

IN THE SUPREME COURT OF THE STATE OF OHIO

Case No. 08-0128

STATE OF OHIO
Appellant,

-vs.-

THE CITY OF LIMA,
Appellee.
On Appeal from the Allen County Court of Appeals
Third Appellate District Court of Appeals
Case no. CA-2007-021

MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE OF
FRATERNAL ORDER OF POLICE OF OHIO, INC.
IN SUPPORT OF APPELLANT, STATE OF OHIO

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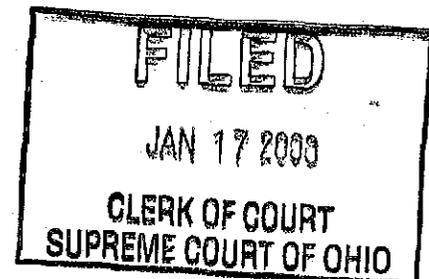


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STATEMENT OF THE CASE AND FACTS

The Statement of the case and Statement of facts provided by the State of Ohio (hereinafter Appellant) in this action will be sufficient and amicus curiae Fraternal Order of Police of Ohio, Inc. (FOP) will not duplicate those statements here.

STATEMENT OF PUBLIC INTEREST AND CONSTITUTIONAL QUESTION

This case presents several constitutional questions, to wit;

1. Does O.R.C. 9.481 as enacted on May 1, 2006 violate Article II Section 34 of the Constitution of the State of Ohio?
2. Does O.R.C. 9.481 as enacted on May 1, 2006 violate Article II Section 26 of the Constitution of the State of Ohio?
3. Does O.R.C. 9.481 as enacted on May 1, 2006 violate Article XVIII Section 3 of the Constitution of the State of Ohio?

In this case the decision of the court of appeals affects every political subdivision and all employees employed by those entities throughout the State of Ohio. The public's interest in the issue of residency is profoundly affected if the statutory language enacted by the legislature in O.R.C. § 9.481 is not held to be applicable statewide.

The ruling in the court of appeals, if permitted to stand, undermines the authority currently afforded to the General Assembly in its law making capacity. Thousands of citizens in the State of Ohio are employed by the municipalities that are covered by this statute. By enacting O.R.C. § 9.481, the General assembly under has recognized residency as a term or condition of employment and has codified a general law that is to be implemented statewide. The statute gives employees the freedom to choose their place of residence while the ordinance at issue requires them to live within the City limits. Lima ordinance 201-00 clearly prohibits what O.R.C. §9.481 allows. The ordinance must

therefore be rendered void. *Strutheres v. Sokol* (1923), 108 Ohio St. 263, 755 N.E.2d 857. In light of the ramifications faced by the membership of the FOP and the citizenry of Ohio the Court of Appeals decision must be overturned.

The decision of the court of appeals is contrary to the statute and to prevailing precedent on this subject. The decision violates the Constitution for the State of Ohio by elevating the status of the Home-Rule provision. O. Const. Article XVIII Section 3 grants municipalities limited authority to create ordinances affecting its employees unless the ordinance as created conflicts with State law. Where a general law such as O.R.C. § 9.481 has been enacted pursuant to O. Const. Article II Section 34, the general law prevails over a local ordinance when as here the law as enacted is of statewide concern.

ARGUMENT
PROPOSITION OF LAW NO. 1:

O.R.C. § 9.481 WAS ENACTED PURSUANT TO THE AUTHORITY GIVEN TO THE GENERAL ASSEMBLY UNDER ARTICLE II SECTION 34 OF THE STATE OF OHIO CONSTITUTION, IT THEREFORE SUPERSEDES ANY AND ALL PROVISIONS ACTING TO THE CONTRARY.

The City of Lima contends that O.R.C § 9.481 violates Article II Section 34 of the Ohio Constitution. In fact Article II Section 34 grants the Ohio General Assembly broad discretion when enacting laws effecting the comfort, health, safety and general welfare of employees. *City of Rocky River v. State Employment Relations Board* (1989), 43 Ohio St.3d 1. Under Article II Section 34 the General Assembly retains exclusive constitutional power and its decisions are entitled to due deference. *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St.3d 624,632; *N. Ohio Patrolmen's Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375, 377, 15 O.O.3d 450, 402 N.E.2d 519.

The sole function of the court of appeals in this case was to determine whether or not the law as enacted exceeds the limits of legislative power afforded the General Assembly. *State ex rel. Bishop v. Mt. Orab Village School Dist. Bd. of Edn.* (1942), 139 Ohio St. 427, 438, 22 O.O. 494, 40 N.E.2d 913. It is well established that legislative actions possess a strong presumption of constitutionality. In order to overcome that presumption the City of Lima was required to prove beyond a reasonable doubt that the legislation and the Ohio Constitution are incompatible. The City of Lima failed to meet this burden in the court of appeals. *Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 128 N.E.2d 59; *Kelleys Island Caddy Shack, Inc. v. Zaino*, 96 Ohio St.3d 375, 2002-Ohio-4930, 775 N.E.2d 489. The Ohio courts have further held that a statute "must be enforced unless it is in clear and irreconcilable conflict with some express provision of

the constitution." *Spivey v. Ohio* (N.D. Ohio 1998), 999 F.Supp. 987, 999. O.R.C. § 9.481 is not in conflict with any section of the constitution.

The City of Lima argues that O.R.C. § 9.481 conflicts with Article XVIII Section 3 (the Home Rule Provision) This Article gives municipalities the right 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. This Article clearly limits the authority of municipalities where a conflict with law is found. If it is determined that the ordinance prohibits what the State law permits, the State law prevails. *Struthers v. Sokol* (1923), 108 Ohio St. 263, 755 N.E.2d 857.

