

Waterworks/Condemnation Proceedings: Arkansas Court of Appeals Addresses Applicable Statutory Authorities



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The Arkansas Court of Appeals (“ACA”) addressed in a February 2nd Opinion an issue arising out of a municipality’s use of statutory condemnation authorities to construct a treated-water transmission line.

The question involved the following two Arkansas statutes that provide certain eminent-domain authority:

- Ark. Code Ann. §§ 18-15-301 et seq. (“Subchapter 3”)
- Ark. Code Ann. §§ 18-15-601 et seq. (“Subchapter 6”)

The City of Fort Smith (“Fort Smith”) owns and operates a waterworks system that includes a water reservoir and treatment facility in Mountainburg, Arkansas. Fort Smith was engaged in the construction of a 48-inch treated-water transmission line to deliver water to city residents.

Fort Smith needed to acquire from certain landowners temporary rights of entry onto an access to evaluate such properties by surveying, soil testing, and appraising them. The properties were to be assessed as potential locations for the 48-inch water transmission line. Fort Smith utilized the eminent domain authority provided by Subchapter 3.

The landowners argued that the Applications/Petitions for Exercise of Power of Eminent Domain (“Applications”) should not have been filed under Subchapter 3. They further argued that even if Subchapter 3 provided such authority, Fort Smith had failed to follow the procedures mandated by such Subchapter.

The lower court held that:

A ‘waterworks’ condemnation must be brought under Ark. Code Ann. § 18-15-601 et seq. [Subchapter 6] .

..

An Order was entered dismissing Fort Smith’s application pursuant to Subchapter 3 finding that:

... Since this project is for water supply . . . any condemnation proceeding must be in accordance with [Subchapter 6].

The ACA cites rules applicable to statutory construction noting:

- Cardinal rule is to effectuate the legislative will
- Meaning of a statute should be construed just as it reads

- Words should be given their ordinary meaning in common language
- If the statutory language is plain and unambiguous, there is no need to resort to the rules of statutory construction

The ACA quotes the language of Subchapter 3 and references certain sections:

(a) The right and power of eminent domain is conferred upon municipal corporations to enter upon, take, and condemn private property for the construction of wharves, levees, parks, squares, market places, or other lawful purposes.

(b)(1) For waterworks systems, it shall be no objection to the exercise of power that the property to be condemned is located in a different county from the municipal corporation.

....

(e) As used in this section:

....

(4) "Or other lawful purposes" includes a waterworks system . . . in its entirety, or any integral part thereof or any extension, addition, betterment, or improvement to an existing waterworks system . . . owned or operated by a municipal corporation.

Subchapter 3 is stated to plainly provide that the Arkansas General Assembly delegated the power of eminent domain to municipal corporations for a waterwork system. It also contains a provision providing that eminent-domain power for a waterworks system may be exercised as to property located in a different county from the municipal corporation. Further, an Arkansas Supreme Court decision recognizing the right of municipalities to exercise the right of eminent domain in operation of waterworks and associated operations was indicated to have been granted in Subchapters 3, 4, and 6 of Title 18, Chapter 15 of the Arkansas Code.

The ACA finds that Subchapter 3 can be utilized and remands for further proceedings.

A copy of the Opinion can be downloaded [here](#).