

IN THE SUPREME COURT OF OHIO

State of Ohio <i>ex rel.</i> ,	:	
Estate of Miles, <i>et al.</i> ,	:	
	:	
Relators,	:	Case No. 08-0782
-v-	:	
	:	Original Action in Mandamus
Village of Piketon, Ohio <i>et al.</i>	:	
	:	
Respondents.	:	

RELATORS' MERIT BRIEF

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I. INTRODUCTION AND SUMMARY

At its heart, this case is not complicated; it is simply a judgment collection case. Relators have a judgment against the Village of Piketon (“VOP”). The VOP is a “political subdivision” as the term is defined and used in the Ohio Revised Code. The Ohio Revised Code prohibits the use of typical methods of collecting on judgments when the judgment is against a political subdivision. Instead, the Ohio Revised Code specifically provides an alternative method for collecting judgments against political subdivisions. *See* Ohio Rev. Code § 2744.06(A).¹ Relators made a demand upon Respondents² pursuant to Ohio Rev. Code § 2744.06(A). Respondents failed to comply. Consequently, Relators filed this action in mandamus seeking an order requiring Respondents to comply with their duties under Ohio Rev. Code § 2744.06(A).

The factual details, supporting law, and references to the evidence have already been fully explained and cited by Relators in their memorandum in support of their mandamus complaint, which was filed on April 24, 2008, pursuant to Sup. Ct. Prac. R. X, Section 4(B) (“memo in support”). For that reason, Relators have not re-stated all of the factual details, supporting law, and references to the evidence in this merit brief. Instead, Relators hereby incorporate their memo in support³ and respectfully request that this Court review it in addition

¹ Instead of the usual methods of collecting on judgments, judgments against municipalities “shall be paid from funds of the political subdivisions that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year.” *See* Ohio Rev. Code § 2744.06(A).

² Respondents are the Mayor of the VOP, the Clerk-Treasurer of the VOP, and the Chief of Police of the VOP. As the officers of the VOP, Respondents are responsible for paying judgments against their municipality pursuant to Ohio Rev. Code § 2744.06(A).

³ A copy of Relators’ memo in support is attached hereto. *See* page A-1 of the Appendix.

to the paragraphs below, which are intended to be a plain language summary of the basic facts, issues, and supporting law.

II. FACTUAL SUMMARY

Relators are the Plaintiffs in the underlying case, Case No. 519-CIV-01 of the Pike County Court of Common Pleas. In the underlying case, Relators were granted a judgment against Nathaniel Todd Booth "individually and in his capacity as Chief of Police of the [VOP]" on January 2, 2003 (the "Judgment"). As explained below, a judgment rendered against an officer of a political subdivision is binding upon the political subdivision. The Judgment stems from the murder of Jerry D. Miles and the VOP's subsequent acts and/or omissions in the murder investigation under the direction of its Chief of Police. The murder investigation was conducted in a reckless manner, reflected a reckless indifference to Relators' rights, and is believed by Relators to be the reason why the identity of Jerry Miles' killer is unknown to this day.

There are two primary entries in the underlying case, one establishing the VOP's liability, and one establishing the damages award against the VOP. Certified copies of both entries are attached to Relators' complaint and are fully explained in Relators' memo in support. Both entries were rendered against Nathaniel Todd Booth "individually and in his capacity as Chief of Police of the [VOP]." Furthermore, the entry relative to liability states that "the Court finds that while [the Chief of Police of the VOP] was acting within the course and scope of his employment, [the Chief of Police's] acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved."

On February 6, 2008, Relators issued a demand upon Respondents that they pay the Judgment or that arrangements for payment be made by the close of business on February 22, 2008. To date, Respondents have failed to pay any portion of the Judgment.

III. SUMMARY OF LAW AND ARGUMENT

A. Proposition of Law No. I:

Where Relators have a clear legal right to satisfaction of a judgment against a political subdivision, and the political subdivision has a clear legal duty to pay the judgment, Mandamus is proper to direct the political subdivision to satisfy the judgment, because there is no plain and adequate legal remedy in the ordinary course of the law to otherwise enforce the judgment.

Relators are entitled to the requested writ of mandamus because: (i) Relators have a clear legal right to satisfaction of the Judgment; (ii) Respondents have a clear legal duty to pay the Judgment; and (iii) Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment. *See State ex rel. Shimola v. City of Cleveland* (1994), 70 Ohio St. 3d 110, 112; *See also* Ohio Rev. Code § 2731.05.

