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IN THE SUPREME COURT OF OHIO

City of Elyria, City of Avon Lake, City of North Ridgeville, and Amherst Township,)

Appellants,)

v.)

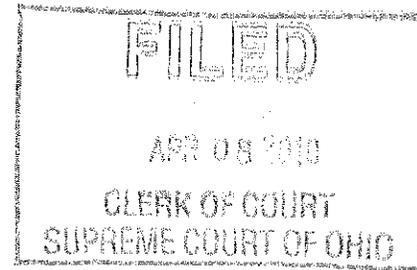
Lorain County Budget Commission, Ohio Tax Commissioner Richard A. Levin, Lorain County, Lorain County Board of County Commissioners, City of Lorain, City of Amherst, City of Avon, City of Oberlin, City of Sheffield Lake, City of Vermilion, Village of Grafton, Village of Kipton, Village of LaGrange, Village of Rochester, Village of Sheffield, Village of South Amherst, Village of Wellington, Brighton Township, Brownhelm Township, Camden Township, Carlisle Township, Columbia Township, Eaton Township, Elyria Township, Grafton Township, Henrietta Township, Huntington Township, LaGrange Township, New Russia Township, Penfield Township, Pittsfield Township, Rochester Township, Sheffield Township, Wellington Township, and Lorain County Metropolitan Park District,)

Appellees.)

Case No. 2010-0564

Cross-Appeal From The Ohio Board of Tax Appeals

Board of Tax Appeals Case Nos. 2003-M-1533, 2004-M-1166, 2005-M-1301



NOTICE OF CROSS-APPEAL OF APPELLEE AND CROSS-APPELLANT LORAIN COUNTY

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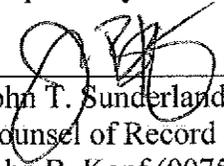
Lorain County hereby gives notice of its cross-appeal as of right, pursuant to R.C. 5717.04 and Supreme Court Rules of Practice 2.1(B) and 2.3(A)(2), from a Decision and Order of the Ohio Board of Tax Appeals (“Board”), entered and journalized in Board Case Nos. 2003-M-1533, 2004-M-1166, and 2005-M-1301 on March 2, 2010. A true copy of the Decision and Order being appealed is attached hereto and incorporated by reference.

Cross-appellant Lorain County complains of the following errors in the Board’s Decision and Order:

1. The Board erred in finding that the payment of a portion of the \$250,000 allocated to Lorain County from the 2004 Local Government Fund (“LGF”) violated R.C. 5747.55(D) where the Board determined that the alternative method for allocating the LGF in the county was valid, that the alternative method governed the allocation for the LGF years under review, that the \$250,000 payment was a factor in the structure of the alternative method, and where appellants/cross-appellees received the full amounts of their prior year’s LGF allocations.

No demand has been filed for the Board to file the certified transcript of the record of the proceedings of the Board and the evidence considered by the Board in making its decision because Appellants have already filed such demand on March 31, 2010.

Respectfully submitted



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing NOTICE OF CROSS-APPEAL OF APPELLEE AND CROSS-APPELLANT LORAIN COUNTY was sent to the following by certified mail, return receipt requested, on April 8, 2010:

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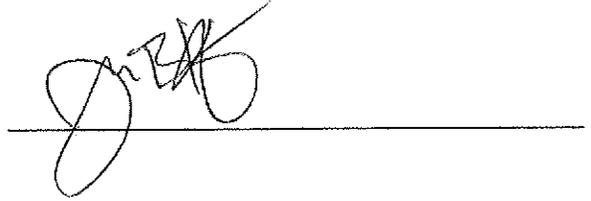
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Entered MAR 02 2010

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

These matters have been remanded to the Board of Tax Appeals following a decision by the Ohio Supreme Court in *Elyria v. Lorain Cty. Budget Comm.*, 117 Ohio St.3d 403, 2008-Ohio-940. This board had previously dismissed the appeals, finding that the notices of appeal filed by appellants, city of Elyria, city of Avon Lake, city of North Ridgeville, Amherst Township, and the Lorain County Metropolitan Park District, in each case were jurisdictionally deficient. The Ohio Supreme Court reversed, and directed this board to consider whether the Lorain County Budget Commission (“LCBC”) properly allocated the undivided local government fund (“ULGF”) and the undivided local government revenue assistance fund (“ULGRAF”). The court further clarified the scope of our jurisdiction on remand:

“First, *** the BTA has jurisdiction to determine the validity of Elyria’s primary claim for relief on the merits. Accordingly, on remand, the BTA will have the authority to decide whether Elyria is entitled to the specific relief reflected by the figures in Exhibit G of the notice of appeal.

