

# **Bond Case Briefs**

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## **MUNICIPAL ORDINANCE - OHIO**

### **City of Cincinnati v. Fourth National Realty, L.L.C.**

**Supreme Court of Ohio - December 22, 2020 - N.E.3d - 2020 WL 7501943 - 2020 -Ohio-6802**

City brought action against the owner of a billboard sign, claiming that the sign was installed without obtaining the necessary permit and variance. Owner counterclaimed for a declaration that the city's outdoor advertising prohibitions violated its free speech and due process rights.

City moved for summary judgment, arguing that the trial court lacked subject-matter jurisdiction because the owner had not served the attorney general with notice of its constitutional claims at the inception of owner's case. While concluding that it had subject-matter jurisdiction, the Court of Common Pleas granted the motion. The parties appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. City sought discretionary review.

The Supreme Court held that:

- Service on attorney general for claims seeking declaration that a statute or ordinance was unconstitutional was not required at inception of a case, and
- Owner satisfied the service requirements for its constitutional claims.

Statute requiring service on the attorney general of a pleading seeking a declaratory judgment that a statute or municipal ordinance was unconstitutional did not deprive a trial court of subject-matter jurisdiction if such service did not occur at the inception of the action; the statute contained no language dictating the timing of service on the attorney general, and there was no language divesting the trial court of its subject-matter jurisdiction if parties did not complete service on the attorney general within a certain time.

Owner of a billboard sign satisfied the requirements of a statute requiring service on the attorney general of a pleading seeking a declaratory judgment that a statute or municipal ordinance was unconstitutional, in an action brought by a city, claiming that the sign was installed without obtaining the necessary permit and variance, in which the owner counterclaimed for a declaration that the city's outdoor advertising prohibitions violated its free speech and due process rights, where the owner asserted its challenge in a counterclaim and ultimately served the counterclaim on the attorney general, although such service did not occur until nearly two and a half years after the constitutional violations were first alleged.