

IN THE
SUPREME COURT OF OHIO

DANIELLE MOORE, *et al.*,

Plaintiffs-Appellees,

-vs-

LORAIN METROPOLITAN HOUSING
AUTHORITY, *et al.*,

Defendant-Appellant.

CASE NOS. 2007-2106 &
2008-0030

On Appeal from the Lorain
County Court of Appeals,
Ninth Judicial District

Court of Appeals
Case No. 06CA008995

BRIEF OF AMICUS CURIAE
CUYAHOGA METROPOLITAN HOUSING AUTHORITY

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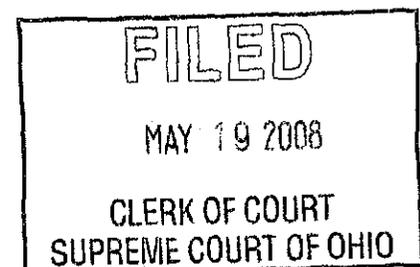
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III. Statement of Facts

A. Introduction

This amicus curiae brief is submitted by the Cuyahoga Metropolitan Housing Authority (“CMHA”) in support of appellant Lorain Metropolitan Housing Authority’s (“LMHA”) request that this Court reverse the Ninth District Court of Appeals’ September 28, 2007, judgment in Court of Appeals Case No. 06CA008995 and reinstate the final judgment in its favor rendered by the trial court. CMHA submits this brief for three reasons, which are as follows.

First, CMHA is deeply concerned over the effect a decision by this Court which in any way validates the appellate court’s *reasoning* upon the various political subdivision immunity issues that this case presents would have upon its ability to accomplish its statutory mission and, as well, upon low-income public housing throughout this State. In this regard, CMHA perceives the *reasoning* disclosed in the court of appeals’ September 28, 2007, “Decision and Journal Entry” as constituting an unauthorized and unwarranted intrusion upon the General Assembly’s constitutional function of determining – through the legislative process – which activities by political subdivisions fall within, or without, the grant of immunity it set forth in R.C. §2744.02(A). CMHA submits that the precept stated in *Opdyke v. Security Sav. & Loan Co.* (1952), 157 Ohio St. 121, 146 – that, “This court should not substitute its judgment on a legislative problem for the judgment of the General Assembly by inserting into the statute provisions which it does not contain” – is equally applicable to Ohio’s intermediate appellate courts, but was disregarded by the court below in deciding this case.

Second, CMHA is equally concerned that this Court’s deciding this case solely upon the basis of the cold record developed by the parties in the courts below would deprive it of the ability to recognize and fully consider the competing *economic and public policy* considerations which our

legislature necessarily considered *and reconciled* when it adopted the version of Chapter 2744., R.C., applicable to this case. Thus, in this amicus brief, CMHA brings those further factors to this Court's attention – not for the purpose of asking this Court to engage in “judicial legislation” of its own, but solely for the purpose of assuring that this Court is fully aware of the then-existing body of law which our General Assembly took into account when it enacted the statutes in question and, thus, fully comprehends the import of the *economic* and *public policy choices* which that body necessarily made when it did so.

Third, because CMHA was the first public housing authority in the United States¹ and, as of 2003, was not only the largest public housing authority in Ohio but also operated the seventh largest public housing program in the Nation, CMHA believes that it is peculiarly able to apprise this Court accurately regarding both such *economic* considerations and such *public policy* considerations.

Hence, the submission of CMHA's instant amicus brief.

B. Historical Overview of Low-Income Public Housing in the United States

Although governmentally sponsored public housing initiatives commenced in the United States in 1933, such had existed in England long before that time. As the Supreme Court of Kentucky noted in *Spahn v. Stewart* (1937), 268 Ky. 97, 103 S.W.2d 651, 655:

*** [T]he matter of properly housing persons living in unclean, unsanitary houses in congested portions of cities, has been a subject of public concern for many years. The importance of proper housing had received public recognition in England for more than 100 years; in 1909 it had reached considerable proportions. The motive was first purely philanthropic and the objective was to improve the condition of the working classes. As early as 1841 there existed at least two societies, one the “Metropolitan Association for Improving the Dwellings of the Industrial Classes.” These societies, after successfully operating for a time, found that from better housing the moral improvement was almost “equal to the physical benefit.”

¹ CMHA was chartered by the State of Ohio on September 13, 1933.

Legislation looking to the same end soon followed and has at intervals continued to the present time. Encyc. Br. vol. 13, p. 815.

Notably, public housing initiatives in the United States originated at the state and Federal levels simultaneously. At the Federal level, such occurred with Congress' passage of:

- the National Industrial Recovery Act of 1933, 40 U.S.C.A. §401 et seq. (an emergency enactment in response to the Great Depression, which included provisions for "low-cost housing and slum-clearance projects" in order to promote the general welfare of the Nation, enacted on June 16, 1933);²
- the United States Housing Act of 1937, 42 U.S.C.A. §1401 et seq. (establishing a program for "Low-Income Housing"); and
- the Lanham Act, 42 U.S.C.A. §1521 et seq. (providing for "Housing of Persons Engaged in National Defense," enacted in 1941),

each of which incorporated Congress' view that the functions of *slum-clearance* and *providing housing for low-income families* were both essential for the good of *the public at large* – as opposed to merely benefitting the narrow class of those of low income who would reside in same.³ As

² As quoted in *United States v. Certain Lands in City of Louisville, Jefferson County, Ky.* (W.D. Ky. 1935), 9 F.Supp. 137, 141:

Section 201(a) of the act (40 USCA § 401(a) authorized the President to create a Federal Emergency Administration of Public Works, and to appoint such officers, agents, and employees, including a Federal Emergency Administrator of Public Works, to carry out that part of the act, as the President may determine. Pursuant to that authority the President has appointed Secretary of the Interior Ickes as the Federal Emergency Administrator of Public Works.

Section 202 of the act (40 USCA § 402) directs the Administrator so appointed, under the direction of the President, to prepare a comprehensive program of public works-

' * * * which shall include among other things the following: * * *

'(d) Construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects.'

³ See, *City of Cleveland v. United States* (1945), 323 U.S. 329, 65 S.Ct. 280, affirming *United States v. Boyle* (N.D. Ohio 1943), 52 F.Supp. 906, and reversing *Federal Public Housing Authority v. Guckenberger* (continued...)

Chapman v. Huntington, W. Va., Housing Authority (1939), 121 W.Va. 319, 3 S.E.2d 502, 508, noted with respect to the United States Housing Act, by 1937 the question of *who the beneficiaries of low-income housing were* had already been answered by Congressional declaration:

The purposes of the United States Act embraced in section 1 thereof are as follows: "It is hereby declared to be the policy of the United States to *promote the general welfare of the Nation* by employing its funds and credit, as provided in this Act [chapter], to assist the several States and their political subdivisions to alleviate present and recurring unemployment and *to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income*, in rural or urban communities, that are *injurious to the health, safety, and morals of the citizens of the Nation.*" 42 U.S.C. A. § 1401[.]

and the meanings of the terms, "slum" and "slum-clearance" were well defined:

Section 2 defines "slum" and "slum clearance" as follows:

"The term 'slum' means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

"The term 'slum clearance' means the demolition and removal of buildings from any slum area." 42 U.S.C.A. § 1402(3, 4).

At the state level, public housing initiatives originated with Ohio's adoption of the Public Housing Act – Gen. Code §1078-30, et seq. The remarkable similarities between Ohio's and the Federal governments respective declarations of policy and definitions was neither accidental nor due to Ohio's copying what Congress had enacted. Rather, both the Federal and Ohio's respective enactments resulted from the efforts of the same man – CMHA's first Executive Director, Ernest

³(...continued)
(1944), 143 Ohio St. 251. Cf., *McGwinn v. Board of Education* (Cuya. 1946), 78 Ohio App. 405, 69 N.E.2d 381, 46 Ohio Law Abs. 328.

Bohn.⁴ The same concepts and definitions which Ohio adopted as the public housing law of this State in 1933 now appear as R.C. §§3735.27, 3735.31, and 3735.40 to 3735.50. See, 77 Ohio Jurisprudence 3d 22 (2004), Public Housing and Urban Development §§5 and 6.

Between 1934 and 1945, cases deciding the issue of whether the activities of slum-clearance and providing housing for low-income families were “governmental” or “proprietary” in nature principally arose in the contexts of (i) challenges to the use of eminent domain or condemnation proceedings to acquire privately owned real estate for such purposes and (ii) challenges relating to the applicability of tax laws which impacted such public housing projects. In Ohio, the eminent domain question was answered in *Blakemore v. Cincinnati Metropolitan Housing Authority* (1943), 74 Ohio App. 5, 29 O.O. 206, wherein, after recognizing that, “where dwellings are leased to family units for the purposes of private homes, the use of such dwellings is private and not public[,]” and that, “‘slum clearance’ has a direct relation to health, welfare, and morals of the public, and constitutes a perfectly legitimate public purpose[,]” the court then identified the resulting issue and held that an MHA’s performance of its *slum-clearance* function could not be divorced from – but, rather, carried over into and continued as a part of – its low-income rental activity; stating:

The question now presented is: Are these purposes, one public, the other private, so closely and intimately identified that the presence of the ultimate private purpose destroys the right of appropriation for the incidental public purpose of slum clearance? The two purposes are, as has been noted, constantly associated throughout legislation, incorporation, and appropriation. The same is true of the federal National Housing Act. *State ex rel. v. Sherrill*, supra, 136 Ohio St. at page 331, 25 N.E.2d at page 845. Neither can be ignored. It must be noted although, that, *after the area cleared is used for the private purpose of low-rent housing units, still the public purpose of slum clearance continues. Slums are not again created. The slums remain cleared of elements antagonistic to the health, morals, and welfare of the*

⁴ See, The Encyclopedia of Cleveland History (Case Western Reserve University, July 14, 1997, July 15, 1997, and March 27, 1998 revisions), excerpts annexed.

public.

While most such issues were settled by the U.S. Supreme Court's 1945 decision in *City of Cleveland*, *supra*, the question of whether Ohio's MHAs' dwelling units were subject to real estate taxation was not settled until 1967. See, *In re Exemption from Taxation, Chase v. Board of Tax Appeals* (Cuya. 1967), 10 Ohio App.2d 75, 81-82, which concluded that the *combined* functions which MHAs exist to perform cause its property to fall within the definition of "'public property used exclusively for public purposes' under the terms of Section 2 of Article XII of the Ohio Constitution."

Nonetheless, throughout the latter 1940s and into the mid-1950s the issue of whether the functions of slum-clearance and providing housing for low-income families, when undertaken by "public corporations," "agencies and instrumentalities of the state," municipalities, or MHAs, were "governmental" or "proprietary" in nature was repeatedly litigated – this time, principally at the state level and in the context of whether state-created public housing authorities performing those functions were entitled to sovereign immunity against tort liability. As the annotation at 61 A.L.R.2d 1246 (1958), "**Suability, and liability, for torts, of public housing authority**," pointed up the issue some *fifty* years ago:

The question whether public corporations engaged in purely governmental activities are immune from tort liability is gradually simmering down from a boiling point reached by two extreme lines of thought, one by those who believe that the state itself in its corporate entity acts as a sovereignty in all respects, and the other by those who believe that sovereignty is a cloak that should be torn from the invisible form of the public corporation representing the state, and that it should be regarded as any other incorporated body, enjoying like privileges and subject to like obligations. The purpose of government is the benefit, protection, and security of the people. To attain this purpose it must assume a position of authority. *Muses v Housing Authority* (1948) 83 Cal App2d 489, 189 P2d 305, *infra*.

The distinction in the law determining tort liability of municipal corporations arising out of the exercise, on the one hand, of so-called governmental functions, and, on the other, of corporate or proprietary functions, has long been in a state of confusion and uncertainty. Indeed the decisions on this subject have been more or less arbitrary, and not wholly consistent with one another, perhaps because they have been based primarily on practical considerations of public policy rather than on any principles of logic. *What at least is firmly established is that in the case of acts of municipalities performed as functions of government delegated by the state to its agencies as public instrumentalities, there is immunity from such liability*, whereas in the case of acts of municipalities performed in a proprietary or business capacity the doctrine of respondeat superior applies and liability exists. *The real difficulty, however, arises in determining whether, in any given case, the activity in question is governmental or proprietary in its nature.*⁵

Thus, in Ohio, the question of whether an MHA's performing the function of owning and operating low-income housing properties is "governmental" or "proprietary" in nature appears to have been settled by 1972, when the reasoning adopted in *In re Exemption*, supra, was cited with approval by this Court in *City of Dayton v. Cloud* (1972), 30 Ohio St.2d 295, at 301.

It was against the foregoing backdrop of Federal and State substantive law pronouncements and judicial reconciliations of conflicting public policy concerns and principles of law that, on November 14, 1985, our General Assembly enacted the Political Subdivisions Tort Liability Act in Amended Substitute House Bill No. 176; including therein the same provision defining "*Urban renewal projects and the elimination of slum conditions*" as a "**governmental function**" which has since remained, unaltered, in R.C. §2744.01(C) to the present.

C. Economic Considerations

In Ohio, as elsewhere, the principal source of funding for MHAs' comes from the Federal government – the United States Department of Housing and Urban Development ("HUD") – which provides each such authority with an annual "subsidy" approximating eighty percent (80%) of the

⁵ Emphasis throughout is supplied unless the contrary is noted.

total amount needed to provide housing to low-income families. The remainder of MHAs' funding is derived from rentals paid by the MHA's tenants, state and local governments' contributions, and other sources.⁶ When HUD appraises an MHA of the amount of its "subsidy" for the coming year, the MHA is required to submit a line-item "budget" to HUD, detailing how it will use that year's subsidy to defray the anticipated cost of operating its low-income housing program. Upon HUD's approval of the budget thus presented, the subsidy payment is then issued.

In the context of reviewing the appellate court's stripping Ohio's MHAs of Chapter 2744., R.C., immunity, comprehending one key Federal provision is critical: Under HUD's funding regulations, monies budgeted for line-items such as "insurance" or "administration"⁷ which are not fully expended on that line-item may be used for *any* other "eligible purpose" – i.e., purpose directly related to providing housing to families of low-income – provided that all reasonable operating needs of the property have been met.⁸ In other words, MHAs are free to expend money originally budgeted for "insurance" or "administration," but later determined not to be needed therefor, upon any other line items which serve the purpose of providing housing to families of low-income. Conversely, however, if a cash shortfall occurs in one category – e.g., "insurance" – that shortfall has to be made up by *reducing* the amounts available to defray other kinds of expense which directly benefit those whom MHAs exist to serve, such as maintenance, protective services, leasing, and occupancy.

⁶ As the attached "History of Revenue and Expenses for the Low Income Program" shows, over the past twelve years, tenant rentals constituted roughly fourteen percent (14%) to nineteen percent (19%) of the amount available to CMHA to operate its low-income housing program.

⁷ See, 24 CFR §990.165(a) (April 1, 2007).

⁸ See, 24 CFR §§990.205(a) and 990.280(b)(5) (April 1, 2007).

At present, CMHA has far more eligible applicants for low-income housing than it has available residences which they might lease. Thus, a family which meets the eligibility requirements for low-income housing, and applies therefor, ordinarily must wait many months before a suitable apartment can be made available to them. In this regard, two separate bottlenecks create such delay. First is the application/eligibility determination process itself, which “may take a year or more” to complete before an applicant is “certified” as eligible. Second is the further amount of time a “certified” applicant must thereafter wait, as his/her name works its way up the “eligible waiting list for housing.”⁹ This latter time period is a variable, depending upon (i) the age group (18 to 49; 50 to 61; or 62 and above) into which the applicant falls, (ii) the number of bedrooms for which his/her family qualifies, and (iii) the speed with which a suitable unit becomes available and can be prepared for occupancy.

Here, again – recognizing that subsidy monies originally budgeted for, but later found not to be needed to be spent on, tort liability claims can be used for maintenance, protective services, leasing, and occupancy – the direct, dollar-for-dollar impact of the appellate court’s decision in Ms. Moore’s case upon those most in need of low-income public housing becomes readily apparent.

D. Danielle Moore’s Case

Although the fact pattern underlying Ms. Moore’s case had an exceptionally tragic ending – the deaths of two of her four infant children, who perished while under the supervision of their father, who slept while one of them set their home on fire – it is otherwise indicative of the kinds of liability claims to which MHAs throughout this State must respond daily.

⁹ See, CMHA’s Public Housing Application Office’s “Information Sheet” (April 2006 revision) and “Eligibility Processing Information” sheet (August 2004 revision).

More importantly, the *procedural events* in Ms. Moore's case, as disclosed in the trial and appellate courts' lengthy decisions, exemplify the inordinate incursion upon MHAs' limited resources to which anything short of a definitive, "bright-line" ruling that upholds our General Assembly's carefully drawn reconciliation of the economic and public policy concerns will create. Specifically, we refer to the lengthy and necessarily expensive discovery aimed at the "merits" of the case, notwithstanding LMHA's immediate assertion of the defense of immunity under Chapter 2744., R.C., in its answer. On that point we note that a *judicial process* which countenances political subdivisions' resources being so consumed merely because a complaint which, on its face, fails to plead facts constituting an *exception* to immunity has been filed, *of itself* deprives political subdivisions of the *benefit* of the immunity conferred.

1. Merit Facts

From the trial court's August 8, 2006, "Findings of Fact and Conclusions of Law on Cross-Motions for Summary Judgment," and those recited in the court of appeals' September 28, 2007, "Decision and Journal Entry" [2007-Ohio-5111], the essential facts are as follows.

On October 19, 2003, Ms. Moore was an LMHA tenant, residing in a "scattered site, single housing unit" in Oberlin with her four minor children. Those children were five, four, two, and one years old – the two older children being boys; the two younger, girls. Towards 10:00 P.M., Ms. Moore left her children in their home with the three youngest children's father, Derrick Macarthy, in order to "go to the store" to retrieve a cigar for him.¹⁰

¹⁰ When Ms. Moore left her children in Mr. Macarthy's care, she knew that she was entrusting them to a man who "had used illegal drugs, drank alcohol, had committed many acts of domestic violence against her in their presence and who had intimidated the two male minors both verbally and physically by "whooping them[.]" Ms. Moore also knew that – per her own request – LMHA had rescinded Mr. Macarthy's

(continued...)

While thus absent from her home, Ms. Moore “visited two different friends before attempting to go to the store.” During her absence, Mr. Macarthy did not check on the children. Rather, he fell asleep on the couch. As he slept, their four year old son used Mr. Macarthy’s lighter(s) to start two fires in two locations within the home.

At this juncture, Ms. Moore’s five year old son got his three year old step sister to leave with him; woke Mr. Macarthy; alerted him to the fire; and, with Mr. Macarthy and that step sister, went to a neighbor’s home, where they waited for the neighbor to come to the door. Thus left in the burning house, the two remaining children – Ms. Moore’s four year old son and one year old daughter – perished.

2. Proceedings in the Trial Court

Ten months later, Ms. Moore filed suit – on her own behalf, on behalf of her two surviving children, and on behalf of the estates of her two deceased children – against LMHA and its Executive Director; essentially alleging that both such defendants were liable to it in negligence because LMHA maintenance personnel and an LMHA inspector had removed the only hard-wired smoke detector from her home two weeks before the October 19 fire.

Following extensive discovery,¹¹ and the submission of opposing motions for summary judgment, the trial court granted summary judgment in defendants’ favor on August 9, 2006;

¹⁰(...continued)

previously existing right to reside in Ms. Moore’s home some five months earlier, due to prior acts of domestic violence on his part.

¹¹ Per the trial court’s docket, plaintiff served one set of interrogatories and one set of production requests with her complaint, later submitted a second set of production requests, and subsequently took the depositions of five witnesses; and defendants took the depositions of two witnesses. The appellate court’s decision, however, reflects that additional witnesses were deposed.

reasoning that: (i) “the provision of low-income housing is a governmental function” [Findings of Fact and Conclusions of Law at p. 7]; as to which function (ii) “the only possible exception to immunity in this case [was] R.C. 2744.02(B)(4)” [ibid.]; and (iii) that, as a matter of law, a scattered site housing unit does not fall within the meaning of that exception. [Id. at pp. 7 through 11.]

3. Proceedings in the Court of Appeals

Upon appeal, Ms. Moore asserted that summary judgment was erroneously granted in LMHA’s favor because (i) LMHA’s function of providing housing to low-income families was a “proprietary” function, as to which the provisions of R.C. §2744.02(B)(2) create an exception from immunity and (ii) R.C. §2744.02(B)(5) also created an exception from immunity which was applicable to her case, *supposedly* due to an express impositions of civil liability upon political subdivisions contained in R.C. §§5321.04(A)(4) and 3735.40.

Addressing Ms. Moore’s initial, R.C. §2744.02(B)(2), contention, two of the appellate judges concluded that R.C. §2744.01(C)(1)(b)’s definition of “governmental function” – “Governmental function’ means a *** function that is for the common good of all citizens of the state” – did not apply because, “ownership and operation of a public housing facility is a **proprietary** function.” 2007-Ohio-5111 at {¶¶4 and 21}. Key to their reasoning on that point was the notion that, “The housing facility provides a benefit to a **limited portion of the population.**” [Id. at {¶20}.] Notably, Judge Slaby dissented from that determination, stating:

I believe that the operation of the Lorain Metropolitan Housing Authority is clearly a governmental function. It is created by the legislative branch of the government. It only exists because of the government’s declaration that it may exist. It is operated by a political subdivision if the subdivision chooses to operate it on a voluntary basis, pursuant to legislative requirements. It functions to promote health, safety, and welfare of its citizens. Because it exists, *it functions for the common good of all citizens* by providing housing for those that would otherwise be living on the streets.

[Id. at ¶36].

Having thus avoided R.C. §2744.01(C)(1)(b), the majority then presented arguments aimed at similarly avoiding R.C. §§2744.01(C)(1)(c) and 2744.01(C)(2)(q) which, respectively, define as “governmental functions” any function which:

(i) “promotes or preserves the public peace, health, safety, or welfare; that *involves activities that are not engaged in or not customarily engaged in by nongovernmental persons*; and that is not specified in *** [§2744.01(G)(2)] as a proprietary function”;
or

(ii) encompasses “Urban renewal projects and the elimination of slum conditions.”

Notably, in both such regards, the majority’s analyses failed to recognize that, by statute, the function of *renting* low-income housing is only *one of four* separate, but interrelated, activities which R.C. 3735.31 directs MHAs to perform; the three remaining functions being *clearing* slum areas, *planning* for the redevelopment of those areas, and *rebuilding* such slum areas.

