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INTRODUCTION

This is a case about the General Assembly's attempt to take away a municipality's right under the Home Rule Amendment, Ohio Constitution, Art. XVIII, § 3, to decide for itself whether concealed weapons will be allowed on municipal property. It is also a case about the General Assembly's failure to enact a general law that applies uniformly throughout the State. Reviewing Am. Sub. H.B. No. 12 ("H.B. 12"), enacted in 2004, and Sub. H.B. No. 347 ("H.B. 347"), enacted in 2006, it appears the General Assembly intended Ohio's concealed carry laws to be general laws and intended to preempt municipal legislation on this topic. The best legislative intentions, however, do not always translate into reality and, in this case, must yield to the requirements of the Ohio Constitution and controlling case law.

The General Assembly, Appellee Ohioans for Concealed Carry, Inc. ("OCC"), and Intervenor-Appellee the Ohio Attorney General have all declared the need for uniformity in the State regarding where concealed carry licensees may lawfully carry their concealed handguns. But R.C. 2923.126 provides no such uniformity. Revised Code 2923.126 is riddled with so many caveats, clarifications, ambiguities, and exceptions that it actually creates the type of ad hoc, piecemeal regulation of concealed carry it is touted to prevent. Although the concealed carry licensing provisions themselves are arguably uniform, when it comes to the authorization granted licensees, R.C. 2923.126 does not operate uniformly throughout the State and does not treat private and public property owners the same. Neither does R.C. 2923.126 treat all private nor all public property owners the same. In sum, R.C. 2923.126 does not uniformly address a matter of statewide concern and is not a general law. City of Clyde Ordinance No. 2004-41 is valid and enforceable.

STATEMENT OF THE CASE AND FACTS

On January 7, 2004, the 125th General Assembly passed H.B. 12, which became effective April 8, 2004. Revised Code 2923.126, which is part of Ohio's concealed carry law, was enacted at that time. On May 18, 2004, City Council for Appellant City of Clyde ("Clyde") passed Ordinance No. 2004-41, which became effective on June 18, 2004.

Clyde Ordinance No. 2004-41 prohibits deadly weapons in city parks. Specifically, it states in relevant part:

[N]o person located within the confines of any City Park shall knowingly carry or have, on or about his person or readily to hand, any deadly weapon, irrespective of whether such person has been issued a license to carry a concealed handgun pursuant to Ohio R.C. 2923.125 or pursuant to a comparable provision of the law of any other state.

(App. at 18 (emphasis added)).

Revised Code 2923.126(A) provides that a concealed carry licensee may carry a concealed handgun anywhere in Ohio except as provided by R.C. 2923.126(B) and (C). These two subsections state in relevant part:

(B) . . . A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to division (A) of section 5119.02 of the Revised Code or division (A)(1) of section 5123.03 of the Revised Code;

(2) A school safety zone, in violation of section 2923.122 [2923.12.2] of the Revised Code;

(3) A courthouse or another building or structure in which a courtroom is located, in violation of section 2923.123 [2923.12.3] of the Revised Code;

(4) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303. of the Revised Code, in violation of section 2923.121 [2923.12.1] of the Revised Code;

(5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home, a type B family day-care home, or a type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(9) Any building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;

(10) A place in which federal law prohibits the carrying of handguns.

(C) (1) Nothing in this section shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. . . .

...

(3) The owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. . . .

(App. at 23 (emphasis added)).

In addition, uncodified Section 9 of H.B. 12 provides:

The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. It is the intent of the General Assembly . . . to enact laws of a general nature, and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. No municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limited to, any ordinance or resolution that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.

(App. at 23 (emphasis added)).

OCC filed suit for declaratory judgment and injunctive relief on August 12, 2004, seeking an order both striking down Clyde Ordinance No. 2004-41 and enjoining Clyde from taking any other action to curtail the rights of concealed carry licensees. Clyde, OCC, and the Attorney General (as an intervenor on behalf of OCC) filed simultaneous motions for summary judgment. After the completion of briefing, and while this case was pending before the Trial Court, the Sixth District Court of Appeals issued its decision in *Toledo v. Beatty* (6th Dist. 2006), 169 Ohio App. 3d 502.

The issue in *Beatty* also involved the propriety of a municipal regulation prohibiting firearms in municipal parks. *Beatty* concluded Toledo's ban on concealed weapons in city parks was an exercise of police power, not local self-government. *Id.* at ¶ 45. However, *Beatty* also concluded that R.C. 2923.126 was not a general law under Ohio's Home Rule Amendment and upheld the Toledo ordinance at issue. *Id.* at ¶ 56. An appeal was filed in *Beatty*, but this Court declined to accept jurisdiction. *See Toledo v. Beatty* (Jan. 27, 2007), 112 Ohio St. 3d 1445, Case No. 2006-1903.

Based on *Beatty*, the Trial Court entered judgment for Clyde. (App. at 1-2). OCC appealed the Trial Court's Decision to the Sixth District. While the appeal was pending, Governor Taft vetoed H.B. 347 citing Home Rule concerns. (App. at 31). The General Assembly overrode the Governor's veto and enacted the bill on December 12, 2006. H.B. 347 made no changes to the concealed carry exceptions in R.C. 2923.126(B) and (C). H.B. 347 also enacted R.C. 9.68(A), which provides:

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.

(Emphasis added).

Based on R.C. 9.68, the Sixth District Court of Appeals abandoned its previous holding in *Beatty* and concluded OCC was entitled to summary judgment:

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.

(App. at 9 (Court of Appeals Decision at ¶ 12)).

Clyde timely appealed from the Court of Appeals decision. Clyde's Memorandum in Support of Jurisdiction identified the critical issues in this case as follows:

- (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 [to] Clyde City Ordinance No. 2004-41

(App. at 13). This Court entered an order accepting jurisdiction on September 26, 2007.

ARGUMENT

I. PROPOSITION OF LAW NO. 1: R.C. 2923.126 is not a general law under Ohio's Home Rule Amendment.

Appellees assert Clyde Ordinance 2004-41 is invalid in light of the General Assembly's pronouncements in H.B. 12 and H.B. 347. Appellees are wrong. Revised Code 2923.126 does not operate uniformly throughout the state and, as such, is not a general law. Thus, Clyde Ordinance 2004-41 is valid and enforceable, and the Court of Appeal's decision must be reversed.

A. Home Rule Standard Generally

Ohio's Home Rule Amendment provides: "Municipalities shall have 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." Ohio Const., Art. XVIII, § 3. This Court has adopted a three-part test to determine whether a provision of a state statute takes precedence over a municipal ordinance:

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 a general law.

Canton v. State (2002), 95 Ohio St. 3d 149, 151; *see also Cincinnati v. Baskin* (2006), 112 Ohio St. 3d 279, ¶¶ 9-10 (reaffirming the three-part *Canton* test).

Clyde's Proposition of Law No. 1 deals exclusively with the third prong of the *Canton* test. To determine if a statute is a general law, this Court has set forth a four-part test:

To constitute a general law for purposes of home-rule analysis, a statute must (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 purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Canton, 95 Ohio St. 3d 149 at syllabus; *see also Am. Fin. Servs. Ass'n v. Cleveland* (2006), 112 Ohio St. 3d 170, 176 (reaffirming the *Canton* test).

B. R.C. 2923.126 Does Not Operate Uniformly Throughout The State

Revised Code 2923.126 is not a general law because it does not operate uniformly throughout the State. The exceptions for private property owners and employers in R.C. 2923.126(C) defeat the stated goal of the concealed carry legislation and create an arbitrary patchwork of zones and areas in which the rules for concealed carry are nonuniform. Revised Code 2923.126 also arbitrarily distinguishes between private and public property and fails to treat all private property or all public property uniformly.

