IN THE SUPREME COURT OF OHIO

CITY OF ELYRIA, OHIO; CITY OF NORTH RIDGEVILLE, OHIO; CITY OF AVON LAKE, OHIO; AND AMHERST TOWNSHIP, OHIO,	)	CASE NOS. 06-2293, 06-2389 and 06-2390 (Consolidated)
Appellants,	)	On Appeal from the Ohio Board of Tax Appeals
vs.	)	
RICHARD LEVIN, Tax Commissioner of Ohio, *et al.*,	)	Case Nos. 2003-T-1533, 2004-T-1166 and 2005-T-1301
Appellees.	)	

MERIT BRIEF OF APPELLANTS, CITY OF ELYRIA, OHIO; CITY OF NORTH RIDGEVILLE, OHIO; CITY OF AVON LAKE, OHIO; AND AMHERST TOWNSHIP, OHIO

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INTRODUCTION

On their surface, these appeals from three decisions of the Ohio Board of Tax Appeals arise out of the Lorain County Budget Commission's misallocation of the Undivided Local Government Fund ("LGF") and Undivided Local Government Revenue Assistance Fund ("RAF") monies distributed by the State of Ohio to Lorain County under an alternative formula adopted pursuant to the provisions of R.C. 5747.53 and 5747.63, respectively,[1] for the years 2003-2004, 2005 and 2006. But more fundamentally these appeals arise out of the resolution of a prior appeal to the Board of Tax Appeals, *City of Lorain v. Lorain Cty. Budget Comm.*, BTA No. 2002-T-1865 (the "Lorain Appeal"), that increased the City of Lorain's LGF and RAF allocations for 2003 and subsequent years and correspondingly decreased such allocations for every other participating subdivision in Lorain County.

As a result, the four Appellants herein (the City of Elyria, the City of North Ridgeville, the City of Avon Lake and Amherst Township) had their allocations of LGF and RAF for 2003 and subsequent years decreased by the resolution of the Lorain Appeal even though they were not parties to the Lorain Appeal.[2]

Appellants believed that Lorain's allocation of LGF and RAF for 2003 and subsequent years was unalterably fixed by the resolution of the Lorain Appeal. Thus, as a result of the Lorain Appeal, Lorain's combined LGF and RAF allocation was increased by $500,000 for 2003 and by 3.396% for 2004 and subsequent years. Lorain County bore half of the increase in Lorain's allocation, and the other participating subdivisions, including Appellants, were

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[1] These consolidated appeals do not involve the allocation of LGF and RAF monies using the statutory methods set forth in R.C. 5747.51 and R.C. 5747.62, respectively.

[2] Another participating subdivision, the Lorain County Metropolitan Park District ("MetroParks"), was also not named as a party to the Lorain Appeal and also had its RAF allocation decreased for 2003 and eliminated entirely for 2004 and subsequent years. MetroParks joined in the three appeals to the Board of Tax Appeals in BTA Case Nos. 2003-T-1533, 2004-T-1166 and 2005-T-1301, but has decided not to participate in these further appeals to this Court.

supposed to bear the other half – a $250,000 decrease in their aggregate allocation for 2003 and a 1.698% decrease in their respective allocations for 2004 and subsequent years.

However, R.C. 5747.55(D) specifies in pertinent part that "no change shall, in any amount, be made in the amount allocated to participating subdivisions [that] are not appellees" in an appeal before the Board of Tax Appeals. Therefore, even if Lorain's allocation must be increased because of the resolution of the Lorain Appeal to the Board, the effect of that increase – decreasing other subdivisions' 2003 and subsequent allocations proportionately – could not be imposed on Appellants because they were not parties to the Lorain Appeal.

As the Board of Tax Appeals itself held in an order entered in the Lorain Appeal on May 9, 2003:

> The purpose of R.C. 5747.55(D) is two-fold. It not only protects a subdivision, the allocation of which is not challenged, from undergoing the expense of litigation, but also ensures that ***its share of the Local Government Fund will not be endangered by such an appeal.***

(*City of Lorain v. Lorain Cty. Budget Comm.*, BTA No. 2002-T-1865, Order Denying Motion to Exclude (May 9, 2003) at 3, Appx. 162 (emphasis supplied).)

Therefore, relying on R.C. 5747.55(D), the four Appellants appealed the decrease in their respective allocations for 2003 and 2004 (BTA No. 2003-T-1533), for 2005 (BTA No. 2004-T-1166) and for 2006 (BTA No. 2005-T-1301) to the Board of Tax Appeals. Appellants sought to have their respective LGF and RAF shares restored to the allocations existing before the resolution of the Lorain Appeal and argued that, under the circumstances, Lorain County should bear the entire decrease in Appellants' LGF and RAF allocations occasioned by the increase to Lorain's allocation. Thus, the only participating subdivision that was over-allocated after the resolution of the Lorain Appeal, given Appellants' belief that Lorain's increased allocation was fixed by the Lorain Appeal, was Lorain County. Appellants accordingly identified Lorain

County as the only over-allocated participating subdivision in their Notices of Appeal to the Board of Tax Appeals, and specified the exact amounts by which they believed Lorain County was over-allocated.

