

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT COMAIN - KANSAS

Neighbor v. Westar Energy, Inc.

Supreme Court of Kansas - May 8, 2015 - P.3d - 2015 WL 2145634

Landowner timely appealed eminent domain appraisers' award to District Court, and District Court later granted his motion to dismiss it without prejudice. About five months later the landowner appealed again, relying on saving statute. The District Court declared second appeal untimely and dismissed with prejudice. Landowner appealed.

The Supreme Court of Kansas held that:

- A party appealing appraisers' award is entitled to rely on saving statute, and
- Landowner was entitled to file his eminent domain appeal under saving statute within 6 months of initial dismissal without prejudice; disapproving *Elwood-Gladden Drainage District v. Ramsel*, 206 Kan. 75, 476 P.2d 696, and *City of Wellington v. Miller*, 200 Kan. 651, 438 P.2d 53.

As a "civil action," landowner's eminent domain appeal was governed by time limitation in code of civil procedure, and although provision of Eminent Domain Procedure Act provided a different time limitation for filing an eminent domain appeal, 30 days from the filing of the appraisers' report, neither it nor rest of the Act specifically provided a time limitation different from the code of civil procedure for saving a dismissed eminent domain appeal.