IN THE SUPREME COURT OF OHIO

STATE OF OHIO, et al.	)	CASE NO.: 2008-0418
Appellants	)	On Appeal from the Summit County Court of Appeals, Ninth Appellate District
v.	)	
CITY OF AKRON, et al.	)	Court of Appeals Case No. 23660
Appellees	)	

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STATEMENT OF THE CASE AND FACTS

A. Statement of the Case

The Ohio General Assembly enacted R.C. 9.481 (the "Statute") to prohibit a political subdivision from requiring its permanent full-time employees to live within the political subdivision. The Statute contains no substantive provisions whatsoever; it purports solely to limit municipal authority. The Statute does, however, permit a municipality to require its employees to live in the county in which the municipality is located or in an adjoining county in order "[t]o ensure adequate response times by certain employees of political subdivisions to emergencies or disasters...." R.C. 9.481(B)(2)(b).

On May 1, 2006, the day that the Statute took effect, the City of Akron filed a complaint seeking a declaration that R.C. 9.481 is unconstitutional facially and as applied to the City. The Complaint alleges that the Statute improperly deprives the City of well-defined powers of local self-government and violates the due process, equal protection and uniformity clauses of the Ohio Constitution. (R.1, Case No. CV 2006-05-2759.)[1] Other cities across the State filed similar complaints. On May 2, 2006, the Akron firefighter and police unions and their union presidents (collectively "the Unions") filed a complaint against the City of Akron and Mayor Donald L. Plusquellic (collectively "the City") seeking a declaration that R.C. 9.481 prevails over Akron City Charter 106(5b). (R.1, Case No. CV 2006-05-2797.) The trial court consolidated the two cases, and Akron, the State, and the Unions filed cross-motions for summary judgment. On March 30, 2007, the trial court denied Akron's motion for summary judgment and granted summary judgment in favor of the State and the Unions. (Apx. C, p. 23) On April 4, 2007, the trial court granted a stay of its judgment. (City's Merit Brief, Apx. A, p. 1)

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[1] Unless otherwise noted, references to the Appendix refer to the Appendix to the Merit Brief of Appellant Unions.

The City timely appealed and on January 9, 2008, the Ninth District Court of Appeals correctly held that the State exceeded the authority granted it by Art. II, §34 when it enacted R.C. 9.481. (Apx. B, pp. 5-22.) The Appellate Court further found that R.C. 9.481 is not a general law and that pursuant to the City's home rule authority, Akron may require its employees to live in Akron in accordance with Akron's Charter. (Apx. B, pp. 5-22.) Upon finding in favor of the City on the first two assignments of error, the Appellate Court declined to rule on the City's second two assignments of error that dealt with uniformity and equal protection.[2] The Unions and the State filed their notices of appeal and requested that this Court accept jurisdiction. The City also requested that this Court accept jurisdiction. This Court accepted jurisdiction on May 7, 2008.

B. <u>Statement of Facts.</u>

The Charter of the City of Akron, adopted pursuant to the vote of the citizens of Akron, requires City employees who work primarily within the City to live in the City. (Supp. A, pp. 1-2, ¶¶5-7.)[3] Akron Charter §§105a and 106(5b), adopted in 1976, require both classified and unclassified City employees[4] who were hired after the effective date of the Charter Amendment and who perform duties primarily in the City to reside in the City. (Supp. A, pp. 1-2, ¶¶5-6.) The City's Charter residency requirements have been approved and amended several times by the voters of the City of Akron since their initial passage to tailor the residency requirement to

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[2] *Amicus* for the FOP discusses uniformity in its brief. That issue is not before this Court.

[3] Unless otherwise noted, all references to the Supplement ("Supp.") will be to the Supplement to the Merit Brief of Appellees City of Akron and Donald L. Plusquellic.

[4] Unclassified employees include all officers elected by the people, the Director and Deputy Directors of the Department of Public Service, the Director and Deputy Directors of Finance, the Director and Deputy Directors of Law, the Assistant Directors of Law, the Director and Deputy Directors of Planning and Urban Development, members of all appointed boards or commissions and advisory boards, the secretaries and assistants to the Mayor, and Deputies to the Mayor. Classified employees include all employees who are not unclassified employees.

best serve the needs of the City and its employees.

City voters have overwhelmingly supported the residency requirement each time it has been on the ballot. In 1978, §106(5b) of the City Charter was amended by the voters to require classified employees to move into the City of Akron within 12 months of their appointment or promotion and to remain resident citizens throughout their employment with the City. (Supp. A, p. 2, ¶¶8-9.) Most importantly, however, in 1995 the citizens of the City of Akron voted to reject an amendment to Charter §106(5b) which was nearly identical to R.C. 9.481, and would have permitted classified City employees to reside outside the City in Summit County or in an adjoining county after their first five years of service as a City employee. (Supp. A, pp. 2-3, ¶¶14-15.) This proposed amendment was soundly defeated at the polls.

City of Akron classified employees acknowledge and agree to the City's residency requirement in writing upon hiring. (Supp. B, p. 41, ¶7; Supp. F, pp. 57-60.) This acknowledgement provides: "I have read Section 106(5b) of the Akron City Charter and understand that if I am appointed or promoted to a position entailing work performed within the corporate limits of Akron, I AM REQUIRED TO BECOME A RESIDENT OF AKRON WITHIN TWELVE MONTHS and that I MUST REMAIN A RESIDENT DURING MY EMPLOYMENT. (Emphasis in original.) (Supp. B, p. 41, ¶7; Supp. F, pp. 57-60.)[5]

Employee residency is vital to Akron and its residents. Under R.C. 9.481, full-time municipal employees would be permitted to live as far away as Cincinnati, Ohio. (Supp. C, pp. 48-49, ¶23) If, pursuant to R.C. 9.481, the City were to adopt the "adjoining county" restriction permitted by the statute, full-time municipal employees would be permitted to live as far as 68 miles away from Akron. (Supp. C, pp. 48-49, ¶23.) City of Akron employees cannot serve the

[5] Acknowledgments signed by the individual Appellants, Union Presidents Hylnsky and Gauer are attached here to at Supp. F, pp. 59 and 60.

citizens of Akron as effectively living two, three, or four counties or more distant from the City of Akron as they can if they live in the community they serve. (Supp. B, p. 42, ¶13.)

If City of Akron employees live outside of the City of Akron, and perhaps as far away as Cincinnati, the safety of the citizens of Akron would be jeopardized. (Supp. B, p. 42, ¶13.) The City's response time in the event of an emergency would increase drastically if employees live outside Akron. (Supp. B, p. 42, ¶13.) When a city employee is called in for an emergency (whether the employee works in public safety, public works, public utilities, or any other department or division of the City), the emergency will take longer to resolve. (Supp. B, p. 42, ¶13.) As an example, in the event of a major storm, every person in the City depends upon City personnel to clear the streets. (Supp. B, p. 42, ¶13.) If these employees are living outside the City and are unable to travel through the storm, street clearing will be delayed. (Supp. B, p. 42, ¶13.) Police cars, fire trucks, and ambulances will be slowed when they are needed most to respond to weather related accidents. (Supp. B, p. 42, ¶13.)

Contrary to the Unions' assertion, mutual aid is not the answer. Mutual aid pacts pertain generally to the safety forces. With respect to the safety forces, there is no reason to assume that officers in neighboring cities would respond as quickly and efficiently as safety forces living and working in Akron. Indeed, as the largest City within Summit County, with the largest police and fire departments, it is more likely that Akron officers will be called to provide mutual aid outside Akron. In an area wide emergency, every officer in every City will be needed. A tornado that strikes Akron will likely strike in neighboring cities. In a blizzard, plow drivers from neighboring cities will be busy in their own cities, and off duty employees in both cities could live hours away. In a major power outage, employees from other cities simply will not be available to rescue those stuck in elevators in downtown Akron nor to direct traffic when all the

traffic lights go out. Akron needs its employees, all of them, in Akron and ready and able to report to work whenever and wherever needed.

The municipalities of Ohio are always the first responders to any emergency within their borders. When a heart attack victim calls 911, Akron firefighter/medics respond—not the State. When a blizzard hits, the City plows the streets, making them safer for City emergency vehicles and citizens—not the State. When a sanitary sewer breaks, spilling sewage into homes and streets, Akron's public utility workers make the repair—not the State.

Minutes matter. When on-duty police and fire personnel are stretched thin in an emergency, the safety of the officers and the community requires that off-duty personnel respond quickly and effectively when called to service. (Supp. C, pp. 45-47, ¶11.) For example, if a fire company or medical unit is called into service, the fire company or medical unit necessarily functions as a team: the fire engine or ambulance must remain at the station until all of its crew members arrive to work. (Supp. C, pp. 45-47, ¶11.) Additionally, SWAT team members (which include police officers and fire medics) are generally required to respond to a situation as a team. (Supp. C, pp. 45-47, ¶11.) A delay in the response of any member of that team delays the response of the entire unit. (Supp. C, pp. 45-47, ¶ 11.)

In the event of a large fire (or any fire in a high rise, hospital or housing facility), or a major accident on the streets or expressways, multiple fire companies and police officers from one area of the City respond. (Supp. C, p. 47, ¶13.) When neighborhood resources are exhausted, other response units are moved within the City and off-duty replacements are called in. (Supp. C, p. 47, ¶13.) During major emergencies (an evacuation, a terrorist attack anywhere in the country, a tornado or severe summer/winter storm, a train derailment or any major accident involving a chemical spill, or any other incident which the officers and firefighters on

duty are not able to handle), high ranking officers of the safety forces are needed in the Emergency Operations Center to gather information and assist and coordinate activities in the field. (Supp. C, pp. 45-47, ¶11.) Additional safety officers, call takers, dispatchers, and other trained personnel are required to report to work to handle the flood of calls from citizens and requests from emergency personnel. (Supp. C, pp. 45-47, ¶11.) At the same time, the safety forces must continue to respond to routine, but no less important, calls for police assistance, and for fire and medical assistance. (Supp. C, pp. 45-47, ¶11.)

Emergencies requiring additional fire and police personnel to report for duty can and do happen in Akron. (Supp. C, pp. 45-48, ¶¶11, 15-19.) The City's emergency operations must be immediate and effective. (Supp. C, pp. 45-47, ¶11.) Over the years, the City has experienced a number of major emergencies, including the collapse of Tallmadge Parkway (now Memorial Parkway), a train derailment and resulting chemical spill and emergency evacuation of all area residents, explosions at the Recycle Energy Plant, flooding and evacuation of hundreds of residents at Timbertop Apartments, Northeastern US electric power outage, major fires at the Portage Country Club, the Brown-Graves warehouse, and the Portage Hotel, and others. (Supp. B, p. 41, ¶11; Supp. C, pp. 45-47, ¶11.) These catastrophic events obviously required additional off-duty City personnel to be called in to respond and to respond quickly. (Supp., B, p. 41, ¶11; Supp. C, pp. 45-47, ¶11.)

In addition, there are a number of other incidents, perhaps less serious but more frequent, that also require additional off-duty City personnel to be called in to respond. (Supp., B, pp. 41-42, ¶12.) These have included, among others, water main and sewer line breaks, summer and winter storm damage and storm control, downed power lines and blocked streets, chemical spills, accidents, fires, floods, traffic device malfunctions, power outages, break-ins at community

centers and City facilities, and near riots at Kathryn Place. (Supp., B, pp. 41-42, ¶12.) From 2004 until 2006 the City of Akron Fire Department had 63 emergency situations in which additional off-duty fire personnel were called in for service. (Supp. C, p. 48, ¶¶15-19.) From 2005 until 2006 the City of Akron Police Department had 326 emergency situations in which additional off-duty police personnel were called in for service. (Supp. C, p. 48, ¶¶15-19 .)

The City must also be prepared to respond in the event of catastrophe. The Department of Homeland Security has funneled millions of dollars into Summit County to train and equip safety forces, including Akron's safety forces. (Supp. C, pp. 45-47, ¶11.) These safety forces are the first line of defense in addressing an incident of terrorism in Summit County. (Supp. C, pp. 45-47, ¶11.) History shows that in the event of an act of terrorism, a quick response with a large number of safety forces is required. (Supp. C, pp. 45-47, ¶11.) Additionally, the community's Emergency Operation Plan ("EOP") includes a design to evacuate the city. (Supp. C, pp. 45-47, ¶11.) Once the evacuation plan is activated, all interstate highways become one-way highways leading out of the City of Akron. (Supp. C, pp. 45-47, ¶11.) Entrance into the City is halted. (Supp. C, pp. 45-47, ¶11.) Employees living outside of Akron will be severely delayed or simply unable to respond to assist their fellow safety forces or the community. (Supp. C, pp. 45-47, ¶11.) In the event the City is evacuated, emergencies will continue to occur within the City and it is imperative that safety forces be present. (Supp. C, pp. 45-47, ¶11.) Just as armed forces are required to live on base to be ready for immediate deployment, so must the City's safety forces live in the City of Akron. (Supp. C, pp. 45-47, ¶11.)

In developing the Emergency Operation Plan, safety forces voiced their concerns about leaving their families in order to report for service in the event of an emergency. (Supp. C, pp. 45-47, ¶11.) Accordingly, the EOP is being developed with a plan to protect the safety forces'

families. (Id.) Providing this protection to the safety forces' families enables the safety forces to report to service in the event of an act of terrorism. (Id.) If these families live outside the City, the City's safety forces cannot protect them. (Id.)

