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State, landowners clash over pipeline siting law

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Attorneys for landowners along the proposed route of the Keystone XL pipeline squared off with the Nebraska Attorney General's office Friday on the constitutionality of a new pipeline law.

The state is seeking dismissal of a lawsuit filed in May against Gov. Dave Heineman, State Treasurer Don Stenberg and Mike Linder, director of the Department of Environmental Quality.

Lancaster County District Judge Stephanie Stacy listened to a sparring session between Assistant Attorney General Katie Spohn and Omaha attorney [David Domina](#) for about 45 minutes before announcing that she would rule at a later date.

At issue is a pipeline siting law passed in the 2012 legislative session. The law assigns Linder's department to work with pipeline builder TransCanada on an alternative route that avoids the Nebraska Sandhills as it connects Canadian oil deposits with refineries along the U.S. Gulf Coast.

If plaintiff landowners Randy Thompson of Martell, Susan Dunavan of McCool Junction and Susan Luebbe of Stuart prevail, court action could throw a wrench in TransCanada's plans to start construction on the northern portion of the pipeline next year.

If they lose their state challenge and the U.S. State Department issues a permit for the pipeline after the November election, their property could be subject to condemnation by TransCanada.

In the bigger picture, a project that has been under review and wrapped in controversy for four years could be shovel-ready early in 2013.

Spohn tried to convince Stacy that the three landowners had no rights to assert as taxpayers in the dispute, because no tax money is being spent. The Legislature requires TransCanada to reimburse the state for the cost of its review.

"Since there is no cost and no expenditure of public funds," Spohn said, "there are no tax dollars to protect."

She also asserted that it's too soon for Thompson, Dunavan and Luebbe to claim they've been harmed, because they don't know whether they will be on the final route.

“There’s been no route determined at this point,” Spohn said.

Spohn offered a 12-page brief in support of her oral arguments.

“In each instance,” she said in her written remarks, “plaintiffs’ claims fall short of meeting the jurisdictional prerequisites of this court and warrant dismissal.”

But [Domina](#) told Stacy that lawmakers’ passage of LB1161 doesn’t stand up to scrutiny for several reasons, including bypassing the Nebraska Public Service Commission as the siting authority for pipelines.

The Legislature can adopt pipeline-siting standards, [Domina](#) said, “but the Legislature cannot ignore the PSC.”

Neither can it transfer the duties for regulating common carriers assigned to the agency in the Nebraska Constitution to some other arm of government.

In written arguments, [Domina](#) called LB1161 “an arbitrary grant of a privilege without any reasonable distinction or substantial difference between those who receive the benefit and those who do not.”

The three landowners filed their lawsuit in May in both the Nebraska Supreme Court and Lancaster County District Court.

A week later, the Supreme Court said it would not be the first stop for legal review. That means the matter would have to work its way up on appeal.

[Domina](#) said after Friday’s hearing that a final ruling from Stacy may not come until next year.

On the motion to dismiss, “I would not be surprised if it was more than 30 days, but probably less than 60.”

The Legislature made a mistake, the landowner attorney said. “The Constitution requires that anything that involves common carriers be handled by the Public Service Commission.”

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