIES (Approved 4/96)

When a condemning authority takes property which is already devoted to a public use, the condemning authority must furnish a substitute facility. For instance, if the State of New Jersey took this courthouse for a State highway, it would have to provide the county with another courthouse facility. It may either build a substitute or be required to pay enough money for one to be built.¹ You must decide whether the substitute which [*insert name of condemning authority here*] has provided is adequate. The two need not be identical, but the substitute must be adequate. It must enable the public body to operate as efficiently as it did before the taking. The property that was taken fulfilled a public purpose. Does the substitute do the same as well?²

[*Insert name of condemning authority here*] bears the burden of convincing you that the substitute really is adequate. It must prove adequacy by a fair preponderance of the evidence. This simply means that, when you consider all the evidence, the scales must tip in its favor. If the greater weight of the evidence does

¹*State v. Tp. of S. Hackensack*, 65 N.J. 377, 385-86 (1974).

²*State v. Board of Educ. of the City of Elizabeth*, 116 N.J. Super. 305, 318 (Law Div. 1971).

not support the condemning authority's contention, then you should not find the substitute to be adequate.³

If you find that the substitute is adequate, then just compensation has already been given. In that case, you should find no money damages. But if the substitute is not adequate, then you must decide how much it would cost to make it adequate. The amount would be the just compensation for the taking.

[Where no substitute has been provided charge the following:]

Before the property was taken, it was used to carry out a public function. *[Insert name of property owner(s) here]* needs a facility to carry out that function. It is entitled to receive a sum of money that will enable it to carry out that function just as efficiently as if the property had not been taken.⁴

³*State v. Tp. of S. Hackensack, supra*, at 386. This allocation of the burden of proof applies only to the question of adequacy of substitute facilities; the concept of burden of proof is otherwise inapplicable to condemnation proceedings. *Ibid.*

⁴*State v. Board of Educ. of the City of Elizabeth*, 116 N.J. Super. 305, 318 (Law Div. 1971). Therefore, the sum awarded to alleviate the effects of a taking is *not* diminished by deductions for depreciation or obsolescence.