B. Proposition of Law No. II:

There is a clear legal right to the satisfaction of a judgment against a political subdivision where a judgment is obtained against the political subdivision.

The facts of the case *sub judice* are in accord with *Shimola*, and this Court's analysis and writ in *Shimola* provide the bases for Relators' request in this case. In *Shimola*, relator had judgments against a political subdivision. The political subdivision failed to satisfy the judgments. The relator sought a writ of mandamus ordering the officers of the political subdivision to satisfy the judgments in the manner set forth in Ohio Rev. Code § 2744.06(A). This Court found that Ohio Rev. Code § 2744.06(A) deprives holders of judgments against political subdivisions of an adequate remedy at law, and thus issued a writ of mandamus compelling the political subdivision to satisfy the judgments.

Despite Relators' formal demand upon Respondents that they satisfy the Judgment, Respondents have failed to pay any portion of the Judgment. Relators have established, in the same manner as the relator in *Shimola*, that Relators have a clear legal right to satisfaction of the Judgment.

C. **Proposition of Law No. III:**

A political subdivision has a clear legal duty to pay the judgment where the judgment is rendered against an officer of the political subdivision in his official capacity, in matters to which he is entitled to represent it.

It is well settled in Ohio that when a judgment is rendered against an officer of a municipal corporation in his official capacity, in matters to which he is entitled to represent it, the judgment is binding against the municipal corporation. *See State ex rel. Gill v. Winters* (1990), 68 Ohio App. 3d 497, 504; *Ohio Fuel Gas Co. v. City of Mt. Vernon* (1930), 37 Ohio App. 159, 169. In the case sub judice, the Judgment was rendered against Nathaniel Todd Booth "individually and in his capacity as Chief of Police of the [VOP]." Furthermore, the entry relative to liability states that "the Court finds that while [the Chief of Police of the VOP] was acting within the course and scope of his employment, [the Chief of Police's] acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved."

A village's chief of police is an officer of the village. Pursuant to Ohio Rev. Code § 733.23, "[t]he executive power of villages shall be vested in a mayor, clerk, treasurer, **marshal**, [and] street commissioner" (emphasis added). "Each village shall have a **marshal**, designated **chief of police**" Ohio Rev. Code § 737.15 (emphasis added). The Judgment was rendered against Nathaniel Todd Booth individually, **and in his capacity as Chief of Police of the VOP**. The Judgment Entry relative to liability states that "the Court finds that while [the

Chief of Police of the VOP] was acting within the course and scope of his employment, [the Chief of Police's] acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved.”

The Judgment was rendered against an officer of the VOP in matters to which he is entitled to represent it. Accordingly, the Judgment is binding upon the VOP. Pursuant to Ohio Rev. Code § 2744.06(A), the VOP has a clear legal duty to pay the Judgment.

D. Proposition of Law No. IV:

Pursuant to Ohio Rev. Code § 2744.06(A), the holder of a judgment rendered against a political subdivision has no plain and adequate legal remedy in the ordinary course of the law to enforce the judgment.

Like the relator in *Shimola*, Relators have no plain and adequate remedy in the ordinary course of the law to enforce the Judgment because the VOP is immune from execution pursuant to Ohio Rev. Code § 2744.06(A), which provides the following:

“[r]eal or personal property, and moneys, accounts, deposits, or investments of a political subdivision **are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision** in a civil action to recover damages for injury, death, or loss to person or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. **Those judgments shall be paid from funds of the political subdivisions** that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year

See State ex rel. Shimola (1994) 70 Ohio St. 3d at 112-13. “‘Political subdivision’ . . . means a municipal corporation . . .” Ohio Rev. Code § 2744.01(F).

Pursuant to Ohio Rev. Code § 2744.06(A), and consistent with this Court's holding in *Shimola*, Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment. Therefore, Relators are requesting that this Court issue a writ of mandamus directing Respondents to satisfy the Judgment in the manner set forth in Ohio Rev. Code § 2744.06(A).