However, without reaching the merits after three years of litigation before it, the Board of Tax Appeals dismissed all three appeals for want of jurisdiction because Appellants supposedly failed to identify which participating subdivisions they believed were over-allocated and failed to list the exact amounts of the alleged over-allocation. (*City of Elyria v. Lorain Cty. Budget Comm.*, BTA No. 2003-T-1533 (11-17-2006), Appx. 23-33; BTA No. 2004-T-1166 (12-1-2006), Appx. 237-42; BTA No. 2005-T-1301 (12-1-2006), Appx. 393-98.)

There is no justification for the Board's ruling that it lacked jurisdiction over these appeals, and this Court should reverse its decision. The interpretation adopted by the Board relies on its misreading of R.C. 5747.55(C)(3) and its misapplication of this Court's decision in *Cincinnati v. Hamilton Cty. Budget Comm.* (1979), 59 Ohio St.2d 43 (affirming the Board's conclusion that it lacked jurisdiction), and the Tenth District's decision in *Union Twp. v. Butler Cty. Budget Comm.* (10th Dist. 1995), 101 Ohio App.3d 212, 216, *review denied*, 72 Ohio St.3d 1551. In the former, Cincinnati had not complied with R.C. 5747.55(C)(3) because it failed to identify which subdivisions it believed received more and which subdivisions it believed received less than their proper share. In the latter case, Union Township knew that other townships had received over-allocations but chose not to name them in its appeal to the Board.

However, by stark contrast to both of these precedents, Appellants herein named every other participating subdivision in Lorain County as parties to their appeals, and specifically identified the only subdivision (Lorain County) they believed received more than its proper share. They also specified the exact amount they believed Lorain County to have been over-allocated. They did not name Lorain as being over-allocated because they did not believe it was

over-allocated, nor that they could even argue it was over-allocated, given the resolution of the Lorain Appeal before the Board just one month earlier. Neither *Cincinnati* nor *Union Twp.* involved a situation where the complaining subdivision did not identify another subdivision as being over-allocated because it had a good faith belief that the resolution of a prior case before the Board of Tax Appeals foreclosed that result.

The Board of Tax Appeals also erroneously confuses a decision on the merits of Appellants' appeal with jurisdictional grounds. The Board acknowledged that Appellants identified Lorain County as the only over-allocated subdivision, but ruled that they should have also identified Lorain as an over-allocated subdivision. The Board's rationale is that there can be only three possible outcomes of these appeals on their merits – (i) the allocation is found to be proper in light of the resolution of the Lorain Appeal and the Budget Commission's determination is affirmed, (ii) the allocation should have been made under the prior alternate formula before the resolution of the Lorain Appeal (in which case Lorain would be over-allocated), or (iii) neither formula applies and the allocation should be ordered under the statutory method. This ignores the fact that a new alternate formula, one that leaves the resolution of the Lorain Appeal in place but removes the burden from those subdivisions who were not parties to that appeal and places it on Lorain County, could have been a potential result of these appeals in the analogous manner as a new alternate formula was the result of the Lorain Appeal.

But the Board's dismissal of these appeals is based fundamentally on its conclusions regarding the merits of Appellants' claims and arguments, not on grounds that are truly jurisdictional. The Board's mistreatment of this jurisdictional issue must be corrected.

STATEMENT OF FACTS

A. Case No. 06-2293 (BTA No. 2003-T-1533) – 2003 and 2004 Allocation Years

The 2003 LGF and RAF Allocations Were Altered and a New Alternative Formula Was Adopted for 2004 Pursuant to the Settlement of the City of Lorain's Appeal to the Ohio Board of Tax Appeals in Which the Cities of Elyria, North Ridgeville and Avon Lake and Amherst Township Were Not Parties.

Prior to the 2004 allocation year, the Lorain County Budget Commission allocated Lorain County's share of the LGF and RAF according to an alternative formula first adopted in 1984 pursuant to R.C. 5747.53 and R.C. 5747.63, respectively (the "original formula"). The original formula utilized in Lorain County included specified factors that the Budget Commission considered and determined to be appropriate and reliable, and allocated the LGF and RAF among all of the political subdivisions of Lorain County[3] (i) 60% on the basis of relative population, (ii) 25% on the basis of relative assessed valuation, and (iii) 15% on the basis of the mileage of roads located in each subdivision.

The original formula continued in effect each year thereafter until 2003.[4] For the 2003 allocation year, the Budget Commission made its allocation of LGF and RAF monies in accordance with the original formula, but the City of Lorain appealed that determination contending that the original formula had not been properly adopted and was therefore invalid. *See City of Lorain v. Lorain Cty. Budget Comm.*, BTA No. 2002-T-1865 (the "Lorain Appeal").[5] Lorain named all but five of the subdivisions in Lorain County as parties-appellee in its appeal to

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[3] As defined by R.C. 5747.01 and 5747.62, the subdivisions of Lorain County include the county itself and the municipal corporations (cities and villages), townships and park districts located wholly or partially within Lorain County.

[4] Once the requisite number of governmental units in Lorain County approved the use of the respective alternative formulas for apportioning the LGF and RAF monies designated for the County, the formulas stayed in effect from year to year. Those political subdivisions that did not limit their approvals to a specific period of time were not required annually to reapprove the same formulas for use in subsequent years. *City of Reynoldsburg v. Licking County Budget Commission*, 104 Ohio St.3d 453, 2004-Ohio-6773, ¶¶ 27-28; *City of Lancaster v. Fairfield County Budget Commission* (1999), 86 Ohio St.3d 137, 142 (syllabus).

