

SUPREME COURT OF OHIO

WILLIAM WHITE, et al.

Appellants

-vs-

COUNTY OF SUMMIT

Appellee

CASE NO.

08-0504

On appeal from Summit County Court of
Appeals, Ninth District, Case No. CA-23740

MEMORANDUM IN SUPPORT OF JURISDICTION
William White, Marsha Pukas, Sylvia Scruggs-DeJournett,
John Eldridge, Shirley Kosar, Kathleen Peters and Gregory Markovich

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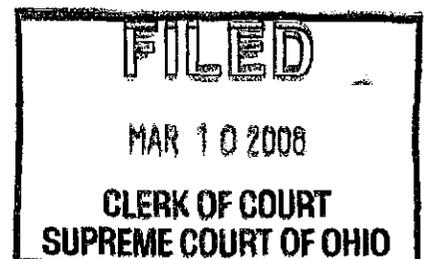


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WHY THIS COURT SHOULD CONSIDER THIS APPEAL

This case involves a substantial constitutional question. What is the scope and effect of Section 3, Article X of the Ohio Constitution? That is, what are the powers and obligations of a charter county, which has adopted the home rule powers of municipal government?

The Ohio Constitution, Section 3, Article X, provides that the people of any county may adopt a charter which “may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities.” The County of Summit adopted such a charter in 1979. Tracking the language of the Constitution, Summit County Charter Section 1.01 provides for “concurrent exercise by the County of all or any powers vested in municipalities by the Ohio Constitution or by general law.”

Since adoption of its charter, the County of Summit has consistently argued, and courts have agreed, that by its charter this county has acquired the broadest powers of municipal home rule. Here, Summit County argues that, notwithstanding its adoption of full municipal home rule powers, the County should be exempt from an established responsibility that goes with the independence of home rule. This argument of power without duty could arise in many contexts. The responsibility at issue in this case is the payment of prejudgment interest on its obligations to the same extent as municipal corporations and private entities. Appellants contend that the County of Summit, like other corporate entities and individuals, “must take the bitter with the sweet.” A charter county with Home Rule powers has Home Rule responsibilities.

The issue of prejudgment interest on back pay is itself a matter of great public interest and general concern. In this case, seven Summit County employees were accorded reinstatement after nine years. While the delay was primarily a product of the twists and turns of appeals

through administrative agencies and courts, the reinstated Employees were deprived of their rightful income for nine years while awaiting vindication, a period during which the Employees were nevertheless required to feed and shelter their families, while the County essentially enjoyed an interest-free loan, free to put the funds (some \$1.5 million) to alternative uses for nine years.

As a matter of fundamental fairness, it is well established that an award of back pay is accompanied by prejudgment interest from the date the pay was “due and payable,” in order to put the reinstated employee in the economic position he or she would be absent the wrongful termination. This principle applies equally to private litigants and municipal corporations, and should therefore apply to a charter county which has assumed the powers and duties of a municipal corporation.

The reasoning of the court of appeals in this case is particularly troubling. The court adopted an analysis which requires case by case evaluation of county jobs to determine whether the particular county department is “an arm of the state” such that the charter county is exempt from prejudgment interest to the reinstated employee. The ruling in this case leaves the County and its employees unable to predict the scope of the County’s obligations to employees other than those in the department of job and family services. Unworkable as a rule of law, this rule is also unjustified by the principles of home rule as interpreted in prior court decisions and as exercised by the County of Summit.

One could argue that these are parochial issues, which concern only Summit County and its employees. Indeed, issues of the implications of a county charter adopted pursuant to Article X, Section 3 arise only from the County of Summit, simply because this is the only charter county in Ohio. It is through the experience of the County of Summit, and court rulings on its actions, that the scope of this section of the Ohio Constitution is determined. These issues will

be considered by no common pleas court other than Summit County, nor any court of appeals other than the Ninth District.

Although these issues arise only in one county, these are not merely parochial concerns. These issues have great general significance because they concern the meaning of a provision of the Constitution of the State of Ohio which is applicable to the entire state. This Court should take jurisdiction to resolve the scope of responsibilities of a charter county which has assumed full Home Rule powers of a municipal corporation.

STATEMENT OF THE CASE AND FACTS

Appellants William White, Marsha Pukas, Sylvia Scruggs-DeJournett, John Eldridge, Shirley Kosar, Kathleen Peters and Gregory Markovich (collectively, "Employees") appeal from the decision of the Ninth District Court of Appeals, which upheld the denial of their motion for pre-judgment interest for wrongful exclusion from employment by the County of Summit from 1997 to 2006.

