

# **Bond Case Briefs**

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## **UTILITIES - TEXAS**

### **Texas Transportation Commission v. City of Jersey Village**

**Court of Appeals of Texas, Houston (14th Dist.) - October 15, 2015 - S.W.3d - 2015 WL 6081972**

City brought action against transportation commission and its commissioner in his official capacity, seeking reimbursement for costs incurred in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project, claiming acquisition of replacement easements constituted compensable utility relocation costs.

The District Court denied defendants' plea to the jurisdiction, which was based on an assertion of sovereign immunity, and entered summary judgment in City's favor. Defendants appealed.

The Court of Appeals held that:

- City's claim did not qualify for exception to sovereign immunity as a challenge to validity of utilities relocation statute;
- Costs associated with obtaining replacement easements did not constitute compensable utility relocation costs; and
- City's claim did not qualify for ultra vires exception to sovereign immunity.

City's claim against transportation commission and its commissioner in his official capacity, seeking reimbursement for costs incurred in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project, did not qualify for exception to sovereign immunity as a challenge to validity of utilities relocation statute under which it sought reimbursement. Instead, it constituted an ultra vires claim contending that the commission, a state agency, and its commissioner, a state official, had refused to perform a ministerial act by refusing to pay the relocation costs as required by the statute.

Costs incurred by City in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project did not constitute compensable utility relocation costs under the utilities relocation statute. Although City had a compensable property interest in its easements, whether they be private or public, so as to entitle it to make a relocation of its utility facilities at the expense of the State. the replacement of those easements themselves was not a cost that was "properly attributable to the relocation," as contemplated by the statute.

Commissioner of transportation commission did not fail to perform a ministerial act in refusing to reimburse City for costs it incurred in obtaining replacement easements in which to place its utility lines that were relocated to accommodate Department of Transportation's highway construction project, and thus, City's claim against commissioner did not qualify for ultra vires exception to sovereign immunity. Although utilities relocation statute entitled City to reimbursement for costs associated with relocating its utility lines, the replacement of easements was not a cost that was "properly attributable to the relocation," as contemplated by the statute.