Regarding R.C. §2744.01(C)(1)(c), while conceding that, “*The provision of public housing is a function that ‘promotes or preserves the public peace, health, safety, or welfare[,]’*” the majority further opined that, “the service provided by LMHA is a service customarily engaged in by nongovernmental persons, i.e. *landlords[,]’*” and, thus, did not fall within R.C. §2744.01(C)(1)(c)’s definition of the term, “governmental function.” 2007-Ohio-5111 at ¶20. CMHA submits that this facet of the majority’s analysis is fundamentally flawed on its face because it neither found that – nor even addressed the question of whether – the same *nongovernmental* “landlords” *also* engage in the activities of “clear[ing], plan[ning] and rebuild[ing] slum areas,” as R.C. §3735.31 defines the scope of MHAs’ functions.

Equally flawed is that part of the majority's analysis which yielded the conclusion that R.C. 2744.01(C)(2)(q) did not require the conclusion that MHAs' ownership and operation of low-income public housing activities constituted "governmental functions." In that regard, while the majority conceded that "R.C. 2744.01(C)(2)(q) lists '[u]rban renewal projects and the elimination of slum conditions' as governmental functions" [2007-Ohio-5111 at ¶11], they failed to examine any of the additionally necessary, inter-related questions of (i) whether R.C. 3735.31 dictates that "[u]rban renewal *** and the elimination of slum conditions" are functions which MHAs exist to perform; (ii) whether "nongovernmental persons," in general, "*customarily engage[] in*" performing *all* such functions; nor (iii) whether those "[u]rban renewal *** and the elimination of slum conditions" functions are "*customarily engaged in*" by "landlords," specifically, as R.C. §2744.01(G)(1)(b) requires before an activity can be classified as a "proprietary function."

Responding to Ms. Moore's second contention – i.e., regarding R.C. §2744.02(B)(5) – the same two-judge majority further concluded that LMHA could also be held liable for failure to comply with duties imposed by Ohio's Landlord-Tenant Act because in two prior decisions,¹² "[t]his Court has implicitly found R.C. 5321.04 applicable to housing authorities" [id. at ¶24], on the theorem that, "*if a governmental entity chooses to create a housing authority, the entity is bound by the requirements of all applicable housing, building, health and safety codes.*" [Id. at ¶25.] That reasoning, CMHA submits, not only judicially "repealed" the express restrictions set forth in the same provision thus cited; i.e., that, (i) in order for that exception to apply, civil liability must be "*expressly imposed upon the political subdivision* by a section of the Revised Code," and that,

¹² *Robinson v. Akron Metro. Hous. Auth.* (Aug. 1, 2001), 9th Dist. No. 20405, 2001 WL 866275; *Wayne Metro. Hous. Auth. v. Jackson* (Oct. 12, 1988), 9th Dist. Nos. 2369, 2403, 1988 WL 107026. Notably, in neither of those cases was any *immunity* issue raised, decided, or even mentioned.

Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term “shall” in a provision pertaining to a political subdivision[.]

but also “reversed” this Court’s holding in *Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities*, 102 Ohio St.3d 230, 2004-Ohio-2629 at ¶24 that, “R.C. 2744.02(B)(5) prohibits construing liability to exist solely because a statute imposes a responsibility or mandatory duty upon a political subdivision.”

IV. ARGUMENT

Proposition of Law No. 1:

A metropolitan housing authority’s ownership and operation of a public housing facility is a “governmental function,” as defined in R.C. §2744.01(C)(1)(b).

Revised Code 2744.01(C)(1)(b) defines the term, “governmental function,” as meaning, “A function that is *for the common good of all citizens* of the state[.]”

Here, two of the appellate judges concluded that “ownership and operation of a public housing facility is a proprietary function” [2007-Ohio-5111 at ¶21] and, thus, that such did not come within §2744.01(C)(1)(b)’s definition of “governmental function” set forth in R.C. §2744.01(C)(1)(b) because, “The housing facility *provides a benefit to a limited portion of the population.*” Id. at ¶¶20 and 21}. As Judge Slaby correctly pointed out in his dissent, however, “[LMHA] functions for *the common good of all citizens* [.]”

Insofar as *Ohio*’s MHAs are concerned, Judge Slaby’s view is correct, as a matter of law; the majority’s, patently erroneous. Although numerous reasons compel that conclusion, what is common among all of them is that, by statute, MHAs exist to serve *more* purposes than merely

owning and renting out apartments, as “landlords” do. See, R.C. §§3735.27(A)(1),(2); 3735.31. Thus, the appellate majority’s focusing upon only *one* of those functions – i.e., owning and operating a residential rental facility – while excluding the others from consideration, for purposes of determining whether the role which MHAs perform is “*for the common good of all citizens of the state*” was fallacious reasoning which produced an erroneous result.

To be specific in this initial regard, R.C. §3735.31 sets forth *four* specific purposes which Ohio’s MHAs exist to serve – (i) “to *clear, plan, and rebuild* slum areas within [its] district”; (ii) “to *provide safe and sanitary housing accommodations* to families of low income within that district”; and, generally, (iii) “to accomplish any combination” of those first four purposes – of which providing housing is only *one*. Apparently due to their failure to comprehend not only the established definition of the term, “slum” – as used in both the National Industry Recovery Act¹³ and R.C. §3735.31 – but also the well-settled judicial recognition of the effect which the presence of a slum area has upon the *entire* community in which it is found, the appellate court’s majority fell prey to what appears to be two *universally rejected* views: (i) that, for purposes of analysis, the function of providing low-income housing can be divorced from the function of eliminating slum conditions; and (ii) that the elimination of slum conditions only serves to “benefit *a limited portion of the*

¹³ As noted in *Chapman*, supra:

Section 2 defines “slum” and “slum clearance” as follows:

“The term ‘slum’ means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

“The term ‘slum clearance’ means the demolition and removal of buildings from any slum area.” 42 U.S.C.A. § 1402(3, 4).

population[.]” as opposed to being “for the common good of all citizens” and, thus, a “governmental function.”

As previously noted, the appellate majority’s “*limited portion of the population*” vs. “*common good of all*” issue was resolved by the United States Supreme Court in 1945, in *City of Cleveland*, supra, when it affirmed the judgment of the three-judge District Court for the Northern District of Ohio in *United States v. Boyle* (1943), 52 F.Supp. 906, 908. There, the District Court held:

Despite the difference in character of the slum areas existing in different parts of the country, as was found by the National Commission on Law Observance and Enforcement in its First Report on the Causes of Crime, the delinquency areas in these cities ‘display similar characteristics- poor housing conditions; shifting and decreasing populations; great poverty and dependence; a marked absence of the home-owning class; a largely foreign population of inferior social status; unwholesome types of recreation; inadequate open-air play facilities.’ On the other hand, it is a matter of widespread knowledge that slum-clearance is a direct remedy for the insanitary, unhealthful conditions that arise out of the crowding and filth of the slum areas, Where old tenements are torn down, and replaced by new, clean, healthful buildings, open to light and air, there is a sharp decline in disease and delinquency. In Liverpool one such slum-clearance project regained 77% of the old population, and another 99%. Yet after a short period crime had decreased among these same residents to less than 25% of the former figure, tuberculosis dropped from 4 to 1.9 per thousand, and the death rate dropped from 50 to 27 per thousand. 14 American Enc. Social Science, 95.

The fact that private individuals receive direct benefit from these projects does not deprive the public of their use. The public, after all, is merely an aggregation of private individuals. Public schools, public universities, public parks, and many similar governmental institutions and projects which offer definite public benefit extend peculiar benefit to those who have immediate access to them. Direct use by the general public is not essential. *Strickley v. Highland Boy Mining Co.*, 200 U.S. 527, 531, 26 S.Ct. 301, 50 L.Ed. 581, 4 Ann.Cas. 1174. Nor does the use fail to be public upon the ground that the immediate enjoyment of it is limited to a small group or even to a single person. *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 161, 17 S.Ct. 56, 41 L.Ed. 369; *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30, 32, 36 S.Ct. 234, 60 L.Ed. 507; *Rindge Co. v. County of Los Angeles*, 262 U.S. 700, 707, 43 S.Ct. 689, 67 L.Ed. 1186.

*We think that a project so closely connected with the public health, safety and morals of the citizens of the nation as the abolition on a national scope of the slum, plainly constitutes a project of public use ***.*

The District Court's holding in that regard was congruent with the conclusion upon the same issue which the Eighth District Court of Appeals reached some twenty-two years later, in *In re Exemption*, supra, that, "The fact that only a portion of the public will be directly benefited by low cost housing facilities, or that some will be benefited in a greater degree than the public generally, does not govern in determining whether a housing authority serves a *public purpose*["] [id. at 82]; the reasoning of which intermediate appellate decision this Court itself later approved in *City of Dayton v. Cloud*, supra. Accord, *Norwood v. Horney* (2006), 110 Ohio St.3d 353, 2006-Ohio-3799 at {¶¶56-59} (quoting *New York City Housing Authority v. Muller*, infra, and reiterating the judicially recognized concept that "slums and blighted or deteriorated property" constitute "a threat to *the public's* general welfare and well-being"); *Blakemore*, supra; *Chapman*, supra, at 508;¹⁴ *Spahn*, supra, at 655.¹⁵

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In these modern times, it can scarcely be gainsaid that slums are areas having insanitary and substandard housing, and are a menace to the health, welfare and morals of any community in which they exist. *Slum areas, because of the congestion, filth and insanitary conditions which are their ever-existing qualities are the breeding places of crime, immorality and disease. These evils necessarily and inevitably strike at the heart of the happiness and well being of all the people of the community. They cannot run rampant in any part of a community without stretching their tentacles menacingly throughout its entire length and breadth.* Thus the eradication of slum areas would seem to rest upon the firm foundation of the police power which inherently resides in the legislative branch of every state government. Any purpose leading toward that end is a public purpose.

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The use here proposed, as argued by appellee and admitted by appellants, may be more beneficial in the way of direct aid to a particular class, *but it also operates to the benefit of the general public and its welfare.* *** *"The essential purpose of the legislation is not to benefit that class or any class; it is to protect and safeguard the entire public from the menace of the slums."*

(continued...)

Moreover, the appellate majority's myopic fixation upon their "*benefit to a limited portion of the population*" formulation is in irreconcilable conflict with our General Assembly's declaration of public policy, as set forth in R.C. §3735.34, that:

All property, both real and personal, acquired or owned by a metropolitan housing authority and used for the purposes of exercising the powers set forth in sections 3735.27 to 3735.50 of the Revised Code, *shall be public property used exclusively for a public purpose* within the meaning of Section 2 of Article XII, Ohio Constitution, and shall be exempt from all taxation.

Since one need look no further than to R.C. §§3735.27, 3735.31, and 3735.34, and to *Norwood*, supra, at {¶¶56-59}, to demonstrate how glaringly wrong the appellate court's reasoning upon this initial issue was, CMHA will not further belabor the point.

Proposition of Law No. 2:

A metropolitan housing authority's ownership and operation of a public housing facility is a "governmental function," as defined in R.C. §2744.01(C)(1)(c).

Revised Code 2744.01(C)(1)(c) provides a second alternative definition of the term, "governmental function," which is also clearly applicable to Ohio's MHAs; defining same as meaning, "A function that promotes or preserves the public peace, health, safety, or welfare; that *involves activities that are not engaged in or not customarily engaged in by nongovernmental persons*; and that is not specified in division (G)(2) of this section as a proprietary function."

As to that provision, the two-judge majority's analysis was flawed in two different ways. *First*, they engaged in an "apples to oranges" comparison, by postulating that the *sole* function which MHAs exist to perform is that of renting out (i.e., "owning and operating") dwelling units; thus

¹⁵(...continued)

[Quoting *New York City Housing Authority v. Muller* (N.Y. Ct. App. 1936), 270 N.Y. 333, 342, 1 N.E.(2d) 153, 156.]

ignoring the three other functions statutorily vested on them by R.C. §§3735.27 and 3735.31 and reducing MHAs' functions to the equivalent of those performed by "landlords." *Second*, having thus created a false comparator, they compounded that first analytical error by wholly failing to address the question of whether *nongovernmental* "landlords" also "*customarily* engage[] in" the functions of "clear[ing], plan[ning] and rebuild[ing] slum areas," which MHAs exist to perform *in conjunction with* their function of renting dwellings. See, R.C. §3735.31; *Norwood*, *supra*, at ¶¶57-58.

Simply stated, while the majority's first analytical error rendered their *logic* faulty, their second analytical error placed their reasoning process in violation of the Black Letter rule that, in dealing with a statute, courts may not reach a conclusion by ignoring part of the words which the General Assembly placed into that statute. See, R.C. §1.47(B); *State v. Tuomala*, 104 Ohio St.3d 93, 2004-Ohio-6239 at ¶12; *Cleveland Elec. Illuminating Co. v. City of Cleveland* (1988), 37 Ohio St.3d 50, at paragraph three of the syllabus: "In matters of construction, it is the duty of this court to give effect to the words used, *not to delete words used* or to insert words not used." *Cf.*, *Vance v. St. Vincent Hospital* (1980), 64 Ohio St.2d 36, 39. ("The General Assembly must be assumed or presumed to have used the words of a statute advisedly.")

Due to same, neither this aspect of the decision thereby reached nor the judgment based thereon can be affirmed, since nowhere in their decision does any basis for concluding that *in conjunction with* their function of owning and renting-out dwellings to those of low income, some *nongovernmental* "landlords" also engage in the functions of "clear[ing], plan[ning] and rebuild[ing] slum areas."

Proposition of Law No. 3:

A metropolitan housing authority's ownership and operation of a public housing facility is a "governmental function," as defined in R.C. §2744.01(C)(2)(q).

As yet a third alternative, R.C. §2744.01(C)(2)(q) defines the term, "governmental function," as meaning, "Urban renewal projects and the elimination of slum conditions."

Regarding this provision, the entirety of the reasoning offered to support the majority's conclusion that §2744.01(C)(2)(q) did *not* bring LMHA's functions within the "governmental functions" class was as follows:

{¶ 11} Ownership and operation of a public housing facility is not specifically identified in R.C. 2744.01(C)(2). However, R.C. 2744.01(C)(2)(q) lists "[u]rban renewal projects and the elimination of slum conditions" as governmental functions. Notably, R.C. 2744.01(C)(2) does not provide an exhaustive list of governmental functions.

As to §2744.01(C)(2)(q), CMHA submits, the majority reached an erroneous conclusion because their reasoning missed three separate, simple, outcome-determinative factors.

First, the majority missed the fact that the General Assembly regards the terms, "Urban renewal," as used in §2744.01(C)(2)(q), and "clear, plan, and rebuild slum areas," as used in R.C. §3735.31 as being synonymous. See, R.C. §725.01(A), (B), (E). Notably, nothing in the majority's opinion provides any basis for concluding that the General Assembly meant to afford the terms thus used in §725.01 a meaning different from that it accorded to them in §2744.01(C)(2)(q).

Second, they also missed the facts that the terms, "elimination of slum conditions," as used in §2744.01(C)(2)(q), and "provide safe and sanitary housing accommodations," as used in R.C. §3735.31 are, likewise, synonymous. See, R.C. §§3735.27(A)(1),(2); 3735.31(B). *Cf.*, *Norwood*,

supra, at ¶¶57-58}.

Third, the majority additionally missed the further fact that regardless of whether the General Assembly intended that the word, “and,” as used in §2744.01(C)(2)(q), be interpreted in its disjunctive sense (i.e., “either/or”) or in its conjunctive sense (i.e., “both/and”), in either such event R.C. §2744.01(C)(2)(q) thereby defined the statutory functions of MHAs as being “governmental functions” because MHAs exist to preform *all* such functions. That is to say, MHAs engage in the function of “urban renewal” when they “clear, plan, and rebuild slum areas”; and MHAs engage in the “elimination of slum *conditions*” when they “provide safe and sanitary housing accommodations” as an alternative to those whose low income levels would otherwise relegate them to living in “slum conditions.”

Thus, to summarize, contrary to the appellate majority’s ultimate conclusion that none of the foregoing three alternative definitions of “governmental function” fits MHAs, CMHA respectfully submits that the duties statutorily enjoined upon MHAs not only *fit* all three of those definitional alternatives but also do so neatly; viz., (i) without stretching or straining the meaning of any words or terms and (ii) without adding to, detracting from, or altering the established meaning of any common term nor any provision which our General Assembly has enacted.

Proposition of Law No. 4:

Because R.C. §5321.04(A) Does Not Expressly Impose Civil Liability upon Political Subdivisions, it Does Not Afford a Basis upon Which the Exception to Immunity Authorized in R.C. §2744.02(B)(5) May Be Premised

In paragraphs 22 through 25 of its decision, the appellate court addressed the issue of whether the exception to immunity authorized in R.C. §2744.02(B)(5) was applicable to the facts in Ms.

Moore's case and concluded that the provisions of Ohio's Landlord-Tenant Act [Chapter 5321., R.C.] provided a basis which made that exception applicable to MHAs. The court noted that in two prior decisions it had "implicitly found R.C. 5321.04 applicable to housing authorities" and reasoned that, "if a governmental entity chooses to create a housing authority, the entity is bound by the requirements of all applicable housing, building, health and safety codes." 2007-Ohio-5111 at {¶¶24 and 25}. Here, yet again, the reasoning process so disclosed was inapposite to the immunity provision at issue because the court failed to recognize and respect the mandatory conditions precedent to that provision's applicability which the General Assembly imposed.

The version of R.C. §2744.02(B) applicable to Ms. Moore's case was enacted by Sen. Bill 106 (2002), effective April 9, 2003. (See, uncodified Section 3 of Sen. Bill 106.) That version of §2744.02(B)(5) was enacted in response to this Court's decision in *Campbell v. Burton* (2001), 92 Ohio St.3d 336, 2001-Ohio-206, and substantially altered the wording of the prior version thereof upon which *Campbell* turned.¹⁶ In *Campbell*, this Court held that the exception to immunity authorized in that former version of §2744.02(B)(5) was applicable when "*either a criminal or civil penalty*" is provided for in the Revised Code for breach of the duty set forth in the statute which creates the "responsibility" upon which the plaintiff relies. [Id. at 341.] In order to restrict the scope of the exception it intended to authorize, the General Assembly then amended that former version

¹⁶ Former R.C. §2744.02(B)(5) provided that:

In addition to the circumstances described in divisions (B)(1) to (4) of this section, *a political subdivision is liable for injury, death, or loss to persons or property when liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Liability shall not be construed to exist under another section of the Revised Code merely because a responsibility is imposed upon a political subdivision or because of a general authorization that a political subdivision may sue and be sued.*

of §2744.02(B)(5) as follows:

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when **civil** liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. ~~Liability~~ **Civil liability** shall not be construed to exist under another section of the Revised Code merely because **that section imposes a responsibility is imposed or mandatory duty** upon a political subdivision **or, because that section provides for a criminal penalty,** because of a general authorization in that section that a political subdivision may sue and be sued, **or because that section uses the term “shall” in a provision pertaining to a political subdivision.**

While it is clear that R.C. §5321.04(A) sets forth mandatory duties which *landlords* must satisfy, and that R.C. §5321.12 authorizes the imposition of civil liability for a *landlord's* breach of such duties,¹⁷ the fact remains that nothing in the Landlord-Tenant Act “expressly impose[s]” civil liability *upon political subdivisions* of any kind for a “violation” of those duties which the Act enjoins upon landlords in general; political subdivisions not being mentioned in R.C. §5321.12 nor anywhere else within that Act. Thus, it cannot be postulated that the provisions of Chapter 5321., R.C., meet the mandatory condition precedent to its applicability which the version of R.C. §2744.02(B)(5) enacted by Sen. Bill 106 (2002) sets forth – i.e., that, “civil liability [be] *expressly imposed upon the political subdivision*” – as all that Chapter 5321. does is to impose mandatory duties, and authorize the imposition of civil liability, upon landlords *in general*. However, since *each* of R.C. §2744.02(B)(5)’s conditions must be satisfied before the exception it authorizes can

¹⁷ See, *Shroades v. Rental Homes, Inc.* (1981), 68 Ohio St.2d 20, at the syllabus, overruling *Thrash v. Hill* (1980), 63 Ohio St.2d 178, 181.

operate,¹⁸ and since the just-quoted condition cannot be satisfied by the provisions of the Landlord-Tenant Act, the conclusion is inescapable that the Landlord-Tenant Act cannot serve as the predicate for the exception to immunity authorized in R.C. §2744.02(B)(5).¹⁹

Here, yet again, the appellate majority reached their decision by violating the fundamental principle that courts cannot disregard words in a statute enacted by the General Assembly. Thus, it becomes obvious that on this issue, also, the two-judge majority's analysis was fatally flawed and, due to same, the conclusion thereby reached was patently erroneous.

V. Summary

Aside from merely correcting – by reversing – the various errors of analysis and result which the appellate majority's decision has placed in the annals of Ohio's public housing law, this Court should reiterate the same kind of “bright line” distinction between what is and is not sufficient to

¹⁸ See, *Estate of Ridley*, supra; *Pearson v. Warrensville Hts. City Schools*, Cuya. App. No. 88527, 2008-Ohio-1102, at {¶¶22-23}; *Doolittle v. Shook*, Mahoning App. No. 06 MA 65, 2007-Ohio-1412 at {¶¶19-20}; *Krantz v. City of Toledo Police Dept.*, 197 Fed.Appx. 446, 450 at fn. 2 (6th Cir. 2006).

¹⁹ See, *Butler v. Jordan*, 92 Ohio St.3d 354, 357, 2001-Ohio-204, wherein this Court refused to equate the concepts of “duty” and “liability,” stating:

Appellee, like the court of appeals, relies upon *Globe Am. Cas. Co. v. Cleveland* (1994), 99 Ohio App.3d 674, 679, 651 N.E.2d 1015, 1018, to support the proposition that a statute, by imposing an express duty, also imposes express liability. However, R.C. 2744.02(B)(5) specifically provides to the contrary. “Expressly” means “in direct or unmistakable terms: in an express manner: explicitly, definitely, directly.” *** Webster's Third New International Dictionary (1986) 803.”

Cf., *Swanson v. City of Cleveland*, Cuya. App. No. 89490, 2008-Ohio-1254 at {¶23}:

{¶ 23} While R.C.2933.41 imposes an express duty on the city to keep appellant's seized vehicle safe until it is no longer needed, and to return it to her at the earliest possible time thereafter, there is no language in the statute that imposes an express liability on the city for its failure to carry out that duty. Without direct or unmistakable terms imposing civil liability upon the city, R.C. 2744.02(B)(5) does not apply.

state a claim upon which tort liability may be imposed against a metropolitan housing authority. As CMHA's undersigned counsel sees it, over the past seventeen years – i.e., since this Court's decision in *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143 – this Court has slowly inched its way towards establishing the blanket rule that, *in order to state a legally cognizable tort claim against any political subdivision*, a complaint must not only allege facts which would be sufficient to make out a cause of action against a nongovernmental person but also allege facts *sufficient to make out at least one of R.C. §2744.02(B)'s five exceptions*.