This case is not limited to the implementation of an ordinance under local self government. To the contrary, it involves a matter of statewide concern and involves a law of a general nature because O.R.C. § 9.481 operates uniformly throughout every county in the State of Ohio. It therefore does not violate Article II Section 26 of the Ohio Constitution. It is applicable to every political subdivision within the state. *American Financial Services Assn. v. Cleveland* (2006), 112 Ohio St.3d 170, 585 N.E.2d 776.

In *Reading v. Pub Util. Comm.* (2006), 109 Ohio St.3d 193 this Court held that "It is a fundamental principle of Ohio law that, pursuant to the "statewide concern" doctrine, a municipality may not, in regulation of local matters, infringe on matters of general and statewide concern." The Court has continuously upheld this principle. *State ex rel. Evans v. Moore*(1982), 69 Ohio St.2d 88, 431 N.E.2d 311. The statute regulates residency for citizens throughout Ohio. As such the City of Lima's home rule concerning residency can not stand. Several courts throughout Ohio have reviewed this matter and the majority have held that O.R.C. § 9.481 is constitutional and prevails over the various

ordinances involved in each of those cases.¹

The Third District Court of Appeals (opinion at page 9) and the City of Lima both concede that if O.R.C. § 9.481 was validly enacted pursuant to Article II section 34 of the Ohio Constitution then O.R.C. § 9.481 supersedes the Lima residency ordinance. Without question, O.R.C. § 9.481 was validly enacted under the authority granted the General Assembly by Article II Section 34 of the Constitution for the State of Ohio. That is clearly established by the unambiguous language contained in that section.

The Third District Court of Appeals overstepped its bounds when it decided to explore the policy and wisdom of this statute. The court dissected the statute and applied its own interpretation to the intent of the legislature. The fact that the court may have disagreed with the legislature does not give it authority to override a statute that is within the exclusive jurisdiction of the legislature. In interpreting a statute, the courts are bound by the language enacted by the General Assembly, the courts are to give effect to the words contained in the statute. The courts are not to place their own interpretation on those words nor can they displace the words contained therein. *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393; see, also, *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501, 858 N.E.2d 341.

The General Assembly and not the Third District Court of Appeals is the branch of state government charged by the Ohio Constitution under Article II section 34 with creating policies that protect the well being of the citizens of Ohio. The General

¹ *City of Lima v. State of Ohio* (Feb 16, 2007), Allen C.P. No CV 2006-518; *City of Cleveland v. State of Ohio* (Feb. 23, 2007), Cuyahoga C.P. No. 590414, 06-590463; *City of Akron v. State of Ohio* (Mar. 30, 2007) Summit C.P. No. 2006-05-2759; *City of Dayton v. State of Ohio* (Jan. 6, 2007) Montgomery C.P. No. 06-3507; *City of Cincinnati v. State of Ohio* (Oct. 31, 2007) Hamilton C.P. No. A0604513 ; *City of Youngstown v. State of Ohio* (Nov. 7, 2007) Mahoning C.P. No. 06 CV 1677; *AFSCME, Local #74 v City of Warren* (Sep. 29, 2007) Trumbull C.P. No. 2006 CV 01489; *City of Toledo and City of Oregon v. State of Ohio*, (July 27, 2007), Lucas C.P. No. C106-3235

Assembly by enacting O.R.C. § 9.481 has not transgressed the limits of its legislative power so as to render that section unconstitutional. To the contrary the statute embraces the language contained in the Ohio Constitution.

The language in O.R.C. § 9.481 is clear and unambiguous. The Third District Court of Appeals had no authority to interpret the language in O.R.C. § 9.481, but was instead obligated to apply the statute as written. *Symmes Twp. Bd. of Trustees v. Smyth* (2000), 87 Ohio St.3d 549, 553, 721 N.E.2d 1057. Under **Section 34, Article II** of the Ohio Constitution, "[l]aws may be passed * * * providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power." Therefore, the statutory right to residency is a vested right which takes precedence over the authority granted to the City of Lima under the Home Rule Amendment. *State ex rel. Reuss v. Cincinnati* (1995), 102 Ohio App.3d 521, 524, 657 N.E.2d 551. The court below should have rendered a decision upholding the residency clause in O.R.C. § 9.481. The court had no authority to hold otherwise.

PROPOSITION OF LAW NO.2:

THE THIRD DISTRICT COURT OF APPEALS COMMITTED REVERSABLE ERROR WHEN IT HELD THAT O.R.C. § 9.481 DID NOT AFFECT TERMS AND CONDITIONS OF EMPLOYMENT.

In *City of St. Bernard v. State Employment Relations Board* (1991), 74 Ohio App.3d 3, 598 N.E. 2d 15, the First District Court of Appeals held that residency was a mandatory subject of collective bargaining because it affects wages, hours terms and conditions of employment. It logically follows that the restriction in O.R.C. § 9.481 affects wages, hours, terms and conditions of employment since it provides for the comfort, health, safety and general welfare of public employees.

The City of Lima argued and the Court of Appeals held that residency affects the qualifications for employment as opposed to the conditions of employment for those affected. That argument makes no sense. If an employee had to reside within the limitations contained in Lima's ordinance upon hire and but could later after hiring move, without suffering any ramifications there would be no need for O.R.C. § 9.481, because employees would be free to move to the residence of their choice. In reality an employee who moves after being hired by the employer is subject to termination of employment. That alone establishes residency as a condition of employment.

Ironically, the Lima ordinance itself defines residency as a condition of employment. City of Lima Ordinance # 201-00 as passed on October 23, 2000 specifically says "... on and after the date of passage of this ordinance, that as a condition of permanent employment with the City all such employees shall live in a primary residency within the corporate boundaries of the municipality." It is apparent from the language contained in the ordinance that while residency may begin as a qualification for employment, but this requirement does not end once an applicant becomes an employee in the City.

The Lima ordinance makes it clear that once an applicant is hired, residency becomes a continuing condition of employment. An employee who is hired by the City of Lima can not take the position and then move to Maysville for example. Were that to happen the Employer would then argue that the employee was subject to termination. We no longer live under the conditions that existed in 1912. In 2008 choice of residence is paramount to maintaining a comfortable, healthy and safe lifestyle. No one can deny that the crime rate in different areas of Ohio varies. Employees have the right to decide how

much risk they wish to expose upon themselves and their families.

It is also undeniable that education systems vary throughout the state. There are numerous other considerations that households, especially those with children, should be able to consider, such as; are there any children of the same age in the area, are there places where my child can safely play outside, is this an affordable area and so on. In many circumstances employees need to consider the available resources in the area, hospitals, specialized physicians, public transportation, and recreational facilities etc.. There are areas of the state where an employee may be able to find a larger more affordable home or acreage. The reasons for allowing employees the freedom to choose the location of their residence far outweigh the reasons for residency requirements. After all an employee who is comfortable is a better employee. Returning to the comforts of home is vital to the maintenance of a healthy mental state. O.R.C. § 9.481 provides for the comfort, health and safety and general welfare of the employees effected.

Article II Section 26 of the Ohio constitution requires the uniform operation of all laws of a general nature. O.R.C. § 9.481 is a law of general nature. This section as enacted operates uniformly upon every person within its operative provisions as constitutionally required. The law as enacted conforms with every prong of the requirements outlined in *Canton v. State of Ohio*, 95 Ohio St.3d 149 (2002). *Canton* states that a general law 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.**

O.R.C. § 9.481 satisfies each of the four prongs listed above. O.R.C. § 9.481 and the residency ordinance for the City of Lima are in direct conflict. The statute takes precedence over the ordinance. The ordinance is more associated with an exercise of police power rather than of local self government. O.R.C. § 9.481 qualifies as a general law as it provides for the uniform regulation of residency for public employees in Ohio. The residency statute serves an overriding statewide interest by allowing all employees who are similarly situated, to locate affordable residences based upon their individual needs. *Canton, Supra*. This is not a law that affects the City of Lima in isolation. This law affects employees in several occupations throughout the entire State of Ohio. There are currently ordinances throughout the State of Ohio that restrict an employee's freedom to choose a residence. O.R.C. § 9.481 is not limited to the City of Lima. Instead it establishes rules regarding residency covering employees for municipalities all over the State of Ohio.

The applicable ordinances in the State of Ohio are each in conflict with O.R.C. § 9.481. In order to meet the Canton requirement each of these ordinances must be eliminated. Once O.R.C. § 9.481 is established as the prevailing law, the residency issue will operate uniformly throughout the state. This statute is a general law and it must be given preference over the Lima City ordinance.

PROPOSITION OF LAW NO. 3

O.R.C. § 9.481 IS A GENERAL LAW AFFECTING THE PUBLIC HEALTH, SAFETY, MORALS OR GENERAL WELFARE OF EMPLOYEES THROUGHOUT THE STATE OF OHIO.

The FOP represents 26, 000 members located throughout the State of Ohio. The FOP's membership is located in every county in Ohio. A host of the political subdivisions/municipalities represented by the FOP have enacted ordinances that conflict with this statute. Each member employed by one of those political subdivisions/municipalities is affected by O.R.C. § 9.481. If the decision of the Allen County Court of Appeals is permitted to stand, thereby permitting the infringement of the Lima ordinance on citizens throughout the state, the membership of the FOP statewide will lose a right established by O.R.C. § 9.481. This statute as passed by the General Assembly provides for the comfort, health, safety and general welfare of the FOP's membership.

The intent of the General Assembly in enacting O.R.C. § 9.481 was referenced in the bill itself. The General Assembly explained its intent as follows:

Section 2. In enacting section 9.481 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

- (A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.
- (B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.

SECTION 3. The General Assembly finds, in enacting section 9.481 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of

employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees.

Sub.S.B. 82

In its decision, the Third District Court of Appeals specifically contradicts the findings of the General Assembly. The court had no right to do so.

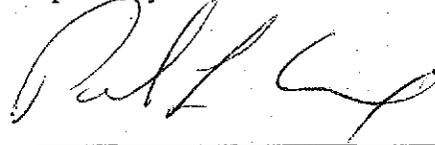
The prohibition contained in O.R.C. § 9.481, does not apply to the City of Lima in isolation. The current Lima ordinance 201-00 prevents uniformity by subjecting its employees to a local residency restriction. O.R.C. § 9.481 on the other hand applies residency uniformly to every citizen in the State of Ohio. The statute does not merely restrict the ability of the City of Lima to enact ordinances. To the contrary, it sets forth regulations for the implementation of residency that apply to all those affected. Ohio's residency statute is a general law that is part of a comprehensive and uniform statewide enactment setting forth regulations that prescribe a general rule concerning the application of residency on public employees in Ohio. *American Financial, Supra.*

Conclusion

O.R.C. §9.481 is a law of general nature and therefore prevails over Lima's ordinance which is in direct conflict with the law as written. The statute is constitutional and affects Ohio citizens Statewide. The Lima residency ordinance conflicts with statutory law and is therefore void. The decision of the court of appeals undermines the intent of O.R.C. §9.481.

For the foregoing reasons, Amicus Curiae FOP respectfully requests that this Court accept jurisdiction in this case and thereafter reverse the decision of the Court of Appeals.

Respectfully submitted,

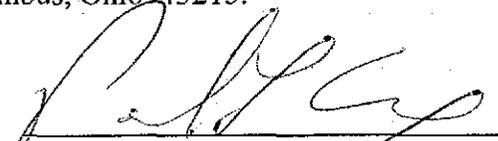


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Brief Amicus Curiae was sent by regular U.S. mail this 17th day of January 2008 to Mr. Anthony Geiger, Law Director, City of Lima, 209 North Main Street, 6th Floor, Lima, Ohio 45801 and to Mr. Robert Krummen, Deputy Director, Office of Attorney General, Marc Dann, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215.