The local concerns underpinning residency transcend the safety forces. Indeed, the need for Akron public utility employees to live in the City is great. The longer it takes to assemble a crew to respond to a sewer line backup or water main break, the more damage that can occur. (Supp. D, p. 51, ¶8.) Sewage or flooding left untreated in a home for an extended period of time can cause substantial property damage, and can create environmental and health concerns. (Supp. D, p. 51, ¶8-10) Akron's Public Utilities Bureau frequently is required to call in off-duty staff to respond to emergencies. (Supp. D, p. 52, ¶18.)[6]

The City's public works employees also need to live in the City. The most common need for emergency off-duty public works personnel to be called in is to remove ice and snow. (Supp. E, pp. 54-56. ¶¶12-24.) In the event of a snow storm, 54 drivers and support staff personnel are needed to respond to the storm. If the storm hits outside of normal business hours, all needed personnel must be called in to work. (Supp. E, p. 54, ¶7) Even with all but a small percentage of City of Akron employees residing within City limits today, it takes approximately 45 minutes to secure the quantity of staff needed to respond to the emergency. (Supp. E, p. 54, ¶8) It then takes an additional 45 minutes for the employees to drive to work, staff a truck, and start clearing the streets of Akron and equipping police cruisers with snow chains. (Supp. E, p. 54, ¶9.) Typically, in the 1 ½ hours it takes to respond to an emergency snow storm, 12-14 snow and/or ice related traffic accidents occur. (Supp. E, p. 54, ¶10.) As response time increases, the number

[6] The number of incidents of emergency calls described in Supp. D may include multiple responses caused by a single incident. The number of employees called in is a total number of employees over the time span described includes multiple responses by an individual employee.

of accidents increases. (Supp. E, p. 54, ¶10.) In the City's Highway Maintenance Division, there were 104 emergency instances in 2003-2005. (Supp. E, p. 55, ¶¶14-16.)

The City's Highway Maintenance Division is not the only Public Works division that experiences emergencies that require additional personnel to report to work on an emergency basis. In 2003-2005, off-duty personnel were called in to respond 39 times at the Akron Fulton Airport. (Supp. E, p. 55, ¶13.) In the Motor Equipment Division, in the years 2003-2005, off-duty personnel were called in 45 times. (Supp. E, p. 56, ¶20.) In the Street Cleaning Division, in the years 2003-2005, off-duty personnel were called in 68 times. (Supp. E, p. 56, ¶24.)

A residency requirement does not limit the pool of applicants to fill City positions nor promote the hiring of unqualified or incompetent City employees, as suggested by the Appellees. In fact, the opposite is true. The City does not restrict hiring to City residents. An employee is not required to reside in Akron at hiring. He or she is required to move into the City within either 6 or 12 months of hiring. (City's Merit Brief Apx. C and D, pp. 3-4.) Most importantly, however, City resident employees are neither incompetent nor unqualified by virtue of their residence in the City. City residence is an essential qualification for the job. City residents are indeed more competent to serve the City in which they reside simply by virtue of their knowledge and experience of the City and people that they serve. There is no evidence to suggest otherwise.

It is likewise important to the residents of Akron that their employees take ownership in the community where they work; that they have a stake in the City. (Supp. C, pp. 45-47, ¶11.) The City as a whole is benefited when members of the City's safety forces are recognized as members of the community who partner in shaping the community where they live, work and play. (Supp. C, pp. 45-47, ¶11) It is important to Akron residents that these individuals interact

with Akron's youth, not only on the job, but in the course of everyday activities. (Supp. C, pp. 45-47, ¶11.) Such participation instills trust in the community that the safety forces serve: trust of firefighters while inside homes and businesses; trust of paramedics when treating loved ones; and trust of police officers to protect them when reporting crime. (Supp. C, pp. 45-47, ¶11.) Trust of the safety forces is essential in achieving the goal of providing the utmost protection for the citizens of the City of Akron. (Supp. C, pp. 45-47, ¶11.)

Akron invests hundreds of thousands of dollars to train, equip, and certify its police officers, firefighters and paramedics. (Supp. C, pp. 45-47, ¶11.) The police officers, firefighters and paramedics use their training and certifications to work secondary employment in the City. (Supp. C, pp. 45-47, ¶11.) From a public safety standpoint, having Akron police officers work secondary jobs in the City of Akron, wearing their Akron uniforms, reinforces the presence of the safety forces throughout the Akron community and provides citizens with the security that comes from having Akron police officers available and present. (Supp. C, pp. 45-47, ¶11.) Akron residents are more secure when safety officers live in their neighborhood, park their police cruisers outside their Akron homes, and are seen in their Akron neighborhoods. (Supp. C, pp. 45-47, ¶11.)

Additionally, having a stake in the community where one resides and works significantly reduces the prospect of any safety force strike[6]. (Supp. B, p. 41, ¶7.) Prior to the City's adoption of a residency requirement, the safety forces were more likely to strike in the event of an impasse in negotiations. (Supp. B, p. 41, ¶7.) The safety forces and their families living outside the City would not suffer the fallout from any such strike (rioting, looting, etc.). (Supp. B, p. 41, ¶7.)

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[6] The City is aware that since the State adopted the Collective Bargaining Act, it is illegal for the safety forces to strike. Nonetheless, illegal strikes can occur. The City is also mindful that the State could repeal this Act at any time.

The Akron employee residency requirement serves the best interests of the City both socially and economically. (Supp. B, p. 42, ¶14.) Except for a small percentage of employees appointed prior to the adoption of the City's residency requirements, (and the few other limited exceptions in Section 106(5b)), Akron employees reside in Akron's many neighborhoods. (Supp. B, p. 42, ¶14.) These employees spend money in Akron. (Supp. B, p. 42, ¶14.) They frequent grocery stores, drug stores, gasoline stations, and numerous other businesses near their homes. (Supp. B, p. 42, ¶14.) These employees also pay their taxes in Akron. (Supp. B, p. 42, ¶14.) These resident employees and their families are involved in their community - whether they volunteer, go to school, attend college courses at the University of Akron, coach sports, attend church, frequent a gym, join a club, lead scout troops, go to school programs, or participate at the local community center. (Supp. B, p. 42, ¶14.) People living in Cincinnati, Youngstown, or Kent will not likely frequent the Akron grocery stores, play or coach Akron intramural sports, attend Akron churches, or frequent Akron school functions. (Supp. B, p. 42, ¶14.)

Dr. Robert Simon, a Cleveland State University Professor in Urban Planning and Real Estate Development, examined the economic impact of rescinding the City of Akron's residency requirement. (Affidavit of Dr. Simon, Exh. F, Report attached as Item #1; Supp. G, p. 62.) Dr. Simon reviewed well established economic theory, data gathered from City employees, and peer-reviewed published literature on this subject. Dr. Simon concluded that if residency requirements are lifted, a substantial number of employees will move out of the City. (Supp. G, pp. 63, 72, 75). The effect on the City will be devastating.

The effect of losing these City employees translates into approximately 1,150 lost households over the next decade, with a corresponding loss of population exceeding 3,400 people. Of these City employee households, 95% own their own homes. With the significant

loss of these City employee residents and the attendant sales of their homes, the average sale price of City homes during the two years after the rescission of residency would cause a decrease in the average sales price of a home in Akron by 27%. Further, the amount of federal and state revenue sharing funds available to cities is often based on population. With a decrease in population, Akron can expect a reduction of funding sources. (Supp. G, p. 84.)

Decreased housing values substantially lower the property tax base in Akron and significantly reduce tax collections for the City of Akron. If the residency requirement is rescinded, the City of Akron is expected to lose millions of dollars in property tax revenue, peaking at a loss of $5.1 million per year in approximately 3 years. Lost property tax revenues to the City of Akron aggregate $25.4 million in the first decade after dissolution of the City's residency requirement. (Supp. G, pp. 86-87.)

Akron schools will suffer as well. With the loss of 1,150 employee households, there will be a loss of nearly 1,000 elementary and secondary school students. Fewer students means less state funding available for the schools. The loss to the residential property tax base in Akron from employees moving out will further reduce state and local revenues for the already financially strapped Akron schools. (Supp. G, p. 86.)

Loss of City-worker households has a particularly negative impact on the housing market. City workers have a higher median household income as a whole than Akron residents overall. (Supp. B, p. 42, ¶15.) With these employees leaving, there will be a strong negative effect on housing starts over the next several years. (Supp. G, p. 64). Dr. Simon projects that over 600 more homes will be offered for sale within four years of the residency requirement rescission with 30 – 40% of these homes listed during the first year. This influx of homes into the Akron housing market would cause a substantial negative effect on the housing market and

new housing starts. The consequent reduction of economic activity in the construction and housing industry in Akron will cause significant additional tax losses to the City. (Supp. G, pp. 82-83).

R.C. 9.481 tears at the social and economic ties existing between the City, its employees and its residents. (¶16; Supp. B, p. 42.) It divides and separates City employees from City residents at a time when the City of Akron is doing all that it can to maintain and increase its economic base, preserve its neighborhoods, and improve its schools. (¶16; Supp. B, p. 42.) Revised Code 9.481 erodes and undermines those efforts to sustain a stable city. (¶16; Supp. B, p. 42.) It impedes Akron's ability to maintain a stable and diverse population. Citizens will not be as safe or secure if the City's safety forces are living in counties on the opposite end of the state of Ohio, instead of in their neighborhoods. (¶1 Supp. B, p. 42.) As City employees move out of the City of Akron, emergency response times will increase, and City employees will be less involved in the community and less familiar with the people and the community they serve. Fewer City tax dollars paid to City employees will be spent in Akron. Fewer employees will live in our neighborhoods providing fewer positive role models in the community and less stability in Akron's neighborhoods and schools. The entire City will suffer. (¶17 Supp. B, pp. 42-43.)

The impact of the Statute on cities throughout the state is apparent. The need for residency requirements is obvious. The State's interest is nonexistent. The Record and the Appellants' briefs are notably without any facts to demonstrate any state interest.

ARGUMENT

Since 1976, the Charter of the City of Akron has required its employees to reside within the City of Akron as a qualification of employment. The residency issue has been on the ballot in Akron numerous times since its original enactment. Each time, the voters of Akron have

overwhelmingly voted in favor of retaining the residency requirement. In 2006, the State of Ohio enacted R.C. 9.481 which would prohibit municipalities throughout Ohio from requiring their employees to live within the city that employs them.

"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." Opinion of the Ninth District Court of Appeals (Apx. B, p. 5). The answer to this question is clear. The City decides.

"Legislation enacted by a municipality ordinarily is presumed to be valid and the enacting body is presumed to have acted constitutionally." *State ex rel. Vana v. Maple Heights City Council* (1990), 54 Ohio St.3d 91, 92 (citing *Xenia v. Schmidt* (1920), 101 Ohio St. 437). "This presumption applies to municipal charter provisions." *Rispo Investment Co. v. City of Seven Hills* (8th Dist. 1993), 90 Ohio App.3d 245, 253 (citing *State ex rel. Vana* (1990), 54 Ohio St.3d 91). This presumption of constitutionality is essential to municipal home rule.

> After all, is not the purpose of the home rule amendment to the Constitution exactly this: That progress in municipalities shall not be hampered by uniformity of action; that communities acting in local self-government may work out their own political destiny, and their own political freedom, on their own initative [sic], and in their own way; and, with this purpose in mind, should not the enactment of political alterations in the structure and substance of a charter government be given every possible presumption of validity?

Reutener v. City of Cleveland (1923), 107 Ohio St. 117, 142, (internal citation omitted.)

When a municipal charter is in conflict with a state law, and the conflict cannot be reconciled, the question is not which one is presumed constitutional. Rather, it is "[w]hich one must be applied?" See, *Northern Ohio Patrolmen's Benevolent Assn. v. Parma (1980)*, 61 Ohio St.2d 375, 377. To answer this question, the Supreme Court has applied a balancing test to

determine whether the matter at issue was one of local self-government or general statewide concern. See *Village of Beachwood v. Board of Elections of Cuyahoga County* (1958), 167 Ohio St. 369; *Cleveland Electric Illuminating Co. v. City of Painesville* (1968), 15 Ohio St.2d 125. In the balance, the residency requirement at issue here is clearly a matter affecting only local interests. Revised Code 9.481 is not a matter of statewide concern for the "general welfare of employees". The Charter of the City of Akron clearly prevails.

Fraternal Order of Police, Akron Lodge No. 7 and Akron Firefighters Assn. IAFF Local 330's Propositions of Law Nos. 1 and 2:

> *The General Assembly's authority to enact legislation pursuant to Article II, Section 34 of the Ohio Constitution is not limited by "societal notions of common welfare."*
>
> *R.C. 9.481 is constitutional as it was enacted under Article II, Section 34 for the general welfare of public employees.*

State of Ohio's Proposition of Law No. 1:

> *R.C. 9.481 is constitutional legislation enacted for the comfort, health, safety, and general welfare of employees under Article II, Section 34 of the Ohio Constitution.*

City of Akron's Proposed Syllabi 1, 2 and 3:

> *Article XV, Section 10 grants authority to the State to adopt municipal civil service legislation only where and to the extent that such laws will not restrict the exercise by such cities of their powers of local self-government. Article II, Section 34 does not authorize the adoption of Civil Service legislation pertaining to residency in conflict with local law.*
>
> *Article II, Section 34 does not authorize the General Assembly to adopt legislation regulating conduct occurring outside the workplace.*
>
> *The General Assembly's authority to enact employee welfare legislation pursuant to Article II, Section 34, while broad, must be within the realm of the authority of the General Assembly to act. The Constitution authorizes the General Assembly to act when the legislation furthers the common welfare of the citizens of the State of Ohio. R.C. 9.481 does not further the common welfare of the citizens Ohio.*

In 1912, Ohio citizens voted to amend the Ohio Constitution to include several provisions that expanded the self-governing powers of Ohio's municipalities. Through these

amendments, municipalities were given the authority to adopt their own governing charters. Ohio Const. Article XVIII, §7 established that "[a] 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." Article XVIII, §3, as adopted in 1912, provides that "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws."

Akron adopted a City Charter on November 5, 1918. (Supp. A, p. 1, ¶4.) Section 1 of Akron's Charter established the body politic and corporate existence of the City and authorized the City to exercise all powers granted to municipalities under the Constitution. (Supp. A, p. 4.) Voter-approved residency requirements for City employees have been part of the City's Charter for more than 30 years. (Supp. A, pp. 1-2, ¶¶5-6.)