This Court's definitively pronouncing such a "bright line" rule in this case would not only be most appropriate, but also would greatly benefit the bench and *both* sides of the bar, by facilitating all concerned's ability to determine whether any such case is meritorious without anyone's having to engage in time-consuming and money-wasting discovery before a dispositive motion can be filed and decided. The presence of such a "bright line rule" pronouncement from this Court would enable *jurists* to determine Civ. R. 12(B)(6) and Civ. R. 12(C) motions with assuredness; plaintiffs' counsel to determine early on whether a complaint should or not be filed; and defense counsel to determine from the face of the complaint itself whether a case is one which warrants resort to merit-oriented discovery or merely a Civ. R. 12(B)(6) or Civ. R. 12(C) motion.

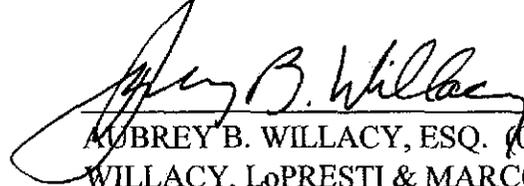
As this Court is no doubt aware, the expense associated with conducting merit-oriented discovery often outweighs the value of the information thereby obtained. Thus, this Court's pronouncement of a "bright line rule" which expressly requires complaints' additional inclusion of facts *sufficient to make out at least one of R.C. §2744.02(B)'s five exceptions* would serve the further purpose of lessening both the time and the expense required of both parties in order to get a case to the stage at which a dispositive motion might be filed and decided. The instant *Moore* case, we

respectfully submit, points that up clearly, as it does not appear from the trial and appellate courts' expositions that any discovery aimed at one or more R.C. §2744.02(B) exception(s) was ever pursued.

VI. Conclusion

For all of the foregoing reasons, CMHA joins in appellant Lorain Metropolitan Housing Authority's submission that the judgement of the court of appeals must be reversed, and that of the trial court reinstated.

Respectfully Submitted,



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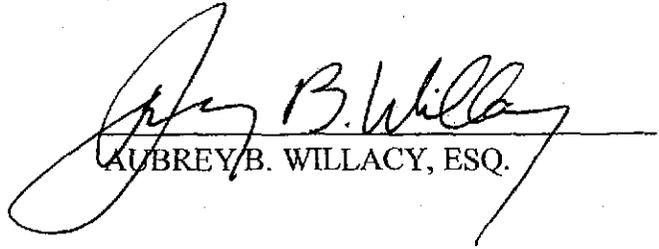
COUNSEL FOR AMICUS CURIAE

CUYAHOGA METROPOLITAN

HOUSING AUTHORITY

VII. CERTIFICATE OF SERVICE

Copies of amicus curiae Cuyahoga Metropolitan Housing Authority's foregoing Brief have been served, by ordinary mail, upon counsel for appellant, Daniel D. Mason, Esq., Stumphauzer, O'Toole, McLaughlin, McGlamery & Loughman Co., LPA, 5455 Detroit Road, Sheffield Village, Ohio 44054, and Terrance P. Gravens, Esq., Rawlin Gravens Co., LPA, 55 Public Square, Suite 850, Cleveland, Ohio 44113; and upon counsel for appellee, Gregory A. Beck, Esq., Baker, Dublikar, Beck, Wiley & Mathews, 400 South Main Street, North Canton, Ohio 44720, this 16th day of May 2008.


AUBREY B. WILLACY, ESQ.

VIII. APPENDIX

Ohio Constitution, Article XII, § 2

Sec. 2 Property taxation by uniform rule; ten-mill limitation; homestead valuation reduction; exemptions

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

THE STATE OF OHIO

vol 141

VOLUME CXXI

**LEGISLATIVE ACTS
INCLUDING APPROPRIATION ACTS
PASSED**

AND

**JOINT RESOLUTIONS
ADOPTED**

BY THE
ONE HUNDRED AND SIXTEENTH GENERAL ASSEMBLY
OF OHIO

AT ITS REGULAR SESSION
JANUARY 7, 1985 TO DECEMBER 31, 1986 INCLUSIVE

Issued by
SHERROD BROWN
Secretary of State

Am. H. B. No. 175

1698

This act is not of a general and permanent nature and does not require a code section number.

David A. Johnston
Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 22nd day of May, A. D. 1985.

Sherrill Stewart
Secretary of State.

File No. 16

Effective Date May 20, 1985



(Amended Substitute House Bill Number 176)

AN ACT

To amend sections 9.60, 133.27, 305.12, 505.43, 505.431, 505.50, 723.01, 723.54, 737.04, 737.041, 3313.203, 4731.90, and 5511.01, to enact sections 2744.01 to 2744.09 and 3345.202, and to repeal sections 505.05, 505.06, 701.02, and 5571.10 of the Revised Code, and to repeal Sections 3, 4, and 5 of Am. Sub. S.B. 76 of the 113th General Assembly, relative to the sovereign immunity of political subdivisions and the immunity of their employees, relative to liability insurance purchases by boards of education and state universities and colleges, and to continue to provide for immunity, indemnification, and defense counsel in civil actions for state officers and employees, to retain the jurisdiction of the Court of Claims to include all cases in which state officers and employees have personal immunity under Am. Sub. S.B. 76 of the 113th General Assembly, to continue to permit certain political subdivisions to provide insurance and indemnification for their members, officers, or employees, and to eliminate the duty of the Legislative Budget Office to report on the effect of Am. Sub. S.B. 76 of the 113th General Assembly, and to declare an emergency.

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

SECTION 1. That sections 9.60, 133.27, 305.12, 505.43, 505.431, 505.50, 723.01, 723.54, 737.04, 737.041, 3313.203, 4731.90, and 5511.01 be amended and sections ~~2744.01, 2744.02~~ 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 2744.08, 2744.09, and 3345.202 of the Revised Code be enacted to read as follows:

Sec. 9.60. (A) As used in this section:

(1) "Firefighting agency" means a municipal corporation, township, township fire district, joint ambulance district, or joint fire district.

(2) "Private fire company" means any nonprofit group or organization owning and operating firefighting equipment not controlled by any firefighting agency.

(3) "Governing board" means the board of county commissioners in the case of a county; the legislative authority in the case of a municipal corporation; the board of trustees of a joint ambulance district in the case of a joint ambulance district; the board of township trustees in the case of a township or township fire district; the board of fire district trustees in the case of a joint fire district; and the board of trustees in the case of a private fire company.

(4) "Fire protection" includes the provision of ambulance, emergency medical, and rescue service by the fire department of a firefighting agency or by a private fire company and the extension of the use of firefighting apparatus or firefighting equipment.

(B) Any firefighting agency or private fire company may contract with any state agency or instrumentality, county, or political subdivision of this state or with a governmental entity of an adjoining state to provide fire protection, whether on a regular basis or only in times of emergency, upon the approval of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or the administrative heads of the state agencies or instrumentalities that are parties to the contract.

(C) Any county, political subdivision, or state agency or instrumentality may contract with a firefighting agency of this state, a private fire company, or a governmental entity of an adjoining state to obtain fire protection, whether on a regular basis or only in times of emergency, upon the authorization of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or administrative heads of the state agencies or instrumentalities that are parties to the contract.

(D) Any firefighting agency of this state or any private fire company may provide fire protection to any state agency or instrumentality, county, or political subdivision of this state, or to a governmental entity of an adjoining state, without a contract to provide fire protection, upon the approval of the governing board of the firefighting agency or private fire company and upon authorization of an officer or employee of the firefighting agency providing the fire protection designated by title of their office or position pursuant to the authorization of the governing board of the firefighting agency.

(E) ~~Section 701.02~~ CHAPTER 12744, of the Revised Code, ~~as far~~ INsofar as it is applicable to the operation of fire departments, applies to the firefighting agencies and fire department members when such members are rendering service outside the boundaries of the firefighting agency pursuant to this section.

Fire department members acting outside the boundaries of the firefighting agency by which they are employed may participate in any pension or indemnity fund established by their employer to the same extent as while acting within the boundaries of the firefighting agency, and are entitled to all the rights and benefits of Chapter 4123. of the Revised Code, to the same extent as while performing service within the boundaries of the firefighting agency.

Sec. 133.27. (A) When the fiscal officer of any subdivision certifies to the bond-issuing authority that, within the limits of its funds THAT HAVE BEEN APPROPRIATED AND ARE available for the purpose, the subdivision is unable to pay a final judgment or judgments rendered against the subdivision in an action for personal injuries OR DEATH or based on any other noncontractual obligation, then ~~such~~ THE subdivision may issue bonds for the purpose of providing funds with which to pay ~~such~~ THE final judgment OR JUDGMENTS in an amount not exceeding, EXCEPT AS OTHERWISE SPECIFIED IN THIS DIVISION, the amount of the judgment or judgments ~~together with~~, the costs of AND EXPENSES TAXED BY THE COURT OR COURTS INVOLVED IN the suit OR SUITS in which such judgment or judgments ~~are~~ WERE rendered, and interest ~~thereon~~ ON THE JUDGMENT OR JUDGMENTS to the approximate date when the proceeds of such bonds are available. THE BONDS ALSO MAY INCLUDE COVERAGE FOR EXPENSES INCURRED BY THE SUBDIVISION IN DEFENDING THE SUIT OR SUITS.

(B) BONDS ISSUED PURSUANT TO DIVISION (A) OF THIS SECTION MAY BE EITHER OF THE FOLLOWING:

(1) GENERAL OBLIGATION BONDS THAT PLEDGE THE GENERAL TAXING POWER, INCLUDING AD VAL-

police department members when they are rendering service outside their own subdivisions pursuant to such contracts.

Police department members acting outside the subdivision in which they are employed, pursuant to such contracts, shall be entitled to, if the rules of the board of trustees of the policemen's indemnity fund provide therefor, participate in any indemnity fund established by their employer to the same extent as while acting within the employing subdivision. Such members shall be entitled to all the rights and benefits of sections 4123.01 to 4123.94 of the Revised Code, to the same extent as while performing service within the subdivision.

Such contracts may provide for:

(A) A fixed annual charge to be paid at the times agreed upon and stipulated therein;

(B) Compensation based upon:

(1) A stipulated price for each call or emergency;

(2) The number of members or pieces of equipment employed;

(3) The elapsed time of service required in such call or emergency.

(C) Compensation for loss or damage to equipment while engaged outside the limits of the subdivision owning and furnishing the equipment;

(D) Reimbursement of the subdivision in which the police department members are employed, for any indemnity award or premium contribution assessed against the employing subdivision for workers' compensation benefits for injuries or death of its police department members occurring while engaged in rendering such service.

Sec. 737.041. The police department of any municipal corporation may provide police protection to any county, municipal corporation, or township of this state or to a governmental entity of an adjoining state without a contract to provide police protection, upon the approval, by resolution, of the legislative authority of the municipal corporation in which the department is located and upon authorization by an officer or employee of the police department providing the police protection who is designated by title of office or position, pursuant to the resolution of the legislative authority of the municipal corporation, to give such authorization.

Section 701.02 CHAPTER 2744, of the Revised Code, insofar as it applies to the operation of police departments, shall apply to any municipal corporation and to members of its police department when such members are rendering police services pursuant to this section outside the municipal corporation by which they are employed.

Police department members acting, as provided in this section, outside the municipal corporation by which they are employed shall be entitled, if the rules of the board of trustees of the policemen's pension or indemnity fund provide therefor, to participate in any pension or indemnity fund established by their employer to the same extent as while acting within the municipal corporation by which they are employed. Such members shall be entitled to all the rights and benefits of sections 4123.01 to 4123.96 of the Revised Code to the same extent as while performing services within the municipal corporation by which they are employed.

→ Sec. 2744.01. AS USED IN THIS CHAPTER:

(A) "EMERGENCY CALL" MEANS A CALL TO DUTY INCLUDING, BUT NOT LIMITED TO, COMMUNICATIONS FROM CITIZENS, POLICE DISPATCHES, AND PERSONAL OBSERVATIONS BY PEACE OFFICERS OF INHERENTLY DANGEROUS SITUATIONS THAT DEMAND AN IMMEDIATE RESPONSE ON THE PART OF A PEACE OFFICER.

(B) "EMPLOYEE" MEANS AN OFFICER, AGENT, EMPLOYEE, OR SERVANT, WHETHER OR NOT COMPENSATED OR FULL-TIME OR PART-TIME, WHO IS AUTHORIZED TO ACT AND IS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT FOR A POLITICAL SUBDIVISION. "EMPLOYEE" DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR. "EMPLOYEE" INCLUDES ANY ELECTED OR APPOINTED OFFICIAL OF A POLITICAL SUBDIVISION. "EMPLOYEE" ALSO INCLUDES A PERSON WHO HAS BEEN CONVICTED OF OR PLEADED GUILTY TO A CRIMINAL OFFENSE AND WHO HAS BEEN SENTENCED TO PERFORM COMMUNITY SERVICE WORK IN A POLITICAL SUBDIVISION WHETHER PURSUANT TO SECTION 2951.02 OF THE REVISED CODE OR OTHERWISE, AND A CHILD WHO IS FOUND TO BE A DELINQUENT CHILD AND WHO IS ORDERED BY A JUVENILE COURT PURSUANT TO SECTION 2151.355 OF THE REVISED CODE TO PERFORM COMMUNITY SERVICE OR COMMUNITY WORK IN A POLITICAL SUBDIVISION.

(C)(1) "GOVERNMENTAL FUNCTION" MEANS A FUNCTION OF A POLITICAL SUBDIVISION THAT IS SPECIFIED IN DIVISION (C)(2) OF THIS SECTION OR THAT SATISFIES ANY OF THE FOLLOWING:

(a) A FUNCTION THAT IS IMPOSED UPON THE STATE AS AN OBLIGATION OF SOVEREIGNTY AND THAT IS PERFORMED BY A POLITICAL SUBDIVISION VOLUNTARILY OR PURSUANT TO LEGISLATIVE REQUIREMENT;

(b) A FUNCTION THAT IS FOR THE COMMON GOOD OF ALL CITIZENS OF THE STATE;

(c) A FUNCTION THAT PROMOTES OR PRESERVES THE PUBLIC PEACE, HEALTH, SAFETY, OR WELFARE, THAT INVOLVES ACTIVITIES THAT ARE NOT ENGAGED IN OR NOT CUSTOMARILY ENGAGED IN BY NONGOVERNMENTAL PERSONS, AND THAT IS NOT SPECIFIED IN DIVISION (G)(2) OF THIS SECTION AS A PROPRIETARY FUNCTION.

(2) A "GOVERNMENTAL FUNCTION" INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) THE PROVISION OR NONPROVISION OF POLICE, FIRE, EMERGENCY MEDICAL, AMBULANCE, AND RESCUE SERVICES OR PROTECTION;

(b) THE POWER TO PRESERVE THE PEACE, TO PREVENT AND SUPPRESS RIOTS, DISTURBANCES, AND DISORDERLY ASSEMBLAGES, AND TO PROTECT PERSONS AND PROPERTY;

(c) THE PROVISION OF A SYSTEM OF PUBLIC EDUCATION;

(d) THE PROVISION OF A FREE PUBLIC LIBRARY SYSTEM;

(e) THE REGULATION OF THE USE OF, AND THE MAINTENANCE AND REPAIR OF, ROADS, HIGHWAYS, STREETS, AVENUES, ALLEYS, SIDEWALKS, BRIDGES, AQUEDUCTS, VIADUCTS, AND PUBLIC GROUNDS;

(f) JUDICIAL, QUASI-JUDICIAL, PROSECUTORIAL, LEGISLATIVE, AND QUASI-LEGISLATIVE FUNCTIONS;

(g) THE CONSTRUCTION, RECONSTRUCTION, REPAIR, RENOVATION, MAINTENANCE, AND OPERATION OF BUILDINGS THAT ARE USED IN CONNECTION WITH THE PERFORMANCE OF A GOVERNMENTAL FUNCTION, INCLUDING, BUT NOT LIMITED TO, OFFICE BUILDINGS AND COURTHOUSES;

(h) THE DESIGN, CONSTRUCTION, RECONSTRUCTION, RENOVATION, REPAIR, MAINTENANCE, AND OPERATION OF JAILS, PLACES OF JUVENILE DETENTION, WORKHOUSES, OR ANY OTHER DETENTION FACILITY, AS DEFINED IN SECTION 2921.01 OF THE REVISED CODE;

(i) THE ENFORCEMENT OR NONPERFORMANCE OF ANY LAW;

(j) THE REGULATION OF TRAFFIC, AND THE ERECTION OR NONERECTION OF TRAFFIC SIGNS, SIGNALS, OR CONTROL DEVICES;

(k) THE COLLECTION AND DISPOSAL OF GARBAGE, REFUSE, AND OTHER SOLID WASTES, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF DUMPS, SANITARY LANDFILLS, AND FACILITIES;

(l) THE PROVISION OR NONPROVISION, PLANNING OR DESIGN, CONSTRUCTION, OR RECONSTRUCTION OF A PUBLIC IMPROVEMENT, INCLUDING, BUT NOT LIMITED TO, A SEWER SYSTEM;

(m) THE OPERATION OF A HEALTH OR HUMAN SERVICES DEPARTMENT OR AGENCY, INCLUDING, BUT NOT LIMITED TO, THE PROVISION OF ASSISTANCE TO AGED AND INFIRM PERSONS AND TO PERSONS WHO ARE INDIGENT;

(n) THE OPERATION OF MENTAL HEALTH FACILITIES, MENTAL RETARDATION OR DEVELOPMENTAL DISABILITIES FACILITIES, ALCOHOL TREATMENT AND CONTROL CENTERS, AND CHILDREN'S HOMES OR AGENCIES;

(o) THE PROVISION OR NONPROVISION OF INSPECTION SERVICES OF ALL TYPES, INCLUDING, BUT NOT LIMITED TO, INSPECTIONS IN CONNECTION WITH BUILDING, ZONING, SANITATION, FIRE, PLUMBING, AND ELECTRICAL CODES, AND THE TAKING OF ACTIONS IN CONNECTION WITH THOSE TYPES OF CODES, INCLUDING, BUT NOT LIMITED TO, THE APPROVAL OF PLANS FOR THE CONSTRUCTION OF BUILDINGS OR STRUCTURES AND THE ISSUANCE OR REVOCATION OF BUILDING PERMITS OR STOP WORK ORDERS IN CONNECTION WITH BUILDINGS OR STRUCTURES;

(p) URBAN RENEWAL PROJECTS AND THE ELIMINATION OF SLUM CONDITIONS;

(q) FLOOD CONTROL MEASURES;

(r) THE DESIGN, CONSTRUCTION, RECONSTRUCTION, RENOVATION, OPERATION, CARE, REPAIR, AND MAINTENANCE OF A TOWNSHIP CEMETERY;

(s) THE ISSUANCE OF REVENUE OBLIGATIONS UNDER SECTION 140.06 OF THE REVISED CODE;

(t) A FUNCTION THAT THE GENERAL ASSEMBLY MANDATES A POLITICAL SUBDIVISION TO PERFORM.

(D) "LAW" MEANS ANY PROVISION OF THE CONSTITUTION, STATUTES, OR RULES OF THE UNITED STATES OR OF THIS STATE, PROVISIONS OF CHARTERS, ORDINANCES, RESOLUTIONS, AND RULES OF POLITICAL SUBDIVISIONS, AND WRITTEN POLICIES ADOPTED BY BOARDS OF EDUCATION. WHEN USED IN CONNECTION WITH THE "COMMON LAW," THIS DEFINITION DOES NOT APPLY.

(E) "MOTOR VEHICLE" HAS THE SAME MEANING AS IN SECTION 4511.01 OF THE REVISED CODE.

(F) "POLITICAL SUBDIVISION" OR "SUBDIVISION" MEANS A MUNICIPAL CORPORATION, TOWNSHIP, COUNTY, SCHOOL DISTRICT, OR OTHER BODY CORPORATE AND POLITIC RESPONSIBLE FOR GOVERNMENTAL ACTIVITIES IN A GEOGRAPHIC AREA SMALLER THAN THAT OF THE STATE. "POLITICAL SUBDIVISION" INCLUDES A COUNTY HOSPITAL COMMISSION APPOINTED UNDER SECTION 339.14 OF THE REVISED CODE, REGIONAL PLANNING COMMISSION CREATED PURSUANT TO SECTION 713.21 OF THE REVISED CODE, COUNTY PLANNING COMMISSION CREATED PURSUANT TO SECTION 713.22 OF THE REVISED CODE, JOINT PLANNING COUNCIL CREATED PURSUANT TO SECTION 713.231 OF THE REVISED CODE, INTERSTATE REGIONAL PLANNING COMMISSION CREATED PURSUANT TO SECTION 713.30 OF THE REVISED CODE, AND REGIONAL COUNCILS OF POLITICAL SUBDIVISIONS ESTABLISHED PURSUANT TO CHAPTER 167. OF THE REVISED CODE.

(G)(1) "PROPRIETARY FUNCTION" MEANS A FUNCTION OF A POLITICAL SUBDIVISION THAT IS SPECIFIED IN DIVISION (G)(2) OF THIS SECTION OR THAT SATISFIES ALL OF THE FOLLOWING:

(a) THE FUNCTION IS NOT ONE DESCRIBED IN DIVISION (C)(1)(a) OR (b) OF THIS SECTION AND IS NOT ONE SPECIFIED IN DIVISION (C)(2) OF THIS SECTION;

(b) THE FUNCTION IS ONE THAT PROMOTES OR PRESERVES THE PUBLIC PEACE, HEALTH, SAFETY, OR WELFARE AND THAT INVOLVES ACTIVITIES THAT ARE CUSTOMARILY ENGAGED IN BY NONGOVERNMENTAL PERSONS.

(2) A "PROPRIETARY FUNCTION" INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) THE OPERATION OF A HOSPITAL BY ONE OR MORE POLITICAL SUBDIVISIONS;

(b) THE DESIGN, CONSTRUCTION, RECONSTRUCTION, RENOVATION, REPAIR, MAINTENANCE, AND OPERATION OF A PUBLIC CEMETERY OTHER THAN A TOWNSHIP CEMETERY, PARK, PLAYGROUND, PLAYFIELD, ZOO, ZOOLOGICAL PARK, BATH, INDOOR RECREATIONAL FACILITY, OR SWIMMING POOL OR POND;

(c) THE ESTABLISHMENT, MAINTENANCE, AND OPERATION OF A UTILITY, INCLUDING, BUT NOT LIMITED TO, A LIGHT, GAS, POWER, OR HEAT PLANT, A

RAILROAD, A BUSLINE OR OTHER TRANSIT COMPANY, AN AIRPORT, AND A MUNICIPAL CORPORATION WATER SUPPLY SYSTEM;

(d) THE MAINTENANCE, DESTRUCTION, OPERATION, AND UPKEEP OF A SEWER SYSTEM;

(e) THE OPERATION AND CONTROL OF A PUBLIC STADIUM, GOLF COURSE, AUDITORIUM, CIVIC OR SOCIAL CENTER, EXHIBITION HALL, ARTS AND CRAFTS CENTER, BAND OR ORCHESTRA, OR OFF-STREET PARKING FACILITY.

