

IN THE SUPREME COURT OF OHIO

07 - 0960

CITY OF CLYDE, ET.AL.,)
Appellants,)
vs.)
OHIOANS FOR CONCEALED)
CARRY, INC., ET.AL.)
Appellees.)
)
)

On Appeal from the
Sandusky County Court of
Appeals, Sixth Appellate
District

Court of Appeals Case
Nos.: S-06-039
S-06-040

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT, CITY OF CLYDE

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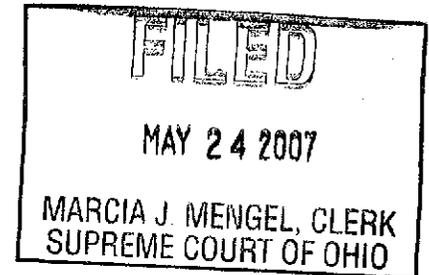


TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.	1
STATEMENT OF THE CASE AND FACT	4
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW	6
<u>Proposition of Law No. I:</u> Revised Code Section 2923.126 is not a general law.	6
CONCLUSION	10
PROOF OF SERVICE	11
APPENDIX	<u>Appx. Page</u>
Decision of the Sandusky County Court of Appeals (April 13, 2007).	1
Decision of Sandusky County Court of Common Pleas (September 8, 2006).	7

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC
OR GREAT GENERAL INTEREST AND INVOLVES A
SUBSTANTIAL CONSTITUTIONAL QUESTION.

The critical issues in this case include the following:

- (1) whether Ohio Revised Code (ORC) 2923.126 (A), Ohio's Conceal Carry Act, is a general law which applies uniformly throughout Ohio;
- (2) whether ORC 9.68 invalidates local ordinances which restrict places where properly permitted concealed weapon carriers may possess concealed firearms; and
- (3) whether Ohio Constitution, Article XVIII, Section 3 permits enactment of local ordinances similar Clyde City Ordinance No. 2004-41.

On September 1, 2006, the Court of Appeals of Lucas County, Sixth Appellate District decided City of Toledo v. Bruce Beatty, 6th Dist. No. L-05-1319, 2006-Ohio-4638. Beatty involved a Toledo ordinance, which similar to Clyde Ordinance 2004-41 restricted the carrying of concealed weapons in city parks. The Sixth District found in Beatty that "*R.C. 2923.126 (A) does not have uniform application to all citizens of the state, and as such is not a general law*". Beatty supra at Paragraph 54. That decision also held that no general laws exist in this state which conflicts with Toledo rule restricting the carrying of concealed weapons in city parks.

When deciding the instant cause the court of appeals avoided the issue involving general laws and relied heavily on R.C. 9.68. Further, the court of appeals did not specifically reverse Beatty, although the implication and effect of a reversal lies in its decision.

The court of appeals reliance on R.C. 9.68 in the instant case certainly avoids the real issue: *Is R.C. 2923.126 a GENERAL LAW?* The Ohio Constitution allows municipalities to “*exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws”.* Ohio Constitution XVIII, Section 3 (Emphasis added.). In the instant cause the court of appeals never changed the holding in Beatty that R.C. 2923.16 is not a general law, but merely voided Clyde Ordinance 2004-41 based on R.C. 9.68.

The intent of R.C. 9.68 is to establish that uniform laws are necessary concerning all aspects of gun ownership, use and carry. R.C. 9.68 states in part that “[e]xcept as specifically provided in the Ohio Constitution, state law a person, without further license, permission, restriction, may own, possess, . . . or keep any firearm”. As previously stated the Ohio Constitution allows municipalities to enforce police ordinances not in conflict with general laws it follows that if the state law which addresses gun possession is not a general law, a city may further restrict where a properly licensed concealed carrier may possess a firearm. This is merely an exercise of the local police power granted by Ohio Constitution XVIII, Section 3.

The decision of the court of appeals, either intentionally or otherwise, fails to address this important issue. If allowed to stand, the court of appeals decision violates separation of power in state government and taken to its extreme repeals Ohio Constitution XVIII, Section 3. HOW? The answer is simple.

