

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - OHIO**

### **Cleveland Electric Illuminating Co. v. Cleveland**

**Supreme Court of Ohio - December 21, 2021 - N.E.3d - 2021 WL 6016475 - 2021-Ohio-4463**

Electric utility brought action against city and city's electric distribution company asserting claims for declaratory judgment, tortious interference with contract/business relations, and unfair competition arising from city's purchase and resale of electricity to inhabitants located outside its geographic limits.

The Court of Common Pleas granted summary judgment for city. Utility appealed. The Court of Appeals reversed and remanded. Utility appealed and city cross-appealed.

The Supreme Court held that:

- Constitutional limits on a municipal utility's sale of surplus product precluded city from purchasing electricity solely to resell entire amount extraterritorially;
- Questions of material fact existed as to whether city obtained surplus electricity for sole purpose of selling it to a neighboring city; and
- Constitutional limits on sale of surplus product did not require city to purchase exact amount of electricity to satisfy current needs of territorial customers.

State constitutional provision allowing a municipality that operates a municipal utility to sell surplus product precludes a municipality from purchasing electricity solely for the purpose of reselling entire amount of purchased electricity to an entity outside municipality's geographic limits.

Genuine issues of material fact existed as to whether city, through its electric distribution company, obtained surplus electricity for sole purpose of selling it to a neighboring city, precluding summary judgment in competing electric utility's action asserting claims for declaratory judgment, tortious interference with contract/business relations, and unfair competition premised on city's alleged violation of state constitutional limits on a municipal utility's sale of surplus product.

State constitutional provision allowing a municipality that operates a municipal utility to sell surplus product does not require a municipality to buy the exact amount of electricity required by its inhabitants at any given time, and there may be other reasons justifying the purchase of electricity beyond a municipality's immediate needs.