

9-1-1998

Gernand v. Illinois Commerce Comm'n and Consumers III. Water Co., 286 Ill. App. 3d 934 (Ill. App. Ct. 1997)

Melody Divine

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Melody Divine, Court Report, Gernand v. Illinois Commerce Comm'n and Consumers III. Water Co., 286 Ill. App. 3d 934 (Ill. App. Ct. 1997), 2 U. Denv. Water L. Rev. 143 (1998).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Gernand v. Illinois Commerce Comm'n and Consumers Ill. Water Co., 286 Ill. App. 3d 934 (Ill. App. Ct. 1997)

the scope of his employment, is liable for an injury resulting from the condition of fire protection or firefighting equipment or facilities." The record showed, however, that no problem ever existed with the hydrant itself, but only with the pipe.

The court then looked to the legislative intent of the Act. In analyzing the plain language of the statute, the court found immunization of the city for injuries resulting from the condition of the "firefighting equipment or facilities." The court stated it must give these words their ordinary and popularly understood meaning because the statute did not provide a definition. "Facility" referred to a structure and clearly did not apply in this instance. The court stated that the hydrant itself could be considered "equipment" but, the pipe, as part of the underground water system, could not. If immunity went further than this the court would be going against the clear congressional intent of the Tort Immunity Act.

Melinda Barton

Gernand v. Illinois Commerce Comm'n and Consumers Ill. Water Co., 286 Ill. App. 3d 934 (Ill. App. Ct. 1997) (holding that the Illinois Public Utilities Act authorized the Consumers Illinois Water Company to obtain a temporary easement over landowners' land for testing purposes).

In response to nitrate problems discovered by the United States Environmental Protection Agency, the Illinois Environmental Protection Agency required Consumers Illinois Water Company ("CIWC") to execute a letter of commitment saying it would lower the nitrate levels in the water it supplied to its customers to comply with federal primary drinking water standards. In order to comply the CIWC chose a groundwater blending option. CIWC filed a petition with the Illinois Commerce Commission (the "Commission") requesting a certificate of convenience and necessity under section 8-406 of the Illinois Public Utilities Act (the "Act") and orders under sections 8-503 and 8-509 which would authorize CIWC to obtain, by eminent domain, temporary easements for test-boring surveys, constructing test wells, extracting groundwater, and measuring the effect of groundwater removal on the water supply in a rural area of Vermilion County, Illinois.

The affected landowners were granted leave to intervene. The Commission entered an order allowing the petition, and denied landowners' application for a re-hearing. Landowners filed a timely petition for judicial review.

The landowners argued that they did not cite statutory authority before the Commission for a utility to drill for water because the trial court did not rely upon provisions of the Illinois Municipal Code. The necessary provisions of the Illinois Municipal Code permit a water company such as CIWC to relocate its source of supply to a point less than 20 miles beyond the corporate limits of the municipality served,

and authorizes the taking or damage to private property. The court concluded that regardless of whether the trial court relied upon the Illinois Municipal Code, it was applicable to this administrative review. The court would only overturn the Commission's decision if proven it was not supported by substantial evidence.

The landowners also argued that sections 8-406, 8-503, and 8-509 of the Act seem to refer only to takings of property for permanent facilities, and not to temporary easements for testing purposes. The court agreed that there was no express authority under the Act for the Commission to give a utility authority to condemn for temporary easements in order to perform tests. However, in interpreting the legislation, it gave deference to the Commission.

The court also relied on *Wilcox v. Illinois Commerce Comm'n* (also concerning the use of eminent domain) where the Illinois Supreme Court upheld the Commission's order issued under the "Gas Act." The supreme court permitted condemnation for underground gas storage even though the project was experimental.

Therefore, considering the deference given to the Commission, the construction the supreme court gave to the Gas Act, and the common sense of permitting condemnation to test the quality of a water source before making permanent facilities, the court held that the temporary testing wells, and the installation of the piezometers and other testing devices were within the meaning of sections 8-503 and 8-509 of the Act. The Commission properly denied landowners' motion to dismiss CIWC's petition for failure to set forth grounds for relief.

Melody Divine

Ryan v. Stonehedge, Inc., 680 N.E.2d 497 (Ill. App. Ct. 1997) (holding that a court is not required to find that a site is contaminated before it can conclude that the site contaminated groundwater in violation of the Environmental Protection Act).

The People of the State of Illinois filed a three-count complaint against the Defendant, Stonehedge, Inc., alleging that deicing salt stored on Stonehedge's property leaked into the area's groundwater supply, contaminating it. The trial court granted the Defendant's motion for summary judgment on all three counts. The Plaintiff appealed.

In fall 1988, Stonehedge began storing deicing salt on its property and continued to store salt until approximately Fall 1992. Stonehedge stored the deicing salt on the ground, without a concrete pad or cover. In 1992, tests by the McHenry County Department of Health revealed high chloride levels in groundwater wells adjacent to the site where Stonehedge, Inc. stored the deicing salt.

Count I of the Plaintiff's complaint alleged that Stonehedge's discharge of salt into the groundwater violated sections 12(a) and 12(d)