IN THE SUPREME COURT OF OHIO
No. 2008-0128

City of Lima, Ohio Appellee	:	On Appeal From the Allen County Court of Appeals Third Appellate District
v.	:	
State of Ohio Appellant	:	Court of Appeals Case No. 10721

BRIEF OF AMICUS CURIAE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION IN SUPPORT OF APPELLEE CITY OF LIMA

Dolores F. Torriero
(Counsel of Record) (0064459))
For Ohio Public Employer Labor
Relations Association
400 S. Fifth Street, Suite 200
Columbus, Ohio 43215
Telephone: 614-221-1216
Facsimile: 614-221-8769
Counsel for Amicus Curiae, OHPELRA

Anthony Geiger
(Counsel of Record) (006150)
City of Lima, Department of Law
209 North Main Street
Lima, Ohio 45801
Telephone: 419-221-5183
Facsimile: 419-221-5176
Counsel for Appellee, City of Lima

Nancy H. Rogers (0002375)
Benjamin C. Mizer (0083089)
(Counsel of Record)
Pearl M. Chin (0078810)
Sharon A. Jennings (005501)
State of Ohio, Office of Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215-3428
Telephone: 614-466-8980
Facsimile: 614-466-5087
Counsel for Appellant, State of Ohio

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF AMICUS INTEREST 2

STATEMENT OF THE CASE 3

LAW AND ARGUMENT 3

i. The Courts of Appeals Correctly Determined that O.R.C. §9.481 Was Not Enacted Pursuant to Section 34, Article II of the Ohio Constitution 3

ii. Ohio Revised Code Section 9.481 Violates the Home Rule Provision of the Ohio Constitution. 6

iii. Enforcement of the Statute Would Lead to Absurd Results and Would Conflict With Collective Bargaining Agreements 10

CONCLUSION 11

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TABLE OF AUTHORITIES

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AFSCME v. City of Warren (unreported), 2008 WL 3290502, Case no. 2007-T-0110 11th Dist. Ct. App. Aug. 4, 2008 2

Am. Financial Servs. Assn. v. Cleveland (2006) 112 Ohio St.3d 170, 173; 858 N.E.2d 776, 779 6

City of Canton v. State (2002), 95 Ohio St. 3d 149, 151; 205 N.E. 2d 963, 966 ..... 6, 7, 8, 9

City of Cleveland v. State (unreported), 2008 WL 2252542, Case no. 89486, 89565 8th Dist. Ct. App. June 2, 2008 1

City of Dayton v. State (unreported), 2008 WL 2222716, Case no. 22221 2nd Dist. Ct. App. May 30, 2008 2

City of Lima v. State (unreported), 2007 WL 4248278, Case no. 1-07-21 3rd Dist. Ct. App. Dec. 3, 2007 ..... 1, 4

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Statutes

O.R.C. §3313.98 5

O.R.C. §9.481 ..... passim

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INTRODUCTION

The Lima City charter contains a provision allowing the city legislature to enact a prospective residency requirement for city employees. The Lima City Council enacted the requirement in 2000. The City of Akron's charter has contained a residency requirement since approximately 1977.

In 2006 the Ohio Legislature enacted O.R.C. §9.481 to prohibit public employers (and only public employers) from establishing a residency requirement for full-time employees except that certain personnel may be restricted to living within the county of the public employer or within an adjacent county. Part-time employees and volunteers are exempt from the statute.

Seven cities have thus far challenged the legislation as violating the home rule provision of the Ohio Constitution; Lima, Akron, Toledo, Oregon[1], Cleveland, Dayton and Warren[2]. Six cases have been decided by the Ohio Courts of Appeals with all but two courts finding the statute to be unconstitutional. *State v. City of Akron* (unreported), 2008 WL 81056, Case no. 23660 9th Dist. Ct. App. Jan. 9, 2008 (Attachment A); *City of Lima v. State* (unreported), 2007 WL 4248278, Case no. 1-07-21 3rd Dist. Ct. App. Dec. 3, 2007 (Attachment B); *City of Toledo and City of Oregon v. State* (unreported) 2008 WL 1837256, Case no. L-07-1261 6th Dist. Ct. App. April 25, 2008 (Attachment C); *City of Cleveland v. State* (unreported), 2008 WL 2252542, Case no. 89486, 89565 8th Dist. Ct. App. June 2, 2008 (Attachment D); *City of Dayton v. State*

[1] The Toledo and Oregon cases are combined into one decision.

[2] The Toledo Charter has contained a residency requirement since the initial charter in 1914. The City of Oregon has had an ordinance requiring city residency for some department heads and supervisors and residency within 10 miles of the city for all other non-bargaining unit employees since 1996. The Cleveland Charter has contained a residency requirement since 1982. The City of Dayton's charter has contained a residency requirement since approximately 1978. The City of Warren has had a residency ordinance since 1991.

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(unreported), 2008 WL 2222716, Case no. 22221 2nd Dist. Ct. App. May 30, 2008 (Attachment E); *AFSCME v. City of Warren* (unreported), 2008 WL 3290502, Case no. 2007-T-0110 11th Dist. Ct. App. Aug. 4, 2008 (Attachment F).

STATEMENT OF AMICUS INTEREST

The Ohio Public Employer Labor Relations Association's members are public sector managers in all types of agencies and jurisdictions whose duties include labor relations, collective bargaining and/or human resources management for their employers. The purpose of OHPELRA is to provide training and development for its members, advocate for their interests and provide professional support. There are currently 406 total members; 133 represent cities, villages and townships, 126 represent counties, 47 represent the State of Ohio, including state universities and 18 represent schools, special districts and other local government entities.

Many public jurisdictions are impacted by this statute, especially as there are various government agencies other than cities that have personnel who are required to respond in emergency situations. For example, many counties now have centralized 9-1-1 centers with Dispatchers who would be required to respond quickly in an emergency. Several counties have Emergency Medical squads and, of course every county has a Sheriff's Office and an Engineer's Office whose employees must be expected to respond quickly in emergency situations. For many of these employers, residency or response time requirements for employees have been established through collective bargaining pursuant to O.R.C. Chapter 4117. There are 110 public sector collective bargaining agreements that include residency or response time requirements according to the State Employment Relations Board. (Attachment G.) The

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enactment of O.R.C. §9.481 has the potential effect of negating these freely negotiated and collectively bargained provisions.

While these decisions impact collective bargaining issues, they also raise constitutional questions regarding O.R.C. §9.481 with regard to its impact on municipalities and the conflict between Article II, section 34 and Article XVIII, section 3.

STATEMENT OF THE CASE

The Ohio Public Employer Labor Relations Associations adopts the Statement of the Case and Statement of Facts as contained in the Brief of Appellee, City of Lima.

LAW AND ARGUMENT

I. The Court of Appeals Correctly Determined That O.R.C. §9.481 Was Not Enacted Pursuant to Section 34, Article II of the Ohio Constitution.

Section 34 Article II of the Ohio Constitution states:
Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

Since O.R.C. §9.481 cannot arguably said to be a law establishing a minimum wage or a law regulating the hours of labor, it must fall under the "comfort, health, safety and general welfare" clause in order to be a valid exercise of legislative authority under this section. Even under this section the statute cannot be said to impact the health or safety of the affected employees. Therefore, the focus must be whether the statute is enacted to impact the comfort and general welfare of all employees in order to determine its validity.

The Third District Court of Appeals did exactly what it was required to do in a case in which two parties argue differing interpretations of the same language. It examined the other related language of the statute *(noscitur a sociis)* and the legislative history to determine which

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interpretation is more closely aligned with the legislature's intent. *City of Lima v. State* (unreported), 2007 WL 4248278, Case no. 1-07-21 3rd Dist. Ct. App. Dec. 3, 2007.

Appellant and other amicii would argue that the "general welfare" clause applies to O.R.C. §9.481 because where a person lives is central to his/her comfort and general welfare. However, all the other items listed in Section 34, Article II relate to the employees' conditions while at work. The laws enacted under Section 34 similarly relate to the employees' conditions while at work or, in the case of collective bargaining statutes, the relationship between employer and employee. A list of such laws include O.R.C. Chapter 4111 (Ohio's Fair Wage law), O.R.C. Chapter 4123 (Ohio's worker's compensation law), O.R.C. Chapter 124 (Ohio's civil service law), O.R.C. Chapter 4117 (Ohio's public sector collective bargaining law), O.R.C. Chapter 4109 (Ohio's child labor law), O.R.C. Chapter 4107 (Ohio's safety and sanitation law) and O.R.C. Chapters 4151-4161 (Ohio's mine safety laws). A law that does not relate to those items that affect the employee while at work is not enacted under section 34. *See, Toledo v. State, supra* at p. 4.

Amicii Fraternal Order of Police and International Association of Firefighters have argued that the employee's comfort and general welfare may be impacted by residency requirements. The I.A.F.F. in particular has listed numerous hypothetical situations in which an employee may have some hard decisions to make regarding whether to accept a job that has a residency requirement. For example, an applicant may have to choose between accepting a job with the City of Lima and remaining or moving closer to aging parents who need assistance. But this situation could occur anytime, with any prospective employer in a location far from his/her aging parents, whether across the county or across the country. Should the employee's choice prevail over the needs of the residents of a City? Also, the I.A.F.F. cites the issue of choice of

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school districts as a factor in deciding where to live. But again, this would be a factor whenever an employee takes a new job that would require a re-location and, with Ohio's open enrollment statute, the employee is free to send his/her child to any district that allows open enrollment. O.R.C. §3313.98.

There is no requirement in the Ohio Constitution that public employers have policies that remove all difficult dilemmas from the applicant's decision process. Further, there is no ability under the general welfare clause of section 34 for the state legislature to address every condition of employment that would impact an applicant's decision to accept a job. The residency prohibition is an attempt to legislate a singular term of employment. For example, an employer may have a strict dress code, or other specific policies that would make employment more or less attractive to an applicant. A registered nurse who does not prefer to work 12-hour shifts is not obligated to accept a position at a county nursing home where 12-hour shifts are required. Similarly, an employee who does not wish to be bound by a residency requirement is not obligated to accept a job that has one. However, having accepted the position the employee is obligated to live up to the bargain he or she made. The state constitution does not provide the legislation of job standards for some local jurisdictions.

In the public sector, the legislature has allowed residency policies to be matters for collective bargaining pursuant to O.R.C. Chapter 4117. The general welfare clause of section 34 has not been used to regulate every condition of employment, be it in the public or private sector. Similarly, the mere fact that a particular matter is an appropriate subject for collective bargaining does not make it an appropriate subject for statewide legislation dictating a single term or condition of employment for a limited application.

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Finally, all residency requirements have a prospective application, thus, they did not impose a new or more restrictive condition on those individuals employed at the time of enactment. Every employee who accepted a position in a jurisdiction with a residency or response time requirement did so knowing the requirements of the position. Thus, a person's constitutional freedom to live where he/she chooses has not been limited by government action, it has been limited by the choice of the employee. As stated above, residency requirements may well impact a prospective employee's decision about whether to apply for or accept a job with a specific employer. However, the same could be said for many other specific aspects of a particular job. That does not make the single requirement prohibiting residency requirements subject to legislation under the general welfare clause of section 34.

Having determined that O.R.C. §9.481 does not relate to the general welfare clause of section 34, the supremacy clause of section 34 does not apply.

ii. Ohio Revised Code Section 9.481 Violates The Home Rule Provision Of The Ohio Constitution.

The home rule provision of Ohio's Constitution states:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."

The section divides the exercise of municipal authority into two types of legislation; those which are an exercise of local self-government, which are unlimited and those that relate to police, sanitary and other similar regulations, which may not conflict with general laws. *City of Canton v. State* (2002), 95 Ohio St. 3d 149, 151; 205 N.E. 2d 963, 966, *citing Am. Financial Servs. Assn. v. Cleveland* (2006) 112 Ohio St.3d 170, 173; 858 N.E.2d 776, 779. Therefore, if it is determined that municipal residency requirements are enacted as an exercise of local self-

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government, O.R.C. §9.481 must be considered unconstitutional as it violates the home rule provision. If the municipal residency requirement is considered a police, sanitary or other similar regulation, then O.R.C. §9.481 must be examined to determine whether it is a conflicting general law. If O.R.C. §9.481 is not a "general law" then it will fall as it is a limitation on a municipality's ability to regulate the requirements for employment of its civil servants. *Id.*

Restrictions on residency requirements cannot be said to be police or sanitary regulations, nor do they relate to such matters. Municipal residency requirements were enacted primarily in the mid 1970's in response to several related pressures on U.S. cities. One reason was to counteract the flight of middle class residents to the suburbs. Other reasons include; diversity of the workforce; commitment to the residents who are the employee's neighbors; stability of neighborhoods and schools and to ensure that necessary employees would be available to respond in emergency situations as quickly as possible. None of these reasons relate to municipal exercise of police power. The residency requirement does not prohibit a specific behavior in the general population, nor does it create criminal penalties for violations. It is neither a sanitary regulation nor related to any such regulation. Municipal residency requirements do not affect building structural requirements and it does not impact sanitary conditions within a structure or in the city at large as was the case in *City of Canton, supra* at 150; 965.

Even assuming that a residency requirement was somehow considered a police or sanitary regulation, O.R.C. §9.481 would be considered unconstitutional as it is not a general law as contemplated by section 3, Article XVIII. This analysis is governed by *City of Canton v. State* (2002), 95 Ohio St. 3d 149, 766 N.E. 2d 963 which established a four part test to determine whether a statute was a general law under section 3: (1) be part of a statewide and

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comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. *Id.* at 150, 965. Ohio Revised Code §9.481 does not meet any of these requirements.

First, O.R.C. §9.481 is not part of a statewide and comprehensive legislative enactment. It does not set forth a scheme for regulating compensation for workplace injuries, for all employees public and private, like Ohio's worker's compensation statute. O.R.C. Chapter 4123. O.R.C. §9.481 does not set forth a plan for regulating collective bargaining for public sector employers. O.R.C. Chapter 4117. It does not set forth a plan for employment of minors, minimum wage and overtime compensation as in Ohio's minimum wage laws. O.R.C. Chapter 4111. O.R.C. §9.481 is specifically targeted to overturning those situations in which a municipality's citizens, or their representatives, have voted to place a residency requirement on those employees who wish to be employed by the municipality and receive the benefits of such employment.

Second, O.R.C. §9.481 does not apply to all parts of the state alike and does not operate uniformly throughout the state. The statute only applies to public sector employers and not to all employers who might have a residency requirement. (Power plants and public utilities are one type of private sector employer that might have residency or response time requirements; hospitals are another.) Like the statute in *City of Canton, supra,* O.R.C. §9.481 contains an exception that wholly defeats its stated purpose. The statute inexplicably excludes part-time employees and volunteers, leaving a municipality free to enforce its residency requirements on part-time employees while prohibiting enforcement for full-time employees. If one of the

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stated purposes is to "recognize the fundamental right of an individual to choose where to live pursuant to Section 1 of Article 1 of the Constitution," the elimination of part-time employees from enforcement wholly defeats this purpose. Section 2, S.B. 82, enacting O.R.C. §9.481. The exception allowing employers to require that certain employees live either in the county in which the employer is located or in a contiguous county is likewise an exception that defeats the stated purpose of the statute, i.e., the statute itself imposes a residency restriction at the same time it purports to safeguard a person's right to choose where to live. When a statute contains an exception that permits what the statute purports to prohibit the court will not recognize it as having uniform application and will not consider it a "general law." *City of Canton, supra*, at 154, 969.

Third, the statute does not set forth any police, sanitary or similar regulations. Ohio Revised Code §9.481 is aimed squarely at those cities whose citizens have, in the purest exercise of home rule, enacted charter amendments or ordinances requiring residency as a condition of employment for their civil servants. It serves solely as a limitation on the legislative power of the citizens of municipal corporations in the state.

Finally, the statute does not prescribe a rule of conduct on citizens generally. Rather it prohibits municipalities from determining how best to govern themselves the public servants they employ and the public it serves.

Since failing to meet any one of these criteria would require a finding that O.R.C. §9.481 is not a general law, a finding that it fails to meet any of these criteria certainly leads to that conclusion. In the absence of a conflicting general law, municipalities remain free to determine the conditions of employment for their employees, especially when it is a direct exercise of the democratic process expressed in a charter amendment.

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III. Enforcement Of The Statute Would Lead To Absurd Results And Would Conflict With Collective Bargaining Agreements.

Cities in Ohio that have enacted employee residency requirements have done so for a variety of reasons, one of which relates to the safety of the citizens as it ensures that city employees will be able to respond quickly and effectively in an emergency. Ohio Revised Code §9.481 purports to allow for this concern with the following language:

(b) To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state...

As amicus Ohio Municipal League correctly points out, the exception allowing a residency restriction to the contiguous counties for certain personnel does not ensure adequate response time since, depending on the location of the municipality, an employee could live more than an hour's drive away and still be in compliance with the statute. In an even more extreme example, the City of Bowling Green could have employees who live on Middle Bass Island, which is part of Ottawa County. Adequate response time in an emergency would be impossible.

Also, the legislature did not address the impact of O.R.C. §9.481 on those collective bargaining agreements that contain either geographic residency restrictions or response time requirements. These are situations in which the employees have voluntarily agreed to restrictions in exchange for other benefits of continued employment. Residency and response time requirements are best suited to the give and take of collective bargaining. Only in collective bargaining do the parties have the opportunity to test their resolve in light of the

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various economic and public policy pressures that impact government employment. The legislature should not disturb bargains that are freely made.

CONCLUSION

O.R.C. §9.481 violates both Section 34, Article II of the Ohio Constitution as it is not a statute enacted for the comfort and general welfare of employees. The "general welfare" clause of Section 34 must be read in conjunction with the rest of the language of the section and can only refer to legislative action which impacts employees in the workplace. Since the residence of an employee is not related to his/her general welfare while at work, it is not a proper exercise of legislative authority.

O.R.C. §9.481 also violates Section 3, Article XVIII of the Ohio Constitution as it is an impermissible infringement on municipal home rule authority. Residency requirements are not police, sanitary or related regulations; they are an exercise of general home rule authority which may not be restricted by the state legislature. Specifically, O.R.C. §9.481 contains two exceptions that entirely defeat the stated purpose of the statute. First, the statute is specifically not applicable to part-time employees. Also, the statute itself contains a residency restriction; it is simply a larger area than a municipal residency restriction. The rationale for the statutory residency restriction is to ensure adequate response time in an emergency. However, the restriction does not ensure adequate response times and merely serves as a larger residency restriction with no rational relationship to the stated purpose.

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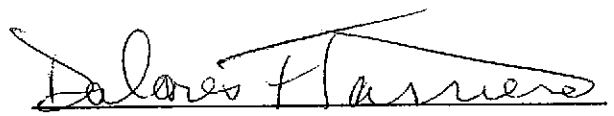
For all the above reasons O.R.C. §9.481 should be declared unconstitutional.

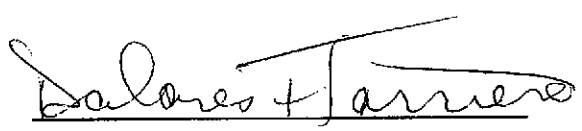
Respectfully submitted,



For the Ohio Public Employers Labor
Relations Association
Dolores F. Torriero (0064459)
DOWNES, HURST & FISHEL
400 S. Fifth St. Suite 200
Columbus, Ohio 43215
(614) 221-1216 (voice)
(614) 221-8769 (facsimile)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Amicus in Support of Appellee has been served on, Anthony Geiger 209 N. Main St. Lima, Ohio 45801 and Benjamin C. Mzer 30 E. Broad St. 16th Fl. Columbus, Ohio 43215 by regular U.S. Mail, postage prepaid this 10 day of September, 2008.



Dolores F. Torriero

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Suite 200
Columbus, Ohio 43215-5430
(614) 221 1216 PH
(614) 221 8769 FX
www.dhflaw.com

APPENDIX

(126th General Assembly)
(Substitute Senate Bill Number 82)

AN ACT

To enact section 9.481 of the Revised Code to generally prohibit political subdivisions from imposing residency requirements on certain employees.

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

SECTION 1. That section 9.481 of the Revised Code be enacted to read as follows:

Sec. 9.481. (A) As used in this section:

(1) "Political subdivision" has the same meaning as in section 2743.01 of the Revised Code.

(2) "Volunteer" means a person who is not paid for service or who is employed on less than a permanent full-time basis.

(B)(1) Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.

(2)(a) Division (B)(1) of this section does not apply to a volunteer.

(b) To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state. For the purposes of this section, an initiative petition shall be filed and considered as provided in sections 731.28 and 731.31 of the Revised Code, except that the fiscal officer of the political subdivision shall take the actions prescribed for the auditor or clerk if the political subdivision has no auditor or clerk, and except that references to a municipal corporation shall be considered to be references to the applicable political subdivision.

(C) Except as otherwise provided in division (B)(2) of this section, employees of political subdivisions of this state have the right to reside any

place they desire.

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

(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.

(B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.

SECTION 3. The General Assembly finds, in enacting section 9.481 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees.

_____

Speaker _____ *of the House of Representatives.*

_____

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

_____

Governor.

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

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____

Slip Copy, 2008 WL 81506 (Ohio App. 9 Dist.), 183 L.R.R.M. (BNA) 2621, 27 IER Cases 184, 2008 - Ohio- 38

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

Court of Appeals of Ohio,
Ninth District, Summit County.
STATE of Ohio, Appellees
v.
City of AKRON, et al., Appellants.
No. 23660.
Decided Jan. 9, 2008.

Background: City brought declaratory judgment action to resolve conflict concerning statute prohibiting political subdivisions from requiring their employees to live within their boundaries. Police and firefighter unions brought their own declaratory judgment action seeking resolution of same issue, challenging the residency requirements. The Court of Common Pleas, Summit County, entered summary judgment in favor of unions, holding that statute invalidated city employee residency requirements. City appealed.

Holding: The Court of Appeals, Dickinson, J., held that statute prohibiting City from enacting employee residency requirement was unconstitutional and infringed upon City's home rule authority. Reversed and remanded.

Slaby, P.J., issued dissenting opinion.

KeyCite Citing References for this Headnote

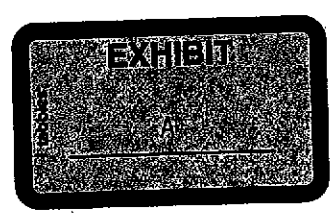
268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k67 Appointment and Removal of Officers
268k67(1) k. In General. Most Cited Cases

Statute prohibiting City from enacting employee residency requirements infringed upon City's home rule authority and exceeded state's authority to regulate municipalities and other political subdivisions; sole purpose of statute was to invalidate residency requirements, and did not address any significant social issues impacting public at large, and, unlike legislation falling within state constitution as providing for general welfare of employees, statute did not pertain to protection or regulation of any existing right or obligation of the affected employees. Const. Art. 2, § 34; R.C. 9.48.1.

Appeal from Judgment Entered in the Court of Common Pleas, County of Summit, Ohio, Case No. CV 2006-05-2759.
Max Rothal, Law Director, Deborah M. Forfia and Patricia Ambrose Rubright, Assistant Law Directors, for appellants.

Marc Dann, Ohio Attorney General, Frank M. Strigari and Julie Kelley Cannatti, Assistant Attorneys General, for appellees.

Susannah Muskovitz and Ryan J. Lemmerbrock, Attorneys at Law, for appellees.



DECISION AND JOURNAL ENTRY

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

DICKINSON, Judge.

THE QUESTION

{¶ 1} This case presents one of the classic legal questions: who gets to decide? In this case, the question is who gets to decide whether people unwilling to live in the City of Akron should be employed by the city, the citizens of Akron or members of the Ohio General Assembly.

{¶ 2} For the past few decades, under amendments to its charter that were adopted by its citizens, Akron has required its employees to live in the city. Currently, Akron requires people it hires into classified positions to agree to become city residents within 12 months and to continue to live in the city for as long as they are employed by the city. Section 9.48.1 of the Ohio Revised Code, which became effective on May 1, 2006, prohibits political subdivisions from requiring their employees to live within their boundaries.

{¶ 3} Because Section 9.48.1 conflicts with, and purportedly supersedes, Akron's employee residency requirements, Akron challenged the statute's constitutionality through a declaratory judgment action. Through a separate action, Akron police and firefighter unions sought a declaration that Section 9.48 .1 is constitutional and that it supersedes the city's residency requirements. On cross-motions for summary judgment in this consolidated case, the trial court held that Section 9.48.1 is constitutional and that it invalidates Akron's employee residency requirements. This Court concludes that Section 9.48.1 of the Ohio Revised Code is unconstitutional and, therefore, the trial court erred in granting summary judgment to the state and the unions and against the city of Akron.

BACKGROUND

{¶ 4} Section 9.48.1 of the Ohio Revised Code provides, in relevant part, that "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." The statute exempts unpaid volunteers, as well as part-time and temporary employees. Section 9 .48.1 further authorizes political subdivisions to require emergency response workers to reside within the county or an adjacent county, if the political subdivision adopts a local law or resolution to that effect through the filing of an initiative petition.

{¶ 5} The city of Akron filed an action for declaratory judgment against the state of Ohio, its governor, and its attorney general, seeking both a declaration that Section 9.48.1 of the Ohio Revised Code is unconstitutional and an order enjoining its enforcement. Akron specifically maintained that Section 9.48.1 infringes upon its right of self-government and that the statute was not enacted pursuant to the General Assembly's authority under Article II Section 34 of the Ohio Constitution to pass legislation "providing for the comfort, health, safety and general welfare" of employees. Akron also sought a declaration that Section 9.48.1 is unconstitutional because it violates other provisions of the Ohio Constitution.

*2 {¶ 6} The Fraternal Order of Police, Akron Lodge No. 7, and the Akron Firefighters Association, International Association of Firefighters Local 330, AFL-CIO, filed a separate action for declaratory judgment against the city, its mayor, and the state of Ohio through its attorney general, seeking a declaration that the Ohio General Assembly had enacted Section 9.48.1 pursuant to its authority under Article II Section 34 of the Ohio Constitution. They sought further declaration that Akron's employee residency requirements violate Section 9.48.1 and exceed Akron's home rule authority and, therefore, are unenforceable.

{¶ 7} The trial court consolidated the two cases and the parties eventually filed cross-motions for summary judgment. The trial court determined that Section 9.48.1 of the Ohio Revised Code is constitutional and that it prevails over the city's employee residency requirements. It, therefore,

granted summary judgment to the state and the unions and denied Akron's motion for summary judgment. The trial court concluded that the Ohio General Assembly enacted Section 9.48.1 pursuant to its authority under Article II Section 34 of the Ohio Constitution to pass laws providing for the "general welfare" of employees. Because Article II Section 34 explicitly provides that "no other provision of the constitution shall impair or limit this power[,]" the trial court further held that the constitutional authority of the General Assembly to enact Section 9.48.1 supersedes the city's home rule authority to pass a local employee residency requirement. Consequently, the trial court held that Section 9.48.1 invalidated the city's employee residency requirement. The city has assigned four errors.

THIS COURT'S STANDARD OF REVIEW

{¶ 8} All of the city's assignments of error are challenges to the trial court's granting of summary judgment to the state and the unions and its denial of summary judgment to the city. In reviewing a trial court's order ruling on a motion for summary judgment, this Court applies the same standard the trial court was required to apply in the first instance: whether there are any genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law. *Parenti v. Goodyear Tire & Rubber Co.*, 66 Ohio App.3d 826, 829, 586 N.E.2d 1121 (1990). There are no disputed material facts in this case. Rather, the issues presented are legal questions.

GENERAL WELFARE

{¶ 9} By its first assignment of error, the city has argued that the trial court incorrectly rejected its argument that, in adopting Section 9.48.1 of the Ohio Revised Code, the General Assembly was not properly acting within the authority granted it by Article II Section 34 of the Ohio Constitution. Article II Section 34 provides:

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

*3 {¶ 10} The parties agree that the General Assembly's authority under Article II Section 34 supersedes the city's home rule authority to pass local legislation. Therefore, if this Court concludes that the General Assembly enacted Section 9.48.1 pursuant to its authority under Article II Section 34 of the Ohio Constitution, the state statute prevails and invalidates Akron's local residency requirement.

{¶ 11} In *Rocky River v. State Emp. Relations Bd.*, 39 Ohio St.3d 196, 530 N.E.2d 1 (1988) (" *Rocky River I* "), the Ohio Supreme Court held that the legislative authority under Article II Section 34 did not encompass laws pertaining to public employee collective bargaining rights, but that it was limited to laws pertaining to employee wages and hours. On reconsideration, the Supreme Court reversed its holding six months later and held that the General Assembly's authority under Article II Section 34 encompasses laws pertaining to the general welfare of employees. *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 539 N.E.2d 103 (1989) (" *Rocky River IV* ").

{¶ 12} In *Rocky River IV,* the Court's more expansive interpretation of the General Assembly's authority under Article II Section 34 focused on the language "and providing for the comfort, health, safety and general welfare of all employees." The Court applied a basic rule of construction that this phrase must have been included for a reason, indicating a clear intention by the framers to expand the General Assembly's authority under Article II Section 34 beyond wage and hour legislation. Focusing in particular on the term "general welfare," the majority in *Rocky River IV* held that the Ohio Public Employees Collective Bargaining Act, set forth in Chapter 4117 of the Ohio Revised Code, was enacted within the General Assembly's broad authority under Article II Section 34 of the Ohio Constitution.

{¶ 13} The majority in *Rocky River IV* explained that the General Assembly's authority under

Article II Section 34 is broad:

> This provision constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces. The provision expressly states in "clear, certain and unambiguous language" that *no other provision* of the Constitution may impair the legislature's power under Section 34. This prohibition, of course, includes the "home rule" provision contained in Section 3, Article XVIII.

Rocky River IV at 13 (internal citations omitted, emphasis in original). The Ohio Supreme Court has continued to follow the *Rocky River IV* holding that Article II Section 34 of the Ohio Constitution is a broad grant of authority to the General Assembly to enact laws pertaining to the "general welfare" of employees. See, e.g., *American Assoc. of Univ. Professors v. Central State Univ.*, 87 Ohio St.3d 55, 61, 717 N.E.2d 286 (1999).

{¶ 14} The focus of the parties' dispute is whether the legislative authority to pass laws providing for the "general welfare" of employees under Article II Section 34 includes authority to enact Section 9.48.1 of the Ohio Revised Code, a law that prohibits Akron's existing employee residency requirement. As was noted above, Akron requires applicants for classified positions to agree that, if they are hired, they will become residents of Akron within 12 months and remain Akron residents throughout their employment. No one is disputing that, prior to the effective date of Section 9.48.1, Akron's employee residency requirement was valid and enforceable. The dispute is whether Akron's employee residency requirement is now unenforceable due to the state's enactment of Section 9.48.1.

***4** {¶ 15} It is the position of the state and the unions that the General Assembly's constitutional authority under Article II Section 34 to pass laws providing for the "general welfare" of employees encompasses the authority to enact Section 9.48.1, which prohibits employee residency requirements by political subdivisions so that employees will have the freedom to choose where to reside. Akron's position, on the other hand, is that the scope of the General Assembly's authority to pass laws for the general welfare of employees under Article II Section 34 is not without limits and does not extend to this legislation.

{¶ 16} The majority in *Rocky River IV* stressed that the language of Article II Section 34 is clear and unequivocal and that "it is the duty of courts to enforce the provision as written." See *Rocky River IV*, 43 Ohio St.3d at 15, 539 N.E.2d 103. Nonetheless, the focus of dispute in the *Rocky River I* and *Rocky River IV* was whether Article II Section 34 encompassed employment legislation beyond wages and hours. The majority in *Rocky River IV* did not define "general welfare," for it concluded that "the Public Employees' Collective Bargaining Act[ ] is indisputably concerned with the 'general welfare' of employees." *Rocky River IV*, 43 Ohio St.3d at 13, 539 N.E.2d 103. It is not so clear, however, whether the legislation at issue in this case pertains to the "general welfare" of employees within the meaning of Article II Section 34.

