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**STATEMENT OF LACK OF SUBSTANTIAL CONSTITUTIONAL QUESTION, OR  
MATTER OF PUBLIC OR GREAT GENERAL INTEREST**

This court should decline jurisdiction of this case. Contrary to the Appellants' assertions, this case does not involve a substantial constitutional question. This court does not need to decide the broad question of the scope and effect of Section 3, Article X of the Ohio Constitution. The aforementioned section of the Ohio Constitution clearly allows for the adoption of a charter form of government. Summit County is a charter county and has been a charter county since 1979. This case does not raise an issue of whether Summit County has properly adopted a charter form of government. Similarly, this case does not raise an issue that Summit County has adopted ordinances or other regulations that grant any power that exceeds its authority. This case does not involve any conflict between the Summit County charter, the Ohio Constitution or other laws.

In the instant case, the issue is whether the seven (7) former employees of the county Department of Human Services (now known as the Department of Job and Family Services department of Job and Family) are entitled to prejudgment interest on back pay dating back to 1997. The court of appeals correctly concluded these county employees who worked for this county department were not.

The plain language of Section 3, Article X of the Ohio constitution clearly states that a county charter must provide for "the exercise of all powers vested in, and the performance of all duties imposed upon counties..." R.C. 329.01 requires that each county operate a "county department of job and family services". There is no question that this case involves a county department, a county function and county employees.

It is true that the plain language of the Section 3, Article X of the Ohio constitution 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 any designated powers vested by the constitution or laws of Ohio in municipalities.” However, this case does not involve a power vested in municipalities. Based upon clear Ohio law, municipalities cannot and do not operate a “county Department of Job and Family Services.” This case does not raise a substantial constitutional question regarding Summit County’s municipal powers, rights or obligations.

Further, this case does not involve a matter of great public interest or general concern. This case involves an issue that is applicable only to one of 88 counties in Ohio. This issues involved in this case are only applicable to the seven (7) employees involved in this case, which dates back to 1997. The unique issues presented in this case will not affect other political subdivisions, including all townships, cities, and counties in Ohio, but will only apply to Summit County. This court need not take jurisdiction of this case to resolve an issue that is narrow in scope and will only apply to a small number of employees in Summit County. This case does not meet the threshold requirement that this Court will only review matters that are of great public concern or general interest.

Through no fault of Summit County, this case has lasted nearly 10 years. This case was an appeal under R.C. 2506, and through many “twists and turns” (as stated by the Appellants) through administrative agencies and courts, the employees were reinstated to comparable positions (old positions now longer existed due to the change in the welfare system, which mandated a change of focus for welfare department – now known as the Department of Job and

Family Services). The employees have been paid \$1.7 million, including payments into Ohio Public Employees Retirement System (OPERS).

### **STATEMENT OF THE CASE AND FACTS**

In 1997, Summit County abolished jobs in the Summit County Department of Human Services (now Department of Job and Family Services) in 1997. The County terminated the employment of William White and Marsha Pukas effective January 31, 1997. The County terminated the employment of Sylvia Scruggs-DeJournett, Gregory Markovich, John Eldridge, Shirley Kosar and Kathleen Peters effective May 29, 1997.

Employees appealed the job abolishments to the administrative agency, which upheld the job abolishments. The employees appealed to the Summit County Court of Common Pleas, which also upheld the job abolishments.

This matter was appealed to the Ninth District Court of Appeals five times. Four times the matter was reversed and remanded back to the court of common pleas. In each instance, the common pleas again court ruled in favor of the County. In each instance, the Appellants appealed again the Ninth District Court of Appeals.

On the last occasion, on September 30, 2005, the Court of Appeals reversed the previous decision of the visiting judge, and remanded with instructions to enter judgment in favor of all Appellants. The County, in its only appeal in this case, appealed to the Supreme Court, which declined jurisdiction of the County's appeal on May 24, 2006. The County offered reinstatement to all Appellants as of June 26, 2006.

On April 25, 2007, the court entered final judgment in this case, including full back pay, including raises, sick leave and vacation pay, and contributions to the Ohio Public Employees

Retirement systems for all appellants. The court also ordered the payment of interest from September 30, 2005. The county promptly submitted full payment of nearly \$1.7 million dollars on May 3, 2007.

The common pleas court declined to order interest back to 1997. The appellants appealed and the matter was affirmed by the Court of Appeals. This appeal follows.