[5] In the proceedings below before the Board of Tax Appeals, the record in the Lorain Appeal was made part of the record in these cases for all purposes. *See* Interim Order entered on December 30, 2004 and Stip. No. 8 of the Stipulation of Facts filed with the Hearing Examiner on January 18, 2006.

the Ohio Board of Tax Appeals – it did not name in its notice of appeal (or otherwise include in the appeal) the four Appellants in these consolidated appeals.[6]

Eventually, the Lorain Appeal was settled under the following terms:

1. Lorain would receive a lump sum payment of $500,000 in addition to its 2003 allocation of LGF and RAF based on the original formula;
2. Half of the lump sum payment ($250,000) would be paid by Lorain County;
3. The other half of the lump sum would be "paid" by a $250,000 reduction of the 2003 LGF and RAF allocated among all of the other political subdivisions, including Elyria, North Ridgeville, Avon Lake and Amherst Township;
4. Lorain's allocated share of LGF and RAF for 2004 and every year thereafter would be increased by $640,000 annually;
5. In order to achieve the $640,000 annual increase for Lorain, the original formula would be changed beginning in 2004 to increase Lorain's percentage by 3.396% annually, and reduce the shares allocated for all other political subdivisions by 3.396% annually;
6. The 3.396% annual reduction for 2004 and subsequent years would be achieved by (i) eliminating MetroParks' allocation entirely, (ii) decreasing Lorain County's share by 1.698% annually, and (iii) allocating the remaining 1.698% annual decrease proportionately among the other political subdivisions of Lorain County, including Elyria, North Ridgeville, Avon Lake and Amherst Township; and
7. The Lorain Appeal would be dismissed when both the $500,000 for 2003 was paid and the new percentages were ratified by Lorain and a majority of the other

[6] Lorain also did not include the Lorain County Metropolitan Park District ("MetroParks") in its appeal of the 2003 LGF and RAF allocations. MetroParks joined in the appeals from the 2004, 2005 and 2006 allocations to the Board of Tax Appeals, but has chosen not to participate in the further appeals to this Court.

political subdivisions in Lorain County.

(*See* Exhibits 48 and 54, Appx. 166, 168.)

On July 21, 2003, Lorain City Council enacted Ordinance No. 133-03 to approve the resolution of the Lorain Appeal:

> Section 1. The City of Lorain hereby accepts the Lorain County Board of Commissioner's settlement agreement of a $500,000 cash payment to the City in 2003 to supplement its 2003 [LGF] and [RAF] distributions and a fixed percentage of the total amount of the [LGF] and [RAF] available for distribution to 16.82% in 2004 and be increased by a percentage amount equal to 3.396% for a total fixed allocation percent of 20.212% or a percentage which results in a $640,000 increase to the City's local government fund allocation. The resulting total 2004 distribution percentage will be the City's fixed percentage distribution for 2005 and thereafter.
>
> Section 2. The City of Lorain hereby approves [LGF] and [RAF] alternate formulae that include the terms set forth in Section 1 hereunder . . .
>
> * * *
>
> Section 5. The City's agreement to this new percentage shall expire at midnight, September 1, 2003, if not formally accepted by the required number of local governments.

(Exhibit 45, Appx. 180.)

The parties to the Lorain Appeal entered into a so-called "Master Agreement" in late July and early August 2003, settling the Lorain Appeal and providing a new alternate formula for distributing the LGF and RAF in Lorain County for 2004 and thereafter (the "new formula") consistent with the settlement terms set forth above. (Exhibit 47, Appx. 171-78.) The sole basis for the new formula was the settlement of the Lorain Appeal and "simple division." (Exhibit 120, Appx. 218.)[7]

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[7] Lorain enacted another ordinance, Ordinance No. 136-03, on August 19, 2003, also approving the new formula. (Exhibit 46, Appx. 181.) However, Ordinance No. 136-03 neither expressly nor impliedly repealed the September 1 deadline in Ordinance No. 133-06.

On August 28, 2003, the Lorain County Commissioners adopted Resolution No. 03-627 (Exhibit 63, Appx. 184; Exhibit 118, Appx. 186-95) that approved the new formula for the years 2004 through 2010, inclusive. However, at its next meeting, the Lorain County Commissioners were asked to reconsider and eliminate the time limits on its approval of the new formula. Accordingly, on September 4, 2003, the Commissioners adopted Resolution No. 03-657 (Exhibit 113, Appx. 196-98) rescinding Res. No. 03-627 and approving the new formula for allocating Lorain County's LGF and RAF for 2004 and subsequent years without a time limitation.

The Budget Commission adopted the new formula on September 24, 2003. Although the Budget Commission concluded that 19 political subdivisions in Lorain County had adopted the new formula,[8] in fact less than 17 political subdivisions had adopted the new formula before midnight on September 1, 2003. Specifically, (i) Lorain County did not approve the new formula until Resolution No. 03-657 (Appx. 198) was adopted on September 4, 2003, (ii) Elyria Township did not approve the new formula until September 3, 2003 (Exhibit LC 00349, Appx. 209), and (iii) none of the other approvals listed by the Budget Commission (except for South Amherst Village, Carlisle Township, Penfield Township and Wellington Township) were filed until after September 1, 2003 (*id.*). Therefore, Lorain's approval of the new formula expired at midnight on September 1, 2003 when the required number of political subdivisions had not approved the new formula by that date.