(II) "STATE" MEANS THE STATE OF OHIO, INCLUDING, BUT NOT LIMITED TO, THE GENERAL ASSEMBLY, THE SUPREME COURT, THE OFFICES OF ALL ELECTED STATE OFFICERS, AND ALL DEPARTMENTS, BOARDS, OFFICES, COMMISSIONS, AGENCIES, COLLEGES AND UNIVERSITIES, INSTITUTIONS, AND OTHER INSTRUMENTALITIES OF THE STATE OF OHIO. "STATE" DOES NOT INCLUDE POLITICAL SUBDIVISIONS.

Sec. 2744.02. (A)(1) FOR THE PURPOSES OF THIS CHAPTER, THE FUNCTIONS OF POLITICAL SUBDIVISIONS ARE HEREBY CLASSIFIED AS GOVERNMENTAL FUNCTIONS AND PROPRIETARY FUNCTIONS. EXCEPT AS PROVIDED IN DIVISION (B) OF THIS SECTION, A POLITICAL SUBDIVISION IS NOT LIABLE IN DAMAGES IN A CIVIL ACTION FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY ALLEGEDLY CAUSED BY ANY ACT OR OMISSION OF THE POLITICAL SUBDIVISION OR AN EMPLOYEE OF THE POLITICAL SUBDIVISION IN CONNECTION WITH A GOVERNMENTAL OR PROPRIETARY FUNCTION.

(2) SUBJECT TO STATUTORY LIMITATIONS UPON THEIR MONETARY JURISDICTION, THE COURTS OF COMMON PLEAS, THE MUNICIPAL COURTS, AND THE COUNTY COURTS HAVE JURISDICTION TO HEAR AND DETERMINE CIVIL ACTIONS GOVERNED BY OR BROUGHT PURSUANT TO THIS CHAPTER.

(B) SUBJECT TO SECTIONS 2744.03 AND 2744.05 OF THE REVISED CODE, A POLITICAL SUBDIVISION IS LIABLE IN DAMAGES IN A CIVIL ACTION FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY ALLEGEDLY CAUSED BY AN ACT OR OMISSION OF THE POLITICAL SUBDIVISION OR OF ANY OF ITS EMPLOYEES IN CONNECTION WITH A GOVERNMENTAL OR PROPRIETARY FUNCTION, AS FOLLOWS:

(1) EXCEPT AS OTHERWISE PROVIDED IN THIS DIVISION, POLITICAL SUBDIVISIONS ARE LIABLE FOR

INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY CAUSED BY THE NEGLIGENT OPERATION OF ANY MOTOR VEHICLE BY THEIR EMPLOYEES UPON THE PUBLIC ROADS, HIGHWAYS, OR STREETS WHEN THE EMPLOYEES ARE ENGAGED WITHIN THE SCOPE OF THEIR EMPLOYMENT AND AUTHORITY. THE FOLLOWING ARE FULL DEFENSES TO SUCH LIABILITY:

(a) A MEMBER OF A MUNICIPAL CORPORATION POLICE DEPARTMENT OR ANY OTHER POLICE AGENCY WAS OPERATING A MOTOR VEHICLE WHILE RESPONDING TO AN EMERGENCY CALL AND THE OPERATION OF THE VEHICLE DID NOT CONSTITUTE WILLFUL OR WANTON MISCONDUCT;

(b) A MEMBER OF A MUNICIPAL CORPORATION FIRE DEPARTMENT OR ANY OTHER FIREFIGHTING AGENCY WAS OPERATING A MOTOR VEHICLE WHILE ENGAGED IN DUTY AT A FIRE, PROCEEDING TOWARD A PLACE WHERE A FIRE IS IN PROGRESS OR IS BELIEVED TO BE IN PROGRESS, OR IN ANSWERING ANY OTHER EMERGENCY ALARM AND THE OPERATION OF THE VEHICLE DID NOT CONSTITUTE WILLFUL OR WANTON MISCONDUCT;

(c) A MEMBER OF AN EMERGENCY MEDICAL SERVICE OWNED OR OPERATED BY A POLITICAL SUBDIVISION WAS OPERATING A MOTOR VEHICLE WHILE RESPONDING TO OR COMPLETING A CALL FOR EMERGENCY MEDICAL CARE OR TREATMENT, THE MEMBER WAS HOLDING A VALID OPERATOR'S OR CHAUFFEUR'S LICENSE ISSUED PURSUANT TO CHAPTER 4507. OF THE REVISED CODE, THE OPERATION OF THE VEHICLE DID NOT CONSTITUTE WILLFUL OR WANTON MISCONDUCT, AND THE OPERATION COMPLIES WITH THE PRECAUTIONS OF SECTION 4511.03 OF THE REVISED CODE.

(2) POLITICAL SUBDIVISIONS ARE LIABLE FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY CAUSED BY THE NEGLIGENT PERFORMANCE OF ACTS BY THEIR EMPLOYEES WITH RESPECT TO PROPRIETARY FUNCTIONS OF THE POLITICAL SUBDIVISIONS.

(3) POLITICAL SUBDIVISIONS ARE LIABLE FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY CAUSED BY THEIR FAILURE TO KEEP PUBLIC ROADS, HIGHWAYS, STREETS, AVENUES, ALLEYS, SIDEWALKS, BRIDGES, AQUEDUCTS, VIADUCTS, OR PUBLIC GROUNDS WITHIN THE POLITICAL SUBDIVISIONS OPEN, IN REPAIR, AND FREE FROM NUISANCE, EXCEPT THAT IT IS A FULL DEFENSE TO SUCH LIABILITY, WHEN A

BRIDGE WITHIN A MUNICIPAL CORPORATION IS INVOLVED, THAT THE MUNICIPAL CORPORATION DOES NOT HAVE THE RESPONSIBILITY FOR MAINTAINING OR INSPECTING THE BRIDGE.

(4) POLITICAL SUBDIVISIONS ARE LIABLE FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY THAT IS CAUSED BY THE NEGLIGENCE OF THEIR EMPLOYEES AND THAT OCCURS WITHIN OR ON THE GROUNDS OF BUILDINGS THAT ARE USED IN CONNECTION WITH THE PERFORMANCE OF A GOVERNMENTAL FUNCTION, INCLUDING, BUT NOT LIMITED TO, OFFICE BUILDINGS AND COURTHOUSES, BUT NOT INCLUDING JAILS, PLACES OF JUVENILE DETENTION, WORKHOUSES, OR ANY OTHER DETENTION FACILITY, AS DEFINED IN SECTION 2921.01 OF THE REVISED CODE.

(5) IN ADDITION TO THE CIRCUMSTANCES DESCRIBED IN DIVISIONS (B)(1) TO (4) OF THIS SECTION, A POLITICAL SUBDIVISION IS LIABLE FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY WHEN LIABILITY IS EXPRESSLY IMPOSED UPON THE POLITICAL SUBDIVISION BY A SECTION OF THE REVISED CODE, INCLUDING, BUT NOT LIMITED TO, SECTIONS 2743.02 AND 5591.37 OF THE REVISED CODE. LIABILITY SHALL NOT BE CONSTRUED TO EXIST UNDER ANOTHER SECTION OF THE REVISED CODE MERELY BECAUSE A RESPONSIBILITY IS IMPOSED UPON A POLITICAL SUBDIVISION OR BECAUSE OF A GENERAL AUTHORIZATION THAT A POLITICAL SUBDIVISION MAY SUE AND BE SUED.

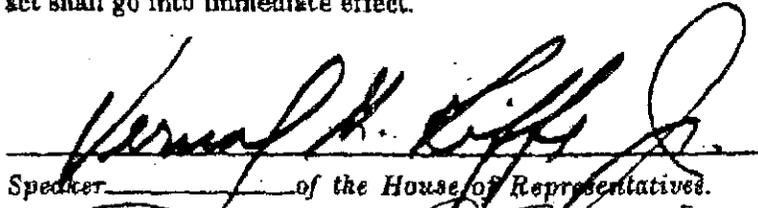
Sec. 2744.03. (A) IN A CIVIL ACTION BROUGHT AGAINST A POLITICAL SUBDIVISION OR AN EMPLOYEE OF A POLITICAL SUBDIVISION TO RECOVER DAMAGES FOR INJURY, DEATH, OR LOSS TO PERSONS OR PROPERTY ALLEGEDLY CAUSED BY ANY ACT OR OMISSION IN CONNECTION WITH A GOVERNMENTAL OR PROPRIETARY FUNCTION, THE FOLLOWING DEFENSES OR IMMUNITIES MAY BE ASSERTED TO ESTABLISH NON-LIABILITY:

(1) THE POLITICAL SUBDIVISION IS IMMUNE FROM LIABILITY IF THE EMPLOYEE INVOLVED WAS ENGAGED IN THE PERFORMANCE OF A JUDICIAL, QUASI-JUDICIAL, PROSECUTORIAL, LEGISLATIVE, OR QUASI-LEGISLATIVE FUNCTION.

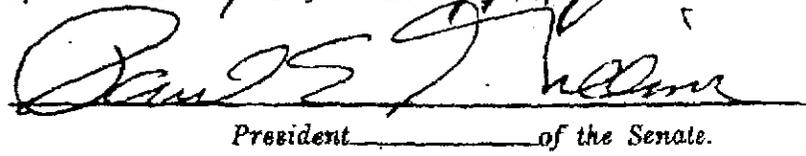
(2) THE POLITICAL SUBDIVISION IS IMMUNE FROM LIABILITY IF THE CONDUCT OF THE EMPLOYEE INVOLVED, OTHER THAN NEGLIGENT CONDUCT, THAT

may consider the Superintendent's recommendations, if any, as to the nature and details of such an association, it may consider those recommendations in part or with modifications, it may reject those recommendations, or it may establish and consider its own proposal for the establishment of such an association.

SECTION 8. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the protections afforded to political subdivisions and employees of political subdivisions by this act are urgently needed in order to ensure the continued orderly operation of local governments and the continued ability of local governments to provide public peace, health, and safety services to their residents. Therefore, this act shall go into immediate effect.



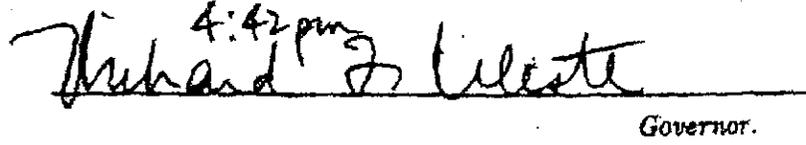
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed November 14, 1985

Approved November 20, 1985

4:42 pm


Governor.

Am. Sub. H. B. No. 176

1734

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 1st day of November, A. D. 1985.

Sumner Brown

Secretary of State.

File No. 93

Effective Date November 20, 1985

Ohio Revised Code, Section 1.47

Intentions in the enactment of statutes

In enacting a statute, it is presumed that:

- (A) Compliance with the constitutions of the state and of the United States is intended;
- (B) The entire statute is intended to be effective;
- (C) A just and reasonable result is intended;
- (D) A result feasible of execution is intended.

Ohio Revised Code, Section 725.01

Definitions

As used in sections 725.01 to 725.11 of the Revised Code:

(A) "Slum area" means an area within a municipal corporation, in which area there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property, by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to public health, safety, morals, or welfare.

(B) "Blighted area" means an area within a municipal corporation, which area by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions to title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipal corporation, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(C)(1) "Development agreement" means an agreement that includes as a minimum all of the following agreements between a municipal corporation as obligee and the following parties as obligors:

(a) An agreement to construct or rehabilitate the structures and facilities described in the development agreement on real property described in the agreement situated in an urban renewal area, the obligor of such agreement to be a party determined by the legislative authority of the municipal corporation to have the ability to perform or cause the performance of the agreement;

(b) The agreement required by section 725.04 of the Revised Code, the obligor of the agreement to be the owner or owners of the improvements to be constructed or rehabilitated;

(c) An agreement of the owner or owners of the fee simple of the real property to which the development agreement pertains, as obligor, that the owner or owners and their successors and assigns shall use, develop, and redevelop the real property in accordance with, and for the period of, the urban renewal plan and shall so bind their successors and assigns by appropriate agreements and covenants running with the land enforceable by the municipal corporation.

(2) A municipal corporation on behalf of the holders of urban renewal bonds may be the obligor of any of the agreements described in division (C)(1) of this section.

(D) "Revenues" means all rentals received under leases made by the municipal corporation in any part or all of one or more urban renewal areas; all proceeds of the sale or other disposition of property of the municipal corporation in any part or all of one or more urban renewal areas; and all urban renewal service payments collected from any part or all of one or more urban renewal areas.

(E) "Urban renewal area" means a slum area or a blighted area or a combination thereof which the legislative authority of the municipal corporation designates as appropriate for an urban renewal project.

(F) "Urban renewal bonds" means, unless the context indicates a different meaning, definitive bonds, interim receipts, temporary bonds, and urban renewal refunding bonds issued pursuant to sections 725.01 to 725.11 of the Revised Code, and bonds issued pursuant to Article XVIII, Section 3, Ohio Constitution, for the uses specified in section 725.07 of the Revised Code.

(G) "Urban renewal refunding bonds" means the refunding bonds authorized by section 725.07 of the Revised Code.

(H) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan shall conform to the general plan for the municipal corporation, if any, and shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning, and planning changes, if any, land uses, maximum densities, and building requirements.

(I) "Urban renewal project" may include undertakings and activities of a municipal corporation in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof, in accordance with an urban renewal plan, and such aforesaid undertakings and activities may include acquisition of a slum area or a blighted area, or portion thereof, demolition and removal of buildings and improvements; installation, construction, or reconstruction of streets, utilities, parks, playgrounds, public buildings and facilities, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives in accordance with the urban renewal plan, disposition of any property acquired in the urban renewal area, including sale, leasing, or retention by the municipal corporation itself, at its fair value for uses in accordance with the urban renewal plan; carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; the acquisition, construction, enlargement, improvement, or equipment of property, structures, equipment, or facilities for industry, commerce, distribution, or research from the proceeds of urban renewal bonds issued pursuant to division (C) of section 725.05 of the Revised Code; and acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, lessen density, eliminate obsolete, or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.

(J) "Urban renewal debt retirement fund" means a fund created pursuant to section 725.03 of the Revised Code by the legislative authority of a municipal corporation when authorizing a single issue or a series of urban renewal bonds, to be used for payment of the principal of and interest and redemption premium on such urban renewal bonds, trustee's fees, and costs and expenses of providing credit facilities, put arrangements, and interest rate hedges, and for fees and expenses of agents, and other fees, costs, and expenses, in connection with arrangements under sections 9.98 to 9.983 of the Revised Code; or when authorizing the repayment of loans from the state issued pursuant to Chapter 164. of the Revised Code and used for urban renewal projects, to be used to repay the principal and interest on such loans. When so authorized by the legislative authority of a municipal corporation, such a fund may be used for both purposes permitted under this division.

(K) "Urban renewal service payments" means the urban renewal service payments, in lieu of taxes, provided for in section 725.04 of the Revised Code.

(L) "Improvements" means the structures and facilities constructed or rehabilitated pursuant to a development agreement.

(M) "Exemption period" means that period during which all or a portion of the assessed valuation of the improvements has been exempted from real property taxation pursuant to section 725.02 of the Revised Code.

Ohio Revised Code, Section 2744.01 (Eff. April 9, 2003)

Sec. 2744.01. As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid

waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.

(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;

(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;

(o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;

(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(q) Urban renewal projects and the elimination of slum conditions;

(r) Flood control measures;

(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any [REDACTED] recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;

(v) A golf course;

(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;

(vii) A rope course or climbing walls;

(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.

(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w)

[REDACTED]

■ A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created

pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, and community school established under Chapter 3314. of the Revised Code.

(G)(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) [REDACTED]

■ "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

Ohio Revised Code, Section 2744.02 (Eff. April 9, 2003)

Sec. 2744.02. (A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

(2) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees upon the public roads, highways, or streets when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of section 4511.03 of the Revised Code.

(2) Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their [REDACTED] failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, in repair, and free from nuisance [REDACTED], except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of [REDACTED] buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when [REDACTED] liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Liability [REDACTED] shall not be construed to exist under another section of the Revised Code merely because [REDACTED] a responsibility is imposed [REDACTED] upon a political subdivision or [REDACTED] because of a general authorization [REDACTED] that a political subdivision may sue and be sued [REDACTED].

Ohio Revised Code, Section 3735.27

Metropolitan housing authority created; districts of specific population

(A) Whenever the director of development has determined that there is need for a housing authority in any portion of any county that comprises two or more political subdivisions or portions of two or more political subdivisions but is less than all the territory within the county, a metropolitan housing authority shall be declared to exist, and the territorial limits of the authority shall be defined, by a letter from the director. The director shall issue a determination from the department of development declaring that there is need for a housing authority within those territorial limits after finding either of the following:

(1) Unsanitary or unsafe inhabited housing accommodations exist in that area;

(2) There is a shortage of safe and sanitary housing accommodations in that area available to persons who lack the amount of income that is necessary, as determined by the director, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without congestion.

In determining whether dwelling accommodations are unsafe or unsanitary, the director may take into consideration the degree of congestion, the percentage of land coverage, the light, air, space, and access available to the inhabitants of the dwelling accommodations, the size and arrangement of rooms, the sanitary facilities, and the extent to which conditions exist in the dwelling accommodations that endanger life or property by fire or other causes.

The territorial limits of a metropolitan housing authority as defined by the director under this division shall be fixed for the authority upon proof of a letter from the director declaring the need for the authority to function in those territorial limits. Any such letter from the director, any certificate of determination issued by the director, and any certificate of appointment of members of the authority shall be admissible in evidence in any suit, action, or proceeding.

A certified copy of the letter from the director declaring the existence of a metropolitan housing authority and the territorial limits of its district shall be immediately forwarded to each appointing authority. A metropolitan housing authority shall consist of members who are residents of the territory in which they serve.

(B)(1) Except as otherwise provided in division (C), (D), or (E) of this section, the members of a metropolitan housing authority shall be appointed as follows:

(a)(i) In a district in a county in which a charter has been adopted under Article X, Section 3 of the Ohio Constitution, and in which the most populous city is not the city with the largest ratio of housing units owned or managed by the authority to population, one member shall be appointed by the probate court, one member shall be appointed by the court of common pleas, one member shall be appointed by the board of county commissioners, one member shall be appointed by the chief executive officer of the city that has the largest ratio of housing units owned or managed by the authority to population, and two members shall be appointed by the chief executive officer of the most populous city in the district.

(ii) If, in a district that appoints members pursuant to division (B)(1) (a) of this section, the most populous city becomes the city with the largest ratio of housing units owned or managed by the authority to population, when the term of office of the member who was appointed by the chief executive officer of the city with the largest ratio expires, that member shall not be reappointed, and the membership of the authority shall be as described in division (B)(1)(b) of this section.

(b) In any district other than one described in division (B)(1)(a) of this section, one member shall be appointed by the probate court, one member shall be appointed by the court of common pleas, one member shall be appointed by the board of county commissioners, and two members shall be appointed by the chief executive officer of the most populous city in the district.

(2) At the time of the initial appointment of the authority, the member appointed by the probate court shall be appointed for a period of four years, the member appointed by the court of common pleas shall be appointed for three years, the member appointed by the board of county commissioners shall be appointed for two years, one member appointed by the chief executive officer of the most populous city in the district shall be appointed for one year, and the other member appointed by the chief executive officer of the most populous city in the district shall be appointed for five years.

If appointments are made under division (B)(1)(a) of this section, the member appointed by the chief executive officer of the city in the district that is not the most populous city, but that has the largest ratio of housing units owned or managed by the authority to population, shall be appointed for five years.

After the initial appointments, all members of the authority shall be appointed for five-year terms, and any vacancy occurring upon the expiration of a term shall be filled by the appointing authority that made the initial appointment.

(3) For purposes of this division, population shall be determined according to the last preceding federal census.

(C) For any metropolitan housing authority district that contained, as of the 1990 federal census, a population of at least one million, two members of the authority shall be appointed by the legislative authority of the most populous city in the district, two members shall be appointed by the chief executive officer of the most populous city in the district, and one member shall be appointed by the chief executive officer, with the approval of the legislative authority, of the city in the district that has the second highest number of housing units owned or managed by the authority.

At the time of the initial appointment of the authority, one member appointed by the legislative authority of the most populous city in the district shall be appointed for three years, and one such member shall be appointed for one year; the member appointed by the chief executive officer of the city with the second highest number of housing units owned or managed by the authority shall be appointed, with the approval of the legislative authority, for three years; and one member appointed by the chief executive officer of the most populous city in the district shall be appointed for three years, and one such member shall be appointed for one year. Thereafter, all members of the authority shall be appointed for three-year terms, and any vacancy shall be filled by the same appointing power that made the initial appointment. At the expiration of the term of any member appointed by the chief executive officer of the most populous city in the district before March 15, 1983, the chief executive officer of the most populous city in the district shall fill the vacancy by appointment for a three-year term. At the expiration of the term of any member appointed by the board of county commissioners before March 15, 1983, the chief executive officer of the city in the district with the second highest number of housing units owned or managed by the authority shall, with the approval of the municipal legislative authority, fill the vacancy by appointment for a three-year term. At the expiration of the term of any member appointed before March 15, 1983, by the court of common pleas or the probate court, the legislative authority of the most populous city in the district shall fill the vacancy by appointment for a three-year term.

After March 15, 1983, at least one of the members appointed by the chief executive officer of the most populous city shall be a resident of a dwelling unit owned or managed by the authority. At least one of the initial appointments by the chief executive officer of the most populous city, after March 15, 1983, shall be a resident of a dwelling unit owned or managed by the authority. Thereafter, any member appointed by the chief executive officer of the most populous city for the term established by this initial appointment, or for any succeeding term, shall be a person who resides in a dwelling unit owned or managed by the authority. If there is an elected, representative body of all residents of the authority, the chief executive officer of the most populous city shall, whenever there is a vacancy in this resident term, provide written notice of the vacancy to the representative body. If the representative body submits to the chief executive officer of the most populous city, in writing and within sixty days after the date on which it was notified of the vacancy, the names of at least five residents of the authority who are willing and qualified to serve as a member, the chief executive officer of the most populous city shall appoint to the resident term one of the residents recommended by the representative body. At no time shall residents constitute a majority of the members of the authority.

