Advisory Opinion 286

Parties: Kent Singleton and Morgan County

Issued: May 7, 2024

TOPIC CATEGORIES:

Occupation or Use of Property

In a boundary dispute between the county and neighboring private landowner where each claimed title to a disputed portion of property, the county had a colorable claim or defense for its actions in occupying the disputed property as it commissioned a survey of the property boundary and occupied only that portion identified in the survey as within the existing county right-of-way.

Without first succeeding to quiet title to the subject property by all adverse claims, the landowner cannot meet his burden in establishing a protectible property interest necessary to maintain that a taking of private property has occurred. A court would first need to formally quiet title in favor of the landowner before any action by the county could be alleged to be a taking of private property.

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ADVISORY OPINION

Advisory Opinion Requested By:	Kent Singleton and Miyako Uehara
Local Government Entity:	Morgan County
Type of Property:	Undeveloped, Multiple Use Zoning
Date of this Advisory Opinion:	May 7, 2024
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUES

Has the county or state taken private property for a public use by posting signs encouraging public use of a disputed portion of property and refusing to enforce claims of trespass?

SUMMARY OF ADVISORY OPINION

An advisory opinion may be requested on the subject of inverse condemnation of private property by a government's physical occupation. However, the first required element of any takings claim is that the claimant must establish a protectible property interest—which, when property ownership is in dispute—requires prevailing to quiet title against any adverse claim by others. An advisory opinion is limited to determining whether an occupation is without colorable authority. This means that we only opine on whether the entity has no apparent legal basis for claiming ownership of, or a right to, occupied property where title is disputed.

A private landowner and Morgan County are adjoining landowners along a section of the Weber River, and both provide prima facie evidence of title to a disputed portion of property used by recreational river-goers as a popular river takeout spot. The landowner alleged that the County and/or state officials effectuated a taking by occupying the disputed property or authorizing public access to, and use of, the takeout. Landowner's allegations, at best, present a legitimate title dispute wherein the County has a colorable claim or defense for its actions, having occupied the disputed property under color of title. The landowner therefore has not met his burden in establishing a property interest necessary to maintain a takings claim. A court would have to formally quiet title in favor of the landowner for us to conclude otherwise.

Evidence

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for Advisory Opinion submitted by Kent Singleton, dated March 21, 2023;
2. Additional information from Kent Singleton received April 23, 2023;
3. Additional information from Kent Singleton received May 15, 2023;
4. Response letter from Garrett T. Smith, Morgan County Attorney, dated June 12, 2023;
5. Submission from Kent Singleton received August 17, 2023;
6. Supplemental letter and supporting material from Garrett T. Smith, dated August 18, 2023;
7. Additional information from Kent Singleton received August 30, 2023;
8. Submission from Kent Singleton received September 15, 2023;
9. Supplemental documents received from Garret Smith by email dated April 4, 2024;
10. Email from Kent Singleton re: Garret Smith's April 4, 2024 email, dated April 9, 2024.

Background

Kent Singleton is the owner of an approximately 5-acre parcel in Morgan County that adjoins a Morgan County-owned parcel that includes the eastbound portion of Taggart's Lane, a frontage road off S.R. 84 at exit 108. These two properties meet along a section of the Weber River that is a common exit-point for river-going recreationists known as the "Taggart takeout."

Mr. Singleton alleges that his property includes a portion of the underlying riverbed as well as the takeout embankment on the other side. According to Mr. Singleton, river rafters on the Weber River exit at Taggart takeout where outfitters have parked on or to the side of the road for pickup. Mr. Singleton alleges that in doing so, the river goers traverse a portion of Mr. Singleton's private property before reaching the County's right-of-way. Mr. Singleton supports his claim by relying on his interpretation of a recorded 1965 UDOT survey and the County's online parcel map overlayed with satellite imagery to form the belief that his property includes a portion of the takeout embankment. Mr. Singleton refers to the embankment as his driveway and has at various times posted signs in the area that state "No Trespassing" and "Do Not Block Driveway," and installed fences and gates across the property.

Mr. Singleton requested this Advisory Opinion upon allegations that certain actions by Morgan County and/or the Utah Department of Natural Resources have amounted to a physical occupation of his private property resulting in a taking, by officers physically trespassing on his property, refusing to enforce the trespass of third parties on his property, and by posting public signs on his property that encourage public use of his property.