IV. CONCLUSION

Relators have a judgment against the VOP. As a political subdivision, the VOP is immune from typical methods of judgment collection. Instead, Ohio Rev. Code § 2744.06(A) expressly provides for the method of a political subdivision to pay judgments. The officers of the VOP have failed to comply with Ohio Rev. Code § 2744.06(A). Relators seek a writ of mandamus ordering the officers of the VOP to satisfy Relators judgment against the VOP in full, including judgment interest, pursuant to Ohio Rev. Code § 2744.06(A). As set forth in their complaint and memo in support, Relators also seek an award of the costs of this action and any other relief as may be just and proper, including reasonable attorneys' fees.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the original foregoing *Relators' Merit Brief* was duly served upon Douglas J. Suter and Douglas C. Boatright, **ISAAC, BRANT, LEDMAN & TEETOR, LLP**, 250 East Broad Street, Suite 900, Columbus, Ohio 43215, via regular U.S. mail, postage pre-paid, this 10th day of October, 2008:

Philip M. Collins
Allison K. Tracey

APPENDIX

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IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.*
Estate of Miles, *et al.*

Relators.

-v-

Village of Piketon, Ohio *et al.*

Respondents.

Case No. **08-0782**

Original Action in Mandamus

**MEMORANDUM IN SUPPORT
OF VERIFIED COMPLAINT FOR WRIT OF MANDAMUS**

CO-COUNSEL FOR RELATORS Betty S. Miles, Individually and as Administrator of the Estate of Jerry D. Miles, Bill S. Miles, and Joshua Miles:

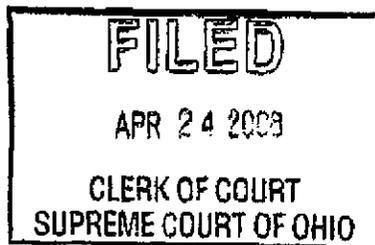
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I. FACTUAL BACKGROUND

Relators Betty S. Miles, both individually and in her capacity as Administrator of the Estate of Jerry D. Miles, Bill S. Miles, and Joshua Miles (together hereinafter collectively referred to as "Relators") are the Plaintiffs in Case No. 519-CIV-01 of the Pike County, Ohio Court of Common Pleas. (Relators' Affs., Ex. D, E, and F of Complaint.) Relators were granted a judgment against the Village of Piketon, Ohio ("VOP") through its Chief of Police on January 2, 2003 in the principle amount of \$837,518.22, plus judgment interest (the "Judgment"). See Ex. A to Complaint. Relators were granted the judgment against the VOP through its Chief of Police after Jerry D. Miles and another individual were murdered. The VOP Police Department's acts or omissions in the murder investigation, under the direction of the Chief of Police, were conducted in a reckless manner, and reflected a reckless indifference to Relators' rights.

The Judgment was rendered against Nathaniel Todd Booth, individually and in his capacity as Chief of Police of the VOP. The Judgment Entry relative to liability, which is attached to the Complaint as Ex. C, states that "the Court finds that while [the Chief of Police of the VOP] was acting within the course and scope of his employment, [the Chief of Police's] acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved." The Judgment was rendered against the Chief of Police of the VOP based upon matters to which the Chief of Police was entitled to represent the VOP. The Judgment expressly provides for post-judgment interest.

On February 6, 2008, counsel for Relators mailed, by registered and regular U.S. mail, a demand upon Respondents VOP, the Mayor of the VOP, the Clerk-Treasurer of the VOP, and the Chief of Police of the VOP (together hereinafter collectively referred to as "Respondents")

that they pay the Judgment in full, including judgment interest, or that arrangements for payment be made, by close of business on February 22, 2008. (Relators' Affs., Ex. D, E, and F of Complaint.) A copy of the demand is attached as Ex. B to the Complaint.

To date, Respondents have failed and/or refused to pay the Judgment in full, including judgment interest, and have failed to make arrangements for payment to Relators. (Relators' Affs., Ex. D, E, and F of Complaint.)

II. LAW AND ARGUMENT

Relators are entitled to the requested writ of mandamus because: (i) Relators have a clear legal right to satisfaction of the Judgment, including judgment interest; (ii) Respondents have a clear legal duty to pay the Judgment, including judgment interest; and (iii) Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest. *See State ex rel. Shimola v. City of Cleveland* (1994), 70 Ohio St. 3d 110, 112; *See also* Ohio Rev. Code § 2731.05.