(D)(1) For any metropolitan housing authority district located in a county that had, as of the 2000 federal census, a population of at least four hundred thousand and no city with a population greater than thirty per cent of the total population of the county, one member of the authority shall be appointed by the probate court, one member shall be appointed by the court of common pleas, one member shall be appointed by the chief executive officer of the most populous city in the district, and two members shall be appointed by the board of county commissioners.

(2) At the time of the initial appointment of a metropolitan housing authority pursuant to this division, the member appointed by the probate court shall be appointed for a period of four years, the member appointed by the court of common pleas shall be appointed for three years, the member appointed by the chief executive officer of the most populous city shall be appointed for two years, one member appointed by the board of county commissioners shall be appointed for one year, and the other member appointed by the board of county commissioners shall be appointed for five years. Thereafter, all members of the authority shall be appointed for five-year terms, with each term ending on the same day of the same month as the term that it succeeds. Vacancies shall be filled in the manner provided in the original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term shall hold office as a member for the remainder of that term.

(E)(1) One resident member shall be appointed to a metropolitan housing authority when required by federal law. The chief executive officer of the most populous city in the district shall appoint that resident member for a term of five years. Subsequent terms of that resident member also shall be for five years, and any vacancy in the position of the resident member shall be filled by the chief executive officer of the most populous city in the district. Any member appointed to fill such a vacancy shall hold office as a resident member for the remainder of that term. If, at any time, a resident member no longer qualifies as a resident, another resident member shall be appointed by the appointing authority who originally appointed the resident member to serve for the unexpired portion of that term.

(2) On and after the effective date of this amendment, any metropolitan housing authority to which two additional members were appointed pursuant to former division (E)(1) of this section as enacted by Amended Substitute House Bill No. 95 of the 125th general assembly shall continue to have those additional members. Their terms shall be for five years, and vacancies in their positions shall be filled in the manner provided for their original appointment under former division (E)(1) of this section as so enacted.

(F) Public officials, other than the officers having the appointing power under this section, shall be eligible to serve as members, officers, or employees of a metropolitan housing authority notwithstanding any statute, charter, or law to the contrary. Not more than two such public officials shall be members of the authority at any one time.

All members of an authority shall serve without compensation but shall be entitled to be reimbursed for all necessary expenses incurred.

After a metropolitan housing authority district is formed, the director may enlarge the territory within the district to include other political subdivisions, or portions of other political subdivisions, but the territorial limits of the district shall be less than that of the county.

(G)(1) Any vote taken by a metropolitan housing authority shall require a majority affirmative vote to pass. A tie vote shall constitute a defeat of any measure receiving equal numbers of votes for and against it.

(2) The members of a metropolitan housing authority shall act in the best interest of the district and shall not act solely as representatives of their respective appointing authorities.

Ohio Revised Code, Section 3735.31

Powers of metropolitan housing authority

A metropolitan housing authority created under sections 3735.27 to 3735.50 of the Revised Code, constitutes a body corporate and politic. To clear, plan, and rebuild slum areas within the district in which the authority is created, to provide safe and sanitary housing accommodations to families of low income within that district, or to accomplish any combination of the foregoing purposes, the authority may do any of the following:

(A) Sue and be sued; have a seal; have corporate succession; receive grants from state, federal, or other governments, or from private sources; conduct investigations into housing and living conditions; enter any buildings or property in order to conduct its investigations; conduct examinations, subpoena, and require the attendance of witnesses and the production of books and papers; issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance; and in connection with these powers, any member of the authority may administer oaths, take affidavits, and issue subpoenas;

Ohio Revised Code, Section 3735.34

Exemption from taxation; audit

All property, both real and personal, acquired or owned by a metropolitan housing authority and used for the purposes of exercising the powers set forth in sections 3735.27 to 3735.50 of the Revised Code, shall be public property used exclusively for a public purpose within the meaning of Section 2 of Article XII, Ohio Constitution, and shall be exempt from all taxation. All accounting and other transactions of the authority shall be subject to audit by the auditor of state.

Ohio Revised Code, Section 3735.40

Definitions

As used in sections 3735.27, 3735.31, and 3735.40 to 3735.50 of the Revised Code:

(A) "Federal government" includes the United States, the federal works administrator, or any other agency or instrumentality, corporate or otherwise, of the United States.

(B) "Slum" has the meaning defined in section 1.08 of the Revised Code.

(C) "Housing project" or "project" means any of the following works or undertakings:

(1) Demolish, clear, or remove buildings from any slum area. Such work or undertaking may embrace the adaptation of such area to public purposes, including parks or other recreational or community purposes.

(2) Provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes.

(3) Accomplish a combination of the foregoing. "Housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

(D) "Families of low income" means persons or families who lack the amount of income which is necessary, as determined by the metropolitan housing authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding.

(E) "Families" means families consisting of two or more persons, a single person who has attained

the age at which an individual may elect to receive an old age benefit under Title II of the "Social Security Act" or is under disability as defined in section 223 of that act, 49 Stat. 622 (1935), 42 U. S. C. A. 401, as amended, or the remaining member of a tenant family.

(F) "Families" also means a single person discharged by the head of a hospital pursuant to section 5122.21 of the Revised Code after March 10, 1964.

Ohio Revised Code, Section 3735.50

Metropolitan housing authority is a political subdivision

A metropolitan housing authority, created under section 3735.27 of the Revised Code, constitutes a political subdivision of the state within the meaning of section 5739.02 of the Revised Code.

Ohio Revised Code, Section 5321.04

Obligations of landlord

(A) A landlord who is a party to a rental agreement shall do all of the following:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;

(2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a safe and sanitary condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him;

(5) When he is a party to any rental agreements that cover four or more dwelling units in the same structure, provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of a dwelling unit, and arrange for their removal;

(6) Supply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code;

(8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of his intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be

a reasonable notice in the absence of evidence to the contrary.

(9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

(B) If the landlord makes an entry in violation of division (A) (8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.

Ohio Revised Code, Section 5321.12

Recovery of damages

In any action under Chapter 5321. of the Revised Code, any party may recover damages for the breach of contract or the breach of any duty that is imposed by law.

[Code of Federal Regulations]
[Title 24, Volume 4]
[Revised as of April 1, 2007]
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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,

PART 990 THE PUBLIC HOUSING OPERATING FUND PROGRAM--Table of Contents

Subpart C Calculating Formula Expenses

Sec. 990.165 Computation of project expense level (PEL).

(a) Computation of PEL. The PEL is calculated in terms of PUM cost and represents the costs associated with the project, except for utility and add-on costs. Costs associated with the PEL are administration, management fees, maintenance, protective services, leasing, occupancy, staffing, and other expenses, such as project insurance. HUD will calculate the PEL using regression analysis and benchmarking for the actual costs of Federal Housing Administration (FHA) projects to estimate costs for public housing projects. HUD will use the ten variables described in paragraph (b) of this section and their associated coefficient (i.e., values that are expressed in percentage terms) to produce a PEL.

(b) Variables. The ten variables are:

- (1) Size of project (number of units);
- (2) Age of property (Date of Full Availability (DOFA));
- (3) Bedroom mix;
- (4) Building type;
- (5) Occupancy type (family or senior);
- (6) Location (an indicator of the type of community in which a property is located; location types include rural, city central metropolitan, and non-city central metropolitan (suburban) areas);
- (7) Neighborhood poverty rate;
- (8) Percent of households assisted;
- (9) Ownership type (profit, non-profit, or limited dividend); and
- (10) Geographic.

(c) Cost adjustments. HUD will apply four adjustments to the PEL. The adjustments are:

- (1) Application of a \$200 PUM floor for any senior property and a \$215 PUM floor for any family property;
- (2) Application of a \$420 PUM ceiling for any property except for New York City Housing Authority projects, which have a \$480 PUM ceiling;
- (3) Application of a four percent reduction for any PEL calculated over \$325 PUM, with the reduction limited so that a PEL will not be reduced to less than \$325; and
- (4) The reduction of audit costs as reported for FFY 2003 in a PUM amount.

(d) Annual inflation factor. The PEL for each project shall be adjusted annually, beginning in 2005, by the local inflation factor. The local inflation factor shall be the HUD-determined weighted average percentage increase in local government wages and salaries for the area in which the PHA is located, and non-wage expenses.

(e) Calculating a PEL. To calculate a specific PEL for a given property, the sum of the coefficients for nine variables (all variables

except ownership

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type) shall be added to a formula constant. The exponent of that sum shall be multiplied by a percentage to reflect the non-profit ownership type, which will produce an unadjusted PEL. For the calculation of the initial PEL, the cost adjustments described in paragraphs (c)(1), (c)(2), and (c)(3) of this section will be applied. After these initial adjustments are applied, the audit adjustment described in paragraph (c)(4) of this section will be applied to arrive at the PEL in year 2000 dollars. After the PEL in year 2000 dollars is created, the annual inflation factor as described in paragraph (d) of this section will be applied cumulatively to this number through 2004 to yield an initial PEL in terms of current dollars.

(f) Calculation of the PEL for Moving to Work PHAs. PHAs participating in the Moving to Work (MTW) Demonstration authorized under section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, approved April 26, 1996) shall receive an operating subsidy as provided in Attachment A of their MTW Agreements executed prior to November 18, 2005. PHAs with an MTW Agreement will continue to have the right to request extensions of or modifications to their MTW Agreements.

(g) Calculation of the PELs for mixed-finance developments. If, prior to November 18, 2005, a PHA has either a mixed-finance arrangement that has closed or has filed documents in accordance with 24 CFR 941.606 for a mixed-finance transaction, then the project covered by the mixed-finance transaction will receive funding based on the higher of its former Allowable Expense Level or the new computed PEL.

(h) Calculation of PELs when data are inadequate or unavailable. When sufficient data are unavailable for the calculation of a PEL, HUD may calculate a PEL using an alternative methodology. The characteristics may be used from similarly situated properties.

(i) Review of PEL methodology by advisory committee. In 2009, HUD will convene a meeting with representation of appropriate stakeholders, to review the methodology to evaluate the PEL based on actual cost data. The meeting shall be convened in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) (FACA). HUD may determine appropriate funding levels for each project to be effective in FY 2011 after following appropriate rulemaking procedures.

[Code of Federal Regulations]

[Title 24, Volume 4]

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[Page 716-717]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,

PART 990 THE PUBLIC HOUSING OPERATING FUND PROGRAM--Table of Contents

Subpart E_Determination and Payment of Operating Subsidy

Sec. 990.205 Fungibility of operating subsidy between projects.

(a) General. Operating subsidy shall remain fully fungible between
ACC

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projects until operating subsidy is calculated by HUD at a project level. After subsidy is calculated at a project level, operating subsidy can be transferred as the PHA determines during the PHA's fiscal year to another ACC project(s) if a project's financial information, as described more fully in Sec. 990.280, produces excess cash flow, and only in the amount up to those excess cash flows.

(b) Notwithstanding the provisions of paragraph (a) of this section and subject to all of the other provisions of this part, the New York City Housing Authority's Development Grant Project Amendment Number 180, dated July 13, 1995, to Consolidated Annual Contributions Contract NY-333, remains in effect.

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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,

PART 990 THE PUBLIC HOUSING OPERATING FUND PROGRAM--Table of Contents

Subpart H Asset Management

Sec. 990.280 Project-based budgeting and accounting.

(a) All PHAs covered by this subpart shall develop and maintain a system of budgeting and accounting for each project in a manner that allows for analysis of the actual revenues and expenses associated with each property. Project-based budgeting and accounting will be applied to all programs and revenue sources that support projects under an ACC (e.g., the Operating Fund, the Capital Fund, etc.).

(b)(1) Financial information to be budgeted and accounted for at a project level shall include all data needed to complete project-based financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (GAAP), including revenues, expenses, assets, liabilities, and equity data. The PHA shall also maintain all records to support those financial transactions. At the time of conversion to project-based accounting, a PHA shall apportion its assets, liabilities, and equity to its respective projects and HUD-accepted central office cost centers.

(2) Provided that the PHA complies with GAAP and other associated laws and regulations pertaining to financial management (e.g., OMB Circulars), it shall have the maximum amount of responsibility and flexibility in implementing project-based accounting.

(3) Project-specific operating income shall include, but is not limited to, such items as project-specific operating subsidy, dwelling and non-dwelling rental income, excess utilities income, and other PHA or HUD-identified income that is project-specific for management purposes.

(4) Project-specific operating expenses shall include, but are not limited to, direct administrative costs, utilities costs, maintenance costs, tenant services, protective services, general expenses, non-routine or capital expenses, and other PHA or HUD-identified costs which are project-specific for management purposes. Project-specific operating costs also shall include a property management fee charged to each project that is used to fund operations of the central office. Amounts that can be charged to each project for the property management fee must be

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reasonable. If the PHA contracts with a private management company to manage a project, the PHA may use the difference between the property management fee paid to the private management company and the fee that is reasonable to fund operations of the central office and other eligible purposes.

(5) If the project has excess cash flow available after meeting all

reasonable operating needs of the property, the PHA may use this excess cash flow for the following purposes:

(i) Fungibility between projects as provided for in Sec. 990.205.

(ii) Charging each project a reasonable asset management fee that may also be used to fund operations of the central office. However, this asset management fee may be charged only if the PHA performs all asset management activities described in this subpart (including project-based management, budgeting, and accounting). Asset management fees are considered a direct expense.

(iii) Other eligible purposes.

(c) In addition to project-specific records, PHAs may establish central office cost centers to account for non-project specific costs (e.g., human resources, Executive Director's office, etc.). These costs shall be funded from the property-management fees received from each property, and from the asset management fees to the extent these are available.

(d) In the case where a PHA chooses to centralize functions that directly support a project (e.g., central maintenance), it must charge each project using a fee-for-service approach. Each project shall be charged for the actual services received and only to the extent that such amounts are reasonable.

Doolittle v. Shook
Ohio App. 7 Dist., 2007.

STATEMENT OF THE CASE

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Seventh District, Mahoning
County.
Sandra DOOLITTLE, Plaintiff-Appellant,
v.
Marion SHOOK, et al., Defendants-Appellees.
No. 06 MA 65.

Decided March 23, 2007.

Civil Appeal from Common Pleas Court, Case No.
04CV4275.

John Chaney, III, Warren, OH, for plaintiff-appellant.
William Scott Fowler, Youngstown, OH, for
defendants-appellees.
VUKOVICH, J.

*1 ¶ 1 Plaintiff-appellant Sandra Doolittle appeals from
the decision of the Mahoning County Common Pleas
Court granting judgment on the pleadings for
defendant-appellee Mahoning County District Board of
Health (referred to as Board of Health). The basis for
granting the Board of Health's motion for judgment on the
pleadings was sovereign immunity. The issue in this case
is whether the trial court erred when it determined that the
Board of Health was immune from liability on the basis of
sovereign immunity as it is enumerated in R.C. Chapter
2744. For the reasons stated below, the judgment of the
trial court is hereby affirmed.

¶ 2 In December 2003, appellant entered into a purchase
agreement for the sale of real estate located in Austintown,
Ohio, with defendant Shook. Defendant Coldwell Banker
First Place Real Estate was acting on behalf of defendant
Shook in the sale of the real estate. Prior to the sale,
appellee Board of Health reviewed and inspected the
sewer/septic system at the real estate. It determined that
the system was functional and free from any leaks,
backups or other problems.

¶ 3 Following the purchase of the real estate, Doolittle
had problems with the sewer/septic system. These
problems caused monetary damage to Doolittle.

¶ 4 On December 17, 2004, Doolittle filed a complaint
against defendants Shook and Coldwell Banker First Place
Real Estate and appellee Board of Health.^{FN1} The fifth
claim in the complaint alleged that the Board of Health
negligently breached its duty to inspect. Doolittle further
alleged that the board "negligently made representations
to * * * [her that the] real estate had a functional
sewer/septic system free from any leaks, backups, or other
material problems."

FN1. Neither Shook nor Coldwell Banker First
Place Real Estate are parties to this appeal. Thus,
the actions against them will not be discussed.

¶ 5 The Board of Health answered the complaint
claiming the affirmative defense of governmental
immunity. Following the answer, the Board of Health filed
a Motion for Judgment on the Pleadings. Doolittle then

filed a motion in opposition. The trial court found that the Board of Health was immune from liability and thus, granted the Board of Health's Motion for Judgment on the Pleadings. This timely appeal follows.

ASSIGNMENT OF ERROR

{¶ 6} "WHETHER THE TRIAL COURT ERRED IN SUSTAINING APPELLEE'S MOTION FOR JUDGMENT ON THE PLEADINGS, WHERE APPELLANT HAS COMPLIED WITH APPLICABLE LAW AND CAN PROVE FACTS ENTITLING HER TO THE RELIEF REQUESTED IN THE COMPLAINT."

{¶ 7} Doolittle argues that the trial court erroneously determined that the Board of Health was immune from liability on the basis of R.C. Chapter 2744. As such, according to her, the trial court erred in granting the Board of Health's Motion for Judgment on the Pleadings.

{¶ 8} Judgment on the pleadings may be granted where no material factual issue exists. However, it is axiomatic that a motion for judgment on the pleadings is restricted solely to the allegations contained in those pleadings. *Carver v. Mack*, 5th Dist. No.2005CA0053, 2006-Ohio-2840, ¶ 8, citing *Flanagan v. Williams* (1993), 87 Ohio App.3d 768 (abrogated on other grounds).

*2 {¶ 9} We review the grant of a Motion for Judgment on the Pleadings under the same standard for review of a Civ.R. 12(B)(6) motion. *Carver*, 5th Dist. No.2005CA0053, 2006-Ohio-2840, ¶ 8. Thus, our review of a dismissal of a complaint based upon a motion for judgment on the pleadings requires us to independently review the complaint and determine if the dismissal was appropriate. *Id.*, citing *Rich v. Erie County Department of Human Resources* (1995), 106 Ohio App.3d 88, 91.

{¶ 10} As stated above, the Motion for Judgment on the Pleadings was granted on the basis that political subdivision immunity as enumerated under R.C. Chapter 2744 was applicable. Typically, the determination as to whether a political subdivision is immune from suit is purely a question of law that is properly determined by a court prior to trial. *Schaffer v. Board of Cty. Commrs. of Carroll Cty.*, Ohio (Dec. 7, 1998), 7th Dist. No. 672, citing *Conely v. Shearer*, 64 Ohio St.3d 284, 292, 1992-Ohio-133.

{¶ 11} "The Political Subdivision Tort Liability Act, as codified in R.C. Chapter 2744, requires a three-tiered analysis to determine whether a political subdivision should be allocated immunity from civil liability." *Hubbard v. Canton Bd. of Edn.*, 97 Ohio St.3d 451, 2002-Ohio-6718, ¶ 10, citing *Cater v. Cleveland*, 83 Ohio St.3d 24, 28, 1998-Ohio-421. "Under the first tier, R.C. 2744.02(A) grants broad immunity to political subdivisions. If immunity is established under R.C. 2744.02(A), such immunity is not absolute, however. Under the second tier of the analysis, one of five exceptions set forth in R.C. 2744.02(B) may serve to lift the blanket of general immunity. Our analysis does not stop here, because under the third tier of the analysis, immunity may be 'revived' if the political subdivision can demonstrate the applicability of one of the defenses found in R.C. 2744.03(A)(1) through (5). *Ziegler v. Mahoning Cty. Sheriff's Dept.* (2000), 137 Ohio App.3d 831. These third-tier defenses are relevant only in determining the immunity of a political subdivision where a plaintiff has shown that a specific exception to immunity under R.C. 2744.02(B) applies. *Id.*" *Summers v. Slivinsky*, 141 Ohio App.3d 82, 86-87, 2001-Ohio-3169 (overruled on other grounds), *Allied Erecting & Dismantling Co., Inc. v. Youngstown*, 151 Ohio App.3d 16, 2002-Ohio-5179.

{¶ 12} Under the first tier, Doolittle concedes that the Board of Health is a political subdivision pursuant to R.C. 2744.01(F) and thus, is entitled to the blanket immunity as set forth in R.C. 2744.02(A)(1). Doolittle is correct in this

concession.

{¶ 13} Thus, our analysis turns to the second tier of political subdivision immunity. As stated above, under this tier immunity will not dissipate unless one of the five exceptions listed in R.C. 2744.02(B) is applicable.

{¶ 14} The first four exceptions under the statute are conceded by appellant to be non-applicable to the facts set forth in this appeal. Rather, she maintains that R.C. 2744.02(B)(5) imposes liability upon appellee. Moreover, she stipulated at oral argument that the version of said statutory provision that is applicable to this case is the current version that went into effect on April 9, 2003. This section reads as follows:

*3 {¶ 15} “(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

{¶ 16} “ * * *

{¶ 17} “(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when **civil liability is expressly** imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political

subdivision may sue and be sued, or because that section uses the term ‘shall’ in a provision pertaining to a political subdivision.”(Emphasis added).

{¶ 18} This version specifies that the liability expressly imposed by a statute must be civil liability. Consequently, in order for the Board of Health to be liable, civil liability must be conferred by a section of the Revised Code.

{¶ 19} Doolittle directs this court to R.C. 3709.22, Duties of board of city or general health district, Ohio Adm.Code 3701-29-02(D) and R.C. 3709.99, Penalties, to show that liability is expressed. Doolittle argues that reading these statutes and regulation together indicates that if the Board of Health fails to comply with them then it is subject to criminal liability.

{¶ 20} Doolittle's argument is flawed. R.C. 2744.02(B)(5) specifically states that **civil liability** must be imposed by a statute in order for the veil of immunity to be lifted. The statute does not state criminal liability. The prior version of R.C. 2744.02(B)(5) had stated that liability must be imposed by a statute and had not specified whether the liability had to be civil or criminal in nature. See R.C. 2744.02(B)(5) (prior version). See, also, *Campbell v. Burton*, 92 Ohio St.3d 336, 2001-Ohio-206 (discussing prior version of R.C. 2744.02(B)(5)). When that section of the statute was reviewed by the Ohio Supreme Court it held that the language of the statute meant either criminal or civil liability. *Campbell*, 92 Ohio St.3d 336, 2001-Ohio-206 (superseded by statutes, current version of R.C. 2744.02(B)(5)). The legislature then changed R.C. 2744.02(B)(5) to expressly state that it must be civil liability. Thus, as that is the version in effect at the time of this case, Doolittle's argument should be about civil liability, not criminal liability.

{¶ 21} Regardless, we will review the statutes and Ohio Administrative Code section to determine whether civil

liability is expressly imposed in any of them.