{¶ 17} It is a basic rule of construction that words should be given their reasonable, ordinary meaning. *In re Adoption of Huitzil*, 29 Ohio App.3d 222, 223, 504 N.E.2d 1173 (1985). On its face, the term "general welfare" is so broad and vague that it provides no ascertainable limit on the scope of the General Assembly's authority under Article II Section 34. See The Legitimate Objectives of Zoning, 91 Harvard Law Review 1443, 1445 (1978). The meaning of the term "general welfare" "is as incapable of specific definition as is the police power itself." 16A American Jurisprudence 2d, Constitutional Law, Section 363.

{¶ 18} This, however, does not mean that the phrase "general welfare" as used in Article II Section 34 is without limits. As vague and all-encompassing as the term "general welfare" may appear to be, it cannot reasonably encompass everything that arguably benefits some employees. Without some boundaries on the scope of the term "general welfare," the General Assembly would feasibly have the authority under Article II Section 34 to enact legislation that furthered the interests of a few employees, yet harmed the welfare of the public at large. Moreover, as Article II Section 34 explicitly provides that "no other provision of the constitution shall impair or limit this power," the General Assembly's authority under this provision would be virtually endless and could potentially undermine the home rule authority of municipalities to make any employment decisions.

*5 {¶ 19} While Article II Section 34 explicitly authorizes legislation for the general welfare of employees, legislation adopted under it must also either secure the blessings of freedom to citizens of Ohio or further the "general welfare" of the state. "All government power derives from the people, but these grants of power are limited." Akhil Reed Amar, The Bill of Rights 123 (Yale University Press) (1998). The scope of the power granted Ohio by its citizens is found in the preamble of the Ohio Constitution:

> We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

As this Court noted in *Porter v. City of Oberlin*, 3 Ohio App.2d 158, 164, 209 N.E.2d 629 (1964), the Ohio Constitution only authorizes laws that secure freedom for its citizens or further their common welfare:

> It here appears that the Constitution was established to secure the blessings of freedom, and to promote the common welfare. All laws enacted pursuant thereto must be subject to such mandate.

{¶ 20} In interpreting the General Assembly's broad authority under Article II Section 34, the Ohio Supreme Court has recognized the societal notion of "common welfare." Although the Court has not explicitly articulated a limitation on the General Assembly's authority under Article II Section 34 to enact legislation for the "general welfare" of employees, it has been unnecessary for it to do so in the prior cases before it.

{¶ 21} The legislation at issue in *Rocky River IV*, the Ohio Public Employees Collective Bargaining Act, encompassed the entire Chapter 4117 of the Ohio Revised Code, which includes dozens of provisions that burden as well as benefit public employees and public employers, in the public interest. Chapter 4117 includes comprehensive provisions that apply to public collective bargaining units throughout the state, define the scope of collective bargaining rights and obligations, and provide for uniform dispute resolution throughout the state. Chapter 4117 also includes provisions that offer primarily a public benefit such as limitations on the ability of certain public employees to strike and the requirement that records of the state employment relations board be kept public. See Section 4117.15 and 4117.16; Section 4117.17. Moreover, Chapter 4117 did not purport to create collective bargaining rights that did not previously exist, but instead defined the scope of existing rights and obligations of public employees and employers.

{¶ 22} In an earlier decision by the Ohio Supreme Court, *State ex rel. Bd. of Trustees of Pension Fund v. Bd. of Trustees of Relief Fund*, 12 Ohio St.2d 105, 233 N.E.2d 135 (1967), the Court determined that Chapter 742 legislation providing for creation, administration, maintenance, and control of a state police and fireman's disability and pension fund was validly enacted within the General Assembly's authority under Article II Section 34. Again, the legislation at issue involved a comprehensive statutory scheme that included over 100 separate provisions and encompassed an entire chapter of the Ohio Revised Code. This legislation likewise did not create employee pension rights that had not previously existed, but sought to preserve and regulate the pension and disability benefits of police and firefighters through the creation and maintenance of a state fund. See Chapter 742.

*6 {¶ 23} In its most recent decision interpreting the General Assembly's authority under Article II Section 34, the Supreme Court held that "the public's interest in the regulation of the employment sector" includes legislation that burdens as well as benefits employees. *American Association of Univ. Professors v. Central State Univ.*, 87 Ohio St.3d 55, 61-62, 717 N.E.2d 286 (1999). The statute at issue, Section 3345.45 of the Ohio Revised Code, required public universities to develop standards for professors' instructional workloads and exempted the issue from collective bargaining. The Court made reference to many other employment-related laws enacted under the authority of Article II Section 34, emphasizing that state legislation in the employment area under Article II Section 34 is focused on public interest, not necessarily benefit to the employees. *Id.*

{¶ 24} Section 9.48.1 of the Ohio Revised Code, on the other hand, bears no similarity to any of

the employee "general welfare" legislation discussed above. The sole purpose of Section 9.48.1 is to invalidate employee residency requirements by political subdivisions. This legislation does not address any significant social issues impacting the public at large; it is not part of a comprehensive legislative scheme, but deals with a single issue; and it applies to a relatively small segment of the population (those who are employed by political subdivisions, are subject to residency requirements, and would choose to live elsewhere if allowed to do so).

{¶ 25} Further, unlike any of the legislation that the Supreme Court has determined falls within the scope of Article II Section 34 as providing for the general welfare of employees, Section 9.48.1 does not pertain to the protection or regulation of any existing right or obligation of the affected employees. Instead, it is an attempt to circumvent municipal home rule authority and reinstate a "right" that the employees voluntarily surrendered when they accepted government employment.

{¶ 26} As the New Jersey Supreme Court stressed when it addressed a challenge to Newark's employee residency requirement as an infringement upon the employees' rights and freedom under its state constitution:

> The question is not whether a man is free to live where he will. Rather the question is whether he may live where he wishes and at the same time insist upon employment by government.

Kennedy v. Newark, 29 N.J. 178, 183, 148 A.2d 473 (1959). The "right" to insist upon employment by government is not a "freedom" within the meaning of the preamble of the Ohio Constitution.

{¶ 27} Although the parties dispute whether Akron's residency requirement is a condition of or qualification for city employment, it is undisputed that Akron city employees voluntarily agreed to give up their "right" to choose to live elsewhere when they accepted employment with the city. Residency was required by their employer as either a condition of or qualification for employment, "similar in this regard to minimum standards of age, health, education, experience, or performance in civil service examinations." *Ector v. Torrance*, 10 Cal.3d 129, 132, 109 Cal.Rptr. 849, 514 P.2d 433 (1973). Akron city employees surrendered any "right" that they once had to choose where to live when they agreed to become employees of the city of Akron, just as they may have agreed to other limitations on their personal freedoms, such as their freedom to dress, groom themselves, or behave as they choose.

***7** {¶ 28} Laws passed for the "general welfare" of employees do not encompass a single-issue statute that seeks to reinstate a non-fundamental right that the employees voluntarily surrendered when they accepted employment. Applying another fundamental rule of construction, Article II Section 34 should not be interpreted in a manner that would yield an absurd result. See *Mishr v. Poland Bd. of Zoning Appeals*, 76 Ohio St.3d 238, 240, 667 N.E.2d 365 (1996). To construe the legislative authority under Article II Section 34 to pass laws providing for the "general welfare" of employees to be so broad as to encompass a law that reinstates a right that employees voluntarily surrendered upon accepting employment would yield an absurd result, and could potentially give limitless power to the General Assembly to undermine all home rule authority of municipalities to make decisions about their employees.

{¶ 29} Consequently, the trial court erred when it concluded that the General Assembly's enactment of Section 9.48.1 of the Ohio Revised Code was within its authority under Article II Section 34 to pass laws providing for the "general welfare" of employees. The first assignment of error is sustained.

HOME RULE

{¶ 30} Akron's second assignment of error is that Section 9 .48.1 is an unconstitutional infringement of its home rule authority to pass local legislation. It is not disputed that Akron's residency requirement was enacted pursuant to the city's home rule authority.

{¶ 31} Section 3, Article XVIII of the Ohio Constitution provides:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

-Therefore, Section 9.48.1 of the Ohio Revised Code prevails over the city's residency requirement only if it qualifies as a "general law." In *Canton v. State*, 95 Ohio St.3d 149, 766 N.E.2d 963, 2002-Ohio-2005, syllabus, the Ohio Supreme Court announced a four-part test defining what constitutes a general law for purposes of home-rule analysis: "a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally."

{¶ 32} As explained above, Section 9.48.1 is an attempt by the General Assembly to circumvent the home rule authority of municipalities to maintain residency requirements for their employees. The Third District Court of Appeals recently held, in *Lima v. State*, 3d Dist. No. 1-07-21, 2007-Ohio-6419, at ¶ 80, that Section 9.48.1 of the Ohio Revised Code is not a general law because it "does not set forth police, sanitary, or similar regulations but merely limits the municipality's power to do the same [.]" It further held that "prohibiting political subdivisions from requiring residency as a condition of employment is not an overriding state interest." *Id.* This Court agrees.

***8** {¶ 33} Consequently, Section 9.48.1 of the Ohio Revised Code is not a general law, but violates the city's home rule authority under the Ohio Constitution to enact local employee residency requirements. Akron's second assignment of error is sustained.

III.

{¶ 34} Akron's first and second assignments of error are sustained. The third and fourth assignments of error are moot because of this Court's disposition of the first and second assignments of error and are, therefore, overruled. The judgment of the Summit County Court of Common Pleas is reversed and the cause is remanded.

Judgment reversed and the cause remanded.

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

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

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

Costs taxed to appellees.

CARR, J., Concurs.

SLABY, P.J. Dissents, Saying:

***8** {¶ 35} I respectfully dissent. I would affirm the decision of the trial court because R.C. 9.481 is a valid exercise of the authority granted to the legislature by Article II, Section 34, of the Ohio Constitution pursuant to *City of Rocky River v. State Emp. Rel. Bd.* (1989), 43 Ohio St.3d 1, 539

N.E.2d 103.

{¶ 36} The plain language of Article II Section 34 of the Ohio Constitution is expansive: "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power." It may be, as the majority concludes, that the phrase "general welfare" is "incapable of specific definition" and "vague and all-encompassing." Nevertheless, these words are those used in the Ohio Constitution, and we must apply them under the guidance of the Supreme Court of Ohio. I find the majority's distinction between this case and other cases arising under Article II Section 34 unpersuasive, and I would affirm the judgment of the trial court.

Ohio App. 9 Dist.,2008.
State v. Akron
Slip Copy, 2008 WL 81506 (Ohio App. 9 Dist.), 183 L.R.R.M. (BNA) 2621, 27 IER Cases 184, 2008 - Ohio- 38

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--- N.E.2d ----, 2007 WL 4248278 (Ohio App. 3 Dist.), 183 L.R.R.M. (BNA) 2755, 2007 -Ohio- 6419

Court of Appeals of Ohio,
Third District, Allen County.
CITY OF LIMA, Appellant,
v.
The STATE of Ohio, Appellee.
No. 1-07-21.
Decided Dec. 3, 2007.

Background: City filed action against the State, challenging the constitutionality of statute limiting ability of political subdivisions to condition employment on residency, and seeking declaratory and injunctive relief. The Court of Common Pleas, Allen County, granted State's motion for summary judgment. City appealed.

Holdings: The Court of Appeals, Preston, J., held that:
(1) laws enacted pursuant to general welfare clause of the wages and hours and employee health, safety and welfare provision of the Constitution must have a nexus between their legislative end and the working environment;
(2) the challenged statute lacked a nexus with the working environment;
(3) State did not have an overriding interest in limiting political subdivisions' ability to condition employment on residency;
(4) the statute did not prescribe a rule of conduct on citizens generally, as required to constitute a general law; and
(5) the statute violated municipal home rule provision of the Ohio Constitution.

Reversed and remanded.

[1] KeyCite Citing References for this Headnote

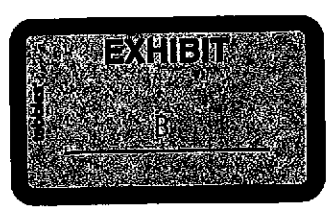
30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases

Whether a statute is constitutional is a question of law reviewed de novo.

[2] KeyCite Citing References for this Headnote

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In General. Most Cited Cases

92 Constitutional Law KeyCite Citing References for this Headnote
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1001 Doubt
92k1004 k. Proof Beyond a Reasonable Doubt. Most Cited Cases



92 Constitutional Law KeyCite Citing References for this Headnote
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1030 k. In General. Most Cited Cases

All statutes are presumed constitutional, and the party challenging has the burden of proving otherwise beyond a reasonable doubt.

[3] KeyCite Citing References for this Headnote

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In General. Most Cited Cases

All presumptions and applicable rules of statutory construction are applied to uphold a statute from constitutional attack.

[4] KeyCite Citing References for this Headnote

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2488 k. Policy. Most Cited Cases

92 Constitutional Law KeyCite Citing References for this Headnote
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2485 Inquiry Into Legislative Judgment
92k2489 k. Wisdom. Most Cited Cases

It is not the function of a court reviewing the constitutionality of a statute to assess the wisdom or policy of a statute, but rather to determine whether the General Assembly acted within its legislative power.

[5] KeyCite Citing References for this Headnote

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k580 k. In General. Most Cited Cases

92 Constitutional Law KeyCite Citing References for this Headnote
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k593 k. Existence of Ambiguity. Most Cited Cases

Generally, in construing the Constitution, courts apply the same rules of construction that they apply in construing statutes; the inquiry begins with the statutory text, and ends there as well if the text is unambiguous.

[6] KeyCite Citing References for this Headnote

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases

The natural meaning of words is not always conclusive as to the construction of statutes.

[7] KeyCite Citing References for this Headnote

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and Purpose of Act. Most Cited Cases

If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the provision to determine its meaning.

[8] KeyCite Citing References for this Headnote

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and Consequences. Most Cited Cases

361 Statutes KeyCite Citing References for this Headnote
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and Purpose of Act. Most Cited Cases

361 Statutes KeyCite Citing References for this Headnote
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k215 k. Contemporary Circumstances. Most Cited Cases

In determining legislative intent when faced with an ambiguous statute, the court may consider several factors such as circumstances under which the statute was enacted, the objective of the statute, and the consequences of a particular construction.

[9] KeyCite Citing References for this Headnote

231H Labor and Employment

231HXIII Wages and Hours
231HXIII(B) Minimum Wages and Overtime Pay
231HXIII(B)1 In General
231Hk2215 Constitutional and Statutory Provisions
231Hk2217 Purpose
231Hk2217(1) k. In General. Most Cited Cases

The purpose of the provision of the Ohio Constitution governing wages and hours and employee health, safety, and welfare was to empower the General Assembly with legislative authority over (1) the hours of labor, (2) a minimum wage, and (3) working environment. Const. Art. 2, § 34.

[10] KeyCite Citing References for this Headnote

231H Labor and Employment
231HXIII Wages and Hours
231HXIII(B) Minimum Wages and Overtime Pay
231HXIII(B)1 In General
231Hk2215 Constitutional and Statutory Provisions
231Hk2216 k. In General. Most Cited Cases

The provision of the Ohio Constitution governing wages and hours and employee health, safety, and welfare is a broad grant of legislative authority. Const. Art. 2, § 34.

[11] KeyCite Citing References for this Headnote

231H Labor and Employment
231HXIII Wages and Hours
231HXIII(B) Minimum Wages and Overtime Pay
231HXIII(B)1 In General
231Hk2215 Constitutional and Statutory Provisions
231Hk2218 Validity
231Hk2218(1) k. In General. Most Cited Cases

Laws enacted pursuant to the general welfare clause of the provision of the Ohio Constitution governing wages and hours and employee health, safety, and welfare must, at minimum, have some nexus between their legislative end and the working environment. Const. Art. 2, § 34.

[12] KeyCite Citing References for this Headnote

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(A) Municipal Officers in General
268k124 Constitutional and Statutory Provisions
268k124(3) k. Eligibility and Qualification. Most Cited Cases

Statute limiting political subdivisions' ability to condition employment on residency lacked any nexus between its legislative end and the working environment, and thus the statute was not validly enacted pursuant to the general welfare clause of the provision of the Ohio Constitution governing wages and hours and employee health, safety, and welfare. Const. Art. 2, § 34; R.C. § 9.481.

[13] KeyCite Citing References for this Headnote

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities

268k65 k. Local Legislation. Most Cited Cases

The first step in a home-rule analysis is to determine whether the matter in question involves an exercise of local self-government or an exercise of local police power; if an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction, but if the ordinance pertains to concurrent police power rather than the right to self-government, the ordinance that is in conflict must yield in the face of a general state law. Const. Art. 18, § 3.

[14] KeyCite Citing References for this Headnote

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k64 k. Nature and Scope of Legislative Power in General. Most Cited Cases

To be a general law under prong three of the preemption test of *Canton v. State*, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. Const. Art. 18, § 3.

[15] KeyCite Citing References for this Headnote

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k67 Appointment and Removal of Officers
268k67(1) k. In General. Most Cited Cases

State did not have an overriding interest in limiting the ability of political subdivisions to condition employment on residency, as required for statute imposing such limitation to constitute a general law superseding city's home rule authority, although citizens of Ohio had a constitutional right to determine where they lived; there was no constitutional right to choose where one lived and, at the same time, demand employment from an unwilling employer, and exemptions for private parties, the state, volunteers, and emergency employees defeated statute's purpose of generally prohibiting residency restrictions. Const. Art. 1, § 1; Art. 18, § 3; R.C. § 9.481.

[16] KeyCite Citing References for this Headnote

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1113 Liberty to Choose Occupation, Pursue Livelihood, or Enjoy Fruits of Labor
92k1114 k. In General. Most Cited Cases

92 Constitutional Law KeyCite Citing References for this Headnote
92XII Freedom of Travel and Movement
92k1280 k. In General. Most Cited Cases

Although the citizens of Ohio may have a right to determine where they live under the Ohio Constitution, citizens do not have a right to live where they want and demand employment with a particular employer. Const. Art. 1, § 1.

[17] KeyCite Citing References for this Headnote

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k67 Appointment and Removal of Officers
268k67(1) k. In General. Most Cited Cases

Statute limiting the ability of political subdivisions to condition employment on residency did not prescribe a rule of conduct on citizens generally, as required to constitute a general law superseding city's home rule authority, but rather the statute purported to limit a municipality's legislative power. Const. Art. 1, § 1; Art. 18, § 3; R.C. § 9.481.

[18] KeyCite Citing References for this Headnote

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k67 Appointment and Removal of Officers
268k67(1) k. In General. Most Cited Cases

Statute limiting the ability of political subdivisions to condition employment on residency was not a general law and, thus violated municipal home rule provision of the Ohio Constitution, and did not preempt city's ordinance establishing a residency requirement for city employees, given that statute was not validly enacted pursuant to the general welfare clause of the provision of the Ohio Constitution governing wages and hours and employee health, safety and welfare. Const. Art. 2, § 34; Art. 18, § 3; R.C. § 9.481.

West Codenotes

Held Unconstitutional
R.C. § 9.481.

Anthony L. Geiger, City Law Director, for appellant.

Frank M. Strigari, Assistant Attorney General, for appellee.

PRESTON, Judge.

I. Factual Background

*1 {¶ 1} Plaintiff-appellant, the city of Lima, appeals the Allen County Court of Common Pleas grant of summary judgment in favor of defendant-appellee the state of Ohio.[FN1] Since the trial court erred in finding R.C. 9.481 was validly enacted pursuant to Section 34, Article II of the Ohio Constitution and meets the test of *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, we reverse and remand for further proceedings not inconsistent with this opinion.

{¶ 2} On November 2, 1920, Lima voters adopted a city charter pursuant to Section 3, Article XVIII of the Ohio Constitution. In 1974, section 72 of the Lima City Charter was amended to permit Lima City Council to determine by ordinance whether to establish a residency requirement for city employees.

{¶ 3} On October 23, 2000, Lima City Council passed Ordinance 201-00 pursuant to section 72 of the Lima City Charter, which "established a requirement for persons appointed by the Mayor as employees of the city on or after the date of passage of this ordinance, that as a condition of employment with the city all such employees shall live in a primary permanent residency within the corporate boundaries of the municipality."

{¶ 4} On May 1, 2006, the General Assembly enacted R.C. 9.481 pursuant to Section 34, Article II of the Ohio Constitution (hereinafter "Section 34"), which, except in specified circumstances, limited the ability of political subdivisions throughout Ohio to condition employment upon residency.

{¶ 5} On May 22, 2006, Lima filed an action for declaratory judgment and injunctive relief in the Allen County Court of Common Pleas against the state arguing that R.C. 9.481 is unconstitutional on several grounds. Cross-motions for summary judgment were filed on December 15, 2006, with both parties responding on January 12, 2007.

{¶ 6} On February 16, 2007, the trial court granted the state's motion for summary judgment upholding the constitutionality of R.C. 9.481 and denied Lima's motion for summary judgment. On April 19, 2007, Lima appealed the trial court's grant of summary judgment to this court asserting three assignments of error.

II. Standard of Review

{¶ 7} We review a grant of summary judgment de novo. *Sharonville v. Am. Employers Ins. Co.*, 109 Ohio St.3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶ 5, citing *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8. Summary judgment is appropriate when "(1) there is no genuine issue of material fact; (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 when viewing the evidence in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party." *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241, citing *State ex. rel. Cassels v. Dayton City School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 217, 219, 631 N.E.2d 150; Civ.R. 56(C).

***2** [1] [2] [3] {¶ 8} Whether a statute is constitutional is a question of law reviewed de novo. *Wilson v. AC&S, Inc.*, 169 Ohio App.3d 720, 2006-Ohio-6704, 864 N.E.2d 682, ¶ 61; *Akron v. Callaway*, 162 Ohio App.3d 781, 2005-Ohio-4095, 835 N.E.2d 736, ¶ 23. De novo review is independent and without deference to the trial courts determination. *Wilson*, 169 Ohio App.3d 720, 2006-Ohio-6704, 864 N.E.2d 682, at ¶ 61. "[A]ll statutes are presumed constitutional, and the party challenging has the burden of proving otherwise" beyond a reasonable doubt. *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, 863 N.E.2d 155, ¶ 9, citing *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 38-39, 616 N.E.2d 163; *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.2d 159, 38 O.O.2d 404, 224 N.E.2d 906, 908-909 ("[W]hen an enactment of the General Assembly is challenged, the challenger must overcome a strong presumption of constitutionality"). All presumptions and applicable rules of statutory construction are applied to uphold a statute from constitutional attack. *State v. Dorso* (1983), 4 Ohio St.3d 60, 61, 4 OBR 150, 446 N.E.2d 449; *State v. Stambaugh* (1987), 34 Ohio St.3d 34, 35, 517 N.E.2d 526.

[4] {¶ 9} "[I]t is not the function of the reviewing court to assess the wisdom or policy of a statute but, rather, to determine whether the General Assembly acted within its legislative power." *Austintown Twp. Bd. of Trustees v. Tracy* (1996), 76 Ohio St.3d 353, 356, 667 N.E.2d 1174, citing *State ex rel. Bishop v. Mt. Orab Village Bd. of Edn.* (1942), 139 Ohio St. 427, 438, 22 O.O. 494, 40 N.E.2d 913; *Primes v. Tyler* (1975), 43 Ohio St.2d 195, 72 O.O.2d 112, 331 N.E.2d 723.

{¶ 10} "The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body." The Federalist No. 78 (Alexander Hamilton) (Clinton Rossiter Ed.1961) 468-469. "The principle that courts are not the creators of public policy and should not decide cases based on disagreement with a legislature has guided courts since the creation of the American judicial system." *Holeton v. Crouse Cartage Co.* (1992), 92 Ohio St.3d 115, 135, 748 N.E.2d 1111 (Moyer, C.J., dissenting).

III. Trial Court's Ruling

{¶ 11} Although we review constitutional questions de novo, for clarification purposes and an otherwise thorough review we set forth the essential findings of the trial court.

{¶ 12} This appeal follows the Allen County Court of Common Pleas grant of summary judgment in favor of the state of Ohio. The trial court set forth the following issue for its review:

> [W]hether * * * O.R.C. 9.481 as enacted by the General Assembly which provides employees of Ohio's political subdivisions with freedom to choose where they want to live, is unconstitutional because it conflicts with Section 3, Article XVIII of the Ohio Constitution * * *

***3** *Lima v. Ohio* (Feb. 15, 2007), Allen C.P. No. CV2006-0518, at 4. The trial court first considered the relevance of the *Canton* test and a traditional-home rule analysis. Id. at 6. The trial court concluded that laws validly passed pursuant to Section 34, Article II of the Ohio Constitution cannot be impaired by the Home Rule Amendment; and therefore, a traditional home-rule analysis was unnecessary. Id. at 10, citing *Rocky River v. State Employment Relations Bd., et al.* (1989), 43 Ohio St.3d 1, 539 N.E.2d 103.

{¶ 13} The trial court then concluded that R.C. 9.481 was validly enacted pursuant to Section 34. The trial court decided that Lima's residency requirement is a condition of employment. Id. at 11, citing *St. Bernard v. State Emp. Relations Bd.* (1991), 74 Ohio App.3d 3, 6, 598 N.E.2d 15. As a condition of employment, the trial court reasoned, R.C. 9.481's regulation of residency requirements concerned the general welfare of public employees; and therefore, the law was validly enacted pursuant to Section 34. Id.

{¶ 14} After it concluded that R.C. 9.481 was validly enacted pursuant to Section 34 and superseded the Home Rule Amendment, the trial court examined R.C. 9.481 under the traditional *Canton* home-rule analysis in the alternative.

{¶ 15} Prior to conducting a *Canton* analysis, the trial court found that residency requirements are an issue of statewide concern due to the extraterritorial effects that such requirements have on other Ohio communities. Id. at 12. The court then concluded that since residency requirements are a matter of state-wide concern, the state's power to regulate superseded the municipality's right to home rule. Id. at 12-13, citing *Cleveland Electric Illuminating Co. v. Painesville* (1968), 15 Ohio St.2d 125, 129, 44 O.O.2d 121, 239 N.E.2d 75; *Uniformed Firefighters Assn. v. New York* (1980), 50 N.Y.2d 85, 428 N.Y.S.2d 197, 405 N.E.2d 679.

{¶ 16} Finally, the trial court concluded that even if it applied the *Canton* test, the state of Ohio still prevailed. Id. at 13. Applying the four-part *Canton* test, the trial court reached the following conclusions:

> 1. Generally permitting employees of political subdivisions through [sic] the State of Ohio to live where they choose to live while providing political subdivisions with a process for enacting specific exceptions, constitutes a statewide and comprehensive legislative enactment in and of itself.
>
> 2. O.R.C. 9.481 operates uniformly throughout the State of Ohio because the statute applies across the State to all included within the statute's operative provisions.
>
> 3. Subject of providing employees of political subdivisions throughout the State of Ohio with the freedom to choose where they want to live is of a general nature for all of these employees. Specifically, the law's subject not only affects employees of the City of Lima by providing them with the freedom to choose where they want to live, but it also affects employees of every other political subdivision within the State of Ohio in the same manner.
>
> ***4** 4. O.R.C. 9.481 qualifies as an exercise of police power. State's police power embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or public health. (Quoted from *Wessel[/] v.*

Timberlake (1916), 95 Ohio St. 21, 34 [116 N.E. 43])

5. O.R.C. 9.481 proscribes a rule of conduct on citizens generally. As noted by the State, the statute applies to political subdivisions, but "the practical effect of the legislation and common sense tells us 'that O.R.C. 9.481 has a direct impact on the conduct of employees of political subdivisions generally' " *City of Canton*, supra, at 155, 766 N.E.2d 963.

For these reasons, the trial court concluded that R.C. 9.481 was constitutional under both *Canton* and the doctrine of statewide concern in addition to its earlier conclusion that R.C. 9.481 superseded Lima's ordinance under Section 34.

{¶ 17} Several other trial courts throughout the state have concluded that R.C. 9.481 is constitutional and supersedes municipal ordinances to the contrary for similar reasons. *Toledo v. State* (July 27, 2007), Lucas C.P. No. CI06-3235; *Dayton v. State* (June 6, 2007), Montgomery C.P. No. 06-3507; *Akron v. State* (Mar. 30, 2007), Summit C.P. No. CV 2006-05-2759; *Cleveland v. State* (Feb. 23, 2007), Cuyahoga C.P. No. 06-590463; *Am. Fedn. of State, Cty., & Mun. Emps. Local # 74 v. Warren* (Sept. 14, 2007), Trumbull C.P. No. 2006 CV 01489. The Ohio courts of appeals have not decided the constitutionality of R.C. 9.481.

IV. Analysis

{¶ 18} Lima asserts three assignments of error for our review. Since assignment of error two must be resolved before assignment of error one becomes relevant, we will analyze it first. Our disposition of assignments of error one and two renders assignment of error three moot.

{¶ 19} In its first assignment of error, Lima argues that the trial court incorrectly determined that R.C. 9.481 is constitutional pursuant to the doctrine of statewide concern. Lima contends that the trial court did not apply the doctrine of statewide concern within the context of the *Canton* test. 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. Under a proper formulation of the *Canton* test, argues Lima, R.C. 9.481 is not a "general law"; and therefore does not supersede Lima's home-rule authority.

{¶ 20} The state argues that the proper analysis for determining whether R.C. 9.481 is constitutional is not *Canton*'s home-rule analysis, but rather the analysis outlined in *Am. Assn. of Univ. Professors v. Cent. State Univ.* and *Rocky River IV.* (1999), 87 Ohio St.3d 55, 717 N.E.2d 286, 43 Ohio St.3d 1, 539 N.E.2d 103. The state claims that *Cent. State Univ.* and *Rocky River IV*, like this case and unlike *Canton*, involved laws enacted pursuant to Section 34, Article II of the Ohio Constitution.

{¶ 21} Lima agrees with the state that laws validly enacted pursuant to Section 34, Article II of the Ohio Constitution supersede local ordinances passed pursuant to Article XVIII, Section 3 of the Ohio Constitution, the home-rule authority. However, Lima alleges in its second assignment of error that R.C. 9.481 was not validly enacted pursuant to Section 34, Article II of the Ohio Constitution.

***5** {¶ 22} Therefore, the first issue before this court is whether R.C. 9.481 was validly enacted pursuant to Article II, Section 34 of the Ohio Constitution. If the answer to this inquiry is 'yes,' the parties agree that R.C. 9.481 supersedes Lima Ordinance No. 201-00; if the answer is 'no,' then the *Canton* traditional home-rule analysis applies, and Lima's first assignment of error becomes relevant.

Assignment of Error No. II

The trial court erred in concluding R.C. 9.481 was a valid enactment pursuant to Article II, Section 34 of the Ohio Constitution.

{¶ 23} In its second assignment of error, Lima argues that R.C. 9.481 was not validly enacted pursuant to Article II, Section 34, because "Section 34 * * * address[es] employment issues directly related to the working environment." The state counters that Section 34's general welfare clause

applies to "conditions of employment," and since residency is one such condition, R.C. 9.481 is within Section 34's grant of authority.

{¶ 24} At oral argument, Lima asserted that "conditions of employment" and "conditions for employment" are distinct issues, because the former means conditions within the working environment, whereas the later means qualifications for employment. Lima concedes that Section 34's grant of authority covers working environment conditions, but disagrees that it extends to qualifications for employment. We agree with Lima that Section 34's language, legislative history, and case law support a more limited grant of legislative authority than the state presents.

A. Section 34's Plain Language

[5] {¶ 25} "Generally speaking, in construing the Constitution, we apply the same rules of construction that we apply in construing statutes." *State v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206, 811 N.E.2d 68, ¶ 14. " '[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous.' " *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶ 38, quoting *BedRoc Ltd., LLC v. United States* (2004), 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338.

