



CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Trades and Suppliers

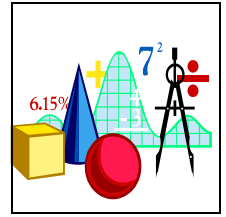
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NUISANCE; CLOSURE ORDERS, FOREFEITURE OF REAL PROPERTY

Federal and Ohio laws prohibiting illegal activities such as trafficking and drug sales from residential properties are prosecuted under a Complaint to Abate a Nuisance. Upon conviction, these actions may result in temporary or even permanent closure (“boarding up”) orders of Court, effectively amounting to a forfeiture of real property rights of an innocent owner.

The Supreme Court of Ohio reviewed the application of law to a cited drug violation at a leased residence. The Court held: “In each of the three cases before us a non-owner resident was arrested for conduct that violated felony drug laws while occupying residential property owned by one of the appellees herein. In all three cases, it is undisputed that the appellee property owners neither acquiesced to nor participated in the drug activities that took place on their property. Further, the record indicates that all three owners acted in good faith, taking affirmative action to investigate allegations and to remove the offending residents upon discovering the illegal activity. The state nonetheless filed a Complaint to Abate a Nuisance, pursuant to R.C. Chapter 3767, against each owner.”

*** “...we hold that R.C. 3767.02 does not require a finding of acquiescence to or participation in the creation or perpetuation of a nuisance on an owner's property in order to find an owner guilty of maintaining a nuisance.” *** (Emphasis supplied.)

However, the Court held: “...the statute violates the Fourteenth Amendment Due Process Clause and the Fifth Amendment Takings Clause of the United States Constitution, and Section 19, Article I of the Ohio Constitution, when applied to an owner who did not negligently or knowingly acquiesce to, and did not participate in the creation or perpetuation of the nuisance.”

*** “...we hold that the imposition of a mandatory closure order pursuant to R.C.

3767.06(A) would be unconstitutional as applied to these defendants.” (Emphasis supplied.)

*** “...A forfeiture is “a divestiture of specific property without compensation; it imposes a loss by the taking away of some preexisting valid right without compensation.” Black's Law Dictionary (6 Ed.1990) 650. An order to close property “against its use for any purpose,” as mandated by R.C. 3767.06(A), renders the owner's property economically idle for a year. In Lucas v. South Carolina Coastal Council (1992), 505 U.S. 1003, 1019, 112 S.Ct. 2886, 2895, 120 L.Ed.2d 798, 815, the court noted that “when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.” (Emphasis in original.) The fact that the order is of limited duration does not change this conclusion. It is well established that the Constitution protects against temporary takings just as it does against permanent takings.”

***”...the mandatory closure order provisions of R.C. 3767.06(A) violate the Takings Clause of the Fifth Amendment to the United States Constitution when imposed against an innocent owner. “

*** “We hold as a separate and independent basis for our decision that the mandatory closure-order provision of R.C. 3767.06(A) is unconstitutional as applied to these defendants under Section 19, Article I of the Ohio Constitution, which provides that “[p]rivate property shall ever be held inviolate, but subservient to the public welfare.”***

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