The stated intention of the General Assembly in passing concealed legislation was “to ensure uniformity throughout the State regarding . . . the authority granted to a person holding a [concealed carry] license.” (App. at 23 (H.B. 12, uncodified § 9). However, the exceptions in R.C. 2923.126 for private employers and private property owners are so large they effectively defeat the purpose of the concealed carry legislation and prevent uniform application of any concealed carry rights.

The baseline of R.C. 2923.126 is that concealed carry licensees “may carry a concealed handgun anywhere in this state” *except* as provided. R.C. 2923.126(A) (emphasis added). However, R.C. 2923.126(C)(1) allows most private employers to permit or to forbid firearms on the employers’ premises or property, including motor vehicles, through workplace rules or

regulations.¹ Similarly, R.C. 2923.126(C)(3) gives private property owners, and those leasing land owned by governmental entities, the right to choose for themselves whether to allow concealed handguns or to prohibit such activity by prominently posting signs. Thus, for the vast majority of locales in Ohio – restaurants, shopping centers, office buildings, movie theaters, etc. – there is *no* uniform application regarding concealed carry. As the Sixth District in *Beatty* correctly recognized, delegating the authority to allow or disallow concealed handguns in this way creates “arbitrary . . . [and] disparate rules and regulations regarding where a properly licensed person can lawfully carry a concealed handgun within the state.” *Beatty*, 169 Ohio App. 3d at 511-12.

In *Canton*, this Court indicated it was proper to compare the actual operation of the statute with its stated purpose in determining whether a law operated uniformly throughout the State. The issue in *Canton* was the operation of R.C. 3781.184(C) and (D). Subsection (C) forbid political subdivisions from restricting the use of manufactured homes, while subsection (D) allowed private landowners to use restrictive covenants to effectively prohibit manufactured homes. *Canton*, 95 Ohio St. 3d at 150.

Discussing the uniform operation requirement, *Canton* stated: “Although the state maintains that the goal of the statute is to foster more affordable housing across the state, the statute contains an exception that wholly defeats the stated purpose.” *Id.* at 154.

Because we find that R.C. 3781.184(D) permits that which the statute prohibits, we find that it is inconsistent with the statute’s stated purpose, i.e., to encourage placement of affordable manufactured housing units across the state. Thus, we hold that R.C. 3781.184(C) and (D) do not have uniform application to all citizens of the state, and as such are not general laws.

¹ At the same time, employers at private universities and institutions of higher learning are given no such discretion; these locales are dealt with specifically in R.C. 2923.126(B)(5).

Id. at 155 (emphasis added). Applying the *Canton* rationale to this case, R.C. 2923.126 does not operate uniformly throughout the state.

Appellees have previously argued, and likely will argue again, that *Canton* should be interpreted solely as a case forbidding disparate treatment of municipalities. In other words, Appellees believe R.C. 2923.126 “appl[ies] to all parts of the state alike and operate[s] uniformly throughout the state” because it applies to all municipalities. *Canton, supra* at syllabus. Under this view, the only way a statute runs afoul of this requirement in *Canton* is if the statute applies to some municipalities but not others.

Such a position is incorrect and is based on an artificially narrow interpretation of *Canton*. To constitute a general law, a statute must “apply to all parts of the state alike and operate uniformly throughout the state.” *Id.* (emphasis added); *see also Am. Fin. Servs. Ass’n*, 112 Ohio St. 3d at 176. To the extent a statute effectively applies to some municipalities but not others, it would not apply to *all parts* of the state alike. But just because a statute applies to all municipalities (such as R.C. 2923.126), does not necessarily mean a statute *operates uniformly throughout* the state. Revised Code 2923.126(C) delegates to private employers and private property owners the authority to decide for themselves whether and how to allow concealed carry. This creates a patchwork of inconsistent application within and beyond municipal boundaries throughout Ohio that completely defeats the stated purpose of providing uniformity with respect to where concealed carry licensees may exercise the authority granted to persons holding such licenses. Pursuant to *Canton*, R.C. 2923.126 is not a general law.

Revised Code 2923.126 fails to operate uniformly throughout the state for the additional reason that it makes arbitrary distinctions regarding the standards which apply in certain areas. “The requirement of uniform operation throughout the state of laws of a general nature does not

forbid different treatment of various classes or types of citizens, but does prohibit nonuniform classification if such be arbitrary, unreasonable or capricious.” *Garcia v. Siffrin* (1980), 63 Ohio St. 2d 259, 272; *see also Canton*, 95 Ohio St. 3d at 155 (same). Upon close review, there are a number of instances in which R.C. 2923.126 makes distinctions that are arbitrary, unreasonable, or capricious.

The first arbitrary distinction in R.C. 2923.126 is the treatment of private versus public property. One example mentioned by Clyde in its Trial Court briefing is a private park operated by Whirlpool Corporation, which has a manufacturing facility in Clyde. The Whirlpool park has facilities similar to those found in many municipal parks, including a swimming pool, tennis courts and ball fields. Under the provisions of the R.C. 2923.126, Whirlpool can ban concealed handguns from its park facilities. Appellees, however, would deny Clyde the right to enact a similar ban with respect to similar park facilities owned by the municipality.

Another illustrative example involves golf courses. Many golf courses throughout the state are privately owned but open to the general public. Pursuant to R.C. 2923.126, concealed handguns can be prohibited *entirely* at these courses (and are in many instances). By the same token, a private owner could allow concealed handguns *anywhere* if that is what the owner so chose. A municipality, however, generally lacks the authority to prohibit a licensee from carrying a concealed handgun. But R.C. 2923.126(B)(9) forbids concealed carry in any “building” owned by “any political subdivision.” Thus, a concealed carry licensee is forbidden from carrying a concealed handgun into the pro shop of a municipally-owned course, but has an absolute right to carry a concealed handgun on the golf course.

This example becomes even less uniform and more arbitrary when R.C. 2923.126(B)(5) is considered. This section provides that a concealed carry licensee may not carry a concealed

handgun on “[a]ny premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle.” R.C. 2923.126(B)(5). Ohio University owns and operates a golf course in Athens, Ohio that is open to the public.

Thus, we have three golf courses. All are open to the public and serve the same function, the only difference being who owns the property in question. At the municipally-owned golf course, a concealed handgun is allowed on the course, but not in the pro shop. At the privately owned golf course, possession of a concealed handgun can be banned everywhere, or allowed anywhere. At the Ohio University golf course, a concealed handgun is allowed in a licensee’s locked car in the parking lot, but is not allowed anywhere else. This is a definitive example of arbitrary, unreasonable, or capricious classifications.

Another example of non-uniformity involves baseball fields. Many high schools do not own baseball fields, so high school baseball games are held at a baseball field in a municipal park. Pursuant to R.C. 2923.126(B)(2) carrying a concealed handgun is prohibited in a “school safety zone.” A school safety zone is defined to include a “school activity.” R.C. 2901.01(C)(1). Thus, while a high school baseball game is being played, concealed carry is forbidden in the stands. Any other time, a concealed carry licensee has an absolute right to carry a concealed handgun. Further, many high school students play in leagues organized by private organizations, such as the American Legion. *See* <http://www.baseball.legion.org/>. Therefore, the very same students could be playing on the very same baseball field, but concealed handguns would now be allowed in the stands because American Legion baseball is not a “school activity” under R.C. 2901.01(C)(3).

Revised Code 2923.126 also makes arbitrary distinctions between different types of private property. For example, concealed carry is forbidden in “[a]ny church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise.” R.C. 2923.126(B)(5) (emphasis added). Thus, this statute treats places of worship different from almost all other private property. Yet strangely, it allows individual churches to opt back in to concealed carry – leading to the possibility that concealed carry will be allowed in some churches but not others. In addition, concealed handguns are forbidden in aircraft used in intrastate or interstate air transportation, but not in trains, buses or ferries. R.C. 2923.126(B)(8). As such, a concealed carry licensee cannot bring a handgun on a chartered plain flight, but theoretically could bring a handgun on a chartered bus trip.