In responding to the Advisory Opinion Request, the County provided additional information and alleged that the exact location of the mutual boundary between Mr. Singleton's property and the County's property has been in dispute, and that the County alleges that it has maintained the Taggart takeout area as part of the public right of way for decades, and notes its understanding that members of the public that recreate on the Weber River have also utilized Taggart takeout to exit

the river for decades as well.[1] The County, therefore, likewise claims that it owns the takeout property and disputes that any portion of Mr. Singleton's private property has been taken.

From the submissions of the parties, we make the following statement of facts.

STATEMENT OF FACTS

On May 21, 2019, the Morgan County Council discussed longstanding issues surrounding the public's use of the Taggart takeout and passed a motion to officially designate the area as a "Recreation Access," and thereafter discussed requests for "minor improvements including signage, temporary outhouses, trash dumpster, and some basic site work to allow for better parking and two-way traffic." During the meeting one council member asked about the property "on the other side of the river" and whether it was still for sale, and in response a comment was made about that property having no access. Mr. Singleton alleges this was a reference to the property he now owns, which the submissions indicate he had purchased and closed on just a few days prior to this council meeting.

In an email response to Mr. Singleton dated July 31, 2020, the County stated its understanding that the takeout area served as a public access to the river as a public right of way, and that the area "does not appear to be on your property," acknowledging that exact property lines cannot be confirmed without a survey, and encouraging Mr. Singleton to obtain a survey to determine the actual property boundaries.

The two parties underwent several discussions throughout 2021 on the issue, and on October 12, 2021, Mr. Singleton met with County officials at the property to discuss the issues, and the County again suggested that Mr. Singleton obtain a new survey so that the corners could be set. The following day, Mr. Singleton informed the County that he had contacted a surveyor (Entellus) for an estimate for survey work, but also related his concerns with the County's suggestion that he needed to be the one to obtain a new survey, as he felt that the 1965 UDOT survey was adequate, and asserted that there needed to be agreement on the parameters of the surveyor's assignment.

Ultimately, the parties do not appear to have been able to reach an agreement on the parameters or scope to jointly appoint a surveyor, and in response to Mr. Singleton's request for a survey estimate, the Entellus surveyor communicated in November 2021 that he was waiting on some UDOT documents to be able to send Mr. Singleton a proposal. However, when Mr. Singleton followed up in February of 2022, the surveyor informed him that he would no longer be sending Mr. Singleton a proposal because the County had hired him instead to survey the property line between the parties' properties.

While the Entellus survey was pending, Mr. Singleton had installed a fence and gate across the takeout. The resulting survey reflects that the fence and gate (installed by Mr. Singleton) are entirely situated on the County's property. The survey reflects that rebar and cap was placed at various points along the shared boundary with Mr. Singleton's property, reflecting that the edge of

[1] The County, however, takes no formal position on whether the public has established some form of prescriptive easement over any portion of Mr. Singleton's property, and asserts that Mr. Singleton's dispute with river outfitters using Taggart takeout is a civil matter, as it has no authority to determine whether a prescriptive easement exists.

the County's right-of-way, in at least one point, extends into the river, with the note: "set rebar with cap at water line, 3.0' westerly from right-of-way line." The County alleges that the resulting survey established that the entirety of the disputed takeout area is part of the public right-of-way owned by the County. Once the survey was completed, the County sent a copy of the survey and a letter to Mr. Singleton stating "please review the attached final survey that Morgan County received this week and notice that you have trespassed on public property for about four months. The survey shows that you have placed your fencing, steps devices, and signs outside your own property." The letter continued by informing Mr. Singleton that he must remove all fencing and other obstructions by a certain date.

At the May 17, 2022 Morgan County Council meeting, Mr. Singleton spoke during the public comment period, introducing himself as the owner of the Taggart takeout, which he referred to as his driveway, and stated that earlier that day, he was notified that his fence and gates that were installed at the property were removed at the direction of county officers. Mr. Singleton disputes the legitimacy and accuracy of the County's survey, but has since posted "no trespassing" signs at locations marked as the boundary by the Entellus survey, including out in the river itself near where the survey markers had been placed.

On August 20, 2022, Mr. Singleton and an associate were at Taggart takeout to hand out trespass notices he had prepared to outfitters and to river goers that were exiting the river. The trespass notice stated as follows:

> TO WHOM IT MAY CONCERN:
>
> This letter will serve as notice that you and/or your affiliate Outfitter Company are not to enter and/or exit upon privately owned property designated with No Trespassing Signs and Do Not Block Driveway signs in Taggart, Utah.
>
> Should you fail to abide by this notice you may be subject to arrest and criminal prosecution under Utah Code Criminal Trespass.
>
> Please be aware that you were also found to be in our private driveway and Utah Supreme Court explains that the river bed belongs to the private property owner. How would you feel if someone illegally operated a business in your driveway without your permission?
>
> Posted property and riverbed is closed to fishing, floating equally and ALL TRESPASS without specific written permission by the property owner.
>
> Sincerely,
> [signed by Kent Singleton]
>
> THIS NOTICE WAS PERSONALLY SERVED TO THE PERSON NAMED ABOVE ON 20 AUGUST, 2022

(emphases in original).

After someone from an outfitting company called the Morgan County Sheriff's Office, a Morgan County Deputy responded. Referring to the content of the notice, the Deputy said to Mr. Singleton "Okay. I don't know the legalities and everything like that, but as long as you're not causing a disturbance or anything like that, just wait until further things. I know this has been an issue that people have been having for a long time. Obviously not something I'm going to solve today."

Mr. Singleton informed the Deputy of his belief that the individuals were using his driveway, which the Deputy identified in the incident report as "the area known as the take out ramp." The Deputy told Mr. Singleton that it was his intention to speak with everyone to see if any laws were being broken. The Deputy then spoke with someone from a river company that had received one of Mr. Singleton's trespass notices, and referring to the notice, commented "Don't pay any attention," and assured the individual that the County is responsible for criminal trespass citations, and that this notice did not come from the County.

The Deputy then reports that he witnessed Mr. Singleton and his associate step in front of a tubing company's van while moving on the paved roadway in order to make it stop and give the driver a trespass notice. The Deputy informed Mr. Singleton that he could not stop vehicles while they were driving, and that doing so was committing the crime of disorderly conduct. Mr. Singleton protested stating the outfitters were loading their tubes on his driveway, and the Deputy clarified that "while they're on the road, you two cannot approach moving vehicles and stop them."

The Deputy momentarily detained Mr. Singleton and his associate while he called a State Parks Ranger who said he was familiar with Mr. Singleton's situation and property dispute, and the Deputy inquired about Mr. Singleton's claim of ownership of the river bottom, and the pullout, noting that as he viewed the property lines on the County's parcel map, "the property line shows the river is in their land maps." The Deputy reports that the Ranger informed him that Mr. Singleton's claim was not true. Following this, in speaking with another tubing company representative about the trespass notice, the Deputy informed him to "don't worry about it," and in commenting on Mr. Singleton's claim that it was his private property, the Deputy stated "It's not. I just talked to Parks. We're fine." He then confirms that individuals who had been stopped by Mr. Singleton could have their car parked and may pull the raft out of the river.

Approximately a year after this incident, Mr. Singleton also alleges that the County or DNR placed "No Parking [-] Loading Zone" signs and other signage in the pullout area claimed by Mr. Singleton to be his driveway. Additionally, in another, separate incident on December 7, 2023, Mr. Singleton claims that the DNR effected a continued trespass on Mr. Singleton's property by parking a DNR truck on the takeout area and alleges that the DNR officer was on his property without permission.

Analysis

We start by noting that the Office of the Property Rights Ombudsman serves a very limited role in assisting to help resolve disputes between property owners and state and local government entities on the subjects of eminent domain, takings, and land use regulation. The Ombudsman's Office

does not serve as the arbiter of any general grievance of a property owner against a government entity but is instead limited to the statutory duties expressed in Utah Code, Title 13, Chapter 43, the Property Rights Ombudsman Act. Over the course of this request, Mr. Singleton has asked this Office to assist him with concerns on a spectrum of matters involving several different government entities, on issues ranging from official misconduct and open and public meetings, government records requests, executive agency rulemaking, law enforcement, and even criminal prosecution.

Our Office wishes to make clear that we cannot resolve all of Mr. Singleton's concerns he has about his interactions with various government entities pertaining to his property or incidents thereon. Nor do we take a position of, or intend to opine on, any legal matter falling outside of the specific issue that is the subject of this advisory opinion request.

Section 13-43-205 of the Property Rights Ombudsman Act provides a list of topics for which a written advisory opinion may be requested. A private property owner may request an opinion "to determine if a condemning entity . . . is in occupancy of the owner's property . . . for a public use authorized by law . . . without colorable legal or equitable authority," and whether continued occupancy of the property without the owner's consent "would constitute a taking of private property for a public use without just compensation." UTAH CODE § 13-43-205(2).

Inverse condemnation is the legal action a property owner may bring when the government has allegedly taken or damaged private property for public use without a formal exercise of the eminent domain power. *Pinder v. Duchesne Cty. Sheriff*, 2020 UT 68, ¶ 11 n.4 (internal quotations and citations omitted). A request for an Advisory Opinion under Subsection 205(2), then, asks for a determination that relates to a claim of inverse condemnation by way of physical occupation.

I. Government Authorization of Third-Party Access to Private Property Would Present an Actionable Takings Claim

When the government authorizes some form of physical occupation of private property for a public purpose, even if by a third party, this is known as a *per se* taking. In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the United States Supreme Court held that a New York law requiring landlords to allow cable television equipment to be installed on buildings amounted to a *per se* taking requiring compensation as the state of New York had authorized the permanent physical occupation of an owner's property to accomplish the objectives of the enacted law. Similarly, the Supreme Court recently held, in *Cedar Point Nursery v. Hassid*, that a California regulation that granted labor union representatives a "right to take access" to an agricultural employer's property to solicit support for unionization constituted a *per se* physical taking. 141 S. Ct. 2063 (2021). In *Cedar Point*, the Court noted that the regulation did not restrict the growers' use of their own property, but instead appropriated the owners' right to exclude third parties from their land, "one of the most treasured rights of property ownership." *Id*. at 2072 (internal quotations omitted). By granting access to third-party union organizers, even for a limited time, the regulation conferred a right to physically invade the growers' property and constituted a physical taking.

The Supreme Court noted in *Cedar Point* that its holding did not efface the law's distinction between a taking and trespass, stating, "[i]solated physical invasions, not undertaken pursuant to a granted right of access, are properly assessed as individual torts rather than appropriations of a

property right," however, "while a single act may not be enough, a continuance of them in sufficient number and for a sufficient time may prove the intent to take property, [as every] successive trespass adds to the force of the evidence." 141 S. Ct. 2063, at 2078 (cleaned up).

Consistent with the above, any allegations by Mr. Singleton that the Morgan County deputy or DNR officer had, themselves, trespassed on his property by their physical presence on a particular occasion, or refused a particular request to enforce a trespass of individuals from the property, do not likely invoke any actionable takings claim.[2] However, Mr. Singleton has also alleged that the County erected public signage in the area he claims to be his private property and driveway. These signs appear to instruct members of the public with regards to both acceptable use of the river and the takeout embankment for parking, loading, etc.

The *Loretto* court had reasoned that the "placement of a fixed structure on land or real property is an obvious fact [that] presents relatively few problems of proof [as to] whether a permanent physical occupation has occurred." 458 U.S. 419, at 437. Additionally, a taking may also occur under the "permanent physical occupation" rule where "individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed, even though no particular individual is permitted to station himself permanently upon the premises." *Nollan v. Cal. Coastal Com*, 483 U.S. 825, 832, 107 S. Ct. 3141, 3146 (1987).

As such, affixing public signs on private property would, itself, amount to a permanent physical occupation, and the content of signs could also amount to an authorized grant of access of the public's continuous use of the premises where the signs are situated.[3] But in this matter, however, while Mr. Singleton alleged in his advisory opinion request certain kinds of actions that, as analyzed above, could amount to a taking where private property is involved, here we have a threshold issue that ownership of the subject property being occupied is disputed as to whether it is private- or publicly owned. If the property in question is not determined to be private property, then no taking can be found.

II. Whereas Ownership of the Subject Property is Disputed, County Has Occupied the Property with Color of Authority, As It Asserts a Colorable Claim to Title

The purpose of a request for an Advisory Opinion under Subsection 205(2) is to determine whether private property has been taken by way of a government's physical occupation. The extent of such a determination is limited to whether such occupation is "without colorable legal or equitable

[2] The first element of any takings claim is that there is "some protectible interest in property," which is something more than a unilateral expectation of continued privileges. *Strawberry Elec. Serv. Dist. v. Spanish Fork City*, 918 P.2d 870, 878 (Utah 1996). Police enforcement services, generally, are viewed as a state benefit, but not an entitlement considered to be a protectible property interest. *See, e.g., Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768, 125 S. Ct. 2796, 2809 (2005) (due process clause does not require the state to protect the life, liberty, and property of its citizens against invasion by private actors). As such, isolated incidents of a refusal to enforce a trespass against members of the public on Mr. Singleton's property is not likely a taking, unless there is a continuation showing intent to take the property.