{¶ 26} Section 34, Article II of the Ohio Constitution provides:

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

Section 34's plain text provides four clauses. The first three are grants of legislative authority; the fourth is a supremacy clause. First, Section 34 grants the General Assembly the authority to pass laws "fixing and regulating the hours of labor" ("hours clause"). Second, Section 34 grants the General Assembly authority to pass laws "establishing a minimum wage" ("minimum-wage clause"). Third, Section 34 grants the General Assembly authority to pass laws "providing for the comfort, health, safety, and general welfare of all employes" ("general-welfare clause"). Fourth, Section 34 provides that "no other provision of the constitution shall impair or limit this power" ("supremacy clause").

***6** {¶ 27} Lima argues that the general-welfare clause grants the General Assembly authority to pass laws addressing "employment issues directly related to the working environment." The general welfare clause states laws may be passed "providing for the comfort, health, safety, and general welfare of employees." The general-welfare clause, thus, provides that the General Assembly may pass laws providing for the 'general welfare.' General welfare means "[t]he public's health, peace, morals, and safety." Black's Law Dictionary (8th Ed.2004) 1625; *Mirick v. Gims* (1908), 79 Ohio St. 174, 179, 86 N.E. 880. Usually, the term 'general welfare' is associated with the state's police powers, which are broad and discretionary. *Gims*, 79 Ohio St. at 179, 86 N.E. 880.

{¶ 28} The general-welfare clause's language is, however, limited by subject matter. The general-welfare clause's plain language requires that the General Assembly enact laws providing for the general welfare "of all employes." Lima's assignment of error, thus, raises the issue of whether the term "employes" in Section 34 means employees acting within the scope of their employment (i.e. within the working environment) or whether "employes" refers to the status of being an employee, which transcends any particular locus. In other words, does the term "employes" refer to the status of being an employee 24 hours per day, which attaches at hiring and sheds at firing ("employee" in its broadest sense), or does the term have a more limited meaning, which is intricately tied to a particular locus; here, the work environment? If the later interpretation is correct, the plain language would support finding that laws passed pursuant to Section 34's general-welfare clause must address issues related to the employees' working environment as Lima argues. If the former interpretation is correct, then the plain language would support finding that laws passed pursuant to Section 34 *can* address issues beyond the employees' working environment as the state argues.

{¶ 29} The common law already recognizes the status-conduct distinction of an employee, for

example, in tort law. The doctrine of respondeat superior [FN2] requires that an employer answer for torts committed by an employee. However, it is a settled tort law rule that an employer is only liable for the torts committed by an employee under the doctrine if the employee commits the tort while acting within the scope of his or her duties. See e.g. *Byrd v. Faber* (1991), 57 Ohio St.3d 56, 58, 565 N.E.2d 584. Consequently, the law recognizes that one may be an employee in status, but not by conduct. Since other areas of law draw this distinction, the scope of the term 'employees' in Section 34 should be considered.

{¶ 30} Since the meaning of the term "employes" is not defined within the text of the Section 34, we must interpret it consistent with common usage. R.C. 1.42; *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, 817 N.E.2d 76, ¶ 23. Black's Law Dictionary defines 'employee' as

> *7 [a] person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

(8th Ed.2004) 564. The American Heritage Dictionary defines "employee" as: "[a] person who works for another in return for financial or other compensation." (2nd College Ed.1985) 250. Neither definition provides a definitive conclusion regarding the scope of the term 'employee.' Both definitions refer to the status of being an employee, but Black's Law definition also emphasizes employer control over work performance, which generally applies when an employee is acting within the scope of his or her employment.

{¶ 31} Since the common definition of "employee" does not satisfactorily resolve its scope and, thus, the extent of the General Assembly's general welfare authority under Section 34, we must utilize other rules of statutory interpretation.

B. Section 34 & Noscitur a Sociis

[6] {¶ 32} As the Ohio Supreme Court has noted, " 'the natural meaning of words is not always conclusive as to the construction of statutes.' " *Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, at ¶ 40. When the meaning of a word or phrase is unclear, the statutory doctrine of noscitur a sociis instructs a reviewing court to determine its meaning by the words immediately surrounding it. Black's Law Dictionary (8th Ed.2004) 1087. See also, *Wilson v. Stark Cty. Dept. of Human Serv.* (1994), 70 Ohio St.3d 450, 453, 639 N.E.2d 105.

{¶ 33} The meaning of the Section 34's third clause, then, must be interpreted consistent with Section 34's first and second clauses, which, like the general-welfare clause, provide grants of legislative authority. We agree with Lima, that if the general welfare clause's grant of authority is read consistent with the hours clause and the minimum wage clause, as the doctrine of noscitur a sociis instructs, then the general welfare clause grants the General Assembly authority to pass laws regulating work environment conditions.

{¶ 34} The general-welfare clause of Section 34 grants the General Assembly authority to pass laws "providing for the comfort, health, safety, and general welfare of all employes." As we noted above, Section 34's first clause grants the General Assembly the authority to pass laws "fixing and regulating the hours of labor," and Section 34's second clause grants the General Assembly authority to pass laws "establishing a minimum wage." The hours and minimum-wage clauses address working terms and conditions within the working environment context; they do not address qualifications for employment nor do they address issues outside of the working environment. Therefore, noscitur a sociis instructs that the general-welfare clause should, likewise, be interpreted to address working environment conditions.

{¶ 35} Not only should we interpret the scope of the general-welfare clause in the same context as the hours and minimum-wage clauses, we should also interpret the term "general welfare" *within* the third clause in relation to the words directly preceding and following it. Common sense dictates that the words "comfort," "health," and "safety" relate to working environment conditions. Moreover, these

terms, like "general welfare," are followed by the limiting term "employees." We, should therefore interpret "general welfare" to be a grant of legislative authority for laws affecting the employees' work environment conditions.

***8** {¶ 36} Thus, the doctrine of noscitur a sociis applied to the general-welfare clause as a whole and to its components supports Lima's argument that the clause grants legislative authority for the purpose of passing laws that affect the employees' working environment.

C. Section 34 Legislative History[FN3]

[7] [8] {¶ 37} "If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the provision to determine its meaning." *Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶ 14, citing *Castleberry v. Evatt* (1946), 147 Ohio St. 30, 33 O.O. 197, 67 N.E.2d 861, paragraph one of the syllabus. "In determining legislative intent when faced with an ambiguous statute, the court may consider several factors such as circumstances under which the statute was enacted, the objective of the statute, and the consequences of a particular construction." *Bailey v. Republic Engineered Steels, Inc.* (2001), 91 Ohio St.3d 38, 40, 741 N.E.2d 121, citing R.C. 1.49; *State v. Jordan* (2000), 89 Ohio St.3d 488, 492, 733 N.E.2d 601. Since we have determined that the term 'employees' is ambiguous, and we cannot ascertain the scope of authority granted under Section 34's general-welfare clause by looking at its plain language, we turn to the legislative history for guidance.

1. Historical Circumstances

{¶ 38} The early 1900s were difficult times for American factory workers. The working environment often included long hours, low wages, and dangerous working conditions. Murlo, Priscilla A.B. Chitty, From the Folks Who Brought You the Weekend (New Press 2001) 145. See also, generally, Derks, Scott, Working Americans 1880-1999, Volume 1: The working Class (Grey House Pub.2000). Legislative efforts to remedy these woes were stifled by both state and federal courts striking down laws for violating the freedom to contract, which courts found as a substantive due process right. *Rocky River*, 43 Ohio St.3d at 26, fn. 31-32, 539 N.E.2d 103 (Wright, J., dissenting). One of the most infamous of this line of cases was *Lochner v. New York*, wherein the U.S. Supreme Court struck down a New York law setting a sixty-hour-per-week maximum for work in bakeries. (1905), 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937.

{¶ 39} The Ohio Constitutional delegates were aware of both factory working conditions and the legal climate when Section 34 was passed. Several delegates recognized the working conditions at factories. Mr. Farrell commented at length about the intolerable working conditions in American factories when debating Section 34's minimum-wage language:

> But, gentleman of the Convention, I have been compelled to change my position on th[e] question [of minimum wage] in the last few years. When one considers the relentless war that has been waged against the trade union movement in this country, and the war of extermination that is now going on, and, in some instances, meeting with success, in putting some unions out of business, and the general application of "black list," all for no other reason than the piling up of capitalistic profits without any regard for justice in the premises, when we see the attempts making to build up industries on the foundations of *wages too low to admit of decent standards of family life, and hours of labor too long to admit of sufficient rest and relaxation for even moderate health, we are driven to the knowledge that it is time that a decent humane effort should be made to remedy this un-American condition.*

***9** (Emphasis added). 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912) 1328.

{¶ 40} The delegates were also aware of the courts' hostile attitude toward progressive labor reform. Mr. Lampson asked Section 34's reporting committee, "Did you investigate the question as to whether that provision in the constitution relating to the passage of laws violating the obligation of

contract has any bearing on this proposal?" Id. at 1335. In response, Mr. Dwyer answered:

> The courts have been deciding cases. Take that bake-shop case in New York [i.e. *Lochner*]. The supreme court there decided it was a question of private contract about the hours of labor. Our courts are becoming more progressive. They are catching the spirit of the time and we should put a clause in the constitution that will give the courts an opportunity to more liberally construe these matters than they have done in the past.

Id. Thus, it is evident from Section 34's debates that the constitutional delegates were well aware of both the working conditions in American factories and the legal climate with respect to labor reform.

2. Section 34's Objective

{¶ 41} On January 24, 1912, what is now Section 34 was introduced to the Ohio Constitutional Convention by Mr. Farrell, a delegate from Cuyahoga County, as Proposal No. 122, entitled "Relative to employment of women, children and persons engaged in hazardous employment." 1 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912) 106. On January 25, 1912, Proposal No. 122 was sent to the committee on labor. Id. at 118. On March 19, 1912, Proposal No. 122 was reported to the convention with an amendment to insert

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

Id. at 755. The report was agreed to and the language amended. Id.

{¶ 42} On April 22, 1912, Proposal No. 122 was brought before the convention and read a second time, whereupon some debate was heard. 2 Proceedings and Debates, supra, at 1328. Mr. Farrell began his remarks noting:

> Since this proposal has been on the calendar I have heard some little objection to it, *especially with reference to* the clause which would permit the legislature to pass minimum wage legislation, and to that clause I intend to direct my remarks exclusively.

(Emphasis added). Id. On the other hand, Mr. Crites began his remarks noting that: "[f]irst, you will note that this proposal is for the *sole purpose* of limiting the number of hours of labor; second, to establish a minimum wage for the wageworker." Id. at 1331. (Emphasis added). During his remarks in support of the proposal, Mr. Dwyer commented that employers ought to

> ***10** give your employees fair living wages, good sanitary surroundings *during hours of labor,* protection as far as possible against danger, a fair working day. Make his life as pleasant for him as you can consistent with his employment.

(Emphasis added). Id. at 1332. Mr. Elson commented, "It seems to me that the kernel of this proposal is a minimum wage." Id. at 1336. On the other hand, Mr. Harris offered his support for Proposal No. 122, except the minimum-wage language:

> I am very anxious to support the remainder of the proposal, and if the authors will strike the words "minimum wage," the proposal will receive not only the united support of this Convention but of the people of Ohio.

Id. at 1337. Following this debate, the question was called and the proposal passed for the first time with eighty yeas and thirteen nays. Id. at 1338.

{¶ 43} On May 22, 1912, Proposal No. 122 was reported from the committee on Arrangement and Phraseology with an amendment to "[s]trike out the title and insert: 'To submit an amendment by adding section 34, Article II of the constitution.-Welfare of employes' " and make other grammatical

corrections. Id. at 1742.

{¶ 44} On May 23, 1912, Proposal No. 122 was read for the third time whereupon Mr. Harris offered an amendment to strike the words "minimum wage." Id. at 1784. Debate on the amendment proceeded, but, ultimately, the amendment was tabled and the proposal passed for the second time with 96 yeas and five nays. Id. at 1786. Proposal No. 122's language at that time read the same as Section 34 now reads. Id.

{¶ 45} On May 31, 1912, Proposal No. 122 was reported from the committee on Arrangement and Phraseology without amendment and passed a third and final time [FN4] with 87 yeas and eight nays. Id. at 1955.

[9] {¶ 46} Reviewing the constitutional debates in light of the historical context preceding Proposal No. 122 (now Section 34), it is obvious that its purpose was to empower the General Assembly with legislative authority over (1) the hours of labor, (2) a minimum wage, and (3) working environment. Although the debates surrounding Proposal No. 122 focused on its minimum wage provision, it is clear from our own review of the debates that the minimum wage provision was not Section 34's only subject. See also, *Rocky River*, 43 Ohio St.3d at 14-16, 539 N.E.2d 103. Mr. Dwyer and Mr. Harris's remarks demonstrate that Proposal No. 122's supporting delegates were also concerned with working environment conditions within Ohio.

{¶ 47} R.C. 9.481 does not fall within Section 34's original intent as evidenced by the historical context and the Convention proceedings. Rather, R.C. 9.481 attempts to regulate aspects of employment having nothing to do with the working environment-namely, where an employee resides after leaving work.

3. Interpretative Consequences

***11** {¶ 48} We must also consider the affect of interpreting Section 34's general welfare clause beyond the working environment. *Bailey*, 91 Ohio St.3d at 40, 741 N.E.2d 121, citing R.C. 1.49; *Jordan*, 89 Ohio St.3d at 492, 733 N.E.2d 601. If the general-welfare clause extends to issues outside the working environment, then what topic affecting employees would ever exceed its scope?

{¶ 49} Consider, for example, a law that would require employers to provide paid transportation to and from the workplace. Although the law does not concern the hours of labor or a minimum wage, it certainly affects the "general welfare" of employees. With soaring gas prices, congested traffic, and never-ceasing road construction, such a law would bring peace-of-mind to many employees across the state. If we agree with the state's interpretation of the general-welfare clause (i.e. beyond the working environment) this proposed law must also prevail. Like R.C. 9.481, the law would affect employees if we simply mean employees in status, as discussed above in Section IV A, but it would not affect employees within the scope of their employment. We simply cannot agree that Proposal No. 122's supporting delegates intended its language to extend beyond the working environment.

D. Section 34 Case Law

{¶ 50} The state argues that case law supports a broad interpretation of the General Assembly's authority under Section 34. The state further argues that the cases relied upon by Lima for its argument that Section 34's general-welfare clause is limited to issues directly related to the working environment expressly contradict this narrow interpretation. We agree, in part, and disagree, in part, with the state's interpretation of Section 34 general-welfare case law.

[10] {¶ 51} We agree with the state that Section 34 is a broad grant of legislative authority. *Am. Assn. of Univ. Professors v. Cent. State Univ.* (1999), 87 Ohio St.3d 55, 61, 717 N.E.2d 286 ("This court has repeatedly interpreted Section 34, Article II as a broad *grant* of authority to the General Assembly, not as a limitation on its power to enact legislation"); *Rocky River*, 43 Ohio St.3d at 13, 539 N.E.2d 103 (Section 34 "constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces," citing *State ex rel. Bd. of Trustees*

of Police Firemen's Pension Fund v. Bd. of Trustees of Police Relief & Pension Fund of Martins Ferry (1967), 12 Ohio St.2d 105, 41 O.O.2d 410, 233 N.E.2d 135). However, the fact that the legislative grant of power is broad does not mean that the power exceeds the amendment's language or original intent; therefore, a further analysis is required.

{¶ 52} An example of an appropriate analysis is found in *Cent. State,* supra. In that case, the American Association of University Professors ("AAUP") challenged R.C. 3345.45, which required a mandatory ten percent increase in faculty classroom instruction at state universities. 87 Ohio St.3d at 56, 717 N.E.2d 286. In addition to its equal protection claims, AAUP argued that R.C. 3345.45 was outside the General Assembly's authority under Section 34. Id. at 60, 717 N.E.2d 286. AAUP argued that only laws *benefiting* employees could be passed pursuant to Section 34, and since R.C. 3345.45 *burdened* employees by increasing work hours, it was invalid. Id. The Ohio Supreme Court disagreed.

***12** {¶ 53} The Ohio Supreme Court first noted that Section 34 powers are broad, as pointed out by the state. Id. at 61, 717 N.E.2d 286. However, the analysis did not stop there; instead, the court then went back to Section 34's plain language and reasoned that, in effect, AAUP was adding limiting language that did not exist in Section 34:

> AAUP's position would require Section 34 to be read as a limitation, in effect stating: "No law shall be passed on the subject of employee working conditions *unless it furthers* the comfort, health, safety and general welfare of all employees."

Id. Beyond the plain language analysis, the court also examined the practical effect of AAUP's interpretation and found that it was problematic in the context of many existing laws other than R.C. 3345.45. Id. Therefore, the state's emphasis on the Ohio Supreme Court's interpretation of Section 34 powers as "broad," although relevant, is not dispositive to the issue raised in this case; a further analysis is required.

{¶ 54} To begin with, we disagree with the state that *Pension Fund* or *Rocky River* "expressly contradict" Lima's argument that Section 34's general-welfare clause is limited to the working environment. On the contrary, these cases, read in their totality with an understanding of the laws at issue therein, lend support to Lima's argument that Section 34's general welfare clause is more limited in scope than the state alleges. Furthermore, consistent with the amendment's primary concern, Section 34 general welfare case law is limited to employee economic welfare.

{¶ 55} In *Pension Fund,* the municipality challenged several sections of R.C. Chapter 742 and specifically R.C. 742.26, which required that municipalities transfer their firefighter and police pension and relief fund assets into a state-controlled disability and pension fund. 12 Ohio St.2d at 106, 41 O.O.2d 410, 233 N.E.2d 135. The Ohio Supreme Court upheld R.C. 742.26 apparently under Section 34's general-welfare clause.

{¶ 56} The state of Ohio argues that pensions and disability benefits, the subject of *Pension Fund,* are not directly related to the work environment; and therefore, the General Assembly's Section 34 general-welfare authority extends beyond the work environment. The state reasons that pensions are received after retirement; and therefore, R.C. Chapter 742 is not related to the employee's working environment. Although pensions are received after retirement and, therefore, the effects of R.C Chapter 742 are realized after the employee is no longer in the working environment, R.C. Chapter 742 pension and disability benefits are calculated based on an employee's wages and years of service. R.C. 742.3716 and 742.39; Ohio Adm.Code 742-3-02. Consequently, R.C. Chapter 742 pension and disability benefits, upheld by the Ohio Supreme Court, are related to the working environment, since they are calculated with respect to time and wages earned in the workplace.

***13** {¶ 57} Furthermore, pensions and disability benefits are nothing more than additional wages and compensation. Section 34's minimum-wage clause was enacted to give the state the authority to establish a wage foundation, but certainly the state is free to go beyond that foundation. The state, as employer, is also able to contract with its employees regarding wages and compensation, and does so regularly. Nothing in Section 34 was meant to limit this preexisting state power.

{¶ 58} In *Rocky River v. State Emp. Relations Bd.*, the Ohio Supreme Court determined that the Public Employees' Collective Bargaining Act, R.C. Chapter 4117, which provided for binding arbitration, addressed the "general welfare" of employees; and therefore, was a valid exercise of the General Assembly's Section 34 powers. 43 Ohio St.3d 1, 13, 539 N.E.2d 103. Like *Pension Fund*, R.C. Chapter 4117's legislative end was related to the work environment and the worker as an 'employee' working within the scope of his or her duties. The purpose of a collective bargaining agreement is to provide for agreed-upon wages, hours, benefits, and other terms and conditions of employment, and the binding arbitration provided by R.C. Chapter 4117 was enacted to reach such an agreement. R.C. 4117.10. Wages, hours, benefits, and other terms and conditions of employment impact the worker in the work place.

{¶ 59} Contrary to the state's arguments, both *Pension Fund* and *Rocky River* do suggest that laws enacted pursuant to Section 34's general welfare language must have, at minimum, *some* nexus between their legislative end and the working environment. R.C. 9.481, unlike the laws in *Pension Fund* and *Rocky River*, lacks any nexus between its legislative end and the working environment. Rather, R.C. 9.481 attempts to regulate where an employee may reside *outside* of the work place.

{¶ 60} More important, like *Rocky River* and *Pension Fund*, other cases interpreting Section 34's general-welfare language are limited to legislation providing for the economic welfare of employees. See e.g. *State ex rel. Mun. Const. Equip. Operator's Labor Council v. Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831, 870 N.E.2d 1174 (sick-leave benefits); *State ex rel. Horvath v. State Teachers Retirement Bd.* (1998), 83 Ohio St.3d 67, 697 N.E.2d 644 (teacher's savings plans); *Cincinnati v. Ohio Council 8, Am. Fedn. of State, Cty., & Mun. Emp.* (1991), 61 Ohio St.3d 658, 576 N.E.2d 745 (collective bargaining). In fact, Justice Cook has noted that "[e]conomic legislation related to the welfare of employees, including pension funds for public employees, is granted favored status under Section 34, Article II of the Ohio Constitution." *Horvath*, 83 Ohio St.3d at 74, fn. 2, 697 N.E.2d 644. One of the main purposes behind Section 34 was to address the economic welfare of employees who were earning meager wages during the 1900's. Consistent with Section 34's genesis, the Ohio Supreme Court has limited the scope of Section 34's general-welfare clause to economic legislation. FN5

***14** {¶ 61} R.C. 9.481, unlike the laws upheld under Section 34's general welfare clause, is not economic legislation. Consequently, upholding R.C. 9.481 under Section 34's general welfare clause would expand its scope beyond that recognized by the Ohio Supreme Court; and this, we decline to do. Furthermore, if the laws passed under Section 34's general welfare clause do not have *some* nexus between their legislative end and the working environment, we see no boundary to the state's power over the employee and employer. We cannot agree that the 1912 Constitutional delegates intended such a result.

E. Conclusion

{¶ 62} First, we determined that Section 34's plain language provides that laws may be passed providing for the "general welfare of all employes." Second, since the plain meaning of the term "employes" can be more limited than simply signifying a status and is, therefore, ambiguous, we applied the statutory doctrine of noscitur a sociis and determined that the general-welfare clause should be limited to the working environment. Third, we analyzed the legislative history, including the historical context in which Section 34 was passed and the debates, and again determined that Section 34's general-welfare clause should be limited to the working environment. Fourth and finally, we analyzed Section 34 general welfare case law and determined that although Section 34 general-welfare powers are broad, they are broad within the context of the working environment. Further, we noted that cases interpreting Section 34's general welfare clause are limited to laws affecting employee economic welfare.

[11] [12] {¶ 63} For all these reasons, we conclude that laws enacted pursuant to Section 34's general-welfare clause must, at minimum, have *some* nexus between their legislative end and the working environment. Since R.C. 9.481 lacks any nexus between its legislative end-restricting political subdivisions from requiring residency as condition of employment-and the working

environment, we hold that R.C. 9.481 was not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution.

{¶ 64} Lima's assignment of error two is therefore sustained.

Assignment of Error No. I

The trial court erred in finding R.C. 9.481 is a general law of statewide concern

{¶ 65} Lima's second assignment of error having been sustained, Lima's first assignment of error is now relevant and dispositive to this case. In its first assignment of error, Lima argues that the trial court incorrectly determined that R.C. 9.481 is constitutional pursuant to the doctrine of statewide concern. Lima contends that the trial court did not apply the doctrine of statewide concern within the context of the *Canton* test. Under a proper formulation of the *Canton* test, argues Lima, R.C. 9.481 is not a "general law"; and therefore, does not supersede Lima's home-rule authority. In addition, Lima argues that its residency requirement is a matter of local self-government; and therefore, prevails under the *Canton* test.[FN6]

***15** {¶ 66} The state argues that regulation of residency requirements has transformed into a matter of statewide concern due to the extraterritorial effects that such requirements have on other communities. Further, the state argues that since Lima enacted its residency pursuant to its local self-government power and not its police power, the *Canton* test does not apply. We disagree with the state's interpretation of the applicable case law and therefore find that the state's arguments lack merit.

[13] {¶ 67} First, the state's argument that *Canton* does not apply when a municipality acts pursuant to its local self-government power is correct, but it certainly does not mean that the state prevails.[FN7]

> The first step in a home-rule analysis is to determine "whether the matter in question involves an exercise of local self-government or an exercise of local police power." If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction. On the other hand, if, as is more likely, the ordinance pertains to concurrent police power rather than the right to self-government, the ordinance that is in conflict must yield in the face of a general state law.

Am. Financial Servs. Assn. v. Cleveland, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23, citing *Twinsburg v. State Emp. Relations Bd.* (1988), 39 Ohio St.3d 226, 228, 530 N.E.2d 26, overruled on other grounds, *Rocky River*, 43 Ohio St.3d 1, 539 N.E.2d 103. On the contrary, if Lima enacted its residency requirement pursuant to its local self-government power, the "analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction," and Lima prevails. Id.

{¶ 68} This result is also supported from the fact that the *Canton* three-prong preemption test was developed in order to determine whether a municipal ordinance must yield to the provisions of a state statute. *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9; *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 244, 602 N.E.2d 1147. *Canton* prong two requires that: "the ordinance is an exercise of the police power, rather than local self-government." Therefore, if (1) the *Canton* test determines whether a municipal ordinance must yield to the provisions of a state statute, (2) *Canton* prong two requires that Lima enacted its residency requirement pursuant to the police power, and (3) Lima enacted its residency requirement as an act of local self-government as the state argues, then Lima's ordinance need not yield to R.C. 9.481.

{¶ 69} Second, the state is appealing to the doctrine of statewide concern as an independent ground for preemption. That argument, however, was rejected by the Ohio Supreme Court in *Am. Fin. Servs.*, supra. The Ohio Supreme Court explained, "We recognize, however, that the application of

'statewide concern' as a separate doctrine has caused confusion, because some courts have considered the doctrine a separate ground upon which the state may regulate." 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, at ¶ 29, citing *Dayton*, 157 Ohio App.3d 736, 2004-Ohio-3141, 813 N.E.2d 707, ¶ 32-76. The court in *Am. Financial Servs.* clarified that the statewide-concern doctrine is *part of* the *Canton* three-prong preemption test and used to determine whether "the ordinance is an exercise of the police power, rather than local self-government" (*Canton* prong two). Id. 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 30.

***16** {¶ 70} Since we do not believe that the state intended to admit that *Canton* prong two is lacking, we will proceed with the *Canton* analysis, beginning with Lima's first argument that R.C. 9.481 is not a "general law" as required by *Canton* prong three. If *Canton* prong three is met, we must determine whether *Canton* prong two is met; however, if prong three is not met, then the *Canton* test fails and the inquiry is over.

[14] {¶ 71} Prong three of *Canton*'s preemption test requires that the state statute be a "general law." 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 9. Whether the state statute is a general law is, itself, determined by a separate four-prong test. Id. at ¶ 21. To be a general law under prong three of *Canton*'s preemption test, the statute must

> (1)be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Id. Lima argues that R.C. 9.481 does not meet prongs three and four of the *Canton* general-law test. We agree.

A. Police, Sanitary, or Similar Regulation

{¶ 72} The court in *Canton* explained that "general laws" within Section 3, Article XVIII of the Ohio Constitution means "statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations." 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 31, citing *W. Jefferson v. Robinson*, 1 Ohio St.2d 113, 30 O.O.2d 474, 205 N.E.2d 382, at paragraph three of the syllabus. R.C. 9.481 provides: "Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." Thus, on its face, R.C. 9.481 clearly purports "to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations." Id.

{¶ 73} However, in *Canton* the court determined that paragraph three of *Robinson*, supra, really meant "that a statute which prohibits the exercise by a municipality of its home rule powers *without such statute serving an overriding statewide interest* would directly contravene the constitutional grant of municipal power." (Emphasis added.) Id., citing *Clermont Environmental Reclamation Co. v. Wiederhold* (1982), 2 Ohio St.3d 44, 48, 2 OBR 587, 442 N.E.2d 1278. Thus, the critical inquiry in this case is whether allowing political subdivision employees to reside in any part of the state is an "overriding state interest."

***17** {¶ 74} The court in *Canton* did not explain what it meant by "overriding state interest," nor did it definitely conclude that the law at issue in that case was one such "overriding state interest." Rather, the court in *Canton* merely concluded that "R.C. 3781.184(C), on its face, *appears* to serve an overriding state interest in providing more affordable housing options across the state." (Emphasis added.) 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 33. The court in *Clermont*, on the other hand, concluded that the issue of "whether there will be safe and properly operated hazardous waste disposal facilities within this state to receive the potentially dangerous wastes from Ohio industry and, by so doing, prevent such wastes from fouling our water and countryside" was an

overriding state interest. 2 Ohio St.3d at 49, 2 OBR 587, 442 N.E.2d 1278.

[15] [16] {¶ 75} Even if there may be a state interest at stake in this case, it is not an "overriding" one. When passing R.C. 9.481, the General Assembly declared its intent to recognize "[t]he inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution." Sub. S.B. No. 82, 2. However, "[i]nterpretation of the state and federal Constitutions is a role exclusive to the judicial branch." *Beagle v. Walden* (1997), 78 Ohio St.3d 59, 62, 676 N.E.2d 506. Although the citizens of Ohio may have a right to determine where they live under Article 1, Section 1, citizens do not have a right to live where they want *and* demand employment with a particular employer. See *Smeltzer v. Smeltzer* (Nov. 24, 1993), 7th Dist. No. 92-C-50, 1993 WL 488235, at *1, citing *Allison v. Akron* (1974), 45 Ohio App.2d 227, 343 N.E.2d 128; *Cutshall v. Sundquist* (C.A.6, 1999), 193 F.3d 466, 479; *Morgan v. Cianciola* (Dec. 28, 1987) 7th Dist. No. 87 C.A. 130, 1987 WL 31935, at *1 ("The constitution does not guarantee the right to hold a specific job with a particular employer, but, rather, the right 'to follow a chosen trade or occupation, and to earn a livelihood for oneself * * *' ").

{¶ 76} Certainly the preservation of a constitutional right would be an "overriding state interest" on the same scale as the state's interest in protecting the water supply from hazardous waste. However, there is no constitutional right to choose where one lives and, at the same time, demand employment from an unwilling employer. So, the state's interest in prohibiting political subdivisions from passing residency restrictions is not an 'overriding' one, like the state's interest was in *Clermont*, supra.

{¶ 77} On the other hand, Lima's interest in establishing residency as a qualification of employment is substantial. The mayor of Lima gave several important reasons for the residency requirement; specifically that it

(1) promotes the City's interest in the employment of individuals who are highly committed to the betterment of the City where they both live and work;

***18** (2) enhances the quality of work performance by employing individuals who are knowledgeable about and aware of issues and conditions in the City;

(3) promotes the employment of individuals with a greater empathy for the real and long term concerns and problems of the people of Lima;

(4) promotes the development and maintenance of a workforce with a greater personal stake in working to ensure the City of Lima's improvement and progress over the long term;

(5) promotes the availability of resident employees who are easily available for emergency situations and who can respond promptly if on-call for certain duties;

(6) promotes the ability of the City to maintain a workforce that reflects the racial and ethnic diversity of its population and its absence would undermine those efforts;

(7) produces economic benefits that flow to a city from having resident employees which are of a particular importance in an economically depressed city such as Lima;

(8) promotes the value of real estate in the City;

(9) promotes the development and maintenance of strong neighborhoods anchored by stable, wage-earning City employees and their families; and

(10) promotes numerous other benefits to the City of Lima and helps avoid other harms.