Such examples demonstrate that, despite the best intentions of the General Assembly, the classifications made by R.C. 2923.126 do not operate uniformly throughout the state and are, in fact, “arbitrary, unreasonable or capricious.” *Garcia*, 63 Ohio St. 2d at 272. Because it does not operate uniformly throughout the state, R.C. 2923.126 is not a general law.

C. The General Assembly’s Attempts at Preemption Are Ineffective

Both H.B. 12 and H.B. 347 arguably contain statements of the General Assembly’s intent to preempt municipal regulation of concealed carry. This Court’s Home Rule jurisprudence makes clear, however, that such a proclamation is not determinative. It is the Court which must decide, based on the substance of a statute, whether it is a general law. Notwithstanding the intentions of the General Assembly, R.C. 2923.126 does not operate as general law under Ohio’s Home Rule Amendment. Further, R.C. 9.68 does not substantively amend R.C. 2923.126 and does not transform it into a general law.

Uncodified Section 9 of H.B. 12 indicates the General Assembly intended to preempt municipal regulation of concealed carry. It provides in part: “No municipal corporation may

adopt . . . any ordinance or resolution that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.” (App. at 23).

However, simply because the General Assembly says so does not mean that municipalities now lack the authority to regulate concealed carry. The courts, not the General Assembly, have final jurisdiction over that matter. This Court has consistently held a municipality’s authority to enact police regulations is derived from the Home Rule Amendment, Ohio Constitution Art. XVIII, § 3, is not dependent on State legislation, and cannot be taken away by a mere legislative pronouncement. *See, e.g., Fondessy Enterprises, Inc. v. Oregon* (1986), 23 Ohio St. 3d 213, 216; *West Jefferson v. Robinson* (1965), 1 Ohio St. 2d 113 at ¶ 1 of syllabus; *Struthers v. Sokol* (1923), 108 Ohio St. 263 at ¶ 1 of syllabus. Accordingly, a municipal ordinance is valid and enforceable *unless* it conflicts with a general law of the State. *Fondessy*, 23 Ohio St. 3d at 216; *Struthers*, 108 Ohio St. 263 at ¶ 1 of syllabus; *see also* Ohio Const., Art. XVIII, § 3.

This Court recently reaffirmed these basic principles in *Am. Fin. Servs. Assoc.*, a case involving Sub. H.B. No. 386 and the regulation of predatory lending. *Am. Fin. Servs. Assoc.* noted that, through Sub. H.B. No. 386, the General Assembly expressly intended to preempt municipal regulation of predatory lending. While recognizing that the preemption language could “be considered to determine whether a matter presents an issue of statewide concern,” this Court reiterated that such a statement “does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws.” *Am. Servs. Fin. Assoc.*, 112 Ohio St. 3d at 175 (emphasis added).

Thus, statements of preemptive intent are relevant only in determining whether a matter rises to the level of a statewide concern. As discussed in more detail in Proposition of Law No. 2, *infra*, the statewide concern doctrine is itself limited to determining whether a municipality is acting pursuant to its police powers or its powers of local self government. *Amer. Servs. Fin. Assoc.*, 112 Ohio St. 3d at 175 (stating the “statewide-concern doctrine falls within the existing framework of the *Canton* test, and courts should consider the doctrine when deciding whether ‘the ordinance is an exercise . . . of local self government’”). Thus, statements of preemptive intent are *irrelevant* to determining whether a statute is a *general law*. Only by applying the four-part test adopted in *Canton* and *Am. Servs. Fin. Assoc.* can this Court determine whether a statute is a general law for purposes of Ohio’s Home Rule Amendment.

For all of the reasons discussed in Section B, *supra*, R.C. 2923.126 is not a general law. Uncodified Section 9 of H.B. 12 can neither turn R.C. 2923.126 into a general law nor override Clyde’s constitutionally granted Home Rule powers.²

Further, the passage of H.B. 347 and the enactment of R.C. 9.68 does nothing to change this Home Rule analysis. Revised Code 9.68 states “the general assembly finds the need to provide uniform laws throughout the state regulating” the ownership, possession or carrying of firearms. The statute further provides: “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.” R.C. 9.68.

² Even if members of this Court were to engage in a preemption analysis, R.C. 2923.126 still fails the test. The two “key factors” that signal that an issue is one of statewide concern are: (1) a “need for uniform regulation,” and (2) if “any local regulation of the matter would have extraterritorial effects.” *Amer. Servs. Fin. Assoc.*, 112 Ohio St. 3d at 181 (O’Connor, J., concurring). As to the first factor, the discussion in Section B, *supra*, demonstrates R.C. 2923.126 does not in fact provide uniform regulation of concealed carry. And as discussed in more detail in Proposition of Law No. 2, *infra*, Clyde Ordinance No. 2004-41 has no extraterritorial effects.

Based on R.C. 9.68, the Court of Appeals concluded that the General Assembly intended “the concealed carry laws have general and uniform operation throughout Ohio” and that Clyde Ordinance No. 2004-41 was preempted. (App. at 9).

For the reasons just discussed, however, R.C. 9.68 does not transform R.C. 2923.126 into a general law and cannot preempt the Clyde ordinance. First, the statement in R.C. 9.68 that there is a need to provide uniform laws throughout the state is nothing more than a statement of a legislative preference and is not definitive. H.B. 347 did not change the operative language of R.C. 2923.126 which the *Beatty* court found lacked uniformity throughout the state. It is for this Court to decide, based on the three-part *Canton* test, whether a municipal statute is enforceable, and it is for this Court to decide whether R.C. 2923.126 operates uniformly throughout the state and is a general law. Finally, it is not clear whether R.C. 9.68 even intends to preempt the field. The statute provides that firearms cannot be regulated except as provided in the Ohio Constitution. The Home Rule Amendment, a well established provision of the Ohio Constitution, gives municipalities authority to enact and enforce “local police, sanitary and other similar regulations” except as in conflict with general laws of the state. Ohio Const. Art. XVIII, §3; *see also Am. Servs. Fin. Assoc.*, 112 Ohio St. 3d at 175

In sum, R.C. 9.68 did nothing to correct the problems inherent in R.C. 2923.126 which prevent it from operating uniformly throughout the state and being a general law.

D. Conclusion

This is not a licensing case. Clyde Ordinance 2004-41 is not an attempt to extract additional fees for or to impose additional requirements on obtaining a concealed carry license. The issue before the Court is whether the authority granted a concealed carry licensee under R.C. 2923.126(B) and (C) establishes regulations that operate uniformly throughout the State of Ohio. In dealing with a difficult political issue, the General Assembly cobbled together a hodge-

podge of arbitrary rules, exceptions, and classifications that provide no clear standards to concealed carry licensees whatsoever. Revised Code 2923.126 cannot and does not operate uniformly throughout the State of Ohio and, as such, it is not a general law for purposes of Ohio's Home Rule Amendment.

II. PROPOSITION OF LAW NO. 2: A municipality's ability to regulate city parks is a power of local self government and, as such, cannot be limited or diminished by the General Assembly.

This litigation was prompted by the enactment of Clyde Ordinance No. 2004-41. The Clyde ordinance is limited strictly to municipal parks. (Clyde Ordinance No. 2004-41, App. at 18 (stating that "no person located within the confines of any City Park shall knowingly carry . . . any deadly weapon"). A municipality's authority to regulate municipal parks is a power of local self-government under Ohio's Home Rule Amendment. As such, the General Assembly cannot limit that authority, and Clyde Ordinance No. 2004-41 is enforceable irrespective of *any statement* in either H.B. 12 or H.B. 347.