*4 {¶ 22} R.C. 3709.22, in pertinent part, states:

{¶ 23} "Each board of health of a city or general health district shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The board may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and county homes, and other charitable, benevolent, and correctional institutions. The board may also provide for the inspection of dairies, stores, restaurants, hotels, and other places where food is manufactured, handled, stored, sold, or offered for sale, and for the medical inspection of persons employed therein. The board may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease."

{¶ 24} R.C. 3709.99 states:

{¶ 25} "(A) Whoever violates section 3709.20, 3709.21, or 3709.22 of the Revised Code or any order or regulation of the board of health of a city or general health district adopted in pursuance of those sections, or whoever interferes with the execution of an order or regulation of that nature by a member of the board or person authorized by the board, shall be fined not more than one hundred dollars or imprisoned not more than ninety days, or both. No person shall be imprisoned for the first offense, and the prosecution shall always be for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a subsequent offense.

{¶ 26} "(B) Except in case of an emergency endangering the public health caused by an epidemic, an infectious or a communicable disease, or a disaster emergency condition or event, no prosecution for a violation of any regulation or order adopted pursuant to section 3709.20, 3709.21, or 3709.22 of the Revised Code shall take place until twenty days after the board of health of a city or general health district has notified the person subject to the regulation or order of the specific violation alleged. Any person notified by the board of a violation of any regulation or order of that nature may file an action for declaratory judgment pursuant to Chapter 2721 of the Revised Code to have determined whether the regulation or order is unreasonable or unlawful. No prosecution of that nature shall be commenced when, within the twenty-day period described in this division, the violation has been corrected. No prosecution of that nature shall be commenced until a declaratory judgment of that nature has been given."

{¶ 27} Ohio Adm. Code 3701-29-02 lists sewage disposal requirements. In section (A) it states that design, construction, installation, location, maintenance, and operation of household sewage disposal systems must comply with the rules that are listed in this section and with the Ohio Department of Health. Section (D) states that no household sewage disposal system shall create a nuisance.

*5 {¶ 28} Clearly, nothing in these sections expressly imposes civil liability on the Board of Health for failing to perform or negligently performing a duty. R.C. 3709.22 does indicate that the Board of Health shall study and record diseases within its district and provide for the prompt diagnosis and control of communicable diseases. Furthermore, the statute indicates other acts the Board of Health may do, such as medical and dental supervision for school children, inspect schools, correctional institutions, dairies, restaurants, provide for the inspection and abatement of nuisances dangerous to public health or comfort and take steps necessary to protect the health and

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prevent disease. Thus, duties are created by this statute. However, there is no expressly conferred civil liability for failure to perform those duties in the above statute. See *Palmer v. Foley*, 2d Dist. No. 21235, 2006-Ohio-4013 (discussing that while a statute enumerates duties for a political subdivision that is not an expression of the intent to confer civil liability).

DONOFRIO and WAITE, JJ., concur.
 Ohio App. 7 Dist., 2007.
 Doolittle v. Shook
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{¶ 29} Likewise, Ohio Adm.Code 3701-29-02 also does not confer civil liability. It merely states that sewage systems must comply with certain requirements and must not create a public nuisance. This code section does not even clearly require any mandatory duty of the Board of Health, let alone impose civil liability for failure to perform a duty.

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{¶ 30} Lastly, R.C. 3709.99 is a criminal liability statute, not a civil liability statute. This statute imposes criminal liability on those who do not comply with the Board of Health's directives. Doolittle insists that this statute also imposes criminal liability on the Board of Health for failing to perform its duties. Even if we assume for the sake of argument that the aforementioned statute somehow conferred criminal liability on the Board of Health for failure to perform its duties, the alleged imposition of criminal liability does not help Doolittle's argument for the reason that R.C. 2744.02(B)(5) clearly indicates civil liability must be conferred, not criminal. *Id.* As the requisite civil liability is absent, R.C. 3709.99 does not operate to remove the immunity of this political subdivision as conferred upon it by R.C. 2744.02(A).

{¶ 31} In conclusion, since the Board of Health's general immunity from liability has not been pierced by any statutory provision, judgment on the pleadings was appropriately granted by the trial court as a matter of law.

{¶ 32} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Pearson v. Warrensville Hts. City Schools
Ohio App. 8 Dist., 2008.

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Eighth District, Cuyahoga
County.
Darnell PEARSON, et al., Plaintiffs-Appellees
v.
WARRENSVILLE HTS. CITY SCHOOLS, et al.,
Defendants-Appellants.
No. 88527.

March 13, 2008.

Civil Appeal from the Cuyahoga County Court of
Common Pleas, Case No. CV-584981.

Sherrie D. Claybourne, Esq. Scott C. Peters, Esq.,
Cleveland, OH, for plaintiffs-appellees.
Terry H. Gilbert, Esq., Andrea Whitaker, Esq., Cleveland,
OH, for defendants-appellants.

Before Calabrese, P.J., DYKE, and Rocco, JJ.

ANN DYKE, J.

*1 ¶ 1 This appeal is before the court on the accelerated
docket pursuant to App. R. 11.1 and Loc.App. R. 11.1.

¶ 2 Defendants-appellants, Warrensville Heights City

Schools, Warrensville Heights Board of Education
(collectively "Warrensville Schools") and Kim D. Tyler
Snyder ("Snyder") (collectively "appellants"), appeal the
judgment of the trial court denying their motion for
judgment on the pleadings in favor of plaintiffs-appellees,
Darnell Pearson, his minor daughter, and his minor son
(collectively "appellees"). For the reasons set forth below,
we reverse in part and affirm in part.

¶ 3 On February 23, 2006, appellees instituted this
action asserting appellants improperly released Pearson's
daughter to her mother which resulted in the abduction of
his daughter and her brother and seeking compensatory
damages for alleged physical and mental injuries suffered
as a result thereof. Appellants answered appellees'
complaint and subsequently filed a motion for judgment
on the pleadings on May 22, 2006. On June 30, 2006, the
trial court denied appellants' motion for judgment on the
pleadings, finding appellants were not entitled to immunity
pursuant to Chapter R.C. 2744.

¶ 4 Appellants timely appealed the trial court's
judgment. We, however, stayed the appeal pending the
Supreme Court of Ohio's decision in *Hubber v. City of
Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d
878, on the issue of whether the denial of immunity is a
final, appealable order. The Supreme Court concluded that
the denial of immunity is a final, appealable order.
Therefore, we now address the merits of appellants'
appeal.

¶ 5 Appellants assert two assignments of error for our
review. Appellants' first assignment of error states:

¶ 6 "I. The Trial Court Erred To The Prejudice Of The
Warrensville Heights City Schools and Warrensville
Heights Board of Education In Not Dismissing All Claims

Against Them On The Grounds Of Ohio Revised Code Chapter 2744 Immunity.”

{¶ 7} In this assignment of error, appellants argue that the trial court erred in not denying its motion for judgment on the pleadings and finding that immunity does not apply to Warrensville Schools. For the reasons proffered below, we agree.

{¶ 8} A reviewing court analyzes the trial court's decision regarding judgment on the pleadings de novo. *Thomas v. Byrd-Bennett*, Cuyahoga App. No. 79930, 2001-Ohio-4160, citing *Drozeck v. Lawyers Title Ins. Co.* (2000), 140 Ohio App.3d 816, 820, 749 N.E.2d 775. The determination of a motion for judgment on the pleadings is limited solely to the allegations in the pleadings and any writings attached to the pleadings. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 165, 297 N.E.2d 113. Pursuant to Civ.R. 12(C), “dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond a doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.” *State ex rel Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 569, 1996-Ohio-459, 664 N.E.2d 931. The very nature of a Civ.R. 12(C) motion is specifically designed to resolve solely questions of law. *Duff v. Coshocton County, Ohio Bd. of Commrs.*, Coshocton App.No. 03-CA-019, 2004-Ohio-3713, citing *Peterson*, supra at 166.

*2 {¶ 9} When examining immunity pursuant to R.C. 2744, a court engages in a three-tier analysis to determine whether a political subdivision is immune from liability. *Greene Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551, 556-557, 2000-Ohio-486, 733 N.E.2d 1141. First, the court must determine whether immunity applies under R.C. 2744.02(A)(1). *Greene Cty. Agricultural Soc.*, supra. If immunity applies, then the court determines whether any of the exceptions to immunity enumerated in

R.C. 2744.02(B) apply. *Greene Cty. Agricultural Soc.*, supra at 557. Finally, should an exception be present, the burden then shifts back to the political subdivision to demonstrate the applicability of one of the defenses proffered in R.C. 2744.03. *Greene Cty. Agricultural Soc.*, supra. If one of the defenses applies, then immunity is reinstated. *Id.*

{¶ 10} First, as previously stated, the court must determine whether immunity applies under R.C. 2744.02(A)(1). R.C. 2744.02(A)(1) states:

{¶ 11} “(A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.”

{¶ 12} For the purposes of the immunity statute, there is no dispute that, pursuant to R.C. 2744.01(F), Warrensville Schools, a public school district, is a “political subdivision.” See *Bradigan v. Strongsville City Schools*, Cuyahoga App. No. 88606, 2007-Ohio-2773; *Aratari v. Leetonia Exempt Village School Dist.*, Columbiana App. No. 06 CO.11, 2007-Ohio-1567 (finding that a board of education is a “political subdivision”). Furthermore, providing a system of public education is considered a “government function” under R.C. 2744.01(C)(2)(c). Accordingly, we find that Warrensville Schools are entitled to immunity pursuant to R.C. 2744.02(A)(1).

{¶ 13} Having affirmed that immunity does apply in this matter, our analysis then turns to whether any of the exceptions to immunity enumerated in R.C. 2744.02(B) are applicable here. The relevant portion of R.C.

2744.02(B) states:

{¶ 14} “(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

{¶ 15} “(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority * * *.

*3 {¶ 16} “(2) Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

{¶ 17} “(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

{¶ 18} “(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that

occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

{¶ 19} “(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term ‘shall’ in a provision pertaining to a political subdivision.”

{¶ 20} In the case sub judice, the exceptions provided in R.C. 2744.02(B)(1) through (B)(4) are inapplicable because the averments in the complaint against Warrensville Schools all allege a malicious purpose, bad faith, or a wanton or reckless manner in releasing the child to her mother. The exceptions enumerated in R.C. 2744.02(B)(1) through (4) only apply when the complaint alleges negligent causes of actions. *Cramer v. Auglaize Acres*, 113 Ohio St.3d 266, 271, 2007-Ohio1946, 865 N.E.2d 9. Accordingly, the first four exceptions to immunity proffered in R.C. 2744.02(B)(1) through (4) are inapplicable in this case.

{¶ 21} Finally, despite the trial court's finding to the contrary, we find R.C. 2744.02(B)(5) does not apply here. The trial court determined that R.C. 2744.02(B)(5), which

excepts immunity where the Revised Code expressly imposes liability upon political subdivisions, excluded Warrensville Schools from immunity. The court reasoned that, taking the allegations in the complaint as true along with all reasonable inferences, appellants may be liable under R.C. 2151.421, which expressly imposes criminal liability upon mandatory reporters of child abuse, such as Warrensville Schools, for failure to report abuse. In support of this contention, the trial court relied on the Supreme Court of Ohio's decision in *Campbell v. Burton*, 92 Ohio St.3d 336, 2001-Ohio-206, 750 N.E.2d 539. In that case, the Court determined that, under R.C. 2744.02(B)(5), courts may hold a political subdivision liable for failure to perform its duty to report child abuse expressly imposed by R.C. 2151.421, a criminal statute. *Id.*

*4 {¶ 22} Since *Campbell*, however, "the General Assembly has amended R.C. 2744.02(B)(5) to permit a political subdivision to be sued under that subdivision only when the liability expressly imposed by a section of the Revised Code is civil liability." *Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities*, 102 Ohio St.3d 230, 2004-Ohio-2629, 809 N.E.2d 2, fn. 3. The amended version, effective April 9, 2003, expressly provides that a political subdivision may only be held liable "when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code * * *. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty * * *."

{¶ 23} R.C. 2151.421 expressly imposes criminal liability, not civil, upon a political subdivision for failure to report child abuse. Such a statute does not fall within the exception to immunity enumerated in the new version of R.C. 2744.02(B)(5). Thus, as the new version of the statute was in effect at the time of this case, we overrule

the trial court and find that pursuant to R.C. 2744.02(B)(5), R.C. 2151.412 does not impose liability upon Warrensville Schools.

{¶ 24} Having determined that no exception to immunity is applicable to Warrensville Schools in this case, we find no need in addressing the third tier of the immunity analysis, whether any defenses under R.C. 2744.03 apply. *Greene Cty. Agricultural Soc.*, supra. Consequently, we reverse the judgment of the trial court which denied judgment on the pleadings in regards to Warrensville Schools and find that Warrensville Schools are entitled to immunity on appellees' claims.

{¶ 25} Appellants' second assignment of error states:

{¶ 26} "II. The Trial Court Erred To The Prejudice Of Kim D. Tyler Snyder In Not Dismissing All Claims Against Her On The Grounds of Ohio Revised Code Chapter 2744 Immunity."

{¶ 27} Within this assignment of error, Snyder maintains the trial court erred in denying her motion for judgment on the pleadings because she is entitled to immunity under R.C. 2744. We find Snyder's argument unpersuasive.

{¶ 28} In the interests of brevity, we incorporate herein the standard of review regarding judgment on the pleadings proffered in the preceding assignment of error.

{¶ 29} When examining immunity pursuant to R.C. 2744 in regards to individual employees of a political subdivision, we do not engage in the three tier analysis proffered in *Greene Cty. Agricultural Soc.*, supra. *Cramer v. Auglaize Acres*, 113 Ohio St.3d 266, 270, 2007-Ohio-1946, 865 N.E.2d 9. Rather, we look to R.C. 2744.03(A)(6), which provides:

{¶ 30} “(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

*5 {¶ 31} “(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

{¶ 32} “(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

{¶ 33} “(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term ‘shall’ in a provision pertaining to an employee.”

{¶ 34} We find R.C. 2744.03(A)(6) expressly excludes immunity for Snyder in this case. In their complaint, appellees' allege Snyder engaged in malicious, bad faith or wanton or reckless behavior when she allegedly released the minor child to her mother after previously being directed to the contrary. Because the causes of actions allege Snyder's actions were with malicious purpose, bad faith or in a wanton or reckless manner, we find, construing the allegations most strongly in appellees' favor, that appellees have alleged sufficient facts which, if proven, exclude Snyder from immunity pursuant to R.C.

2744.03(A)(6). Accordingly, the trial court correctly denied Snyder's motion for judgment on the pleadings.

{¶ 35} Snyder argues that the trial court erred in finding that she is not entitled to immunity because appellees failed to plead sufficient operative facts to demonstrate that any action by her was taken with malicious purpose, in bad faith, or in a wanton or reckless manner. “It is well established that the obligation to accept factual allegations in a complaint as true does not extend to unsupported legal conclusions. ‘Simplified pleading under Rule 8 does not mean that the pleader may ignore the operative grounds underlying a claim for relief.’ “ *Hodge v. Cleveland* (Oct. 22, 1998), Cuyahoga App. No. 72283. In other words, courts have determined that a litigant cannot escape immunity by making bald claims of wanton and/or reckless misconduct. *Id.* Instead, that litigant must allege some operative facts concerning the employee. *Id.*

{¶ 36} Despite Snyder's assertions, the complaint in this instance alleges some operative factual allegations supporting assertions of malicious purpose, bad faith, and wanton or reckless behavior. The complaint alleges that appellants were given a list of individuals who were not permitted to take the daughter from the school, an Emergency Temporary Custody Decree granting the father custody of the child, and were told of the mother's drug addiction. Accordingly, because the complaint alleges that Snyder was forewarned prior to the release of the child to her mother, we find that the trial court did not err in denying the motion for judgment on the pleading with respect to Snyder.

*6 {¶ 37} Having determined that Snyder is not immune from liability, we affirm the trial court's denial of the motion for judgment on the pleading with respect to her only.

Judgment reversed in part and affirmed in part.

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It is ordered that appellees and appellants split the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANTHONY O. CALABRESE, JR., P.J., CONCURS.
KENNETH A. ROCCO, J., CONCURS IN JUDGMENT ONLY.
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Westlaw.

Not Reported in N.E.2d
Not Reported in N.E.2d, 2001 WL 866275 (Ohio App. 9 Dist.)
(Cite as: Not Reported in N.E.2d, 2001 WL 866275)

Robinson v. Akron Metropolitan Housing Authority
Ohio App. 9 Dist., 2001.
Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Ninth District, Summit
County.

Terrance ROBINSON, Sr., et al., Appellants,
v.

AKRON METROPOLITAN HOUSING AUTHORITY,
Appellee.
No. 20405.

Aug. 1, 2001.

Appeal from Judgment Entered in the Court of Common
Pleas, County of Summit, Ohio, Case No. CV 98 12 4760.

Edward L. Gilbert, Attorney at Law, Akron, OH, for
appellant.
Ronald S. Kopp and Alisa Labut Wright, Attorneys at
Law, Akron, OH, for appellee.

DECISION AND JOURNAL ENTRY

SLABY.

* Appellants, Terrance Robinson, Sr., Terrance Robinson,
Jr., and Alan Robinson, appeal from the decision of the
Summit County Court of Common Pleas granting
summary judgment in favor of Appellee, Akron

Metropolitan Housing Authority. This Court affirms.

Appellants filed a complaint for damages arising from the
alleged negligence of Appellee. Specifically, Appellants
claimed that Appellee failed to inspect and maintain the
furnace in a residence leased by Appellants. Appellants
were exposed to carbon monoxide poisoning on December
16, 1997, which allegedly caused permanent injuries.
Appellee filed a counterclaim against Terrance Robinson,
Sr., ("Robinson"), alleging past due rent payments and
damages. Appellee moved for summary judgment on
Appellant's claim. The trial court granted the motion on
February 9, 2000, and Appellants timely appealed. This
Court dismissed the appeal for lack of a final order, due to
Appellee's pending counterclaim. On December 13, 2000,
the trial court granted Appellee's motion for summary
judgment on its counterclaim. Appellant timely appealed
from the judgment entry of February 9, 2000, raising one
assignment of error for review.

ASSIGNMENT OF ERROR

The lower court erred in granting [Appellee's] motion for
summary judgment on the issue of [Appellee's] actual or
constructive notice of the defect.

In their sole assignment of error, Appellants argue that the
trial court erred in granting summary judgment in favor of
Appellee on Appellants' claim because R.C. 5321.04 does
not require that a landlord receive notice of a defective
condition in order to impose liability. In the alternative,
Appellant contends that if the statute requires notice,
Appellee had constructive and actual notice of the
defective furnace. We disagree with both contentions.

Pursuant to Civ.R. 56(C), summary judgment is proper if:

(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc. (1977), 50 Ohio St.2d 317, 327. An appellate court's review of a lower court's entry of summary judgment is *de novo*, and, like the trial court, it must view the facts in the light most favorable to the non-moving party. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. Any doubt must be resolved in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

The party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying portions of the record that demonstrate an absence of genuine issues of material fact as to an essential element of the non-moving party's claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of the motion. *Id.* If the moving party meets this burden of proof, the burden then shifts to the non-moving party, as set forth in Civ.R. 56(E), to offer specific facts showing a genuine issue for trial. *Id.* The non-moving party may not rest upon the mere allegations and denials in the pleadings, but instead must point to or submit some evidentiary material that shows a genuine dispute over the material facts exists. *Id.*; Civ.R. 56(E).

*2 R.C. 5321.04(A)(4) enumerates the statutory obligations for a landlord and mandates that a landlord "[m]aintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him." A violation of

R.C. 5321.04 constitutes negligence *per se*. *Shroades v. Rental Homes, Inc.* (1981), 68 Ohio St.2d 20, 25. "[I]t must be shown that the landlord received notice of the defective condition of the rental premises, that the landlord knew of the defect, or that the tenant had made reasonable, but unsuccessful, attempts to notify the landlord." *Id.* at 25-26.

More recently, in *Sikora v. Wenzel* (2000), 88 Ohio St.3d 493, the Ohio Supreme Court noted that negligence *per se* and strict liability are not synonymous. *Id.* at 495. The Court explained the difference as follows:

[N]egligence *per se* and strict liability differ in that a negligence *per se* statutory violation may be "excused." * * * Lack of notice is among the legal excuses recognized by other jurisdictions and set forth in the Restatement of Torts 2d. This excuse applies where "the actor neither knows nor should know of any occasion or necessity for action in compliance with the legislation or regulation."

(Citation omitted.) *Id.* at 497. Factual circumstances must exist that would prompt or require a landlord to investigate. *Id.* at 498. Therefore, contrary to Defendant's contention, R.C. 5321.04(A)(4) requires that a landlord receive notice of the defective condition in order to impose liability. See *Lockhart v. Mayfield* (Sept. 18, 1991), Summit App. No. 14990, unreported, at 3-4, citing *Shroades*, 68 Ohio St.2d at 25-26. See, also, *Burnworth v. Harper* (1996), 109 Ohio App.3d 401 (finding that a landlord who had no notice of defective heating system was not liable for death of tenant resulting from his failure to maintain a gas space heater with a clogged flue).

In support of its summary judgment motion, Appellee submitted the affidavit and deposition of Charlie Castello, Director of Maintenance for Appellee, along with documentation relating to the ongoing inspection, maintenance, and repair of the furnace in question. The

documentation demonstrated that Appellee routinely inspected and/or serviced the furnace since it acquired the residence and furnace in 1985. Appellee performed inspections when tenants moved out of a residence, as well as when a new tenant moved in, referred to as move-in/move-out inspections. It conducted annual Housing Quality Standard inspections pursuant to federal law and it performed routine maintenance pursuant to work orders. Specifically, in the two years prior to the incident, Appellee conducted a move-in/move-out inspection on February 7, 1996; serviced the furnace on April 2, 1996, pursuant to a work order generated from the previous inspection; and performed annual Housing Quality Standard inspections on August 2, 1996, and September 18, 1997. In his affidavit, Castello stated that since the time Appellee acquired the residence and prior to the incident of December 16, 1997, he did not know of, receive notice of, or have any reason to believe any defect existed in the furnace capable of causing carbon monoxide poisoning.

*3 Appellee also submitted an affidavit and deposition of Michael Clowser, an HVAC Mechanic for Appellee. Clowser testified, in part, regarding the service to the furnace performed on April 2, 1996. He and Daniel R. Lance, an electrician for Appellee, serviced the furnace pursuant to a work order generated from the move-in/move-out inspection of February 7, 1996. The order requested maintenance to "clean furnace & secure duct work." Clowser stated that they repaired the ductwork that had moved away from the wall. However, he testified that the furnace was in good working order. He stated that they took "the burners out and cleaned them, vacuumed the heat exchanger, checked the wiring, and started it up to see if there [was] a problem with it." In his affidavit, Clowser stated that he did not know of, receive notice of, or have any reason to believe a defect existed in the furnace capable of causing carbon monoxide poisoning.