The City Charter provides, in pertinent part, as follows:

> **Section 105a. Unclassified Service- Residency Requirement**
>
> No person shall retain any position in the unclassified service unless he be a resident citizen of the City of Akron within six months of his appointment and remain a resident for the period during which he occupies said position in the unclassified service, provided, however, that the provisions of this Section shall not be applicable to persons occupying said positions in the unclassified service on June 8, 1976.
>
> **Section 106 – Personnel Director – Rules and Regulations**
>
> ***
>
> (5b) ...no person shall hold an appointed or promoted position in the classified service of the City of Akron unless he shall become a resident citizen of the City of Akron within twelve (12) months of his appointment or promotion, and remain a resident citizen of the City of Akron during the term of his employment, except that such provisions shall not be applicable to:
>
> 1. Full-time permanent employees of the City of Akron whose continuous employment began prior to and continued through

November 7, 1978; or

2. Appointment or promotion to a position entailing work performed primarily outside of the corporate limits of Akron; or
3. Employees of agencies which serve areas outside of the City of Akron and which receive most of their funding from other than City of Akron Funds. However, these employees must live within the region their agency serves.

(Supp. A, p. 3, ¶18.)

Both classified and unclassified City employees are required to live in the City. Pursuant to Charter §105a, the City electors have determined that the City and its residents are better served if the Mayor, Deputy Mayors, City Council representatives, the Directors of Law, Finance, Public Service and Urban Planning and other unclassified employees, live in the City. These unclassified employees are either elected officials or are appointed by and serve at the discretion of the Mayor. See, *State ex rel. Hunter v. Summit County Human Resource Com'n* (1998), 81 Ohio St.3d 450, 453. There is no question that the knowledge gained from living in the City is essential to the performance of these employees' duties, nor is there any doubt that public officers can and should be required to live in the City, readily available for work in the event of any emergency. The State has no right to interfere in establishing the qualifications for the municipal unclassified service in conflict with the express requirements of the City Charter.

> It would seem obvious not only from what this court has said with reference to the selection of municipal officers as being a matter of purely local concern, but also from the dictates of common sense, that the method of selection of municipal officers, their compensation and their purely local duties are matters which do not conflict with any general problem or concern of the state at large.

State ex rel. Hackley v. *Edmond,* 150 Ohio St. 203, 216 (1948).

The Unions have not challenged Section 106, pertaining to unclassified employees, in

their complaint. See, p. 1, supra. The State asserted below that the Statute did not pertain to City officers, but offered no definition of officer, nor any defense of the Statute with respect to the unclassified service. See, R. 15, State of Ohio Response to City of Akron's Motion for Summary Judgment, p. 14. ("Appointed and elected officials of political subdivisions are not traditionally considered "employees" for the purposes of the Revised Code. Instead, appointed and elected officials are considered an "office" and likewise not included in the operative provision of R.C. 9.481.)

The service provided to the City by its employees in the classified service is equally essential to the safety, stability and well-being of the City. The City's clear need for its residency requirement extends to all employees and the benefits that emanate from this requirement extend to all who live, work or visit the City.

The facts illustrate the positive impact Sections 105a and 106(5b) of Akron's Charter have on the City of Akron and its residents. The City is the first to respond to any emergency in the City, including fires, storms, illness, chemical spills, accidents and many other incidents which threaten the lives and safety of every person in the City. City employees are first on the scene, and response time is crucial.

The benefits to the City as a result of its residency requirement extend beyond public safety. City employees living in the City reflect the community they serve. Employees in the City are better able to serve the people who employ them, quickly and efficiently. The City's residency requirements strengthen the bond between City employees and the persons they serve. City employees buy homes in Akron, participate in the community and spend their tax generated dollars in the City. Residency is essential to the continued vitality and stability of the City and to the safety and well being of its residents.

Nonetheless, in 2006, the State of Ohio enacted R.C. 9.481 to prohibit Ohio municipalities from requiring their employees to live in the city that employs them. Revised Code 9.481 provides:

> (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)(l) of this section does not apply to a volunteer.

In addition, the statute authorizes the institution of a specific residency restriction if accomplished in the manner specified by the State:

> (B)(2)(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....[7]

While the City's interest in residency is manifest and considerable, the State's interest is nonexistent. The General Assembly stated its sole basis for enacting R.C. 9.481 in the Statute:

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[7] Revised Code Sections 731.28 and 731.31 "do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures." R.C. § 731.41. The City of Akron has adopted its own Initiative and Referendum procedures in its Charter at Sections 17-26. (Supp. A, p. 3, ¶17, City's Apx. E, pp. 6-9.)

"[e]xcept as otherwise provided in [the Statute], employees of political subdivisions of this state have the right to reside any place they desire." R.C. 9.481 (C). The State and the Unions assert that a municipal employee has a fundamental right to live where he or she chooses. The argument is fatally flawed. First, there is no such right. This Court and the United States Supreme Court have ruled that there is no constitutional right to employment with a municipality while living elsewhere. *Buckley* v. *City of Cincinnati* (1980), 63 Ohio St.2d 42, 44; *McCarthy v. Philadelphia Civil Service Commission* (1976), 424 U.S. 645, 96 S.Ct. 1154, 47 L.Ed.2d 366. The Statute is wholly without basis in law.

Secondly, the Statute does not permit employees to "reside any place they desire." It does not effectuate its stated purpose. Indeed, the Statute directly contradicts its stated purpose. City employees are not free to live in the place of their choosing under the Statute, but only where the Statute permits. Pursuant to the Statute, City employees are required to live within the confines of the state of Ohio and, at a city's option exercised pursuant to the Statute, within the county of their employment or an adjoining county. Of the 88 counties in this state, 83 counties remain out of bounds for Akron employees pursuant to the Statute. Residence in the five states adjoining Ohio is also prohibited, without any explanation from the State as to the reason for the prohibition. A Dayton employee may not live a stone's throw away in Indiana. A Youngstown employee may not reside directly across the border in Pennsylvania. The State has not effectuated "employee choice"; it has merely substituted its judgment for the judgment of the citizens of each Ohio city.

The State does not explain by what right it may restrict an employee's choice of residency without violating the "right" it seeks to protect. The exception to the Statute negates the entire purpose for its enactment.

With the enactment of R.C. 9.481, the State attempts to vacate long-standing local self-government powers provided to the City and other municipalities by the Home Rule Amendment to the Ohio Constitution—and it does so with no basis whatsoever. It purports to protect a right that does not exist in order to provide a choice that the statute does not permit. The Statute does not provide for the health, safety and welfare of *any* citizen of the state of Ohio, including those employed by cities throughout the state.

Nonetheless, Appellants argue that the Statute was passed pursuant to authority granted pursuant to Article II, §34 of the Ohio Constitution. The Ninth District Court of Appeals disagreed. Article II, §34 of the Ohio Constitution empowers the state legislature to pass laws "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees...." O. Const. Art. II, §34. Legislation properly adopted pursuant to Article II, §34 prevails over conflicting local legislation adopted pursuant to municipal home rule authority as set forth in Article XVIII, Sections 3 and 7 of the Ohio Constitution. *City of Rocky River v. State Employee Relations Bd.* (1989), 43 Ohio St.3d 1, *("Rocky IV").*

Revised Code 9.481 was not adopted pursuant to the grant of authority in Article II, §34: it neither fixes nor regulates the hours of labor, establishes a minimum wage, nor provides for the comfort, health, safety and general welfare of all employees in the state of Ohio. Additionally, Article II, §34 does not authorize the State to adopt civil service legislation. Thus, the State may not rely upon Article II, §34 to prohibit a home rule municipality from exercising its constitutional authority to require municipal employees to reside within the city that employs them.

1. Article II, Section 34 does not authorize the adoption of Civil Service legislation.

Revised Code 9.481 and the City of Akron employee residency requirement, as set forth in its Charter, address a matter of civil service. The establishment of qualifications for employment falls under the civil service laws. *State Personnel Bd. of Review v. City of Bay Village Civil Service Comm.* (1986), 28 Ohio St.3d 214, 216 ("A municipality is considered to have general home-rule authority to regulate the appointment, removal, *qualifications*, compensation, and duties of its officers and employment.") (Emphasis added). A residency requirement is a qualification for employment.

> A requirement that a municipal employee reside within the borders of the city that hires and pays him has long been deemed a "qualification" for the employment in question, similar in this regard to minimum standards of age, health, education, experience, or performance in civil service examinations.

Ector v. City of Torrance (1973), 10 Cal.3d 129, 514 P.2d 433. See also, *City and County of Denver v. State* (Colo. 1990), 788 P.2d 764, citing *Ector* to uphold a municipal residency requirement in conflict with state statute.

"The manner of regulating the civil service of a city is peculiarly a matter of municipal concern." *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191, 196 (quoting *State ex rel. Lentz v. Edwards* (1914), 90 Ohio St. 305, 309). In *State ex rel. Canada*, the Supreme Court was asked to consider whether a municipality had authority, under the home rule provisions of the Ohio Constitution, to make promotions within its police force contrary to state civil service laws. The Court's response was unequivocal: municipal civil service is a municipal concern. While the Court in *State ex rel. Canada* acknowledged that the State possessed certain limited authority to regulate the municipal civil service, the State's authority in this regard is wholly preempted by municipal home rule authority in the event of conflict between state and local law.

> The appointment of officers in the police force of a city represents the exercise of a power of local self-government within the meaning of those words as used in Sections 3 and 7 of Article XVIII of the Ohio Constitution.
>
> The authority of the General Assembly, to enact laws applicable to cities pursuant to *Section 10 of Article XV of the Constitution*, is an authority to enact such laws to be applicable in cities *only where and to the extent that such laws will not restrict the exercise by such cities of their powers of local self-government.* Where a municipality establishes and operates a police department, it may do so as an exercise of the powers of local self-government conferred upon it by Sections 3 and 7 of Article XVIII of the Ohio Constitution and if it does, the mere interest or concern of the state, which may justify the state in providing similar police protection, will not justify the state's interference with such exercise by a municipality of its powers of local self-government.

Id., Paragraphs 1, 3, and 7 of the Syllabus (emphasis added).

Not surprisingly, the Court in *State ex rel. Canada* did not even consider the provisions of Article II, §34 as the basis for measuring the authority of the State to regulate the municipal civil service. The State's constitutional authority with respect to municipal civil service derives solely from Article XV §10.

Since its decision in *State ex rel. Canada,* the Supreme Court has considered the scope of state authority to legislate with respect to municipal employment pursuant to Article II, §34. See *City of Kettering v. State Employment Relations Bd.* (1986), 26 Ohio St.3d 50, 56-59 (Douglas, J., concurring); *State Personnel Bd. of Review v. City of Bay Village Civil Service Comm.* (1986), 28 Ohio St.3d 214; *Ohio Association of Public School Employees v. City of Twinsburg* (1988), 36 Ohio St.3d 180; *City of Rocky River v. State Employee Relations Bd. ("Rocky I")* (November 2, 1988), 39 Ohio St.3d 196; *City of Rocky River v. State Employee Relations Bd. ("Rocky IV")* (1989), 43 Ohio St.3d 1. The Court has not wavered from its holding in *State ex rel. Canada.* In matters pertaining to civil service, local law prevails. The power of the General Assembly to enact legislation pursuant to Article II, §34 does not preempt a municipality's home rule charter authority in the arena of municipal civil service.

In *Kettering*, the Court considered a provision of state law, adopted as part of the Public Employees Collective Bargaining Act, which required a city to engage in collective bargaining with police command officers. The *Kettering* Court noted that in the seven years prior to the passage of the Act, there had been over 400 public labor strikes and found, on that basis, that the statewide concern prevailed over local interests. *Kettering*, 26 Ohio St.3d at 50, paragraph one of the syllabus. However, the *Kettering* majority considered *and rejected* an argument that the provision at issue was adopted pursuant to Article II, §34 of the Ohio Constitution. See Id., at 57-58, Douglas, J., concurring.

In *Bay Village*, the Court held that the "State Personnel Board of Review does not have investigative or removal authority over charter municipalities' civil service commissions when the municipalities' charters establish their own removal procedures." *Bay Village*, 28 Ohio St.3d at 214, syllabus. The Supreme Court explicitly rejected the proposition that Article II, §34 of the Ohio Constitution gives state law precedence over a home-rule municipality's charter with respect to civil service. *Bay Village*, 28 Ohio St.3d at 215-18. The Court found instead that a "municipality is considered to have general home-rule authority to regulate the appointment, removal, qualifications, compensation, and duties of its officers and employment." Id. at 216.

In *Twinsburg*, the Court held that a "chartered municipality, under its home-rule authority, may enact an ordinance limiting the jurisdiction of its civil service commission to only city employees, notwithstanding R.C. § 124.011(A)." *Twinsburg*, 36 Ohio St.3d at 181, syllabus. The Court stated: "It is well-settled in Ohio that regulation of city civil service is within the powers of local self-government." Id. at 182-83, Moyer, C.J., writing for the majority, citing *State ex rel. Canada* and *Bay Village*. Once again, the Court rejected the proposition that a charter municipality's civil service powers are limited by Article II, §34 of the Ohio

Constitution. Justice Douglas, *in his dissent,* argued that a "city's authority to enact legislation concerning civil service is limited by Article II, §34. . . ." Id. at 186, Douglas, J., dissenting.

In *City of Rocky River v. State Employee Relations Bd. ("Rocky IV")* (1989), 43 Ohio St.3d 1, the Court upheld a provision of state law requiring a city to engage in binding arbitration of labor disputes with its safety forces against a home rule challenge. In *Rocky IV*, however, unlike in *Kettering* and in *Rocky I*, the Court upheld a provision of the Public Employees Collective Bargaining Act pursuant to Article II, §34. In 1991, the Court again addressed R.C. Chapter 4117 in *City of Cincinnati v. Ohio Council 8, American Federation of State, County and Municipal Employees* (1991), 61 Ohio St.3d 658. Again, the Court held that the provisions of the Public Employees Collective Bargaining Act were adopted pursuant to Article II, §34.