On September 26, 2003, in the wake of the foregoing resolution that resulted in the new formula, the Board of Tax Appeals dismissed the Lorain Appeal. (Exhibit 3, Appx. 215.)

As a result of the new formula implemented by the Lorain County Budget Commission in accordance with the settlement of the Lorain Appeal, the LGF and RAF funding for Appellants

[8] In Lorain County, resolutions affirmatively adopting the new formula enacted by at least seventeen political subdivisions were needed to satisfy the requirements of R.C. 5747.53 and 5747.63 that an alternate formula

in the aggregate was reduced by $296,757 for 2004, $166,171 for 2005, and $166,246 for 2006, for a total funding reduction of $629,174 among the four Appellants for the three years in question.

On October 23, 2003, Appellants filed their Notice of Appeal with the Board of Tax Appeals (Appx. 34-117). Unlike the Lorain Appeal, the Notice of Appeal named every other political subdivision in Lorain County, along with the Budget Commission and the Lorain County Commissioners, as parties-appellees (*id.*, 34-39).

Appellants' Notice of Appeal asserted that, in adopting the new formula, the Budget Commission abused its discretion and erred as a matter of law in at least four respects:

(a) the Budget Commission erred by adopting an unlawful new formula that reduced the respective allocable shares of Elyria, North Ridgeville, Avon Lake, Amherst Township and MetroParks in the LGF and RAF for 2003 and 2004 as the result of implementing the settlement of the Lorain Appeal in which none of those subdivisions were named parties, in violation of the provisions of R.C. 5747.55(D);

(b) the Budget Commission erred by allocating the 2004 LGF and RAF using an unlawful new formula that was not properly adopted by the Budget Commission and the necessary political subdivisions as required by R.C. 5747.53(B) and R.C. 5747.63(B);

(c) the Budget Commission abused its discretion by, *inter alia*, failing to include an allocation and distribution to a statutorily-eligible entity (MetroParks); and

(d) the Budget Commission erred by using a new formula that failed to include an

(continued...)

must be approved by a majority of the political subdivisions in the county excluding the municipal corporation with the largest population (Lorain).

allocation to MetroParks.

(Notice of Appeal, ¶ 4, Appx. 40-41.) Appellants' position in the Notice of Appeal was that the reductions in (i) the 2003 LGF and RAF allocations and (ii) the new formula for the 2004 LGF and RAF necessitated by the increased allocation to Lorain as a result of the settlement of the Lorain Appeal should be borne entirely by Lorain County as the party that entered into the settlement with Lorain, and not by Appellants who were not named as parties to the Lorain Appeal (*id.*, ¶ 5, Appx. 41).

Exhibit G attached to Appellants' Notice of Appeal set forth four columns of detailed information by specific dollar amounts. In Exhibit G-Part I (Appx. 94-95), Appellants provide the allocation of 2004 LGF as determined by the Budget Commission under the new formula (column 1) and the share allocations for 2004 LGF under the original formula but taking into account the settlement of the Lorain Appeal for Lorain's allocation (column 2).

Column 3 set forth the exact amount of the over-allocation of 2004 LGF for the only entity that Appellants believed had been over-allocated under the new formula – Lorain County. Column 4 set forth the exact amount of the under-allocation of 2004 LGF for the political subdivisions that Appellants believed had been under-allocated under the new formula – themselves and all other participating subdivisions in Lorain County except for the County itself (which had been over-allocated), the City of Lorain (with an allocation Appellants believed was unalterably fixed by the settlement of the Lorain Appeal such that it was neither over-allocated nor under-allocated), and MetroParks. (Appx. 94-95.)

Exhibit G-Part II provided exactly the same information in four columns for the 2004 RAF under the new formula, and provided the same detailed information for the specific amount Appellants believed Lorain County was over-allocated, and the specific amounts by which every participating subdivision (including MetroParks) was under-allocated. The lone exception (the

only subdivision whose allocation was neither over-allocated nor under-allocated) was again the City of Lorain because Appellants believed its allocation was determined by the settlement of the Lorain Appeal. (Appx. 96-97.)

Column 1 of Exhibit G fulfilled the requirements of R.C. 5747.55(C)(1) that a notice of appeal must specify "the exact amount in dollars allocated to each participating subdivision" and "the total amount in dollars allocated" for each fund. Column 2 of Exhibit G fulfilled the requirements of R.C. 5747.55(C)(2) by showing "[t]he amount in dollars which [each Appellant] believe[d] it should have received." Column 3 satisfied the requirements of R.C. 5747.55(C)(3) by naming each participating subdivision that Appellants "believe[d] received more than its proper share of the allocation, and the exact amount in dollars of such alleged over-allocation." There is no requirement that Appellants' belief must be accurate or must be ultimately accepted by the Board of Tax Appeals in order to satisfy the statutory jurisdictional requirements for the notice of appeal.