This is an administrative appeal from the Summit County Human Resource Commission, arising from layoffs effective February 1 and May 30, 1997 of seven employees of the Summit County Department of Human Services (now Job and Family Services). Four decisions by the court of common pleas were overturned on appeal. *White v. County of Summit* (2000), 138 Ohio App.3d 116 (reversing because the matter was decided by a visiting judge without the appropriate journal entry assigning the case to that judge); *White v. County of Summit*, 9th Dist. No. 21152, 2003-Ohio-1807 (reversing because the trial court reviewed the administrative ruling under an incorrect legal standard); *White v. County of Summit*, 9th Dist. No. 21736, 2004-Ohio-2672 (reversing because the trial court again reviewed the administrative ruling under an

incorrect legal standard); *White v. County of Summit*, 9th Dist. No. 22398, 2005-Ohio-5192. On the fourth reversal, issued September 30, 2005, the Ninth District Court of Appeals held that all seven Employees were wrongfully excluded from employment in 1997, and remanded with instructions to enter judgment on behalf of Employees. *White v. County of Summit*, 9th Dist. Nos. 23740 & 23741, 2008-Ohio-176. The County then sought appeal to the Supreme Court, which declined jurisdiction on May 24, 2006. *05/24/2006 Case Announcements*, 2006-Ohio-2466. The case returned to the original common pleas judge¹ to enter judgment and order the remedy due to Employees.

The County offered to return Employees to active employment as of June 26, 2006. Three Employees accepted the return to employment in the County's department of job and family services, and the others voluntarily terminated their employment as of that date. All Employees were entitled to back pay from the 1997 date of their layoff to the reinstatement date of June 26, 2006. On December 22, 2006, the trial court ruled that the Employees were not entitled to interest on the lost pay for their wrongful layoff from 1997 to September 2005, although Summit County was required to pay post-judgment interest from September 30, 2005, the date when the court of appeals ordered entry of judgment for Employees. The court of common pleas entered final judgment on April 25, 2007, including back pay from the 1997 layoff dates to reinstatement, but interest only from September 30, 2005 to date of payment.

The Employees appealed the denial of pre-judgment interest. The court of appeals issued its decision on January 23, 2008.

The court considered whether Summit County, which by its charter assumed the powers and responsibilities accorded to municipalities, thereby assumed the duty to pay prejudgment

¹The previous decisions, overturned on appeal, were issued by a visiting judge.

interest on back pay owed to wrongfully discharged employees. The court of appeals acknowledged that “the County has adopted the broadest powers that it can under its charter” which was adopted pursuant to Section 3, Article X of the Ohio Constitution. (Decision, 4). The court recognized that municipal corporations are required to pay prejudgment interest on back pay awarded to employees who were entitled to reinstatement after wrongful discharge. *State, ex rel. Crockett, v. Robinson* (1981), 67 Ohio St.2d 363, 367-368. The court then turned to an analysis not briefed by either party nor raised during oral argument. The court held that “the County’s Department of Job and Family Services is an arm of the state,” based on a review of Revised Code Chapter 329, which authorizes county departments of job and family services. Thus, the court concluded, because of the statutes concerning county departments of job and family services, the Appellant Employees are more like school board employees than employees of charter municipalities, and are not entitled to pre-judgment interest on back pay, citing *Beifuss v. Westerville Bd. of Edn.* (1988), 37 Ohio St.3d 187. (Decision, 7).

ARGUMENT AND LAW

Proposition of Law No. 1. Where a county has adopted a charter pursuant to Section 3, Article X of the Ohio Constitution, and by that charter has assumed the powers vested by the constitution and laws of Ohio in municipalities, such a charter county is liable, to the same extent as municipalities, for interest on the back pay due to wrongly discharged employees.

In general, Ohio law accords prejudgment interest on back pay awarded to individuals found to be wrongfully excluded from their employment. *Ohio Civ. Rights Comm. v. David Richard Ingram, D.C., Inc.* (1994), 69 Ohio St.3d 89, 92-93. This is not a penalty. It is simply the appropriate remedy to restore employees to the economic position they would have been in

had they not been wrongly discharged from employment. “To rule otherwise would in effect give the employer an interest-free loan.” *Id.* at 93.