According to the courts of appeals, as long as the General Assembly expresses its desire on a specific issue that uniform laws are necessary, whether by placing its intention in the statute itself or in a separate statute, aka R.C. 9.68, the courts no longer need address whether a particular statute is a general law.

In the instant case the court of appeals did not go beyond the General Assembly's self-serving declaration contained in R.C. 9.68. Instead, the analysis ceases and the real constitutional issue was never addressed; namely, is R.C. 2923.126 a general law.

This case goes to the heart of the constitutional grant of local self-government provided by Ohio Constitution XVIII, Section 3. Certainly, the General Assembly may pass general laws on any number of issues. When done properly, municipalities constitutionally conferred powers of local self-government may be curtailed. However, when not narrowly tailored to meet the test for general laws, no amount of proselytization on the part of the General Assembly can transform an otherwise non-general law into one with uniform application throughout the State of Ohio.

In order to preserve the municipal right to local self-government, to assure uniform and general application of R.C. 2923.126, and to determine the extent to which the General Assembly must go when adopting "*general laws*", this Court must grant jurisdiction to hear this case and fully review the erroneous decision of the court of appeals.

STATEMENT OF THE CASE AND FACTS

This case began with the adoption of Ordinance No. 2004-41 by the Clyde City Council on May 18, 2004. Prior thereto, on April 8, 2004, House Bill 12 became effective. The bill enacted relevant R.C. Sections 2923.125 to 2923.1213 (Conceal/Carry Law).

Ohio Conceal/Carry Law concerns procedures for obtaining license to legally carry a concealed firearm. R.C. 2923.126 (B) (1) to (10) lists specific places in Ohio where valid license holders are prohibited from carrying a concealed firearm. R.C. 2923.126 (C) (1) to (3) lists various entities, including private employers, the owner of private land or premises and a private person or entity leasing property from the state or the United States, which may further restrict the places where concealed firearms may be carried.

Clyde Ordinance No. 2004-41 became effective on June 18, 2004, thirty days after its passage. On August 12, 2004, Appellees filed a Complaint for Declaratory and Injunctive Relief. The Complaint basically alleged that Ordinance No. 2004-41 was unconstitutional because it is an exercise of municipal police power contrary to Ohio Constitution XVIII, Section 3.

The City of Clyde filed its Answer to Complaint for Declaratory Relief and Counterclaim for Declaratory Judgment on November 16, 2004. The Attorney General of Ohio was granted leave to intervene in this case.

All parties filed Motion for Summary Judgment. The City of Clyde argues that R.C. 2923.126 was not a general law and therefore Ordinance No. 2004-41 was not in conflict and should be upheld as a valid exercise of police power.

The trial court issued its decision on September 7, 2006 granting the City of Clyde Motion for Summary Judgment and denying the Motion for Summary Judgment of Ohioans for Concealed Carry, Inc. and the State Attorney General. The trial court relied on the Sixth District decision in City of Toledo v. Bruce Beatty, 6th Dist. No. L-05-1319, 2006-Ohio-4638.

Appellees herein perfected an appeal to the Sandusky County Court of Appeals. The court of appeals reversed the Common Pleas Court and found that:

Since, pursuant to R.C. 9.68, no law other than the United States Constitution, Ohio Constitution, state law, or federal law, may interfere with the right to "keep and bear arms", local ordinances which further restrict places in which a person may legally carry a concealed weapon are invalid.

The court of appeals erred in ruling that R.C. 9.68 is controlling in this case since as the court of appeals held in Beatty, R.C. 2923.126 is not a general law. The court of appeals also erred by failing to consider that because R.C. 2923.126 is not a general law, the Ohio Constitution permits municipalities to enact police ordinances.

In support of its position on these issues, the appellant presents the following argument.

AGRUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Revised Code Section 2923.126 is not a general law.

Article XVIII, Section 3 of the Ohio Constitution states as follows:

Municipalities shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

In Ohio, cities may exercise “*full and complete political power in all matters of local self-government*”. Perrysburg v. Ridgway (1923), 108 Ohio St. 245,255.