Ohio's Home Rule Amendment provides: "Municipalities shall have 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." Ohio Const., Art. XVIII, § 3 (emphasis added). This Court has long recognized the phrase "as are not in conflict with general laws" modifies "the words 'local police, sanitary and other similar regulations' but [does] not modify the words 'powers of local self-government.'" *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, ¶ 4 of the syllabus (emphasis added); *see also Ohio Ass'n of Private Detective Agencies, Inc. v. North Olmsted* (1992), 65 Ohio St. 3d 242, 244; *State ex rel. Mullin v. Mansfield* (1971), 26 Ohio St. 2d 129, 132. Thus, a municipal ordinance relating solely to matters of local self-government is enforceable *irrespective* of any pronouncement by the State, "because the Constitution authorizes a municipality to exercise all

powers of local self-government within its jurisdiction.” *Am. Fin. Servs. Ass’n v. Cleveland*, 112 Ohio St. 3d at 173; *see also Twinsburg v. State Employment Relations Bd.* (1988), 39 Ohio St. 3d 226, 228 (citing numerous cases in support of the proposition that “all powers of local self-government are protected from state interference”), overruled on other grounds, *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 20.

This Court should acknowledge that the regulation of municipal parks is a power of local self-government. The traditional test is as follows:

To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly.

Cleveland Electric Illuminating Co. v. Painesville (1968), 15 Ohio St. 2d 125, 129 (emphasis added).

Intertwined in this analysis is whether the subject of regulation is a matter of statewide concern. “It is a fundamental principle of Ohio law that, pursuant to the statewide concern doctrine, a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern.” *Reading v. Pub. Util. Comm’n* (2006), 109 Ohio St. 3d 193, 198-199. Thus, the Court should also look to whether “the regulation of the subject matter affects the general public of the state as a whole more than it does the local inhabitants.” *Cleveland Electric Illuminating Co.*, 15 Ohio St. 2d at 129. While use of the statewide concern doctrine has “caused confusion,” this Court has clarified that the doctrine “falls within the existing framework of the *Canton* test, and courts should consider the doctrine when deciding whether ‘the ordinance is an exercise . . . of local self-government,’ or whether ‘a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all the

citizens of this state.” *Am. Fin. Servs. Ass’n*, 112 Ohio St. 3d at 175. Thus, the statewide concern test is something of a balancing test, and it is for this Court to decide whether regulations governing use of municipal facilities are of greater import to the individual municipalities in question or to the State.

The regulation of municipal parks – including activities which are or are not allowed in those areas, such as carrying a concealed firearm – is purely a matter of local self-government. By its very nature, Clyde Ordinance No. 2004-41 cannot apply outside the City’s territorial limits. Thus, the Clyde ordinance is unlike many economic regulations, such as the predatory lending ordinances at issue in *Am. Fin. Servs. Ass’n*. Even if not located within the municipality in question, businesses can be ensnared in economic regulations merely by providing goods or services to local citizens, such as providing a loan. In contrast, no individual is subject to Clyde Ordinance No. 2004-41 unless that person enters the physical boundaries of a Clyde City Park.

Clyde Ordinance 2004-41 is also limited to regulating activity on *publicly-owned property*. In their briefs, Appellees may cite a number of cases in which this Court has upheld exclusive state licensing schemes because they involved matters of statewide concern. *See, e.g., State ex rel. McElroy v. Akron* (1962), 173 Ohio St. 189 (holding that the licensing of watercraft was a matter of statewide concern and that municipalities lack the authority to impose additional fees or licensing requirements); *Westlake v. Mascot Petroleum Co.* (1991), 61 Ohio St. 3d 161 (holding that municipalities cannot deprive businesses of the ability to sell alcohol if they possess a permit from the State). Such cases are distinguishable.

As indicated previously, this is not a licensing case. It is a case about Clyde’s ability to regulate activity within its own parks. *State ex rel. McElroy* may have held that the licensing of watercraft is a matter of statewide concern, but it does not stand for the radical proposition that a

municipality cannot control when and what type of boats are allowed on municipal waters. Similarly, while the State may have the authority to control the sale and consumption of alcohol generally, *Mascot Petroleum Co.* in no way indicates the State could take away a municipality's ability to regulate alcohol consumption on municipally-owned land.

In one of the few decisions to address the regulation of parks, the Tenth District Court of Appeals held "that the providing of parks, playgrounds, and recreation centers is a power of local self-government." *McDonald v. Columbus* (10th Dist. 1967), 12 Ohio App. 2d 150. The issue in *McDonald* was whether Franklin County zoning ordinances prevented use of a park owned by Columbus, but located outside the city-limits, as a campsite. The Tenth District concluded the county zoning provisions did not apply to the park because the matter was one of local self government under the Home Rule Amendment. *Id.* at 152.

The *Beatty* court erroneously tried to distinguish *McDonald* on the grounds it involved solely the "improvement, protection or preservation of the city's park lands." *Beatty*, 169 Ohio App. 3d at ¶ 45. In fact, the issue in *McDonald* was much more fundamental. *McDonald* holds it is the *provision* of parks that is a power of local self-government. A municipality cannot adequately *provide* parks for its citizens and visitors without the accompanying authority to delineate the type of activity that is either allowed (in *McDonald*, camping) or disallowed (for Clyde, possession of deadly weapons).

By rejecting this position, Appellees are arguing the State can take away a municipality's ability to decide for itself whether deadly weapons will be allowed in municipal parks – where citizens and youths are engaged in any number of organized or informal activities. As recognized by members of this Court in *Baskin, supra*, the regulation of firearms has traditionally been left to local governments.

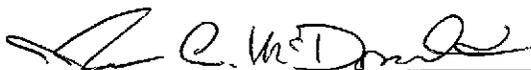
Further, Ohio courts have always respected municipal regulation of municipal property. This Court long ago held the “power to establish, open, improve, maintain and repair public streets within the municipality, and fully control the use of them, is included within the term ‘powers of local self-government.’” *Perrysburg v. Ridgway* (1923), 108 Ohio St. 245, ¶ 2 of the syllabus; *see also Dublin v. State* (Franklin County C.P. 2002), 118 Ohio Misc. 2d 18 (striking down portions of State statute purporting to limit municipal authority to regulate public rights of way).

As *Perrysburg* noted, ultimate “[c]ontrol [of] public streets must be placed somewhere, and, if there is any virtue whatsoever in democracy, why should not that control be placed in the community which opens the streets, pays for their establishment, their maintenance, and best understands their needs for durability and safety?” 108 Ohio St. at 255-56 (emphasis). While there may be some differences between public streets and public parks, the preceding quote applies with equal, if not greater, force to the latter. In sum, if such a thing still exists as a matter of purely local concern into which the State cannot interfere, the concept should include the regulation of municipally-owned parks.

CONCLUSION

Revised Code 2923.126 does not operate uniformly throughout the state and, as such, is not a general law under Ohio’s Home Rule Amendment. Further, a municipality’s ability to regulate city parks is a power of local self government which cannot be limited or diminished by the General Assembly. Should the Court agree with Clyde as to either of these propositions of law, it must reverse the decision of the Court of Appeals and conclude Clyde Ordinance No. 2004-41 is enforceable.

Respectfully submitted,



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The undersigned certifies that a copy of the foregoing was served via regular mail this
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Matthew T. Green

APPENDIX OF
APPELLANT CITY OF CLYDE

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

2006 SEP -8 AM 11:35

SANDUSKY COUNTY
COMMON PLEAS COURT

Ohioans for Concealed Carry, Inc.,

Plaintiffs

v.

City of Clyde, et al.,

Defendants

Case No. 04-CV-769

DECISION

September 7, 2006

CHRISTOPHER P. BROWN
CLERK

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.

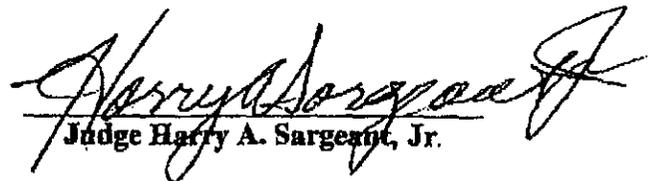
Therefore, after due consideration of the motions for summary judgment, the pleadings, the evidence submitted pursuant to the provisions of Civil Rule 56, and the memoranda of counsel, the Court finds that there are no material facts in dispute, and that the defendants are entitled to judgment, as a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

JOURNALIZED
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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.