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APPENDIX

COMMON PLEAS COURT
FILED

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CLERK OF COURTS
ALLEN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

CITY OF LIMA, OHIO

*

CASE NO. : CV2006 0518

Plaintiff

*

-v-

*

STATE OF OHIO

*

**ORDER
DECLARATORY JUDGMENT**

Defendant

*

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This matter is before the Court upon the Complaint for Declaratory Judgment and Injunctive Relief filed by the Plaintiff, City of Lima, on May 22, 2006 for an Order declaring that Ohio Revised Code 9.481 be declared unconstitutional. Both City of Lima and Defendant, State of Ohio, have filed their respective well reasoned Motions for Summary Judgment and Responses. The Court has considered the respective arguments of the parties, affidavits and applicable law, without hearing.

STATEMENT OF FACTS

In 1912, Ohio citizens voted to amend the Ohio Constitution to include several provisions that expanded the powers of municipalities,

including the authority to adopt their own Charter, which are referred to as the Home Rule Amendment. *See Ohio Const. Art. XVIII.*

Section 3 of Article XVIII of the Ohio Constitution provides “[m]unicipalities 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.”

Article XVIII, Section 3 of the Ohio Constitution grants municipalities two separate types of authority: (a) to regulate matters of local self-government and (b) to adopt and enforce police regulations that do not conflict with State’s general laws.

As it applies to the instant case, the original Charter for the City of Lima was adopted by its electorate on November 2, 1920. Section 72 of the Lima City Charter was amended in 1974 to specifically allow the Lima City Council to determine by Ordinance whether to establish a residency requirement for city employees.

On October 23, 2000, Lima City Council passed Ordinance 201-00 which, “established a requirement for persons appointed by the Mayor as employees of the City on and after the date of passage of this Ordinance, that as a condition of employment with the City all such employees shall live in a

primary permanent residency within the corporate boundaries of the municipality." (emphasis added)

As noted by Defendant, the General Assembly found that there are approximately 125 cities and 13 villages in the State of Ohio that subject their employees to residency restrictions. See Ohio Legislative Services Commission's "Fiscal Note and Local Impact Statement" (attached as Defendant's Exhibit C).

On May 1, 2006, the Ohio General Assembly enacted R.C. 9.481 to insure that employees of all Ohio political subdivisions would no longer be thwarted in exercising their freedom to choose where they want to live in the State of Ohio.

Specifically, O.R.C. 9.481(B)(1) provides:

"Except as otherwise provided in division (B)(2), of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." (emphasis added)

The General Assembly in adopting R.C. 9.481(B)(2)(b), the exception, provided that political subdivisions had the ability to legislate in this area if they seek "to insure adequate response times by certain employees of political subdivisions to emergencies or disasters while

insuring that those employees generally are free to reside throughout the state.”

ISSUE

The issue in this case is whether a state statute, specifically O.R.C. 9.481 as enacted by the General Assembly which provides employees of Ohio’s political subdivisions with freedom to choose where they want to live, is unconstitutional because it conflicts with Section 3, Article XVIII of the Ohio Constitution that restricts this freedom (Lima Ordinance 201-00).

Pursuant to Civil Rule 56, summary judgment is appropriate if: (1) there is no issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his or her favor. *State ex rel. Cassels v. Dayton City School Dist. Bd. of Ed.* (1994), 69 Ohio St.3d 217, 219; See *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. The burden of showing no genuine issue exists as to any material fact falls upon the moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

The Ohio Supreme Court has established the standards for granting summary judgment under Civ. R. 56 when a party asserts that a nonmoving

party has no evidence to establish an essential element of the nonmoving party's case. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Civ. R. 56(E) requires the nonmoving party to go beyond the pleadings, affidavits, or by the depositions, answers to interrogatories, and admissions on file, and designate specific facts showing that there is a genuine issue for trial.

Dresher at 289 (citing *Celotex Corp. v. Catrett* (1986), 477 U.S. 317). The last two sentences of Civ. R. 56(E) provide that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Accordingly, if the moving party has satisfied its initial burden, the nonmoving party then must set forth specific facts showing that there is a genuine issue for trial, and if the nonmovant does not respond, summary judgment, if appropriate, shall be entered against the nonmoving party.

Dresher at 293.

The City of Lima claims that it has a compelling interest in its residency requirements in that the societal and economic benefits as outlined in its brief are crucial to the City's on-going vitality and long-term redevelopment efforts. Further, it is claimed that by adopting a residency

provision into the Charter of the City of Lima, the people of the City of Lima have exercised the powers of local self-government that are specifically conferred upon them by Article XVIII, Sections 3 and 7 of the Ohio Constitution.

The Court finds that the Ohio General Assembly made a legislative finding that it is a matter of statewide concern (emphasis added) to generally allow the employees of Ohio's political subdivisions to choose where to live and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the State in order to provide for the comfort, health, safety and general welfare of those employees. See 126 S.B. 82, Section 3.

However, the Ohio Legislative Service Commission recognized that the prohibition contained in the Act as it relates to municipal corporations may violate the "Home Rule" provisions of the Ohio Constitution. It noted that, "residency requirements for municipal employees most likely are a matter of local self-government, which can be overcome only when there is a state law expressing a matter of statewide concern."

HOME RULE

The City of Lima claims, plain and simple, that this a "Home Rule" case. Further, the Court is directed by the City of Lima that it need look no

further than the case of *Am. Financial Servs. Assn. v. Cleveland*, 2000-Ohio, 6043 for authority in deciding in its favor.

Am. Financial, supra, provides:

The first step in a Home Rule analysis is to determine “whether the matter in question involves an exercise in local self-government or an exercise of local police power.” “. . . If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.