(Mayor of Lima Affidavit at 8). In addition to these reasons, the qualification, duties, and selection of municipal officers has traditionally been within a municipality's home-rule authority. *State ex rel.*

Lentz, v. Edwards (1914), 90 Ohio St. 305, 107 N.E. 768; *State ex rel. Frankenstein v. Hillenbrand* (1919), 100 Ohio St. 339, 343-345, 126 N.E. 309; *State ex rel. Mullin v. Mansfield* (1971), 26 Ohio St.2d 129, 55 O.O.2d 239, 269 N.E.2d 602; *N. Ohio Patrolmen's Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375, 15 O.O.3d 450, 402 N.E.2d 519; *State Personnel Bd. of Review v. Bay Village Civ. Serv. Comm.* (1986), 28 Ohio St.3d 214, 216, 28 OBR 298, 503 N.E.2d 518. The Ohio Supreme Court has extended the home-rule authority to the appointment and regulation of police officers and other civil service functions as well. *Harsney v. Allen* (1953), 160 Ohio St. 36, 40, 50 O.O. 492, 113 N.E.2d 86, citing *State ex rel. Lentz v. Edwards* (1914), 90 Ohio St. 305, 107 N.E. 768; *State ex rel. Regetz v. Cleveland Civ. Serv. Comm.* (1995), 72 Ohio St.3d 167, 169, 648 N.E.2d 495, citing *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, 5 O.O.2d 481, 151 N.E.2d 722; *State ex rel. Meyers v. Columbus* (1995), 71 Ohio St.3d 603, 606, 646 N.E.2d 173, citing *State ex rel. Bardo v. Lyndhurst* (1988), 37 Ohio St.3d 106, 108, 524 N.E.2d 447; *State ex rel. Hipp v. N. Canton* (1996), 75 Ohio St.3d 221, 224, 661 N.E.2d 1090. Lima has a similar interest in the qualifications of its other employees as well, and exercising legislative authority in furtherance of this interest should be within the home-rule authority.

{¶ 78} Even if the state had an "overriding" interest in this case, R.C. 9.481 has several exceptions similar to the law in *Canton,* which defeats the state's proposed interest. The court in *Canton* recognized that the state's proposed interest in passing R.C. 3781.184(C) was to provide affordable housing options across the state; however, the law had an exception for restrictive covenants in private deeds. 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 33, citing R.C. 3781.184(D). The court in *Canton* found that this exception actually defeated the state's purpose; and therefore, the law failed to set forth police, sanitary, or similar regulations and only served to limit the legislative authority of municipalities. Id.

***19** {¶ 79} The General Assembly's purpose in passing R.C. 9.481 was

> to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees.

Sub. S.B. No. 82, Section 3. First, R.C. 9.481, like R.C. 3781.184(C), on its face exempts private parties and the state, itself. R.C. 9.481(C). Second, like R.C. 3781.184(C), R.C. 9.481 has two further exemptions for "volunteers" and for employees required to respond to "emergencies" or "disasters." R.C. 9.481(B)(2)(a) and (B)(2)(b). Thus, R.C. 9.481 has exemptions that defeat its purpose of generally prohibiting residency restrictions and, like the law at issue in *Canton*, fails to set forth police, sanitary, or similar regulations.

{¶ 80} We, therefore, find that R.C. 9.481 does not set forth police, sanitary, or similar regulations but merely limits the municipality's power to do the same, and prohibiting political subdivisions from requiring residency as a condition of employment is not an overriding state interest sufficient to meet prong three of *Canton*'s general-law test.

B. Prescribing a Rule of Conduct on Citizens Generally

[17] {¶ 81} Prong four of *Canton*'s general-law test requires that the statute "prescribe a rule of conduct upon citizens generally." 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21. The court in *Canton* explained that a general law " 'is [not] a limitation upon law making by municipal legislative bodies' " and has " 'no special relation to any of the political subdivisions of the state.' " 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 34, 38, citing *Youngstown v. Evans* (1929), 121 Ohio St. 342, 168 N.E. 844 (statute providing "that all municipal corporations shall have general power 'to make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both, but such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months' " does not prescribe a rule of conduct upon citizens generally); *Schneiderman v. Sesanstein* (1929), 121 Ohio St. 80, 84, 167 N.E. 158 (speed limits), quoting *Froelich v. Cleveland* (1919), 99 Ohio St. 376, 386, 124 N.E. 212; *Clermont*, 2 Ohio St.3d 44,

2 OBR 587, 442 N.E.2d 1278 (hazardous-waste facility).

{¶ 82} This same standard has been applied by the Ohio Supreme Court in other home rule cases. *Robinson*, 1 Ohio St.2d at 117, 30 O.O.2d 474, 205 N.E.2d 382 (statute that purported to grant a municipality power to license solicitors does not prescribe a rule of conduct upon citizens generally); *Linndale v. State* (1999), 85 Ohio St.3d 52, 55, 706 N.E.2d 1227 (prohibiting local law-enforcement officers from issuing speeding and excess-weight citations on interstate freeways does not prescribe a rule of conduct upon citizens generally).

***20** {¶ 83} Like the statutes in *Canton*, *Youngstown*, and *Linndale*, R.C. 9.481 only purports to limit a municipality's legislative power and has a special relationship to the state political subdivisions. R.C. 9.481's plain language states: "Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." R.C. 9.481 is, on its face, a limitation of local legislative power and applies only to political subdivisions. As such, it fails prong four of *Canton*'s general-law test.

C. Conclusion of *Canton*'s General-Law and Preemption Tests

[18] {¶ 84} R.C. 9.481 fails prongs three and four of *Canton*'s general-law test; therefore, R.C. 9.481 does not preempt Lima Ordinance No. 201-00 since it fails *Canton*'s three-part preemption test. 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 9, 21. Because we have determined that R.C. 9.481 fails prong three of *Canton*'s preemption test and all three prongs must be met, we need not consider the parties' arguments on whether R.C. 9.481 also fails prong two of *Canton*'s preemption test. Id., at ¶ 9. Since R.C. 9.481 fails *Canton*'s preemption test, it violates Section 3, Article XVIII of the Ohio Constitution. Id., 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 39.

{¶ 85} Lima's second assignment of error is, therefore, sustained.

Assignment of Error No. III

The trial court erred in not finding R.C. 9.481 violates Article II, Section 26 of the Ohio Constitution.

{¶ 86} In its third assignment of error, Lima argues that the trial court erred in not finding that R.C. 9.481 violates Article II, Section 26 of the Ohio Constitution (the Uniformity Clause). Since we have decided that R.C. 9.481 violates Section 3, Article XVIII of the Ohio Constitution, we need not decide whether it also violates the Uniformity Clause. *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 39; *Linndale*, 85 Ohio St.3d at 55, 706 N.E.2d 1227.

V. Conclusion

{¶ 87} A few closing remarks are appropriate before we conclude. We understand that residency requirements have a real impact on Ohio citizens and are often felt most by working families. Were we members of the Ohio legislature, our decision might be different than that required of us today. We, however, are judicial officers and have taken an oath to uphold the Ohio Constitution and the laws of this state-and to that oath we hope to be found faithful by those who have so entrusted us. Thus constrained, we summarize our conclusions of law:

{¶ 88} R.C. 9.481 was not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution, because Section 34's language, legislative history, and case law support finding that laws providing for the "general welfare of all employes" must have, at minimum, some nexus between their legislative end and the working environment.

{¶ 89} R.C. 9.481 is not a general law under *Canton* that would preempt Lima Ordinance No. 201-00; therefore, R.C. 9.481 violates Section 3, Article XVIII of the Ohio Constitution. Lima Ordinance

No. 201-00 is a valid exercise of local self-government pursuant to Section 3, Article XVIII of the Ohio Constitution and prevails, R.C. 9.481 notwithstanding.

***21** {¶ 90} Having found error prejudicial to the appellant herein in the particulars assigned and argued, we reverse the judgment of the trial court and remand for further proceedings consistent with this opinion.

Judgment reversed and cause remanded.

ROGERS, P.J., and WILLAMOWSKI, J., concur.

FN1. Amicus curiae, Local 334 of the International Association of Fire Fighters, has also submitted a brief in support of the state of Ohio in this case.

FN2. "Respondeat superior" is defined as "The doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency." Black's Law Dictionary (8th Ed.2004) 1338.

FN3. Much of the information herein was explained by the court in *Rocky River*; however, a fresh look at the legislative history is prudent.

FN4. Proposal No. 122 was passed three times, twice for committee report changes/amendments and one final time with all the amendments incorporated.

FN5. That is not to say that Section 34's *only* purpose was to address economic concerns or only minimum wages. As we have explained, the plain language of Section 34 also provides for (1) hours of labor, (2) minimum wages, (3) health, (4) comfort, and (5) safety. See *Rocky River*, 43 Ohio St.3d at 14-16, 539 N.E.2d 103.

FN6. Both the state and Lima concede that *Canton* prong one is met. The disagreement is whether prongs two and three are met.

FN7. In fact, Lima is arguing that its residency requirement was passed pursuant to its local self-government power and therefore *Canton* prong two fails.

--- N.E.2d ----, 2007 WL 4248278 (Ohio App. 3 Dist.), 183 L.R.R.M. (BNA) 2755, 2007 -Ohio- 6419

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

Court of Appeals of Ohio,
Sixth District, Lucas County.
City of **TOLEDO** and **City** of Oregon, Appellant
v.
STATE of Ohio, Appellee.
No. L-07-1261.
Decided April 25, 2008.

Background: City brought action against state, challenging validity of state statute invalidating municipal charter provisions requiring municipal employees to reside within the boundaries of the municipality as a precondition of their government employment. The Court of Common Pleas, Lucas County, found statute valid and entered summary judgment in favor of state. City appealed.

Holdings: The Court of Appeals, Osowik, J., held that:
(1) statute improperly infringed on constitutional municipal home rule authority, and
(2) city's residency requirement was a valid and proper exercise of the constitutional grant of municipal home rule authority.

Reversed.

Singer, J., dissented and filed opinion.

West Headnotes

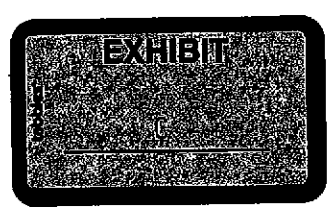
[1] KeyCite Citing References for this Headnote

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k77 Operation and Effect of Legislative Acts
268k79 k. Conflict with Charter or Act of Incorporation. Most Cited Cases

Statute invalidating municipal charter provisions requiring municipal employees to reside within the boundaries of the municipality as a precondition of their government employment improperly infringed on constitutional municipal home rule authority; residency requirement did not entail "on-duty" hours worked, wages earned, or workplace conditions, but rather involved an "off-duty" right voluntarily waived as a precondition of employment by those seeking and accepting municipal employment. Const. Art. 2, § 34, Art. 18, § 3; R.C. § 9.481.

[2] KeyCite Citing References for this Headnote

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k67 Appointment and Removal of Officers
268k67(1) k. In General. Most Cited Cases



Municipal charter provision requiring municipal employees to reside within the boundaries of the municipality as a precondition of their government employment, which provision expressly authorized

the granting of residency waivers in the interest of justice, was a valid and proper exercise of the constitutional grant of municipal home rule authority. Const. Art. 2, § 34, Art. 18, § 3.

West Codenotes

Held Unconstitutional
R.C. § 9.481

John Madigan, City of Toledo Director of Law, and Adam Loukx, Senior Attorney, for appellant.

Marc Dann, State of Ohio Attorney General, Sharon A Jennings and Pearl M. Chin, Assistant Attorneys General, for appellee.

Henry A. Arnett, for amicus curiae.

OSOWIK, J.
*1 {¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which granted summary judgment to appellee and denied it to appellant. The essence of this case revolves around the validity of a state statute enacted in 2006, R.C. 9.481, expressly to invalidate municipal charter provisions throughout Ohio requiring municipal employees to reside within the boundaries of the municipality as a precondition of their government employment.

{¶ 2} Under the disputed municipal charter residency requirements, prospective municipal employees voluntarily waive the right to maintain residency outside the boundaries of the municipality offering them employment upon acceptance of said employment. The residency requirement provision does incorporate flexibility, enabling exceptions to be made. Specifically, the city of Toledo Charter residency provision specifically allows residency waivers to be granted in order to accommodate unique circumstances or cases where it is shown that a waiver is required in the interests of justice.

{¶ 3} R.C. 9.481, was drafted to constitute a general prohibition of municipal charter employee residency requirements in Ohio, even where waivers are permitted in the interest of justice. R.C. 9.481 was enacted ostensibly under the legislature's authority to regulate the wages and working conditions of labor granted under Section 34, Article II of the Ohio Constitution.

{¶ 4} In its summary judgment ruling, the trial court declared R.C. 9.481 lawful and prevailing as applied to the conflicting municipal employee residency requirement provision of the city of Toledo Charter. For the reasons set forth below, this court reverses the judgment of the trial court.

{¶ 5} Appellant, the city of Toledo, sets forth the following two assignments of error:

{¶ 6} "No. 1 The trial court erred when it granted the State's motion for Summary Judgment, because Ohio Revised Code 9.481 was not properly enacted pursuant to Art. II, § 34 of the Ohio Constitution.

{¶ 7} "No. 2 The trial court erred when it denied the City's Motion for Summary Judgment because the City's Charter residency requirements prevail over Ohio Revised Code Section 9.481."

{¶ 8} The following undisputed facts are relevant to the issues raised on appeal. Section 34, Article II, Ohio Constitution, authorizes state legislation regulating wages and employment conditions affecting workers engaged in the performance of labor. It states, "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the Constitution shall impair or limit this power." This provision, by the plain meaning of its own language, was clearly intended to address the compelling public interest in regulating hours required to be worked, wages paid, and

conditions in the workplace in order to protect employees from abusive wages, hours and unsafe conditions.

*2 {¶ 9} Another portion of the Ohio Constitution is highly consequential to our analysis of this matter. Ohio municipalities enjoy constitutional authority to enact local rules in the exercise of local self-government. Article XVIII of the Ohio Constitution establishes, "Any municipality may frame and adopt or amend the charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government." This is commonly referred to as the "home rule" provision.

{¶ 10} Pursuant to this constitutional grant of legislative home rule power, the city of Toledo Charter establishes in relevant part, "every officer and employee must be a resident of the city of Toledo." However, in order to permit exceptions and accommodate special and compelling cases, the Charter specifically provides authority to grant municipal residency requirement waivers where, "justice to such employee so requires."

{¶ 11} On January 27, 2006, then Governor Taft executed Senate Bill 82. This bill was codified as R.C. 9.481 with an effective date of May 1, 2006. R.C. 9.481 states in pertinent part, "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state ." Given its direct contravention to municipal charter employee residency requirements, including Toledo's Charter residency provision enacted pursuant to the home rule provision of the Ohio Constitution, Toledo filed a complaint on April 28, 2006, requesting a judicial determination that R.C. 9.481 is unconstitutional. On June 9, 2006, the state of Ohio filed its answer. On November 13, 2006, opposing motions for summary judgment were filed.

{¶ 12} On April 26, 2007, two municipal employee unions, namely, Toledo Firefighters Local 92 and the Toledo Police Patrolmen's Association, requested and were granted leave to file amicus curiae briefs in support of the state position that their members should not be required to reside in the municipality that provides them government employment. These plaintiffs argued that residing in Toledo has a significant adverse impact on them. They assert that, "some employees may be hard pressed to afford housing in the community where they work, while more affordable housing may exist just across the city limits." No supporting factual data is furnished to establish that housing opportunities are more affordable in area suburbs of Northwest Ohio or Southeastern Michigan in comparison to the city of Toledo so as to support the financial hardship argument as relevant to Toledo's residency requirement.

{¶ 13} In addition, they argue that the residency requirement creates additional quality of life burdens such as inhibiting them from shopping where they would like, going to church where they would like, or sending their children to the school they would like. Again, other than their assertions, the plaintiffs have failed to submit any factual evidence or data to demonstrate how residing within the boundaries of Toledo as a condition of their employment by Toledo burdens or inhibits its municipal employees from shopping, worshipping, or educating their children.

*3 {¶ 14} Further, to address any individual concerns, the Toledo Municipal Charter expressly contains a waiver provision for any unique and special cases where an undue burden of some kind can be established such that justice requires a waiver.

{¶ 15} In its first assignment of error, appellant asserts that the trial court erred in granting appellee's motion for summary judgment. In support, appellant contends that R.C. 9.481 is not a proper legislative enactment pursuant to Section 34, Article II as argued by appellee. It is axiomatic that rules and provisions of law be interpreted and applied given their reasonable, plain and ordinary meaning. The crux of the state's position in support of R.C. 9.481 is that it is a proper legislative enactment pursuant to Section 34, Article II. Article II states in relevant part, "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees."

[1] {¶ 16} Consistent with the language of the constitutional provision, Ohio Supreme Court

precedent analyzing the scope of powers granted by Section 34, Article II consistently pertain to the public interest in workload, workplace, and compensation issues affecting employee welfare as opposed to preconditions to qualify for the employment. For example, *American Assn. of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St.3d 55, 717 N.E.2d 286 dealt with R.C. 3345.45, which exempted public university professor workloads from collective bargaining. By contrast, R.C. 9.481 involves an "off-duty" right voluntarily waived as a precondition of employment by those seeking and accepting municipal employment. It does not entail "on-duty" hours worked, wages earned, or workplace conditions. As such, R.C. 9.481 does not fall within the purview of Article II, Section 34 and improperly undermines the well-established home rule provision set forth in Article XVIII of the Ohio Constitution.

{¶ 17} Our review of summary judgment determinations is conducted on a de novo basis, applying the same standard used by the trial court. *Lorain Natl. Bank v. Saratoga Apts.* (1989), 61 Ohio App.3d 127, 129, 572 N.E.2d 198; *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241. Summary judgment will be granted when there remains no genuine issue of material fact and, considering the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 18} We have carefully reviewed and thoroughly considered the record of evidence. In applying the above legal principles to appellant's first assignment of error, we find that R.C. 9.481 does not pertain to the protection of employees' welfare from adverse wages, hours, or working conditions. Rather, it pertains to "off-duty" residential location preferences. Such residential preferences were voluntarily waived upon the acceptance of municipal employment. Terms and conditions of employment and the choice of whether to accept employment with certain terms and conditions are inherent in all employment decisions in a free market economy.

*4 {¶ 19} The unconvincing and unsupported reasons offered in an effort to establish an unacceptable or unfair burden imposed upon municipal employees by the residency requirement are not persuasive.

{¶ 20} Reasonable minds can only conclude that R.C. 9.481 is not a proper legislative enactment encompassed by Section 34, Article II of the Ohio Constitution. It is an obvious attempt to circumvent constitutional municipal home rule authority established granted by Article XVIII of the Ohio Constitution. Appellant's first assignment of error is found well-taken.

[2] ☑ {¶ 21} In its second assignment of error, appellant asserts that the trial court erred in denying Toledo's motion for summary judgment to declare its Charter residency requirement a valid exercise of its home rule authority pursuant to Article XVIII of the Ohio Constitution. First, we note that the disputed Charter provision expressly authorizes the granting of residency waivers in the interest of justice.

{¶ 22} Given our holding that R.C. 9.481 is not encompassed by or constitutional pursuant to Article II, the express incorporation of a justice waiver in the Charter, and the home rule authority established by Article XVIII of the Ohio Constitution, we find that the Toledo Charter residency requirement is a valid and proper exercise of the constitutional grant of municipal home rule authority. Appellant's second assignment of error is found well-taken.

{¶ 23} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded the Lucas County.

JUDGMENT REVERSED.

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

WILLIAM J. SKOW, J. and THOMAS J. OSOWIK, J., Concur.

ARLENE SINGER, J., dissents, and writes separately.

SINGER, J. I respectfully dissent.

*4 {¶ 24} I recognize the benefits that inure to a municipality when its public employees reside within its boundaries. Logic tells us that public taxpayer dollars are more likely to be reinvested in the community and help maintain the municipality's vitality. Public salaries will most likely be reinvested in the city. Employees may invest in real estate, with attendant property taxes supporting the schools and other city services; may support community businesses; and may support the municipality's community, cultural, social and political programs and projects.

{¶ 25} And logic also tells us that when a public employee resides within the employer community, that employee is enfranchised. Employees are able to vote for (or against) the elected officials who set policy and make the decisions directly affecting employment, as well as tax and other income generation devices that provide fair salaries and benefits and employment opportunity. Convenience and minimal expense of travel to nearby employment may be also a benefit to the employee who resides within the employer municipality.

*5 {¶ 26} However, all cities and communities cannot offer their employees the necessary and desired quality of life services and conditions. Hospitals and other medical services, religious institutions, educational opportunities as well as other necessities may not be readily available within the city limits. Municipalities may argue that unless their employees live within the city it may be without sufficient resources to provide or maintain those very same services and conditions. Employees may argue that because the city does not provide or maintain certain services or conditions, they must choose between their own and their family's needs and municipal employment.

{¶ 27} Resolution of this conflict, by requiring municipal employees to reside within the employer-municipality, places the burden on the employees as a condition of employment. This clearly, to me, affects their comfort, health, safety and, most particularly, their general welfare. R.C. 9.481 removes this burden by prohibiting a political subdivision to dictate where their employees may live.

{¶ 28} Section 34, Article II, Ohio Constitution authorizes state legislation regulating wages and employment conditions and includes " providing for the comfort, health, safety and general welfare of all employees."

{¶ 29} The trial court relied on *State ex rel. Bd. Of Trustees of Pension Fund v. Bd. Of Trustees of Relief Fund* (1967), 12 Ohio St.2d 105, 233 N.E.2d 135 and *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d and found R.C. 9.481 constitutional.

{¶ 30} The trial court correctly relied on that line of cases. Section 34, Article II, Ohio Constitution must be broadly construed. Therefore, residency restrictions by political subdivisions affect the general welfare of employees. I would hold that R.C. 9.481 is constitutional.

Ohio App. 6 Dist.,2008.
Toledo v. State
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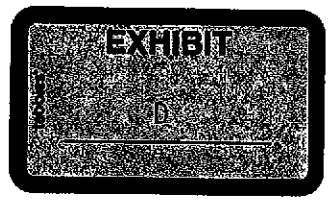

Court of Appeals of Ohio,
Eighth District, Cuyahoga County.
City of **CLEVELAND**, et al., Plaintiffs-Appellants
v.
STATE of Ohio, et al., Defendants-Appellees.
Nos. 89486, 89565.
Decided June 2, 2008.

Civil Appeal from the Cuyahoga County Court of Common Pleas, Case Nos. CV-590414 and CV-590463.
Robert J. Triozzi, Director of Law, Gary S. Singletary, Assistant Director of Law, Joseph G. Hajjar, Assistant Director of Law, Thomas J. Kaiser, Chief Trial Counsel, City of Cleveland, Cleveland, OH, for appellants.

State of Ohio, Office of the Attorney General, by Pearl M. Chin, Assistant Attorney General, Constitutional Offices Section, by Sharon A. Jennings, Assistant Attorney General, Chief Counsel's Staff, Columbus, OH, for appellees.

Henry A. Arnett, Livorno and Arnett Co., L.P.A., Columbus, OH, Amicus Curiae, OAPFF.

Joseph W. Diemert, Jr., Thomas M. Hanculak, Daniel A. Powell, Joseph W. Diemert, Jr. & Associates Co., Mayfield Heights, OH, for Cleveland Firefighters, et al.

Patrick A. D'Angelo, Cleveland, OH, for Cleveland Police Patrolmen's Association.

Ryan J. Lemmerbrock, Robert M. Phillips, Susannah Muskovitz, Faulkner, Muskovitz & Phillips, L.L.P., Cleveland, OH, for Fraternal Order of Police, et al.

Before: CELEBREZZE, J., CALABRESE, P.J., and ROCCO, J.

FRANK D. CELEBREZZE, JR., J.
***1** {¶ 1} Appellant, City of Cleveland, brings this appeal of the trial court's decision granting summary judgment in favor of appellees, the State of Ohio, the Cleveland Police Patrolmen's Association, the Cleveland Firefighters Association Local 93, and the Fraternal Order of Police Lodge 8. The City of Cleveland also appeals the trial court's decision to deny summary judgment in its favor. At issue is whether R.C. 9.481 supersedes the City of Cleveland's home rule authority to enforce its residency requirement for city employees pursuant to City Charter Section 74. After a thorough review of the record and upon consideration of persuasive decisions on this issue in other districts, [FN1] we reverse and remand.

FN1. At the time of the trial court's decisions, no appellate court had decided the issue now before us. Since these appeals were filed, both the Third and Ninth Districts have rendered opinions. See *City of Lima v. State,* Third Appellate No. 1-07-21, 2007-Ohio-6419, and *State v. City of Akron,* Ninth Appellate No. 23660, 2008-Ohio-38.

Procedural History

{¶ 2} On May 1, 2006, the City of Cleveland ("City") filed an action against the State of Ohio

("State") in the Cuyahoga County Court of Common Pleas seeking a declaration that R.C. 9.481 was unconstitutional (Case No. CV-590414). Also on May 1, 2006, in the same court, the Cleveland Police Patrolmen's Association, the Cleveland Firefighters Association Local 93, and the Fraternal Order of Police Lodge 8, and their members (collectively referred to as "Unions") filed a declaratory judgment and taxpayer action against the City, Mayor Frank Jackson, the City's Safety Director, the City's Civil Service Commission, and individual members of the Civil Service Commission, seeking to have the court hold that R.C. 9.481 was constitutional (Case No. CV-590463). On May 23, 2006, the two cases were consolidated because they both dealt with the constitutionality of R.C. 9.481.

{¶ 3} On October 16, 2006, all parties to the litigation filed motions for summary judgment, and subsequently all responsive briefs were filed. On February 23, 2007, the court entered its Order-Declaratory Judgment, granting summary judgment in favor of the State and Unions and denying summary judgment to the City, thereby upholding the constitutionality of R.C. 9.481.

{¶ 4} On February 26, 2007 and March 15, 2007, the City filed Notices of Appeal in Case Nos. CV-590414 and CV-590463, respectively. On March 19, 2007, the two appeals, Case Nos. 89486 and 89565, were consolidated. The City raises five assignments of error for our review. For clarity, we address them out of order.

Factual Background

{¶ 5} In 1912, the Ohio Constitution was amended to provide municipalities with the authority to adopt their own charters. Section 7, Article XVIII states:

{¶ 6} "Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government." Section 3, Article XVIII states: "Municipalities shall have the authority to exercise all powers of self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws." This became known as the Home Rule Amendment.

***2** {¶ 7} On January 1, 1914, a City Charter became effective in Cleveland. As part of its Charter, Cleveland adopted an "Initiative and Referendum" procedure. On November 3, 1931, Cleveland voters voted to amend the Charter by approving an employee residency requirement. On November 21, 1967, the voters repealed this amendment; however, on November 2, 1982, voters again approved an employee residency requirement through the enactment of City Charter Section 74.

{¶ 8} Section 74 of the City Charter states in relevant part:

{¶ 9} "Residency Requirements; Officers and Employees

{¶ 10} "(a) Except as in this Charter otherwise provided or except as otherwise provided by a majority vote of the Council of the City of Cleveland, every temporary or regular officer or employee of the City of Cleveland, including the members of all City boards and commissions established by the Charter or the ordinances of Cleveland, whether in the classified or unclassified service of the City of Cleveland, appointed after the effective date of the amendment, shall, at the time of his appointment, or within six months thereafter, be or become a bona fide resident of the City of Cleveland, and shall remain as such during the term of his office or while employed by the City of Cleveland."

{¶ 11} This amendment, as written, has remained the law in the City from the time of its adoption in November 1982 and has applied to all employees hired after its adoption.

{¶ 12} In 2006, the General Assembly enacted legislation that conflicts with Section 74 of the City Charter. R.C. 9.481(B)(1) states: "Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." Division (B)(2) exempts "volunteers," who are defined as any person "who is not paid for service or who is employed on less than a permanent full-time basis." R.C. 9.481(B)

(2); see, also, (A)(2). Division (C) states: "[e]xcept as otherwise provided in division (B)(2) of this section, employees of political subdivisions of this state have the right to reside any place they desire." R.C. 9.481.

{¶ 13} The parties agree that the inherent conflict between City Charter Section 74 and R.C. 9.481 is that which forms the basis of the case before us. These two laws cannot logically and legally coexist.

{¶ 14} The trial court, in granting summary judgment in favor of the State and Unions, held that "R.C. 9.481 was lawfully enacted by the General Assembly to provide for the general welfare of the employees of Ohio's political subdivisions and is a matter of statewide concern. Section 34, Article II of the Ohio Constitution is the controlling provision, and conflicting local laws passed pursuant to the city's home rule power in Section 3, Article XVIII must succumb to state law, R.C. 9.481 is constitutional and upheld." (Order, Declaratory Judgment, Case Nos. CV-590414 and CV-590463, February 23, 2007.)

Review and Analysis

***3** {¶ 15} This court reviews the lower court's granting of summary judgment de novo. *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 622 N.E.2d 1153. An appellate court reviewing the grant of summary judgment must follow the standards set forth in Civ.R. 56(C). "[T]he reviewing court evaluates the record * * * in a light most favorable to the nonmoving party. * * * [T]he motion must be overruled if reasonable minds could find for the party opposing the motion." *Saunders v. McFaul* (1990), 71 Ohio App.3d 46, 50, 593 N.E.2d 24; *Link v. Leadworks Corp.* (1992), 79 Ohio App.3d 735, 741, 607 N.E.2d 1140.

{¶ 16} "Civ.R. 56(C) specifically provides that before summary judgment may be granted, it must be determined that: (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, 364 N.E.2d 267.

{¶ 17} The trial court's decision essentially makes two distinct findings: that R.C. 9.481 was validly enacted under the Ohio Constitution and that, as enacted, it supersedes the City's home rule authority as it relates to Section 74 of the City Charter. We believe that the City's Assignments of Error V and III deal directly with these findings and are dispositive of this case; therefore, we address them first.

Assignment of Error V

{¶ 18} "The trial court erred with its determination that R.C. 9.481 was properly promulgated under Section 34, Article II of the Ohio Constitution."

{¶ 19} In its fifth assignment of error, the City argues that R.C. 9.481 was not validly enacted under Section 34, Article II of the Ohio Constitution. Specifically, it argues that Section 34 permits the General Assembly to enact laws to improve working conditions, but not to affect a city's authority to establish the qualifications, selection, and appointment of its employees. The State and Unions argue that prohibiting municipal residency requirements is within the purview of Section 34, Article II as being associated with providing for the "general welfare" of all employees.

{¶ 20} Two appellate courts have recently decided exactly this issue. In *City of Lima v. State,* Third Appellate No. 1-07-21, 2007-Ohio-6419, and *State v. City of Akron,* Ninth Appellate No. 23660, 2008-Ohio-38, each respective city was challenging whether R.C. 9.481 was validly enacted so as to supersede each municipality's employee residency requirement ordinance. In both cases, the trial courts had granted summary judgment in favor of the State on this issue. On appeal, both appellate courts reversed the lower court's decisions. We do the same.

*4 {¶ 21} Section 34, Article II states: "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power." There is no dispute among the parties that Section 34, Article II supersedes a municipality's home rule authority as it relates to validly enacted state legislation. The dispute and this appeal, however, are premised on whether R.C. 9.481 is validly enacted legislation.

{¶ 22} Whether a statute is constitutional is a question of law reviewed de novo. *Wilson v. AC & S, Inc.,* 169 Ohio App.3d 720, 2006-Ohio-670, 864 N.E.2d 862. "[A]ll statutes are presumed constitutional, and the party challenging has the burden of proving otherwise" beyond a reasonable doubt. *State v. Boczar,* 113 Ohio St.3d 148, 2007-Ohio-1251, 863 N.E.2d 155, citing *Arnold v. City of Cleveland* (1993), 67 Ohio St.3d 35, 616 N.E.2d 163. "[I]t is not the function of a reviewing court to assess the wisdom or policy of a statute but, rather, to determine whether the General Assembly acted within its legislative power." *Austintown Twp. Bd. of Trustees v. Tracy,* 76 Ohio St.3d 353, 356, 1996-Ohio-74, 667 N.E.2d 1174.