“Second, the BTA on remand will not have jurisdiction to entertain any theory of relief not consistent with Elyria’s identification of Lorain County as the only overallocated subdivision. In *Union Twp.*, 101 Ohio App.3d at 218, ***, the court of appeals explained that the ‘purpose of appeal is to permit a subdivision receiving less than its statutory [or alternative-method] share to seek to recover that share,’ and it does so from the fund consisting of ‘the over-allocations to the named appellees.’ By requiring an appellant to name the appellees and identify their potential liability, the statute furnishes notice to those other subdivisions about what they stand to lose and thereby puts them on guard to defend. It follows that the BTA

may not exercise jurisdiction to consider a claim that the earlier alternative method of apportionment should be completely reinstated. As the BTA correctly found, this theory cannot be squared with the notice of appeal because reinstating the earlier formula, with adjustment for the settlement, would mean that Lorain City has been overallocated, but the notice of appeal does not identify that city as being overallocated.

“Finally, the BTA will not have jurisdiction to apply the statutory method. We understand that the BTA, in the decision under review, has already found that the statutory method is not jurisdictionally before it, and the appeal to this court did not challenge that disposition. See *Dayton-Montgomery Cty. Port Auth.*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶33.” *Id.*, ¶28-30.

Our consideration relates to three matters filed with the Board of Tax Appeals regarding the propriety of actions of the LCBC for distribution years 2004, 2005, and 2006. As the Supreme Court noted in *Elyria v. Lorain Cty. Budget Comm.* 117 Ohio St.3d 403, 2008-Ohio-940, its consideration of these matters, the present appeal was instituted after a settlement of an earlier appeal to this board. In 2002, the city of Lorain challenged the amount apportioned to it by the LCBC for distribution year 2003. The settlement of that claim resulted in an agreement by the parties to the settlement that the city of Lorain would receive a lump-sum payment of \$500,000 for the 2003 distribution year. Further, the parties agreed that a new alternative formula would be adopted for the 2004 distribution year that would adjust apportionment percentages. The adjustment of the apportionment percentages had the effect of

increasing the funds received by the city of Lorain and decreasing the funds received by all of the remaining taxing subdivisions.²

In order to effectuate the settlement, Lorain County paid the agreed lump sum of \$500,000. However, as part of the agreement, Lorain County agreed to absorb only one-half of the settlement amount. It was agreed by the participants to the settlement that the county would be reimbursed for the remaining \$250,000 from 2004 ULGF and ULGRAF funds. H.R. at 59. The participants to the settlement then voted into place a new alternative formula. The new formula changed the percentages due the subdivisions by increasing the percentages to the city of Lorain and decreasing percentages to every other taxing subdivision receiving ULGF and ULGRAF funds. Additionally, the new alternative formula increased Lorain County's allocation by \$250,000 for distribution year 2004 only. The \$250,000 increase (and corresponding pro rata deduction to each taxing subdivision) reimbursed the county for one-half of the settlement paid by the county to the city. Appellee's Ex. H.

Appellants claim that the percentage amounts due them in 2003 cannot be changed in subsequent years if the basis for that change is a settlement of an earlier year's appeal in which they were not named as parties. Appellants claim that R.C. 5747.55 precludes funds of a non-participating subdivision from being changed. Indeed, R.C. 5747.55 provides:

² The Lorain County Metropolitan Park District's allocation was reduced to zero.

“The action of a county budget commission under sections R.C. 5747.51 and 5747.62 of the Revised Code may be appealed to the board of tax appeals in the manner and with the effect provided in section 5705.37 of the Revised Code, in accordance with the following rules:

“***

“(C) There shall also be attached to the notice of appeal a statement showing:

“(1) The name of the fund involved, the total amount in dollars allocated, and the exact amount in dollars allocated to each participating subdivision.

“(2) The amount in dollars which the complaining subdivision believes it should have received;

“(3) The name of each participating subdivision, as well as the name and address of the fiscal officer thereof, that the complaining subdivision believes received more than its proper share of the allocation, and the exact amount in dollars of such alleged over-allocation.

“(D) *Only the participating subdivisions named pursuant to division (C) of this section are to be considered as appellees before the board of tax appeals and no change shall, in any amount, be made in the amount allocated to participating subdivisions not appellees.*” (Emphasis added.)

We agree with the appellants in part.

While the appellants originally challenged the manner in which the 2004 alternative formula (sometimes referred to as the “new alternative formula” to distinguish it from the alternative formula that had previously been in place and had been challenged by the city of Lorain), they have withdrawn that claim. Appellants’ brief regarding Ohio Supreme Court’s instructions to the board on remand, at 6. Therefore, in accordance with the court’s instructions to this board, the only issue for

our consideration is whether the appellants are entitled to additional funds from Lorain County, the entity identified through the notice of appeal as the “overallocated” subdivision.

We first consider the appellants’ claim that the change made to the new alternative formula can never affect those taxing subdivisions that either were not a part of the earlier appeal or did not agree to the change. To fully understand appellants’ position, a review of how local government funds are apportioned is necessary. Each year the Tax Commissioner estimates the amount to be paid into the local government fund for distribution for the following year. R.C. 5747.51. The budget commission then apportions funds to taxing subdivisions yearly. R.C. 5747.51.

