

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - OHIO

Mentor v. Cleveland Electric Illuminating Company

Court of Appeals of Ohio, Eleventh District, Lake County - February 5, 2024 - N.E.3d - 2024 WL 414321 - 2024-Ohio-399

City brought action against electric utility seeking declaratory relief, alleging utility refused to relocate its facilities within utility easement as city requested, in order for city to complete improvement project on road where easement was located.

The Court of Common Pleas granted city's motion for summary judgment and denied utility's motion for summary judgment. Utility appealed.

The Court of Appeals held that:

- Utility was not entitled to just compensation under the doctrine of eminent domain;
- Utility easement fell within the statutory definition of a "public way"; and
- Statute providing that a legislative authority undertaking a public improvement shall pass an ordinance was inapplicable.

Electric utility was not entitled to just compensation from city under the doctrine of eminent domain for any costs or expenses involved in relocation of its facilities as a result of city's improvement for widening of a street, which was the subject of a dedication plat that granted a perpetual public right-of-way for highway and utilities to city, utility, and others, inasmuch as the street improvement constituted a valid exercise of a governmental function in furtherance of the public safety and welfare.

Utility easement that was 60-foot-wide and created by dedication plat constituted a public easement, rather than a private easement, and thus fell within statutory definition of a "public way"; nowhere in language of the plat was there an indication that individual grantees possessed rights distinguishable from other grantees, plat contained a dedication of the street to "public use" and, concomitantly, granted a permanent right-of-way easement to city, utility, and others, and plat contained the grant of a permanent right-of-way easement ten feet in width located on both sides of the street for underground and above-ground facilities, in accordance with city ordinance at the time of dedication.

Statute providing that a legislative authority undertaking a public improvement shall pass an ordinance was inapplicable in determining whether city could order electric utility to relocate its facilities at its own expense due to city's street-widening improvement; city's improvement was not being funded by special assessments, and city engineer was expressly authorized by municipal law to order relocation of utility's facilities, citing relevant state statutes and municipal ordinances in a letter to utility's representative.