For the first two-and-a-half years during which this appeal remained pending before the Board of Tax Appeals, no contention was made that the Notice of Appeal, nor any of the subsequent notices of appeal in the later cases, was defective in any respect. The Board held an evidentiary hearing on January 18, 2006. Appellants filed a post-hearing brief on March 3, 2006. In its post-hearing brief filed in April 2006, Lorain argued for the first time that the Notice of Appeal was defective supposedly because Appellants failed to comply with R.C. 5747.55(C)(3) which requires that an entity appealing from the Budget Commission's allocation name those subdivisions the appellant believes to be over-allocated and to state the amount of the alleged over-allocation.

On November 17, 2006, the Board issued its decision and order dismissing the appeal for lack of jurisdiction on its mistaken belief that Appellants had "identified only those subdivisions

from which they seek to recover their share of the funds, not those subdivisions they believe to be overallocated." (*City of Elyria v. Lorain Cty. Budget Comm.*, BTA No. 2003-T-1533, Decision and Order (Nov. 17, 2006) at 10, Appx. 32.) The Board concluded that "[A]ppellants' failure to comply with the mandatory requirements of [R.C. 5747.55(C)(3)] deprives us of subject-matter jurisdiction." (*Id., citing Union Twp.* and *Cincinnati, supra.*)

B. Case No. 06-2389 (BTA No. 2004-T-1166) – 2005 Allocation Year

On December 1, 2006, without a motion filed or argument asserted by any party and without affording Appellants an opportunity to amend or revise their position in light of the Board's decision in BTA No. 2003-T-1533, the Board *sua sponte* dismissed this appeal for the same reasons and on the authority of its earlier decision:

> In accordance with *City of Elyria v. Lorain Cty. Budget Comm.* (Nov. 17, 2006), BTA No. 2003-T-1533, unreported, we conclude that the appellants have not properly invoked the subject-matter jurisdiction of this board. The Board of Tax Appeals therefore dismisses BTA No. 2004-T-1166.

(Appx. 242.)

C. Case No. 06-2390 (BTA No. 2005-T-1301) – 2006 Allocation Year

Similarly, on December 1, 2006, again without any party filing a motion or arguing that jurisdiction was lacking, and without affording Appellants an opportunity to amend or revise their position in light of the Board's decision in BTA No. 2003-T-1533, the Board *sua sponte* dismissed this appeal for the same reasons and on the authority of its earlier decision:

> In accordance with *City of Elyria v. Lorain Cty. Budget Comm.* (Nov. 17, 2006), BTA No. 2003-T-1533, unreported, we conclude that the appellants have not properly invoked the subject-matter jurisdiction of this board. The Board of Tax Appeals therefore dismisses BTA No. 2005-T-1301.

(Appx. 398.)

D. The 2007 Allocation Year

On September 19, 2006, Appellants filed another appeal for the 2007 allocation year with the Board of Tax Appeals, BTA No. 2006-T-1324. No action has yet been taken on that appeal and it is not part of the consolidated appeals in this case.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: The Ohio Board of Tax Appeals has proper subject-matter jurisdiction over these consolidated appeals pursuant to R.C. 5747.53 and 5747.63, and the procedural requirements of R.C. 5747.55(C)(3) do not apply to such appeals.

Since the new formula and the original formula are both alternative formulas within the meaning of R.C. 5747.53 (LGF) and 5747.63 (RAF), the Board had proper subject-matter jurisdiction over these consolidated appeals under those statutory provisions, a fact which it implicitly recognized in finding that each of these three consolidated appeals was brought under the relevant provisions of R.C. 5747.53 and 5747.63. (*City of Elyria v. Lorain Cty. Budget Comm.*, BTA No. 2003-T-1533, unreported, Order and Decision (Nov. 17, 2003) at 3, Appx. 25.)

The procedural requirements of R.C. 5747.55 apply by its express terms only to appeals from a statutory formula adopted under R.C. 5747.51 or R.C. 5747.62, but not to appeals from an alternative formula adopted under R.C. 5747.53 or R.C. 5747.63:

> § 5747.55. Appeal of action by county budget commission.
>
> The action of the county budget commission ***under sections 5747.51 and 5747.62 of the Revised Code*** may be appealed to the board of tax appeals in the manner and with the effect provided in section 5705.37 of the Revised Code, in accordance with the following rules . . . (emphasis supplied).

It is undisputed that the consolidated appeals herein are based upon the Budget Commission's allocations to Appellants under the new alternative formula and not under the statutory formula. Yet, the cases relied on by the Board to dismiss these appeals – *Cincinnati v. Hamilton Cty. Budget Comm.* (1979), 59 Ohio St.2d 43; *Union Twp. v. Butler Cty. Budget Comm.* (10th Dist. 1995), 101 Ohio App.3d 212; and *Painesville v. Lake Cty. Budget Comm.*

(1978), 56 Ohio St.2d 282 – all concerned appeals from allocations under the statutory formula, not allocations under an alternative formula. Thus, they are not applicable to these consolidated appeals and do not control whether the Board has subject matter jurisdiction of these appeals.

Appeals from allocations pursuant to an alternative formula under R.C. 5747.53 (LGF) and 5747.63 (RAF) are governed by the identical provisions of subsection (G)[9] of both sections:

> The actions of the county budget commission taken pursuant to this section are final and may not be appealed to the board of tax appeals except on the issues of abuse of discretion and failure to comply with the formula.

