



Ohio Courts of Appeals affirm authority to conduct land surveys for natural gas pipeline project

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On September 12, 2016, the Ohio Ninth District Court of Appeals affirmed a 2015 trial court ruling that an interstate natural gas pipeline company has authority to access private property to conduct surveys required to construct a 250-mile natural gas pipeline ([read the ruling](#)).

The ruling was affirmed under Ohio Revised Code 1723.01 after a group of landowners argued that the natural gas pipeline company could access private property to conduct surveys only if it was “necessary” for an appropriation action. The Ninth District Court of Appeals ruled that Ohio Revised Code 1723.01 was clear and unambiguous in authorizing a natural gas pipeline the right to enter upon private property to conduct survey activities even before any appropriation action is initiated and without a showing of necessity.

Earlier this year, the Sixth District Court of Appeals reached a similar conclusion ([read the ruling](#)). The Sixth District Court of Appeals decision affirmed the pipeline company’s right to conduct surveys under both Ohio Revised Code 1723.01 and 163.03 after a group of landowners argued that the company needed a certificate from the Federal Energy Regulatory Commission (FERC) before it could be deemed a “private agency” authorized to enter properties to conduct surveys. The court held that because the company is authorized by R.C. 1723.01 to appropriate land, it is authorized to enter upon private property to conduct survey activities under Ohio law.

These are the first two appellate decisions in Ohio that have addressed this “survey access” issue, which has become prevalent given the urgent need to build pipeline infrastructure in Ohio to transfer shale oil and gas to markets.

Bricker & Eckler represented the plaintiff-pipeline company in both of these cases.

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