Appellee also submitted the affidavit and deposition of Daniel R. Lance. In his affidavit, Lance stated that when

Appellee services the furnaces within its rental properties, it smoke tests the furnaces for potential carbon monoxide emissions. Lance testified that he and Clowser performed such a test on April 2, 1996, and found no defect.

Appellee also submitted the affidavit of Laverne Beasley, an inspector for Appellee. Beasley stated that she conducted the annual Housing Quality Standard inspections for Appellee. She established that when performing an inspection she routinely "check[s] the furnace, flues, and ductwork for any obvious defects or irregularities and ensure[s] that the filters are clean." Also, she stated that "weather permitting, [she] turn[s] on the furnace to ensure it is working properly." The reports submitted from the two inspections prior to the incident in question indicate that the furnace passed both inspections. Further, in support of its motion for summary judgment, Appellee submitted Robinson's deposition. Robinson testified that he never contacted Appellee to request that the furnace be inspected.

In response to the summary judgment motion, Appellants submitted evidence that Appellee did not install carbon monoxide detectors in its buildings, as well as evidence that Appellee did not check the carbon monoxide level when it serviced the furnace on April 2, 1996. However, Appellants presented no reference to any building code or regulation that required Appellee to install a detector, nor that its absence provided Appellee with constructive notice of a defective furnace. Further, as previously stated, Appellee provided evidence that it did not have any reason to believe there was an issue with carbon monoxide emissions and, therefore, there was no reason to check the level of carbon monoxide on April 2, 1996.

Appellants also noted in their response that the record indicated that the flue damper used in the furnace may have caused the excessive carbon monoxide emissions. On that point, Appellants presented evidence that Appellee did not check the flue for leakage, even though Appellee

“was aware that the flue damper used in [Appellants'] furnace was commonly used in furnaces that were installed at the same time as [Appellants'] furnace[.]” However, Appellee's knowledge that the same type of flue was used in other furnaces, without more, does not present a factual situation that would prompt Appellee to investigate the flue for a possible defect. See *Sikora*, 88 Ohio St.3d at 498.

*4 Finally, Appellants submitted the affidavit of Robinson in which he stated that “[o]n numerous occasions [he] notified [Appellee] of the deficient condition of the property.” In their appellate reply brief, Appellants argue that Robinson's affidavit specifically states that he gave notice of the defective furnace to Appellees on numerous occasions. However, the affidavit contains only a general allegation that Robinson provided Appellee with notification of the “deficient condition of the property.” Assuming *arguendo* that Robinson's affidavit includes the fact that he notified Appellee of the defective furnace on numerous occasions, this statement is contrary to Robinson's previous deposition testimony. This Court has previously held that where a motion for summary judgment is before the trial court and the non-moving party has presented conflicting testimony and:

an affidavit is inconsistent with affiant's prior deposition testimony as to material facts and the affidavit neither suggests affiant was confused at the deposition nor offers a reason for the contradictions in [his or her] prior testimony, the affidavit does not create a genuine issue of fact which would preclude summary judgment.

Bilder v. Estes (Apr. 4, 2001), Summit App. No. 20345, unreported, at 5, quoting *Pace v. GAF Corp.* (Dec. 18, 1991), Jefferson App. No 90-J-49, unreported. Robinson's affidavit offers no reason for the contradictions in his prior testimony. Consequently, Appellants have not produced evidentiary material that shows the existence of a genuine dispute over the material facts, as required.

In sum, Appellee presented evidence indicating that it did not have actual or constructive knowledge of any type of defect in the furnace. There is no evidence that indicates otherwise and R.C 5321.04 requires such notice to impose liability. There being no genuine issue of material fact on the question of Appellee's negligence, the trial court properly granted summary judgment. Appellants' sole assignment of error is overruled. The judgment of the trial court 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).

Costs taxed to Appellant.

Exceptions.

BATCHELDER, P.J., and CARR, J., concur.
Ohio App. 9 Dist., 2001.
Robinson v. Akron Metropolitan Housing Authority

Not Reported in N.E.2d
Not Reported in N.E.2d, 2001 WL 866275 (Ohio App. 9 Dist.)
(Cite as: Not Reported in N.E.2d, 2001 WL 866275)

Not Reported in N.E.2d, 2001 WL 866275 (Ohio App. 9
Dist.)

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Swanson v. Cleveland
Ohio App. 8 Dist.,2008.

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Eighth District, Cuyahoga
County.
Lena SWANSON, Plaintiff-Appellant
v.
City of CLEVELAND, Defendant-Appellee.
No. 89490.

Decided March 20, 2008.

Civil Appeal from the Cuyahoga County Court of
Common Pleas, Case No. CV-578688.

Paul Mancino, Jr., Cleveland, OH, for appellant.
Robert J. Triozzi, City of Cleveland Law Director, by
Jerome A. Payne Assistant Law Director, Cleveland, OH,
for appellee.

Before STEWART, J., CALABRESE, P.J., and ROCCO,
J.

MELODY I. STEWART, J.

*1 ¶ 1 Plaintiff-appellant Lena Swanson appeals from
the January 31, 2007 order of the Cuyahoga County Court
of Common Pleas finding the city of Cleveland (the
"city") immune from civil liability on appellant's claims
and granting summary judgment for the city. Appellant

raises a single assignment of error asserting that the city
was not entitled to sovereign immunity under the facts of
this case. Because we find that none of the exceptions to
immunity found at R.C. 2744.02(B)(2) apply, we affirm
the judgment of the trial court.

¶ 2 The following facts are not in dispute. On May 29,
2003, appellant's boyfriend, Charles Nickelberry, was
driving her car, a 1989 Cadillac. Nickelberry ran a red
light and was stopped by the Cleveland police. After the
police found drugs on him and in the car, Nickelberry was
arrested and the car seized and impounded by the police.
On November 19, 2003, Nickelberry entered pleas of
guilty to charges of drug possession and drug trafficking.

¶ 3 Appellant alleges she contacted the police on a
number of occasions to try to get the car back. On
September 19, 2003, Nickelberry filed a motion in his
criminal case for return of the vehicle to appellant. This
motion was granted at the plea hearing on November 19,
2003, and the court ordered the car returned to appellant.
However, when appellant tried to get her car back per the
court order, it was discovered that the car had been
disposed of months earlier. Police records show the car
was ordered disposed of as salvage pursuant to an
unclaimed and abandoned junk motor vehicle affidavit
filed by an agent of the Cleveland police on August 8,
2003.

¶ 4 In December 2005, appellant filed an action against
the city seeking damages for the value of the car and for
her loss of its use. The city filed a motion for summary
judgment on the grounds that it was a political subdivision
and therefore immune from civil liability under Chapter
2744 of the Revised Code. The trial court granted the
city's motion finding that none of the exceptions to
immunity applied and the city was entitled to judgment as
a matter of law.

{¶ 5} Appellant asserts that the trial court improperly applied the law of immunity and therefore erred in granting summary judgment for the city.

{¶ 6} We review the granting of summary judgment under a de novo standard. We afford no deference to the trial court's decision, and independently review the record to determine whether summary judgment is appropriate.

{¶ 7} Summary judgment is appropriate when, looking at the evidence as a whole: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) construing the evidence most strongly in favor of the nonmoving party, it appears that reasonable minds could only conclude in favor of the moving party. Civ.R. 56(C); *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 686-687, 1995-Ohio-286. If any doubts exist, the issue must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95.

*2 {¶ 8} The party moving for summary judgment carries an initial burden of setting forth specific facts that demonstrate his or her entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107. If the moving party fails to meet this burden, summary judgment is not appropriate; if the moving party does meet this burden, the nonmoving party must then rebut with specific facts showing the existence of a genuine issue of material fact; the nonmoving party may not rest on the mere allegations or denials of her pleadings. *Id.* Material facts are those facts "that might affect the outcome of the suit under the governing law." *Turner v. Turner*, 67 Ohio St.3d 337, 340, 1993-Ohio-176, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248.

{¶ 9} The city contends that under R.C. 2744.02(A)(1), it

is immune from negligent acts committed while performing governmental or proprietary functions, and that none of the exceptions to immunity found under R.C. 2744.02(B) are applicable because the seizing, impounding, and destroying of appellant's car by the police department is a governmental function.

{¶ 10} In *Greene Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551, 556, 2000-Ohio-486, the Ohio Supreme Court established a three-tiered analysis for determining whether a political subdivision is immune from liability under Chapter 2744. The first tier provides a general grant of immunity, stating that "a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." R.C. 2744.02(A)(1). The second tier involves an analysis of whether any of the exceptions to immunity, located in R.C. 2744.02(B), apply. Finally, in the third tier of analysis, if it appears one of the stated exceptions to immunity applies, immunity may be reinstated if the political subdivision can successfully assert one of the defenses to liability listed in R.C. 2744.03.

{¶ 11} The city of Cleveland is a municipal corporation and therefore a political subdivision as defined by R.C. 2744.01(F). Under the first tier of analysis, the general grant of immunity contained in R.C. 2744.02(A)(1) applies in this case.

{¶ 12} Under the second tier of analysis the city may be liable for the negligent acts of its employees if one of the exemptions under R.C. 2744.02(B) applies. Appellant asserts that the city is not immune from liability because the police operation of the impound lot is a proprietary function and pursuant to R.C. 2744.02(B)(2) a political subdivision may be liable for the negligent acts of its employees in the performance of proprietary functions.

Appellant also claims an exception to immunity under R.C. 2744.02(B)(5), which provides an exception to immunity when another statute imposes liability. Appellant contends that R.C. 2933.41 specifically imposes liability on the city for the failure to return a vehicle to its rightful owner when it is no longer needed for evidence.

Applicability of R.C. 2744.02(B)(2)

*3 {¶ 13} The provision of police services is a governmental function. See R.C. 2744.01(C)(2)(a). In this case, the police lawfully seized and impounded appellant's vehicle as part of a criminal investigation into suspected drug activity. The police power to impound a motor vehicle constitutes a governmental function. See *Globe Am. Cas. Co. v. Cleveland* (1994), 99 Ohio App.3d 674. This court has recognized that in limited circumstances police action that begins as a governmental function may transform into a proprietary function as the action progresses. *Bader v. Cleveland* (Feb. 18, 1982), Cuyahoga App. No. 44118

{¶ 14} In the *Bader* decision, we found that while the towing and impounding of suspected stolen vehicles was a governmental function of the police department, the subsequent holding and storage of those vehicles by the police in their impound lot, after notice to the owners, could become a proprietary function. We reasoned, "[a]t some time after each vehicle had been identified and its owner notified, police contact with that vehicle amounted to nothing more than storage. When that time arrived in any particular case is a question of fact dependent upon all the circumstances." *Id.* According to *Bader*, once it was determined that the city's governmental function had ended and the proprietary function began, the city became liable for its negligent acts with regard to that vehicle.

{¶ 15} We find that *Bader* can be factually distinguished from the case at bar. In the instant case, appellant's vehicle

was lawfully seized as part of a criminal investigation. Therefore, the city had a duty pursuant to R.C. 2933.41(B) to "make a reasonable effort to locate the persons entitled to possession of the property in its custody, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time." The city claims it notified appellant to retrieve her car and that because she failed to do so, it took the steps necessary to dispose of the vehicle. The statute permits the police to dispose of unclaimed property. R.C. 2933.41(D). The unclaimed and abandoned junk motor vehicle affidavit filed by the city certifies that all of the statutory requirements were met prior to disposing of the vehicle. Accordingly, under the facts and circumstances of this particular case, we agree with the city that the police actions of seizing, impounding, and destroying appellant's car were strictly governmental functions. As there was no proprietary function, R.C. 2744.02(B)(2) does not apply in this case as an exception to the city's general immunity.

Applicability of R.C. 2744.02(B)(5)

{¶ 16} R.C. 2944.02(B)(5) states:

{¶ 17} "In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term 'shall' in a provision pertaining to a political subdivision."

*4 {¶ 18} R.C. 2933.41(A)(1), since repealed but in effect at the time of the incident, stated in part that “any property *** lawfully seized or forfeited, and that is in the custody of a law enforcement agency shall be kept safely pending the time it no longer is needed as evidence and shall be disposed of pursuant to this section.” There is no question that pursuant to R.C. 2933.41, the city had a statutory duty to return appellant’s vehicle to her when it was no longer needed in the criminal investigation and prosecution of her boyfriend, Charles Nickelberry. However, the decisive issue here is not whether the city had a statutory duty to return the car, but whether the city can be held liable for damages resulting from its negligent failure of that duty.

{¶ 19} Appellant relies upon our decision in *Globe Am. Cas. Co. v. Cleveland* (1994), 99 Ohio App.3d 674, in which we found that R.C. 2933.41 constituted an exception to the sovereign immunity doctrine under R.C. 2744.02(B)(5), and therefore the city was not immune from liability for damages resulting from its failure to return a vehicle it had impounded. We found that the language of the statute imposed a mandatory duty on the law enforcement agency to return the property to the entitled persons at the earliest possible time and reasoned that, since the language established a mandatory duty, it also followed that the statute expressly imposed liability upon the party in violation of such mandatory duty. *Id.* at 679.

{¶ 20} However, subsequent to the *Globe* decision, R.C. 2744.02(B)(5) was amended. Under the newer version, “[c]ivil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term ‘shall’ in a provision pertaining to a political subdivision.” *Id.*

{¶ 21} Additionally, the Supreme Court of Ohio has specifically questioned the holding in *Globe*. In *Butler v. Jordan*, 92 Ohio St.3d 354, 357, 2001-Ohio-204, the court refused to equate the concepts of “duty” and “liability” stating:

{¶ 22} “Appellee, like the court of appeals, relies upon *Globe Am. Cas. Co. v. Cleveland* (1994), 99 Ohio App.3d 674, 679, 651 N.E.2d 1015, 1018, to support the proposition that a statute, by imposing an express duty, also imposes express liability. However, R.C. 2744.02(B)(5) specifically provides to the contrary. ‘Expressly’ means ‘in direct or unmistakable terms: in an express manner: explicitly, definitely, directly.’ * * * Webster’s Third New International Dictionary (1986) 803.”

{¶ 23} While R.C. 2933.41 imposes an express duty on the city to keep appellant’s seized vehicle safe until it is no longer needed, and to return it to her at the earliest possible time thereafter, there is no language in the statute that imposes an express liability on the city for its failure to carry out that duty. Without direct or unmistakable terms imposing civil liability upon the city, R.C. 2744.02(B)(5) does not apply.

*5 {¶ 24} Neither of the exceptions to immunity found at R.C. 2744.02(B)(2) and (B)(5) are applicable under the facts of this case. Therefore, pursuant to R.C. 2744.02(A)(1), the city is immune from liability for damage to, or the loss of, appellant’s vehicle resulting from the negligent handling of the vehicle while in the possession of the police department. The trial court did not err in granting summary judgment to the city on appellant’s claims. Appellant’s single assignment of error is overruled.

Judgment affirmed.

Slip Copy
Slip Copy, 2008 WL 740577 (Ohio App. 8 Dist.), 2008 -Ohio- 1254
(Cite as: Slip Copy)

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANTHONY O. CALABRESE, JR., P.J., and KENNETH
A. ROCCO, J., concur.
Ohio App. 8 Dist., 2008.
Swanson v. Cleveland
Slip Copy, 2008 WL 740577 (Ohio App. 8 Dist.), 2008
-Ohio- 1254

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Westlaw.

Not Reported in N.E.2d
Not Reported in N.E.2d, 1988 WL 107026 (Ohio App. 9 Dist.)
(Cite as: Not Reported in N.E.2d, 1988 WL 107026)

Wayne Metropolitan Housing Authority v. Jackson
Ohio App., 1988.

Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio, Ninth District, Wayne
County.

WAYNE METROPOLITAN HOUSING
AUTHORITY, Plaintiff-Appellee,

v.

Betty JACKSON, Defendant-Appellant.

Nos. 2369, 2403.

Oct. 12, 1988.

Appeals from Judgment Entered in the Common Pleas
Court County of Wayne, Ohio. Case No. G 88 1 52.

Mark C. Clark, Rittman, for plaintiff.
Stanley L. Josselson, Cleveland, for defendant.

DECISION AND JOURNAL ENTRY

*1 These causes were heard upon the record in the trial
court. Each error assigned has been reviewed and the
following disposition is made:

QUILLIN, Judge.

Defendant Betty Jackson appeals from her eviction, and
the dismissal of her counterclaim against Wayne
Metropolitan Housing Authority ("WMHA"). We affirm.

On December 1, 1987, Betty Jackson called Florence
DeHart, the director of occupancy for WMHA, because
Jackson's refrigerator was not working properly. When a
WMHA maintenance employee was unable to repair the
refrigerator, the service request was referred to Briggs
Plumbing and Heating, an outside company. On December
3, 1987, DeHart received another call that the refrigerator
was still not working. As a result, on December 4, 1987,
DeHart and a maintenance repairman, without making an
appointment, went to Jackson's apartment. Jackson's
daughter permitted them to enter the premises. At that
time, DeHart noted lease violations.

WMHA brought a forcible entry and detainer action. The
trial court granted WMHA restitution of the premises and
a judgment in WMHA's favor on defendant's
counterclaim.

Appellant raises two issues in this appeal.

ISSUES PRESENTED

"I. Whether the trial court committed reversible error in
holding the actions of the plaintiff-appellee in failing to
give prior notice of entry were not in violation of section
5321.04(A)(7) & (B) of the Ohio Revised Code.

"II. Whether the trial court committed reversible error in
holding the plaintiff/appellee could use evidence obtained
by illegal entry into the defendant/Appellant's dwelling
unit to evict her."

Jackson argues that there were no circumstances pursuant

to R.C. 5321.04(A)(7) and (8) which would justify DeHart's entry into her apartment. We disagree.

R.C. 5321.04(A) provides, in part:

“(A) A landlord who is a party to a rental agreement shall:

“(7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code;

“(8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of this intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.”

The record reflects that DeHart did not abuse the right to access provided in R.C. 5321.04(A). DeHart entered at a reasonable time as a direct result of Jackson's second request to have her refrigerator repaired. Further, Jackson's daughter permitted DeHart to enter the premises between 9:30 and 10:00 a.m.

This is not an instance where a tenant had no knowledge that the landlord intended to enter her dwelling. *Spencer v. Blackmon* (1985), 22 Ohio Misc.2d 52. Instead, DeHart and the maintenance repair man sought to enter Jackson's apartment because of the tenant's request and were voluntarily admitted. Accordingly, we hold that DeHart complied with the requirements provided in R.C. 5321.04(A)(7) and (8).

*2 The assignments of error are overruled.

The judgment is affirmed.

The Court finds that there were reasonable grounds for these appeals.

We order that a special mandate issue out of this court, directing the County of Wayne Common Pleas Court 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).

Costs taxed to appellant.

Exceptions.

MAHONEY, P.J., and CACIOPPO, J., concur.
Ohio App., 1988.
Wayne Metropolitan Housing Authority v. Jackson
Not Reported in N.E.2d, 1988 WL 107026 (Ohio App. 9 Dist.)

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BOHN, ERNEST J. (1901-15 Dec. 1975), was a nationally known expert on PUBLIC HOUSING. Born in Hungary, the son of Frank J. and Juliana (Kiry) Bohn, he came to Cleveland with his father in 1911, graduating from Adelbert College in 1924 and Western Reserve Law School in 1926. In 1929 he was elected to the Ohio House as a Republican, then served as city councilman until 1940. Active in housing reform, he authored the first state housing legislation, passed in 1933. As president and organizer of the Natl. Assoc. for Housing & Redevelopment Officials, Bohn helped pass the U.S. Housing Act of 1937.

Bohn directed the Cleveland Metropolitan Housing Authority (CUYAHOGA METROPOLITAN HOUSING AUTHORITY) from its founding in 1933 until 1968, and chaired the City Planning Commission from its founding in 1942 until 1966. His work included slum clearance and redevelopment. Following WORLD WAR II he focused on housing for the elderly, building the Golden Age Ctr. at E. 30th St. and Central Ave., the first such housing development in the U.S. Deterioration of central-city housing in the mid-1960s led to charges that Bohn neglected meeting the needs of poorer people and promoted racial discrimination in filling CMHA units.

Following his retirement, Bohn lectured at CASE WESTERN RESERVE UNIVERSITY and was on the board of directors of the Natl. Housing Conference and the Ohio Commission on Aging. Bohn Tower and the Ernest J. Bohn Golden Age Ctr. were named in recognition of his contributions to Cleveland. Bohn never married. He died in Cleveland and was buried in CALVARY CEMETERY.

Ernest J. Bohn Collection, Freiburger Library, CWRU.

Related Article(s)

- REFORM, CHARITY AND PHILANTHROPY

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The **CUYAHOGA METROPOLITAN HOUSING AUTHORITY (CMHA)**, the nation's first such organization, was established as the Cleveland Metropolitan Housing Authority in 1933, largely through the efforts of ERNEST J. BOHN†, its director until 1968. Also instrumental in the formation of CMHA was Monsignor ROBERT B. NAVIN†'s survey of a slum neighborhood. An independent public agency regulated by the Ohio Housing Board, CMHA was created as an advisory and coordinating entity to improve housing for low-income families and to eliminate slums. The passage of the U.S. Housing Act in 1937 enabled CMHA to plan, construct, and manage federally subsidized housing facilities, the first units being the Cedar Apartments (Cedar and E. 30th) and the Outhwaite Homes (E. 55th and Outhwaite Ave.). CMHA was granted authority to borrow money, issue bonds and notes, and appropriate property at fair market prices.

CMHA provided housing for war workers and their families during World War II, and for returning veterans after 1945. High-rise PUBLIC HOUSING for the elderly, such as the Golden Age Centers, was established in the mid-1950s and praised as a model; this idea later expanded to include family units. High crime statistics, charges of racial discrimination, and the Federal Housing Act of 1968 initiated changes in CMHA's approach. Tenant organizations requested more social-service programs and safer living conditions. The Housing Act provided for the rehabilitation of single-family units as scatter-site housing. In 1971, emphasizing a broader service area, the organization changed its name to the Cuyahoga Metropolitan Housing Authority. A board of 5 unpaid members governs CMHA. Following the passage of the Federal Housing Act of 1974, CMHA has administered the "Section Eight Program," which allows selected families to choose their own housing throughout the county. In the late 1980s and early 1990s, scandals and financial and administrative problems plagued the agency, while crime in public housing continued to make headlines. In 1989 CMHA was located at 1441 W. 25th St.

