

IN THE SUPREME COURT OF OHIO

CITY OF ELYRIA, <i>et al.</i> ,)	CASE NOS. 06-2293, 06-2389 and 06-2390
)	
Appellants,)	On Appeal from the
)	Ohio Board of Tax Appeals
vs.)	
)	
LORAIN COUNTY BUDGET)	
COMMISSION, <i>et al.</i> ,)	
)	
Appellees.)	

MERIT BRIEF OF APPELLEE
SHEFFIELD VILLAGE, OHIO

Luke F. McConville
Luke@healthlaw.com
WALDHEGER · COYNE
A Legal Professional Association
1991 Crocker Rd., Suite 550
Westlake, Ohio 44145
Phone (440) 835-0600
Fax: (440) 835-1511
COUNSEL FOR SHEFFIELD VILLAGE, OHIO

FILED
MAR 15 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND OF THE FACTS.....1

ARGUMENT3

APPELLEE’S PROPOSITION OF LAW NO. 1:3

THE APPELLANTS FAILED TO FOLLOW THE PROCEDURAL REQUIREMENTS OF O.R.C. SECTION 5747.55, TO THE PREJUDICE OF ALL PARTIES WHO WERE EITHER OVER-ALLOCATED OR WOULD RECEIVE LESSER AMOUNTS OF LGF AND RAF UNDER A STATUTORY METHOD OF APPORTIONMENT, AND SUCH PROCEDURAL FAILURES ARE FATAL TO SUBJECT MATTER JURISDICTION.

CONCLUSION.....6

CERTIFICATE OF SERVICE7

TABLE OF AUTHORITIES

Cases

<i>City of Lorain v. Lorain Cty. Budget Comm.</i> , BTA No. 2002-T-1865	1
<i>Shawnee Township v. Allen County Budget Commission</i> (1991), 58 Ohio St.3d 14, 567 N.E2d 1007	4
<i>Cincinnati v. Budget Comm. Of Hamilton Cty.</i> (1979), 59 Ohio St.2d 43, at 45-46	5

Statutes

R.C. 5747.55	1,5
R.C. 5747.53	3
R.C. 5747.51	4

STATEMENT OF THE CASE AND OF THE FACTS

Appellee Sheffield Village (the "Village") adopts *in toto* the "Statement of the Case and of the Facts" set forth in the Merit Brief of Appellees Lorain County, Lorain County Board of County Commissioners, City of Lorain and Lorain County Budget Commission.

In addition, the Village notes that Appellants, in their Merit Brief, have repeatedly misunderstood or mischaracterized the consequences of the settlement of *City of Lorain v. Lorain Cty. Budget Comm.*, BTA No. 2002-T-1865 (the "Lorain Appeal") (See Appellants' Merit Brief, Appx. Vol. II, page 141). The Lorain Appeal was the appeal by the City of Lorain of the Lorain County Budget Commission's allocation of Lorain County Undivided Local Government Fund ("LGF") and Undivided Local Government Revenue Assistance Fund ("RAF") amounts pursuant to the alternative formula that had been in place since 1984 (the "1984 Formula"). The City of Lorain claimed that it was under-allocated under the 1984 Formula.

The settlement of the Lorain Appeal entailed the adoption in 2003 of a new alternative formula to govern allocations for tax year 2004 and thereafter (the "2004 Formula"). (See Appellants' Merit Brief, Appx. II, pages 171 *et seq.*) The 2004 Formula was adopted in conformance with all applicable statutory requirements and is lawful.

The 2004 Formula governs allocations to *all* political subdivisions in Lorain County from the Lorain County LGF and RAF.¹ Appellants have acknowledged in their Merit Brief that the resolution of the Lorain Appeal (i.e., the adoption of the 2004 Formula) foreclosed the possibility of any modification to the allocation for the City of Lorain of LGF and RAF amounts. (See

¹ The Appellants have improperly cited Ohio Revised Code Section 5747.55(D) for the proposition that their allocation of amounts under the LGF and RAF cannot be reduced since they were not named as appellees under the Lorain Appeal. The Lorain Appeal was dismissed by the City of Lorain. Appellants' LGF and RAF allocations were reduced by the adoption of the 2004 Formula, not as a result of the formal disposition of the Lorain Appeal. Therefore, R.C. Section 5747.55(D) is inapposite.

