

## **Summary of SC91539, *St. Charles County, Missouri v. Laclede Gas Company***

Appeal from the St. Charles County circuit court, Judge Jon A. Cunningham

Argued and submitted May 11, 2011; opinion issued Aug. 30, 2011

**Attorneys:** Laclede was represented by Booker T. Shaw, Mary M. Bonacorsi, Paul D. Lawrence and Carl J. Pesce of Thompson Coburn LLP in St. Louis, (314) 552-6000; and the county was represented by Greg H. Dohrman of the St. Charles County counselor's office in St. Charles, (636) 949-7540. The Missouri Energy Development Association, which filed a brief as a friend of the Court, was represented by Paul A. Boudreau of Brydon, Swearengen & England PC in Jefferson City, (573) 635-7166; and the Missouri Municipal League, which also filed a brief as a friend of the Court, was represented by Daniel G. Vogel and Ryan A. Moehlman of Cunningham, Vogel & Rost PC in St. Louis, (314) 446-0800.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A utility company appeals a summary judgment requiring it to pay the cost of relocating its gas lines due to a county's plans to widen the road along which the gas lines run. In a unanimous decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri reverses the circuit court's judgment and remands (sends back) the case. Because subdivision plats established both a public roadway and then utility easements in which the gas lines are located, requiring the utility company to relocate its gas lines without compensation from the county would amount to an unconstitutional taking of private property.

**Facts:** Laclede Gas Company maintains gas lines along Pitman Hill Road in St. Charles County. Both the road and gas lines are located within areas established as public roads on recorded subdivision plats. Each of the plats first establishes public roads and then designates the roads as utility easements, stating that the purpose of the easements is for the installation and maintenance of gas lines. The county is planning to widen Pitman Hill Road, which will require Laclede to relocate its gas lines. Laclede declined to pay for the relocation. The county filed suit seeking a declaratory judgment requiring Laclede to bear the relocation cost. The circuit court entered summary judgment in the county's favor. Laclede appeals.

### **REVERSED AND REMANDED.**

**Court en banc holds:** Requiring Laclede to relocate its gas lines without compensation would amount to an unconstitutional taking of private property. The subdivision plats established utility easements allowing Laclede to install and maintain its gas lines in the public roadway. Although an easement does not vest title, it is a constitutionally recognized form of private property that, under the Takings Clause of the Fifth Amendment, only can be taken upon payment of just compensation. Accordingly, Laclede cannot be compelled to relocate its gas lines within the utility easement without compensation from the county. Requiring the county to reimburse Laclede the cost of relocating the gas lines does not limit the county's police authority over public roads because the county retains the authority to maintain, improve and regulate Pitman Hill Road. The doctrine of merger (in which one property interest is merged into another) does

not apply here because the county does not have unity of possession over both the public road's right-of-way and the gas lines located within the easement. Although the county may have a property interest in the Pitman Hill Road right-of-way pursuant to section 445.070, RSMo, the easements give Laclede a possessory interest over the gas lines within the easements. Further, the easements are a compensable property right irrespective of whether they were acquired prior to or contemporaneously with the creation of the public right-of-way. The order in which the public roadway and utility easements are mentioned in the subdivision plats does not create priorities of property interests. The subdivision plats established non-exclusive easements permitting both a public roadway and the provision of utility service to the subdivisions.