{¶ 23} We do not accept any interpretation of R.C. 9.481 to suggest it falls under the language in Section 34 that gives the legislature authority to enact this legislation by relating it to regulating hours or wages; therefore, we focus on whether the General Assembly derives its authority to enact R.C. 9.481 under the "general welfare of all employees" provision.

{¶ 24} In *Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St.3d 1, 539 N.E.2d 103 (*"Rocky River IV"*), the court held that "[t]his provision constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces. The provision expressly states in 'clear, certain and unambiguous language' that no other provision of the Constitution may impair the legislature's power under Section 34. This prohibition, of course, includes the 'home rule' provision contained in Section 3, Article XVIII." (Internal citations omitted.) *Rocky River IV.*

{¶ 25} The State and Unions argue that this broad grant of authority allows the General Assembly to enact legislation that prohibits residency requirements by municipalities. The City argues that to permit this legislation extends beyond the General Assembly's authority under the general welfare provision.

{¶ 26} The question before us is whether the general welfare clause extends to the status of being an employee, which transcends any particular locus, or whether it extends to employees acting within the scope of their employment. Since the definition of "employee" as "one who works for another in return for financial or other compensation" does not aid us in determining its commonly accepted meaning, we consider how it is used in the broader context of Section 34 as a whole. See *Lima,* supra.

*5 {¶ 27} As noted above, Section 34 contains separate clauses that extend the General Assembly's authority to pass legislation regarding employees' hours and wages. We believe the general welfare clause is to be read consistently with those clauses that regulate matters concerning employees acting within the scope of their employment. Just as the Third and Ninth Districts, we decline to interpret Section 34 to grant the General Assembly virtually limitless authority over municipalities in making employment decisions.

{¶ 28} Instead, we agree with the court in *Lima* that "[c]ommon sense dictates that the words 'comfort,' 'health,' and 'safety' relate to working environment conditions" and not to conditions of employment as the State argues. *Id.* at ¶ 35, 539 N.E.2d 103. We also agree with the recent appellate decisions in the Third and Ninth Districts, which found that the cases cited by the State are either limited to employee economic welfare or have demonstrated some nexus between their legislative end and the working environment. See *Rocky River IV,* supra, and *State ex rel. Bd. of Trustees of Police & Fireman's Pension Fund v. Bd. of Trustees of Police, Pension Fund of Martins Ferry* (1967), 12 Ohio St.2d 105, 233 N.E.2d 135.

{¶ 29} R.C. 9.481 is not economic legislation, nor does it have a nexus between its legislative end

and the working environment. To uphold it as a valid enactment by the General Assembly would be to extinguish the boundaries between the State's power and a municipality's authority to legislate the relationship between employee and employer. Therefore, we hold that R.C. 9.481 was not validly enacted pursuant to Section 34, Article II of the Ohio Constitution. Appellant's fifth assignment of error is sustained.

Assignment of Error III

{¶ 30} "The trial court erred in ruling that the City's Charter mandated residency requirement must succumb to R.C. 9.481 when the statute is not a 'General Law' under Section 34, Article II or for purposes of the General Home Rule Analysis."

{¶ 31} Having sustained the City's fifth assignment of error, we must address the City's third assignment of error as dispositive of the case. The City argues that the trial court erred in deciding that R.C. 9.481 was a law of "statewide concern that impacts the general welfare of working people." (See Order, p. 6.)

{¶ 32} We adopt an analysis similar to the courts in *Lima* and *Akron*. The critical inquiry here is whether the State has satisfied the three-prong preemption test in *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, to demonstrate that R.C. 9.481 supersedes the City's residency requirement.

{¶ 33} The Ohio Supreme Court has adopted the three-part test set forth by the appeals court in *Canton*. A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law. *Canton,* supra.

***6** {¶ 34} The parties agree, as do we, that the first prong of the test is easily met. Section 74 of the City's Charter is in conflict with R.C. 9.481. As to the second prong, the parties seem to agree that Section 74 is not an exercise of the police power, but rather of local self-government. We have addressed that separately in the City's second assignment of error (see below). So it is in determining the third prong-whether R.C. 9.481 is a general law-that we believe disposes of this appeal.

{¶ 35} As stated above, Section 74 of the City's Charter was enacted pursuant to Section 3, Article XVIII, which grants municipalities home rule authority to pass laws, provided they do not conflict with general laws. Therefore R.C. 9.481 prevails over the residency requirement only if R.C. 9.481 is a general law.

{¶ 36} The court in *Canton* set forth a four-part test to determine what constitutes a general law for purposes of home-rule analysis: "[A] statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Id.*

{¶ 37} We find the decision in *Lima* to be persuasive on this issue, and we hold that R.C. 9.481 is not a general law because it does not meet the third and fourth prongs of the *Canton* general law test.

{¶ 38} With respect to the third prong, the court in *Akron* held that "[s]ection 9.481 is an attempt by the General Assembly to circumvent the home rule authority of municipalities to maintain residency requirements for their employees." *Akron,* supra. The *Lima* court held that because the exceptions contained in R.C. 9.481 are exemptions for "volunteers" and employees who were required to respond to emergencies and disasters, R.C. 9.481 "failed to set forth police, sanitary, or similar regulations and only served to limit the legislative authority of municipalities." *Lima,* supra. In essence, the court held that the State has not demonstrated that municipal employees have a constitutional right to choose where one lives *and* demand employment from an unwilling employer. *Id.* See, also, *Buckley v. City of Cincinnati* (1980), 63 Ohio St.2d 42, 406 N.E.2d 1106. Therefore, the

court held that "prohibiting political subdivisions from requiring residency as a condition of employment is not an overriding state interest sufficient to meet" the third prong of *Canton's* general law test. *Lima,* at ¶ 80.

{¶ 39} The *Lima* court also held that R.C. 9.481 fails the fourth prong of the *Canton* general law test, and we agree. Specifically, the law does not prescribe a rule of conduct upon citizens generally since its plain language states: "[e]xcept as otherwise provided in division (B)(2) of this section, *no political subdivision shall require* any of its employees, as a condition of employment, to reside in any specific area of the state." (Emphasis added.) On its face, R.C. 9.481 imposes a restriction on the conduct of political subdivisions, not on that of citizens generally; therefore, it fails to meet the fourth prong of the *Canton* general law test.

***7** {¶ 40} R.C. 9.481 cannot pass *Canton's* preemption test, having failed its third and fourth prongs; therefore, we sustain the City's third assignment of error.

Assignment of Error II

{¶ 41} "The trial court erred with its determination that R.C. 9.481 addressed a matter of statewide concern as the City's residency requirement is exclusively a matter of local self-government that does not affect the general public of the state as a whole more than it does the City's local inhabitants."

{¶ 42} In its second assignment of error, the City argues that its residency requirement is a valid enactment of law as a matter of local self-government. The State agrees that the City acted as a matter of local self-government, as opposed to acting under its police powers. (See Appellee's brief, page 25.)

{¶ 43} The second prong of the *Canton* test, if satisfied, supports a finding that the state statute supersedes a municipality's home rule authority. The second prong requires that "the ordinance is an exercise of police power, rather than of local self-government." The difference in the positions of the parties lies in the fact that, under the City's theory, by acting as a matter of local government, it necessarily falls outside the second prong of the *Canton* test and, therefore, remains valid in the face of a conflicting state statute; while, under the State's theory, an ordinance that is an exercise of self-government places it outside the purview of *Canton* and, therefore, it must succumb to a conflicting state statute.

{¶ 44} We agree with the City and with the holding in *Am. Fin. Servs. Assn. v. City of Cleveland,* 112 Ohio St.3d 170, 173, 2006-Ohio-6043, 858 N.E.2d 776, that "[i]f an allegedly conflicting city ordinance relates solely to self-government, the analysis stops because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction."

{¶ 45} Although we adopt the City's reasoning, having held that R.C. 9.481 is not a general law under the third and fourth prongs of the *Canton* test, we do not expressly accept the State's concession. Therefore, we find the City's second assignment of error moot.

Assignment of Error I

{¶ 46} "The trial court erred in not recognizing long standing precedent that municipal employee residency requirements do not deprive individuals of any fundamental rights. It is long standing Ohio law that there is no constitutional right to be employed by a municipality while living elsewhere."

{¶ 47} In its first assignment of error, the City argues that, while individuals have a right to live where they choose, this right does not include the right to demand employment from the government. There is ample case law in Ohio to support the City's contention. See *Buckley,* supra; *Senn v. City of Cleveland,* Cuyahoga App. No. 84598, 2005-Ohio 765; *State ex rel. Fisher v. City of Cleveland,* Cuyahoga App. No 83945, 2004-Ohio-4345. Indeed, the recent decisions in *Lima,* supra, and *Akron,*

supra, lend additional support to this argument.

*8 {¶ 48} Having sustained the City's fifth and third assignments of error, we decline to explicitly sustain or overrule this assignment of error.

Assignment of Error IV

{¶ 49} "The trial court erred in holding that R.C. 9.481 does not violate section 26, Article II, Section 26(sic) of the Ohio Constitution as the class of employee affected by the statute is arbitrarily and capriciously drawn."

{¶ 50} Having held that R.C. 9.481 was not validly enacted, nor does it supersede Ohio's Home Rule Amendment, we do not need to determine whether it violates Article II, Section 26, the Uniformity Clause, of the Ohio Constitution. We do, however, struggle to accept the State's argument that R.C. 9.481 is uniform in its application when it carves out an exception for a category of volunteers, which includes paid part-time and temporary employees. Nonetheless, the City's fourth assignment of error is moot.

Conclusion

{¶ 51} The City's fifth and third assignments of error are sustained. The City's second and fourth assignments of error are moot in light of our disposition of the fifth and third assignments of error. Finally, we have declined to rule on the City's first assignment of error.

{¶ 52} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellants recover of said appellees 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 common pleas 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.

KENNETH A. ROCCO, J., Concurs (With Separate Opinion).

ANTHONY O. CALABRESE, JR., P.J., Dissents (With Separate Opinion).

KENNETH A. ROCCO, J., Concurring:

{¶ 53} I question the wisdom of the city's unbending residency requirement, which can and does impose hardships on some of its employees and their families and thus limits the city's ability to attract and retain the best and brightest in its employment. As the population ages, reducing the available pool of applicants for more physically and psychologically demanding municipal jobs like police and fire protection, the city may find an insufficient pool of qualified applicants willing to accept the residency requirement. However, I do not question the city's constitutional authority to make this decision for itself. Therefore, I agree that we must reverse the trial court's decision and find that the city charter supercedes R.C. 9.481.

{¶ 54} I whole-heartedly agree that R.C. 9.481 does not regulate hours or wages, or provide for the comfort, health, safety, or general welfare of all employees. See *Lima v. State*, Allen App. No. 1-

07-21, 2007-Ohio-6419. It was not enacted pursuant to the legislature's authority under Art. II, § 34 of the Ohio Constitution, and therefore does not have supremacy that section grants over enactments pursuant to other constitutional provisions.

***9** {¶ 55} City Charter § 74 is in conflict with R.C. 9.481, requiring us to address the question whether the city charter has precedence over the statute under the city's home rule powers under Art. XVIII, § 3. "The first step in a home-rule analysis is to determine 'whether the matter in question involves an exercise of local self-government or an exercise of local police power.' " *Am. Financial Servs. Assn. v. Cleveland,* 112 Ohio St.3d 170, 858 N.E.2d 776, 2006-Ohio-6043, ¶ 23, citing *Twinsburg v. State Emp. Relations Bd.* (1988), 39 Ohio St.3d 226, 228, 530 N.E.2d 26. If the municipal enactment is an exercise of local police powers, then a "general" state law will take precedence over it. *Canton v. State,* 95 Ohio St.3d 149, 151, 766 N.E.2d 963, 2002-Ohio-2005, ¶ 9. If it is an exercise of local self-government, then it takes precedence. *Am. Financial Servs.,* supra.

{¶ 56} The parties here have agreed that City Charter § 74 is *not* an exercise of local police powers. Consequently, there is no need to address the question whether R.C. 9.481 is a general law. Judge Celebrezze's conclusion that R.C. 9.481 is not a general law must be regarded as a display of excessive caution. It is not a necessary part of the constitutional analysis in this case.

{¶ 57} I write separately to address more fully the question whether the city charter provision is an exercise of local self-government. In my view, it is difficult to imagine a more local concern than qualifications for municipal employment. See *State Personnel Bd. of Rev. v. Bay Village Civ. Serv. Comm.* (1986), 28 Ohio St.3d 214, 216, 503 N.E.2d 518 ("A municipality is considered to have general home-rule authority to regulate the appointment, removal, qualifications, compensation, and duties of its officers and employment"). Residency can be rationally considered a legitimate job qualification, as residents are more likely than non-residents to be concerned about the success of the city and about the welfare of their fellow residents. The state has expressed concerns about the "extraterritorial effects" of residency requirements depriving other municipalities of residents they might otherwise have. However, no municipality can claim a right to residents, so I cannot view this extraterritorial effect as a matter of statewide concern subject to state regulation.

ANTHONY O. CALABRESE, JR., P.J., Dissenting:

***9** {¶ 58} I respectfully dissent from my learned colleagues in the majority. I believe that there is substantial evidence in the record to support the trial court's decision. I believe the trial court's actions were proper and should be affirmed.

{¶ 59} "[I]t is not the function of the reviewing court to assess the wisdom or policy of a statute but, rather, to determine whether the General Assembly acted within its legislative power." *Austintown Twp. Bd. of Trustees v. Tracy,* 76 Ohio St.3d 353, 356, 667 N.E.2d 1174, 1996-Ohio-74.

{¶ 60} "[A]ll statutes are presumed constitutional, and the party challenging has the burden of proving otherwise" beyond a reasonable doubt. *State v. Boczar,* 113 Ohio St.3d 148, 863 N.E.2d 155, citing *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 38-39, 616 N.E.2d 163; *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.2d 159, 224 N.E.2d 906 ("[W]hen an enactment of the General Assembly is challenged, the challenger must overcome a strong presumption of constitutionality"). All presumptions and applicable rules of statutory construction are applied to uphold a statute from constitutional attack. *State v. Dorso* (1983), 4 Ohio St.3d 60, 61, 446 N.E.2d 449; *State v. Stambaugh* (1987), 34 Ohio St.3d 34, 35, 517 N.E.2d 526.

***10** {¶ 61} In the case at bar, the General Assembly used its broad authority under Section 34, Article II to provide for the general welfare of public employees by enacting R.C. 9.481, which removes residency requirements as a condition of public employment. Moreover, R.C. 9.481 provides a broad grant of authority to the General Assembly to legislate for the general welfare of public employees. In addition, conditions of public employment, such as residency requirements, are within the General Assembly's authority to regulate and provide for the general welfare of public employees. R.C. 9.481 expressly conforms with R.C. Chapter 4117, and the regulation of the residency requirement is a matter of statewide concern and, thus, R.C. 9.481 supersedes Cleveland's residency

requirement.

{¶ 62} Overturning a trial court and finding a statute to be unconstitutional is an extreme remedy. I do not believe the evidence in the case at bar rises to the level of unconstitutionality. I would, therefore, agree with the lower court and uphold the constitutionality of the statute passed by the Ohio legislature.

Ohio App. 8 Dist.,2008.
Cleveland v. State
Slip Copy, 2008 WL 2252542 (Ohio App. 8 Dist.), 2008 -Ohio- 2655

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--- N.E.2d ----, 2008 WL 2222716 (Ohio App. 2 Dist.), 2008-Ohio-2589
Court of Appeals of Ohio,
Second District, Montgomery County.
DAYTON, Appellant,
v.
The STATE of Ohio et al., Appellees.
No. 22221.
Decided May 30, 2008.

Background: City brought declaratory judgment action against state, challenging constitutionality of statute prohibiting political subdivisions from imposing a residency requirement as a condition of employment. The Court of Common Pleas, Montgomery County, No. 2006-CV-3507, entered summary judgment in favor of the state. City appealed.

Holdings: The Court of Appeals, Fain, J., held that:
(1) grant of constitutional authority to legislature to provide for the general welfare of employees may not be impaired by any other provision of the state constitution;
(2) statute prohibiting residency requirements was a valid exercise of legislature's broad authority to provide for the general welfare of employees; and
(3) statute prohibiting residency requirements did not violate state constitutional Uniformity Clause.

Affirmed.

Grady, J., dissented and filed opinion.

[1]

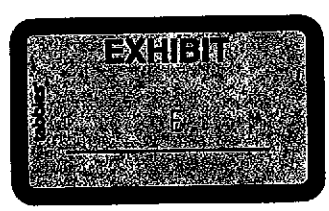
92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In General. Most Cited Cases

Courts must presume the constitutionality of lawfully enacted legislation.

[2]

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In General. Most Cited Cases

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1001 Doubt
92k1004 k. Proof Beyond a Reasonable Doubt. Most Cited Cases



When considering the constitutionality of legislation passed by the General Assembly, courts presume it to be constitutional and will not declare it to be unconstitutional unless it appears beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.

[3]

231H Labor and Employment
231HI In General
231Hk2 Constitutional and Statutory Provisions
231Hk3 k. In General. Most Cited Cases

[3]

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k65 k. Local Legislation. Most Cited Cases

Broad grant of constitutional authority to legislature to provide for the general welfare of employees may not be impaired by the home rule provision, or by any other provision of the Ohio Constitution, including the preamble. Const. Art. 2, § 34; Art. 18, § 3.

[4]

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k67 Appointment and Removal of Officers
268k67(1) k. In General. Most Cited Cases

Statute prohibiting political subdivisions from imposing a residency requirement as a condition of employment was valid exercise of legislature's broad authority to provide for the general welfare of employees. Const. Art. 2, § 34; R.C. § 9.481.

[5]

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak412.1 k. In General. Most Cited Cases

[5]

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k120 k. Construction and Operation. Most Cited Cases

[5]

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k210 k. Preamble and Recitals. Most Cited Cases

A "preamble" is the introductory part of a statute, ordinance, or regulation that states the reasons and intent of the law or regulation or is used for other explanatory purposes.

[6]

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)2 Encroachment on Judiciary
92k2350 k. In General. Most Cited Cases

[6]

361 Statutes
361I Enactment, Requisites, and Validity in General
361k4 k. Powers and Duties of Legislature in General. Most Cited Cases

General Assembly may pass any law that is not constitutionally forbidden; if a particular law conflicts with existing case law, that is a matter for the courts to resolve.

[7]

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(A) Municipal Officers in General
268k124 Constitutional and Statutory Provisions
268k124(3) k. Eligibility and Qualification. Most Cited Cases

[7]

361 Statutes
361II General and Special or Local Laws
361k70 Uniformity of Operation of General Laws
361k73 Places
361k73(1) k. In General. Most Cited Cases

Statute prohibiting political subdivisions from imposing a residency requirement as a condition of employment did not violate state constitutional Uniformity Clause; although law distinguished among "full-time" employees, "part-time" employees, and "volunteers," the subject matter of the statute, i.e., residency, was general, and law would apply uniformly throughout the state as to all persons in the same category. Const. Art. 2, § 26; R.C. § 9.481.

[8]

361 Statutes
361II General and Special or Local Laws
361k70 Uniformity of Operation of General Laws
361k71 k. In General. Most Cited Cases

A two-part test is applied to assess constitutionality under the Uniformity Clause: (1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state. Const. Art. 2, § 26.

[9]

361 Statutes
361II General and Special or Local Laws
361k70 Uniformity of Operation of General Laws
361k71 k. In General. Most Cited Cases

Legislative classifications do not violate the Uniformity Clause merely because they are arbitrary.

Const. Art. 2, § 26.
Green & Green, Thomas M. Green, Jane M. Lynch, and Jared A. Wagner, for appellant.
Nancy Hardin Rogers, Ohio Attorney General, and Frank M. Strigari, and Julie Kelley Cannatti, Assistant Attorneys General, for appellee state of Ohio.
Trisha M. Duff, for appellee IAFF Local # 136.
Livorno & Arnett Co., L.P.A. and Henry A. Arnett, for amicus curiae Ohio Association of Professional Fire Fighters.

FAIN, Judge
*1 {¶ 1} Plaintiff-appellant, the city of Dayton, has a residency requirement for employees. Defendant-appellee state of Ohio has enacted a statute that prohibits a political subdivision of the state from imposing residency requirements for its employees. This appeal concerns the constitutionality, under the Ohio Constitution, of the state's restriction on residency requirements. Specifically, Dayton appeals from a summary judgment rendered in favor of the state and third-party defendant-appellee International Association of Firefighters Local # 136 ("IAFF # 136"). After considering cross-motions for summary judgment, the trial court rendered summary judgment in favor of the state and IAFF # 136. In so doing, the trial court upheld the constitutionality of R.C. 9.481, which prohibits political subdivisions from requiring full-time employees, as a condition of employment, to reside in any specific area of the state.
{¶ 2} Dayton contends that the trial court erred in finding that R.C. 9.481 was enacted pursuant to Section 34, Article II of the Ohio Constitution and in finding that R.C. 9.481 prevails over residency requirements adopted under Dayton's home-rule authority. Dayton also contends that the trial court erred in holding that R.C. 9.481 satisfies requirements for preempting local ordinances.
{¶ 3} According to Dayton, R.C. 9.481 is an impermissible attempt by the legislature to interpret the Ohio Constitution and create a right at variance with holdings of both the Supreme Court of the United States and the Supreme Court of Ohio. Finally, Dayton contends that R.C. 9.481 violates Section 26, Article II of the Ohio Constitution.
{¶ 4} We conclude that the enactment of R.C. 9.481 is authorized by the broad grant of authority to provide for the general welfare of working persons provided for in Section 34, Article II of the Ohio Constitution, that may not be impaired by the home-rule provision in Section 3, Article XVIII of the Ohio Constitution, or by any other provision of the Ohio Constitution, including the preamble.
{¶ 5} Because we conclude that R.C. 9.481 is authorized by Section 34, Article II of the Ohio Constitution, we need not consider Dayton's argument that the statute violates the home-rule provision of Section 3, Article XVIII, in that it conflicts with provisions of an ordinance adopted pursuant to home-rule powers.
{¶ 6} Finally, we conclude that the General Assembly did not impermissibly interfere with the role of the judiciary by enacting R.C. 9.481, nor does the statute itself violate the Uniformity Clause. Accordingly, the judgment of the trial court is affirmed.

I

{¶ 7} In 1912, Ohio citizens approved various amendments to their constitution, including Article XVIII ("the home rule amendment"), which allowed municipalities the ability to adopt charters and to exercise powers of self-government. Article II was adopted during the same process and gave Ohio's legislature broad authority over employee welfare.
*2 {¶ 8} In 1913, Dayton adopted its first charter. Subsequently, in 1978, Dayton's City Commission adopted Ordinance No. 25558. This ordinance required all employees in Dayton's Civil Service to be actual residents and reside physically in the city of Dayton, and to continue to live in the city during the term of their employment. The commission also enacted Ordinance No. 27505 in 1987, for the purpose of placing the residency issue before the electorate. Based on the approval of the electorate in March 1987, Section 102 was placed in Dayton's charter.
{¶ 9} Section 102 provides:
{¶ 10} "(A) All employees in the Civil Service of the City of Dayton, appointed after the effective date of this Charter section, must and shall be actual residents of and physically live in the City of Dayton at the time of their appointment, and shall continue to be actual residents and physically live in the City of Dayton during the term of their employment.
{¶ 11} "(B) All employees in the Civil Service of the City of Dayton, required by Ordinance No. 25558, dated June 28, 1978, and/or personnel regulations, including, but not specifically limited to, Personnel Policies and Procedures Manual § 2.01, originally adopted June 28, 1978, as § 9.10 and revisions

thereof, to have actual residence and physically live in the City of Dayton at the time of the effective date of this Charter section shall and must continue to be actual residents of and physically live in the City of Dayton during the term of their employment.
{¶ 12} "(C) Irrespective and notwithstanding any other provision of this Charter, violation of the provisions of this section shall result in discharge.
{¶ 13} "(D) The Commission may enact such ordinances as may be necessary and consistent with implementation of this section." Revised Code of General Ordinances of the City of Dayton ("R.C.G.O.") 102.
{¶ 14} Consistent with R.C.G.O. 102, Dayton employees have been required to reside in Dayton as a condition of employment, and the requirement has been routinely enforced.
{¶ 15} In 2006, the General Assembly passed S.B. 82, which became effective as R.C. 9.481, in May 2006. R.C. 9.481 applies to all political subdivisions and provides:
{¶ 16} "(B)(1) Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.
{¶ 17} "(2)(a) Division (B)(1) of this section does not apply to a volunteer.
{¶ 18} "(b) To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state. * * *
***3** {¶ 19} "(C) Except as otherwise provided in division (B)(2) of this section, employees of political subdivisions of this state have the right to reside any place they desire."
{¶ 20} The statute defines a "volunteer" as "a person who is not paid for service or who is employed on less than a permanent full-time basis." R.C. 9.481(A)(2). Thus, after R.C. 9.481 became effective, Dayton's full-time employees were no longer required to live in the city as a condition of employment. However, volunteers or part-time employees could be subjected to a residency requirement.
{¶ 21} Dayton was dissatisfied with this situation and filed a declaratory judgment action against the state of Ohio in May 2006, asking the trial court to declare that R.C. 9.481 is invalid and unenforceable and that it violates the Ohio Constitution. Dayton also asked for preliminary and permanent injunctions barring enforcement of the statute.
{¶ 22} After the state filed an answer, IAFF # 136 was given permission to intervene as a third-party defendant. All parties then filed cross-motions for summary judgment. Dayton noted in its motion that the city's population had been declining steadily since the 1970 census. As of November 2006, Dayton had 2,195 employees, 70 percent of whom resided in the northeast and southeast portions of the city. Of these individuals, 819 are employed in the police and fire departments, and 80 percent live in the northeast and southeast sections of the city.
{¶ 23} Dayton's motion also noted that in February 2005, the city had 2,500 vacant residential properties. Dayton's economic expert predicted an adverse effect on the city's population, property values, and tax revenues if the residency requirement were abolished.
{¶ 24} According to the state, the General Assembly found that 125 cities and 13 villages in Ohio subject employees to residency requirements. The General Assembly also made the following legislative comments when it enacted S.B. 82:
{¶ 25} "Section 2. In enacting section 9.481 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:
{¶ 26} "(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.
{¶ 27} "(B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.
{¶ 28} "Section 3. The General Assembly finds, in enacting section 9.481 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees."

*4 {¶ 29} In June 2007, the trial court granted summary judgment in favor of the state and IAFF # 136 and denied Dayton's motion for summary judgment. The court concluded that R.C. 9.481 was properly enacted under the "general welfare" clause of Section II, Article 34 of the Ohio Constitution, which prevails over the home-rule provision in Section 3, Article XVIII of the Ohio Constitution. The court further concluded that even if Section 34 does not control, R.C. 9.481 is a general law that takes precedence over Dayton's city charter. Finally, the trial court held that R.C. 9.481 does not violate the Uniformity Clause of Section 26, Article II of the Ohio Constitution.
{¶ 30} Dayton appealed from the decision and also requested a stay of the trial court's decision pending appeal. A stay was granted in August 2007.

II

{¶ 31} Dayton's First Assignment of Error is as follows:
{¶ 32} "The trial court erred in finding that R.C. 9.481 was enacted pursuant to Section 34, Article II of the Ohio Constitution." '
{¶ 33} Under this assignment of error, Dayton contends that the trial court improperly extended the scope of Section 34, Article II of the Ohio Constitution by interpreting "general welfare" to include every law that even tangentially affects employment. Dayton also claims that the phrase "general welfare" is ambiguous and that the history and legislative debates accompanying the passage of Section 34 reveal that "general welfare" pertains only to working conditions, not other aspects of employment like residency. Finally, Dayton argues that the "general law" test used in home-rule cases applies to Section 34 analysis. According to Dayton, R.C. 9.481 is not a general law under home-rule standards and cannot prevail over conflicting municipal regulations.
{¶ 34} Before we address these arguments, we should note that we have reviewed the briefs of the parties, as well as a brief filed by amicus curiae, Ohio Association of Professional Fire Fighters. We have also considered supplemental authority filed by both Dayton and the state.
[1][2] {¶ 35} Turning now to the merits, we begin with the fundamental principle that courts "must 'presume the constitutionality of lawfully enacted legislation.' " (Citations omitted.) *Klein v. Leis*, 99 Ohio St.3d 537, 2003- Ohio-4779, 795 N.E.2d 633, at ¶ 4. Therefore, when "we consider the constitutionality of * * * legislation passed by the General Assembly, we presume it to be constitutional and will not declare it to be unconstitutional unless it 'appear[s] beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.' " *Kelleys Island Caddy Shack, Inc. v. Zaino*, 96 Ohio St.3d 375, 376, 2002-Ohio-4390, 775 N.E.2d 489 at ¶ 10, quoting *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 57 O.O. 134, 128 N.E.2d 59, paragraph one of the syllabus.
{¶ 36} R.C. 9.481 was enacted pursuant to Section 34, Article II of the Ohio Constitution, which provides:
*5 {¶ 37} "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power."
{¶ 38} Section 34 was among a number of constitutional amendments that were proposed by the 1912 Constitutional Convention and approved by voters. Another amendment adopted during this process was Article XVIII, which is known as the home rule amendment. Section 3 of Article XVII is considered a key part of the home rule amendment, and states:
{¶ 39} "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."
{¶ 40} Dayton contends that its residency requirement involves the exercise only of local self-government and must prevail over any conflicting state legislation. Conversely, the state and IAFF # 136 argue that valid enactments under Section 34, Article II of the Ohio Constitution must prevail over conflicting local ordinances, due to the supremacy of Section 34.
[3][4] {¶ 41} In *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 539 N.E.2d 103 ("*Rocky River IV*"), the Ohio Supreme Court considered the constitutionality of a statute requiring binding arbitration of disputes between a city and its safety forces. Id. at 1-2, 539 N.E.2d 103. [FN1] The city argued that the statute unconstitutionally denied cities the power to determine municipal safety employee compensation, in violation of the home-rule sections in Article XVIII. Id. at 12, 539 N.E.2d 103. However, the Ohio Supreme Court concluded that Section 34 of Article II governed and that the home-rule sections of the Constitution did not apply. Id. at 13, 539 N.E.2d 103.
{¶ 42} In discussing Section 34, the Supreme Court stressed:
{¶ 43} "This provision constitutes a broad grant of authority to the legislature to provide for the

welfare of all working persons, including local safety forces. * * * The provision expressly states in 'clear, certain and unambiguous language' that *no other provision* of the Constitution may impair the legislature's power under Section 34. * * * This prohibition, of course, includes the 'home rule' provision contained in Section 3, Article XVIII." *Rocky River IV,* 43 Ohio St.3d at 13, 539 N.E.2d 103, quoting from *State ex rel. Bd. of Trustees of Police & Firemen's Pension Fund v. Bd. of Trustees of Police Relief Fund* (1967), 12 Ohio St.2d 105, 106, 41 O.O.2d 410, 233 N.E.2d 135. The Ohio Supreme Court, therefore, concluded that because the statute in question was concerned with the general welfare of employees, "pursuant to Section 34, Article II, the power of the General Assembly to adopt the act*may not be affected in any way by the 'home rule' amendment*." (Emphasis sic.) Id.
***6** {¶ 44} In *Rocky River IV,* the city argued that Section 34 did not apply to conciliation, but was intended to apply only to matters involving minimum wage. In rejecting this contention, the Ohio Supreme Court first focused on the history of Section 34, including the constitutional debates. After discussing the constitutional debates in detail, the court stressed:
{¶ 45} "But none of this really makes any difference. The language of Section 34 is so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary. Where the language of a statute or constitutional provision is clear and unambiguous, it is the duty of courts to enforce the provision as written. * * * 'Debates of a constitutional convention are proper matter for consideration where they throw light on the correct interpretation of any provision of the Constitution, but if the provision is clear and may be read without interpretation, the discussion leading to its adoption is of no value, nor are the various statements by the members of the convention and the resolutions offered during the convention determinative of the meaning of the amendment.' " * * *
{¶ 46} "Regardless of what was said or not said during the debates, the unalterable fact remains that Section 34, as it was ultimately adopted, transcends the limitations urged by appellant. If the framers of our Constitution had intended this section to apply only to minimum wage, almost half of the forty-one words contained in this section must be regarded as mere surplusage, since it further provides that laws may be passed 'fixing and regulating the hours of labor * * * and providing for the comfort, health, safety and general welfare of all employees * * *.' Are we to believe, as appellant apparently does, that these words were not intended to have meaning? To ask the question is to answer it." (Citations omitted.) Id. at 15-16, 539 N.E.2d 103.
{¶ 47} The Ohio Supreme Court continued:
{¶ 48} "The same may be said of the final phrase of Section 34, which states that ' * * * no other provision of the constitution shall impair or limit' the General Assembly's power to pass laws concerning the welfare of employees. * * * How can it be seriously maintained that the home-rule amendment is somehow exempt from this mandate? Section 34 could not be clearer or more unequivocal. Appellant's contention, that Section 34 does not mean what it so obviously says, is indefensible. This is especially true when one considers that this court has already held that Section 34 contains 'clear, certain and unambiguous language' providing that 'no other provision of the Constitution may impair the intent, purpose and provisions' of Section 34, including the home-rule amendment. *Pension Fund,* 12 Ohio St.2d at 107, 41 O.O.2d at 412, 233 N.E.2d at 137." *Rocky River IV,* 43 Ohio St.3d at 16, 539 N.E.2d 103.
{¶ 49} Dayton argues that we should adopt the view of the dissent in *Rocky River IV,* which argued that an overly broad interpretation of "general welfare" makes the remaining parts of Section 34, as well as Section 35, Article II of the Ohio Constitution "mere surplusage." Id. at 28, 539 N.E.2d 103, fn. 35 (Wright, J., dissenting). Justice Wright further argued in his dissent in *Rocky River IV* that the drafters of Section 34 intended to limit the General Assembly specifically to "wages, hours, and sanitary conditions in industry." Id.
***7** {¶ 50} This is the view recently taken in *Lima v. State,* Allen App. No. 1-07-21, 2007-Ohio-6419, 2007 WL 4248278. In *Lima,* the Third District Court of Appeals concluded after a lengthy analysis:
{¶ 51} "R.C. 9.481 was not validly enacted pursuant to Article II, Section 34 of the Ohio Constitution, because Section 34's language, legislative history, and case law support finding that laws providing for the "general welfare of all employes" [sic] must have, at minimum, some nexus between their legislative end and the working environment." Id. at ¶ 88.
{¶ 52} The Third District used four methods of interpretation in reaching this conclusion: (1) the common definition of "employee"; (2) "*noscitur a sociis,* " which instructs courts to determine the meaning of statutory phrases by their immediately surrounding words; (3) the "legislative history" of Section 34; and (4) case law interpreting Section 34.
{¶ 53} The Third District conceded that "general welfare" is a broad term, but observed that the

language in Section 34 is limited by its subject matter. The Third District thus framed the issue as follows:

{¶ 54} "The general-welfare clause's plain language requires that the General Assembly enact laws providing for the general welfare 'of all employes.' [sic] Lima's assignment of error, thus, raises the issue of whether the term 'employes' [sic] in Section 34 means employees acting within the scope of their employment (i.e. within the working environment) or whether 'employes' [sic] refers to the status of being an employee, which transcends any particular locus. In other words, does the term 'employes' [sic] refer to the status of being an employee 24 hours per day, which attaches at hiring and sheds at firing ('employee' in its broadest sense), or does the term have a more limited meaning, which is intricately tied to a particular locus; here, the work environment? If the later interpretation is correct, the plain language would support finding that laws passed pursuant to Section 34's general-welfare clause must address issues related to the employees' working environment as Lima argues. If the former interpretation is correct, then the plain language would support finding that laws passed pursuant to Section 34 can address issues beyond the employees' working environment as the state argues." Id. at ¶ 28.