There has been much confusion in this area. As stated in *Am.*

Financial, supra, at paragraph 29, “. . . the application of “statewide concern” as a separate doctrine has caused confusion, . . . because some courts have considered the doctrine a separate ground upon which the state may regulate. . . . “[S]tatewide concern” describes the extent of state police power which was left unimpaired by the adoption of the Home Rule Amendments, as well as . . . those areas of authority which are outside the outer limits of “local” power, i.e., those matters which are neither ‘local self-government’ nor ‘police and sanitary regulations.’”

Therefore the “statewide concern doctrine” falls within the existing framework of what is called the *Canton* test (*Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.)

The City of Lima claims that O.R.C. 9.48, as a matter of law, is not a general law but a local law. The “*Canton* test” provides:

In *Canton v. State*, 95 Ohio St.3d 149 . . . we announced a 4-part test defining what constitutes a general law for the 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." See *Am. Financial, supra*, paragraph 32.

The City of Lima further contends that O.R.C. 9.481 clearly fails to meet parts 3 and 4 of the "*Canton test*." The law, it is claimed, as written is clearly only a prohibition against the authority of the state's political subdivisions, not as a regulation for the populous as a whole. Therefore, based upon the *Canton* analysis required by the *Am. Financial* court, O.R.C. 9.481 fails on its merits.

The State of Ohio argues that the City's Home Rule contention must fail because the Ohio Supreme Court has already declared that the General Assembly's authority to regulate under Article II, Section 34 of the Ohio Constitution is constitutionally superior to, and can not be impaired or negated by, the City of Lima's Home Rule authority under Article XVIII, Section 3 (the Home Rule Amendment).

The Court finds that pursuant to Article II, Section 34 of the Ohio Constitution, the General Assembly undeniably has the authority to enact

laws that provide for the comfort, health, safety and general welfare of employees. Specifically, Section 34 states:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of all employees; and no further provisions of the constitution shall impair or limit this power. (emphasis added)

The State of Ohio argues that the *City of Rocky River v. State Employment Relations Bd., et al.* (1989), 43 Ohio St.3d 1 is the authority for the determination of the instant case. (This case is referred to often as “*Rocky River IV*”.) The Ohio Supreme Court in *City of Rocky River, supra*, concluded that “the language of Section 34 is so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary. Where the language of a statute or constitutional provision is clear and unambiguous, it is the duty of the courts to enforce the provisions as written.” *Supra*, at 15.

In determining the constitutionality of O.R.C. 9.481, the Court is cognizant of the long established principle requiring courts to presume the constitutionality of legislative enactments. *State, ex rel. Jackman v. Court of Common Pleas* (1967), 9 Ohio St.2d 159. This presumption can only be overcome by proof beyond a reasonable doubt, that the legislation and the

Constitution are clearly incompatible. *State, ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142.

Based upon the presumption of constitutionality and the analysis in *Rocky River IV*, the Court finds that the final phrase of Section 34, which states “no other provision of the Constitution shall impair or limit this power,” means just that. As quoted by the State and as reasoned by the Ohio Supreme Court in *Rocky River IV*, “How can it seriously be maintained that the home-rule amendment is somehow exempt from this mandate? Section 34 should not be clearer or more unequivocal.” *Supra*, at 16. Therefore, the Ohio Supreme Court held that “Section 3, Article XVIII of the Ohio Constitution, the Home Rule Provision, may not be interposed to impair, limit or negate” legislation validly enacted pursuant to Article II, Section 34.

As it applies to the instant case and pursuant to *Rocky River IV*, the City of Lima’s Home Rule argument need not be considered because legislation enacted under Section 34 can not be impaired by legislation enacted under the Home Rule Amendment. Since the Ohio General Assembly enacted O.R.C. 9.481 pursuant to its Section 34 powers, the City of Lima’s Ordinance enacted under the Home Rule Amendment can not impair, limit or negate O.R.C. 9.481.

The Court further finds that a residency requirement is a condition of employment. *City of St. Bernard v. State Emp. Relations Bd.* (1st District 1991), 74 Ohio App.3d 3, 6. Since residency requirements are clearly a condition of employment, the regulation of residency requirements in O.R.C. 9.481 is concerned with the general welfare of public employees and the state statute “may not be affected in any way by the “Home Rule” Amendment.” *Rocky River IV, supra*, at 13.

In the instant action, the Ohio General Assembly considered this to be a situation where the public interest necessitated legislative action. It enacted O.R.C. 9.481 to address and modify existing concerns. Jurists may not agree that such remedy is the best or most effective means of resolving the problem. Nevertheless, the remedy must be upheld unless it constitutes a plain affront to a specific provision of the Constitution. *American Ass’n. of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St.3d 55, 61. Even though a “Home Rule” analysis is unnecessary, for the reasons set forth above, the Court shall do so in the alternative.

People change. Society changes. And, as a result, laws change. Years ago a residency requirement may have been just a matter of local concern. The Court is reminded of the 1950 Tennessee Ernie Ford song “Sixteen Tons”:

“You load sixteen tons, what do you get
Another day older and deeper in debt
Saint Peter don't call me 'cause I can't go
I owe my soul to the company store.”

Compare the above to the 2005-2006 Thomas L. Friedman book entitled *The World is Flat (A Brief History of the Twenty-first Century)*; Farrar, Straus & Giroux, 19 Union Square West, New York, NY 10003; First updated and expanded edition 2006. This book accounts the great changes taking place in our time, as lightning swift advances in technology and communications bring people all over the globe together and put us in touch as never before.

The Court finds the issue of residency requirement is a matter of statewide concern due to the extraterritorial effects that residency requirements have on other communities throughout the State of Ohio. Since this is an issue of statewide concern, residency requirements is a matter that has passed from one exclusively of local self-government to one of statewide concern and is properly addressed by statewide legislation. While powers granted under the Home Rule Amendment relate to local matters, “even in the regulation of such local matters a municipality may not infringe on matters of general and statewide interest.” *Cleveland Electric Illuminating Co. v. City of Painesville* (1968), 15 Ohio St.2d 125,129.