In these consolidated appeals, the Board of Tax Appeals ignored its own decision in *Village of Mogadore v. Portage Cty. Budget Comm.*, 1989 WL 82882 (Ohio Bd. Tax App.). (Appx. 137.) *Village of Mogadore* fully supports Appellants' contention that R.C. 5747.53 provides the process by which an appeal from the allocation of LGF under an alternative formula is governed. Furthermore, the Board held in *Village of Mogadore* that appeals from an alternative formula did not have to comply with the requirements of R.C. 5747.55(C)(3):

> The authority for the alternative method of apportioning the local government fund is provided in Revised Code section 5747.53. That section provides in pertinent part:
>
> > "(A) In lieu of the method of apportionment of the undivided local government fund of the county provided by section 5747.51 of the Revised Code, the county budget commission may provide for the apportionment of such fund under an alternative method or on a formula basis as authorized by this section.
> >
> > * * *
> >
> > (E)[10] The actions of the budget commission taken pursuant to this section are final and may

[9] Division (G) of each section was formerly labeled as division (E) when each statute was enacted.

[10] Now relabeled as division (G) after R.C. 5747.53 and 5747.63 were amended by Substitute House Bill No. 329 effective August 29, 2002.

> not be appealed to the board of tax appeals, except on the issues of abuse of discretion and failure to comply with the formula."
>
> This section clearly states that the alternative method is in lieu of the statutory formula provided in Section 5747.51. Therefore, an appellant does not have to follow the appellate procedure provided in Section 5747.55 where the appeal is taken from the adoption of an alternative method of apportionment. Section 5747.55 must be followed when the appeal is from the statutory formula of Section 5747.51.

Village of Mogadore, supra, at *2 (Appx. 139). The Board failed even to mention its *Village of Mogadore* ruling in its decisions below.

This Court has similarly construed the provisions of R.C. 5747.55:

> "According to R.C. 5747.55, subdivisions may appeal the actions of the Budget Commission taken under R.C. 5747.51, the statutory formula allocation, to the BTA . . . in the manner and with the effect provided in section 5705.37 of the Revised Code. . . ." On the other hand, subdivisions dissatisfied with alternative formula allocations may according to R.C. 5747.53(E)[11] appeal to the BTA only for abuse of discretion or failure to comply with the formula.

Shawnee Twp. v. Allen Cty. Budget Comm. (1991), 58 Ohio St.3d 14, 15. Moreover, this understanding of R.C. 5747.55 was adopted and approved by the 10th District in *Union Twp. v. Butler Cty. Budget Comm.* (10th Dist. 1995), 101 Ohio App.3d 212, 216, a case on which the Board heavily relied in disregarding the limitations on the procedural requirements of R.C. 5747.55(C)(3) and dismissing these appeals for want of jurisdiction.

The Board's errors leading to the dismissals of these appeals violate well-settled principles of Ohio statutory law and should be reversed by this Court. Based on the foregoing alternative analysis, the Ohio Board of Tax Appeals has proper subject-matter jurisdiction over these consolidated appeals.

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[11] Now relabeled as division (G); *see* note 10 *supra*.

Proposition of Law No. 2: The Ohio Board of Tax Appeals has proper subject-matter jurisdiction over these consolidated appeals pursuant to R.C. 5705.37, and the procedural requirements of R.C. 5747.55(C)(3) do not apply to them.

In the alternative, R.C. 5705.37 confers jurisdiction on the Ohio Board of Tax Appeals to hear any appeal from the actions of a county budget commission with which a local subdivision is dissatisfied. Necessarily included within such jurisdiction is any appeal from funding changes affecting the subdivision's LGF and RAF allocations that arise out of the resolution of a prior appeal before the Board of Tax Appeals in which the subdivision was not named a party-appellee.

The Board properly found that Appellants brought these consolidated appeals under, *inter alia*, the relevant provisions of R.C. 5705.37. (*City of Elyria v. Lorain Cty. Budget Comm.* (Nov. 17, 2006), BTA No. 2003-T-1533, unreported, at 3, Appx. 25.) R.C. 5705.37 provides, in pertinent part:

> [A]ny subdivision that is dissatisfied with any action of the county budget commission may . . . appeal to the board of tax appeals . . . The board of tax appeals in a de novo proceeding shall forthwith consider the matter presented to the commission, and may modify any action of the commission. . . . The finding of the board of tax appeals shall be substituted for the findings of the commission. . . .

This Court has confirmed that the Board of Tax Appeals has the authority under R.C. 5705.37 to modify any action of a county budget commission and to substitute its findings for those of the budget commission. *See, e.g., City of Canton v. Stark Cty. Budget Comm.* (1988), 40 Ohio St.3d 243, 244, *citing City of Cleveland v. Cuyahoga Cty. Budget Comm.* (1976), 47 Ohio St.2d 27, 30, and *Brooklyn v. Cuyahoga Cty. Budget Comm.* (1965), 2 Ohio St.2d 181. In *Cleveland*, this Court stated:

> The Board has the duty to determine the allocation of the local government fund de novo not simply to affirm or reverse the decision of the county budget commission.

City of Cleveland, supra, 47 Ohio St.2d at 30, *citing Brooklyn, supra.*

R.C. 5705.37 does not mention or require compliance with R.C. 5747.55; on the other hand, R.C. 5747.55 does require compliance with R.C. 5705.37. R.C. 5705.37 is a broad general appeal provision authorizing the appeal of any action of a county budget commission including but not limited to actions taken pursuant to R.C. 5747.53 and R.C. 5747.63. On the other hand, R.C. 5747.55 is a limited appeal provision pertaining to appeals taken only under R.C. 5747.51 and R.C. 5747.62.

