

Can I Challenge the Authority of a Condemning Party in Ohio?

By Jeremy S. Young

I regularly present on eminent domain, and one of the most common questions that came up this past year during live or remote presentations had to do with necessity determinations made by a condemning authority.

Basically, people today want to know whether an individual or property owner in Ohio would have a realistic chance to appeal a condemning authority's determination of necessity or public use.

So, Can I challenge the authority of a “taking” party in Ohio?

The quick and honest answer? Challenging such authority in Ohio continues to be an almost-impossible task.

Basically, a property owner would have to prove that the condemning party has committed an [abuse of discretion](#) in determining necessity.

That is typically very difficult to prove because the standard for necessity is quite low. In [City of Dayton v. Keys, 21 Ohio Misc.](#), 105, 112, 252 N.E.2d 655, 659 (Ohio Com.Pl. 1969), the court noted that “Necessity...cannot be limited to an absolute physical necessity. It means reasonably convenient or useful to the public...”

As many of us know, the government authority (or the taking/regulating authority) will be able to articulate at least one rational basis for necessity that would prevent an abuse of discretion finding. That is enough to defeat a challenge to the taking itself, and relegates the property owner to advocating for a higher level of just compensation.