### ARGUMENT AND LAW

#### **Opposition to Proposition of Law No. I:**

**Although Summit County has adopted a charter pursuant to Section 3, Article X of the Ohio Constitution, and by that charter can assume powers vested by the constitution and laws of Ohio in municipalities, Summit County is not liable to county employees for prejudgment interest on the back pay, based upon laws applicable to solely to municipalities.**

The employees in this case worked for the County Department of Human Services, now known as the Department of Job and Family Services. The General Assembly, not the County's charter, required the creation of this department. R.C. 329.01. The Revised Code imposes upon the department numerous duties and responsibilities. The Court of Appeals correctly concluded that county departments of job and family services, like public school boards, are "ultimately managed and controlled by the dictates of the General Assembly", citing Beifuss v. Westerville Board of Education, (1988), 37 Ohio State 3d. 187. Consequently, Summit County's Department of Job and Family Services is an arm of the state and absent a statute authorizing it, prejudgment interest does not accrue under the laws applicable to municipalities.

Generally, counties are creatures of statute and may exercise only those powers expressly granted by the General Assembly. See Geauga Cty Bd. of Comm'rs v. Munn Road Sand & Gravel, 67 Ohio St. 3d 579, 621 N.E.2d 696 (1993). Historically, counties have been considered administrative arms of state government for carrying out certain functions of administration and policy throughout the state. Bd. of Comm'rs v. Mighels, 7 Ohio St. 109, 119 (1857).

In addition to the statutory powers vested in counties, Ohio Const. art. X, § 3 permits a county to adopt a charter, thereby enabling the county to exercise what is commonly known as home rule authority. Ohio Const. art. X, § 3 provides in pertinent part:

The people of any county may frame and adopt or amend a charter as provided in this article...[The charter] shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter 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....

In accordance with Ohio Const. art. X, § 3, Summit County has adopted a charter for its government. Sections 1.01 and 1.02 of Article I of the Summit County Charter make the county responsible for the exercise of all powers and the performance of all duties imposed upon counties and county officers by law, as required by the Ohio Constitution. As allowed under the Ohio Constitution, the Summit County Charter also provides for the concurrent exercise (with municipalities within the county) of all or any powers vested in municipalities by the Ohio Constitution or by general law.

In 1857, the Ohio Supreme Court explained the difference between counties and municipalities as political units as follows:

A municipal corporation proper is created mainly for the interest, advantage, and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the state at large, for purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for the general administration of justice. With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the state, and are, in fact, but a branch of the general administration of that policy. (Emphasis added)

Board of Comm'rs v. Mighels, 7 Ohio St. 109, 119 (1857); see also State ex rel. Guilbert v. Yates, 66 Ohio St. 546, 64 N.E. 570 (1902) (syllabus, paragraph one) (“[c]ounty officers are not local officers, but are a part of the permanent organization of the government of the state”).

By requiring that a charter county maintain all the powers and duties given to counties by statute, Ohio Const. art. X, § 3 protects this historical governmental function of county administration of state policy from any authority which might be asserted by a charter county pursuant to adopted municipal powers. As stated by the 1970-77 Ohio Constitutional Revision Commission in its Final Report at 292:

The intention of this provision seems to be to make it clear that even counties having charters continue to be administrative arms of the state for purposes of carrying out certain functions throughout the state. While, therefore, a county could by charter change its form of government and expand the powers which it may exercise and be less inhibited by statutory provisions in the manner of the exercise of those powers, those duties required by general law of counties and county officers would still have to be carried out.

Thus, the language of Ohio Const. art. X, §3 requires that a county charter continue to "provide for the exercise of all powers vested in, and the performance of all duties imposed upon

counties and county officers by law." According to the very language of the Ohio Constitution, Summit County is still required perform county functions.

The Summit County Department of Job and Family Services performs duties and administers various programs for the poor. These powers and duties, as extensively set forth in RC Chapter 329, do not implicate municipal powers, rights, or obligations at all. Under the circumstances of this particular case, the fact that Summit County has adopted a charter does not entitle employees who receive back pay to pre-judgment interest based upon the law applicable to municipalities.