By choosing a charter form of government, Summit County has assumed the powers and responsibilities accorded to municipalities under the general law. Pursuant to Article X, Section 3 of the Ohio Constitution:

Any such charter may provide for the concurrent or exclusive exercise by the county ... of all or of any designated powers vested by the constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county

Tracking the language of the Constitution, Section 1.01 of the Summit County Charter provides for “concurrent exercise by the County of all or any powers vested in municipalities by the Ohio Constitution or by general law.” The County has repeatedly argued, and the Ohio Supreme Court and the Ninth District Court of Appeals have agreed, that Summit County has thus acquired municipal powers and duties to the broadest extent possible. Thus, *State ex rel. Vickers v. Summit Cty. Council* (2002), 97 Ohio St.3d 204, 208, 777 N.E.2d 830, 2002 -Ohio- 5583 {¶ 31} noted that the “general law relating to municipalities” is incorporated into Summit County law on initiative and referendum. In *Geauga Cty. Bd. of Commrs. v. Munn Rd. Sand & Gravel* (1993) 67 Ohio St.3d 579, 621 N.E.2d 696, this Court explained that counties may acquire municipal home rule powers through a charter adopted pursuant to Section 3, Article X of the Ohio Constitution. 67 Ohio St.3d at 583 n.2. In *County of Summit v. Meyer*, 2004 -Ohio- 4457, 2004 WL 1885872 at {¶ 11}, the court held that the legal principles applicable to home rule municipalities apply equally to the County of Summit. In *Akron-Canton Chapter American Subcontractors Association v. Morgan*, 9th Dist. No. 10724 (1982), 1982 WL 2727, the Court held that where there is a conflict between the concurrent grants to Summit County of municipal

and county powers, the general law which applies should be that which is most extensive. *Id.*, at *4.

With respect to pre-judgment interest, the Ohio Supreme Court has repeatedly held that a municipal employee, reinstated pursuant to a civil service appeal, is entitled to interest on back pay for the entire period of wrongful exclusion from employment. *State ex rel. Bednar v. N. Canton* (1994), 69 Ohio St.3d 278, 282; *State, ex rel. Crockett, v. Robinson*, 67 Ohio St.2d at 367-368; *State ex rel. Dean v. Huddle* (1976), 45 Ohio St.2d 234, 236. This is because a municipal corporation, is treated the same as a natural person or private corporation with respect to its obligations. *Crockett*, 67 Ohio St.2d at 367-368.

Unlike non-charter counties, the County of Summit, through its Charter and pursuant to Article X, Section 3 of the Ohio Constitution, has assumed the broadest powers and duties of municipal corporations. *Geauga Cty. Bd. of Commrs.* 67 Ohio St.3d at 583 n.2; *County of Summit v. Meyer*, 2004 -Ohio- 4457 at ¶ 11; *Akron-Canton Chapter American Subcontractors Association*, 1982 WL 2727 at *4. Through its charter, Summit County has assumed the “rights, properties, and obligations ... incident to the municipal power so vested in the county.” Ohio Constitution, Art. X, Sec. 3. The obligations incident to municipal power include the responsibility to pay pre-judgment interest on back pay for the period of wrongful exclusion from employment. *State, ex rel. Crockett, v. Robinson*, 67 Ohio St.2d at 367-368.

Where the people of a county have chosen to assume all the powers and obligations of municipal home rule, that must include the responsibility to pay prejudgment interest on its obligations from the time they were due and payable, including back pay due to wrongly discharged employees.

Proposition of Law No. 2. The Department of Job and Family Services of the County of Summit is not an arm of the state, and the county must pay prejudgment interest to such employees to the same extent as municipal employees and other employees of a charter county which has assumed municipal home rule powers pursuant to Section 3, Article X of the Ohio Constitution.

The court of appeals acknowledged that municipal corporations are liable for prejudgment interest on back pay to the same extent as private actors, citing *State, ex rel. Crockett, v. Robinson*, 67 Ohio St.2d at 367-368; and *State ex rel. Dean v. Huddle*, 45 Ohio St.2d 234. However, the court then noted this Court's decision in *Beifuss v. Westerville Bd. of Edn.* (1988), 37 Ohio St.3d 187, which held that a public school board of education, like the State, was not liable for prejudgment interest on back pay in the absence of a statute or express contractual agreement to make such payment.²

The court of appeals acknowledged that Summit County has home rule powers, unlike a public school board. Notwithstanding that factor, the court of appeals focused on the discussion in *Beifuss* which found that a public school board is "an 'arm' of the state with its direct duties and powers defined extensively in Title 33 of the Revised Code," and therefore exempt from prejudgment interest in the same way as the state. See, *Beifuss*, 37 Ohio St. 3d at 189-190. Purportedly following the same approach, the court of appeals noted that Revised Code Chapter 329 authorizes county departments of job and family services and details their duties and powers. The court then concluded that Summit County's department of job and family services "is an arm of the state and that prejudgment interest may not accrue against it absent a statute authorizing such interest." (Decision, 6-7).