The Public Employees Collective Bargaining Act, as construed in *Rocky IV, City of Cincinnati and Kettering*, differs significantly from the Statute at issue here. Municipalities retained significant home rule charter authority with respect to their employees under the Public Employees Collective Bargaining Act. The *Kettering* Court noted in particular that R.C. Chapter 4117 "explicitly preserves the important local self-government management powers." Id. at 53. These powers include, among others, the powers to "direct, supervise, evaluate, or *hire employees*...and to suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, *promote, or retain employees*...." Id. at 53 (quoting R.C. § 4117.08(C), emphasis added).

The Court in *City of Cincinnati* echoed its conclusion in *Kettering*, noting that "provisions of a collective bargaining agreement entered into pursuant to R.C. Chapter 4117 prevail over conflicting laws, including municipal home-rule charters . . . except for those laws specifically exempted by R.C. 4117.10(A)." *City of Cincinnati* at 659, paragraph one of the

syllabus. Among the exemptions specifically identified in R. C. § 4117.10(A) are "laws pertaining to ...residency..." In addition, the *Cincinnati* Court stated "[u]nder our holding today, no city is under any obligation to sign a collective bargaining agreement which conflicts with its charter. So long as it bargains in good faith, the city may lawfully 'just say no' to any proposal from the employee representative which conflicts with the charter . . . ." Id. at 666.

The Statute here is directly at odds with this Court's holding in *Rocky IV, City of Cincinnati* and *Kettering*. The General Assembly here considered and rejected an amendment to the Statute which would have permitted collective bargaining of residency requirements. See, Supplement to Merit Brief of Union Appellants, p. 9. ("Notwithstanding anything to the contrary in § 4117.10 of the Revised Code, this section does not apply to any agreement entered into pursuant to Chapter 4117 of the Revised Code.") This proposed amendment was rejected by the legislature.

Neither the Court's holding in *Rocky IV, Kettering* nor *City of Cincinnati* is relevant to an analysis of the State's authority in the matter at issue here. All dealt with collective bargaining. Revised Code §9.481 pertains to civil service laws. All acknowledged and protected essential home rule concerns. Revised Code §9.481 does not.

This Court has weighed and balanced the conflicting authority of the state and municipalities to regulate municipal employee relations. Without equivocation, in matters of civil service, local law prevails. See, *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191; *State Personnel Bd. of Review v. City of Bay Village Civil Service Comm.*, (1986) 28 Ohio St.3d 214; *Ohio Association of Public School Employees v. City of Twinsburg* (1988), 36 Ohio St.3d 180. *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Sidney* (2001), 91 Ohio St.3d 399, 402; *State ex rel. Regetz v. Cleveland Civil Service Comm.* (1995), 72 Ohio St.3d 167,

169; *State ex rel. Lightfield v. Indian Hill* (1994), 69 Ohio St.3d 441, 442; *State ex rel. Bednar v. North Canton* (1994), 69 Ohio St.3d 278, 280-81; *State ex rel. Bardo v. Lyndhurst* (1988), 37 Ohio St.3d 106, 108-09.

State ex rel. Canada is alive and well in Ohio, and is relevant and decisive of this case. *Canada* has been cited by the Supreme Court of Ohio in no fewer than seven cases after *Rocky IV*. See *Regetz,* supra *at* 169; *State ex rel. Meyers v. City of Columbus* (1995), 71 Ohio St.3d 603, 606; *Lightfield,* supra *at* 442; *Bednar,* supra at 280; *Ohio Assn. of Private Detective Agencies, Inc. v. City of N. Olmsted,* 1992-Ohio-65, 65 Ohio St.3d 242, 244; *State ex rel. Habe v. City of South Euclid* (1990), 56 Ohio St.3d 117, 118; *Rispo Realty & Development Co. v. City of Parma* (1990), 55 Ohio St.3d 101, 103.

Not only has the Supreme Court repeatedly cited to *State ex rel. Canada* after *Rocky IV*, but Justice Douglas, who questioned the continued validity of *State ex rel. Canada* in *Rocky IV,* abandoned his opposition. See *Rocky IV*, fn. 14, questioning ¶4 of the syllabus from *State ex rel. Canada* concerning the continued validity of the conflict clause of Article XVIII, §3. In *Buckeye Community Hope Foundation v. City of Cuyahoga Falls*, Justice Douglas quoted, *verbatim*, the language of ¶4 of the syllabus from *State ex rel. Canada* (which he had earlier questioned), in support of the majority opinion he authored. 2006-Ohio-189, 81 Ohio St.3d 559, 563, reconsidered on other grounds, 82 Ohio St.3d 539.

This Court's analysis in *State ex rel. Canada* (1958), 168 Ohio St. 191, remains the appropriate analysis to determine the State's constitutional authority to enact civil service laws governing municipal employees. As the Court noted in *Rocky IV*, "*Canada* is a case involving civil service . . . . It does not deal in any way with Section 34, Article II . . . ." 43 Ohio St.3d at 13 n.14. See, also, *Steele v. Frank* (September 27, 2000), Ninth District No. 19847, unreported

2000 WL 1420287 decided after *Rocky IV*.

Article XV, §10 grants authority to the State to adopt municipal civil service legislation only where and to the extent that such laws will not restrict the exercise by such cities of their powers of local self-government. Article II, §34 does not authorize the adoption of Civil Service legislation pertaining to residency in conflict with local law.

2. Article II, Section 34 enables the General Assembly to pass laws to improve working conditions. It does not authorize the General Assembly to adopt legislation regulating conduct occurring outside the workplace.

Article II, Section 34 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 employe[e]s; and no other provision of the Constitution shall impair or limit this power." The State's authority under Art. II, §34 is broad – but must be confined to its proper scope. If legislation properly adopted pursuant to Art. II, §34 prevails over every other provision of law, the scope of such plenary power must be narrow -- otherwise, the remainder of the Constitution is simply surplusage. See *Rocky IV*, 43 Ohio St.3d 1, at 22, et seq., J. Wright, dissenting.

The grant of authority to the General Assembly pursuant to Art. II, §34, is limited to laws "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees..." See, e.g., *Akron & Barberton Belt Rd. Co. v. Pub. Util. Comm.* (1947), 148 Ohio St. 282; *Indus. Comm. v. Warnke* (1936), 131 Ohio St. 140; *Strain v. Southerton* (1947), 148 Ohio St. 153; *State v. Kidd* (1958), 167 Ohio St. 521; *State, ex rel. Strain v. Houston* (1941), 138 Ohio St. 203; *Comerford v. Jones & Laughlin Steel Corp.* (1959), 170 Ohio St. 117; *Rocky IV*, supra. Revised Code 9.481 *does not* fix or regulate the hours of labor, it *does not* establish a minimum wage, and it *does not* provide for the

comfort, health, safety and general welfare of all employees. Revised Code 9.481 was not properly enacted pursuant to Art. II, §34.

Neither the term "general welfare" nor "employee" is clearly defined in the Constitution. The limits of the legislature's authority to act to protect the "general welfare of all employees" pursuant to Art. II, §34 have not been defined. Although this Court has indicated what is included in that authority, it has not yet defined what ought be excluded. (Appellate Decision, Apx. B, p. 15.) Revised Code § 9.481, which clearly deals with an issue outside the workplace, must be excluded.

This Court, in *Rocky IV,* declined to rely on legislative history surrounding the adoption of Article II, §34, noting that the Collective Bargaining Act was "indisputably concerned with the 'general welfare' of employees." *Rocky IV,* supra. p. 13. It is not at all clear, however, that R.C. 9.481 pertains to the "general welfare of all employees." Thus, the legislative history surrounding the adoption of Art. II, §34 is particularly relevant.

Article II, §34 was adopted for a limited purpose: to improve conditions in the workplace. Justice Douglas, writing for the majority in *Rocky IV,* reviewed the history of the 1912 Constitutional Convention and the proceedings surrounding the adoption of Article II, §34 in order to determine the meaning and scope of that provision. Justice Douglas cited at length to a "moving speech" given by Judge Dennis Dwyer, who spoke to the amendment as follows:

> [t]herefore, 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.*

43 Ohio St.3d at 15, citing 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio (1912) at 1332-1333, (emphasis added). The dissent in *Rocky IV* also noted the limited purpose of Article II, §34:

A review of the entire constitutional debate, reveals the context of Section 34 was

> to improve the working conditions of men, women and children in terms of the number of hours of work each day, the minimum wage to be paid, *and the environment in which work was being performed.*
>
> It is abundantly clear that the proposal's sole aim was to provide relief for those workers suffering in 'sweatshop' industries and to override the constitutional proscription against interference with one's right to contract.

Rocky IV, 43 at 27-28, emphasis added.

The same constitutional convention that adopted Article II, §34, adopted Article II, §35, which grants the state authority to establish a worker's compensation system. Both of these initiatives were part of a "broad humanitarian policy of the state to safeguard the life, limb, health, and safety of its people employed in the industrial world". *Pittsburgh C., C. & St. L. Ry. Co. v. Kinney* (1916), 95 Ohio St. 64, 70. The purpose of these initiatives was to impose a "duty upon the employer to provide a reasonably safe place for the employé (sic) to work". Id.

This Court has limited the scope of legislation enacted pursuant to Article II, §35 consistent with the purpose for which it was enacted. In *Kulch v. Structural Fibers, Inc.* (1997), 78 Ohio St.3d 134, this Court held that an employee is entitled to workers' compensation benefits only for injuries incurred *in the course of his employment.* Employees are not within the scope of their employment when they are at home or when they are traveling to and from work.

> Ordinarily, an employee who has a fixed and limited working place is not to be regarded as within the course or scope of his employment while traveling between his home or place of abode and such working place, within the meaning and operation of the compensation act.

Simerlink v. Young (1961), 172 Ohio St. 427, 429, (quoting *Industrial Commission of Ohio v. Baker* (1933), 127 Ohio St. 345). The protections afforded by Art. II, §35 may not exceed the purpose for which it was enacted. Thus, workers' compensation benefits apply only when an employee is *at work.*

Article II, Sections 34 and 35 were passed for the same purpose. Legislation passed

pursuant to authority granted by Article II, §34 is subject to the same limitation.

> Ohio's public policy is clearly in keeping with the laudable objectives of the federal Occupational Safety and Health Act. The public policy of this state demands that employees be provided with a safe work environment and that unsafe working conditions be corrected. This conclusion is supported by a host of statutes and constitutional provisions favoring *safety in the workplace*. See, *e.g.*, Sections 34 and 35, Article II of the Ohio Constitution.

Id., (emphasis added).

Revised Code 9.481 clearly exceeds the limits of legislative authority granted by Article II, §34. It does not provide a safe place for the employee to work nor safeguard the life, limb, health, and safety of working persons. An employee's working conditions clearly are not affected by the location of his home residence. An employee's home residence is clearly not associated with an employee's working conditions. R.C. 9.481 is nothing akin to that authority contemplated by the constitutional convention that adopted Article II, §34.

Article II, Sections 34 and 35 were adopted at the same time and for the same purpose. Section 35 addresses injuries for workers *within the course or scope of their employment*. Section 34 was adopted as a general measure to authorize the General Assembly to improve pay and working conditions for *employees*. An employee may not collect workers' compensation for an injury sustained at home and outside his fixed place of work. It follows logically that Article II, §34 cannot support legislation addressing a topic completely outside the workplace. Article II, §34 of the Ohio Constitution does not empower the State to adopt R.C. 9.481, a law which does not address hours of labor, pay, or working conditions.

The plain language of Article II, §34 requires that laws passed pursuant to authority granted by the general welfare clause of Article II, §34 are limited to the general welfare *of employees*. (Apx. F, pp. 72-73, at ¶25-31.) Utilizing the statutory doctrine of *noscitur a sociis*, the Third District Court of Appeals determined in *City of Lima v. State of Ohio*, 2007-Ohio-6419,

(Apx. F, p. 64) that the scope of Article II, §34 is limited to working environment conditions. Id.

Next, the *Lima* Court analyzed the legislative history of Art. II, §34, including the historical circumstances and objectives of the legislation. (Apx. F, pp. 73-74, at ¶37-47.) Considered within its historical context, the purpose of Art. II, §34, was obviously to empower the General Assembly with the legislative authority over hours of labor, a minimum wage, and working environment conditions within Ohio. Id; See also, *City of Toledo v. State of Ohio*, 2008-Ohio-1957, at ¶16.

Finally, citing this Court's decision in *AAUP II*, *Pension Fund*, and *Rocky IV*, the *Lima* Court held that the scope of Article II, §34's general welfare clause was necessarily limited to economic legislation that has, at minimum, *some* nexus between the legislative end and the working environment. (Apx. F, pp. 77-79 at ¶50- 63; See also, City of *Cleveland v. State of Ohio*, 2008-Ohio-2655, Apx. D, pp. 40-41, at ¶28 ("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.") The Eighth District Court of Appeals in *City of Cleveland v. State of Ohio*, Apx. D, pp. 37-45, also found the general welfare clause was drafted to regulate matters concerning employees acting within the scope of their employment, and declined to interpret Art. II, §34 to grant to the General Assembly "virtually limitless authority over municipalities in making employment decisions." Id., Apx. D, p. 40 at ¶27.

There is no nexus between where an employee resides in his time away from work and the employee's working environment, nor does R.C. 9.481 address the economic welfare of the employee in any manner. Revised Code 9.481 was not enacted pursuant to legislative authority granted by Art. II, §34 of the Ohio Constitution.