As discussed above, Ohio Const. art. X, § 3, requires that a county charter provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Summit County is mandated to perform these duties and is not empowered to modify this mandate through its charter or ordinances. As noted by the Ohio Attorney General:

Ohio Const. art. X, § 3 provides that the powers and duties statutorily delegated to counties and county officers *in their capacity as administrative arms of the state* are not affected by the adoption of municipal powers, including the municipal home-rule authority provided in Ohio Const. art. XVIII, § 3 (municipalities have "powers of local self-government" and local police power, within prescribed limitations).

1989 Op. Att'y Gen. No. 89-106, at 2-517 (emphasis added; footnote omitted). Thus, Ohio Const. art. X, § 3 provides that the powers and duties statutorily delegated to counties and county officers in their capacity as administrative arms of the state are not affected by the adoption of municipal powers, including the municipal home-rule authority. Therefore, Summit County's obligations to the employees of the Summit County Department of Job and Family Services is not affected by the laws applicable to municipalities. Although Summit County has adopted a

charter pursuant to Section 3, Article X of the Ohio Constitution, and by that charter can assume powers vested by the constitution and laws of Ohio in municipalities, Summit County is not liable to county employees for prejudgment interest on the back pay, based upon laws applicable to solely to municipalities. This case does not present a substantial constitutional question.

**Opposition to Proposition of Law No. 2:**

**The Summit County Department of Job and Family Services is an arm of the state, and the county is not obligated to pay prejudgment interest to such employees based upon the law applicable to municipal employees.**

The Summit County Department of Job and Family Services was established pursuant to R.C. 329.01. The Summit county Department of Job and Family Services must perform the duties set forth in R.C. 329.04 and in other provisions of the Revised Code. They include the duty to provide various kinds of services and assistance. R.C. 329.04.

The Summit County Department of Job and Family Services has the same responsibility as non-chartered counties of performing duties assigned by the Ohio Department of Job and Family Services regarding the provision of public family services, including the expenditure of funds and provision of services under various federal programs. R.C. 329.04(A); *see also, e.g.,* R.C. 5101.54(A)(8)(e) (administration of federal food stamp program); R.C. 5101.60-.71 (program on elder abuse); R.C. 5101.80-.801 (administration of federal programs under the temporary assistance for needy families block grant); R.C. 5111.012 (establishing eligibility for medical assistance); R.C. 5111.013 (federal women, infants, and children health programs); R.C. 5115.04 (performance of administrative functions for disability financial assistance program); R.C. 5115.13 (performance of administrative functions for disability medical program).

As discussed above, these functions have nothing to do with Summit County's home rule powers and its municipal powers or obligations. To this extent, Summit County is no different than any other county. Absent a statute requiring it or a contractual obligation, no County has been ordered to pay pre-judgment interest on back pay. State ex rel. Carver v. Hull (1994), 70 Ohio St.3d 570. Summit County's status as the only chartered county in the state does not mandate that it, unlike other counties, must pay pre-judgment interest.

### **Opposition to Proposition of Law No. 3:**

**Although prejudgment interest on back pay is neither a windfall to the employee nor a penalty against the employer, the county employees in this case are not entitled to prejudgment interest.**

The Court of Appeals correctly determined that the county employees in this case are not clearly entitled to prejudgment interest. The Court correctly refused to order nearly a decade worth of prejudgment interest to these County employees. Summit County is still a county and no statute has clearly established that counties must pay prejudgment interest on its obligations.

R.C. 2743.18 (A) is inapplicable as it does not apply to Counties. Similarly, Royal Electric Construction Corp. v. Ohio State University (1995), 73 Ohio St.3d 110, does not apply and is not controlling in this case. Royal Electric involved a contract issue with a state university, issues that are specifically covered by R.C. 1343.03 (A) and 2743.18 (A). This case specifically does not involve a contract with a state entity.

This court should not extend R.C. 2743.18 (A) to counties. This matter should be left to the legislators to pass such legislation. Although prejudgment interest on back pay is neither a

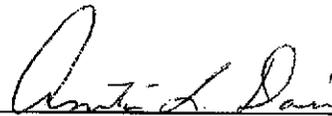
windfall to the employee nor a penalty against the employer, the county employees in this case are not entitled to prejudgment interest.

**CONCLUSION**

This Court should decline to accept jurisdiction of this case. This case does not involve a substantial constitutional question, nor does this case involve a matter of public or great general interest. The Court of Appeals correctly decided this matter.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by regular U.S. Mail service, to:  
Attorney Nancy Grim, 237 East Main Street, Kent, Ohio 44240 this 9<sup>th</sup> day of April, 2008.



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