The Court notes a New York case for the proposition that a city's home-rule authority did not supersede a state statute. In the case of *Uniformed Firefighters Assn., et al. v. City of New York, et al.* (1980), 50 N.Y.2d 85, the court concluded that the City's Home Rule authority did not supersede a state statute dealing with a matter of state concern, namely the residency of municipal officers and employees. The Court stated specifically, "while the structure and control of the municipal service departments is an issue here and may be considered of local concern within the meaning of municipal home rule . . . the residence of their members, unrelated to job performance or departmental organization is a matter of state-wide concern not subject to the Home Rule."

Further, the Court finds that a "*Canton* test" is not necessary but even if the same is applied, the City of Lima's argument fails.

1. Generally permitting employees of political subdivisions through the State of Ohio to live where they choose while providing political subdivisions with a process for enacting specific exceptions, constitutes a statewide and comprehensive legislative enactment in and of itself.
2. O.R.C. 9.481 operates uniformly throughout the State of Ohio because the statute applies across the State to all included within the statute's operative provisions.
3. Subject of providing employees of political subdivisions throughout the State of Ohio with the freedom to choose where they want to live is of a general nature for all of these employees. Specifically, the law's subject not only affects

employees of the City of Lima by providing them with the freedom to choose where they want to live, but it also affects employees of every other political subdivision within the State of Ohio in the same manner.

4. O.R.C. 9.481 qualifies as an exercise of police power. State's police power embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health. (Quoted from *Wessel v. Timberlake* (1916), 95 Ohio St. 21, 34.)
5. O.R.C. 9.481 proscribes a rule of conduct on citizens generally. As noted by the State, the statute applies to political subdivisions, but "the practical effect of the legislation and common sense tells us "that O.R.C. 9.481 has a direct impact on the conduct of employees of political subdivisions generally."” *City of Canton, supra*, at 155.

As a result, the Court declares that O.R.C. 9.481 is constitutional pursuant to the doctrine of statewide concern, thus trumping and/or superseding all conflicting local laws including that enacted pursuant to the City's power of local self-government (Ordinance #201-00).

The Court further finds that the Ohio General Assembly in enacting O.R.C. 9.481 declared its intent to recognize . . . Section 34 of Article II, Ohio Constitution, which specifies that laws may be passed providing for the comfort, health, safety and general welfare of all employees and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.

Since the General Assembly concluded that it is necessary to provide employees of Ohio's political subdivisions with the right to reside anywhere they wish to live, the enactment of O.R.C. 9.481(C) undoubtedly bears a real and substantial relation to public health, safety and welfare. Further, by providing employees of every Ohio political subdivision with the ability to choose where they want to live, the Ohio General Assembly has provided for the general welfare of these individuals with a law that is neither arbitrary nor unreasonable.

The Court finds that the Plaintiff, City of Lima, has not overcome the heavy burden of the presumption of constitutionality.

O.R.C. 9.481 was lawfully enacted by the Ohio General Assembly to provide for the general welfare of employees of Ohio's political subdivisions, in addition to being a matter of statewide concern. Since the Ohio General Assembly's authority to legislate in this area is constitutionally superior to the City of Lima's Home Rule authority to enact local laws that ban employees from living outside the city's corporate boundaries, the City of Lima's Ordinance #201-00 enacted on October 23, 2000 must succumb to State Law.

Plaintiff, City of Lima's Motion for Summary Judgment is denied.

Defendant, State of Ohio's Motion for Summary Judgment is well taken and the same is granted.

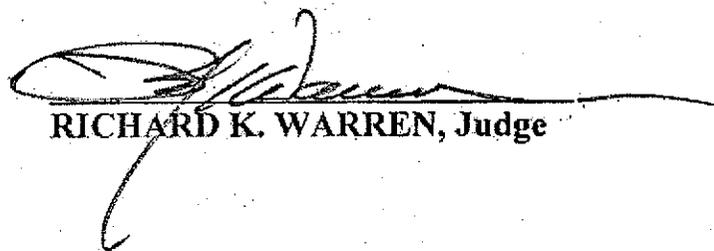
Therefore, the Court finds that O.R.C. 9.481 supersedes the aforesaid City of Lima's Ordinance imposing residency requirements and is constitutional in all respects as a matter of law. Plaintiff, City of Lima, to pay costs.

This is a final appealable Order.

IT IS SO ORDERED.

Dated: 2/16/07

cc: Anthony Geiger
Frank M. Strigari
Henry Arnett


RICHARD K. WARREN, Judge

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS

City of Cleveland)
)
Plaintiff,)
)
vs.)

Case No. 590414

State of Ohio)
)
)
Defendant.)
and)

State of Ohio ex rel. Cleveland Fire)
Fighters Assoc. Loc. 93 of the)
International Assoc. of Fire Fighters,)
et al.)

Case No. 06-590463

Plaintiff-relators,)
)
vs.)

ORDER
DECLARATORY JUDGMENT

Frank G. Jackson, et al.)
)
Defendant-respondents.)

Peter J. Corrigan, J.:

Since 1982, the City of Cleveland ("City") has imposed a requirement on all its employees that, as a condition of employment, all employees must reside within the city. This requirement is embodied in Section 74 of the City Charter. Those employees who do not comply with the charter face termination. On May 1, 2006, Sub.S.B. 82, codified as R.C. 9.481, became law. R.C. 9.481 provides that "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." R.C. 9.481 (B)(1). Thus, by the enactment of this bill, the stage was set

creating a direct conflict between a local law and state law. In the face of this new law, lawsuits were immediately filed across the state asking for court intervention and guidance as many political subdivisions have enacted similar residency requirements. See e.g., *Fraternal Order of Police, Akron Lodge No. 7, et al. v. City of Akron, et al.* Case No. CV-2006-05-2797 (Summit Cty. C.P.); *American Federation of State, County and Municipal Employees, Local #74, et al. v. City of Warren, et al.* Case No. 06-CV-1489 (Trumbull Cty. C.P.); *City of Lima v. State of Ohio* Case No. CV2006-0518 (Allen Cty.C.P.[recently upheld state law]. These instant cases, Case Nos. 590414 and 590463, are typical of the ongoing litigation.