3. ***The General Assembly's authority to enact employee welfare legislation pursuant to Article II, Section 34, while broad, must be within the realm of the authority of the General Assembly to act. The General Assembly is only authorized to act when the legislation furthers the common welfare of the citizens of the State of Ohio. R.C. 9.481 does not further the common welfare of the citizens of Ohio.***

The General Assembly's authority to pass laws for the general welfare of employees pursuant to Article II, §34 is not without limits. It does not extend to authorize the enactment of R.C. 9.481. The Ninth District Court of Appeals found that the State does not have unlimited and all-encompassing authority pursuant to the "employee welfare" provision under Art. II, §34 of the Ohio Constitution to preempt any municipal law pertaining to municipal employees. If that authority were granted pursuant to Art. II, §34, then Art. XV, §10, granting the State authority to enact civil service laws, would be wholly meaningless. This Court's considerable jurisprudence holding that municipal civil service laws prevail over conflicting state law, would be equally without meaning. The Court of Appeals was correct: Article II, §34, simply does not authorize the state legislature to pass any law that may impact only a few employees, to pass laws that hurt the common welfare of the people of Ohio, nor to pass laws that create substantive rights for employees that did not previously exist. (Court of Appeals Case No. 23660, 2008-Ohio-38, ("Appellate Decision"), ¶¶ 18-28, Apx. B, pp. 13-18.) Some boundaries must exist.

While the General Assembly's authority is broad, this Court has never held it to be limitless. Rather, this Court has not had the opportunity to articulate a limitation based on the cases before it. (Appellate Decision, Apx. B, p. 14.) In fact, this Court acknowledged that Article II, §34 does not prevail over the equal protection clause. In *American Association of Univ. Professors v. Central State Univ.* (1998), 83 Ohio St. 3d 229 (*"AAUP I"*) and *AAUP II* (1999), 87 Ohio St.3d 55, this Court twice analyzed whether a collective bargaining provision pertaining to university professors violated the equal protection clause before addressing whether

the Statute was properly promulgated pursuant to Article II, §34. Id. If laws passed pursuant to Article II, §34 of the Ohio Constitution prevail over every other Constitutional provision, the Court would not have first analyzed whether the law violated the equal protection clause. Instead, the equal protection clause would be relevant in an Article II, §34 case only if it were first determined that the law was not properly promulgated pursuant to Article II, §34.

As determined by the Court of Appeals here, the General Assembly's authority to enact employee welfare legislation pursuant to Article II, §34, must be within the realm of the authority of the General Assembly to act. The General Assembly is only authorized to act when the legislation is within the authority delegated by the Constitution. The concepts of "public welfare" and "public interest", as noted by the Ninth District Court of Appeals, are the foundation of the General Assembly's authority to act. (See also, discussion of the *Akron* case in *City of Dayton v. State of Ohio*, 2008-Ohio-2589 at ¶¶65-77.) The preamble to the Constitution describes and defines this power. It is within the preamble that the authority of the General Assembly is set forth:

> 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." (Appellate Decision, Apx. B, p. 14, citations omitted.)

"In interpreting the General Assembly's authority under Art. II, §34 this Court has recognized the societal notion of 'common welfare.'" (Appellate Decision, Apx. B, pp. 12-14.) In *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1 ("*Rocky IV*"), the entire Public Employees Collective Bargaining Act was at issue. Id. The legislation encompassed all of R.C. Chapter 4117, contained dozens of provisions that furthered the public interest and both burdened and benefited public employees and public employers. (Appellate Decision, Apx. B, pp. 14-15.) The legislation included provisions that offer primarily a public benefit. (Id., Apx.

B, pp. 14-15.) These benefits included the requirement that records of the state employment relations board be open to the public, and limited the ability of public employees to strike. (Id., Apx. B, pp. 14-15., citing R.C. §§ 4117.15, 4117.16, and 4117.17) Both of these provisions were in the general public interest and therefore an appropriate basis for regulation. Chapter 4117 incorporated comprehensive provisions that applied throughout the entire state regarding public collective bargaining units, including defining the scope of collective bargaining rights and obligations, and providing for uniform dispute resolution. Id. Additionally, Chapter 4117 did not purport to create collective bargaining rights that did not previously exist. Id. Rather, Chapter 4117 defined the scope of already existing rights and obligations of public employees and employers. Id.

In *State ex rel. Bd. Of Trustees of Pension Fund v. Bd. Of Trustees of Relief Fund* (1967), 12 Ohio St.2d 105 ("Pension Fund"), the legislation at issue (R.C. Chapter 742) provided for the creation, administration, maintenance, and control of a state police and fireman's disability and pension fund. (Appellate Decision, Apx. B, p. 15.) That legislation also involved a comprehensive statutory scheme that included over 100 separate provisions that sought to preserve and regulate the pension and disability benefits through the creation and maintenance of a state fund. Id. As in *Rocky IV*, Chapter 742 did not create any employee pension rights that did not previously exist. Id.

In *American Association of Univ. Professors v. Central State Univ.*, 87 Ohio St.3d 55 (1999) ("AAUP II"), the statute at issue required public universities to develop standards for professors' instructional workloads and exempted the issue from collective bargaining. In doing so, the *AAUP II* Court made reference to many other employment-related laws enacted under the authority of Article II, §34 and emphasized that state legislation in the employment area under

Article II §34 must focus on public interest, not necessarily on any benefit particular to an employee. Id. The Court held that legislation that burdens an employee may be validly enacted pursuant to Article II, §34 if it furthers "the *public's interest* in the regulation of the employment sector." Id. Also in *AAUP II*, "the state identified a disturbing trend in faculty workload at public universities....[T]he General Assembly considered this to be a situation *where the public interest* necessitated legislative intervention." *AAUP II*, at 61, (emphasis added.)

After reviewing the facts of these cases, the Ninth District Court of Appeals determined that there was no resemblance between R.C. 9.481 and the employee "general welfare" legislation upheld in those cases. (Appellate Decision, Apx. B, p. 16.) R.C. §9.481 does nothing to further the common welfare nor advance any matter of statewide concern sufficient to justify action by the General Assembly. Revised Code § 9.481, quite simply, is not a comprehensive statutory plan that is necessary to promote the safety and welfare of all the citizens of this state. R.C. 9.481's sole purpose is to prohibit and invalidate employee residency requirements enacted by political subdivisions. Id. R.C. 9.481 does not address any significant social issues impacting the public at large; it is not a comprehensive legislative scheme; it applies to only those who are employed by a municipality that has a residency requirement and who would choose to live elsewhere if allowed to do so. Id.

Additionally, unlike any of the legislation that this Court has determined falls within the scope of Art. II, Sect. 34 legislation, R.C. 9.481 does not protect or regulate any pre-existing right or obligation of the affected employees. (Appellate Decision, Apx. B, pp. 16-17.) Rather, through R.C. 9.481, the General Assembly attempts to "circumvent municipal home rule authority and reinstate a 'right' that the employees voluntarily surrendered when they accepted government employment." Id., Apx. B, p. 17 at 27. The Appellate Court noted that residency is

merely one qualification of employment with the City, "similar in this regard to minimum standards of age, health, education, experience, or performance in civil service examinations." Id., Apx. B, p. 17 at 27, quoting *Ector v. Torrance*, 10 Cal.3d 129, 132, 514 P.2d 433 (1973). City of Akron employees voluntarily surrender their "right" to choose where to live when they choose to work for Akron, just as these employees agree to other restrictions on their "freedoms", such as how to behave as they choose, how to dress as they choose, how to groom themselves, and such. (Id., Apx. B., p. 17 at 27.) R.C. 9.481 is merely a single-issue statute that seeks to protect a right that never existed[8] and bears no resemblance to laws passed for the "general welfare" of employees that this Court has previously entertained.

The Sixth Appellate District also analyzed Ohio Supreme Court precedent and determined that the scope of powers granted by Article II, §34 pertain to the *public interest* in workload, workplace, and compensation issues affecting employee welfare. *City of Toledo v. State of Ohio*, 2008-Ohio-1957, Apx. G, pp. 88-89, ¶16 and at ¶18 ("This provision [Art. II, §34], 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."). The *Toledo* Court found that R.C. 9.481 does not protect employees from adverse wages, hours or working conditions; rather, it pertains to "off-duty" residential location preferences. "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

[8] This Court has already determined there is no constitutional right to employment with the a city while living elsewhere. *Buckley* v. *City of Cincinnati* (1980), 63 Ohio St.2d 42, 44. *McCarthy v. Philadelphia Civil Service Commission* (1976), 424 U.S. 645, 96 S.Ct. 1154, 47 L.Ed.2d 366.

conditions.") Apx. G, p. 88 at 16.

The public interest here necessitates having City employees nearby to respond to emergencies. The public is, in fact, not just inconvenienced, but even endangered, when public employees live several counties away. There is no public interest that necessitates state legislative intervention nor any constitutional authority to justify state interference.

The General Assembly's authority pursuant to Art. II, Sect. 34 to enact employee welfare legislation is broad, but it is not without limits. Article II, §34 does not authorize the adoption of laws that do not promote the common welfare of the citizens of the state of Ohio. Revised Code 9.481 does not in any manner facilitate the public interest nor address the common welfare of the citizens of Ohio. Revised Code §9.481 was not properly enacted pursuant to Article II, §34.

State of Ohio's Proposition of Law No. 2:

R.C. 9.481 does not unconstitutionally conflict with municipal home rule powers.

City of Akron's Proposed Syllabi 4 and 5:

The City's residency requirements are an exercise of the City's powers of local self government under Section 3, Article XVIII of the Ohio Constitution which are not subject to state restriction.

R.C. 9.481 is an unconstitutional infringement on the City's Home Rule authority. It advances no state interest, evinces no matter of statewide concern, and is not a general law.

Residency is clearly a matter of local self-government and should be left to the residents of each community to decide whether such a requirement is right for their community. Akron residents have indicated time and time again that City employees must live in the City that they serve. R.C. 9.481 is an unauthorized, unwarranted intrusion by the General Assembly into the home rule powers of the City of Akron. It advances no state interest, evinces no matter of statewide concern, and is not a general law.

The City's residency requirements are an exercise of the City's power of local self government under Article XVIII, §§ 3 and 7 of the Ohio Constitution. The City has enacted a Charter and possesses "home rule" powers pursuant to the State of Ohio's Constitution. *Northern Ohio Patrolmen's Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375, 379. Home Rule allows municipal corporations to become autonomous governmental units. Id. "The purpose of the Home Rule amendments was to put the conduct of municipal affairs in the hands of those who knew the needs of the community best, to-wit, the people of the city." Id., fn.l, citing *Goebel v. Cleveland Ry.* (1915), 17 Ohio N.P. (N.S.) 337, 343; *Billings v. Cleveland R. Co.* (1915), 92 Ohio St. 478; *Froelich* v. *Cleveland* (1919), 99 Ohio St. 376, 385.

The Home Rule amendments grant municipalities two separate types of authority. First, municipalities are empowered to regulate matters of local self-government. Second, municipalities have the right to adopt and enforce within their limits police regulations that do not conflict with the State's general laws. *State Personnel Bd. of Review* v. *Bay Village Civil Serv. Comm'n* (1986), 28 Ohio St.3d 214, 217. "All powers of local self-government" means "such powers of government as, in view of their nature and the field of their operation, are local and municipal in character," *Billings* (1915), 92 Ohio St. at 484 (quoting *Toledo v. Lynch* (1913), 88 Ohio St. 71, 97 (disapproved of on other grounds)) and those that "clearly involve the exercise of the functions of government, and... are local in the sense that they relate to the municipal affairs of the particular community." *Fitzgerald v. Cleveland* (1913), 88 Ohio St. 338, 344. Akron's residency charter provisions were enacted pursuant to its power to exercise all matters of local self-government.

A local regulation that invokes the power of local self-government is not preempted by conflicting state law. It is well established that the phrase "as are not in conflict with general

laws" of Article XVIII, § 3 of the Ohio Constitution modifies the words "local, police, sanitary and other similar regulations," but not the phrase "powers of local self-government." *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted* (1992), 65 Ohio St.3d 242, 244; *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191; *State ex rel. Petit* v. *Wagner* (1960), 170 Ohio St. 297, 303; *Fondessy Enterprises, Inc. v. Oregon*, (1986), 23 Ohio St.3d 213, 215.

Indeed, Ohio's Home Rule Authority grants a municipality wide latitude in enacting its laws. A municipal charter or ordinance is considered a valid exercise of municipal power unless each of the following three requirements is met: (1) the ordinance is an exercise of the police power, rather than of local self- government; (2) the state statute is a general law; and (3) the ordinance conflicts with the state statute. *Mendenhall v. Akron* (2008), Slip Opinion No. 2008-Ohio-270, 117 Ohio St.3d 33, ¶17, citing and reordering the three-part test as stated in *Canton v. State* (2002), 95 Ohio St.3d 149, 2002-Ohio-2005, ¶9; *Am. Fin. Servs. Assn. v. Cleveland* (2006), 112 Ohio St.3d 170, 175, 2006-Ohio-6043. The Statute fails both the first and second prongs. Thus, Akron's residency requirements prevail over the Statute.

(1) Akron's residency requirement is an exercise of local self-government.

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." *American Fin. Servs. Assn.*, supra at ¶23 (quoting *Twinsburg v. S.E.R.B.* (1988), 39 Ohio St.3d 226, 228); *Mendenhall,* supra at ¶18. Neither the State, the Unions, nor the City contend that the City of Akron's residency requirement, as set forth in its Charter, is an exercise of Akron's police powers. The City's Charter residency requirement is a matter distinctly within the purview of local self-government.

Over eighty years ago, the Supreme Court of Ohio rejected any contention that

establishing qualifications and methods of selecting municipal employees falls within the police powers. The Court stated that "the qualification, duties, and manner of selection of officers purely municipal come within the purview of the provision granting a city 'local self government.'" *State ex rel. Frankenstein v. Hillenbrand* (1919), 100 Ohio St. 339, 343. "Whatever difficulty this court may have encountered in accurately designating the subjects comprehended in 'local self-government,' as contradistinguished from 'local police, sanitary and other similar regulations,' it has had no difficulty in arriving at the conclusion that the qualification, duties, and manner of selection of officers purely municipal come within the purview of the provision granting a city 'local self-government.'" Id. Ohio courts have continued to characterize qualifications and methods of selecting municipal employees as falling within the 'local self government' powers of a municipality as opposed to its police powers. See *Canada,* supra, 168 Ohio St. 191 at ¶5 of the syllabus ("The mere fact that the exercise of a power of local self-government may happen to relate to the police department does not make it a police regulation . . .").