At issue is whether Clyde Ordinance No. 2004-41 is superceded by R.C. 2923.126. In Canton v. State, (2002), 95 Ohio St. 149, this Honorable Court established a tri-partite test to determine if a local ordinance is preempted by a state statute. “*A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is general law*”. Canton, supra at 151.

With respect to the three part Canton test, as it applies to R.C. 2923.126, the Sixth District Court of Appeals held in City of Toledo v. Bruce Beatty, 6th Dist. No. L-05-1319, 2006-Ohio-4638. as follows:

R.C. 2923.126 (A) states that a properly license person “may carry a concealed hand gun anywhere in this state ‘except where prohibited by R.C. 2923.126 (B) or (C)’.” Municipally owned parks are not one of the listed locations where a licensee is prohibited from carrying a concealed handgun. Accordingly we find Rule 18 is in conflict with state law. Beatty, supra at paragraph 36.

It is fair to say that under its Beatty analysis the court of appeals would also find Clyde Ordinance No. 2004-41 in conflict with state law. The court of appeals in Beatty next concluded:

In this case, Rule 18 does not concern the improvement, protection or preservation of the City's park lands. Rather, Rule 18 is an attempt to prohibit the carrying of weapons, concealed or not, within or adjacent to its city parks, and imposes a penalty for violation of said rule. The Ohio Supreme Court has held that a statutory scheme prohibiting the carrying of concealed weapons is an exercise of police power . . . Based on the foregoing, we find that Rule 18, is an exercise of police power. Beatty, supra at paragraph 45.

Again, this appellant concedes for purposes of this argument that the court of appeals would have also found Clyde Ordinance No. 2004-41 is an exercise of police powers.

As to part three of the Canton test, the court of appeals wrote in Beatty:

Finally, we must determine whether R.C. 2923.126, with which Rule 18 is in conflict, is a general law. In order to constitute a general law for purposes of the home-rule analysis, a statute must satisfy each of the following: "(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than to purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulation, and (4) prescribe a rule of conduct upon citizens generally." Canton v. State, (2002), 95 Ohio St. 149, 2002-Ohio-2005, at syllabus.

Because R.C. 2923.126 fails to meet all of these conditions, we hold that it is not a general law and, as such, must yield to the city's park regulation regarding the carrying of weapons in or adjacent to the city's park. . Beatty, supra at paragraph 46.

The court of appeals in Beatty found that as a whole the concealed carry law met the criteria 1, 2, and 3 from the Canton case. The court of appeals however found that “R.C. 2923.126 does not operate uniformly throughout the state”. Beatty, supra at paragraph 47. The court of appeals stated that the “exception created by R.C. 2923.126 (C) is remarkably similar to the exception the Ohio Supreme Court was faced in Canton supra”.

It was the court of appeals position in Beatty that the exception found in R.C. 2923.16 (C) “creates a situation whereby the permission granted by R.C. 2923.126 (A) can be taken away arbitrarily, unreasonably or capriciously by any private employer or land owner/occupier”. Beatty, supra at paragraph 54. See also Garcia v. Siffrin Residential Assn. (1980), 63 Ohio St. 2d 259, 272. The Beatty court felt that the R.C. 2923.126 (C) exceptions create non-uniform application regarding where licensed concealed carriers may legally possess concealed handguns. Appellant agrees.

The court of appeals in Beatty found that R.C. 2923.126 (C) prohibits that which R.C. 2923.126 (A) allows. This, they said, “is inconsistent with the statute stated purpose”. The court of appeals found in Beatty that “R.C. 2923.126(A) does not have uniform application to all citizens of the state, and as such is not a general law”. Beatty supra at paragraph 54.

Appellant has gone to length to cite the court of appeals holding in Beatty, mainly because in the instant case the court of appeals ignored its prior holding. It is appellant's position that the Beatty decision is correct. The court of appeals in its decision in the case at bar does not say "we were wrong in Beatty". In fact in its decision the court of appeals confirms that in Beatty it "found that 'Ohio's Concealed Carry Laws were not *general laws*'". See attached Decisional Judgment Entry at page 3. Then in its decision the court of appeals forgets about Beatty and bases its reversal of the judgment of the Sandusky County Court of Common Pleas on R.C. 9.68.