In Case No. 590414, the City seeks a declaratory judgment that R.C. 9.481 is an unconstitutional law because it improperly attempts to deprive the City of well-defined powers of local self-government accorded to it by Section 3, Article XVIII of the Ohio Constitution (the Home Rule Amendment). In Case No. 590463, the Firefighter and Police Unions ("safety forces") and the State of Ohio ("State") filed a complaint against the City and other municipal defendants seeking a declaration that Section 74 of the City Charter is preempted by R.C. 9.481 according to Section 34, Article II of the Ohio Constitution. As both cases concern the same issue, i.e., whether R.C. 9.481 is constitutional, this Court consolidated the cases for review. Shortly after consolidation, the Court set a briefing schedule for dispositive motions. Thereafter, all parties filed summary judgment motions.

The parties agree that there is no issue of material fact and that the only issue to be decided is one of law, thus, the matter is appropriate for summary disposition. Civ. R. 56. Moreover, a declaratory judgment is appropriate if a real controversy exists between

the parties; the controversy is justiciable; and speedy relief is necessary to preserve the rights of the parties. *Burger Brewing Co. v. Ohio Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97. In applying this standard, this court must remember that the provisions of the Declaratory Judgment Act are remedial and "shall be liberally construed and administered." R.C. 2721.13.

The first inquiry requires the existence of a real controversy between the parties, which is met when there is "a genuine dispute between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Wagner v. Cleveland* (1988), 62 Ohio App.3d 8, 13. This inquiry is answered in the affirmative since there is a real legal dispute as to whether Section 74 of the City Charter is superseded as a matter of law by the enactment of R.C. 9.481. Moreover, the safety forces must comply with the local charter provision or lose their livelihood. Thus, this issue immediately impacts them.

Next, in determining whether a controversy is justiciable in nature, the question concerns whether the issues are ready for judicial resolution and there is a hardship to the parties if relief is denied. *Burger Brewing Co. v. Ohio Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97. These requirements are easily met. On May 1, 2006, Sub.S.B. 82 went into effect and the issues presented became ready for judicial resolution. By that date, Mayor Frank Jackson had disseminated a letter to all city employees establishing the City's position that Sub.S.B. 82 was not a valid legislative act and had no application to the City. The letter also expressed the City's intent to terminate the employment of any employee who attempted to exercise his or her rights under Sub.S.B. 82. Thus, the safety forces litigants, are caught in a dilemma; whether to exercise their constitutional

rights as declared in R.C. 9.481 (i.e., the inalienable and fundamental right of an individual to choose where to live pursuant to Section 1, Article I of the Ohio Constitution, as set forth in Section 2 of R.C. 9.481) and face the possibility of termination by their employer or forego the exercise of their constitutional right and maintain their employment.

Finally, the last requirement, that speedy relief is necessary to preserve the rights of the parties, is also met. Three of the individuals named as plaintiffs in this suit submitted requests for an exemption from the City's residency requirement. All three requests were denied. And, every day that the plaintiffs are precluded from residing in a location of their choosing is an infringement of their rights provided for in R.C. 9.481. Accordingly, the plaintiffs have established that relief is obtainable under the Declaratory Judgment Act. Thus, the issue presented in these cases, whether R.C. 9.481 is a valid exercise of General Assembly authority, is appropriate for declaratory judgment review.

The issue before this Court is whether this statutory enactment is constitutional. When the constitutionality of a statute is at issue, this Court is mindful of the well-established principle that courts are required to presume the constitutionality of legislative enactments. *Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375. To overcome this strong presumption of constitutionality, the challenger of the law must provide proof, beyond a reasonable doubt, that the legislation and the Constitution are clearly incompatible. *Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St.3d 103, 111.

The City asserts that R.C. 9.481 is unconstitutional because it denies a municipality its home rule power, guaranteed by Section 3, Article XVIII of the Ohio

Constitution to require residency as a qualification for employment of its employees, a matter, the City contends, of purely local concern. However, the State and safety forces contend that R.C. 9.481 is a valid exercise of General Assembly authority pursuant to Section 34, Article III of the Ohio Constitution and as such, supercedes the home rule power in Section 3, Article XVIII. This court agrees with the State and safety forces.

Section 3, Article XVIII 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.”

This provision, commonly referred to as the “Home Rule Amendment,” grants authority to municipalities to legislate in areas of local self-government. *Canton v. State of Ohio* (2002), 95 Ohio St.3d 149. However, the Supreme Court of Ohio has determined that the powers of local self-government under the Home Rule Amendment are not unlimited. *City of Reading v. Public Utilities Commission of Ohio* (2006), 109 Ohio St.3d 193. In fact, even issues of local concern must yield to matters of general and statewide interest. *Cleveland Electric Illuminating Co. v. City of Painesville* (1968), 15 Ohio St.2d 125, 129.

In *Cleveland Electric*, the court held that regulation of electric utilities is a matter of statewide concern that preempts all local regulations of electric utilities. In so holding, the court reasoned that “[i]f the result [of a municipal act] 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.” *Id.* at 129. However, if the impact of a local regulation is not confined to the particular municipality

and "affects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest." Id.

When the issue is one involving a statewide concern, another provision of the Ohio Constitution is implicated. This is Section 34, Article III and it states:

"Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power."

In construing this provision, the Supreme Court of Ohio determined that the provision constitutes a broad grant of authority to the legislature to provide for the welfare of all working people, and that no other provision, including the home rule provision, may impair the General Assembly's power under Section 34, Article XVIII. *State ex rel. Bd. of Trustees of Pension Fund v. Bd. of Trustees of Relief Fund* (1967), 12 Ohio St.2d 105.