Qualifications for employment within the City are matters of local self-government. Shortly after the adoption of the Home Rule provisions at the 1912 Constitutional Convention, the Ohio Supreme Court recognized that the administration of local government equates with the "powers of local self-government" identified in Article XVIII, § 3 commenting:

> It will not be disputed that one of the powers of government is that of determining what officers shall administer the government, which ones shall be appointed and which elected, and the method of their appointment and election. These are essentials, which are confronted at the very inception of any undertaking, to prepare the structure or Constitution for any government. Obviously such power would be included among "all powers of local self-government."

Fitzgerald v. City of Cleveland (1913), 88 Ohio St. 338, 344-45.

Time and again, the Ohio Supreme Court has acknowledged that municipalities, acting pursuant to their powers of local self-government, have the authority to determine whom to hire. The qualification, duties, and manner of selection of officers are within the self-government powers of a municipality. *State ex rel. Frankenstein v. Hillenbrand* (1919), 100 Ohio St. 339, 343. The appointment, removal, qualifications, and duties of its officers and employees are within a municipality's home rule authority. *State Personnel Bd. of Review v. Bay Village Civ. Serv. Comm.* (1986), 28 Ohio St.3d 214, 216, citing *Benevolent Assoc. v. Parma* (1980), 61 Ohio St.2d 375. The Supreme Court has repeatedly held that the appointment of police officers constitutes an exercise of local self-government. *State ex rel. Regetz v. Cleveland Civil Service Comm.*, (1995), 72 Ohio St.3d 167, citing *State ex rel. Canada v. Phillips* (1958), 168 Ohio St. 191; See also *State ex rel. Hipp v. N. Canton* (1996), 75 Ohio St.3d 221, 224. The organization and regulation of its police force, as well as its civil service functions, are within a municipality's powers of local self-government. *Harsney v. Allen* (1953), 160 Ohio St. 36, 41.

In *City and County of Denver* v. *State of Colorado* (Colo. 1990), 788 P.2d 764, the City of Denver challenged the constitutionality of a state statute forbidding local governments from adopting residency requirements for their municipal employees. The Colorado Supreme Court upheld the local residency requirement. In its analysis, the Colorado Supreme Court echoed the home rule test applied repeatedly by the Ohio Supreme Court: "although the legislature continues to exercise supreme authority over matters of statewide concern, a home rule city is not inferior to the General Assembly with respect to local and municipal matters." Id. at 768. The Colorado Court considered both the need for statewide uniformity of regulation and the impact of the municipal regulation on persons living outside the municipal limits. Id. at 768. The Court also considered whether residency was a matter traditionally governed by state or by

local government. Id. Ultimately, the Court held that the residency of the employees of a home rule municipality is a matter of local concern. Id. at 772.

A municipality's authority over matters of local self government may be limited in matters of "statewide concern." This "statewide concern" limitation has been applied when a matter is not sufficiently "local" in nature to permit the municipality to exercise exclusive authority over the matter. See, *Am. Financial Servs. Assn. v. Cleveland* (2006), 112 Ohio St.3d 170, 175. The Court has adopted a balancing test to determine whether the subject of legislation involves a matter of local self-regulation or a matter of statewide concern. "[T]hus, 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 Company v. Painesville* (1968), 15 Ohio St.2d 125, 129; See also *Kettering* v. *State Employment Relations Board* (1986), 26 Ohio St.3d 50, 54.

The question here, then, is whether the City of Akron's employee residency requirement affects the general public of the state as a whole more than it does the citizens of Akron. It does not. The evidence clearly illustrates that R.C. 9.481 would devastate Akron while providing no benefit to the State.

The State argued below, with no evidentiary support, that a residency requirement deprives surrounding communities of the many "social and economic benefits incumbent in housing such employees." The State's presented no evidence to support this. This argument was rejected by the Colorado Supreme Court in a case directly on point, *City and County of Denver v. State of Colorado* (1990), 788 P.2d 764, 768-9. As in the case at hand, the State of Colorado argued that home rule residency requirements have an adverse economic impact beyond the

borders of the particular municipalities: "for every economic gain caused by a person moving into Denver there is a corresponding loss of revenue in the municipality from which the person moved." The Colorado Supreme Court, when presented with evidence that 60-70 percent "of all Denver employees would live outside of Denver in the absence of the residency requirement", responded that they were "unpersuaded" that local residency requirements had any real extraterritorial impact. Id. at 769-770. The Colorado Supreme Court concluded that "the economic impact of the Denver residency requirement on the remainder of the state is *de minimus*." Id.

With the enactment of R.C. 9.481, the State improperly attempts to preempt this essential exercise of local self-government guaranteed to charter municipalities without advancing any matter of statewide concern. What the statewide concern doctrine perceives is that a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all the citizens of this state, be they public employees or those whom public employees must serve and protect. *Kettering,* supra *at* 55. The State did not set forth any evidence of extraterritorial effects, nor did the State pass a comprehensive statutory plan that would address and promote the safety and welfare of all the citizens of this state. The State merely passed a prohibition on a municipality's exercise of local self-government. This the State may not do.

The constitutional authority of municipalities to enact local regulations derives from the constitution and cannot be extinguished by a legislative provision. See, *Am. Fin. Servs. Assn.*, supra at 175, quoting, *Fondessy Ents., Inc. v. Oregon*, 23 Ohio St.3d at 216, with respect to municipal authority to enact laws pursuant to its police power authority. Likewise, the legislature may not limit the city's exercise of local self-government by a simple prohibition.

"*Exclusive municipal power* was created by the Amendments insofar as local self-government power is exercisable by charter municipalities * * *." (Emphasis sic; footnotes omitted.) *Am. Fin. Servs.*, supra at 174, quoting, Vaubel, Municipal Home Rule in Ohio, at 1108.

Akron's residency requirement, as set forth in its Charter, is an exercise of the powers of local self-government within the City's borders which is not subject to state restriction. It does not impact any legitimate matter of statewide concern nor result in any extraterritorial effect. "In matters of local self-government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provisions will prevail." *State ex rel. Lightfield v. Indian Hill* (1994), 69 Ohio St.3d 441, 442. See, also *State ex rel. Bardo v. City of Lyndhurst* (1988), 37 Ohio St.3d 106, 108-109.

(2) R.C. 9.481 is not a general law.

In a home rule analysis undertaken pursuant to this Court's decision in *Canton v. State* (2002), 95 Ohio St.3d 149, and its progeny, a court ordinarily would determine whether a state statute conflicts with a municipal charter provision only if the municipal law were enacted as an exercise of municipal police powers. "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." *Mendenhall v. Akron* (2008), 117 Ohio St.3d 33, 37 citing *Am. Fin. Servs. Assn. v. Cleveland,* (2006), 112 Ohio St.3d 170, ¶ 23. In other words, if this court determines that the City acted pursuant to its powers of local self government in adopting its Charter, the Charter prevails in any home rule analysis. *Mendenhall,* supra at ¶18.

If, on the other hand, the Charter provision or municipal ordinance is considered to be an exercise of a city's police power, the Court is then required to examine the second prong of the

Canton analysis, i.e., whether the state statute is a general law. This is not to suggest that the second prong of the *Canton* test is wholly irrelevant to a home rule analysis involving a municipal exercise of local self regulation. The State ought not be excused from complying with the second prong of *Canton* simply because it failed the first.

Rather, the Statute, which fails the second prong of the *Canton* test, can not be found to be a matter of statewide concern under the first prong. The lack of any statewide and comprehensive legislative enactment, the lack of uniformity throughout the state and the lack of any substantive provisions in the Statute, where the sole purpose of the Statute is to impose a singular limitation of municipal legislative power, necessitates a finding that there is no legitimate statewide concern addressed by R.C. 9.481.

The Statute is not a general law. *State of Ohio v. City of Akron,* 2008-Ohio-38 (Apx. B), *City of Lima v. State of Ohio*, 2007-Ohio-6419 (Apx. F, pp. 64-85), *City of Cleveland v. State of Ohio*, 2008-Ohio-2655 (Apx. D, pp. 37-45), *City of Toledo v. State of Ohio*, 2008-Ohio-1957 (Apx. G, pp. 86-90). To constitute a general law for purposes of home-rule analysis under the State Constitution, 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. *Canton v. State* (2002), 95 Ohio St.3d 149, 153.

Revised Code 9.481 does not meet any of these requirements. First, R.C. 9.481 is not part of a statewide and comprehensive legislative enactment. Indeed, there is no comprehensive statewide law pertaining to qualifications for municipal employment. The Statute targets only a

single issue and targets only a relatively few employees. Second, 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. Like the statute considered in *City of Canton*, supra, R.C. 9.481 contains an exception that wholly defeats its stated purpose. The statute inexplicably excludes part-time employees and volunteers while imposing, or specifically permitting the imposition of a residency requirement on permanent full-time employees. These exceptions wholly defeat the stated purpose of the Statute which purports to "recognize the fundamental right of an individual to choose where to live pursuant to Section 1 of Article 1 of the Constitution." R.C. 9.481, §2. Finally, the Statute does not set forth any police, sanitary or similar regulations. It serves solely as a limitation on the legislative power of the citizens of municipalities throughout the state. Revised Code §9.481 is not a general law. In the absence of a conflicting general law, municipalities remain free to determine the qualifications necessary for employment with the municipality.

Revised Code 9.481 is an unauthorized, unwarranted intrusion by the General Assembly into the home rule powers of the City of Akron. It advances no state interest and evinces no matter of statewide concern. It provides for noone's welfare. It is not a general law. Revised Code 9.481 is unconstitutional.

CONCLUSION

Fundamentally, the Akron Charter residency requirement and the Statute are not different in kind, but only in degree. Both restrict an employee's ability to choose where to live while maintaining employment with a municipality. Both restrict this choice of residence as necessary to serve the needs of the residents and guests of the municipality. Both acknowledge that the

firefighter should not live too far from the fire nor the plow driver too far from the streets he or she plows. Both presume that the City should determine how far from the fire, how far from the plow, is too far. Both restrict the municipal employee's residence to the political jurisdiction of those who enact, enforce and benefit from the restriction: the City Charter protects the City's interests and the State protects its own interest, albeit at the expense of the City. If Akron's charter has extraterritorial effects beyond its jurisdictional authority, so does the Statute. If the Charter requirement violates an employee's rights, so does the Statute.

The City Charter residency requirement is a qualification for employment with the City, and a matter of local self regulation, both in fact and in law. So is the Statute.

Akron's employee residency requirement serves the best interests of the City, both socially and economically. Employees who live in the city where they work have a vested interest in that city. City of Akron employees pay their taxes in Akron and are involved in their community.

If City of Akron employees live outside of the City of Akron, the safety of the citizens of Akron would be jeopardized. Emergencies requiring additional City personnel to report for duty can and do happen frequently in Akron. The City's response in the event of an emergency will be delayed, obviously, if additional personnel responding to the emergency need to drive into the City from southern Wayne County or western Medina County. When a citizen's life hangs in the balance, the fact that municipal employees live two, three, or four counties away (or even one county away) could make the difference to that citizen's life.

In addition, R.C. 9.481 confers no benefit whatsoever on the citizens of Akron. If Akron's residency requirement is lifted, the effect on the City will be significant. A considerable number of employees will move out of the City. This employee exodus would severely and

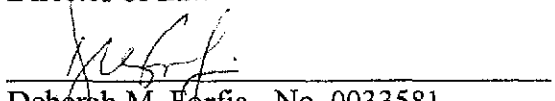
adversely impact the Akron housing market, as well as retail spending and service employment within the City. The loss of millions of dollars in the property tax base in Akron will also affect funding revenues for the City and its schools.

Residency is clearly a matter of local self-government and should be left to the residents of each community to decide whether such a requirement is right for their community. The citizens of Akron have voted, by an overwhelming majority, to require City employees to live in the City. In fact, in 1995, Akron residents overwhelmingly rejected an amendment to the Charter which would have accomplished precisely what the legislature attempted to accomplish with the enactment of R.C. 9.481. The State of Ohio is not and cannot be permitted to substitute its judgment in a matter of local concern for that of the citizens of Akron. It may not impose a residency requirement that the citizens of Akron flatly rejected. The will of the citizens of Akron is clear and unequivocal; they do not want their employees to live in Summit County or an adjoining county, they want their employees to live in Akron. There is simply no statewide concern articulated by the legislature that would permit any infringement on Akron's fundamental power of local self-government to establish qualifications for the selection and appointment of its employees. R.C. 9.481 is an unconstitutional infringement on the City's Home Rule authority.

For the foregoing reasons, the City respectfully requests that this Court affirm the judgment of the Ninth District Court of Appeals in the within case.

Respectfully submitted,

Max Rothal - No. 0009431
Director of Law



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CERTIFICATE OF SERVICE

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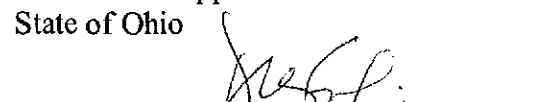

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APPENDIX

Apx. Page

A Judgment Entry Granting Stay of Court of Common Pleas Judgment 1

B Akron City Charter §1 2

C. Akron City Charter §105 3

D. Akron City Charter §106(5b) 4

E. Akron City Charter §§17-26 6

F. Ohio Constitution, Article XV, Section 10 10

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H. R.C. §§4117.08, 4117.10, 4117.15, 4117.16 and 4117.17 13

COPY

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

2007 APR -4 AM 10: 14

SUMMIT COUNTY
CLERK OF COURTS

CITY OF AKRON, et al.,	)	
	)	CASE NO. CV 2006-05-2759
Plaintiffs,	)	
	)	JUDGE BOND
-vs-	)	
	)	
STATE OF OHIO, et al.,	)	**ORDER**
	)	
Defendants.	)	

This matter is before the Court upon Plaintiffs, City of Akron and Donald L. Plusquellic's Motion to Stay Judgment Pending Appeal.