[3] In one case, a Federal Circuit court agreed with a jury's finding that a physical taking of a privately-owned vacant beachfront property had occurred through the continuous occupation by members of the general public where the city had encouraged public occupation through various actions, including placing beach access signs, clearing vegetation, creating nearby parking spaces, hosting events at the property, and refusing to remove trespassers. *Chmielewski v. City of St. Pete Beach*, 890 F.3d 942, 951 (11th Cir. 2018).

authority." UTAH CODE § 13-43-205(2)(b)(ii). In the context of law, the term "color" is defined as "[a]ppearance, guise, or semblance; esp., the appearance of a legal claim to a right, authority, or office." BLACK'S LAW DICTIONARY (10th ed. 2014), and "color of authority," specifically, is defined as "[t]he appearance or presumption of authority sanctioning a public officer's actions." *Id*. We believe, therefore, that when the alleged physical taking of property arises from a government entity's occupation of property that it claims to own, the purpose of an Advisory Opinion under Section 13-43-205(2) is to determine whether or not the condemning entity has an apparent legal basis for claiming ownership of, or a right to, the disputed property.

Here, the record shows that the County has not attempted to occupy, or authorize access to, any portion of property that it categorically understands and believes to be privately owned. Rather, all of the County's actions in relation to the disputed property were done on the assumption that it owns the property in question.

For example, the County claims it has always maintained the takeout as part of the public right of way, has formally designated the takeout as a public recreation area and taken recent action to improve public facilities and conditions on the property. The record reflects that the County has, at least, occupied the property for the duration that Mr. Singleton has owned the property, and since the time that Mr. Singleton acquired the property in 2019, the two parties have had several discussions about disputed ownership, in which the County has always maintained that the disputed portion was County-owned property.

During the timeframe in which the County was waiting for a survey of its property to be completed, Mr. Singleton erected a fence and gate across the disputed area. Despite that the County already held the belief that the takeout property was public property, the County notes that it "did not take any action regarding Mr. Singleton's trespass on the County right of way until the survey was completed." Once the survey was completed, the County sent a copy of the survey and a letter to Mr. Singleton stating "please review the attached final survey that Morgan County received this week and notice that you have trespassed on public property for about four months. The survey shows that you have placed your fencing, steps devices, and signs outside your own property." The letter continued by informing Mr. Singleton that he must remove all fencing and other obstructions by a certain date, and the County thereafter removed the items after the time indicated. The County also only placed signage on the disputed property after its survey was completed.

Moreover, as to the August 2022 incident, Mr. Singleton alleged in making his request for an advisory opinion that the County Deputy had, upon encouragement of a state parks officer, actively prevented him from issuing trespass notices on his property. This is not supported by our review of the facts. Rather, the Deputy's concerns were only to ensure that no public disturbance occurred, and he expressed that Mr. Singleton and public outfitter groups would have to otherwise resolve their civil dispute in some other setting. The Deputy made clear that he did not care about Mr. Singleton's efforts to hand out trespass notices on the takeout itself, but stated that he "drew the line" at stopping moving vehicles that were clearly on the road. The Deputy did inform outfitters that they could ignore Mr. Singleton's trespass notices, but only after he received feedback that Mr. Singleton's claims of ownership were not true.

As such, whereas the County's actions to occupy the property are made on the basis that the occupation is supported by a survey alleged to confirm that the disputed portion of property is part of the County's property, the County has demonstrated a "colorable claim or defense for [its] actions." UTAH CODE § 13-43-205(3)(a).

III. Private Landowner Has Not Met his Burden to Establish a Protectible Property Interest to Maintain a Takings Claim Where County Has a Colorable Claim

The first step in any takings claim is that the "claimant must demonstrate some protectable interest in property," which requires the claimant to "establish that they own the property at issue." *Harold Selman, Inc. v. Box Elder County*, 2011 UT 18, ¶ 23.

Possession of land is *prima facie* evidence of title and is sufficient evidence of title as against all persons but one who can show either a prior possession or a better title. *E. Canyon Land & Stock Co. v. Davis & Weber Ctys. Canal Co.*, 65 Utah 560, 568, 238 P. 280, 283 (Utah 1925). To succeed in quieting title to property against the adverse or hostile claim of another, "a party must prevail on the strength of his own claim," in which "all a party need do is prove prima facie that he has title which, if not overcome by the opposing party, is sufficient." *Gillmor v. Blue Ledge Corp.*, 2009 UT App 230, ¶ 14 (internal quotations and citation omitted).