R.C. 9.68 went into effect on March 14, 2007, some six months after the Beatty decision. House Bill 347, which created R.C. 9.68, also included amendments to Ohio Concealed Carry Law, including R.C. 2923.126. However, of primary importance in this case is the fact that H.B. 347 made no changes to R.C. 2923.126 which would in anyway alter the court of appeals Beatty decision.

R.C. 2923.126 is virtually identical in substance after H.B. 347 as it was prior thereto and at the time of Beatty was decided. Because there was no substantive change to R.C. 2923.1126 (A) by virtue of the passage of H.B. 347 R.C. 2923.126 (A), as held by the court of appeals in Beatty, is still not a general law. As such, R.C. 9.68 does not prevent municipalities from enacting ordinances or rules like those in Beatty and the instant cause.

R.C. 9.68 says that “*except as specifically provided by the United States Constitution, Ohio Constitution VXX, a person, without further license, permission, restriction, delay, or process, may own, possess or keep any firearm.*” The Ohio Constitution specifically grants home-rule power to municipalities in Article XVIII, Section 3. Nothing has changed in the substance of R.C. 2923.126 (A), (B), or (C) post Beatty or post H.B. 347. According to the Sixth District Court of Appeals no conflict exists between any general law in the State of Ohio and a municipal rule prohibiting the carrying of concealed handguns in parks that holding still stands.

It is appellants firm belief that even with the passage of H.B. 347, R..C. 2923.126 is not a general law. Because it is not a general law, not even the adoption of R.C. 9.68 can prohibit municipalities like Clyde from enacting ordinances similar to Ordinance No. 2004-41.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant request this court accept jurisdiction in the case so that the important issues presented will be reviewed on the merits.

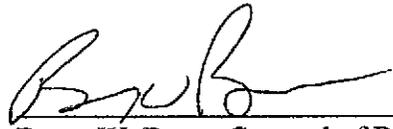
Respectfully submitted,



Barry W. Bova, Counsel of Record
COUNSEL FOR APPELLANT,
CITY OF CLYDE

Certification of Service

I hereby certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellees, Daniel T. Ellis (0038555) (Counsel of Record) AUSPACH, MEEKS and ELLENBERGER, LLP, 300 Madison Avenue, Suite 1600, Toledo, Ohio 43604-2633; L. Kenneth Hanson, III (0064978), FIRESTONE, BREHM, HANSON, WOLF, YOUNG, LLP, 15 West Winter Street, Delaware, Ohio 43015; and Sharon A. Jennings (COUNSEL OF RECORD), OHIO ATTORNEY GENERAL MARK DANN, Senior Deputy Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215 on this 17th day of May, 2007.



Barry W. Bova, Counsel of Record
COUNSEL FOR APPELLANT
CITY OF CLYDE

**SANDUSKY COUNTY
COURT OF APPEALS
FILED**

APR 13 2007

**WARREN P. BROWN
CLERK**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Ohioans For Concealed Carry,
Inc., et al.

Court of Appeals Nos. S-06-039
S-06-040

Appellants

Trial Court No. 04-CV-769

v.

City of Clyde, et al.

DECISION AND JUDGMENT ENTRY

Appellees

Decided: **APR 13 2007**

* * * * *

Daniel T. Ellis and L. Kenneth Hanson, for appellants;
Marc E. Dann, Attorney General of Ohio, Sharon A. Jennings,
Senior Deputy Attorney General, Holly J. Hunt and Frank M.
Strigari, Assistant Attorneys General, for intervenor/appellant,
Ohio Attorney General.

Barry W. Bova, for appellees.

* * * * *

SKOW, J.

{¶ 1} Appellants, Ohioans for Concealed Carry, Inc., and James J. Stricker, Jr.,
appeal the Sandusky Court of Common Pleas' grant of summary judgment to appellees,
the city of Clyde, Ohio, and its solicitor, mayor, vice-mayor, city manager, chief of

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police, councilmen, clerk-treasurer, and the Sandusky County Sheriff. The Ohio Attorney General filed a brief as an intervenor-appellant. On December 12, 2006, the Ohio Legislature passed H.B. 347, amending the concealed carry laws at issue. Due to the passage of H.B. 347, we reverse and instruct the trial court to enter summary judgment in favor of appellants.