Appellants' Merit Brief at pages 4, 10-11). This contention by Appellants would seem to support the position that the 2004 Formula was properly adopted. However, the Appellants apparently do not agree that the 2004 Formula was properly adopted. Instead, Appellants argue that the 2004 Formula was "unlawful." In their Notice of Appeal to the Board of Tax Appeals, the Appellants stated:

[the Budget Commission] erred by adopting an unlawful alternative method of apportionment of the LGF and the RAF which reduces the respective allocable shares of Elyria, North Ridgeville, Avon Lake, Amherst Twp. and MetroParks of such funds resulting from and implementing of settlement of a tax appeal proceeding before this Board brought by Appellee, the City of Lorain ("Lorain"), Case No. 02-T-1865, in which Elyria, North Ridgeville, Avon Lake, Amherst Twp. and MetroParks were not named parties, in violation of the provisions of Section 5747.55(D) of the Ohio Revised Code and Ohio law. (See Appellants' Merit Brief, Appx. Vol. I, pages 40-41).

In fact, the Appellants have argued before the Board of Tax Appeals (the "BTA") that the 2004 Formula is unlawful. Appellants nevertheless simultaneously argue that settlement of the Lorain Appeal (i.e., the adoption of the 2004 Formula) precludes a challenge to the allocation of LGF and RAF amounts for the City of Lorain (but does not preclude a challenge to the allocation for any other Lorain County political subdivision). Because such a challenge is precluded, the Appellants' argument continues, they could not include the City of Lorain as an over-allocated subdivision in their Notice of Appeal to the BTA.

Thus, the Appellants apparently argue that the 2004 Formula is unlawful, except when it is not. Under the Appellants' tortured logic as presented in their Merit Brief, the adoption of the 2004 Formula both (i) precludes a challenge to the allocation of LGF and RAF amounts to the City of Lorain and (ii) is unlawful and therefore inapplicable. This position is absurd.

ARGUMENT

The Village adopts *in toto* the Argument and Propositions of Law Nos. 1 through 4 as set forth in the Merit Brief of Appellees Lorain County, Lorain County Board of County Commissioners, City of Lorain and Lorain County Budget Commission, as if the same were re-written herein in their entirety. The Village also adopts *in toto* the Appendix to the Merit Brief of Appellees Lorain County, Lorain County Board of County Commissioners, City of Lorain and Lorain County Budget Commission, as if the same were re-written herein in its entirety.

APPELLEES' PROPOSITION OF LAW NO. 1:

THE APPELLANTS FAILED TO FOLLOW THE PROCEDURAL REQUIREMENTS OF O.R.C. SECTION 5747.55, TO THE PREJUDICE OF ALL PARTIES WHO WERE EITHER OVER-ALLOCATED OR WOULD RECEIVE LESSER AMOUNTS OF LGF AND RAF UNDER A STATUTORY METHOD OF APPORTIONMENT, AND SUCH PROCEDURAL FAILURES ARE FATAL TO SUBJECT MATTER JURISDICTION.

Appellants cannot argue both that the 2004 Formula is unlawful *and* that as a result of the adoption of the 2004 Formula, the County is the only political subdivision that has been over-allocated. Nor does it seem plausible that the BTA would adopt appellants' position that the 2004 Formula applies to Lorain but not to the remaining political subdivisions in Lorain County.

The 2004 Formula was adopted in accordance with the requirements of O.R.C. Section 5747.53. The board of county commissioners, the legislative authority of the city, located wholly or partially within the county, with the greatest population (here, Lorain), and a majority of the boards of township trustees and legislative authorities of municipal corporations all formally adopted the 2004 Formula as required by statute.