²But see, *Royal Electric Constr. Corp. v. Ohio State Univ.* (1995), 73 Ohio St.3d 110 (holding that a statute requires the state to pay prejudgment interest on its obligations). Also see, *State ex rel. Tavenner v. Indian Lake Local School Dist. Bd. of Edn.* (1991) 62 Ohio St.3d 88, 90 which noted that a public board of education is subject to suit and liability in the same manner as private litigants, citing *State, ex rel. Springfield City School Dist. Bd. of Edn., v. Gibson* (1935), 130 Ohio St. 318.

The reasoning of the court of appeals leads to the awkward policy that whether Summit County must pay prejudgment interest to reinstated employees depends on an assessment of legislation specific to the county department. However, the analysis is incorrect for more fundamental reasons.

This analysis fails to recognize the importance of Summit County's adoption of home rule through its charter. This was a critical element of this Court's reasoning in *Beifuss*. There, the Court began by citing cases holding that the State is not liable for interest on its obligations absent a statute, whereas a Municipal Corporation is liable for prejudgment interest.³ The Court then reasoned that there are important differences between a public school board and a municipal corporation. The Court held that school boards have limited powers and function as "state agencies in the school system of education." 37 Ohio St. 3d at 189. The Court pointedly contrasted that with a municipal corporation's "significant home rule powers pursuant to Section 3, Article XVIII of the Ohio Constitution." *Id.*

Brushing aside the significance of home rule in the *Beifuss* analysis, the court of appeals in this case reviewed Chapter 329 of the Ohio Revised Code to discern whether the county department of job and family services is an "arm of the state". Chapter 329 is one of thirty four chapters concerning county government. See, R.C. Chapters 301-351. Similarly, the Revised Code includes thirty six chapters concerning municipal government. See, R.C. Chapters 701-765. However, it is well established that when chartered municipalities exercise broad powers of

³The Court said,

It is well-established that "[i]n the absence of a statute requiring it, or a promise to pay it, interest cannot be adjudged against the state for delay in the payment of money." *State, ex rel. Parrott v. Bd. of Public Works* (1881), 36 Ohio St. 409, paragraph four of the syllabus; [other citations omitted]. However, a contrary rule has been applied with regard to interest assessed against a municipal corporation. See *State, ex rel. Crockett v. Robinson* (1981), 67 Ohio St.2d 363, 21 O.O.3d 228, 423 N.E.2d 1099.

37 Ohio St. 3d at 188-189.

local self-government, they supercede contradictory state statutes. As long as the charter provisions comply with the provisions of the Ohio Constitution, they operate to “discontinue the general law on the subject as to that municipality.” *State, ex rel. Lentz v. Edwards* (1914), 90 Ohio St. 305, 310. *Accord, State, ex rel. East Cleveland Ass'n of Firefighters, Local 500, I.A.F.F. v. City of East Cleveland* (Ohio 1988) 40 Ohio St.3d 222, 224, rehearing denied 41 Ohio St.3d 717 (The requirements for filling vacancies in a city fire department set forth in RC 124.46 do not apply to a chartered municipality which has enacted its own ordinances on the subject); *Ohio Assn. of Pub. School Emp., Chapter No. 471 v. Twinsburg* (1988), 36 Ohio St.3d 180, 183 (Charter municipality was empowered to enact ordinance limiting jurisdiction of civil service commission by excluding school district and its employees, notwithstanding state statute providing that local school districts be included within civil service commission jurisdiction); *State Personnel Bd. of Review v. Bay Village Civil Service Comm.* (1986), 28 Ohio St.3d 214 (Notwithstanding state statute, the State Personnel Board of Review does not have investigative or removal authority over charter municipalities' civil service commissions when the municipalities' charters establish their own removal procedures); *State, ex rel. Canada, v. Phillips* (1958), 168 Ohio St. 191 (city charter supercedes state statute concerning procedures for hiring police employees).

Summit County, unlike public school boards, and unlike other counties, has through its charter acquired the home rule powers of a municipality. The Summit County Charter expressly assumes “all or any powers vested in municipalities by the Ohio Constitution or by general law.” Charter, Section 1.01. Thus, the County has used the full authority permitted by Section 3, Article X of the Ohio Constitution to take on “all ... powers vested by the constitution or laws of Ohio in municipalities; [and] ... the rights, properties, and obligations of municipalities ...

incident to the municipal power so vested in the county .” The only concession of the Summit County Charter is that it exercises such powers concurrently with the municipalities or townships within its borders. Summit County Charter, Section 1.02. Where, as here, there is no conflict with the power or obligations of another political corporation, Summit County's home rule is complete. Thus, in *Akron-Canton Chapter American Subcontractors Association v. Morgan*, the court of appeals held,

The County Charter grants not only all of the powers of a county, but also all of the powers of a municipality. The County of Summit is, therefore, possessed of two concurrent grants of powers....