In 1990 federal Dept. of Housing and Urban Development officials considered CMHA's bookkeeping procedures, centralizing operations, and increasing the occupancy rate to 96%, the CMHA under Freeman introduced two new residential drug treatment programs, Miracle Village and Recovery Village, on the grounds of the Outhwaite Homes in the Cedar Central neighborhood, that served as models for a national HUD initiative. In 1995 the agency was making preliminary plans to build between 450 and 680 new homes throughout the county that would allow more CMHA residents to become homeowners.

Ernest J. Bohn Collection, Freiburger Library, CWRU.

Navin, Msgr. Robt. B. "An Analysis of a Slum Area in Cleveland."

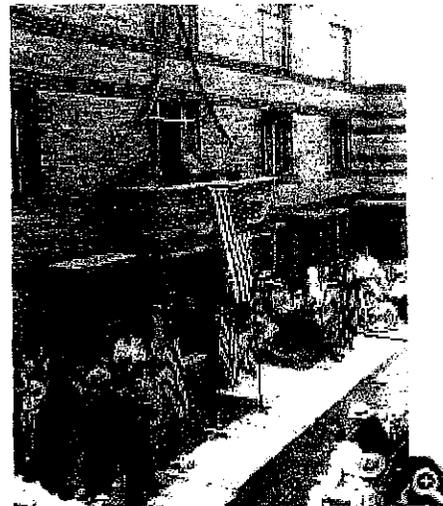
- REFORM, CHARITY AND PHILANTHROPY
- POLITICS AND GOVERNMENT

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PUBLIC HOUSING. As early as the 1810s, visitors to Cleveland commented on the wretched housing conditions. After the Civil War, as thousands of European immigrants were attracted to the growing city by opportunities for work, Cleveland's slums grew along with its population. There is no evidence that 19th century city administrations addressed housing problems; even reform mayor **TOM L. JOHNSON**† paid the question little attention. **MALL** designers gave no thought to housing the hundreds of persons displaced for stately civic buildings. A 1904 Cleveland Chamber of Commerce investigation that concluded poor housing caused a whole litany of social and moral evils spurred passage of the city's first comprehensive building code. This code followed the pattern already established by experts such as Lawrence Veiller, who opposed municipally built housing as socialistic. Codes, however, did not house people.

Between 1900-20, Cleveland's population doubled, from 381,768 to 796,841; this influx of mostly unskilled workers worsened inadequate housing. While the city did purchase a parcel of land in 1913 for low-cost housing, none ever materialized. In 1917 the Cleveland Real Estate Board secretary claimed that there was need for an additional 10,000 houses, and another Chamber of Commerce investigation revealed that living conditions needed immediate remedy. This time the chamber funded a real estate firm for housing **AFRICAN AMERICANS** in the old Central area and tried to secure a million dollars from the federal Wartime Emergency Housing program. The scheme was dropped, however, when the war ended.



Dedication ceremonies at Outhwaite Homes, Aug. 1937. WRHS.

During the postwar period, housing problems increased, especially for the growing black population. National reformers introduced the concept of limited-dividend housing: investors would receive only a 6% return, but the housing would be tax-exempt. State legislator **ERNEST J. BOHN**† studied the program. In 1932 former city manager **DANIEL E. MORGAN**† and Bohn, now representing **HOUGH** on **CLEVELAND CITY COUNCIL**, pressed for passage of the state Public Housing Act, which authorized the creation of a semiprivate Public Housing Corp. to build low-cost housing. The law failed to work, however, because reformers were unable to secure tax exemption to attract private investment. Undaunted, Bohn persuaded the city council to investigate housing conditions. In 1933 Cleveland sponsored the first national slum-clearance conference, attended by experts who formed the National Assn. of Housing Officials, with Bohn as president. In Cleveland, Bohn continued to press for legislation that would provide tax incentives for investment in low-cost housing. His pragmatic approach was attractive to the ailing construction industry and reformers. In 1934 a limited-dividend housing bill with tax exemption came into operation. Its sponsors thought that such housing could be built with Reconstruction Finance Corp. funds, but plans failed when local sponsors could not raise the required 15% matching money. Bohn concluded that "slum clearance and the construction of housing for poor people would have to be taken on as a

direct public responsibility without private investments." To persuade Clevelanders that slum areas were an economic liability, he launched a study with the assistance of Bp. ROBERT B. NAVIN†, a sociologist, and HOWARD WHIPPLE GREEN†, a demographer. Their examination of the area between Central and Woodland avenues from E. 22nd to E. 55th streets demonstrated that the decrease in tax revenue, relative to the cost of city services, in this slum was equivalent to an annual subsidy of \$51.10 per resident. Bohn believed that the results of this study, replicated in other cities, were largely responsible for the acceptance of public-supported, low-income housing. With the New Deal, \$150 million of the Public Works Administration (PWA) budget was set aside for housing. Because of Bohn's work and that of local architects and contracting firms on limited-dividend schemes, Cleveland got the first 3 PWA Housing Division projects. Members of the Cleveland Metropolitan Housing Authority (CMHA, see CUYAHOGA METROPOLITAN HOUSING AUTHORITY) served as informal members of the Cleveland Housing Committee, the PWA advisory body, and worked with the directors of the limited-dividend company that had options on the Cedar-Central land. PWA financed innovative housing projects at Cedar-Central, Outhwaite, and LAKEVIEW TERRACE, built between 1935-37.

When the Wagner-Steagall Housing Act of 1937 created the U.S. Housing Authority, with power to loan and grant to local housing agencies, CMHA ceased its advisory role and began developing, constructing, and operating low-rent housing, under Bohn's direction. The federal statute required that local communities contribute 20% of the federal subsidy, in the form of municipal tax exemption. In 1938 CMHA and Cleveland agreed to cooperate in "equivalent elimination" of substandard dwellings. For each new dwelling unit built by the housing authority, one substandard dwelling would be demolished or brought up to housing code by the city; the city would also provide city services without charge. (In later years, CMHA did contribute a percentage of these costs.) CMHA and Cuyahoga County also signed an agreement. CMHA's first housing projects were Valleyview, Woodhill, Carver Park, and extensions to Outhwaite. In 1940 the authority took over the operation of the PWA Housing Division estates of Cedar, Outhwaite, and Lakeview Terrace. Bohn resigned city council that year to become the first paid director of CMHA, a job he had been performing since 1933. He served in that position for the next 28 years and became very influential in the field. Bohn's imprint was on every policy established by the board or executed by the management. As housing problems became acute after World War II, his modus operandi came increasingly under attack.

In the early years, the selection of estate residents was carefully monitored. Recreation facilities were provided and staffed by the WORK PROJECTS ADMINISTRATION (WPA), which also provided cultural performances. Families on relief were not initially allowed into the estates because they were not able to pay the fixed rents, but in 1949 such discrimination was prohibited by the Taft Housing Act. Without formal policy, blacks and whites were clearly separated into different estates. Despite extensive picketing by the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE in the late 1940s and early 1950s, and the passage in 1949 of a city ordinance banning racial discrimination in public housing, the situation remained unchanged until the late 1960s. At the 1966 U.S. Civil Rights Commission hearings in Cleveland, a report noted that African American public-housing tenants (over 47% of all tenants by 1965) were still concentrated in a few east-side estates.

By the 1950s and 1960s, the city had witnessed enormous demographic and social changes. The African American population of Cleveland increased from 85,000 in 1940 to 148,000

by 1950. In the next decade, approx. 100,000 southern blacks migrated into Cleveland as over 170,000 whites left for the suburbs. Urban renewal and highway construction displaced over 11,000 people by 1966. The Hough area, with 40,000 people in 1940, had over 82,443 residents, mostly African Americans, by 1956. Throughout the city, increasingly crowded housing deteriorated.

CMHA continued pioneering projects such as high-rise buildings for the elderly, which offered federally funded services. The country's first such housing was a 14-story building, part of the Cedar extension. But the increase of slums around deteriorating housing estates and the rise of a militant civil-rights movement called for new approaches. Although Bohn managed 11 projects housing 26,000 people by the mid-1960s, he refused to consider rehabilitation of existing houses or new concepts, such as scattered-site housing. Within a year of his election, Mayor Carl B. Stokes secured Bohn's resignation. Bohn's successor, Irving Kriegsfeld, former executive director of the nonprofit housing group PATH (Plan of Action for Tomorrow's Housing), aggressively pushed to end racial discrimination in west-side estates, promoted scatter-site housing throughout the city, and built integrated housing on the west side. Unlike Bohn, who had been a skillful politician, Kriegsfeld relied solely on the mayor's support to advance his programs. White council members James M. Stanton and Dennis Kucinich opposed new housing on the west side, while black council members protested scattered-site housing in their middle-class neighborhoods. Stokes backed Kriegsfeld completely despite the political ramifications and, in retrospect, considered the building of 5,496 housing units under his administration as one of his "true and lasting achievements."

Stokes's successor, Ralph J. Perk, strongly opposed expanding public housing into middle-class areas. The new CMHA director, Robert Fitzgerald, formerly the authority's chief engineer, found the problems almost insurmountable. Federal housing policy favored private-sector approaches--rent supplements and low-interest loans for private developers to build or rehabilitate houses for the elderly and families of low and moderate incomes. The loans later changed to deep subsidy through the Section 8 program of the 1974 Housing Act. Increasingly, housing estates were occupied by single women, heading WELFARE/RELIEF households. With federal limits on the percent of a family's income that could be collected (instituted in 1968), rents no longer provided sufficient maintenance funds. CMHA became increasingly dependent on federal money, but the government provided only 90% of funds required for maintenance and less than half of other expenses. Deterioration spread, as did drug peddling and juvenile crime. Residents abandoned their Valleyview apartments, plagued by arson and vandalism. In July 1978 police officers refused to enter the estates without 2-person patrols. When ordered to resume their single patrols, police went on strike, which ended only after bitter confrontations between Mayor Kucinich and the union. CMHA conflict and crime made daily headline news.

In the midst of despair, the tenants organized; they fought to secure representation on the CMHA board, better security, and improved facilities. Local council members obtained community block grants to help finance additional security and community improvements. The CLEVELAND FOUNDATION funded grants for tenant-management training. Lakeview Terrace's tenant council invited Bertha Gilkey, an activist from St. Louis, to help them organize self-management of their estate. Between 1976 and 1986, housing for the elderly continued to spread. Not usually in slum areas, they have not been plagued with the problems that have afflicted Cedar Extension and Riverview. In the 1980s, executive director George M. James changed policy regarding rehabilitation. Proposals for demolition

of Cedar and Lakeview Terrace apartments were rejected in favor of restoration and improvement. In the summer of 1985, newly restored model suites in the Cedar estate were presented at the 50th anniversary of its construction. With all its faults and shortcomings, the public-housing movement in Cleveland brought decent housing to hundreds of thousands of low-income people.

Thomas F. Campbell

Cleveland State Univ.

Ernest J. Bohn Housing & Planning Library, CWRU.

Navin, R. B. "Analysis of a Slum Area" (Master's thesis, Catholic Univ. of America, 1934).

See also FAIR HOUSING PROGRAMS.

Related Article(s)

- REFORM, CHARITY AND PHILANTHROPY
- POLITICS AND GOVERNMENT

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Cuyahoga Metropolitan Housing Authority
 History of Revenue and Expenses
 FOR THE LOW INCOME PROGRAM

	1996		1997		1998		1999		2000		2001	
	Actual		Actual		Actual		Actual		Actual		Actual	
Subsidy	40,084,601	80.48%	47,153,323	82.07%	44,237,093	79.49%	42,375,019	77.61%	43,421,500	78.23%	45,801,081	
Dwelling	8,916,630	17.90%	9,217,790	16.04%	10,067,078	18.09%	10,884,967	19.94%	10,586,935	19.07%	10,946,079	
Non Dwelling	37,066	0.07%	87,749	0.15%	56,612	0.10%	2,925	0.01%	2,685	0.00%	4,265	
Excess Util	88,853	0.18%	91,460	0.16%	90,000	0.16%	89,482	0.16%	148,463	0.27%	154,815	
Interest	372,050	0.75%	382,030	0.66%	443,529	0.80%	586,389	1.07%	923,493	1.66%	798,541	
Capital Fund operations	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	
Program Mgt Fee	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	
Other	308,032	0.62%	523,948	0.91%	755,992	1.36%	658,870	1.21%	425,172	0.77%	1,082,277	
Total Revenue	49,807,232	100.00%	57,456,300	100.00%	55,650,304	100.00%	54,597,652	100.00%	55,508,248	100.00%	58,787,058	
GAAP Rcls	0	0.00%	0	0.00%	0	0.00%	3,385,326	0.00%	0	0.00%	0	
	49,807,232		57,456,300		55,650,304		57,982,978		55,508,248		58,787,058	
Operating Expenses	49,491,832	99.37%	51,865,117	90.27%	53,700,303	96.50%	53,176,991	97.40%	54,241,265	97.72%	58,334,568	
**Depreciation	Not Required -using govt accounting methodology - GAAP converted in 1999						8,091,099	14.82%	3,862,758	6.96%	3,699,418	
Surplus available for debt service	315,400	0.63%	5,591,183	9.73%	1,950,001	3.50%	-3,285,112	-6.02%	-2,595,775	-4.68%	-3,246,928	
Amount of Operating Exp for Legal Fees, Claims etc.									1,170,062		1,438,290	

** DEPRECIATION IS AN IMPORTANT PART OF THE CALCULATION BECAUSE IT DEMONSTRATES THE AGING OF OUR PROPERTY

** In 2006 the Authority secured a loan for \$33,610,000 to be repaid over the next 12 years. Proceeds of the loan were used to energy saving devices such as low flow toilets, insulation, modern energy efficient furnaces and boilers, roofs, windows, insulat Annual debt service is \$3,653.415 theoretically to be funded with savings in utilities expense

	2002		2003		2004		2005		2006		2007	
	Actual											
77.91%	48,857,536	78.64%	55,668,249	80.25%	52,198,565	80.16%	53,982,125	81.52%	54,897,169	77.69%	57,385,838	67.34%
18.62%	11,678,189	18.80%	11,653,854	16.80%	11,269,089	17.31%	10,778,102	16.28%	11,859,894	16.78%	12,454,516	14.61%
0.01%	2,390	0.00%	3,000	0.00%	2,965	0.00%	2,565	0.00%	0	0.00%	0	0.00%
0.26%	202,500	0.33%	204,702	0.30%	208,143	0.32%	201,702	0.30%	188,186	0.27%	216,372	0.25%
1.36%	384,371	0.62%	272,099	0.39%	190,313	0.29%	359,268	0.54%	865,445	1.22%	1,274,802	1.50%
0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1,172,022	1.66%	9,583,389	11.25%
0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2,251,030	2.64%
1.84%	1,006,143	1.62%	1,569,170	2.26%	1,250,634	1.92%	897,351	1.36%	1,681,445	2.38%	2,058,582	2.42%
100.00%	62,131,129	100.00%	69,371,074	100.00%	65,119,709	100.00%	66,221,113	100.00%	70,664,161	100.00%	85,223,529	100.00%
0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	62,131,129		69,371,074		65,119,709		66,221,113		70,664,161		85,223,529	
99.23%	64,528,386	103.86%	63,876,174	92.08%	65,821,307	101.08%	66,685,926	100.70%	69,670,806	98.59%	77,599,194	91.05%
6.29%	3,531,372	5.68%	3,567,730	5.14%	3,508,951	5.39%	3,280,411	4.95%	3,228,148	4.57%	3,745,346	4.39%
-5.52%	-5,928,629	-9.54%	1,927,170	2.78%	-4,210,549	-6.47%	-3,745,224	-5.66%	-2,234,793	-3.16%	3,878,989	4.55%
	1,145,129		648,388		298,052		929,110		*****		*****	

ES

install
ed doors etc.

CUYAHOGA METROPOLITAN HOUSING AUTHORITY
PUBLIC HOUSING APPLICATION OFFICE
6001 WOODLAND AVENUE
CLEVELAND, OHIO 44104
216.361.3700 (telephone)
216.432.5900 (fax)

INFORMATION SHEET

**PLEASE READ BEFORE COMPLETING THE
PRELIMINARY HOUSING APPLICATION**

COMPLETING THE PRELIMINARY HOUSING APPLICATION

All applicants must be 18 years of age, or older. Please print all information and complete all sections of the application. If a section does not apply, do not leave it blank, please insert "N/A." CMHA has housing preferences that are listed as number one through five on the back of the Preliminary Housing Application. All housing preferences are equal; one point is given for a housing preference, regardless of how many are claimed. In order to qualify for a housing preference, verification of that preference must be submitted with the Preliminary Housing Application (see back of Preliminary Housing Application for types of verifications). If verification of a housing preference is not submitted with the Preliminary Housing Application, a housing preference will not be given. However, verification of housing preferences may be submitted later; at which time the housing preference will be given. Applications and housing preference verification may also be mailed to the Application Office.

After completing the Preliminary Housing Application, it is to be returned to the Receptionist who will stamp the date and time received. A "Receipt of Preliminary Housing Application" letter will be mailed to all applicants. All applicants are placed on a preliminary waiting list to be scheduled for an eligibility interview, based upon bedroom size required, housing preference, and date and time of application.

PROCESSING THE PRELIMINARY HOUSING APPLICATIONS

CMHA DOES NOT HAVE EMERGENCY HOUSING. Therefore, all eligibility interviews are scheduled in order by applicant's place on the waiting list (bedroom size, housing preference, date/time of application). CMHA averages 5,000 or more applicants waiting for an eligibility interview, so in some cases, it may take a year or more before eligibility interview is scheduled.

An "Interview Appointment Letter" is mailed, along with a list of items required for the interview, such as: birth certificates, social security cards, income verifications, allowable expense, and an updated verification of housing preference. **If you do not attend the eligibility interview, or fail to reschedule, or if your mail is returned as undeliverable, your Preliminary Housing Application will be withdrawn.** Unfortunately, due to the number of applicants waiting for housing, only one rescheduled date is allowed.

After the interview, a credit, background and landlord history check is conducted on all household members, 18 years and older. Based upon these checks, families may be denied admission to housing due to a number of reasons, such as:

(Over)

- Felony convictions
- History of criminal activities
- Illegal use, distribution, sale or manufacture of a controlled substance
- Lifetime registration as a sex offender
- Monies owed to other federally subsidized housing owners
- Abandonment or destruction of federally subsidized housing
- Alcohol abuse that interfere with the health, safety, or peaceful enjoyment of other residents
- Fleeing confinement of a felony
- Conviction of methamphetamine production on premises of any federally assisted/insured housing
- Eviction from Public Housing or Section 8 programs for drug related criminal activity
- Fraud committed in connection with any HUD funded programs
- Failure to provide certification of U.S. citizenship or documentation to support eligible alien status
- Failure to qualify under HUD's criteria for housing eligibility
- Failure to met or exceed CMHA's screening criteria
- Failure to supply required information to determine eligibility

All incomes and allowable expenses are verified. The processing stage may take up to 30 days to complete. When determined eligible for housing, an applicant will receive written notification of such, and his/her name is placed on the "Eligible Waiting List" for an available unit to lease, by bedroom size required, housing preference, date and time of application. If determined ineligible for housing, an applicant will also be notified in writing. Within 10 days from receipt of the ineligible notice, an applicant may request in writing, an informal hearing to appeal the ineligible decision.

UNIT OFFERS

Applicants are selected to lease a unit by his/her placement on the "Eligible Waiting List". Available units are offered to applicants based upon where a vacancy is, and not necessarily by the applicant's request. An applicant is notified of an available unit by phone or letter. If an applicant fails to respond to the call or letter, his/her name will be withdrawn from CMHA's "Eligible Waiting List". If an applicant refuses three (3) unit offers, (except for extenuating circumstances such as illness or death in family), his/her name may be withdrawn from CMHA's "Eligible Waiting List."

Appointments for eligibility interviews are mailed to the applicants. Notifications to lease an apartment are by mail or telephone. Therefore, it is the applicant's responsibility to keep the Application Office informed of any changes to his/her address and telephone number. Do not rely on changes made through the Post Office. You may visit the Application Office to complete a change of address/telephone form. Also, changes may be submitted in writing and mailed or delivered to:

CMHA Public Housing Application Office
6001 Woodland Avenue- First Floor
Cleveland, Ohio 44104

PLEASE INCLUDE YOUR NAME, SOCIAL SECURITY NUMBER, ON ALL CORRESPONDENCE AND VERIFICATIONS MAILED, OR DELIVERED, TO THE APPLICATION OFFICE.

THANK YOU FOR YOUR INTEREST IN CMHA HOUSING

ELIGIBILITY PROCESSING INFORMATION

You have just completed your eligibility interview for Public Housing on _____.

The next step will be to process your application, which includes the following:

- * Conduct a background check to determine if any adult member in the household has a felony criminal record (if so, the family may be rejected)
- * Conduct a credit check to determine if there are any evictions or monies owed to CMHA, any other Housing Authority, or any other subsidized housing. (if so, the family may be rejected)
- * Submit request for income and asset verifications to appropriate agency or to determine anticipated annual income.
- * If no income is claimed, we must verify with Welfare, Social Security, and Child Support (if appropriate), that income is not being received.
- * Anyone with Social Security income will be required to obtain the income verification from the Social Security office and return it to your Interviewer.
- * Submit request to provider to verify amounts of expenses (medical or child care).
- * Verify any preference you have claimed (Involuntary Displaced; Substandard Housing; Homeless living in a recognized shelter; Veteran; 62 years and older or disabled/handicapped; working families).

When all verifications have been received, the rent is computed and the file is set up. If you have been determined eligible for housing, you will be sent an eligible letter.

If you are determined ineligible a letter will be mailed to you informing you of such. If you disagree with the ineligible status, you may request a grievance hearing (which will be explained in the ineligible letter).

BECAUSE OF THE VOLUME OF APPLICATIONS TO PROCESS, THE NUMEROUS STEPS INVOLVED, AND THE TIME TO MAIL OUT AND RECEIVE VERIFICATIONS, THE TIME TO PROCESS AN APPLICATION IS APPROXIMATELY 30 TO 60 DAYS. PLEASE DO NOT CALL TO CHECK ON THE STATUS OF YOUR APPLICATION UNTIL AFTER THE PROCESSING TIME.

Once your application process has been completed, your name will be placed on the eligible waiting list for housing based upon your preference, date and time of application, and bedroom size required. When your name reaches the top of the waiting list, a Property Manager will call or send you a letter to offer you a unit. If you refuse three housing offers, your name may be withdrawn from the waiting list.

If you have a change in one of the following areas, you are required to immediately notify the Application Office: address, telephone number, income, family size or preference. You must bring the changes to the Application Office or submit them in writing, with your name and social security number. Telephone calls for changes will not be accepted.

(rev. 8/04)