2006 SEP 13 PM 3:06

DAVID E. CROWN
CLERK

**IN THE COURT OF COMMON PLEAS
SANDUSKY COUNTY, OHIO**

Ohioans For Concealed Carry, Inc., et al.)
)
 Plaintiffs,)
)
 v.)
)
 City of Clyde, et al.)
)
 Defendants.)

Case No. 04-CV-769

Hon. Harry A. Sargeant, Jr.

JUDGMENT ENTRY
(Final Order)

September 13, 2006

This matter is before the Court on the Motions for Summary Judgment filed by plaintiffs, defendants, and Intervenor, the Attorney General of Ohio. On September 6, 2006, the City of Clyde supplemented the record of this Court with the decision of *City of Toledo v. Bruce Beatty*, (Sept. 1, 2006, Lucas County App. No. L005-1319, unreported), as controlling authority in support of its motion. The Court being fully advised in the premises, entered its Decision on September 8, 2006, finding that the foregoing supplemental authority is controlling, and directed counsel for defendants to prepare and submit a final Order for filing:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The motion for summary judgment filed by the City of Clyde is **granted**.
2. The motion for summary judgment filed by Ohioans for Concealed Carry is **denied**.
3. The motion for summary judgment filed by Intervenor, Ohio Attorney General, is **denied**.

JOURNALIZED
9/15/06 *LMR*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the granting of the City of Clyde's motion, on the controlling authority of *City of Toledo v. Bruce Beatty*, which held that R.C.2923.126 is not a "general law" precluding a "Home Rule" municipality such as the City of Clyde from banning within its "City Park ... any deadly weapon, irrespective of whether such person has been issued a license to carry a concealed handgun pursuant to Ohio R.C.2923.125 or pursuant to a comparable provision of the law of any other state", is a *determination on the whole case, that trial is unnecessary, and this Entry grants final judgment in favor of the City of Clyde.*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are assessed against plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Order and any proceedings to enforce or act upon it are stayed during the pendency of any appeal, pursuant to Civil Rule 62(B) & (C), by agreement of the parties. The parties have stipulated that this stay and the continuance of the preliminary injunction are necessary to preserve the status quo. No additional bond, obligation or other security shall be required.

The Court finds, pursuant to Civil Rule 54(B), that there is no just reason for delay, and that all claims and parties are subject to the judgment in favor of the City of Clyde.

The clerk shall send a file-stamped, journalized copy of this Entry to all counsel.



Judge Harry A. Sargeant, Jr.

**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

1.

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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.

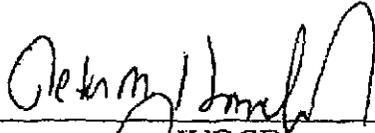
Ohioans For Concealed Carry, Inc. v.
City of Clyde, et al.
C.A. Nos. S-06-039, S-06-040

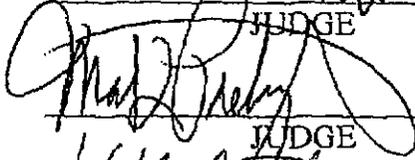
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

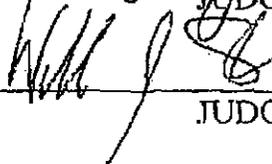
Peter M. Handwork, J.

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 SUPREME COURT OF OHIO

07 - 0960

CITY OF CLYDE, ET.AL.,)	
Appellants,)	On Appeal from the
vs.)	Sandusky County Court of
)	Appeals, Sixth Appellate
)	District
OHIANS FOR CONCEALED)	Court of Appeals Case
CARRY, INC., ET.AL.)	Nos.: S-06-039
)	S-06-040
Appellees.)	

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT, CITY OF CLYDE

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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.

The Supreme Court of Ohio

FILED

SEP 26 2007

CLERK OF COURT
SUPREME COURT OF OHIO

Ohioans For Concealed Carry, Inc., et al.

Case No. 2007-0960

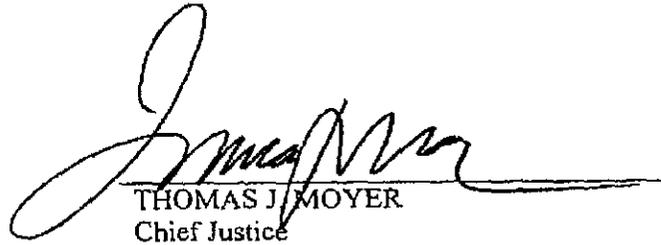
v.

ENTRY

City of Clyde et al.

Upon consideration of the jurisdictional memoranda filed in this case, the Court accepts the appeal. The Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Sandusky County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

(Sandusky County Court of Appeals; Nos. S06039 and S06040)



THOMAS J. MOYER
Chief Justice

LEXSTAT OH. CONST. ART. XVIII, § 3

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH NOVEMBER 8, 2007 ***

*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER 4, 2007 ***

CONSTITUTION OF THE STATE OF OHIO
ARTICLE XVIII. MUNICIPAL CORPORATIONS

Go to the Ohio Code Archive Directory

Oh. Const. Art. XVIII, § 3 (2007)

§ 3. Powers

Municipalities shall have 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.

(Adopted September 3, 1912.)

Exhibit "A"

ORDINANCE NO. 2004- 41

AN ORDINANCE CREATING SECTION 923.10 OF THE CODIFIED ORDINANCES OF THE CITY OF CLYDE, OHIO, PROHIBITION OF DEADLY WEAPONS IN CITY PARKS AND DECLARING AN EMERGENCY.

WHEREAS, this Council finds it to be in the best interest of the citizens of the City of Clyde, Ohio to enact an Ordinance prohibiting the carrying of concealed weapons within the several parks within the City Limits of the City of Clyde, Ohio; and

WHEREAS, the City of Clyde operates under a City Charter adopted pursuant to Article 18, Section 7 and 8 of the Constitution of the State of Ohio; and,

WHEREAS, this Council has Home Rule authority to adopt Ordinances directly related to police powers pursuant to Article 18, Section 7 of the Constitution of the State of Ohio.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Clyde, County of Sandusky, State of Ohio:

SECTION 1: That there be established Section 923.10 of the Codified Ordinance of the City of Clyde, Ohio, which section shall read as follows:

923.10 PROHIBITION OF DEADLY WEAPONS IN CITY PARKS

- (a) No person located within the confines of any City Park shall knowingly carry or have, on or about his person or readily to hand, any deadly weapon, irrespective of whether such person has been issued a license to carry a concealed handgun pursuant to Ohio R.C. 2923.125 or pursuant to a comparable provision of the law of any other state.
- (b) Subsection (a) of this section does not apply to an officer, agent or employee of this or any other state or the United States, or a law enforcement officer, who is authorized to carry a handgun or other deadly weapon and acting within the scope of the officer's, agent's or employee's duties.
- (c) For the purposes of this section, the term "City Park" shall be defined as any property in the City of Clyde zoned as a "Park District" pursuant to Part Eleven of these Codified Ordinances.
- (d) For the purposes of this section, the term "deadly weapon" shall have the same meaning as set forth in subsection (a) of Section 549.01 of these Codified Ordinances.

(e) Whoever violates subsection (a) of this Section 923.10 shall be guilty of possession of a dangerous weapon in a park, which shall be a misdemeanor of the first degree.

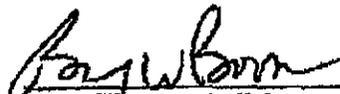
SECTION 2: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City of Clyde and its inhabitants for the reason that there exists an imperative necessity to create an Ordinance prohibiting the carrying of deadly weapons in the several parks of the City of Clyde.