{¶ 2} Appellants filed a complaint seeking injunctive and declaratory relief from Clyde Codified Ordinance 2004-41. Clyde enacted the ordinance on May 18, 2004, after the Ohio Legislature passed H.B. 12, otherwise known as the "concealed carry laws." Those laws, R.C. 2923.11 et seq., allow individuals to obtain licenses to carry concealed handguns and provide a procedure for procuring licenses. R.C. 2923.126 prohibits licensees from carrying concealed handguns in certain places; however, the statute does not specifically list municipal parks. Clyde's ordinance prohibited persons from carrying "any deadly handgun" within the confines of "any City Park," irrespective of whether a person possesses a license for a concealed handgun issued pursuant to the concealed carry laws. The penalty for a violation of Ordinance 2004-41 was a misdemeanor of the first degree.

{¶ 3} The trial court granted a preliminary injunction to prohibit enforcement of Ordinance 2004-41 pending the outcome of a hearing. Appellants argued that Clyde's ordinance invalidly conflicted with Ohio's concealed carry laws. Specifically, they argued that Clyde's ordinance was an exercise in police power that conflicted with the general law of concealed carry. On September 1, 2006, this court decided *City of Toledo*

v. Beatty, 6th Dist. No. L-05-1319, 2006-Ohio-4638, which involved a city of Toledo ordinance nearly identical to Clyde's Codified Ordinance 2004-41. In *Beatty*, we held that Toledo's ban on concealed weapons on city parks was an exercise of police power. However, we also held that Ohio's concealed carry laws were not "general" laws pursuant to *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005. Therefore, we concluded that Toledo's ban on concealed weapons in city parks did not conflict with Ohio's concealed carry laws, and we upheld the validity of the Toledo ordinance.

{¶ 4} The trial court granted summary judgment for appellees on the controlling precedent of *Beatty*. However, by consent of the parties, the trial court continued the temporary injunction and entered a stay of its order pending appeal. Thus, Ordinance 2004-41 has remained unenforced.

{¶ 5} Appellants filed a timely notice of appeal and now raise the following assignments of error:

{¶ 6} "A. THE TRIAL COURT ERRED IN HOLDING THAT R.C. 2923.126 IS NOT A GENERAL LAW.

{¶ 7} "B. THE TRIAL COURT ERRED IN HOLDING THAT OHIO'S CONCEALED CARRY LAW DOES NOT PREEMPT CLYDE CODIFIED ORDINANCE 2004-41."

{¶ 8} On December 12, 2006, while this appeal was pending, the Ohio Legislature passed H.B. 347 over Governor Taft's veto. The bill affects 31 different

statutes, most of which comprise the concealed carry laws. The bill also added R.C. 9.68, which states in pertinent part:

{¶ 9} "(A) The individual right to keep and bear arms, being a fundamental individual right that predates the United States Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition. *Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.*

{¶ 10} "(B) In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section." R.C. 9.68(A), (B) (emphasis added).

{¶ 11} In *Beatty*, we found a conflict between R.C. 2923.126(C), which allows individual employers, owners or occupiers of land to decide whether to allow a properly licensed person to carry a concealed weapon on their property, and R.C. 2923.16(B), which prohibits properly licensed persons from carrying concealed weapons into certain defined areas. We concluded that because "R.C. 2923.126(C) prohibits that which R.C.

2923.126(A) permits * * * R.C. 2923.126(A) does not have uniform application to all citizens of the state, and as such is not a general law." As such, we upheld the validity of the Toledo ordinance prohibiting properly licensed persons from carrying concealed weapons into city-owned parks.

{¶ 12} R.C. 9.68 became effective March 14, 2007. The emphasized language quoted supra indicates the Ohio Legislature's clear intent that the concealed carry laws have general and uniform operation throughout Ohio. Since, pursuant to R.C. 9.68, no law, other than the United States Constitution, Ohio Constitution, state law, or federal law, may interfere with the right to "keep and bear arms," local ordinances which further restrict the places in which a person may legally carry a concealed weapon are invalid. Therefore, Clyde Codified Ordinance 2004-41 is pre-empted by R.C. 9.68 and 2923.126, and summary judgment must be entered in appellants' favor. Appellants' assignments of error are well-taken.

