

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **IMMUNITY - OHIO**

### **Eikenberry v. Municipality of New Lebanon**

**Court of Appeals of Ohio, Second District, Montgomery County - February 19, 2021 - N.E.3d - 2021 WL 650485 - 2021 -Ohio- 453**

Apartment building owner brought negligence action against city alleging that city's negligent failure to reinstate lateral sewer service connection from building to main sewer pipe during city's rehabilitation of sewer main caused sewage to backup into basement.

The Court of Common Pleas granted summary judgment for city. Owner appealed.

The Court of Appeals held that:

- City engaged in a governmental function for which it had immunity under Political Subdivision Tort Liability Act, and
- Statements in civil engineer's summary judgment affidavit about nature of project were legal conclusions that were subject to being stricken.

Negligence claim against city arising from city's alleged negligent failure to reinstate lateral sewer service connection from apartment building to sewer main in connection with city's efforts to rehabilitate its deteriorating sewer main involved a governmental function that was more than routine maintenance, and therefore city had immunity under Political Subdivision Tort Liability Act from claim arising from sewage backup into building's basement, where rehabilitation involved installation of cured-in-place pipe (CIPP) using special materials and specialized equipment, rehabilitation was essentially an upgrade to sewer system, rehabilitation involved considerable discretion by city, and project was funded through a state grant for capital improvement projects.

Statements in civil engineer's summary judgment affidavit that, in his professional opinion, city's efforts to rehabilitate the sewer main amounted to maintenance and upkeep of a sewer system, which would fall under category of proprietary function for which city would not have immunity under Political Subdivision Tort Liability Act, were legal conclusions that were subject to being stricken in negligence action against city arising from sewage backup in apartment building's basement due to city's alleged negligent failure to reinstate the lateral sewer service connection from building to sewer main; engineer's statements were in effect a notarized legal argument.