
EMINENT DOMAIN - KENTUCKY

Commonwealth v. Louisville Gas and Electric Company

Court of Appeals of Kentucky - April 22, 2022 - S.W.3d - 2022 WL 1194180

Public utility initiated condemnation proceedings to take property upon which the Kentucky Heritage Land Conservation Fund Board owned a conservation easement for construction of underground natural gas pipeline.

The Circuit Court denied Board's motion to dismiss on issue of sovereign immunity. Board filed interlocutory appeal.

The Court of Appeals held that:

- Condemnation proceedings to take conservation easement impacted Commonwealth's property rights; and
- Board was competent to defend Commonwealth's interests by asserting defense of sovereign immunity; but
- As matter of first impression, statutory mandate that eminent domain powers are exercisable as if conservation easements do not exist constitutes waiver of sovereign immunity; and
- Doctrine of prior public use did not bar utility from taking property.

Statute prohibiting a conservation easement from operating to impair or restrict any right or power of eminent domain created by statute and mandating that such rights and powers shall be exercisable as if the conservation easement does not exist constitutes a waiver of sovereign immunity where a governmental interest in a conservation easement is asserted as a defense to condemnation proceedings initiated by a party with a statutory right of eminent domain.

The doctrine of prior public use, which provides that land devoted to one public use cannot be taken for another public use in the absence of express legislative authority for the taking, operates to resolve competing claims to property under a right of eminent domain.

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com