The issue is easily stated. Where there is a conflict between the two concurrent grants of power, should such conflict be resolved so as to allow the exercise of the power, or to restrict the exercise of the power? We think it clear that the language in Section 1.01 of the Charter evidences an intent on the part of the framers of the Charter and particularly on the part of the people of this County to bestow upon the new county government the most extensive powers allowable under the Constitution and hence, that the least restrictive alternative should govern situations wherein conflicts arise between the various powers delegated.

1982 WL 2727, at *4. Through its charter, the County of Summit thus took on the broadest powers and duties of a municipal corporation.

The County of Summit has expressly asserted local jurisdiction over the employees of its Department of Job and Family Services. Section 3.03 of the Charter grants to County Council the power:

(10) To establish personnel procedures, job descriptions, rankings, and uniform pay ranges for all County employees of the County Fiscal Officer, Clerk of the Court of Common Pleas, Medical Examiner, County Engineer, Prosecuting Attorney, Sheriff, County Council, County Executive, including the Department of Jobs and Family Services and the Department of Human Resources.

(Emphasis added.) Also, see, Summit County Code §115.01(h), which situates the “Department of Social Services/Job and Family Services” under the direction of the Summit County Executive.

Article VI of the County Charter, adopted in 1995, authorized a County Human Resource Commission and County Department of Human Resources. The County then established a Human Resource Department and Commission, and asserted that County employees were subject to local jurisdiction rather than the State Personnel Board of Review. Indeed, several of the Employees in this case began this long journey in 1997 with attempted appeals to the State Personnel Board of Review, and several Employees joined in an action for declaratory and injunctive relief, in which they argued that the then-new Summit County Human Resource Commission had no jurisdiction over these Employees. Their claim was rejected. *Eldridge, et al. v. Tim Davis, Summit County Executive, et al.*, Summit County Case No. 97-04-3090 (May 23, 1997). The State Personnel Board of Review dismissed the appeals, finding that employees of the Summit Department of Human Services (now Job and Family Services) were under the jurisdiction of Summit County and its Human Resource Commission. *William White v. Summit County Department of Human Services*, SPBR Case No. 97-ABL-01-0030 (Order, July 18, 1997); *Marsha A. Pukas, et al. v. Summit County Department of Human Services*, SPBR Case No. 97-ABL-01-0025, et al. (Order, March 19, 1997); *Marsha A. Pukas, et al. v. Summit County Department of Human Services*, SPBR Case No. 97-ABL-01-0025, et al. (Report and Recommendation, Feb. 18, 1997).

Clearly, the County of Summit has, through its charter and ordinances, acquired full powers and duties of local governance to the same extent as available to a charter municipality, and established local control over its department of job and family services. As with charter municipalities, the Summit County Charter and ordinances “discontinue the general law on the subject” as to the County of Summit. *Lentz*, 90 Ohio St. at 310. Whatever the relevance of Revised Code Chapter 329 to the liability of non-charter counties, the Summit County

department of job and family services is clearly an arm of the County of Summit, not an arm of the state.

This home rule county, like home rule municipalities, should be liable for prejudgment interest to compensate its reinstated employees for the delay in payment of wages.

Proposition of Law No. 3. Prejudgment interest on back pay is neither a windfall to the employee nor a penalty against the employer, but merely compensates the wrongly discharged employee for the delay in payment of lost wages.

Court decisions after *Beifuss* cast further doubt on the reasoning of the court of appeals in this case.

In *Royal Electric Constr. Corp. v. Ohio State Univ.* (1995), 73 Ohio St.3d 110, this Court held that the long-standing principle that the state could not be required to pay prejudgment interest in the absence of a statute or contract requiring it, was resolved by the enactment of R.C. §2743.18(A), which provides:

Prejudgment interest shall be allowed with respect to any civil action on which a judgment or determination is rendered against the state for the same period of time and at the same rate as allowed between private parties to a suit.

Through R.C. §2743.18, the state became subject to the “common-law right to prejudgment interest” long recognized by Ohio courts. *Royal Electric* at 114, citing *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 656-657. Thus, a state agency is required to pay prejudgment interest from the time the money becomes “due and payable” pursuant to R.C. §1343.03(A). *Royal Electric*, 73 Ohio St.3d at 114-115.

Importantly, *Royal Electric* noted that the right of prejudgment interest was not created by R.C. §1343.03, but was founded in the common law. *Royal Electric* looked to R.C. §1343.03(A) “to determine when interest commences to run, i.e., when the claim becomes ‘due and payable,’

and to determine what legal rate of interest should be applied.” *Royal Electric*, at 115. The Court recognized that “prejudgment interest does not punish the party responsible for the underlying damages ..., but, rather, it acts as compensation and serves ultimately to make the aggrieved party whole.” *Royal Electric*, at 117.