In *State ex rel. Shimola*, an Ohio Supreme Court case that is factually and procedurally parallel to the case at bar, an individual who had previously been awarded three judgments against the City of Cleveland made demands on the city for payment of the three judgments, to no avail. Thereafter, the individual filed a complaint requesting a writ of mandamus ordering the city and its finance director to pay all three judgments, plus accrued post-judgment interest. This Court, in granting the writ of mandamus ordering the city to pay the three judgments, plus post-judgment interest pursuant to Ohio Rev. Code §§ 1343.03(A) and 1343.03(B), held the following: (i) the individual relator had a clear legal right to the amount of the three judgments, plus post-judgment interest; (2) the city had a clear legal duty to pay relator such amounts; and

(3) pursuant to Ohio Rev. Code § 2744.06(A), the individual relator had no adequate legal remedy to enforce the judgments, plus post-judgment interest. (1994), 70 Ohio St. 3d 110.

As set forth in greater detail below, consistent with this Court's holding in *State ex rel. Shimola*, a writ of mandamus must be issued directing Respondents to pay all money necessary to satisfy in full the principal amount of the Judgment, including judgment interest from January 2, 2003 to the date the Judgment is paid.

- A. Relators have a clear legal right to satisfaction of the Judgment in the principle amount of \$837,518.22, including judgment interest from January 2, 2003, which is the date the Judgment was rendered, to the date the Judgment is paid.**

Despite Relators' formal demand upon Respondents that they pay the Judgment in full, including judgment interest, or that arrangements for payment be made by February 22, 2008, Respondents have failed and/or refused to pay the judgment in full, including judgment interest, and have failed to make arrangements for payment to Relators. (Relators' Affs., Ex. D, E, and F of Complaint.) The Judgment expressly provides for post-judgment interest. Pursuant to Ohio Rev. Code § 1343.03(B), "interest on a judgment . . . shall be computed from the date the judgment . . . is rendered to the date on which money is paid . . ." (Emphasis added).

In *State ex rel. Shimola*, counsel for relator Shimola filed an affidavit in support of relator's motion for default judgment indicating that the city owed relator money based on three separate judgments, and that the city had failed to pay any money toward those judgments. (1994), 70 Ohio St. 3d 110, 112. In determining whether relator Shimola had a clear legal right to the judgments plus post-judgment interest, the Court noted that Ohio Rev. Code § 1343.03(A) "automatically bestows a right to post-judgment interest as a matter of law," and that pursuant to Ohio Rev. Code § 1343.03(B), the post-judgment interest is calculated from the dates of the

judgments. *Id.* Based on the evidence submitted by affidavit, this Court held that relator Shimola had a clear legal right to the amount of judgments plus post-judgment interest.

Relators have established, in the same manner as the relator in *State ex rel. Shimola*, that Relators have a clear legal right to satisfaction of the Judgment in the principle amount of \$837,518.22, plus judgment interest from January 2, 2003, which is the date the Judgment was rendered, to the date the Judgment is paid.

B. Respondents have a clear legal duty to pay the Judgment, including judgment interest.

It is "well settled in Ohio . . . that when a judgment is rendered . . . against an officer of a municipal corporation in his official capacity, in matters to which he is entitled to represent it, the judgment is binding against the [municipal] corporation, or another officer representing the [municipal] corporation. *State, ex rel. Gill v. Winters*, (1990), 68 Ohio App. 3d 497, 504; *Ohio Fuel Gas Co. v. City of Mt. Vernon* (1930), 37 Ohio App. 159, 169. The foregoing "is in accordance with the great weight of authority." *State, ex rel. Gill*, 68 Ohio App. 3d at 504. "It will not do to allow parties in interest to fight their legal battles over the shoulders of a public officer and then claim that the judgments are not binding upon them because they were not parties nor privies." *Ohio Fuel Gas Co.* (1930), 37 Ohio App. at 168.

In *State, ex rel. Gill*, an individual was granted a peremptory writ of mandamus against the Mayor of the City of Wellston ordering the Mayor to appoint the individual relator to the position of Second Assistant Fire Chief, and that the Mayor pay the individual the amount of damages sustained and costs. 68 Ohio App. 3d at 500. On appeal, the Mayor argued that because the Mayor was the only one sued, neither the City of Wellston nor the City's other officers were bound by the order granting the peremptory writ of mandamus. *Id.* at 504. The

court disagreed and held that, contrary to the Mayor's argument, "it appears well settled in Ohio . . . that when a judgment is rendered . . . against an officer of a municipal corporation in his official capacity, in matters to which he is entitled to represent it, the judgment is binding against the [municipal] corporation, or another officer representing the [municipal] corporation." *Id.*