Here, both parties can establish *prima facie* evidence of title as each party has possessed the property during the time provided in the record (since 2019). Additionally, each party supports their respective claims on their interpretations of different surveys of the property. The question is whether Mr. Singleton, as a claimant to quiet title for the purposes of a taking claim, has prevailed on the strength of his own claim or else has been overcome by a showing of prior possession or a better title by the County.

The informal nature of the advisory opinion, however, as an alternative dispute resolution tool, tends to limit the fact-finding capability of the Ombudsman to whatever information is independently observable or willingly provided by the parties, in which case the Ombudsman will provide a statement of facts to support its opinion according to the evidence it found most persuasive. Our Office cannot definitively resolve any apparent conflict between the 1965 UDOT survey relied on by Mr. Singleton and the more recent Entellus survey commissioned by the County, if there is any. Neither party has provided any additional testimony or evidence beyond their own assertions that could reliably establish their respective interpretation of their own survey as correct, or to discredit the other party's interpretation of the opposing survey.

However, we do note that Mr. Singleton has not alleged knowledge of any existing boundary markers from the 1965 survey, but appears to have only identified his claimed boundary by his own interpretation of the surveyed location of the boundary as facilitated by the County's parcel map overlayed with satellite imagery. In contrast, the County has had a recent survey where a surveyor marked the parties' alleged common boundary, and the County has acted in reliance on the placement of those markers; Mr. Singleton has not obtained his own survey to rebut the boundary markers to be elsewhere than as alleged by the County's Entellus survey. As such, the County's more recent survey appears to be relevant to the boundary dispute in particular by reflecting and locating the disputed portion of property, as it depicts the fence and gate installed

by Mr. Singleton upon his claim to the fenced off portion of property. Moreover, the County has at least also proffered evidence of "a prior possession" to the disputed property in alleging that the County and public have utilized the takeout for decades, whereas Mr. Singleton has not similarly proffered any reliable evidence of actual occupation of the disputed portion of property by any of his predecessors in interest.[4]

Based on the above, we conclude that the County's assertions are more persuasive and that it has presented the better evidence of title. As such, in the context of Mr. Singleton alleging a takings claim, Mr. Singleton has not prevailed against the County's claim to title to the disputed property, and he has therefore not met his burden in establishing a protectible property interest necessary to maintain that any taking of his private property has occurred.

Considering that both parties have, and continue, to actually possess the disputed portion of property, either party may avail themselves of the judicial process to formally quiet title to the property, wherein they may take advantage of the formal discovery and fact-finding process of district court proceedings that are otherwise unavailable in the informal setting of this advisory opinion. However, without a court having formally adjudicated and quieted title to Mr. Singleton, we cannot conclude that any actions taken by the County have amounted to a taking of private property, as the County has a colorable defense to its actions of occupying the disputed portion of property upon a colorable claim to title.

CONCLUSION

Because Morgan County has a colorable claim to title to the portion of property known as Taggart takeout as part of its right-of-way property, the County's physical occupation of that property is done under color of authority and does not amount to a taking of private property for public use without just compensation. Because Mr. Singleton has not prevailed in his claim to quiet title to the property as part of the parcel he owns, he has not therefore established any protectible property interest necessary to show that a taking of private property has occurred.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

[4] Mr. Singleton does allege that "all the property in question was my ancestors[']," but this does nothing to inform us of how the existing respective parcels of the parties as they exist have been occupied since the time of their current configuration. It may very well be that the entire area was at one time under private ownership, but at some later point in history, portions of property had been dedicated or conveyed to public ownership in the creation of S.R. 84, exit 108, and the Taggart lane frontage road to create the right-of-way parcel now owned by the County. Mr. Singleton has not provided any contrary evidence of actual occupation of the disputed portion of property prior to his own ownership of his parcel.

NOTE:

This is an advisory opinion as defined in Section 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, the author does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his or her interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman under Section 13-43-205(2) may justify an award of attorney fees against a condemning entity if the court finds that the condemning entity does not have a colorable claim or defense for the entity's actions and continued to occupy without payment of just compensation and in disregard of the advisory opinion.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees provisions, found in Sections 13-43-205 and 206 of the Utah Code, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.