{¶ 55} After reviewing some common definitions of "employee," the Third District concluded that the definitions did not resolve the scope of the term as used in Section 34. The Third District then focused on "*noscitur a sociis* " and concluded that because the first and second clauses of Section 34 deal with working terms and conditions "within" the employment environment, the General Assembly would be limited to enacting laws that affect employees' "work environment conditions." [FN2] Id. at ¶ 35.

{¶ 56} Finally, the Third District reviewed historical circumstances in the early 1900s and the content of debates that occurred during the 1912 Constitutional Convention. Id. at ¶ 37-47. In this regard, the Third District again concluded that Section 34 was intended to empower the General Assembly with legislative authority over only labor hours, a minimum wage, and the working environment itself. Id. at ¶ 46.

***8** {¶ 57} As we noted, this is the view taken by the dissent in *Rocky River IV*. In arguing that the legislature could not enact compulsory arbitration legislation that would prevail over conflicting municipal law, Justice Wright's dissent in *Rocky River IV* suggested that "any fair-minded reader of the debates could only conclude that * * * [Section 34] refers to wages, hours and sanitary conditions in industry." *Rocky River IV*, 43 Ohio St.3d at 28, 539 N.E.2d 103 (Wright, J., dissenting). But this was not the view adopted by the majority of the Ohio Supreme Court.

{¶ 58} Justice Wright also reviewed case law interpreting Section 34. Like the Third District, Justice Wright concluded that Section 34 is limited in scope to "the minimum wage, hours of labor, or safety conditions." Id. at 35, 539 N.E.2d 103. Compare *Lima*, 2007-Ohio-6419, at ¶ 54 (stating that "Section 34 general welfare case law is limited to employee economic welfare"). Again, this was not the view expressed by the majority opinion in *Rocky River IV*, and we are bound by that decision until it is reversed or overruled. See, *e.g.*, *Natl. City Bank v. Rhoades*, 150 Ohio App.3d 75, 84, 2002-Ohio-6083, 779 N.E.2d 799, at ¶ 31; *Louis A. Green, P.S. v. State Bd. of Registration for Professional Engineers and Surveyors*, Greene App. No. 05CA121, 2006-Ohio-1581, at ¶ 20; and *State v. Davis*, Clark App. No.2006 CA 69, 2007-Ohio-1030, at ¶ 43 (all referring to the binding effect of Ohio Supreme Court decisions).

{¶ 59} Furthermore, we find a logical inconsistency in the Third District's classification of the issues. In *Lima*, the Third District focused on whether "employee" refers to a status that attaches at hiring and sheds at firing (the state of Ohio's position in *Lima*), or whether "employee" is tied to a particular locus--the working environment (the city of Lima's position). The Third District concluded that in the first situation, Section 34's "plain language" would "support finding that laws passed pursuant to Section 34 can address issues beyond the employees' working environment." *Lima*, 2007-Ohio-6419, at ¶ 28. However, the Third District also stated that in the second situation, Section 34's "plain language" would "support finding that laws passed pursuant to Section 34's general-welfare clause must address issues related to the employees' working environment." Id.

{¶ 60} We find it difficult to understand how statutory language can be described as "plain" if it can be read to support each of two contrary positions. Moreover, if language is plain, it must be applied as written. See, *e.g.*, *State v. Tuomala*, 104 Ohio St.3d 93, 96, 2004-Ohio-6239, 818 N.E.2d 272, at ¶ 11-12, and *In re Blue Flame Energy Corp.*, 171 Ohio App.3d 514, 536, 2006-Ohio-6892, 871 N.E.2d 1227, at ¶ 43. As we have already stressed, the Ohio Supreme Court concluded in *Rocky River IV* that the language in Section 34 is unambiguous and may not be impaired by the home rule amendment. *Rocky River IV*, 43 Ohio St.3d at 16, 539 N.E.2d 103.

***9** {¶ 61} In 1999, the Ohio Supreme Court again rejected attempts to restrict Section 34, stressing

that Section 34 has repeatedly been interpreted as a "broad grant of authority to the General Assembly, not as a limitation on its power to enact legislation." *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.* (1999), 87 Ohio St.3d 55, 61, 717 N.E.2d 286. In *Cent. State Univ.*, the American Association of University Professors ("AAUP") alleged that the General Assembly had violated Section 34 by enacting legislation that burdened state employees. The burden consisted of an increase in the employees' instructional workloads. The Ohio Supreme Court rejected the contention that Section 34 restricts the legislature solely to the enactment of laws benefiting employees, rather than burdening employees as well. Id. at 60, 717 N.E.2d 286. In this regard, the court noted that:

{¶ 62} "The General Assembly routinely enacts legislation that serves precisely the purpose AAUP would have us declare impermissible. R.C. 3319.22, for instance, allows rules imposing continuing education requirements upon teachers; R.C. 109.801 requires police officers to undergo annual firearm training; public employees are limited by R.C. 102.03 in gifts they may receive; and classified employees are limited in their solicitations of political contributions under R.C. 124.57. Furthermore, employees of Head Start agencies and out-of-home child care employees must submit to criminal record checks (R.C. 3301.32 and 2151.86); teachers and other school employees may be required to undergo physical examinations in certain instances at the discretion of school physicians (R.C. 3313.71); an employee who contracts AIDS from a fellow employee has no cause of action in negligence against his employer (R.C. 3701.249); and board of health employees dealing with solid and infectious waste are required to complete certain training and certification programs (R.C. 3734.02).

{¶ 63} "These statutes provide only a few examples of laws burdening employees based upon legislative decisions to regulate the employment sector in the public interest. None of these statutes was enacted to benefit employees, but there can be no question that they constitute important legislation that the General Assembly has the constitutional authority to enact." 87 Ohio St.3d at 61, 717 N.E.2d 286.

{¶ 64} Some of the statutes mentioned by the Ohio Supreme Court bear no more "nexus" to the conditions of the "work environment" than the residency provisions in R.C. 9.481. *Lima*, 2007-Ohio-6419, at ¶ 18. For example, R.C. 102.03 places restrictions on the outside employment of various public employees for as long as 24 months after they leave public service. Likewise, granting immunity to employers for negligent transmission of the AIDS virus by fellow employees does not bear a significant nexus to the work environment itself. Nonetheless, the legislature's power to routinely enact these measures under Section 34 has been upheld. *Cent. State Univ.*, 87 Ohio St.3d at 61, 717 N.E.2d 286. The fact that the legislative ends do not bear a "nexus" to the conditions of the working environment does not mean that the legislature's goals in enacting these statutes are irrelevant. However, contrary to the Third District's conclusion, this does mean that Section 34 is not limited solely to legislation that bears a nexus to the conditions of the working environment as opposed to the status of being an "employee"--which attaches at hiring and is shed at firing. *Lima*, 2007-Ohio-6419, at ¶ 28.

***10** {¶ 65} In a recent decision, the Ninth District Court of Appeals employed a different analysis in assessing the constitutionality of R.C. 9.481. The issue before the Ninth District Court of Appeals was the same-- whether the General Assembly acted within the authority granted by Section 34, Article II of the Ohio Constitution. See *State v. Akron*, Summit App. No. 81506, 2008-Ohio-38, at ¶ 9. In *Akron*, the Ninth District Court of Appeals agreed that *Rocky River IV* had taken an expansive view of the General Assembly's power under Section 34. Id. at ¶ 15-18. However, the Ninth District Court of Appeals concluded that the phrase "general welfare" in Section 34 is not without limits. Id. at ¶ 18.

{¶ 66} The Ninth District Court of Appeals stressed that while the term "general welfare" appears to be all-encompassing, it "cannot reasonably encompass everything that arguably benefits some employees." Id. Instead, some boundaries must exist. To decide the boundaries, the Ninth District Court of Appeals looked to the "common welfare" clause of the preamble to the Ohio Constitution. In this regard, the Ninth District Court of Appeals observed:

{¶ 67} "While Article II[,] Section 34 explicitly authorizes legislation for the general welfare of employees, legislation adopted under it must also either secure the blessings of freedom to citizens of Ohio or further the 'general welfare' of the state. 'All government power derives from the people, but these grants of power are limited.' * * * The scope of the power granted Ohio by its citizens is found in the preamble of the Ohio Constitution:

{¶ 68} " 'We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.' " (Citations omitted.) Id.

at ¶ 19.
{¶ 69} Based on the preamble, the Ninth District Court of Appeals concluded that Ohio's Constitution only authorizes laws securing freedom for citizens or furthering their common welfare, and that all laws are subject to this limitation. Id. The Ninth District Court of Appeals also found no barrier to this line of thought in the Ohio Supreme Court's previous decisions. In this regard, the Ninth District Court of Appeals noted:
{¶ 70} "In interpreting the General Assembly's broad authority under Article II Section 34, the Ohio Supreme Court has recognized the societal notion of 'common welfare.' Although the Court has not explicitly articulated a limitation on the General Assembly's authority under Article II Section 34 to enact legislation for the 'general welfare' of employees, it has been unnecessary for it to do so in the prior cases before it." Id. at ¶ 20.
{¶ 71} Consistent with the "common welfare" limitation, the Ninth District Court of Appeals distinguished *Rocky River IV, Pension Fund,* and *Central State Univ.* because those cases involved comprehensive legislation addressing significant social issues impacting the public at large. Id. at ¶ 21-24. In contrast, the Ninth District Court of Appeals concluded that R.C. 9.481 did not affect the common welfare. The Ninth District Court of Appeals concluded that the "sole purpose" of R.C. 9.481 is as follows:
***11** {¶ 72} "[T]o invalidate employee residency requirements by political subdivisions. This legislation does not address any significant social issues impacting the public at large; it is not part of a comprehensive legislative scheme, but deals with a single issue; and it applies to a relatively small segment of the population (those who are employed by political subdivisions, are subject to residency requirements, and would choose to live elsewhere if allowed to do so).
{¶ 73} " * * * unlike any of the legislation that the Supreme Court has determined falls within the scope of Article II[,] Section 34 as providing for the general welfare of employees, Section 9.48.1 does not pertain to the protection or regulation of any existing right or obligation of the affected employees. Instead, it is an attempt to circumvent municipal home rule authority and reinstate a 'right' that the employees voluntarily surrendered when they accepted government employment." (Brackets added.) Id. at ¶ 24-25.
[5] {¶ 74} We note that a preamble is " 'the introductory part of a statute, ordinance, or regulation that states the reasons and intent of the law or regulation or is used for other explanatory purposes.' " *Christy v. Summit Cty. Bd. of Elections* (1996), 77 Ohio St.3d 35, 39, 671 N.E.2d 1, fn. 1, citing Webster's Third New World International Dictionary (1986) 1783. The view of the Ninth District Court of Appeals on the effect of the preamble is supported by *Palmer v. Tingle* (1896), 55 Ohio St. 423, 45 N.E. 313. In *Palmer,* the Ohio Supreme Court indicated that the preamble of Ohio's Constitution limits the powers of the General Assembly. Specifically, the court stated:
{¶ 75} "It is worthy of notice that the constitution is established to secure the blessings of freedom, and to promote the common welfare. As the constitution must be regarded as consistent with itself throughout, it must be presumed that the laws to be passed by the general assembly under the powers conferred by that instrument are to be such as shall secure the blessings of freedom, and promote our common welfare." 55 Ohio St. at 440, 45 N.E. 313.
{¶ 76} *Rocky River IV* did not consider any limitations imposed on Section 34 by the concept of "common welfare"--presumably because the Ohio Supreme Court did not need to do so. As the Ninth District Court of Appeals noted, the statute involved in *Rocky River IV* was part of comprehensive legislation encompassing an entire chapter of the Ohio Revised Code. *Akron,* 2008-Ohio-38, at ¶ 21. See also *Rocky River IV,* 49 Ohio St.3d at 41, 550 N.E.2d 464 (noting that the statutory section involved in the case was part of the Ohio Public Employees Collective Bargaining Act, R.C. Chapter 4117). The idea of legislating for the "common welfare" also appears in *Central State Univ.,* as the court focused on the fact that statutes previously upheld as valid had been "based upon legislative decisions to regulate the employment sector *in the public interest.*" (Emphasis added.) 87 Ohio St.3d at 61, 717 N.E.2d 286.
***12** {¶ 77} Nevertheless, we are not persuaded that the grant of authority to the General Assembly, in Section 34, Article II of the Ohio Constitution, to pass laws providing for the general welfare of all employees, is subject to a limitation based in the preamble to the Ohio Constitution. The last clause of Section 34, Article II unequivocally declares, "and no other provision of the constitution shall impair or limit this power." The declaration includes the preamble to the Ohio Constitution as well as the home rule amendment. The effect is to render the grant of legislative power contained in Section 34, Article II plenary; no limitations to that power external to the language therein may be imposed.
{¶ 78} In short, Section 34, Article II of the Ohio Constitution gives the General Assembly the power

to provide that employees of political subdivisions of the state shall be free to reside wherever they choose, because that is a provision providing for their general welfare. Dayton's first assignment of error is overruled.

III

{¶ 79} Dayton's second assignment of error is as follows:

{¶ 80} "The trial court erred in finding that R.C. 9.481 satisfies the three part test established in *City of Canton v. State of Ohio* and preempts the requirement set forth in the city's charter that all city employees must reside within the city limits."

{¶ 81} Under this assignment of error, Dayton contends that its residency rule is a matter of local self-government and that the trial court erred in finding that R.C. 9.481 is a general law that takes precedence over Dayton's city charter. In response, the state and IAFF # 136 contend that R.C. 9.481 regulates matters of statewide concern and is a general law superseding Dayton's home rule powers. In this regard, the state also claims that R.C. 9.481 has extra-territorial effects because it addresses the labor relationship between public-sector employers and employees and because society is no longer concentrated in insular, local communities.

{¶ 82} In view of our disposition of Dayton's first assignment of error, this assignment of error has become moot. R.C. 9.481 prevails over Dayton's city charter by reason of Section 34, Article II of the Ohio Constitution; it is not necessary to establish that it is a general law for it to prevail.

{¶ 83} Dayton's second assignment of error is overruled as moot.

IV

{¶ 84} Dayton's third assignment of error is as follows:

{¶ 85} "The trial court erred in failing to find that R.C. 9.481 is an impermissible attempt by the legislature to interpret the constitution and create a right at variance with both the United States and Ohio Supreme Courts."

{¶ 86} Under this assignment of error, Dayton contends that the legislature impermissibly interfered with the role of the judiciary by enacting legislation that interprets Article I, Section I of the Ohio Constitution in a way that is inconsistent with existing judicial decisions. The state responds by noting that Dayton failed to raise a "separation of powers" argument in its complaint. Citing *Johns v. Univ. of Cincinnati Med. Assn., Inc.*, 101 Ohio St.3d 234, 2004-Ohio-824, 804 N.E.2d 19, the state also points out that the General Assembly may pass any law that is not constitutionally forbidden.

***13** [6] {¶ 87} In this regard, we agree with the state. In *Johns,* the Ohio Supreme Court stated, " '[T]he state Constitution is primarily a limitation on legislative power of the General Assembly; therefore, the General Assembly may pass any law unless it is specifically prohibited by the state or federal Constitutions.' " (Citations omitted.) Id. at ¶ 35. If a particular law conflicts with existing case law, that is a matter for the courts to resolve. Consistent with this principle, the Ohio Supreme Court has declared legislation invalid or unconstitutional on numerous occasions. The General Assembly has also exercised the option of enacting legislation to supersede decisions with which it disagrees. A classic example of this interplay is the uninsured/underinsured motorists statute, which has long been a battleground between the legislature and courts. See R.C. 3937.18 and its uncodified law, indicating an intention to supersede various Ohio Supreme Court decisions, including *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660, 710 N.E.2d 1116, and *Savoie v. Grange Mut. Ins. Co.* (1993), 67 Ohio St.3d 500, 620 N.E.2d 809.

{¶ 88} Dayton points to no federal or state constitutional provisions that specifically prohibit enactment of R.C. 9.481. As a result, the General Assembly was not precluded from enacting the statute.

{¶ 89} Dayton's third assignment of error is overruled.

V

{¶ 90} Dayton's Fourth Assignment of Error is as follows:

{¶ 91} "The trial court erred in finding that R.C. 9.481 does not violate Section 26, Article II of the Ohio Constitution."

[7] {¶ 92} Dayton contends under this assignment of error that the trial court erred in failing to find that R.C. 9.481 violates the Uniformity Clause of the Ohio Constitution. In this regard, Dayton argues that R.C. 9.481 is unconstitutional because it creates arbitrary distinctions between full-time and part-time municipal employees. As we mentioned, R.C. 9.481(B)(1) provides that political subdivisions may not require employees to reside in any specific area of the state as a condition of employment. However, certain individuals, defined as either volunteers or persons with less than full-time employment, may be subjected to residency requirements.

{¶ 93} Section 26, Article II of the Ohio Constitution states:

{¶ 94} "All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution."
[8] {¶ 95} A two-part test is applied to assess constitutionality under the Uniformity Clause: "(1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state." (Citations omitted.) *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 541, 706 N.E.2d 323.
***14** {¶ 96} The first part of the test refers to subject matter, not geographical application. Id. at 542, 706 N.E.2d 323. In deciding whether a given subject matter is general or special, the Ohio Supreme Court has said that a matter is of a general nature "if the subject does or may exist in, and affect the people of, every county, in the state." Id. "On the contrary, if the subject cannot exist in, or affect the people of every county, it is local or special." Id. Based on this standard, which differs from the more complex criteria used to decide whether laws are "general" for purposes of the home-rule amendment, we conclude that the subject matter of R.C. 9.481 is general because the subject of the statute (residency) does or may exist in and affect the people of every county in the state.
{¶ 97} In *Austintown Twp. Bd. of Trustees v. Tracy* (1996), 76 Ohio St.3d 353, 356, 667 N.E.2d 1174, the Ohio Supreme Court stressed that "uniform operation throughout the State" means "universal operation as to territory; it takes in the whole state. And, as to persons and things, it means universal operation as to all persons and things in the same condition or category. When a law is available in every part of the state as to all persons and things in the same condition or category, it is of uniform operation throughout the state."
{¶ 98} Again, under this definition, we conclude that R.C. 9.481 does not violate the Uniformity Clause. Although R.C. 9.481 distinguishes among "full-time" employees, "part-time" employees, and "volunteers," the law is available in every part of Ohio to all individuals occupying the same position or category. In other words, all part-time employees or volunteers in every municipality in Ohio may be subjected to a residency requirement, while full-time employees may live where they choose.
[9] {¶ 99} Dayton contends that these classifications violate the Uniformity Clause because they are arbitrary. However, the Ohio Supreme Court has rejected the idea that arbitrary classifications violate the Uniformity Clause. *Austintown,* 76 Ohio St.3d at 358, 667 N.E.2d 1174. In *Austintown,* the court stressed:
{¶ 100} "[A]rbitrary classifications violate the Uniformity Clause only where those classifications are contained in a statute first deemed to be special or local as opposed to general. * * *
{¶ 101} "Further, acceptance of the contention that the Uniformity Clause bars all legislatively created classifications deemed by the judiciary to be arbitrary would improperly and unnecessarily expand the scope of that constitutional provision. Traditionally, and more appropriately, it is equal protection analysis, rather than Uniformity Clause analysis, which mandates inquiry into whether legislatively created classifications of similarly situated persons bear a rational relationship to legitimate governmental purposes." Id. at 358-59, 667 N.E.2d 1174.
{¶ 102} Based on the Ohio Supreme Court's instruction in *Austintown,* we will not consider whether the classifications in R.C. 9.481 are arbitrary. We also note that Dayton failed to challenge R.C. 9.481 on equal protection grounds.
***15** {¶ 103} In light of the above discussion, we conclude that R.C. 9.481 does not violate the Uniformity Clause. Accordingly, Dayton's fourth assignment of error is overruled.

VI

{¶ 104} All of Dayton's assignments of error having been overruled, the judgment of the trial court is affirmed.
Judgment affirmed.

DONOVAN, J., concurs.

GRADY, J., dissents.

GRADY, J., dissenting:
{¶ 105} The question presented in this appeal is whether the residency requirement in the charter of the city of Dayton survives the prohibition against such regulations in R.C. 9.481. That question presents two issues of law. The first issue is whether the city's residency requirement is entitled to the

protection of the home rule amendment, Section 3, Article XVIII of the Ohio Constitution. If that protection applies, then the second issue for determination is whether R.C. 9.481 was enacted pursuant to the authority conferred on the General Assembly by Section 34, Article II, which trumps the protections afforded local legislation by the home rule amendment.

{¶ 106} Section 3, Article XVIII provides:

***16** {¶ 107} "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

{¶ 108} In *Canton v. State* (2002), 95 Ohio St.3d 149, 766 N.E.2d 963, 2002- Ohio-2005, the Supreme Court held:

{¶ 109} "To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." Id. at syllabus.

{¶ 110} R.C. 9.481 fails the tests for a general law in several ways, but most clearly because it does not "set forth police, sanitary, or similar regulations, (but) purport(s) only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." By its terms, R.C. 9.481 is wholly and exclusively prohibitory. Therefore, R.C. 9.481 is not a general law for purpose of Section 3, Article XVIII that nullifies the residency requirement in the charter of the city of Dayton.

{¶ 111} Even if R.C. 9.481 were found to satisfy the test for a "general law," it would not prevail over the conflicting provisions of Dayton's residency requirement for its employees, because the city's residency requirement is an exercise of its proprietary authority, which is protected by Section 3, Article XVIII, from the state's exercise of its police power, absent some other prohibition.

{¶ 112} The general laws of the state to which Section 3, Article XVIII refers "are obviously such as refer to police, sanitary, and other similar regulations which apply uniformly throughout the State." *Fitzgerald v. Cleveland* (1913), 88 Ohio St. 338, 359, 103 N.E. 512. They are expressions of "that inherent sovereignty which it is the right and duty of the government or its agents to exercise whenever public policy in a broad sense demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires." *Miami County v. Dayton* (1915), 92 Ohio St. 217, 223-224.

{¶ 113} Municipalities may likewise exercise the police power. See, e.g., *State ex rel. Tomino v. Brown* (1989), 47 Ohio St.3d 119, 549 N.E.2d 505. However, the grant to municipalities of "all power of local self-government" in Section 3, Article XVIII is broader than the authority to exercise the police power. Therefore, not all local legislation is necessarily an exercise of a municipality's police power. Further, it is only those enactments of "local police, sanitary and similar regulations" that are subject to the superseding provisions of the home rule amendment when they conflict with a general law. *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, 151 N.E.2d 722.

{¶ 114} The police power is a governmental power, the power to prescribe rules regulating the conduct of the public generally in order to provide for the common welfare of the governed. *State v. Martin* (1958), 168 Ohio St. 37, 151 N.E.2d 7. As applied to business activities, it is the power to regulate them as opposed to the power to engage in them. *State v. Helvering* (1934), 292 U.S. 360, 54 S.Ct. 725, 78 L.Ed. 1307. When engaged in a business activity, a municipal corporation acts as a proprietor, not a governmental entity performing a regulatory function.

{¶ 115} Notwithstanding the fact that it is a municipality, and the fact that the city of Dayton's residency requirement regulates who may be its employees, that determination is an exercise of the city of Dayton's proprietary authority, not an exercise of its police powers. The city's exercises of its authority as a proprietor are protected by the home rule amendment from interference by the General Assembly through an exercise of the state's police powers, except to the extent that the city's exercise of its proprietary authority violates some other constitutional prohibition, such as the Equal Protection Clause, which the General Assembly may use its police powers to enforce. No such violation is argued. Therefore, regardless of any conflict with R.C. 9.481, that section, being an exercise of the police power, does not supersede the city's residency requirement pursuant to Section 3, Article XVIII, because the residency requirement is an exercise of the city's authority to act for its own proprietary purposes. The action that the city took in adopting its residency requirement for employees is not

different in kind and character from deciding from whom it will purchase its supplies, which is plainly a matter protected from state intrusion by the home rule amendment.
{¶ 116} Even if R.C. 9.481 fails as a general law for purposes of home-rule analysis, it nevertheless prevails over the protections the home rule amendment provides if the General Assembly passed R.C. 9.481 pursuant to the authority conferred on it by Section 34, Article II. That section states:
{¶ 117} "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provisions of the constitution shall impair or limit this power."
***17** {¶ 118} The first thing to understand about Section 34, Article II is that, as a grant of authority to the General Assembly, it is redundant. Section 1, Article II of the Ohio Constitution provides: "The legislative power of the state shall be vested in a General Assembly * * *." That grant of authority was originally provided by Article I, Section 1 of the 1802 Ohio Constitution. *Swisher,* Ohio Constitution Handbook (1990), Editor's Comment, 209. The "legislative power" conferred on the General Assembly includes an inherent power to prescribe regulations that promote the education, health, safety, peace, morals, and general welfare of the community, which is exercised under the rubric "police power." *State v. Stouffer* (1971), 28 Ohio App.2d 229, 276 N.E.2d 651. The General Assembly's exercise of the police power is not plenary, but is subservient to other provisions of the Ohio Constitution. *French v. Dwiggins* (1984), 9 Ohio St.3d 32, 458 N.E.2d 827.
{¶ 119} The police power conferred on the General Assembly by Section 1, Article II is fully sufficient to authorize any legislation comprehended by Section 34, Article II. However, because of apprehensions that other provisions of the Constitution might impair the General Assembly's exercise of its Section 1, Article II powers for that purpose, Section 34, Article II was adopted. Steinglass and Scarselli [FN3] explain.
{¶ 120} "The adoption of Article II, section 34 was one of the major achievements of the Progressive movement at the 1912 convention. In 1912 shortly after the Constitutional Convention convened but long before it completed its work, the Ohio Supreme Court in *State, ex rel. Yaple v. Creamer* (1912) [FN4] upheld the constitutionality of Ohio's first workers' compensation laws. However, the statute was voluntary, and the court suggested that coercive legislation would violate the Ohio Constitution (ibid.; see also *Taylor v. Academy Iron & Metal Co.* 1988: 151). [FN5] Section 34 insulated a *mandatory* program of workers' compensation from constitutional attack by providing 'a broad grant of authority to the legislature to provide for the welfare of all working persons' (*Rocky River v. State Employment Relations Board,* 1989): 13-14) [FN6] and by 'empower[ing] the General Assembly to regulate the employment relationship without running afoul of the now-obsolete judicial doctrine of 'economic substantive due process' (*Brady v. Safety-Kleen Corp., 571 N.E.2d 132,* 1991: 639). [FN7]
{¶ 121} "Section 34 accomplished the latter purpose by containing a statement, identical to the one in section 33, that 'no other provision of the constitution shall impair or limit this power.' This provision insulated the program from claims that legislation enacted under its authority violated other provisions of the Ohio Constitution."
{¶ 122} The history and origin of Section 34, Article II are germane to its coverage. An editor's note to the discussion of Section 34, Article II in Baldwin's Ohio Revised Code Annotated states that it was among "[t]he key reforms advocated by organized labor in the late nineteenth and early twentieth centuries (that) included a living wage, decent working conditions, and job security." Those matters concern the working environment. Since its adoption, judicial approval of legislation enacted pursuant to Section 34, Article II has been confined to matters that involve such conditions of employment. See *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 35, 539 N.E.2d 103 (Holmes, J., dissenting).
***18** {¶ 123} The trial court in the present case departed from that standard, reasoning that the "general welfare of all employees" clause in Section 34, Article II authorized enactment of R.C. 9.481, prohibiting limitations on the place of residence of municipal employees. The trial court erred when it so held, because application of a general provision to facts beyond the range of those in special provisions to which it is attached lets the tail wag the dog and risks extending a general provision to matters beyond the intention of those who adopted it. Determination of that intention is the goal of the canon of interpretation *nosciture a sociis* : to interpret a general term to be similar to more specific terms in a series. As we apply that principle, and consistent with its reference specifically to laws "establishing a minimum wage, and providing for the comfort, health, (and) safety" of all employees, the "general welfare" clause of Section 34, Article II authorizes only legislation regulating conditions of employment within the working environment.
{¶ 124} R.C. 9.481 goes beyond those limits by prohibiting municipal legislation that places limits on

where employees of the municipality may reside. Such regulations apply to conditions for employment, not to conditions of employment, which are those that pertain to the working environment. Therefore, R.C. 9.481 was not validly enacted pursuant to Section 34, Article II, and its superseding provision does not trump the protections that the home rule amendment affords to Dayton's residency requirement. Instead, and necessarily, R.C. 9.481 was enacted pursuant to the authority conferred on the General Assembly by Section 1, Article I, and to that extent is subject to Section 3, Article XVIII, the home rule amendment.