PASSED: 5/18/04


Daniel R. Gabel, Mayor

ATTEST: Theresa Steinbauer
Clerk of Council

APPROVED AS TO FORM:


Barry W. Bova, Solicitor

OHIO 2004 SESSION LAW SERVICE
125TH GENERAL ASSEMBLY

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Additions are indicated by Text; deletions by
~~Text~~. Changes in tables are made but not highlighted.

File 53
Am. Sub. H.B. No. 12
CONCEALED CARRY LAW

To amend sections 1547.69, 2911.21, 2913.02, 2913.04, 2921.13, 2923.11, 2923.12, 2923.121, 2923.122, 2923.123, 2923.13, 2923.16, 2929.14, 2953.32, and 4749.10 and to enact sections 109.69, 109.731, 181.251, 311.41, 311.42, 2923.124, 2923.125, 2923.126, 2923.127, 2923.128, 2923.129, 2923.1210, 2923.1211, 2923.1212, 2923.1213, 2923.25, and 5122.311 of the Revised Code to authorize county sheriffs to issue licenses to carry concealed handguns to certain persons, to create the offenses of falsification to obtain a concealed handgun license, falsification of a concealed handgun license, and possessing a revoked or suspended concealed handgun license, to increase the penalty for theft of a firearm and having weapons while under disability, to modify the definition of handgun that applies in the Weapons Control Law, to require the Office of Criminal Justice Services to prepare and distribute to federally licensed firearms dealers a poster and brochure that describe safe firearms practices, to require federally licensed firearms dealers to offer gun locking device to purchasers at the time of sale, post the poster, and provide the brochure to purchasers, and to maintain the provisions of this act on and after January 1, 2004, by amending the versions of sections 2923.122, 2929.14, and 2953.32 of the Revised Code that take effect on that date.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1547.69, 2911.21, 2913.02, 2913.04, 2921.13, 2923.11, 2923.12, 2923.121, 2923.122, 2923.123, 2923.13, 2923.16, 2929.14, 2953.32, and 4749.10 be amended and sections 109.69, 109.731, 181.251, 311.41, 311.42, 2923.124, 2923.125, 2923.126, 2923.127, 2923.128, 2923.129, 2923.1210, 2923.1211, 2923.1212, 2923.1213, 2923.25, and 5122.311 of the Revised Code be enacted to read as follows:

<< OH ST 109.69 >>

(A) (1) The attorney general shall negotiate and enter into a reciprocity agreement with any other license-issuing state under which a license to carry a concealed handgun that is issued by the other state is recognized in this state if

2004 Ohio Laws File 53 (Am. Sub. H.B. 12)

(Publication page references are not available for this document.)

the attorney general determines that both of the following apply:

(a) The eligibility requirements imposed by that license-issuing state for that license are substantially comparable to the eligibility requirements for a license to carry a concealed handgun issued under section 2923.125 of the Revised Code.

(b) That license-issuing state recognizes a license to carry a concealed handgun issued under section 2923.125 of the Revised Code.

(2) A reciprocity agreement entered into under division (A)(1) of this section also may provide for the recognition in this state of a license to carry a concealed handgun issued on a temporary or emergency basis by the other license-issuing state, if the eligibility requirements imposed by that license-issuing state for the temporary or emergency license are substantially comparable to the eligibility requirements for a license or temporary emergency license to carry a concealed handgun issued under section 2923.125 or 2923.1213 of the Revised Code and if that license-issuing state recognizes a temporary emergency license to carry a concealed handgun issued under section 2923.1213 of the Revised Code.

(3) The attorney general shall not negotiate any agreement with any other license-issuing state under which a license to carry a concealed handgun that is issued by the other state is recognized in this state other than as provided in divisions (A)(1) and (2) of this section.

(B) As used in this section:

(1) "Handgun" has the same meaning as in section 2923.11 of the Revised Code.

(2) "License-issuing state" means a state other than this state that, pursuant to law, provides for the issuance of a license to carry a concealed handgun.

<< OH ST 109.731 >>

(A) The Ohio peace officer training commission shall prescribe, and shall make available to sheriffs, all of the following:

(1) An application form that is to be used under section 2923.125 of the Revised Code by a person who applies for a license to carry a concealed handgun or for the renewal of a license of that nature and that conforms substantially to the form prescribed in section 2923.1210 of the Revised Code;

(2) A form for the license to carry a concealed handgun that is to be issued by sheriffs to persons who qualify for a license to carry a concealed handgun under section 2923.125 of the Revised Code and that conforms to the following requirements:

(a) It has space for the licensee's full name, residence address, and date of birth and for a color photograph of the licensee.

2004 Ohio Laws File 53 (Am. Sub. H.B. 12)

(Publication page references are not available for this document.)

(b) It has space for the date of issuance of the license, its expiration date, its county of issuance, the name of the sheriff who issues the license, and the unique combination of letters and numbers that identify the county of issuance and the license given to the licensee by the sheriff in accordance with division (A)(4) of this section.

(c) It has space for the signature of the licensee and the signature or a facsimile signature of the sheriff who issues the license.

(d) It does not require the licensee to include serial numbers of handguns, other identification related to handguns, or similar data that is not pertinent or relevant to obtaining the license and that could be used as a de facto means of registration of handguns owned by the licensee.

(3) A series of three-letter county codes that identify each county in this state;

(4) A procedure by which a sheriff shall give each license, replacement license, or renewal license to carry a concealed handgun and each temporary emergency license or replacement temporary emergency license to carry a concealed handgun the sheriff issues under section 2923.125 or 2923.1213 of the Revised Code a unique combination of letters and numbers that identifies the county in which the license or temporary emergency license was issued and that uses the county code and a unique number for each license and each temporary emergency license the sheriff of that county issues;

(5) A form for the temporary emergency license to carry a concealed handgun that is to be issued by sheriffs to persons who qualify for a temporary emergency license under section 2923.1213 of the Revised Code, which form shall conform to all the requirements set forth in divisions (A)(2)(a) to (d) of this section and shall additionally conspicuously specify that the license is a temporary emergency license and the date of its issuance.

(B)(1) The Ohio peace officer training commission, in consultation with the attorney general, shall prepare a pamphlet that does all of the following, in everyday language:

(a) Explains the firearms laws of this state;

(b) Instructs the reader in dispute resolution and explains the laws of this state related to that matter;

(c) Provides information to the reader regarding all aspects of the use of deadly force with a firearm, including, but not limited to, the steps that should be taken before contemplating the use of, or using, deadly force with a firearm, possible alternatives to using deadly force with a firearm, and the law governing the use of deadly force with a firearm.

(2) The attorney general shall consult with and assist the commission in the pre-

2004 Ohio Laws File 53 (Am. Sub. H.B. 12)

(Publication page references are not available for this document.)

SECTION 9. The General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. It is the intent of the General Assembly in amending sections 1547.69, 2911.21, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2953.32, and 4749.10 and enacting sections 109.69, 109.731, 311.41, 311.42, and 2923.124 to 2923.1213 of the Revised Code to enact laws of a general nature, and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. No municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limited to, any ordinance or resolution that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed.

<< Note: OH ST 1547.69 >>

<< Note: OH ST 2911.21 >>

<< Note: OH ST 2913.02 >>

<< Note: OH ST 2921.13 >>

<< Note: OH ST 2923.12 >>

<< Note: OH ST 2923.121 >>

<< Note: OH ST 2923.123 >>

<< Note: OH ST 2923.16 >>

<< Note: OH ST 2929.14 >>

<< Note: OH ST 2953.32 >>

<< Note: OH ST 4749.10 >>

<< Note: OH ST 109.69 >>

<< Note: OH ST 109.731 >>

<< Note: OH ST 311.41 >>

<< Note: OH ST 311.42 >>

<< Note: OH ST 2923.124 >>

2004 Ohio Laws File 53 (Am. Sub. H.B. 12)

(Publication page references are not available for this document.)