Also, in *State ex rel. Tavenner v. Indian Lake Local School Dist. Bd. of Edn.* (1991) 62 Ohio St.3d 88, decided after *Beifuss*, the Court reiterated long-standing principles that a public school board, like other government entities endowed with the capacity “to sue and be sued”, is subject to liability in the same manner as private litigants. 62 Ohio St.3d at 90, citing *State, ex rel. Springfield City School Dist. Bd. of Edn., v. Gibson* (1935), 130 Ohio St. 318, paragraph two of the syllabus. While the specific holding of *Tavenner* was that the school board was liable for post-judgment interest, the reasoning of *Tavenner* compels the conclusion that no government entity with the capacity to sue and be sued is exempt from common law or statutory procedures for post-judgment or pre-judgment interest. Further, the suggestion in *Beifuss* that a school board, as quasi-state agency, is exempt from pre- or post-judgment interest is undercut by *Royal Electric*, which held that the state itself is subject to pre-judgment interest.

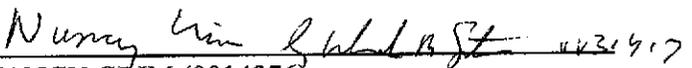
Subsequent to *Royal Electric*, at least one court has noted that the “due and payable” language of R.C. §1343.03(A) is not limited to “contracts.” *Bischoff v. Bischoff*, 2005 WL 2931842 (Ohio App. 6 Dist.), 2005-Ohio-5879, at ¶ 7, held that a probate decision allocating proceeds of an estate is an “other transaction” within the purview of R.C. §1343.03(A), thus subject to prejudgment interest from the date the sum was due and payable. Similarly, wages are properly labeled as an “other transaction” within the purview of R.C. §1343.03(A), regardless of whether the underlying employment claim arose in contract or statute or common law, such that prejudgment interest is proper on back pay from the time the wages were payable. This is

consistent with the long-standing common law according pre-judgment interest on back pay.
See, *Ohio Civ. Rights Comm. v. David Richard Ingram, D.C., Inc.* 69 Ohio St.3d at 92-93; *State, ex rel. Crockett, v. Robinson* 67 Ohio St.2d at 367-368.

CONCLUSION

This case involves a substantial constitutional question, and matters of public and great general interest. Appellant Employees ask that this Court accept jurisdiction to review the important issues on the merits.

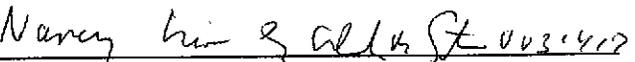
Respectfully submitted,


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CERTIFICATE OF SERVICE

A copy of this document was served by U.S. mail this 10 day of March 2008 to:

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STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

WILLIAM WHITE, et al.

Appellants

v.

SUMMIT COUNTY DEPT. OF
HUMAN SERVICES, et al.

Appellees

COURT OF APPEALS
DANIEL M. HOFFMAN
IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
2008 JAN 23 11:55
SUMMIT COUNTY
CLERK OF COURTS
Nos. 23740 & 23741

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 1998-05-1766

DECISION AND JOURNAL ENTRY

Dated: January 23, 2008

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, Judge.

{¶1} Appellants, William White, Marsha Pukas, Sylvia Scruggs-DeJournett, John Eldridge, Shirley Kosar, Kathleen Peters, and Gregory Markovich (collectively "Employees"), appeal from the judgment of the Summit County Court of Common Pleas which denied their motion for prejudgment interest. This Court affirms.

I.

{¶2} Employees lost their jobs when Appellee, Summit County ("the County") decided to abolish certain positions in the Summit County Department

of Human Services (“DHS”). The County’s decision was implemented in two phases. The first phase, effective on January 31, 1997, terminated the employment of White and Pukas; the second phase, effective on April 18, 1997, terminated the employment of Kosar, Eldridge, Peters, Markovich, and Scruggs-DeJournett.

{¶3} Each of the Employees appealed to the Summit County Human Resource Commission (“HRC”). The HRC hearing officer recommended that the HRC reverse the abolishment of the positions of Kosar, Eldridge, and Peters, and that the HRC affirm the abolishment of the positions of Markovich, White, Pukas, and Scruggs-DeJournett. The HRC upheld the original decision to terminate all of the positions at issue.

{¶4} From that decision, Employees filed an administrative appeal. On August 31, 1999, the trial court affirmed the decision of the HRC. Employees appealed the trial court’s decision to this Court. On June 7, 2000, we reversed the decision of the trial court and remanded the case for further proceedings. See *White v. Summit Cty.* (2000), 138 Ohio App.3d 116, 117 (reversing on the basis that the matter had been decided by a visiting judge without the appropriate journal entry assigning the case to that judge). On remand, after having the visiting judge properly assigned to the case, the trial court issued a new decision, affirming the HRC decision on May 22, 2002.