{¶ 125} I would hold that the city of Dayton's residency requirement for its employees, not being a "local police, sanitary or similar regulation," is not subject to the superseding provisions applicable to conflicts with general laws in Section 3, Article XVIII, and that R.C. 9.481 cannot supersede the Dayton residency requirement because that section, being only prohibitory, is not a general law given preference over local enactments by Section 3, Article XVIII. Further, because R.C. 9.481 exceeds the authority conferred on the General Assembly by Section 34, Article II, the superseding provisions of Section 34, Article II cannot apply to deny the city of Dayton's residency requirement for its employees the protections it is afforded by Section 3, Article XVIII, the home rule amendment. I would reverse the declaratory judgment that the trial court granted for those reasons and remand the case to the common pleas court to enter a declaratory judgment consistent with those reasons.

.....

FN1. The Ohio Supreme Court issued four decisions in the *Rocky River* case, and the one cited in the main text is the last decision issued, in May 1989. Because the last decision is commonly referred to as *Rocky River IV,* we will use that designation throughout the rest of our opinion.

FN2. The Third District further concluded that the words within the "general welfare clause" itself ("health, safety, and comfort") also relate to "work environment conditions." Id. at ¶ 35.

FN3. Steven H. Steinglass and Gino J. Scarselli, "The Ohio State Constitution, A Reference Guide," Praiger Publishers (2004), 152.

FN4. *Yaple v. Creamer* (1912), 85 Ohio St. 349, 97 N.E. 602.

FN5. *Taylor v. Academy Iron & Metal Co.* (1988), 36 Ohio St.3d 149, 522 N.E.2d 464.

FN6. *Rocky River v. State Emp. Relations Bd.,* (1989), 43 Ohio St.3d 1

FN7. *Brady v. Safety-Kleen Corp.* (1991), 59 Ohio St.3d 705, 571 N.E.2d 132.

Ohio App. 2 Dist.,2008.
Dayton v. State
--- N.E.2d ----, 2008 WL 2222716 (Ohio App. 2 Dist.), 2008-Ohio-2589

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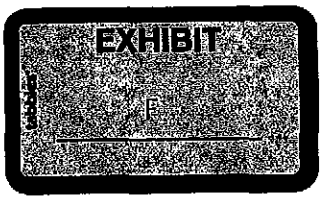
CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
Eleventh District, Trumbull County.
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL # 74, et al.,
Plaintiffs-Appellees,
v.
City of WARREN, et al., Defendants-Appellants.
No. 2007-T-0110.
Decided Aug. 4, 2008.



Civil Appeal from the Court of Common Pleas, Case No.2006 CV 01489.
Dennis Haines and Charles W. Oldfield, Green, Haines, Sgambati Co ., L.P.A., Youngstown, OH, for plaintiffs-appellees.

Gregory V. Hicks, **Warren City** Law Director, and James R. Ries, **Warren City** Deputy Law Director, **Warren**, OH, for defendants-appellants.

Sharon A. Jennings and Pearl M. Chin, Assistant Attorneys General, State Office Tower, Columbus, OH, for intervening defendant, Attorney General Nancy Hardin Rogers.

MARY JANE TRAPP, J.

*1 {¶ 1} The **city** of **Warren** appeals from a judgment of the Trumbull County Court of Common Pleas finding R.C. 9.481 constitutionally enacted pursuant to Section 34, Article II, Ohio Constitution and therefore superseding the **city's residency** requirement, codified in Section 155.05 of the Codified Ordinances of the **city** of **Warren**.

{¶ 2} The issue on appeal concerns the constitutionality of R.C. 9.481. After a careful review of the pertinent constitutional provisions, statutes, and case law authority, this court concludes R .C. 9.481 is constitutionally enacted pursuant to Section 34, Article II, Ohio Constitution, and therefore we affirm the judgment of the trial court.

{¶ 3} Mindful of the presumption of constitutionality afforded the General Assembly's legislative enactments, we have concluded R.C. 9.481 is a valid exercise of the legislature's broad authority to regulate public employees' right to collectively bargain the terms and conditions of their employment pursuant to Section 34, Article II, Ohio Constitution. We find that the statute regulates a matter of statewide concern and therefore does not unconstitutionally infringe on the city's home rule powers, and we have also determined that the statute offends neither the Uniformity Clause nor the Contract Clause of the Ohio Constitution.

{¶ 4} We recognize that many economically depressed cities sought to either maintain or regain a stable, economically productive workforce through enactment of residency requirements for its public employees, but if a municipality such as the city of Warren wishes to challenge the wisdom of the General Assembly in enacting R.C. 9.481, its resort is to the political process and not the court.

{¶ 5} ***Substantive and Procedural Background***

{¶ 6} The parties in this case are (1) the **city** of **Warren** ("**Warren**"), a municipal corporation organized under the laws of the State of Ohio, and (2) the American Federation of State, County and Municipal Employees, Local # 74, and **Warren** Management Association ("Unions"), two labor organizations representing various employees of **Warren**.

{¶ 7} On May 29, 1991, the Council of the **city** of **Warren** passed the **Warren City** Ordinance No.

10262/91, which enacted Section 155.05 of the Codified Ordinances of the **city** of **Warren**. Section 155.05 requires, as a condition of employment, that any person appointed as a non-elected official or employee of the **city** become a **resident** of the **city**, and must remain a **resident** throughout his employment.

{¶ 8} On May 1, 2006, the General Assembly enacted R.C. 9.481, which prohibits municipalities from imposing a **residency** requirement as a condition of employment on their employees. The statute provides, in part,

{¶ 9} "(B)(1) Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.

***2** {¶ 10} "(2)(a) Division (B)(1) of this section does not apply to a volunteer.

{¶ 11} "(b) To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state. * * *."

{¶ 12} Senate Bill 82, which enacted R.C. 9.481, contains two uncodified sections declaring the legislative intent in the enactment of R.C. 9.481. Section 2 of Senate Bill 82 states:

{¶ 13} "In enacting section 9.481 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

{¶ 14} "(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.

{¶ 15} "(B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution."

{¶ 16} Furthermore, Section 3 of Senate Bill 82 states:

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

{¶ 18} Also, in connection with the enactment of R.C. 9.481, the Ohio Legislative Service Commission stated its finding that there are one hundred twenty-five cities and thirteen villages throughout the state of Ohio that have some form of residency requirements in their charters. "In some cases these requirements pertain to management employees of the city (city manager, finance director, treasurer, etc.). Many of the larger cities in the state such as Cleveland, Akron, Toledo, Dayton, and Youngstown (by ordinance) have residency requirements for virtually all city employees to live within city limits." FN1

FN1. See Ohio Legislative Service Commission's "Fiscal Note and Local Impact Statement" of September 15, 2005 relating to Senate Bill 82.

{¶ 19} On June 14, 2006, the Unions filed a complaint in the Trumbull County Common Pleas Court against Warren and its Mayor, Michael J. O'Brien, seeking a judgment declaring (1) Section 155.05 of Codified Ordinances of the city of Warren is in conflict with R.C. 9.481; (2) R.C. 9.481 preempts Section 155.05 of the Codified Ordinances of the city of Warren; and (3) Section 155.05 of the Codified Ordinances of the city of Warren is of no force or effect.

*3 {¶ 20} Warren filed an answer and a counterclaim alleging that the enactment of R.C. 9.481 is an infringement of its power pursuant to Section 3, Article XVIII, Ohio Constitution, and also a violation of (1) Section 28, Article II, Ohio Constitution (the Contract Clause), (2) Section 26, Article II, Ohio Constitution (the Uniformity Clause), and (3) the separation of powers.

{¶ 21} On October 23, 2006, the Ohio Attorney General filed a motion to intervene, which the trial court granted. All three parties subsequently filed motions for summary judgment.

{¶ 22} On September 14, 2007, the trial court granted the Unions' motion for summary judgment and denied Warren's motion for summary judgment. The trial court found R.C. 9.481 to have been enacted constitutionally pursuant to the authority granted to the General Assembly in Section 34, Article II, Ohio Constitution. Therefore, the trial court struck down Section 155.05 of the Codified Ordinances of the city of Warren as being superseded by R.C. 9.481.

{¶ 23} Warren now appeals, raising four assignments of error for our review.

{¶ 24} "[1.] The trial court erred in concluding that section 9.481 of the Ohio Revised Code was a valid enactment pursuant to Article II, Section 34 of the Ohio Constitution.

{¶ 25} "[2.] The trial court erred in striking down Section 155.05 of the Codified Ordinances of the City of Warren by concluding that Section 155.05 of the Codified Ordinances of the City of Warren was superseded by Section 9.481 of the Ohio Revised Code.

{¶ 26} "[3.] The trial court erred in not finding Section 9.481 of the Ohio Revised Code to be in violation of Article II, Section 26 of the Ohio Constitution.

{¶ 27} "[4.] The trial court erred in not finding Section 9.481 of the Ohio Revised Code to be in violation of Article II, Section 28 of the Ohio Constitution."

{¶ 28} ***Standard of Review***

{¶ 29} Summary judgment is appropriate under Civ.R. 56(C) when (1) there is no genuine issue of material fact remaining 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 the evidence in favor of the nonmoving party, that conclusion favors the moving party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267. An appellate court reviews a grant of summary judgment de novo. *Comer v. Risko*, 106 Ohio St.3d 185, 833 N.E.2d 712, 2005-Ohio-4559, ¶ 8.

{¶ 30} Moreover, whether a statute is constitutional is a question of law reviewed de novo by an appellate court. *Wilson v. AC & S, Inc.* (2006), 169 Ohio App.3d 720, 864 N.E.2d 682, 2006-Ohio-6704, ¶ 61.

{¶ 31} ***Presumption of Constitutionality***

{¶ 32} We begin our review with the recognition that all statutes have a strong presumption of constitutionality. See *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 418, 633 N.E.2d 504. Before a court may declare unconstitutional an enactment of the legislative branch, "it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *Doyle v. Ohio Bur. of Motor Vehicles* (1990), 51 Ohio St.3d 46, 47, 554 N.E.2d 97, quoting *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 128 N.E.2d 59, paragraph one of the syllabus. A party raising a facial challenge, as Warren does in the instant appeal, must demonstrate that there is

no set of circumstances in which the statute would be valid. *Harrold v. Collier*, 107 Ohio St.3d 44, 836 N.E.2d 1165, 2005-Ohio-5334, ¶ 37. Courts have a duty to liberally construe statutes to avoid constitutional infirmities. *Hughes v. Registrar, Ohio BMV* (1997), 79 Ohio St.3d 305, 307, 681 N.E.2d 430.

***4** {¶ 33} With that in mind, we begin our analysis of the constitutionality of R.C. 9.481. The General Assembly declared that it enacted R.C. 9.481 pursuant to the power conferred by Section 34, Article II, Ohio Constitution. That constitutional provision states:

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

{¶ 35} On the other hand, Section 155.05 of the Codified Ordinances of the city of Warren was enacted purportedly pursuant to Section 3, Article XVIII, Ohio Constitution (the "Home-Rule Amendment"), which provides:

{¶ 36} "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

{¶ 37} ***Whether R.C. 9.481 was Validly Enacted Pursuant to Section 34, Article II, Ohio Constitution***

{¶ 38} In the first assignment of error, Warren claims the enactment of R.C. 9.481 is not a proper exercise of the authority granted in Section 34, Article II, Ohio Constitution, but rather an unconstitutional infringement of Warren's home rule power. The Unions contend that the statute was properly enacted pursuant to the broad grant of authority conferred by Section 34, Article II, Ohio Constitution, and therefore supersedes Warren's residency requirement codified in Section 155.05 of its Codified Ordinances.

{¶ 39} Because of the supremacy clause in Section 34, Article II, Ohio Constitution, if R.C. 9.481 is a valid exercise of the legislature's power conferred in this constitutional provision, the statute trumps Section 155.05 of the Codified Ordinances of the city of Warren, despite Warren's home-rule power granted in Section 3, Article XVIII, Ohio Constitution. See, also, *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. City of Cleveland* (2007), 114 Ohio St.3d 183, 870 N.E.2d 1174, 2007-Ohio-3831 (the legislative authority under Section 34, Article II, Ohio Constitution to pass laws concerning the general welfare of employees takes precedence over municipal home rule authority). Therefore, the first issue for our consideration is whether the General Assembly properly exercised its Section 34 power in enacting R.C. 9.481.

{¶ 40} We first note that although the General Assembly declared in the uncodified portion of Senate Bill 82 that it was its intent to enact R.C. 9.481 pursuant to Section 34, Article II, Ohio Constitution, a judicial review is still necessary to determine whether the General Assembly acted within its constitutional authority.

{¶ 41} Because the matter of an employee's residency obviously does not relate to the hours of labor or minimum wage specifically enumerated in Section 34, Article II, Ohio Constitution, the question for our determination is whether an employee's residency is a matter relating to "the comfort, health, safety and general welfare of all employees" and therefore appropriate for legislation as contemplated by Section 34.

***5** {¶ 42} After reviewing the case law authority pertaining to the General Assembly's legislative authority pursuant section 34, Article II, Ohio Constitution, we believe the residency question is best considered in the context of the line of cases where the Supreme Court of Ohio has interpreted this constitutional provision to confer upon the General Assembly broad authority to regulate public employees' right to collectively bargain the terms and conditions of their employment.

{¶ 43} ***Constitutionality of Legislation Governing Collective Bargaining Pursuant to Section 34, Article II, Ohio Constitution***

{¶ 44} On April 1, 1984, the General Assembly enacted the Public Employees' Collective Bargaining Act ("Act"), codified in R .C. Chapter 4117, in order to establish a legal framework for public sector labor relations. *Local 4501 v. Ohio State. Univ.* (1986), 24 Ohio St.3d 191, 195, 494 N.E.2d 1082. The Act established a comprehensive collective bargaining law for Ohio's public employees. *State, ex rel. Williams v. Belpre City School Dist. Bd. of Edn.* (1987), 41 Ohio App.3d 1, 6, 534 N.E.2d 96. The Act permits public employers and their employees to negotiate employment terms for the purposes of minimizing the possibility of public sector disputes and facilitate the determination of the rights and obligations of government employees and employers. *Cincinnati Metro. Hous. v. State Emp. Rel. Bd.* (1990), 53 Ohio St.3d 221, 560 N.E.2d 179. The Supreme Court of Ohio, furthermore, has held that the provisions in the Act are constitutionally enacted within the General Assembly's authority to enact "employee welfare legislation" pursuant to Section 34, Article II, Ohio Constitution. *Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St.3d 1, 20, 539 N.E.2d 103.

{¶ 45} Since the enactment of the Act, however, the Supreme Court of Ohio has been called upon on several occasions to resolve the potential conflicts between the Act's provisions and the home-rule power enjoyed by municipalities pursuant to Section 3, Article XVIII, Ohio Constitution. The court has determined on these occasions that the legislative authority conferred by Section 34 is broad enough to prevail over the home-rule power in the public employee collective bargaining context.

{¶ 46} In *Kettering v. State Employment Relations Bd.* (1986), 26 Ohio St.3d 50, 496 N.E.2d 983, the court upheld the constitutionality of R.C. 4117.01(F)(2), which requires a public employer to bargain collectively with a union representing its police command officers. In his concurring opinion, Justice Douglas explained the historical context of Section 34, Article II, enacted at the same time as the Home Rule Amendment, as follows:

{¶ 47} "Section 3, Article XVIII of the Ohio Constitution, the so-called Home Rule Amendment, was drafted and recommended for adoption at the Ohio Constitutional Convention of 1912. However, that is not all that was forthcoming from that convention. A number of measures, dealing with the welfare and rights of employees, also emerged. Among those provisions was Section 33, Article II, dealing with mechanics' liens; Section 35, Article II, authorizing a workers' compensation system; Section 37, Article II, providing for an eight-hour day for employees engaged in public works; and Section 41, Article II, setting forth restraints upon the exploitation of prison labor for competitive advantage.

***6** {¶ 48} "Probably the most comprehensive of the provisions was Section 34, Article II, which *manifested the broad purpose of proclaiming and securing to the General Assembly the power to enact legislation establishing employee rights and protections.*" (Emphasis added.) *Id.* at 57, 496 N.E.2d 983.

{¶ 49} In *Rocky River,* supra, the court upheld the constitutionality of R.C. 4117.14(I), a provision in the Public Employees' Collective Bargaining Act mandating binding arbitration between a city and its safety force. The Supreme Court of Ohio held that Chapter 4117, and in particular R.C. 4117.14(I), is constitutional as it falls within the General Assembly's authority to enact "employee welfare legislation" pursuant to Section 34, Article II and therefore the home-rule provision may not be interposed to impair, limit or negate the Act. *Id.* at 20, 539 N.E.2d 103.

{¶ 50} In that case, appellant city of Rocky River cited the debates taking place in the 1912 constitutional convention surrounding the enactment of Section 34, Article II to support its argument that the constitutional provision had been intended to apply only to matters involving the minimum wage and similar matters. The Supreme Court of Ohio disagreed with this narrow interpretation of Section 34, explaining:

{¶ 51} " * * * Section 34, as it was ultimately adopted, transcends the limitations urged by appellant. If the framers of our Constitution had intended this section to apply only to minimum wage,

almost half of the forty-one words contained in this section must be regarded as mere surplusage, since it further provides that laws may be passed 'fixing and regulating the hours of labor * * * and providing for the comfort, health, safety and general welfare of all employees * * *.' " *Id.* at 15-16, 539 N.E.2d 103.

{¶ 52} The court in *Rocky River* determined that "[Section 34, Article II] constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces. The provision expressly states in 'clear, certain and unambiguous language' that no other provision of the Constitution may impair the legislature's power under Section 34. This prohibition, of course, includes the 'home rule' provision contained in Section 3, Article XVIII." *Id.* at 13, 539 N.E.2d 103 (internal citations omitted). See, also, *American Ass'n. of Univ. Professors v. Central State Univ.* (1999), 87 Ohio St.3d 55, 61, 717 N.E.2d 286 ("[t]his court has repeatedly interpreted Section 34, Article II as a broad grant of authority to the General Assembly").

{¶ 53} *Kettering* and *Rocky River* both concerned statutes regulating public employees' collective bargaining rights, which the court determined to be constitutional pursuant to the broad power granted to the General Assembly by Section 34, Article II, Ohio Constitution to enact "employee welfare legislation."

{¶ 54} Given this line of case law, we believe matters that fall within public employees' collective bargaining rights, such as wages, hours, and other terms and conditions of employment are matters proper for legislation for the purpose of "providing for the general welfare of all employees" pursuant to Section 34, Article II.

***7** {¶ 55} Warren argues that the "employee welfare legislation" authorized by Section 34, Article II can only relate to matters affecting employees' "working environment conditions." The city argues that the ordinance addresses merely "qualifications for appointment" and "where employees reside while not working." This narrow interpretation of the "general welfare" clause in Section 34 is contrary to the Supreme Court of Ohio's mandate in *Rocky River, Kettering,* and *Am. Assoc. of Univ. Professors* to broadly construe Section 34 as authorizing the General Assembly to regulate employment matters to provide for the general welfare of employees, in particular those subject to collective bargaining. It is difficult to conceive of a matter more vital to the general welfare of an employee than a freedom to choose the community or neighborhood in which to live.

{¶ 56} In order to qualify for public sector employment the worker must either live or move into the city. Should the need arise to move outside of the city limits to care for an ailing parent in another city the worker is forced to choose between their family or their job. This Hobson's choice offered by the city illustrates the incredulities of the city's argument and harkens back to the day of the company town.

{¶ 57} Our view that an employee's residency is a matter relating to terms and conditions of employment subject to collective bargaining is shared by other appellate districts that have had the occasion to consider this question. In *City of St. Bernard v. State Employment Relations Bd.* (1991), 74 Ohio App.3d 3, 598 N.E.2d 15, the First Appellate District was confronted with the issue of whether a residency requirement for public employees was "terms or condition of employment" subject to mandatory collective bargaining.

{¶ 58} In answering the question in the affirmative, the First Appellate District provided the following well-reasoned analysis, citing to Ohio's collective bargaining statutes:

{¶ 59} "Mandatory subjects of collective bargaining are deemed to be matters of immediate concern that vitally affect the terms and conditions of employment of the bargaining-unit employees. *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co.* (1971), 404 U.S. 157, 179-180, 92 S.Ct. 383, 30 L.Ed.2d 341. R.C. 4117.08(A) provides that the following are subjects of mandatory bargaining:

{¶ 60} "All matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining

agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified.

{¶ 61} "As further required by R.C. 4117.08(C), public employers must also bargain in areas that are subjects of management rights and direction of the governmental unit if they 'affect wages, hours, terms and conditions of employment * * *.' *Lorain City Bd. of Edn. v. State Emp. Rel. Bd.* (1988), 40 Ohio St.3d 257, 262, 533 N.E.2d 264. Therefore, a public employer's decision to exercise a management right which affects the terms and conditions of the unit's employment becomes a mandatory subject for bargaining. *Lorain City Bd. of Edn. [at* 262]." *City of St. Bernard* at 5-6, 598 N.E.2d 15.

***8** {¶ 62} The court in *St. Bernard* went on to note that " * * * [h]ad [the General Assembly] intended to exclude residency requirements as a subject of collective bargaining, the legislature would have specifically included residency in R.C. 4117.08(B) or (C). * * * [T]he value of bargaining the residency issue is like any of the other 'terms and conditions of employment,' within the Ohio Supreme Court's observation in *Lorain City Bd. of Edn.* [at 269]." *The City of St. Bernard* at 6-7, 598 N.E.2d 15.

{¶ 63} This view is also adopted by the Sixth Appellate District, in *Santiago v. City of Toledo* (Feb. 13, 1998), 6th Dist. No. L-97-1219, 1998 Ohio App. LEXIS 465, *7 ("R.C.4117.08(A) mandates that matters related to 'wages, hours, or terms and other conditions of employment' are subject to collective bargaining. **Residency** requirements are a 'condition of employment' and are, therefore, subject to collective bargaining").

{¶ 64} We agree with these appellate districts and likewise view an employee's **residency** as a matter within the "terms or conditions of employment" subject to collective bargaining. **Residency** requirements such as section 155.05 of the Codified Ordinances of the **city** of **Warren** undercuts public employees' right to collectively bargain all of the terms and conditions of their employment, and therefore, the General Assembly's prohibition of municipalities' impairing of the employees' rights to bargain is a proper exercise of its authority derived from Section 34, Article II, Ohio Constitution.

{¶ 65} Accordingly, we uphold the trial court's determination that R.C. 9.481 was constitutionally enacted. In accordance with the supremacy clause in Section 34, therefore, R.C. 9.481 prevails over Section 155.05 of the Codified Ordinance of the city of Warren.

{¶ 66} Warren's first assignment of error is overruled.

{¶ 67} ***The Home Rule Analysis***

{¶ 68} In Warren's second assignment of error, it asserts that Section 155.05 is an exercise of its home-rule power pursuant to Section 3, Article XVIII, Ohio Constitution, and therefore it supersedes R.C. 9.481.

{¶ 69} Because of the supremacy clause in Section 34, our determination that R.C. 9.481 is constitutionally enacted pursuant to that section renders unnecessary a "home-rule analysis" traditionally undertaken by the courts to resolve a potential conflict between a statute and a municipal ordinance enacted pursuant to its home-rule power. However, we will address Warren's second assignment of error and examine R.C. 9.481 under the "home-rule analysis" as well.

{¶ 70} Section 3, Article XVIII, Ohio Constitution, provides that municipalities "shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Under a "home-rule analysis," the threshold question is "whether the matter in question involves an exercise of local selfgovernment or an exercise of local police power." *Am. Fin. Servs. Ass'n v. City of Cleveland* (2006), 112 Ohio St.3d 170, 858 N.E.2d 776, 2006-Ohio-6043, ¶ 23.

***9** {¶ 71} If a local ordinance is purported to be an exercise of a municipality's police power, the ordinance is subject to the "general law" test, adopted by the Supreme Court of Ohio in *City of Canton*

v. Ohio (2002), 95 Ohio St.3d 149, 766 N.E.2d 963, 2002-Ohio-2005, which states:

{¶ 72} "A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Id* , at 151, 766 N.E.2d 963.

{¶ 73} If, on the other hand, an ordinance is purported to be an exercise of the power of local self-government, the Supreme Court of Ohio has applied the "statewide concern doctrine" when the exercise of that power conflicts with a state statute.

{¶ 74} In this case, Warren asserts that it enacted Section 155.05 pursuant to its power of local self-government; therefore, we review the ordinance under the statewide concern doctrine, rather than applying the "general law" test adopted in Canton.

{¶ 75} The court explained the doctrine of statewide concern as follows:

{¶ 76} "[T]he cities' power of local self-government are not completely unfettered. This court has previously acknowledged that, in matters of statewide concern, municipal powers of local self-government may be subordinate to the exercise of the state's police powers." *Kettering*, supra, at 53, 496 N.E.2d 983.

{¶ 77} The court in *Kettering* reiterated its holding in *Cleveland Electric Illuminating Co. v. Painesville* (1968), 15 Ohio St.2d 125, 129, 239 N.E.2d 75 that "[t]he power granted under Section 3 of Article XVIII relates to local matters and even in the regulation of such local matters a municipality may not infringe on matters of general and statewide concern." *Id.*

{¶ 78} See, also, *Reading v. Pub. Util. Comm.*, 109 Ohio St.3d 193, 846 N.E.2d 840, 2006-Ohio2181, ¶ 32-33 (this court has never held that powers of local self-government under Section 3 are unlimited; it is a fundamental principle of Ohio law that, pursuant to the "statewide concern" doctrine, a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern.) *Am. Fin. Servs. Ass'n.* at ¶ 27 and ¶ 29, 717 N.E.2d 286 (where matters of statewide concern are at issue, the state retains the power-despite the Home Rule Amendment-to address those matters; the courts must decide as a preliminary matter, whether a particular issue is not a matter of merely local concern, but is of statewide concern, and therefore not included within the power of local self-government).

{¶ 79} The test to distinguish matters of local self-government from matters of a statewide concern was first set forth in *Beachwood v. Board of Elections of Cuyahoga County* (1958), 167 Ohio St. 369, 148 N.E.2d 921:

{¶ 80} "To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly." *Id.* at 371, 148 N.E.2d 921.

***10** {¶ 81} "Thus, even if there is a matter of local concern involved, if the regulation of the subject matter affects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest." *Cleveland Electric Illuminating Co. v. Painesville* (1968), 15 Ohio St.2d 125, 129, 239 N.E.2d 75.

{¶ 82} As the court observed in *Cleveland Electric Illuminating Co*, "[d]ue to our changing society, many things which were once considered a matter of purely local concern and subject strictly to local regulation, if any, have now become a matter of statewide concern, creating the necessity for statewide control." *Id.*, quoting *State, ex rel. McElroy, v. Akron* (1962), 173 Ohio St. 189, 192, 181 N.E.2d 26.

{¶ 83} Here, we are aided by case law in which the court applied the statewide doctrine to permit state laws regulating matters relating to terms and conditions of public sector employment. For example, in *State ex rel. Evans v. Moore* (1982), 69 Ohio St.2d, 88, 431 N.E.2d 311, the Supreme Court of Ohio applied this doctrine to hold that the prevailing-wage law superseded local wage regulation. In *State ex rel. Villari v. Bedford Hts.* (1984), 11 Ohio St.3d 222, 465 N.E.2d 64, overruled on other grounds, the court similarly upheld a state law governing the calculation of employee benefits. In *State ex rel. Adkins v. Sobb* (1986), 26 Ohio St.3d 46, 496 N.E.2d 994, the court validated a state law calculating vacation-leave credits. This line of cases establishes that matters relating to terms and conditions of public sector labor relations are matters of statewide concern appropriate for a statewide control by the General Assembly.

{¶ 84} The residency requirement likewise relates to terms and conditions of employment and therefore is a matter more appropriate for uniform statewide legislation rather than patchwork regulations by hundreds of municipalities. As to potential extraterritorial effects, a residency requirement such as Warren's affects not only the municipality itself, but clearly has impact beyond its borders. The requirement impairs competition among the municipalities for residents; it affects the tax revenue, housing market, and school systems of all surrounding communities.

{¶ 85} Therefore, in our view, a residency requirement is not purely local in nature; it goes beyond the administration of internal local affairs of a municipality. It is therefore more appropriate for a statewide control by the legislature pursuant to the doctrine of statewide concern. Accordingly, Section 155.05 must yield to R.C. 9.481.

{¶ 86} Warren's second assignment of error is without merit.

{¶ 87} In its third and fourth assignments of error, Warren contends R.C. 9.481 violates the Uniformity Clause and the Contract Clause of the Ohio Constitution, respectively. Because of the supremacy clause in Section 34, Article II, Ohio Constitution and our determination that R.C. 9.481 is a proper exercise of the Legislature's Section 34 power, these assignments of error are moot. However, we undertake the following analysis to express our view that R.C. 9.481 offends neither constitutional clause.

{¶ 88} ***The Uniformity Clause***

***11** {¶ 89} In its third assignment of error, Warren claims R.C. 9.481 violates the Uniformity Clause in Sec. 26, Article II, Ohio Constitution. That provision states: "All laws, of a general nature, shall have a uniform operation throughout the state * * *." The constitutionality of such legislation is determined through a two-part analysis: (1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state. *Desenco, Inc. v. City Of Akron* (1999), 84 Ohio St.3d 535, 541, 706 N.E.2d 323 (citations omitted).

{¶ 90} A statute's subject matter is "general" in compliance with the Uniformity Clause "if the subject does or may exist in, and affect the people of, every county, in the state." *Desenco* at 542, 706 N.E.2d 323, quoting *Hixson v. Burson* (1896), 54 Ohio St. 470, 481, 43 N.E. 1000.

{¶ 91} Here, Warren does not challenge the general nature of R.C. 9.481 but only argues that it lacks uniform operation, on the ground that it is applicable only to full-time employees but not to other categories of employees such as part-time employees or volunteers. Warren argues that this distinction is arbitrary and illogical.

{¶ 92} The court in *State ex rel. Stanton v. Powell* (1924), 109 Ohio St. 383, 142 N.E. 401 set forth the test for the uniform operation of a statute as follows:

{¶ 93} "Section 26, Art. II of the Constitution was not intended to render invalid every law which does not operate upon all persons, property or political subdivisions within the state. It is sufficient if a law operates upon every person included within its operative provisions, provided such operative provisions are not arbitrarily and unnecessarily restricted. And the law is equally valid if it contains

provisions which permit it to operate upon every locality where certain specified conditions prevail. A law operates as an unreasonable classification where it seeks to create artificial distinctions where no real distinction exists." *Id.* at 385, 142 N.E. 401.