Pursuant to Ohio Rev. Code §§ 733.23, "[t]he executive power of villages **shall** be vested in a mayor, clerk, treasurer, **marshal**, [and] street commissioner" (Emphasis added). "Each village shall have a **marshal**, designated **chief of police**" Ohio Rev. Code § 737.15 (emphasis added). The Judgment was rendered against Nathaniel Todd Booth individually, **and in his capacity as Chief of Police of the VOP**. The Judgment Entry relative to liability, which is attached to the Complaint as Ex. C, states that "the Court finds that while [the Chief of Police of the VOP] was acting within the course and scope of his employment, [the Chief of Police's] acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved."

The Judgment was rendered against the Chief of Police of the VOP based upon matters to which the Chief of Police was entitled to represent the VOP. Thus, consistent with this Court's holding in *State ex rel. Shimola*, the Judgment is binding against the VOP, and Respondents have a clear legal duty to pay the Judgment, including judgment interest.

C. Pursuant to Ohio Rev. Code § 2744.06(A), Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest.

Like the relator in *State ex rel. Shimola*, Relators have no plain and adequate remedy in the ordinary course of the law to enforce the Judgment and judgment interest because the VOP is immune from execution pursuant to Ohio Rev. Code § 2744.06(A), which provides the following:

“(r)real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to person or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. **Those judgments shall be paid from funds of the political subdivisions** that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year

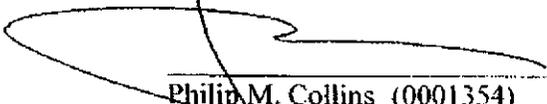
See State ex rel. Shimola (1994) 70 Ohio St. 3d at 112-13. “‘Political subdivision’ . . . means a municipal corporation” Ohio Rev. Code § 2744.01(F).

Pursuant to Ohio Rev. Code § 2744.06(A), and consistent with this Court’s holding in *State ex rel. Shimola*, Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest. Therefore, Relators request that this Court issue an alternative and/or peremptory writ of mandamus directing Respondents to pay all money necessary to satisfy in full the principal amount of the Judgment totaling \$837,518.22, plus judgment interest from January 2, 2003 to the date the Judgment is paid, and grant the costs of this action to Relators, and any other relief as may be just and proper, including, but not limited to, reasonable attorneys’ fees.

III. CONCLUSION

Relators have established that (i) Relators have a clear legal right to satisfaction of the Judgment, including judgment interest; (ii) Respondents have a clear legal duty to pay the Judgment, including judgment interest; and (iii) Relators have no plain and adequate legal remedy in the ordinary course of the law to enforce the Judgment and judgment interest. Thus,

consistent with this Court's holding in *State ex rel. Shimola*, Relators have a right to an alternative and/or peremptory writ of mandamus directing Respondents to pay all money necessary to satisfy in full the principal amount of the Judgment totaling \$837,518.22, plus judgment interest from January 2, 2003 to the date the Judgment is paid.



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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH OCTOBER 1, 2008 ***
*** ANNOTATIONS CURRENT THROUGH JULY 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 ***

TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

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ORC Ann. 2744.06 (2008)

§ 2744.06. Exemption from attachment; payment of judgments; annual installments

(A) Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to person or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. Those judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year as provided by *section 5705.08 of the Revised Code*, unless any judgment is to be paid from the proceeds of bonds issued pursuant to *section 133.14 of the Revised Code* or pursuant to annual installments authorized by division (B) or (C) of this section.

(B) (1) (a) As used in this division, "the actual loss of the person who is awarded the damages" includes all of the following:

(i) All wages, salaries, or other compensation lost by the person injured as a result of the injury, as of the date of the judgment;

(ii) All expenditures of the person injured or of another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that were necessary because of the injury;

(iii) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace the property that was injured or destroyed;

(iv) All expenditures of the person injured or whose property was injured or destroyed or of another person on

behalf of the person injured or whose property was injured or destroyed in relation to the actual preparation or presentation of the person's claim;

(v) Any other expenditures of the person injured or whose property was injured or destroyed or of another person on behalf of the person injured or whose property was injured or destroyed that the court determines represent an actual loss experienced because of the personal or property injury or property loss.