Upon consideration the Court finds said motion well taken. Judgment is hereby stayed pending appeal pursuant to Civ. R. 62(B) & (C).

Therefore, Plaintiffs, City of Akron and Donald L. Plusquellic's Motion to Stay Judgment Pending Appeal is GRANTED.

IT IS SO ORDERED.

JUDGE JANE BOND

cc: Assistant Director of Law Deborah M. Forfia
Assistant Attorney General Frank M. Strigari
Attorney Susannah Muskovitz

Appendix A

CORPORATE POWERS, RIGHTS, AND PRIVILEGES

SECTION 1. NAME, BOUNDARIES, AND POWERS.

SECTION 2. ENUMERATED POWERS NOT EXCLUSIVE.

SECTION 1. NAME, BOUNDARIES, AND POWERS.

The inhabitants of the City of Akron, as its limits now are, or may hereafter be, shall be a body politic and corporate by name The City of Akron, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease, or lease with privilege to purchase, for any Municipal purpose; may sell, lease, hold, manage, and control such property, and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all the provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease and operate and regulate public utilities; may assess, levy and collect taxes for general and special purposes on all the subjects or objects which the City may lawfully tax under the provisions of this Charter; may levy and collect assessments for local improvements; may borrow money on the faith and credit of the City by the issue or sale or bonds or notes of the City; may appropriate the money of the City for all purposes lawful under the provisions of this Charter; may create, provide for, construct, regulate and maintain all things of the nature of public works and improvements; may license and regulate persons, corporations and associations engaged in any business, occupation, profession or trade; may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; may do all things necessary to promote the health, convenience, comfort and welfare of its citizens and advance the moral, social, physical and intellectual standard of its citizenship, and for such purposes it may exercise any or all of the power conferred in this section; may regulate and limit the height and bulk of buildings hereafter erected, and may regulate and prescribe the construction and the material used in all buildings, and the maintenance and occupancy thereof and regulate and determine the area of yards, courts, and other open places, and may divide the City into districts of such number, space and area as may be deemed best suited to carry out these purposes; may regulate and restrict the location of trades and industries, and the location of buildings designed for specified uses, and may divide the City into districts of such number, shape and area as may be deemed best suited to carry out these purposes; may regulate and control the use, for whatever purposes, of the streets and other public places; may create, establish, abolish and organize offices and fix the salaries and compensations of all officers and employees; may make and enforce local police, sanitary and other regulations; may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof. The City shall have all powers that now are, or hereafter may be granted to municipalities by the Constitution or laws of Ohio; and all powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this Charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the Council, and when not prescribed by this Charter or amendments thereto, or ordinance of Council, then said powers shall be exercised in the manner prescribed by the State law.

SECTION 2. ENUMERATED POWERS NOT EXCLUSIVE.

(Repealed; V 95 p 107; Approved by voters Nov. 8, 1966)

<< previous | next >>

Appendix B

SECTION 105. CLASSIFICATION.

The civil service of the City is hereby divided into the unclassified and the classified service.
(1) The unclassified service shall include:
(a) All officers elected by the people.
(b) The Director and Deputy Directors of the Department of Public Service.
(c) The Director and Deputy Directors of Finance.
(d) The Director of Law, the Deputy Directors of Law and the Assistant Directors of Law.
(e) The Director and Deputy Directors of Planning and Urban Development appointed after November 15, 1990.
(f) The members of all appointed boards or commissions, and advisory boards.
(g) The Secretaries and assistants to the Mayor.
(h) The Deputies to the Mayor.
(2) The classified service shall comprise all positions not specifically included by this Charter in the unclassified service.
(V 46 p 444; Approved by voters Nov. 2, 1937) (Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-6-90)

SECTION 105a. UNCLASSIFIED SERVICE--RESIDENCY REQUIREMENT.

No person shall retain any position in the unclassified service unless he be a resident citizen of the City of Akron within six months of his appointment and remain a resident for the period during which he occupies said position in the unclassified service, provided, however, that the provisions of this Section shall not be applicable to persons occupying said positions in the unclassified service on June 8, 1976.
(Approved by voters June 8, 1976) (Amendment adopted by electorate 11-6-90)

Appendix C

SECTION 106. PERSONNEL DIRECTOR--RULES AND REGULATIONS.

The Personnel Director, under the direction of the Commission, shall direct and supervise the administrative work of the Personnel Department; shall prepare and recommend rules and regulations for the administration of the civil service provisions of the Charter, which shall become effective after approval by the Commission; shall administer such rules and regulations and shall propose amendments thereto; shall prepare an annual report to the Mayor for the Civil Service Commission and Council; shall keep minutes of the proceedings of the Commission; shall make investigation concerning the enforcement and regulations thereunder; shall perform such other functions as may be required by the Civil Service Commission.

It is hereby provided and the rules and regulations shall provide:

(1) For the classification and standardization of all positions in the classified service. The classification into groups and subdivisions shall be based upon and graded according to their duties and responsibilities, and so arranged as to permit the filling of the higher grades, so far as practicable through promotion. All salaries shall be uniform for like service in each grade, as the same shall be standardized and classified by the Civil Service Commission. The Commission shall have the sole power to create new classification.

(2) For open competitive examinations to be given under the direction of the Personnel Director to test the relative fitness of applicants for such positions. Employees of any public utility or agency taken over by the City who have been in the service of said utility or agency for three (3) years prior to the time of such acquisition shall come under the provisions of the merit system without examination; but vacancies thereafter occurring in such service shall be filled from eligible lists in the manner herein provided.

(3) For public notice of the time and place of all competitive examinations.

(4) For the creation by the Personnel Director of eligible lists upon which shall be entered the names of successful candidates in the order of their standing in such examination or test.

(5) For the rejection by the Personnel Director, by authority of the Commission, of candidates or eligibles who failed to meet reasonable qualification requirements, or who have attempted deception or fraud in connection with any application or examination.

(5a) (Repealed; Amendment adopted by electors 11-4-80)

(5b) For declaring that no person shall hold an appointed or promoted position in the classified service of the City of Akron unless he shall become a resident citizen of the City of Akron within twelve (12) months of his appointment or promotion, and remain a resident citizen of the City of Akron during the term of his employment, except that such provisions shall not be applicable to:

1. Full-time permanent employees of the City of Akron whose continuous employment began prior to and continued through November 7, 1978; or
2. Appointment or promotion to a position entailing work performed primarily outside of the corporate limits of Akron; or
3. Employees of agencies which serve areas outside of the City of Akron and which receive most of their funding from other than City of Akron Funds. However, these employees must live within the region their agency serves.

(5c) For declaring methods of granting preference points to the passing grades of those persons taking non-promotional examinations who are resident citizens of the City of Akron continuously for one year immediately prior to examination and who remain resident citizens of the City of Akron throughout the remainder of the selection process.

(5d) For declaring methods of granting preference points to the passing grades of those persons taking non-promotional examinations who are veterans of the Armed Forces of the United States irrespective of date of honorable discharge from active duty.

(6) For the certification to the appointing authority by the Personnel Director from the appropriate eligible list to fill vacancies in the classified service of the persons with the three highest scores on such list, or of the person or persons on such list when the same contains less than three scores.

(7) For promotion based on competitive examinations and records of efficiency and seniority. Lists shall be created and promotions made in the same manner as in original appointments. Any advancement from one job classification to another for which the maximum rate of pay is higher shall constitute promotion. Whenever practicable, vacancies shall be filled by promotion.

(8) For transfer from a position to a similar position in the same class and grade and for reinstatement on the eligible list within one year of persons who, without fault or delinquency on their part, are separated from the service or reduced in rank.

Appendix D

reinstatement on the eligible list within one year of persons who, without fault or delinquency on their part, are separated from the service or reduced in rank.
(9) (Repealed; V 107 p 582; approved by voters Nov. 2, 1971)
(10) (Repealed; V 107 p 582; Approved by voters Nov. 2, 1971)
(11) For investigating and keeping a record of the efficiency of officers and employees in the classified service, and for requiring performance evaluations and records relative thereto from appointing officers. Each employee's own record shall be available for his/her inspection at all times.
(12) For a period of probation not exceeding six (6) months before an appointment or employment is made permanent, during which period a probationer may be discharged or reduced by the appointing authority without the right of appeal to the Commission; provided, however, that said probationary period shall be extended for each class of employee, for that period of time which is equivalent to the period of time during which employees entering service in that classification are required to participate in formal, full-time training programs. In no case shall the combined probationary and training period exceed nine (9) months.
(Approved by voters Nov. 4, 1975)
(13) Such other rules shall be adopted which are not inconsistent with the foregoing provisions of this section as may be necessary and appropriate for the enforcement of the merit system.
(Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-7-00)

SECTION 17. MANNER OF EXERCISE OF INITIATIVE.

Ordinances and resolutions providing for the exercise of any and all powers of government granted by the Constitution or now delegated or hereafter to municipal corporations by the General Assembly, may be proposed by initiative petition. Such initiative petition must contain the signatures of not less than seven (7) percent of the electors of the City. The full text of the proposed ordinance or resolution shall be set forth in such initiative petition. Initiative petitions shall be filed with the Clerk of Council. The Clerk of Council shall not accept for filing any petition which does not purport to contain at least the minimum number of signatures required for submission of the proposed law or amendment for the approval or rejection of the electors. The proposed ordinance or resolution shall be submitted for the approval or rejection of the electors of the City at the next succeeding regular or general election occurring subsequent to thirty (30) days after such initiative petition is found to be sufficient by the Clerk of the Council as hereinafter provided.
(Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-7-00)

SECTION 18. WHEN ORDINANCES AND RESOLUTIONS SHALL BECOME EFFECTIVE.

No ordinance or resolution shall go into effect until thirty days after it shall have been passed by the Council, except as hereinafter provided.

SECTION 19. REFERENDUM, HOW ORDERED AND WHEN HELD.

Referendum petitions shall be filed with the Clerk of Council. The Clerk of Council shall not accept for filing any petition which does not purport to contain at least the minimum number of signatures required for submission of the referendum for the approval or rejection of the electors. When a petition signed by ten (10) percent of the electors of the City shall have been filed with the Clerk of the Council within thirty (30) days after an ordinance or resolution shall have been passed by the Council ordering that such ordinance or resolution be submitted to the electors of the City for their approval or rejection and said petition is found to be sufficient by the Clerk of the Council, as hereinafter provided, the election officer, officers or board having control of elections in the City shall cause such ordinance or resolution to be submitted to the electors of the City for their approval or rejection at the next succeeding regular or general election in any year occurring subsequent to thirty (30) days after the Clerk of the Council finds such petition to be sufficient as hereinafter provided. No such ordinance shall go into effect until and unless approved by the majority of those voting upon the same. Nothing in this article shall prevent the City, after the passage of any ordinance or resolution, from proceeding at once to give any notice or make any publication required by such ordinance or resolution.
(Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-7-00)

Appendix E

SECTION 20. APPLICATION OF REFERENDUM.

Any ordinance or resolution passed by the Council shall be subject to referendum except as hereinafter provided. Whenever the Council is by law required to pass more than one (1) ordinance or resolution to complete the legislation necessary to make and pay for any public improvement, the provisions of Sections 17 to 26, inclusive, in this Charter shall apply only to the first ordinance or resolution required to be passed and not to any subsequent ordinances or resolutions relating thereto. Ordinances or resolutions providing for appropriations for the current expenses of the City, or for street improvements petitioned for by the owners of the majority of the feet front of the property benefited and to be specially assessed for the cost thereof, and emergency ordinances or resolutions necessary for the immediate preservation of the public peace, health or safety shall go into immediate effect, or at the time stated in the ordinance. Such emergency ordinances or resolutions must, upon a "Yea" and "Nay" vote, receive the vote of two-thirds of all the members of the Council, and the reasons for such necessity shall be set forth in one (1) section of the ordinance or resolution. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder, and all rights and privileges conferred by it shall be null and void; provided, however, that such measure so repealed shall be deemed sufficient authority for any payment made or expense incurred in accordance with the measure previous to the referendum vote thereon. The provisions of Sections 17 to 26, inclusive, of this Charter shall apply to pending legislation provided for any public improvement.
(Amendment adopted by electorate 11-4-80)

SECTION 21. THE PETITION--REQUIREMENTS, CONSTRUCTION, AND EFFECT OF ELECTION.

Any initiative or referendum petition may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the ordinance or resolution proposed or sought to be referred. Each signer of an initiative or referendum petition shall sign his name in ink or indelible pencil. Each signer of an initiative or referendum petition must be an elector of the City. With each signature shall be stated the place of residence of the signer, giving the street and number. Each part of such petition shall contain the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of signers of such part of such petition, that the affiant witnessed the affixing of every signature and that, to the best of the affiant's knowledge and belief, each of the signatures contained on such part is the genuine signature of the person whose name it purports to be, that such persons are electors of the City, and that they signed such petition with the knowledge of the contents thereof. The petitions and signatures upon such petitions shall be prima facie presumed to be in all respects sufficient. No ordinance or resolution submitted to the electors of the City, and receiving an affirmative majority of the votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the same shall have been procured; nor shall the rejection by a majority of the votes cast thereon of any ordinance or resolution submitted to the electors of the City be held invalid for such insufficiency. The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast during the last general municipal election.
(Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-7-00)

SECTION 22. DUTIES OF CLERK OF COUNCIL.