Thus, the focus is whether R.C. 9.481 is a law of statewide concern that impacts the general welfare of working people. Clearly, the answer to this question is yes. In fact, the statute itself states in Section 3:

"The General Assembly finds, in enacting section 9.481 *** that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees."

R.C. 9.481 was enacted to provide for the general welfare for full-time employees of all of Ohio's political subdivisions by allowing them to choose where they want to live. Thus, the law provides these employees the freedom to reside in a location that is in the best interest of their families and falls squarely within the authority granted to the General Assembly under Section 34, Article II. The Court rejects the City's argument that R.C. 9.481 attempts to create a right to demand city employment while choosing to live elsewhere. The only right created by the statute is the right to choose where to live.

The City also argues that the law violates Section 26, Article II (the Uniformity Clause: "all laws, of a general nature, shall have a uniform operation throughout the state") because it applies only to full-time employees and not volunteers or part-time employees and allows a political subdivision to require residency in the county or adjacent counties. See R.C. 9.481 (A)(2); (B)(1); (B)(2)(a); (B)(2)(b). The Court finds no such violation.

When considering whether a statute violates the Uniformity Clause, courts must ascertain "(1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state." *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 541.

The first part of the test has already been established. The second part of the test is also met. In *State ex rel. Stanton v. Powell* (1924), 109 Ohio St. 383, 385, the Supreme Court of Ohio stated that:

"[the Uniformity Clause] was not intended to render invalid every law which does not operate upon all persons, property or political subdivisions within the state. It is sufficient if a law operates upon every person included within its operative provisions,

provided such operative provisions are not arbitrarily and unnecessarily restricted. And the law is equally valid if it contains provisions which permit it to operate upon every locality where certain specified conditions prevail. A law operates as an unreasonable classification where it seeks to create artificial distinctions where no real distinction exists."

Thus, the test is not whether the statute applies to all employees or classifications of employees. Instead, the test is whether the statute applies to all areas of the state equally. Here the uniformity of R.C. 9.481 is established because the law operates on every political subdivision and every person included (full-time employees) within its operative provisions and these provisions are not arbitrary or unnecessarily restrictive. Why the General Assembly chose to include only full-time employees and allows a political subdivision to require residency in the county or adjacent counties is immaterial. The City's arguments raise political questions that are best addressed by the General Assembly.

Finally, the City contends that R.C. 9.481 is unconstitutional because it violates Section 28, Article II of the Ohio Constitution: "the General Assembly shall have no power to pass *** laws impairing the obligation of contracts ***." Specifically, the City argues that R.C. 9.481 unconstitutionally impairs contracts because it interferes with agreements made between the City and its employees concerning the employees' residence. This argument lacks merit.

Despite the general prohibition found in Section 28, Article II of the Ohio Constitution does not bar all interference with contracts. In fact, Section 28, Article II specifically allows for laws that impair the right to contract if it is enacted to provide for

the comfort, health, safety, and general welfare of employees. *Ohio Edison Co. v. Power Siting Comm.* (1978), 56 Ohio St.2d 212, 217-218.

The General Assembly expressly declared its intent in enacting R.C. 9.481 to provide for the comfort, health, safety and general welfare of the citizens of Ohio. See Section 2(B) of Sub.S.B. 82:

“In enacting section 9.481 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize *** Section 34, of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.”

This Court finds that by providing employees of political subdivisions with the ability to choose where they want to live, the General Assembly has provided for the general welfare of these individuals with a law that is neither arbitrary nor unreasonable.

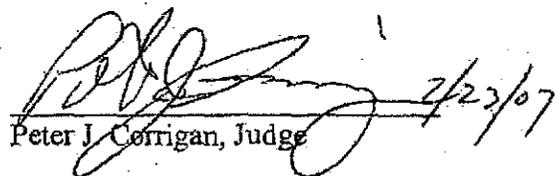
The Court summarily rejects the City's argument that previous cases have upheld local residency requirements. None of these decisions analyzed the legality of residency requirements subsequent to the enactment of R.C. 9.481.

The City attempts to divert the Court's analysis of the constitutionality of R.C. 9.481 by interjecting predictions of dire and irreparable financial harm that the City and its expert claim with certainty. This Court cannot speculate as to the accuracy of the crystal ball that prognosticates these employees will all abandon their neighborhoods and neighbors in a mass exodus of biblical proportions. However, the City may employ its considerable resources to entice its employees to live in the City by any lawful incentives available in the same manner the City uses to attract businesses, tourists and other

sources of revenue. Clearly, requiring residency as a qualification of employment guarantees captive employee taxpayers, but does not guarantee the efficacy of the workforce. The City implies employees will not be as effective or will not care about the quality of their work without residency forcing their financial or emotional investment in the community. The Court rejects such rationale and the implication that where one resides affects the quality of the work performed. The hard-working, dedicated and compassionate qualities found in resident employees today is a function of their individual personalities and integrity and not a function of where they live. To suggest otherwise, impugns those very qualities necessary for an effective workforce including those risking their lives in the City's safety forces.

Having considered and rejected all the City's arguments, this Court grants summary judgment in favor of the State and the safety forces and denies summary judgment in favor of the City. In so ruling, this court specifically determines that R.C. 9.481 was lawfully enacted by the General Assembly to provide for the general welfare of employees of Ohio's political subdivisions and is a matter of statewide concern. Section 34, Article II of the Ohio Constitution is the controlling constitutional provision, and conflicting local laws passed pursuant to the city's home rule power found in Section 3, Article XVIII must succumb to state law. R.C. 9.481 is constitutional and is upheld.

IT IS SO ORDERED.


Peter J. Corrigan, Judge

Date: February 23, 2007

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GERARD E. EVERST, CLERK

NO. 0004-00280

CERTIFICATE OF SERVICE

A copy of this ruling has been mailed by regular U.S. Mail this 23 day of February 2007 to:

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