(b) As used in this division, "the actual loss of the person who is awarded the damages" does not include any of the following:

(i) Wages, salaries, or other compensation lost by the person injured as a result of the injury, that are future expected earnings of that person;

(ii) Expenditures to be incurred in the future, as determined by the court, by the person injured or by another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury;

(iii) Any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss;

(iv) Any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.

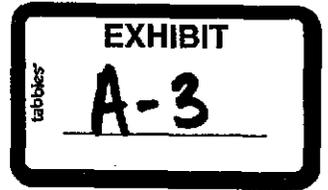
(2) Except as specifically provided to the contrary in this division, a court that renders a judgment against a political subdivision as described in division (A) of this section and that is not in favor of the state may authorize the political subdivision, upon the motion of the political subdivision, to pay the judgment or a specified portion of the judgment in annual installments over a period not to exceed ten years, subject to the payment of interest at the rate specified in division (A) of *section 1343.03 of the Revised Code*. A court shall not authorize the payment in installments under this division of any portion of a judgment or entire judgment that represents the actual loss of the person who is awarded the damages.

Additionally, a court shall not authorize the payment in installments under this division of any portion of a judgment or entire judgment that does not represent the actual loss of the person who is awarded the damages unless the court, after balancing the interests of the political subdivision and of the person in whose favor the judgment was rendered, determines that installment payments would be appropriate under the circumstances and would not be unjust to the person in whose favor the judgment was rendered. If a court makes that determination, it shall fix the amount of the installment payments in a manner that achieves for the person in whose favor the judgment was rendered, the same economic result over the period as that person would have received if the judgment or portion of the judgment subject to the installment payments had been paid in a lump sum payment.

(C) At the option of a political subdivision, a judgment as described in division (A) of this section and that is rendered in favor of the state may be paid in equal annual installments over a period not to exceed ten years, without the payment of interest.

HISTORY:

141 v H 176 (Eff 11-20-85); 143 v H 230 (Eff 10-30-89); 146 v H 350 (Eff 1-27-97); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 106, Eff 4-9-2003.



LEXSTAT ORC 2731.05

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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2731. MANDAMUS

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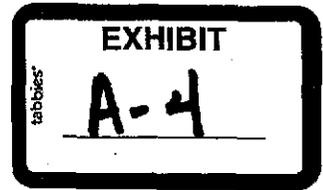
ORC Ann. 2731.05 (2008)

§ 2731.05. Adequacy of law remedy bar to writ

The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law.

HISTORY:

RS § 6744; S&C 1126; 51 v 57, § 570; GC § 12287; Bureau of Code Revision. Eff 10-1-53.



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TITLE 7. MUNICIPAL CORPORATIONS
CHAPTER 733. OFFICERS
EXECUTIVE POWER IN VILLAGES

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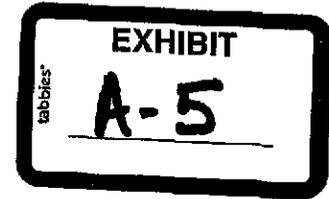
ORC Ann. 733.23 (2008)

§ 733.23. Executive power in villages

The executive power of villages shall be vested in a mayor, clerk, treasurer, marshal, street commissioner, and such other officers and departments thereof as are created by law.

HISTORY:

RS Bates § 1536-853; 96 v 83, § 199; GC § 4248; Bureau of Code Revision. Eff 10-1-53.



LEXSTAT ORC 737.15

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TITLE 7. MUNICIPAL CORPORATIONS
CHAPTER 737. PUBLIC SAFETY
VILLAGE MARSHAL

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ORC Ann. 737.15 (2008)

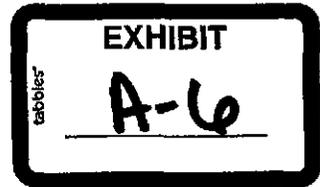
§ 737.15. Appointment of village marshal

Each village shall have a marshal, designated chief of police, appointed by the mayor with the advice and consent of the legislative authority of the village, who need not be a resident of the village at the time of appointment but shall become a resident thereof within six months after appointment by the mayor and confirmation by the legislative authority unless such residence requirement is waived by ordinance, and who shall continue in office until removed therefrom as provided by *section 737.171 [737.17.1] of the Revised Code*.