Within ten (10) days after the filing of any initiative or referendum petition the Clerk of the Council shall determine the sufficiency of such petition and attach thereto a certificate showing the result of his examination. If the Clerk shall certify that the petition is insufficient he shall set forth in the certificate the particulars in which the petition is defective and shall return a copy of the certificate to the person designated in such petition to receive it.

In the event the original petition contained prima facie insufficient signatures, such initiative or referendum petition may be supplemented at any time within twenty (20) days after the making of a certificate of insufficiency by the Clerk, by filing a supplementary petition upon additional petition papers signed and filed in the manner required for the original petition. Within ten (10) days after the filing of a supplementary petition, the Clerk shall make like examination of the petition as supplemented, and, if his certificate shall show the same to be still insufficient, he shall return it to the person designated in such petition to receive it without prejudice, however, to the filing of a new petition. If the Clerk of the Council shall determine that the original petition or the petition as supplemented is sufficient, he shall submit the same with his certificate to the Council at the next meeting of Council. No change may be made to the original petition or the petition as supplemented after filing with the Clerk except that any person who signs the petition may request in writing, in the presence of the Clerk, the removal of his or her signature at any time before submission of the Clerk's certificate to Council.

The Council shall thereupon order that the ordinance or resolution proposed or sought to be referred be submitted to the qualified electors of the City for their approval or rejection at an election to be held as here prescribed. The Clerk of Council shall forthwith transmit a duly certified copy of such order to the Director of the Board of Elections of Summit County, Ohio or the successor to this position. The election authorities shall cause publication of notice and all arrangements to be made for holding such election, and the same shall be conducted and the result thereof returned and declared in all respects as are the results of general municipal elections.

(Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-7-00)

SECTION 23. INITIATIVE AND REFERENDUM BALLOTS.

The ballots used when voting upon any measure proposed by initiative petition or referred by referendum petition shall state the title of the ordinance or resolution and shall also contain a statement in clear and concise language descriptive of the substance of such ordinance or resolution, and below such statements the two propositions, "For the Ordinance" (or Resolution, as the case may be), and "Against the Ordinance" (or Resolution, as the case may be). Immediately at the left of each proposition there shall be a space in which the voter may vote for or against the proposed measure. If a majority of the electors voting on any such measure shall vote in favor thereof, it shall thereupon become an ordinance or resolution of the City. The statement descriptive of the substance of the ordinance or resolution to be placed on the ballot shall be drawn by the Director of Law and by him furnished to the election authorities having charge of the printing of the ballots.

(Amendment adopted by electorate 11-4-80)

SECTION 24. CONFLICT OF REFERRED MEASURES.

If two or more ordinances or resolutions adopted or approved at the same election conflict in respect to any of their provisions, they shall go into effect in respect to such of their provisions as are not in conflict, and the one receiving the highest affirmative vote shall prevail insofar as their provisions conflict.

SECTION 25. REFERENDUM NOT TO APPLY.

The following ordinances and measures shall not be subject to the referendum but shall go into effect either immediately or at the time indicated therein, as Council may determine:
(a) Annual appropriation ordinances.
(b) Ordinances or resolutions providing for the approval or disapproval of appointments or removals and appointments or removals made by Council.
(c) Actions by Council on the approval of official bonds.
(d) Ordinances or resolutions providing for the submission of any proposition to the vote of the electors.
(e) Ordinances providing for street improvements petitioned for by owners of a majority of the feet front of the property benefited and to be specially assessed for the cost thereof.

SECTION 26. ENACTMENT OR REPEAL BY COUNCIL.

If at any time before an election is held submitting an ordinance or resolution proposed by initiative petition the Council shall pass such ordinance or resolution, then no such election shall be held. If at any time before an election is held referring an ordinance by referendum petition for approval or rejection of the electors the Council shall repeal such ordinance then no such election shall be held.

Const. Art. XV, § 10

Baldwin's Ohio Revised Code Annotated Currentness
Constitution of the State of Ohio (Refs & Annos)
Article XV. Miscellaneous (Refs & Annos)
➡O Const XV Sec. 10 Civil service

Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.

(1912 constitutional convention, adopted eff. 1-1-13)

Appendix F

only if and as provided in such articles. Any vacancy which may occur in any elective state office not so created, shall be filled by appointment by the governor until the disability is removed, or a successor elected and qualified. Such successor shall be elected for the unexpired term of the vacant office at the first general election in an even numbered year that occurs more than forty days after the vacancy has occurred; provided, that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. All vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by this constitution or by law.

(1905, am. 1947, 1954, 1970, 1976)

REPEALED. REFERRED TO PRESENT INCUMBENTS.

§3

(1905, rep. 1953)

ARTICLE XVIII: MUNICIPAL CORPORATIONS

CLASSIFICATION OF CITIES AND VILLAGES.

§1 Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

(1912)

GENERAL LAWS FOR INCORPORATION AND GOVERNMENT OF MUNICIPALITIES; ADDITIONAL LAWS; REFERENDUM.

§2 General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

(1912)

MUNICIPAL POWERS OF LOCAL SELF-GOVERNMENT.

§3 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.

(1912)

ACQUISITION OF PUBLIC UTILITY; CONTRACT FOR SERVICE; CONDEMNATION.

§4 Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

(1912)

REFERENDUM ON ACQUIRING OR OPERATING MUNICIPAL UTILITY.

§5 Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

(1912)

SALE OF SURPLUS PRODUCT OF MUNICIPAL UTILITY.

§6 Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility within the municipality, provided that such fifty per cent limitation shall not apply to the sale of water or sewage services.

(1912, am. 1959)

HOME RULE; MUNICIPAL CHARTER.

§7 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.

(1912)

SUBMISSION AND ADOPTION OF PROPOSED CHARTER; REFERENDUM

§8 The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, 'Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

(1912)

AMENDMENTS TO CHARTER; REFERENDUM.

§9 Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the General Assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

(1912, am. 1970)

APPROPRIATION IN EXCESS OF PUBLIC USE.

§10 A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made.

Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

(1912)

ASSESSMENTS FOR COST OF APPROPRIATING PROPERTY.

§11 Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

(1912)

4117.08 Matters subject to collective bargaining.

(A) 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 in this section and division (E) of section 4117.03 of the Revised Code.

(B) The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the original appointments from the eligible lists are not appropriate subjects for collective bargaining.

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

(1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;

(2) Direct, supervise, evaluate, or hire employees;

(3) Maintain and improve the efficiency and effectiveness of governmental operations;

(4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

(5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

(6) Determine the adequacy of the work force;

(7) Determine the overall mission of the employer as a unit of government;

(8) Effectively manage the work force;

(9) Take actions to carry out the mission of the public employer as a governmental unit.

The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement.

Effective Date: 04-01-1984; 09-29-2005; 2007 HB119 09-29-2007

Appendix H

4117.10 Terms of agreement.

(A) An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement. If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure. Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. Laws pertaining to civil rights, affirmative action, unemployment compensation, workers' compensation, the retirement of public employees, and residency requirements, the minimum educational requirements contained in the Revised Code pertaining to public education including the requirement of a certificate by the fiscal officer of a school district pursuant to section 5705.41 of the Revised Code, the provisions of division (A) of section 124.34 of the Revised Code governing the disciplining of officers and employees who have been convicted of a felony, and the minimum standards promulgated by the state board of education pursuant to division (D) of section 3301.07 of the Revised Code prevail over conflicting provisions of agreements between employee organizations and public employers. The law pertaining to the leave of absence and compensation provided under section 5923.05 of the Revised Code prevails over any conflicting provisions of such agreements if the terms of the agreement contain benefits which are less than those contained in that section or the agreement contains no such terms and the public authority is the state or any agency, authority, commission, or board of the state or if the public authority is another entity listed in division (B) of section 4117.01 of the Revised Code that elects to provide leave of absence and compensation as provided in section 5923.05 of the Revised Code. Except for sections 306.08, 306.12, 306.35, and 4981.22 of the Revised Code and arrangements entered into thereunder, and section 4981.21 of the Revised Code as necessary to comply with section 13(c) of the "Urban Mass Transportation Act of 1964," 87 Stat. 295, 49 U.S.C.A. 1609(c), as amended, and arrangements entered into thereunder, this chapter prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in this chapter or as otherwise specified by the general assembly. Nothing in this section prohibits or shall be construed to invalidate the provisions of an agreement establishing supplemental workers' compensation or unemployment compensation benefits or exceeding minimum requirements contained in the Revised Code pertaining to public education or the minimum standards promulgated by the state board of education pursuant to division (D) of section 3301.07 of the Revised Code.

(B) The public employer shall submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes. The legislative body must approve or reject the submission as a whole, and the submission is deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement. The parties may specify that those provisions of the agreement not requiring action by a legislative body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section. If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.

As used in this section, "legislative body" includes the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction and, with regard to the state, "legislative body" means the controlling board.

(C) The chief executive officer, or the chief executive officer's representative, of each municipal corporation, the designated representative of the board of education of each school district, college or university, or any other body

that has authority to approve the budget of their public jurisdiction, the designated representative of the board of county commissioners and of each elected officeholder of the county whose employees are covered by the collective negotiations, and the designated representative of the village or the board of township trustees of each township is responsible for negotiations in the collective bargaining process; except that the legislative body may accept or reject a proposed collective bargaining agreement. When the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement.

(D) There is hereby established an office of collective bargaining in the department of administrative services for the purpose of negotiating with and entering into written agreements between state agencies, departments, boards, and commissions and the exclusive representative on matters of wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Nothing in any provision of law to the contrary shall be interpreted as excluding the bureau of workers' compensation and the industrial commission from the preceding sentence. This office shall not negotiate on behalf of other statewide elected officials or boards of trustees of state institutions of higher education who shall be considered as separate public employers for the purposes of this chapter; however, the office may negotiate on behalf of these officials or trustees where authorized by the officials or trustees. The staff of the office of collective bargaining are in the unclassified service. The director of administrative services shall fix the compensation of the staff.

The office of collective bargaining shall:

(1) Assist the director in formulating management's philosophy for public collective bargaining as well as planning bargaining strategies;

(2) Conduct negotiations with the exclusive representatives of each employee organization;

(3) Coordinate the state's resources in all mediation, fact-finding, and arbitration cases as well as in all labor disputes;

(4) Conduct systematic reviews of collective bargaining agreements for the purpose of contract negotiations;

(5) Coordinate the systematic compilation of data by all agencies that is required for negotiating purposes;

(6) Prepare and submit an annual report and other reports as requested to the governor and the general assembly on the implementation of this chapter and its impact upon state government.

Effective Date: 03-22-1999; 09-29-2005

4117.15 Strike - injunction.

(A) Whenever a strike by members of a police or fire department, members of the state highway patrol, deputy sheriffs, dispatchers employed by a police, fire or sheriff's department or the state highway patrol or civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire, sheriff's department, or emergency medical or rescue personnel and units, an exclusive nurse's unit, employees of the state school for the deaf or the state school for the blind, employees of any public employee retirement system, correction officers, guards at penal or mental institutions, or special policemen or policewomen appointed in accordance with sections 5119.14 and 5123.13 of the Revised Code, psychiatric attendants employed at mental health forensic facilities, youth leaders employed at juvenile correctional facilities, a strike by other public employees during the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code or a strike during the term or extended term of a collective bargaining agreement occurs, the public employer may seek an injunction against the strike in the court of common pleas of the county in which the strike is located.

(B) An unfair labor practice by a public employer is not a defense to the injunction proceeding noted in division (A) of this section. Allegations of unfair labor practices during the settlement procedures set forth in section 4117.14 of the Revised Code shall receive priority by the state employment relations board.

(C) No public employee is entitled to pay or compensation from the public employer for the period engaged in any strike.

Effective Date: 04-01-1984

4117.16 Temporary restraining order enjoining strike.

(A) Whenever the public employer believes that a lawful strike creates clear and present danger to the health or safety of the public, the public employer may petition the court of common pleas having jurisdiction over the parties to issue a temporary restraining order enjoining the strike. If the court finds probable cause to believe that the strike may be a clear and present danger to the public health or safety, it has jurisdiction to issue a temporary restraining order, not to exceed seventy-two hours, enjoining the strike.

Should a court issue a temporary restraining order, the public employer shall immediately request authorization of the state employment relations board to enjoin the strike beyond the effective period of the temporary restraining order. The board shall determine within the effective period of the temporary restraining order whether the strike creates a clear and present danger to the health or safety of the public.

If the board finds that a clear and present danger exists, the common pleas court which issued the temporary restraining order has jurisdiction to issue orders to further enjoin the strike. However, the court shall make provisions in any injunction or other order issued beyond the temporary restraining order for the automatic termination of the injunction or other order at the end of sixty days following the end of the temporary restraining order or when an agreement is reached, whichever occurs first. Thereafter, no court has jurisdiction to issue any further injunction or other orders pursuant to this section. The order of the court is appealable as provided in the Appellate Rules.

(B) Whenever a court of common pleas has issued an order, other than a temporary restraining order, under division (A) of this section enjoining acts or practices which create a clear and present danger to the public health or safety, the parties to the labor dispute giving rise to the order shall engage in collective bargaining for a period of sixty days from the date of the order or until agreement is reached, whichever occurs first. The parties shall collectively bargain with the assistance of a mediator appointed by the board. The mediator, at his discretion, may require that the parties collectively bargain in public or in private. At any time after there has been forty-five days of collective bargaining and no agreement has been reached, the mediator may make public a report on the current position of the parties to the dispute and the efforts which have been made for settlement. The report shall include a statement by each party of its position and a statement of the employee organization's and public employer's offers of settlement.

Effective Date: 04-01-1984

4117.17 Board proceedings are public records.

Formal charges, petitions, complaints, orders, evidence, fact-finding recommendations, and other proceedings instituted by the state employment relations board under Chapter 4117. of the Revised Code are public records and available for inspection or copying subject to rules made by the board. All hearings on complaints or petitions pursuant to Chapter 4117. of the Revised Code are open to the public.

Effective Date: 04-01-1984