{¶5} A second appeal to this Court followed. This Court again reversed the decision of the trial court and remanded the case for further proceedings. See

White v. Summit Cty., 9th Dist. No. 21152, 2003-Ohio-1807 (reversing because the trial court reviewed the administrative ruling under an incorrect legal standard).

{¶6} Following our second remand, the trial court again affirmed the HRC decision. In turn, Employees appealed to this Court a third time. In a May 26, 2004, decision, this Court again reversed the trial court and remanded the case for further proceedings. See *White v. Summit Cty.*, 9th Dist. No. 21736, 2004-Ohio-2672 (reversing because the trial court again reviewed the administrative ruling under an incorrect legal standard).

{¶7} On October 12, 2004, after our third remand, the trial court again affirmed the HRC decision. This Court reversed the trial court's decision, finding that the trial court's affirmance of the administrative order was not supported by a preponderance of substantial, reliable and probative evidence. *White v. Summit Cty.*, 9th Dist. No. 22398, 2005-Ohio-5192, at ¶22. Following this final remand, the parties began negotiating the amount of back pay due to Employees. The parties resolved many of their disputes, but one final dispute remained. Employees asserted that they were entitled to prejudgment interest on their back pay. The County asserted that it was not liable for prejudgment interest. The trial court agreed with the County and denied Employees' motion for prejudgment

interest. Employees filed two separate appeals from that matter.¹ This Court consolidated the appeals and now addresses the merits of Employees' claims.

EMPLOYEES' ASSIGNMENT OF ERROR

“AFTER APPELLANTS WERE HELD TO BE WRONGFULLY LAID OFF, IT WAS ERROR TO FAIL TO ORDER PAYMENT OF INTEREST ON THE LOST PAY FOR THE FULL PERIOD OF THE WRONGFUL EXCLUSION FROM EMPLOYMENT.”

{¶8} In their sole assignment of error, Employees assert that the trial court erred in denying their request for prejudgment interest. Specifically, Employees assert that common law entitles them to prejudgment interest on their back pay. We disagree.

{¶9} In support of their argument, Employees assert that the Ohio Supreme Court has found that municipal employees are entitled to prejudgment interest on back pay. See *State ex rel. Crockett v. Robinson* (1981), 67 Ohio St.2d 363, 367-68. Employees then assert that the County's charter effectively makes the County a municipality. Employees, therefore, conclude that the County must pay prejudgment interest.

{¶10} Initially, we note that Employees are correct that the County has adopted the broadest powers it can under its charter. Section 3, Article X of the Ohio Constitution permits a county charter to provide “for the concurrent or

¹ Markovich filed an individual notice of appeal. The remaining Employees filed a consolidated notice of appeal.

exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities[.]”

Pursuant to that authorization, Section 1.01 of the Summit County Charter grants the County

“all powers specifically conferred by this Charter or incidental to powers specifically conferred by this Charter and all other powers which the Constitution and laws of Ohio now or hereafter grant to counties to exercise or do not prohibit counties from exercising, including the concurrent exercise by the County of all or any powers vested in municipalities by the Ohio Constitution or by general law.”

To that extent, this Court has recognized that the County has home rule power by virtue of its charter. See *Akron-Canton Chapter American Subcontractors Association v. Morgan* (Sept. 1, 1982), 9th Dist. No. 10724. Employees assert that this broad power must also contain the obligations imposed on municipalities. We cannot agree with Employees’ conclusion.

{¶11} In the absence of a statute requiring it, or a promise to pay it, interest cannot be adjudged against the state for delay in the payment of money. *State ex rel. Montrie Nursing Home, Inc. v. Creasy* (1983), 5 Ohio St.3d 124, 126-27. However, as noted above, a contrary rule has been applied with regard to interest assessed against a municipal corporation. *Crockett*, 67 Ohio St.2d at 367-68; see, also, *State ex rel. Dean v. Huddle* (1976), 45 Ohio St.2d 234. Important to our analysis, in *Beifuss v. Westerville Bd. of Edn.* (1988), 37 Ohio St.3d 187, the Ohio Supreme Court held that a public school board of education is not liable for the payment of prejudgment interest on an award of back pay absent a statute

requiring such payment or an express contractual agreement to make such payment. *Id.* at syllabus. In so doing, the Court noted as follows:

“Appellants initially contend that interest should be assessed against a public school board just as it is assessed against a municipal corporation. We disagree. Although a public school board is not per se a state agency controlled by the State Personnel Board of Review, it has long been recognized as quite different from a municipal corporation.” (Emphasis omitted.) *Id.* at 189.