{¶ 94} In *Beachwood,* supra, the court further explained that,

{¶ 95} "This court has held many times that, to comply with this section, legislation need not affect every person in the state but that a reasonable classification may be made, and it is sufficient if the legislation operates equally upon every person and locality within such classification." *Id.* at 372, 148 N.E.2d 921.

{¶ 96} In this connection, the pertinent part of R.C. 9.481 states:

{¶ 97} "(A) As used in this section:

{¶ 98} " * * *.

{¶ 99} "(2) 'Volunteer' means a person who is not paid for service or who is employed on less than a permanent full-time basis.

{¶ 100} "(B)(1) Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state."

{¶ 101} Thus, "every person included within [the] operative provision" for the purpose of Uniformity Clause is all employees of political subdivision in the state employed on less than a permanent full-time basis. The issue is therefore whether the provision is "arbitrarily and unnecessarily restricted" or whether a reasonable classification was made by only applying to permanent full-time employees.

***12** {¶ 102} It is axiomatic that full-time permanent employees enjoy more rights, privileges, and protections in law than part-time or temporary employees. Therefore, in our view, the legislature's protection of public employees' right to reside wherever they wish is reasonably extended only to full-time permanent public employees. The distinction between full-time permanent employees and less than full-time permanent employees is not arbitrary or unnecessarily restricted in the instant employee welfare legislation.

{¶ 103} Warren's third assignment of error is not well-taken.

{¶ 104} ***The Contract Clause***

{¶ 105} In its fourth assignment of error, Warren asserts R .C. 9.481 violates Section 28, Article II, Ohio Constitution. That constitutional provision states, in pertinent part:

{¶ 106} "The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts * * *."

{¶ 107} In particular, Warren asserts the General Assembly cannot pass a law that would limit the city of Warren's right to contract with its employees.

{¶ 108} Section 28, Article II, of the Ohio Constitution prohibits laws impairing *existing* contractual obligations. See, e.g., *State ex rel. Youngstown v. Jones* (1939), 136 Ohio St. 130, 136, 24 N.E.2d 442 (the General Assembly had power to enact an amended section and repeal the prior law, but in doing so could not interfere with vested rights or impair the obligations of existing contracts in violation of Section 28, Article II of the state constitution); *Goodale v. Fennell* (1875), 27 Ohio St. 426, 432 (when the contract is once made, the law then in force defines the duties and rights of the parties under it. Any change which impairs the rights of either party, or amounts to a denial or obstruction of the rights accruing by a contract, is obnoxious to [Section 28, Article 28 of the Ohio

Constitution]). Warren is misguided in relying on this constitutional provision as it asserts that the General Assembly cannot pass a law limiting the city's right enter into a contract with its employees.

{¶ 109} Furthermore, "[th]e provision[ ] against impairment of contracts * * * must bow to valid police power legislation designed to protect public health, safety and welfare as long as the exercise of that police power 'bears a real and substantial relation to the public health, safety, morals or general welfare of the public and if it is not unreasonable or arbitrary.' Moreover, * * * the courts * * * will not invalidate that legislation unless the legislating body's initial determination that the law bears a real and substantial relationship to public health, safety and welfare appears to be clearly erroneous." *Ohio Edison Co. v. Power Siting Com.* (1978), 56 Ohio St.2d 212, 218, 383 N.E.2d 588 (internal citations omitted). See, also, *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 77, 495 N.E.2d 380.

{¶ 110} Here, the General Assembly declared in the uncodified section of Senate Bill 82 that "it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees." This declaration evinces the legislating body's initial determination that the law bears a real and substantial relationship to public health, safety, and welfare.

***13** {¶ 111} A residency requirement places an onerous burden on public employees and their family's life, as it severely limits their choice of housing, schools, medical services, or places of worship, undoubtedly affecting their "health, safety, morals or general welfare." We cannot say the legislature's affording the state's public employees the ability to choose where to live is unreasonable or arbitrary.

{¶ 112} Therefore, we do not find legislature's determination that R.C. 9.481 bears a real and substantial relationship to public health, safety and welfare to be "clearly erroneous."

{¶ 113} Moreover, as we discussed in our earlier analysis, residency requirement is a mandatory subject of collective bargaining. The residency ordinance undercuts the right to collectively bargain all of the terms and conditions of public sector employment and thus actually impairs the right to contract by imposing a condition of employment rather than allowing the parties to negotiate the condition as part of the collective bargaining agreement. Simply put, R.C. 9.481 does not impair contractual rights; it ensures a level playing field when public sector employees negotiate a collective bargaining agreement with a political subdivision.

{¶ 114} Warren's fourth assignment of error is not well-taken.

{¶ 115} As Justice Blackmun wrote in his dissent in *Building Trades & Construction Trades Council of Camden Cty. and Vicinity v. Mayor and Council of the City of Camden* (1983), 465 U.S. 208, 104 S.Ct. 1020, 79 L.Ed.2d 249, " * * * [our] view of the constitutional question in this case does not depend on [our] personal opinion about the desirability of the course on which [the city] has embarked. [We] do not find 'beggar thy neighbor' economic policies any more attractive when practiced by [cities], States or nations. The unedifying sight of localities fighting for parochial gain at one another's expense gives new urgency to Benjamin Franklin's reputed warning that 'we must * * * all hang together, or most assuredly we shall all hang separately.' R. Clark, Benjamin Franklin 286 (1983). At the risk of restating the obvious, however, the issue before us is not the desirability of the ordinance, but its constitutionality * * *." *Id.* 234.

{¶ 116} The judgment of Trumbull County Common Pleas Court is affirmed.

TIMOTHY P. CANNON, J., concurs with Concurring Opinion.

CYNTHIA WESCOTT RICE, J., concurs in judgment only with Concurring Opinion.

TIMOTHY P. CANNON, J., concurring.

{¶ 117} The instant appeal presents a question of interpretation of the Ohio Constitution. Neither the state legislature nor any political subdivision may pass legislation that is contrary to the Ohio Constitution. Section 34, Article II contains a specific provision authorizing laws that regulate the hours of labor and establish a minimum wage. In addition, Section 34, Article II contains a more general provision, which authorizes the passing of laws that provide "for the comfort, health, safety and general welfare of all employees." The last clause of Section 34, Article II, which is critical in the instant case, states, "no other provision of the constitution shall impair or limit this power ."

***14** {¶ 118} Appellants contend R.C. 9.481, which became effective on May 1, 2006, is a statute that is specifically authorized by Section 34, Article II, and cannot be limited or impaired by any other section of the Ohio Constitution. The **city** of **Warren's residency** requirement, Section 155.05 of the codified ordinances of the **city** of **Warren**, passed by the Council of the **City** of **Warren** on May 29, 1991, is clearly in conflict with R.C. 9.481. The **city** of **Warren** believes Section 155.05 is a valid exercise of, and permitted by, Section 3, Article XVIII of the Ohio Constitution-"the Home Rule Amendment." Essentially, the **city** of **Warren** argues that the restrictions contained in R.C. 9.481 exceed the scope of Section 34, Article II, since they do not provide for the "comfort, health, safety and general welfare" of employees while they are physically present for work; therefore, the prohibition on any other constitutional limitation does not apply.

{¶ 119} In interpreting the Ohio constitutional provision applicable to this issue, certain rules of construction apply. " 'The first step in determining the meaning of a constitutional provision is to look at the language of the provision itself.' * * * 'Words used in the Constitution that are not defined therein must be taken in their usual, normal, or customary meaning.' * * * " *State ex rel. King v. Summit Cty. Council*, 99 Ohio St.3d 172, 789 N.E.2d 1108, 2003-Ohio-3050, at ¶ 35. (Internal citations omitted.) "If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the [constitutional] provision to determine its meaning." *State v. Jackson*, 102 Ohio St.3d 380, 811 N.E.2d 68, 2004-Ohio-3206, at ¶ 14.

{¶ 120} The city of Warren, together with the Third, Sixth, Eighth, and Ninth Appellate Districts, has suggested that this constitutional provision should be read to limit the phrase "comfort, health, safety, and general welfare" to only those circumstances where the employee is physically present for work. See, *Lima v. State*, 3d Dist. No. 1-07-21, 2007-Ohio-6419; *Toledo v. State*, 6th Dist. No. L-07-1261, 2008-Ohio-1957; *Cleveland v. State*, 8th Dist. Nos. 89486 and 89565, 2008-Ohio-2655; *State v. Akron*, 9th Dist. No. 23660, 2008-Ohio-38. However, as recognized by the Supreme Court of Ohio, "[t]he language of Section 34 is so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary." *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 15, 539 N.E.2d 103. The plain language of Section 34, Article II clearly grants the General Assembly broad authority to legislate for the "comfort, health, safety, and *general welfare of all employees.*" (Emphasis added.) If this section were intended to apply only to the period of time when one is physically present at work, it could have been simply stated as such by providing for the "comfort, health, safety, and general welfare of all employees *during working hours.*"

***15** {¶ 121} I agree with the writing judge that the Supreme Court of Ohio has interpreted this constitutional provision as encompassing more than just the time period when one is at work. See, generally, *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d at 13, 539 N.E.2d 103. We are bound to follow the precedent as set forth by the Supreme Court of Ohio in *Rocky River v. State Emp. Relations Bd.*, which determined that Section 34, Article II "constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces. * * * The provision expressly states in 'clear, certain and unambiguous language' that *no other provision* of the Constitution may impair the legislature's power under Section 34. * * * This prohibition, of course, includes the 'home rule' provision contained in Section 3, Article XVIII. * * *." *Id.* (Internal citations omitted and emphasis in original.)

{¶ 122} In the area of labor law, where a collective bargaining agreement is in place, any change in terms and conditions of employment must be bargained. The **city** of **Warren** argues that Section 155.05 is a "qualification" for employment and, thus, is outside the scope of Section 34, Article II.

However, Section 155.05 is clearly a term and condition of employment; an employee's **residence** within the **city** is required to be eligible for continued employment.

{¶ 123} Perhaps the most disturbing aspect of the ordinance in question is the lack of any exception to the **residency** requirements for particular circumstances. Living within the **city** limits affects all facets of an employee's life including where the employee's children attend school, what local government services they will be able to obtain, what type of safety forces they will have, and where their spouse must live, regardless of how far away the spouse may work. If an employee wanted to live in a rural setting with acreage, the residency requirement would limit that ability. Likewise, a residency requirement also affects an employee when a change of circumstances occurs, such as a transfer of their spouse to a location where it is impractical to continue to work in the area or when a child's special needs cannot be accommodated by the educational services available within the city. Clearly, this ordinance has an influence on an employee not just while he or she is "on the clock." The ordinance has the clear effect of impacting the "comfort, health, safety, and general welfare of all employees." It certainly requires much less interpretation to find that these considerations are within the purview of Section 34, Article II, rather than to suggest that it applies only while the employee is physically "at work."

{¶ 124} Based on the foregoing, I would concur that R.C. 9.481 is a valid legislative enactment contemplated by Section 34, Article II of the Ohio Constitution, since it clearly affects the "comfort, health, safety, and general welfare of all employees." This is supported by our rules of construction and the precedent of *Rocky River,* supra.

CYNTHIA WESTCOTT RICE, J., concurs in judgment only with Concurring Opinion.

***16** {¶ 125} While I agree with the writing judge's resolution of the case, I do not believe R.C. 9.481 necessarily conflicts with Home Rule ordinances which make residency a pre-condition of employment. Rather, such a pre-employment criterion affects the interests of *prospective* employees. In order to clarify my position, I write separately.

{¶ 126} While Section 155.05 affects all employees hired subsequent to its enactment, it has a built-in "grandfather clause" for those employees who did not reside in the city prior to its enactment. However, until prospective employees become actual employees, they will be unaffected by the ordinance. By becoming employees, individuals will have voluntarily agreed to the pre-employment condition of their specific job. Individuals have the freedom to choose where to live. Likewise, in making an employment decision, they may waive this option in order to obtain employment with a municipality that has a residency requirement.

{¶ 127} The Unions assert that R.C. 9.481 represents a proper exercise of the General Assembly's authority under Section 34, Article II of the Ohio Constitution. They further argue that Section 155.05 directly conflicts with the statute and is rendered invalid by virtue of the Supremacy Clause of the Ohio Constitution. I agree that R.C. 9.481 is a valid legislative enactment. Moreover, I agree with the Unions' argument as it pertains to the ordinance at issue. However, I believe the Unions' position is persuasive only to the extent the ordinance fails to provide an exception to the residency requirement for unpredictable changes in circumstances, emergencies, and hardships that might require the employee to move from the city yet nevertheless keep his or her job, e.g., an ailing parent or a spouse's change in employment.

{¶ 128} Because Section 155.05 does not have such an exception or create a process by which an employee could be exempted from the residency requirement, it makes residency in Warren a fundamental condition of actual employment. In this regard, R.C. 9.481 is valid and must necessarily supersede Section 155.05.

{¶ 129} However, I do not think Home Rule ordinances which incorporate residency requirements will always conflict with R.C. 9.481. For instance, where a political subdivision enacts an ordinance which makes residency a pre-condition of employment, such a condition affects only potential employees. Potential employees are non-employees, non-union members, and, by implication have no cognizable collective bargaining rights. R.C. 9.481 has no application to potential employees or

scenarios in which actual employees are unaffected. Thus, Home Rule ordinances, which impact the welfare of non-employees, are in no conflict with the mandates of R.C. 9.481.

{¶ 130} If Section 155.05 were rewritten to include an exception, it is unclear how the Unions can assert the ordinance runs afoul of R.C. 9.481 when the only individuals it would actually affect are non-employees who find the provision unnecessarily burdensome. Because non-employees will suffer no concrete injury by operation of Section 155.05, they have no personal stake in the controversy. For a party to have standing, he, she, or it must have a personal stake in the outcome of the controversy, a concrete injury that will be resolved by the court, not a mere hypothetical or conjectural matter. See *Bourke v. Carnahan*, 163 Ohio App.3d 818, 840 N.E.2d 1101, 2005-Ohio-5422, at ¶ 10; see, also, *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 75, 495 N.E.2d 380. In this regard, the Unions' have no standing to assert their argument insofar as it is directed at the burdens the ordinance places upon those who have yet to accept employment.

***17** {¶ 131} With this in mind, if the exception discussed above were built into Section 155.05, I do not think it would stand in conflict with R.C. 9.481. I believe Section 155.05 incorporates a valid pre-employment condition, which prospective employees must agree to before being hired. By entering into this pre-employment condition, they waive their right to collectively bargain the issue. However, because the ordinance does not provide a limited exception for emergencies which might require an employee to suddenly or even temporarily change residences, it also requires its new hires to reside in Warren irrespective of the potential changes in their personal circumstances. Hence, as it is written, I agree that the ordinance conflicts with R.C. 9.481.

{¶ 132} To summarize, it is foreseeable that non-elected public employees who have accepted the pre-employment residency condition may encounter changes in their lives necessitating a relocation of their residence. However, the inability to relocate outside the municipality could have a negative impact on these employees and affect their general welfare. With no exception to accommodate for these changes, I believe Section 155.05 requires employees, as a condition of their employment, to reside in Warren. This is an employment condition which, due to its inflexibility, directly violates R.C. 9.481. I consequently concur with the conclusion that the ordinance must yield to the R.C. 9.481, a law deriving its validity from the proper exercise of the General Assembly's authority under Section 34, Article II of the Ohio Constitution.

Ohio App. 11 Dist.,2008.
Am. Federation of State, Cty. & Mun. Emps., Local # 74 v. Warren
Slip Copy, 2008 WL 3290502 (Ohio App. 11 Dist.), 2008 -Ohio- 3905

END OF DOCUMENT

Data Obtained from the State Employment Relations Board
Aug. 28, 2008

Case #	Employer Name	Cnty	BU	Size	Union	Effective Dates	Residency	ResidencyPage
05-MED-10-1196	ADAMS COUNTY SHERIFF	ADAM	SM	21	FOP OLC	1/1/2006 - 12/31/2008	YES	35
05-MED-10-1146	ALLIANCE CITY	STAR	SS	10	FOP OLC	1/1/2006 - 12/31/2008	YES	29
06-MED-07-0795	ALLIANCE CITY	STAR	SA	27	OPBA	1/1/2006 - 12/31/2008	YES	34
07-MED-05-0612	ASHLAND CITY	ASHL	SA	19	FOP OLC	1/1/2007 - 12/31/2009	YES	22
06-MED-09-1132	ASHLAND CITY	ASHL	SS	8	OPBA *	1/1/2007 - 12/31/2009	YES	25
06-MED-01-0007	ASHTABULA CITY	ASHT	SS	10	FOP 26	5/1/2006 - 4/30/2009	YES	28
06-MED-01-0006	ASHTABULA CITY	ASHT	SA	21	FOP 26	5/1/2006 - 4/30/2009	YES	29
06-MED-10-1165	BAY VILLAGE CITY	CUYA	SA	25	FOP 25	1/1/2007 - 12/31/2009	YES	2
06-MED-10-1166	BAY VILLAGE CITY	CUYA	SS	6	FOP 25	1/1/2007 - 12/31/2009	YES	2
04-MED-05-0611	BEDFORD HEIGHTS CITY	CUYA	SS	6	OPBA	1/1/2004 - 12/31/2007	YES	46
05-MED-10-1107	BELLEFONTAINE CITY	LOGA	SM	27	OPBA	1/1/2006 - 12/31/2008	YES	7
06-MED-08-0813	BUCYRUS CITY	CRAW	SM	25	FOP OLC	11/2/2006 - 11/1/2009	YES	10
06-MED-10-1192	BUTLER COUNTY SHERIFF	BUTL	SA	150	FOP 101	2/17/2007 - 2/12/2010	YES	63
06-MED-10-1191	BUTLER COUNTY SHERIFF	BUTL	SS	20	FOP 101	2/17/2007 - 2/12/2010	YES	60
06-MED-09-0945	CAMBRIDGE CITY	GUER	SM	24	FOP OLC	12/1/2006 - 11/30/2009	YES	33
05-MED-11-1313	CANFIELD CITY	MAHO	SM	18	OPBA	1/1/2006 - 12/31/2008	YES	18
05-MED-02-0079	CHAMPION TOWNSHIP	TRUM	SM	8	OPBA *	6/1/2005 - 4/30/2008	YES	19
06-MED-08-0836	CINCINNATI CITY	HAMI	SS	214	FOP 69	12/3/2006 - 12/13/2008	YES	73
06-MED-09-0951	CLARK COUNTY SHERIFF	CLAR	SM	110	FOP OLC	1/1/2007 - 12/31/2009	YES	33
06-MED-09-0949	CLARK COUNTY SHERIFF	CLAR	SS	21	FOP OLC	1/1/2007 - 12/31/2009	YES	29
06-MED-09-1078	CLAYTON CITY	MONT	SS	3	OPBA	1/1/2007 - 3/31/2009	YES	13
05-MED-10-1114	CLAYTON CITY	MONT	SA	11	OPBA *	1/1/2006 - 12/31/2008	YES	12
06-MED-10-1218	HOUSING AUTH	CUYA	SS	24	OPBA *	1/1/2007 - 12/31/2009	YES	22
05-MED-03-0160	DELAWARE CITY	DELA	SM	15	FOP OLC	5/31/2005 - 5/31/2008	YES	49
07-MED-04-0388	DELAWARE CITY	DELA	SA	17	FOP OLC	6/26/2007 - 6/25/2010	YES	71
04-MED-09-0834	DELPHOS CITY	ALLE	SM	15	IBT 908	1/1/2005 - 12/31/2007	YES	11
05-MED-03-0341	EATON CITY	PREB	SM	18	FOP OLC	10/27/2005 - 6/30/2008	YES	38
05-MED-09-0967	EUCLID CITY	CUYA	SM	94	FOP 18	1/1/2006 - 12/31/2008	YES	25
04-MED-11-1223	FAIRFIELD CITY	BUTL	SA	46	FOP 166	4/1/2005 - 3/31/2008	YES	27
04-MED-11-1224	FAIRFIELD CITY	BUTL	SS	12	FOP 166	4/1/2005 - 3/31/2008	YES	26
05-MED-06-0682	FINDLAY CITY	HANC	SS	9	OPBA	1/1/2006 - 12/31/2008	YES	25
05-MED-06-0679	FINDLAY CITY	HANC	SA	59	OPBA	1/1/2006 - 12/31/2008	YES	25
05-MED-06-0681	FINDLAY CITY	HANC	SS	3	OPBA	1/1/2006 - 12/31/2008	YES	29
02-CON-01-0461	GALION CITY	CRAW	SM	17	OPBA	1/1/2002 - 12/31/2007	YES	42
06-CON-01-0863	GEAUGA COUNTY SHERIFF	GEAU	SM	112	OPBA *	1/1/2007 - 12/31/2009	YES	21
05-MED-08-0819	GREENE COUNTY SHERIFF	GREE	SS	16	FOP OLC	12/15/2008	YES	36

EXHIBIT

Data Obtained from the State Employment Relations Board
Aug. 28, 2008

Case #	Employer Name	Cnty	BU	Size	Union	Effective Dates	Residency	ResidencyPage
05-MED-08-0818	GREENE COUNTY SHERIFF	GREE	SM	134	FOP OLC	12/15/2008	YES	37
06-MED-07-0781	SHERIFF	GUER	SM	16	FOP OLC	1/1/2007 - 12/31/2009	YES	6
06-MED-07-0783	SHERIFF	GUER	SM	17	FOP OLC	1/1/2007 - 12/31/2009	YES	6
05-MED-07-0735	HAMILTON COUNTY SHERIFF	HAMI	SS	37	* HCDSSA	6/26/2006 - 12/31/2008	YES	39
05-MED-07-0725	HAMILTON COUNTY SHERIFF	HAMI	SM	269	FOP OLC	5/24/2006 - 12/31/2008	YES	52
05-MED-07-0726	HAMILTON COUNTY SHERIFF	HAMI	SS	33	FOP OLC	5/24/2006 - 12/31/2008	YES	46
05-MED-10-1158	HIGHLAND COUNTY SHERIFF	HIGH	SM	48	FOP OLC	1/1/2006 - 12/31/2008	YES	34
06-MED-09-0929	HILLSBORO CITY	HIGH	SM	18	FOP OLC	1/1/2007 - 12/31/2009	YES	45
06-MED-09-1126	HOWLAND TOWNSHIP	TRUM	SM	17	OPBA *	1/1/2007 - 12/31/2009	YES	59
05-MED-08-0776	JACKSON TOWNSHIP	STAR	SA	31	FOP OLC	1/1/2006 - 12/31/2008	YES	25
05-MED-09-0952	KNOX COUNTY SHERIFF	KNOX	SM	51	FOP OLC	1/1/2006 - 12/31/2008	YES	30
05-MED-10-1096	LANCASTER CITY	FAIR	SM	64	FOP OLC	1/1/2006 - 12/31/2008	YES	17
04-MED-09-0859	LEBANON CITY	WARR	SM	27	FOP 133	1/1/2005 - 12/31/2007	YES	23
04-MED-09-0886	LIBERTY TOWNSHIP	TRUM	SA	14	OPBA *	1/1/2005 - 12/31/2007	YES	22
04-MED-09-0887	LIBERTY TOWNSHIP	TRUM	SS	6	OPBA *	1/1/2006 - 12/31/2007	YES	22
05-MED-04-0385	LIMA CITY	ALLE	SM	74	FOP 21	1/1/2006 - 12/31/2008	YES	27
07-MED-01-0063	LIMA CITY	ALLE	SA	3	FOP OLC	4/14/2007 - 4/13/2010	YES	41
06-MED-04-0441	LONDON CITY	MADI	SA	9	OPBA *	7/1/2006 - 6/30/2009	YES	25
06-MED-04-0442	LONDON CITY	MADI	SS	4	OPBA *	7/1/2006 - 6/30/2009	YES	24
05-MED-10-1127	LOUISVILLE CITY	STAR	SA	7	OPBA *	1/1/2006 - 12/31/2008	YES	24
06-MED-12-1413	MARIETTA CITY	WASH	SM	26	FOP OLC	4/1/2007 - 12/31/2008	YES	22
05-MED-04-0430	MASON CITY	WARR	SA	32	FOP OLC	8/1/2005 - 7/31/2008	YES	33
05-MED-04-0431	MASON CITY	WARR	SS	7	FOP OLC	8/1/2005 - 7/31/2008	YES	34
05-MED-09-0977	MAYFIELD HEIGHTS CITY	CUYA	SS	12	FOP 57	1/1/2006 - 12/31/2008	YES	28
06-MED-05-0647	MAYFIELD HEIGHTS CITY	CUYA	SA	22	OPBA	1/1/2006 - 12/31/2008	YES	28
05-MED-10-1240	MEDINA COUNTY SHERIFF	MEDI	SS	18	OPBA *	1/1/2006 - 12/31/2007	YES	24
05-MED-10-1242	MEDINA COUNTY SHERIFF	MEDI	SA	49	OPBA *	1/1/2006 - 12/31/2007	YES	24
05-MED-02-0068	MONROE CITY	BUTL	SS	4	FOP OLC	6/1/2005 - 5/30/2008	YES	43
05-MED-02-0069	MONROE CITY	BUTL	SA	12	FOP OLC	6/1/2005 - 5/31/2008	YES	46
06-MED-10-1309	MORGAN COUNTY SHERIFF	MORG	SA	7	OPBA	3/13/2007 - 3/12/2011	YES	30
06-MED-07-0800	NEW FRANKLIN CITY	SUMM	SA	9	OPBA	10/1/2006 - 9/30/2009	YES	20
06-MED-09-0932	NEW PHILADELPHIA CITY	TUSC	SM	25	FOP OLC	1/1/2007 - 12/31/2009	YES	17
07-MED-09-0850	NOBLE COUNTY SHERIFF	NOBL	SA	5	FOP OLC	1/1/2008 - 12/31/2010	YES	33
06-CON-03-0543	NORTH ROYALTON CITY	CUYA	SA	28	FOP 15	1/1/2007 - 12/31/2009	YES	16
06-MED-09-1065	NORTH ROYALTON CITY	CUYA	SS	6	FOP 15	1/1/2007 - 12/31/2009	YES	15
05-MED-11-1305	NORWOOD CITY	HAMI	SM	52	* BCNPD	1/1/2006 - 12/31/2008	YES	14

Data Obtained from the State Employment Relations Board
Aug. 28, 2008

Case #	Employer Name	Cnty	BU	Size	Union	Effective Dates	Residency	ResidencyPage
06-MED-04-0448	OREGON CITY	LUCA	SS	11	FOP OLC	7/1/2006 - 6/30/2009	YES	54
05-MED-10-1211	PARMA HEIGHTS CITY	CUYA	SS	10	OPBA	1/1/2006 - 12/31/2008	YES	35
05-MED-10-1210	PARMA HEIGHTS CITY	CUYA	SA	22	OPBA	1/1/2006 - 12/31/2008	YES	34
06-MED-09-0961	PATASKALA CITY	LICK	SA	12	FOP OLC	1/1/2007 - 12/31/2009	YES	34
06-MED-09-1046	PERRY TOWNSHIP	STAR	SS	3	FOP OLC	1/1/2007 - 12/31/2009	YES	50
06-MED-09-1045	PERRY TOWNSHIP	STAR	SA	14	FOP OLC	1/1/2007 - 12/31/2009	YES	50
06-MED-08-0895	PERRYSBURG CITY	WOOD	SA	24	FOP OLC	3/5/2007 - 2/28/2009	YES	2
06-MED-08-0894	PERRYSBURG CITY	WOOD	SM	6	FOP OLC	3/7/2007 - 2/28/2009	YES	3
06-MED-08-0896	PERRYSBURG CITY	WOOD	SS	10	OPBA	3/26/2007 - 2/28/2009	YES	2
06-MED-10-1173	PIQUA CITY	MIAM	SA	21	FOP OLC	2/28/2007 - 2/28/2010	YES	3
05-MED-10-1140	POLAND TOWNSHIP	MAHO	SS	3	OPBA *	1/1/2006 - 12/31/2007	YES	30
05-MED-10-1139	POLAND TOWNSHIP	MAHO	SA	7	OPBA *	1/1/2006 - 12/31/2007	YES	32
05-MED-12-1393	PORT CLINTON CITY	OTTA	SM	17	FOP 79	4/1/2006 - 3/31/2009	YES	26
06-MED-10-1244	PUTNAM COUNTY SHERIFF	PUTN	SS	5	FOP OLC	1/1/2007 - 12/31/2009	YES	9
06-MED-10-1243	PUTNAM COUNTY SHERIFF	PUTN	SA	10	FOP OLC	1/1/2007 - 12/31/2009	YES	9
07-MED-03-0218	ROSS COUNTY SHERIFF	ROSS	SM	50	FOP OLC	7/1/2007 - 6/30/2010	YES	17
05-MED-10-1215	SCIOTO COUNTY SHERIFF	SCIO	SM	69	FOP OLC	1/1/2006 - 12/31/2008	YES	53
06-MED-08-0826	SHELBY COUNTY SHERIFF	SHEL	SM	59	FOP OLC	1/1/2007 - 12/31/2009	YES	44
06-MED-03-0270	SIDNEY CITY	SHEL	SA	29	FOP OLC	7/1/2006 - 6/30/2009	YES	36
07-MED-01-0033	SILVERTON CITY	HAMI	SM	12	FOP 112	1/1/2007 - 12/31/2009	YES	16
05-MED-08-0844	SPRINGFIELD CITY	CLAR	SA	100	* SPPA	3/3/2006 - 12/31/2007	YES	28
07-MED-07-0732	SPRINGFIELD CITY	CLAR	SS	24	FOP OLC	1/1/2008 - 12/31/2009	YES	13
06-MED-01-0015	TIPP CITY	MIAM	SA	13	FOP OLC	4/21/2006 - 4/20/2009	YES	34
05-CON-02-1453	TOLEDO CITY	LUCA	SS	138	* TPCOA	1/1/2006 - 1/1/2009	YES	72
05-MED-09-1031	TWINSBURG CITY	SUMM	SA	26	OPBA *	1/1/2006 - 12/31/2008	YES	27
05-MED-10-1105	URBANA CITY	CHAM	SS	4	FOP OLC	1/1/2006 - 12/31/2008	YES	28
05-MED-10-1104	URBANA CITY	CHAM	SA	15	FOP OLC	1/1/2006 - 12/31/2008	YES	29
06-MED-09-1130	WAUSEON CITY	FULT	SA	9	OPBA *	1/1/2007 - 12/31/2009	YES	20
06-MED-09-0940	WAUSEON CITY	FULT	SS	3	OPBA *	1/1/2007 - 12/31/2009	YES	20
05-MED-06-0665	WAYNE COUNTY SHERIFF	WAYN	SA	51	OPBA *	11/3/2005 - 1/1/2009	YES	40
05-MED-06-0667	WAYNE COUNTY SHERIFF	WAYN	SS	15	OPBA *	11/3/2005 - 1/1/2009	YES	40
06-MED-06-0726	WYANDOT COUNTY SHERIFF	WYAN	SM	18	FOP OLC	10/1/2006 - 9/30/2009	YES	19
06-MED-05-0675	XENIA CITY	GREE	SA	33	FOP 37	9/10/2006 - 9/5/2009	YES	40
06-MED-06-0721	XENIA CITY	GREE	SS	6	FOP OLC	9/24/2006 - 9/19/2009	YES	37
05-MED-07-0744	ZANESVILLE CITY	MUSK	SA	45	FOP 5	1/1/2006 - 12/31/2008	YES	56
05-MED-07-0743	ZANESVILLE CITY	MUSK	SS	7	FOP OLC	1/1/2006 - 12/31/2008	YES	39

Data Obtained from the State Employment Relations Board
Aug. 28, 2008

Case #	Employer Name	Cnty	BU	Size	Union	Effective Dates	Residency	ResidencyPage
07-MED-09-0964	ZANESVILLE CITY	MUSK	SS	3	FOP OLC	1/1/2008 - 12/31/2010	YES	39