No person shall receive an appointment under this section after January 1, 1970, unless, not more than sixty days prior to receiving such appointment, the person has passed a physical examination, given by a licensed physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife, showing that the person meets the physical requirements necessary to perform the duties of village marshal as established by the legislative authority of the village. The appointing authority shall, prior to making any such appointment, file with the Ohio police and fire pension fund a copy of the report or findings of said licensed physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife. The professional fee for such physical examination shall be paid for by such legislative authority.

HISTORY:

RS Bates §§ 1536-860, 1536-978; 96 v 86, § 206; 98 v 172, § 222; GC § 4384; 119 v 699; Bureau of Code Revision, 10-1-53; 130 v 242 (Eff 9-16-63); 131 v 276 (Eff 9-6-65); 133 v S 86 (Eff 10-24-69); 148 v H 222 (Eff 11-2-99); 149 v S 245. Eff 3-31-2003.



LEXSTAT ORC 2744.01

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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

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ORC Ann. 2744.01 (2008)

§ 2744.01. Definitions

As used in this chapter:

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

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to *section 3319.301 [3319.30.1] of the Revised Code*. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to *section 2951.02 of the Revised Code* or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to *section 2152.19 or 2152.20 of the Revised Code* to perform community service or community work in a political subdivision.

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

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

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

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

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

- (a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;
- (b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in *section 3750.01 of the Revised Code*; and to protect persons and property;
- (c) The provision of a system of public education;
- (d) The provision of a free public library system;
- (e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;
- (f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;
- (g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;
- (h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in *section 2921.01 of the Revised Code*;
- (i) The enforcement or nonperformance of any law;
- (j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;
- (k) The collection and disposal of solid wastes, as defined in *section 3734.01 of the Revised Code*, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under *section 3734.12 of the Revised Code*, but that is excluded from regulation as a hazardous waste by those rules.
- (l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;
- (m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;
- (n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;
- (o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;
- (p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections

in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

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

(r) Flood control measures;

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

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

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

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

(v) A golf course;

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

(vii) A rope course or climbing walls;

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

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

(w) (i) At any time before regulations prescribed pursuant to *49 U.S.C.A. 20153* become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;

(ii) On and after the effective date of regulations prescribed pursuant to *49 U.S.C.A. 20153*, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in *49 U.S.C.A. 20153*, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.

(x) A function that the general assembly mandates a political subdivision to perform.

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

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

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under *section 339.14 of the Revised Code*, board of hospital commissioners appointed for a municipal hospital under *section 749.04 of the Revised Code*, board of hospital trustees appointed for a municipal hospital under *section 749.22 of the Revised Code*, regional planning commission created pursuant to *section 713.21 of the Revised Code*, county planning commission created pursuant to *section 713.22 of the Revised Code*, joint planning council created pursuant to *section 713.231 [713.23.1] of the Revised Code*, interstate regional planning commission created pursuant to *section 713.30 of the Revised Code*, port authority created pursuant to *section 4582.02 or 4582.26 of the Revised Code* or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under *section 3750.03 of the Revised Code*, joint emergency medical services district created pursuant to *section 307.052 [307.05.2] of the Revised Code*, fire and ambulance district created pursuant to *section 505.375 [505.37.5] of the Revised Code*, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under *section 343.01 or 343.012 [343.01.2] of the Revised Code*, community school established under Chapter 3314. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under *sections 2301.51 to 2301.58 of the Revised Code*, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

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

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

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

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

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

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

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

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

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

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

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

HISTORY:

141 v H 176 (Eff 11-20-85); 141 v H 205, § 1 (Eff 6-7-86); 141 v H 205, § 3 (Eff 1-1-87); 142 v H 295 (Eff 6-10-87); 142 v H 815 (Eff 12-12-88); 142 v S 367 (Eff 12-14-88); 143 v H 656 (Eff 4-18-90); 144 v H 210 (Eff 5-1-92); 144 v H 723 (Eff 4-16-93); 145 v H 152 (Eff 7-1-93); 145 v H 384 (Eff 11-11-94); 146 v H 192 (Eff 11-21-95); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 148 v H 205 (Eff 9-24-99); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 24, § 1 (Eff 10-26-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 108, § 2.03 (Eff 1-1-2002); 149 v S 24, § 3 (Eff 1-1-2002); 149 v S 106. Eff 4-9-2003; 150 v S 222, § 1, eff. 4-27-05; 151 v H 162, § 1, eff. 10-12-06.