Moreover, the 2004 Formula was drafted by counsel for the townships and legislative authorities (other than appellants and Lorain). (See Appellants' Merit Brief, Appx. II, page 218). The 2004 Formula protects the interests of all political subdivisions in Lorain County. Less is

matter jurisdiction in an appeal of a budget commission's allocation of LGF and RAF. *Cincinnati v. Budget Comm. of Hamilton Cty.* (1979), 59 Ohio St.2d 43, at 45-46.²

This case is about appellants' failure to satisfy the strict and exacting jurisdictional requirements of R.C. 5747.55(C)(3). Rather than comply with the Revised Code, appellants intentionally chose not to include with their notices of appeal the fact that they believed Lorain was over-allocated under the 2004 Formula because they wanted to recoup those over-allocated amounts from the County, not Lorain. Nor have appellants ever illustrated the consequences of reverting to an allocation under the statutory method. Imposition of the statutory method could create hardship for multiple political subdivisions within Lorain County. It was this type of uncertainty and hardship that the vast majority of political subdivisions in Lorain County sought to avoid through adoption of the 2004 Formula.

Appellants failed to meet the jurisdictional prerequisites of Section 5747.55. This was not a technical failure, but a deliberate, tactical, and ultimately fatal, choice that has prejudiced all the Appellees, and that could have potentially dire budgetary consequences for multiple political subdivisions in Lorain County.

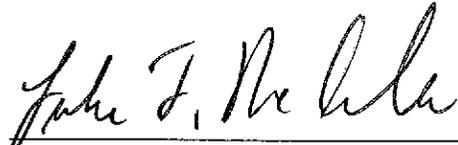
REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

² Alternatively, if the BTA were to enforce the 1984 Formula per its terms, this could also lead to uncertainty and hardship. The Budget Commission formerly made allocations under the 1984 Formula using percentages derived from allocation factors as they existed in 1983. The Budget Commission never updated those allocation factors (i.e., population, assessed value, road miles) to reflect changes in any succeeding allocation year. Accordingly, if there is a proper allocation under the 1984 Formula using current population, assessed valuation and road miles, a drastic change in allocation will also occur. In their notices of appeal, the appellants did not name the over-allocated subdivisions under a proper allocation of the 1984 Formula, either.

CONCLUSION

For the foregoing reasons, Appellee Sheffield Village submits that the BTA's decision dismissing Appellants' 2004, 2005, and 2006 appeals was reasonable and lawful and should be affirmed.

Respectfully submitted,



LUKE F. McCONVILLE
WALDHEGER · COYNE
A Legal Professional Association
1991 Crocker Rd., Suite 550
Westlake, Ohio 44145
Phone (440) 835-0600
Fax: (440) 835-1511

CERTIFICATE OF SERVICE

I hereby certify that copy of this Merit Brief of Appellee Sheffield Village, Ohio, was sent by ordinary U.S. mail, postage pre-paid, this 15th day of March 2007, to all parties as herein listed:

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

Eleanor Gnant, Clerk of Council
Penfield Township
42760 Peck Wadsworth Road
Wellington, Ohio 44090

James R. McConnell, Clerk of Council
Pittsfield Township
17567 Hallauer Road
Wellington, Ohio 44090

Laura Brady, Clerk of Council/Clerk
Rochester Township
52185 Griggs Road
Wellington, Ohio 44090

Patricia Echko, Clerk
Sheffield Township
5166 Clinton Avenue
Lorain, Ohio 44055

Bernie Nirode, Clerk of Council/Clerk
Wellington Township
44627 State Route 18
Wellington, Ohio 44090

Lawrence Rush, Finance Director
City of Vermilion
5511 Liberty Avenue
Vermilion, Ohio 44089

Kenneth S. Stumphauzer
Law Director, City of Amherst
5455 Detroit Road
Sheffield Village, Ohio 44054

Eric R. Severs, Solicitor
City of Oberlin
5 South Main Street
Oberlin, Ohio 44075

Linda S. Bales, Clerk
Village of Grafton
960 Main Street
Grafton, Ohio 44044

Dennis Will, Prosecuting Attorney
Gerald A. Innes, Assistant
Prosecuting Attorney
Counsel for Lorain County Budget
Commission
Lorain County Justice Center
225 Court Street, 3rd floor
Elyria, Ohio 44035