This Court has addressed the right of appeal for subdivisions that have incurred an unfair hardship as a result of the actions of a county budget commission. In *Pal v. Hamilton Cty. Budget Comm.* (1996), 74 Ohio St.3d 196, the question was whether all necessary parties had been named in the appeal. In canvassing the various appeal mechanisms and statutes regarding an appeal from the LGF or RAF allocation made by a county budget commission, this Court held "that necessary parties under R.C. 5705.37 were ***those subdivisions within the county which are affected by the appeal***." *Pal, supra,* 74 Ohio St.3d at 199 (emphasis supplied), *citing Berea City School Dist. v. Cuyahoga Cty. Budget Comm.* (1979), 60 Ohio St.2d 50. The Court went on to state:

> By this decision, R.C. 5747.55, 5705.37 and 5705.351 are now uniform in requiring that all tax-levying entities whose funding is affected by the outcome of an appeal under these sections of the Revised Code are necessary parties to an appeal to the BTA and must be named as appellees in the notice of appeal.

Pal, supra, at 199. In *Pal* and *Berea,* the Court relied on the legislative policy animating R.C. 5747.55 to hold that R.C. 5705.37 likewise requires all parties who are affected by an appeal to be named as appellees.

Thus, a participating subdivision that is subjected to unfair hardship as the result of the LGF or RAF allocation by a county budget commission has an independent right of appeal under R.C. 5705.37. *See City of Canton, supra.* In these consolidated appeals, Appellants named all

subdivisions within Lorain County as Appellees and therefore all necessary parties were included. However, as shown above, Appellants were not named as appellees in the Lorain Appeal that resulted in Appellants' funding under LGF and RAF being reduced for the years 2003-2006, inclusive. As a consequence of these events, Appellants suffered an unfair hardship to their interests in maintaining their share of LGF and RAF allocations.

Therefore, under this Court's holdings in *Berea*, *Canton* and *Pal*, Appellants have the right conferred by R.C. 5705.37 to bring these consolidated appeals and the Board of Tax Appeals has valid subject-matter jurisdiction over them. The Board also has the authority to modify the actions of the Lorain County Budget Commission that resulted in unfair hardship to Appellants in order to avoid or rectify that result.

Proposition of Law No. 3: In resolving questions regarding the effectiveness of a notice of appeal to the Ohio Board of Tax Appeals, the Court should not be disposed to deny review by a hyper-technical reading of the notice.

As the Board of Tax Appeals acknowledged, "despite the considerable amount of litigation involved in this appeal, the city of Lorain did not raise the issue of subject-matter jurisdiction until the filing of its post-hearing merit brief." (*City of Elyria v. Lorain Cty. Budget Comm.*, BTA No. 2003-T-1533 (Nov. 17, 2006), unreported, at 3 n.1, Appx. 25.) It also conceded that the basis for its decision dismissing these consolidated appeals was "technical" and placed a "considerable burden" on any appealing subdivision to comply with the "high jurisdictional hurdles" imposed by R.C. 5747.55.

In the further alternative, even if the "high jurisdictional hurdles" of R.C. 5747.55(C)(3) apply to appeals such as these from a county budget commission's allocation of LGF and RAF based on an alternative formula (*see* Proposition of Law No. 2 *infra*), the Court has recognized in other contexts that "[d]ecisions on the merits should not be avoided on the basis of mere technicalities; pleading is not 'a game of skill in which one misstep by counsel may be decisive

to the outcome . . . [rather] the purpose of pleading is to facilitate a proper decision on the merits.'" *Baker v. McKnight* (1983), 4 Ohio St.3d 125, 447 N.E.2d 104, 107, *quoting Hardesty v. Cabotage* (1982), 1 Ohio St.3d 114, which in turn quoted from *Conley v. Gibson*, 355 U.S. 41, 48 (1957), and *Forman v. Davis*, 371 U.S. 178, 181-82 (1962). As the Court noted, the "spirit of the Civil Rules is the resolution of cases upon their merits, not upon pleading deficiencies." *Baker v. McKnight, supra, quoting Hardesty v. Cabotage, supra*, which in turn quoted from *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 175.

In cases specifically addressing the requirements for a notice of appeal to the Ohio Board of Tax Appeals, this Court has not upheld hyper-technical readings of notices of appeal so as to deny parties the right to appeal or to obtain a ruling on the merits of their appeals. In *Buckeye International, Inc. v. Limbach* (1992), 64 Ohio St.3d 264, 267, the Court noted that a party's "[f]ailure to include errors in the notice of appeal to the BTA results in the BTA's lack of jurisdiction over the errors and the court's inability to review such errors." However, the Court concluded that Buckeye had raised alternate arguments when it "specified the . . . action that it questioned, cited the statute under which it objected, and asserted the treatment it believed the [tax] commissioner should have applied to the income." *Id.* at 268, *citing Goodyear Tire & Rubber Co. v. Limbach* (1991), 61 Ohio St.3d 381, 383. As the Court held in *Buckeye*:

> In resolving questions regarding the effectiveness of a notice of appeal, we are not disposed to deny review by a hyper-technical reading of the notice.