<< Note: OH ST 2923.125 >>

<< Note: OH ST 2923.126 >>

<< Note: OH ST 2923.127 >>

<< Note: OH ST 2923.128 >>

<< Note: OH ST 2923.129 >>

<< Note: OH ST 2923.1210 >>

<< Note: OH ST 2923.1211 >>

<< Note: OH ST 2923.1212 >>

<< Note: OH ST 2923.1213 >>

SECTION 10. If any provision of sections 1547.69, 2911.21, 2913.02, 2921.13, 2923.12, 2923.121, 2923.123, 2923.16, 2929.14, 2953.32, and 4749.10 of the Revised Code, as amended by this act, any provision of sections 109.69, 109.731, 311.41, 311.42, 2923.124, 2923.125, 2923.126, 2923.127, 2923.128, 2923.129, 2923.1210, 2923.1211, 2923.1212, and 2923.1213 of the Revised Code, as enacted by this act, or the application of any provision of those sections to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the particular section or related sections that can be given effect without the invalid provision or application, and to this end the provisions of the particular section are severable.

<< Note: OH ST 2929.14 >>

SECTION 11. (A) Section 2929.14 of the Revised Code, effective until January 1, 2004, is presented in Section 1 of this act as a composite of the section as amended by Sub. H.B. 130, Am. Sub. H.B. 327, and Sub. H.B. 485 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in Section 1 of this act.

(B) Section 2929.14 of the Revised Code, effective on January 1, 2004, is presented in Section 3 of this act as a composite of the section as amended by Sub. H.B. 130, Am. Sub. H.B. 327, Sub. H.B. 485, and Am. Sub. S.B. 123 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting

2004 Ohio Laws File 53 (Am. Sub. H.B. 12)

(Publication page references are not available for this document.)

version of the section in effect prior to the effective date of the section as presented in Section 3 of this act.

Date Passed: January 7, 2004

Approved January 8, 2004

Act. Eff. April 8, 2004

OH LEGIS 53 (2004)

END OF DOCUMENT

LEXSTAT ORC 2923.126

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER 4, 2007 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2923. CONSPIRACY, ATTEMPT, AND COMPLICITY; WEAPONS CONTROL; CORRUPT
ACTIVITY
WEAPONS CONTROL

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ORC Ann. 2923.126 (2007)

§ 2923.126. Expiration of license; carrying of license and identification; notice of change of residence; motor vehicle and law enforcement stops; prohibited places; retired peace officers

(A) A license to carry a concealed handgun that is issued under section 2923.125 [2923.12.5] of the Revised Code on or after the effective date of this amendment shall expire five years after the date of issuance, and a license that is so issued prior to the effective date of this amendment shall expire four years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of thirty days after the licensee's license expires during which the licensee's license remains valid. Except as provided in divisions (B) and (C) of this section, a licensee who has been issued a license under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code may carry a concealed handgun anywhere in this state if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within forty-five days after that change.

If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee shall promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the motor vehicle is stopped, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of division (E) of section 2923.16 of the Revised Code, after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. Additionally, if a licensee is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in section 5503.04 of the Revised Code and if the licensee is transporting or has a loaded handgun in the commercial

motor vehicle at that time, the licensee shall promptly inform the employee of the unit who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun.

If a licensee is stopped for a law enforcement purpose and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee shall promptly inform any law enforcement officer who approaches the licensee while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently is carrying a concealed handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the licensee is stopped or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of division (B) of section 2923.12 of the Revised Code, after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves.

(B) A valid license issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code does not authorize the licensee to carry a concealed handgun in any manner prohibited under division (B) of section 2923.12 of the Revised Code or in any manner prohibited under section 2923.16 of the Revised Code. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to division (A) of section 5119.02 of the Revised Code or division (A)(1) of section 5123.03 of the Revised Code;

(2) A school safety zone, in violation of section 2923.122 [2923.12.2] of the Revised Code;

(3) A courthouse or another building or structure in which a courtroom is located, in violation of section 2923.123 [2923.12.3] of the Revised Code;

(4) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303. of the Revised Code, in violation of section 2923.121 [2923.12.1] of the Revised Code;

(5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home, a type B family day-care home, or a type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(9) Any building that is owned by this state or any political subdivision of this state, and all portions of any

building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;

(10) A place in which federal law prohibits the carrying of handguns.

(C) (1) Nothing in this section shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. Nothing in this section shall require a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer.

(2) (a) A private employer shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer. As used in this division, "private employer" includes a private college, university, or other institution of higher education.

(b) A political subdivision shall be immune from liability in a civil action, to the extent and in the manner provided in Chapter 2744. of the Revised Code, for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises or property owned, leased, or otherwise under the control of the political subdivision. As used in this division, "political subdivision" has the same meaning as in section 2744.01 of the Revised Code.

(3) The owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. A person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of division (A)(4) of section 2911.21 of the Revised Code and is guilty of a misdemeanor of the fourth degree.

(D) A person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state that is recognized by the attorney general pursuant to a reciprocity agreement entered into pursuant to section 109.69 of the Revised Code has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code and is subject to the same restrictions that apply to a person who carries a license issued under that section.

(E) A peace officer has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code. For purposes of reciprocity with other states, a peace officer shall be considered to be a licensee in this state.

(F) (1) A qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (F)(2) of this section and a valid firearms requalification certification issued pursuant to division (F)(3) of this section has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code and is subject to the same restrictions that apply to a person who carries a license issued under that section. For purposes of reciprocity with other states, a qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (F)(2) of this section and a valid firearms requalification certification issued pursuant to division (F)(3) of this section shall be considered to be a licensee in this state.

(2) (a) Each public agency of this state or of a political subdivision of this state that is served by one or more peace officers shall issue a retired peace officer identification card to any person who retired from service as a peace officer with that agency, if the issuance is in accordance with the agency's policies and procedures and if the person, with respect to the person's service with that agency, satisfies all of the following:

(i) The person retired in good standing from service as a peace officer with the public agency, and the retirement was not for reasons of mental instability.

(ii) Before retiring from service as a peace officer with that agency, the person was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and the person had statutory powers of arrest.

(iii) At the time of the person's retirement as a peace officer with that agency, the person was trained and qualified to carry firearms in the performance of the peace officer's duties.

(iv) Before retiring from service as a peace officer with that agency, the person was regularly employed as a peace officer for an aggregate of fifteen years or more, or, in the alternative, the person retired from service as a peace officer with that agency, after completing any applicable probationary period of that service, due to a service-connected disability, as determined by the agency.

(v) The person has a nonforfeitable right to benefits under the retirement plan of that agency.

(b) A retired peace officer identification card issued to a person under division (F)(2)(a) of this section shall identify the person by name, contain a photograph of the person, identify the public agency of this state or of the political subdivision of this state from which the person retired as a peace officer and that is issuing the identification card, and specify that the person retired in good standing from service as a peace officer with the issuing public agency and satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section. In addition to the required content specified in this division, a retired peace officer identification card issued to a person under division (F)(2)(a) of this section may include the firearms requalification certification described in division (F)(3) of this section, and if the identification card includes that certification, the identification card shall serve as the firearms requalification certification for the retired peace officer. If the issuing public agency issues credentials to active law enforcement officers who serve the agency, the agency may comply with division (F)(2)(a) of this section by issuing the same credentials to persons who retired from service as a peace officer with the agency and who satisfy the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section, provided that the credentials so issued to retired peace officers are stamped with the word "RETIRED."

(c) A public agency of this state or of a political subdivision of this state may charge persons who retired from service as a peace officer with the agency a reasonable fee for issuing to the person a retired peace officer identification card pursuant to division (F)(2)(a) of this section.

(3) If a person retired from service as a peace officer with a public agency of this state or of a political subdivision of this state and the person satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section, the public agency may provide the retired peace officer with the opportunity to attend a firearms requalification program that is approved for purposes of firearms requalification required under section 109.801 [109.80.1] of the Revised Code. The retired peace officer may be required to pay the cost of the course.