John A. Gasior, Law Director
City of Avon
36815 Detroit Road
Avon, Ohio 44011

John T. Sunderland
John B. Kopf
Thompson Hine LLP
Lorain County Commissioners
10 West Broad Street, Suite 700
Columbus, Ohio 43215-3435

James E. Hoenig, Treasurer
City of Sheffield Lake
609 Harris Road
Sheffield Lake, Ohio 44054

John R. Varanese
Counsel for City of Lorain
85 East Gay Street, Suite 1000
Columbus, Ohio 43215-3118

Albert Buck, Jr., Clerk
Kipton Village
42 Court
Kipton, Ohio 44049

Marsha Funk, Clerk
Brownhelm Township
200 Harbor Court
Vermilion, Ohio 44089-2589

Mary Rose Dangelo, Clerk
Grafton Township
18789 Avon Wooster Road
Grafton, Ohio 44044

Francis J. Knoble, Clerk
Henrietta Township
10413 Vermilion Road
Oberlin, Ohio 44074

Barbara Baker, Clerk
Elyria Township
41835 Earlene Court
Elyria, Ohio 44035

Rita K. Ruot, Clerk Treasurer
Village of LaGrange
P.O. Box 597
LaGrange, Ohio 44050

Janice J. Szmania, Clerk
Village of South Amherst
103 West Main St.
South Amherst, Ohio 44011

Mary Lou Berger, Clerk
Columbia Township
27753 Ann Road
Columbia Station, Ohio 44028

Roberta M. Dove, Clerk
LaGrange Township
237 Forest Street
LaGrange, Ohio 44050

Karen J. Webb, Clerk
Village of Wellington
159 East Street
Wellington, Ohio 44090

Robert Hamilton, Finance Director
City of Avon
36080 Chester Road
Avon, Ohio 44011

Cheryl Parrish, Clerk
Camden Township
15374 Baird Road
Oberlin, Ohio 44074

Marilyn McClellan, Clerk
Brighton Township
19996 Baird Road
Wellington, Ohio 44090

Elaine R. King, Clerk
New Russia Township
44143 Russia Road
Elyria, Ohio 44035

Margaret Harris, Clerk
Huntington Township
26309 State Route 58
Wellington, Ohio 44090

Linda Spitzer, Clerk
Eaton Township
12335 Grafton Road
Grafton, Ohio 44044

David C. Kukucka, Auditor
City of Amherst
480 Park Avenue
Amherst, Ohio 44001

James Cordes
Lorain County, Ohio
226 Middle Avenue
Elyria, Ohio 44035

Denise Gfell, Treasurer
Lorain County MetroParks
12882 Diagonal Road
LaGrange, Ohio 44050

Salvatore Talarico, Auditor
City of Oberlin
69 South Main Street
Oberlin, Ohio 44074

Laura Brady, Clerk
Village of Rochester
52185 Griggs Road
Wellington, Ohio 44090

Barbara VanMeter, Clerk
Carlisle Township
40835 Banks Road
LaGrange, Ohio 44050

Mark R. Stewart, Lorain County Auditor
Member and Secretary
Lorain County Budget Commission
226 Middle Avenue
Elyria, Ohio 44035

Ron L. Mantini, Auditor
City of Lorain
200 West Erie Avenue, 6th floor
Lorain, Ohio 44052-1647

Board of County Commissioners
Of Lorain County, Ohio
225 Middle Avenue
Elyria, Ohio 44035

Paul D. Eklund, Counsel for
Lorain County MetroParks
Davis & Young
1700 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115

Terry S. Shilling, Law Director
Michelle D. Nedwick, Asst. Law Director
131 Court Street, Room 201
Elyria, Ohio 44035

Eric Zagrans
474 Overbrook Road
Elyria, Ohio 44035

Geoffrey R. Smith
124 Middle Avenue, Suite 800
Elyria, Ohio 44035



LUKE F. McCONVILLE
WALDHEGER · COYNE
A Legal Professional Association
1991 Crocker Rd., Suite 550
Westlake, Ohio 44145
Phone (440) 835-0600
Fax: (440) 835-1511