{¶ 13} For the foregoing reasons, the judgment of the Sandusky County Court of Common Pleas is reversed. This matter is remanded for the trial court to enter summary judgment in favor of appellants. Appellants' motion to file supplemental authority is moot. Appellee, the city of Clyde, is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Sandusky County.

JUDGMENT REVERSED.

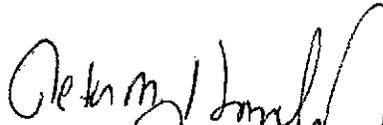
Ohioans For Concealed Carry, Inc. v.
City of Clyde, et al.
C.A. Nos. S-06-039, S-06-040

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

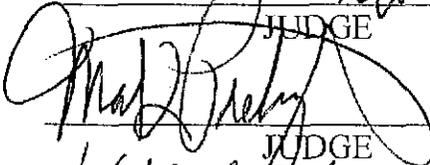
Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

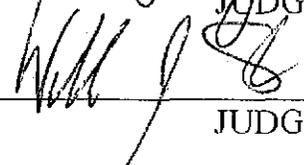
William J. Skow, J.
CONCUR.



JUDGE



JUDGE



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

IN THE COURT OF COMMON PLEAS OF SANDUSKY COUNTY, OHIO
CIVIL DIVISION

2006 SEP -8 AM 11:35

SANDUSKY COUNTY
COMMON PLEAS COURT

CHRISTOPHER P. BROWN
CLERK

Ohioans for Concealed Carry, Inc.,

Plaintiffs

v.

City of Clyde, et al.,

Defendants

Case No. 04-CV-769

DECISION

September 7, 2006

This cause comes before the Court for consideration of Motions for Summary Judgment filed by plaintiff, defendants (except the Sandusky County Sheriff), and intervenor, the Attorney General of Ohio. The parties were advised that the motions for summary judgment would be decided on the pleadings, evidence and briefs, without oral argument, and a briefing schedule was assigned; the parties each responded in accordance with the briefing schedule.

In its Complaint, plaintiff requests that the Court declare that R.C. 2923.125 et seq., Ohio's "Concealed Carry" law, prohibits the City of Clyde from enforcing its Ordinance No. 2004-41, which bans the possession of firearms in its municipal parks. The Attorney General of Ohio joined with the plaintiff in seeking such relief.

In their Counterclaim defendants requested that the Court declare that R.C. 2923.125 et seq. is unconstitutional, and that therefore it does not prevent the Clyde of Clyde from enforcing its Ordinance No. 2004-41.

On September 6, 2006 counsel for defendants submitted additional authority which was not available prior to said date, to-wit a decision of the Sixth District Court of Appeals decided on September 1, 2006, which appears to answer the question submitted in the within case. [see City of Toledo v. Bruce Beatty, Toledo Municipal Court Case No. CRB-05-06830, Court of Appeals Case No. L-05-1319].

In a telephone conference with counsel this date, counsel for plaintiff and intervenor stated that although they respectfully disagreed with that decision of the Court of Appeals, they did not desire to submit any contra authority.

Therefore, after due consideration of the motions for summary judgment, the pleadings, the evidence submitted pursuant to the provisions of Civil Rule 56, and the memoranda of counsel, the Court finds that there are no material facts in dispute, and that the defendants are entitled to judgment, as a matter of law.

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IT IS THEREFORE ORDERED as follows:

1. The defendants' Motion for Summary Judgment is **GRANTED**.
2. The plaintiffs' and Intervenor's Motions for Summary Judgment are **DENIED**.
3. Costs are adjudged against plaintiff.
4. Counsel for defendants shall prepare an appropriate Order for this Declaratory Judgment case, and submit same to all counsel. Said Entry will be a final Order, subject to appeal, as it will resolve all matters in dispute between the parties.
5. Clerk shall mail a copy of this Decision to all counsel.



Judge Harry A. Sargeant, Jr.