{¶12} Due to its charter, the County presents a unique scenario. In *Beifuss*, the Court noted that public school boards do not have home rule powers. As noted above, the County does retain such powers. However, the *Beifuss* Court also noted as follows:

“It is well settled that a board of education is a quasi corporation acting for the public as one of the state’s ministerial education agencies for the organization, administration and control of the public school system of the state.” (Quotations and citation omitted.) *Id.*

The *Beifuss* Court went on to conclude that

“a public school board can be accurately described as an arm of the state with its direct duties and powers defined extensively in Title 33 of the Revised Code and through its receipt of direct guidance and support from the State Board of Education. There is no question but that the public school boards, as arms or agencies of the state, are ultimately managed and controlled by the dictates of the General Assembly.” (Alterations and quotations omitted.) *Id.*

{¶13} Following the approach taken by the *Beifuss* Court, we reach a similar conclusion. Employees worked for the County’s Department of Human Services, now known as the Department of Job and Family Services. The General Assembly, not the County’s charter, permitted the creation of that department.

R.C. 329.01. Moreover, Revised Code Chapter 329 extensively details the department's duties and powers. R.C. 329.02 requires that employees be in Ohio's classified civil service and requires the director to perform certain actions. Additionally, R.C. 329.04(A)(1) requires the department to

“Perform any duties assigned by the state department of job and family services regarding the provision of public family services, including the provision of the following services to prevent or reduce economic or personal dependency and to strengthen family life[.]”

In turn, R.C. 329.04(A)(2)-(12) details other powers and duties of county departments of job and family services.

{¶14} We conclude, therefore, that like public school boards, county job and family service departments are “ultimately managed and controlled by the dictates of the General Assembly.” *Beifuss*, 37 Ohio St.3d at 189. Consequently, we find that the County's Department of Job and Family Services is an arm of the state and that prejudgment interest may not accrue against it absent a statute authorizing such interest. As Employees have not sought interest under any statute, the trial court properly denied their claim for prejudgment interest.

{¶15} Our conclusion is supported by the Ohio Supreme Court's pronouncement on the issue of prejudgment interest in this context. In *State ex rel. Carver v. Hull* (1994), 70 Ohio St.3d 570, the Court declined to award prejudgment interest to an employee of a county sheriff's department. In that matter, the Court noted as follows in dicta:

“[Appellant’s] authority does not specifically establish that a county can be held liable for interest on a judgment at all, much less for prejudgment interest.” *Id.* at 579, fn. 3.

We conclude, therefore, that the trial court did not err in denying Employees’ motion for prejudgment interest.

{¶16} Employees’ sole assignment of error lacks merit.

MARKOVICH’S ASSIGNMENT OF ERROR

“AFTER APPELLANTS WERE WRONGFULLY TERMINATED, AND A PATTERN OF CORRUPT ACTIVITY HAD RESULTED IN THE TERMINATIONS PREVENTING GOOD FAITH EFFORTS BY THE EMPLOYER TO RESOLVE THE CONFLICT BY NEGOTIATION AND REINSTATE THE EMPLOYEES, INTEREST ON THE LOST PAY FOR THE FULL PERIOD OF THE WRONGFUL TERMINATION SHOULD BE AVAILABLE.”

{¶17} In his assignment of error, Markovich asserts that the trial court erred in failing to award prejudgment interest under R.C. 1343.03(C). We find no merit in this contention.

{¶18} In their motion in the trial court, Employees sought prejudgment interest under common law and under R.C. 1343.03(A). At no time below did Employees seek prejudgment interest under R.C. 1343.03(C). As this issue was never presented to the trial court, we will not consider it for the first time on appeal. Markovich’s sole assignment of error lacks merit.

III.

{¶19} Employees' sole assignment of error is overruled, and Markovich's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.


WILLIAM R. BAIRD
FOR THE COURT

DICKINSON, J.
CONCURS

MOORE, P. J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶20} Employees in this matter have waited over ten years to reach a resolution to their employment dispute. The matter dragged on during numerous appeals from the trial court resulting in numerous reversals by this Court. It seems a harsh result that they have been deprived of pre-judgment interest on their awards, however, as I believe the majority engaged in the correct legal analysis, I must concur in the result.

(Baird, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to, §6(C), Article IV, Constitution.)

APPEARANCES:

NANCY GRIM, Attorney at Law, for Appellants.

EDWARD P. MARKOVICH, Attorney at Law, for Appellant Gregory Markovich.

SHERRI BEVAN WALSH, Prosecuting Attorney and ANITA L. DAVIS, Assisatnt Prosecuting Attorney, for Appellee.