If a retired peace officer who satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section attends a firearms requalification program that is approved for purposes of firearms requalification required under section 109.801 [109.80.1] of the Revised Code, the retired peace officer's successful completion of the firearms requalification program requalifies the retired peace officer for purposes of division (F) of this section for one year from the date on which the program was successfully completed, and the requalification is valid during that one-year period. If a retired peace officer who satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section satisfactorily completes

such a firearms requalification program, the retired peace officer shall be issued a firearms requalification certification that identifies the retired peace officer by name, identifies the entity that taught the program, specifies that the retired peace officer successfully completed the program, specifies the date on which the course was successfully completed, and specifies that the requalification is valid for one year from that date of successful completion. The firearms requalification certification for a retired peace officer may be included in the retired peace officer identification card issued to the retired peace officer under division (F)(2) of this section.

A retired peace officer who attends a firearms requalification program that is approved for purposes of firearms requalification required under section 109.801 [109.80.1] of the Revised Code may be required to pay the cost of the program.

(4) As used in division (F) of this section:

(a) "Qualified retired peace officer" means a person who satisfies all of the following:

- (i) The person satisfies the criteria set forth in divisions (F)(2)(a)(i) to (v) of this section.
- (ii) The person is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
- (iii) The person is not prohibited by federal law from receiving firearms.

(b) "Retired peace officer identification card" means an identification card that is issued pursuant to division (F)(2) of this section to a person who is a retired peace officer.

HISTORY:

150 v H 12, § 1, eff. 4-8-04; 151 v H 347, § 1, eff. 3-14-07.

The Speaker handed down the following communication from the Governor:

**STATEMENT OF THE REASONS FOR THE VETO OF
SUBSTITUTE HOUSE BILL 347**

December 7, 2006

Pursuant to Article II, Section 16 of the Ohio Constitution, which states that the Governor may disapprove any bill, I hereby disapprove of this act and set forth below the reasons for so doing.

Substitute House Bill 347 exceeds the scope of a concealed carry corrective bill by preempting local gun regulations relating to owning, possessing, purchasing, selling, and transferring firearms and their ammunition. In so doing, the act nullifies many local municipalities' gun regulations that are more stringent than state law, including the assault weapons bans enacted by the cities of Cincinnati, Cleveland, Columbus, Dayton, and Toledo. This vast prohibition of local control is unwarranted and fails to consider the differing challenges and circumstances faced by different communities and regions of the State.

For these reasons, I am vetoing Substitute House Bill 347.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus this 7th day of December, Two Thousand Six.

[Seal]

/s/ BOB TAFT
Bob Taft, Governor

The question being, "Shall the bill pass notwithstanding the objections of the Governor?"

The yeas and nays were taken and resulted - yeas 71, nays 21, as follows:

Those who voted in the affirmative were: Representatives

Aslanides	Blasdel	Blessing	Book
Brinkman	Bubp	Buehrer	Calvert
Carano	Carmichael	Cassell	Chandler
Coley	Collier	Combs	Core
Daniels	DeWine	Distel	Dolan
Domenick	Evans C.	Evans D.	Faber
Fende	Fessler	Flowers	Garrison
Gibbs	Hagan	Hartnett	Harwood
Healy	Hood	Hoops	Hughes
Latta	Law	Martin	McGregor J.
McGregor R.	Oelslager	Patton T.	Perry
Peterson	Raga	Raussen	Reidelbach
Reinhard	Sayre	Schaffer	Schlichter
Schneider	Seitz	Setzer	Smith G.

Stewart J.	Taylor	Trakas	Uecker
Wagner	Wagoner	Webster	White D.
White J.	Widener	Widowfield	Willamowski
Wolpert	Yuko		Husted-71.

Those who voted in the negative were: Representatives

Beatty	Bocieri	Brown	DeBose
DeGeeter	Driehaus	Foley	Key
Kozjura	Luckie	Mason	Mitchell
Otterman	Redfern	Skindell	Stewart D.
Strahorn	Ujvagi	Williams	Woodard
			Yates-21.

The bill having received the required constitutional majority, passed notwithstanding the objections of the Governor.

BILLS FOR THIRD CONSIDERATION

Sub. H. B. No. 239-Representatives Schneider, Reidelbach, Brinkman, Faber, Seitz, Kearns, Flowers, Hood, Aslanides, Blessing, Bubp, Buehrer, Coley, Collier, Combs, Daniels, DeGeeter, Distel, Dolan, Domenick, Driehaus, Fessler, Garrison, Gibbs, Gilb, Hagan, Hoops, Kilbane, Latta, Law, Martin, McGregor, J., Oelslager, Patton, T., Raga, Raussen, Reinhard, Schaffer, Seaver, Setzer, Smith, G., Taylor, Trakas, Uecker, Wagner, Wagoner, Walcher, White, J., Widener, Widowfield, Willamowski, Wolpert.

To amend section 5101.55 and to enact sections 9.041, 3701.511, 3702.33, and 5101.56 of the Revised Code to declare that it is the public policy of the state to prefer childbirth over abortion, to permit any person to petition a court of common pleas for an order enjoining the operation of a health care facility without a license, to modify the laws governing public funding of abortions, and to prohibit the use of funds appropriated for genetic services to be used for abortion-related purposes, was taken up for consideration the third time.

The question being, "Shall the bill pass?"

The yeas and nays were taken and resulted - yeas 68, nays 25, as follows:

Those who voted in the affirmative were: Representatives

Aslanides	Blasdel	Blessing	Bocieri
Book	Brinkman	Bubp	Buehrer
Calvert	Carmichael	Cassell	Coley
Collier	Combs	Core	Daniels
DeGeeter	DeWine	Distel	Dolan
Domenick	Driehaus	Evans C.	Evans D.
Faber	Fende	Flowers	Garrison
Gibbs	Gilb	Hagan	Hartnett
Hood	Hoops	Hughes	Latta
Law	Martin	McGregor J.	McGregor R.

LEXSTAT ORC 9.68

PAGE'S OHIO REVISED CODE ANNOTATED
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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH NOVEMBER 8, 2007 ***

*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER 4, 2007 ***

OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 9. MISCELLANEOUS
CONSTRUCTION MANAGEMENT SERVICES

Go to the Ohio Code Archive Directory

ORC Ann. 9.68 (2007)

§ 9.68. Need to provide uniform laws with respect to regulation of firearms

(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.

(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.

(C) As used in this section:

(1) The possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the possession, transporting, or carrying, openly or concealed on a person's person or concealed ready at hand, of firearms, their components, or their ammunition.

(2) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(D) This section does not apply to either of the following:

(1) A zoning ordinance that regulates or prohibits the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for residential or agricultural uses;

(2) A zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur, provided that the zoning ordinance is consistent with zoning ordinances for other retail establishments in the same geographic area and does not result in a de facto prohibition of the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for

commercial, retail, or industrial uses.

HISTORY:

151 v H 347, § 1, eff. 3-14-07.

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

NOTICE OF APPEAL OF APPELLANT, CITY OF CLYDE

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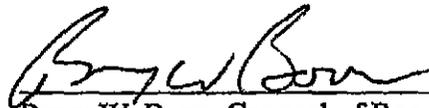
FILED
MAY 24 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Notice of Appeal of Appellant, City of Clyde

Appellant City of Clyde hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Sandusky County Court of Appeals, Sixth District, entered in Court of Appeals case numbers S-06-039 and S-06-040 on April 13, 2007 in the case of Ohioans for Concealed Carry, Inc., et.al vs. City of Clyde, et.al.

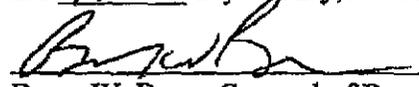
This case raises a substantial constitutional question and is one of public or great general interest.

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) AUPACH, 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