Id. Similarly, in *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, the Court relied on the rationale of its decisions in *Buckeye* and *Goodyear* in holding that MCI's notice of appeal to the Board of Tax Appeals was sufficient where it "set forth the action it contested, stated that this action denied [MCI] equal protection of the laws, and asserted the statute under which [MCI] should have been taxed." *Id.* at 197.

Appellants' Notice of Appeal to the Board of Tax Appeals complied with all applicable requirements of R.C. 5747.55 (in the event such requirements apply to these appeals). In these cases, the Notices of Appeal:

(1) expressly stated the action of the Budget Commission from which the subdivisions appealed, the date of their receipt of the official notice of the Budget Commission's action, the errors and abuses of discretion the subdivisions believed the Budget Commission had made, and the specific relief they sought (as required by R.C. 5747.55(A));

(2) attached copies of the respective resolutions authorizing them to file the appeal, the notices of the action of the Budget Commission appealed from, and their respective budget requests filed with the Budget Commission (as required by R.C. 5747.55(B));

(3) also attached exhibits (Exhibit G to each Notice, Appx. 94-97, 287-90, 458-61, respectively) showing the amounts allocated to each participating subdivision from each fund, the amounts which each Appellant believed it should have received from each fund, and the name of each participating subdivision that Appellants believed received more than its proper share of the allocation together with the amount of such alleged over-allocation (as required by R.C. 5747.55(C)).

R.C. 5747.55(C)(3) does not mandate as a matter of jurisdiction that Appellants' Notice of Appeal must "correctly" identify each participating subdivisions that received more than its proper share of the allocation, nor that the Board must ultimately agree on the merits with Appellants' identification. Rather, the jurisdictional requirement is satisfied by Appellants' identification of each subdivision that they "believe" received more than its proper allocation, along with the amount of such alleged over-allocation. Appellants complied with each of these

procedural requirements.

Appellants attached to each Notice of Appeal a comprehensive statement (Exhibit G) that identified the only participating subdivision Appellants believed to have been over-allocated – Lorain County – and the exact amount they believed to have been over-allocated for each fund and year in question. Appellants did not name Lorain as being over-allocated because, in light of the resolution of the Lorain Appeal less than a month previously, they did not believe the increased allocation to Lorain was open for relitigation. Even assuming (without conceding) that Appellants' belief in that regard was ultimately in error, that is a merits conclusion rather than one that should operate as a jurisdictional bar at the notice of appeal stage. The Board erred in concluding it lacked jurisdiction over these three appeals and in dismissing on the sole basis of supposedly defective notices of appeal because Appellants' notices of appeal in fact included all of the information required by R.C. 5747.55(C)(3). The information specified by R.C. 5747.55(C)(3) was included in each Notice of Appeal; the statute does not require any further merits analysis of such information in order to confer valid jurisdiction.

Therefore, even if the "high jurisdictional hurdles" of R.C. 5747.55(C)(3) apply to these appeals from the actions of the Lorain County Budget Commission adopting a new alternative formula under R.C. 5747.53 and R.C. 5747.63 and allocating the LGF and RAF for 2003 and subsequent years based on it, Appellants' Notices of Appeal fully complied with those procedural requirements by identifying Lorain County as the only subdivision Appellants believed to have received more than its proper allocation under the circumstances of the prior resolution of the Lorain Appeal before the Board, and specifying the exact amount of the alleged over-allocation. The Board erred in dismissing these appeals on a hyper-technical basis.

CONCLUSION

For these reasons, the jurisdictional decision of the Ohio Board of Tax Appeals should be reversed and these consolidated appeals should be remanded for a determination on the merits.

DATED: February 13, 2007

Respectfully submitted,

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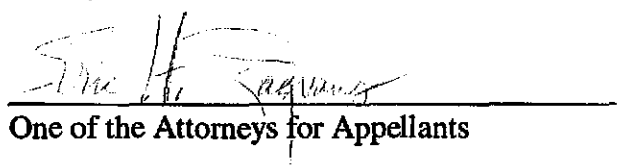
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of Appellants City of Elyria, Ohio, City of North Ridgeville, Ohio, City of Avon Lake, Ohio, and Amherst Township, Ohio, together with the Appendix in four separate volumes, were served by ordinary U.S. mail, postage prepaid, upon John K. McManus, Senior Deputy Attorney General, OFFICE OF THE ATTORNEY GENERAL OF OHIO, State Office Tower, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215-3428, counsel for Appellees, Richard Levin, Tax Commissioner of Ohio, *et al.*; John T. Sunderland, THOMPSON HINE LLP, 10 West Broad Street, Suite 700, Columbus, Ohio 43215-3435, counsel for Appellees, Lorain County and Lorain County Commissioners; Gerald A. Innes, Assistant Prosecuting Attorney for Lorain County, OFFICE OF THE LORAIN COUNTY PROSECUTOR, Lorain County Courthouse, Elyria, Ohio 44035, counsel for Appellee, Lorain County Budget Commission; and John R. Varanese, 85 East Gay Street, Suite 1000, Columbus, Ohio 43215-3118, counsel for Appellee, City of Lorain, Ohio, this 5th day of February, 2007.



One of the Attorneys for Appellants