Under R.C. 5745.51, local government funds are apportioned to taxing subdivisions on the basis of need. The determination of need is made by each county budget commission after a consideration of statutorily defined resources and expenditures of each subdivision. However, R.C. 5747.53 provides for an alternative method of apportionment. Under the alternative method, a county budget commission may consider “any factor” it deems to be “appropriate and reliable” in apportioning funds.³ R.C. 5747.53(D). The alternative method must be approved by the board of county commissioners, the legislative authority of the city located wholly or partially in the county with the greatest population, and the majority of the boards of township

³ The statute provides for certain minimums and maximums that are not in issue in this appeal.

trustees and legislative authorities of municipal corporations located wholly or partially within the county. R.C. 5747.53(B).

In the present matter, the appellants have withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 was approved. Therefore, the board finds the alternative formula for the 2004-distribution year to be valid. While we acknowledge that the appellants were not a part of the majority of taxing subdivisions voting for the new alternative formula, a sufficient number of taxing subdivisions did vote for the new alternative formula so that affirmative votes of the appellants were not necessary for passage. The appellants claim, however, that because the new alternative formula was conceived as a settlement of an earlier distribution year, and because they were not parties to the earlier settlement, their allocations cannot be changed in later years. We do not agree.

As the budget commission acts yearly, it follows that appeals from an action of a budget commission relate to a specific year. *South Russell v. Geauga Cty. Budget Comm.* (1984), 12 Ohio St.3d 126. R.C. 5747.55(D), therefore, guarantees the funds of a non-participating subdivision only for that year in which it was not included in an appeal. The statute does not address the effect of settlements on distributions in subsequent years.

There is no requirement that an alternative formula be approved by all taxing subdivisions within a county. Therefore, it may always be the case that an individual taxing subdivision may not wish to have its allocation adjusted. Nevertheless, the legislature has concluded that a county, the most populous city in

that county, and a majority of other taxing subdivisions have the power to make allocation adjustments, relying upon any factor considered appropriate and reliable. The board concludes that one factor taken into consideration in this matter was the settlement of litigation.

Once an alternative method that has no time limits is approved, it remains in force for ensuing years until it is revised, amended, or repealed pursuant to statute. *Reynoldsburg v. Licking Cty. Budget Comm.*, 104 Ohio St.3d 453, 2004-Ohio-6773; *Lancaster v. Fairfield Cty. Budget Comm.* (1999), 86 Ohio St.3d 137. While the appellants may be unwilling participants, they are participants nonetheless. Were we to agree with the appellants' claim, it could have the effect of denying a change to an alternative formula, even if the votes are present for such a change. The General Assembly did not provide an alternative for the minority of subdivisions other than the county or the most populous city, which may not agree with the majority. Therefore, this board concludes that the appellants must accept the allocations made under the new alternative formula for tax years 2005 and 2006.

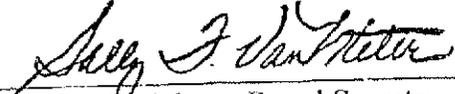
However, for distribution year 2004, the alternative formula included what the parties characterized as a "carve out," a fund of money to reimburse Lorain County for funds it provided to settle the 2002 challenge by the city of Lorain relating to funds apportioned for distribution-year 2003. It is clear from the record that the alternative formula approved for 2004 includes this amount for only distribution year 2004. Attachment to Appellant's Ex. 53, approved September 24, 2003. It is also clear from the record that these funds are paid to Lorain County from all the taxing

subdivisions except the city of Lorain, not only the subdivisions that were parties to the 2002 appeal.

The board finds that the deduction of \$250,000 is based upon a settlement of an appeal in which the appellants were not parties. R.C. 5747.55(D) precludes funds from being removed from taxing subdivisions that were not parties to the appeal. The fact that the funds were removed in a later year does not transform the funds into later-year funds. The \$250,000 is traceable to the 2003-allocation settlement. The alternative formula attempted to reimburse Lorain County for settlement dollars from parties that were not a part of the 2003-allocation appeal. Such a reimbursement is contrary to law.

Therefore, the board finds that the 2004 alternative formula must be amended for the city of Elyria, the city of Avon Lake, the city of North Ridgeville, and Amherst Township to remove the reimbursement of their pro-rata share of the \$250,000 settlement of the 2002 appeal. As these funds were allocated to Lorain County, and the parties identified Lorain County as the over-allocated subdivision, the Ohio Supreme Court's instructions have been met. This board finds that Lorain County was over-allocated by the pro-rata amounts of the \$250,000 settlement only. The matter is remanded to the LCBC for reallocation of the 2004 distribution year only. The alternative formulas in place for the 2005 and 2006 years are found to be lawful, and are affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary