

**IN THE SUPREME COURT OF OHIO
No. 2010-0209**

WALLACE R. CAMPBELL, *et al.*, :
Appellee, : On Appeal from the Twelfth
 : Appellate District, Warren County
v. :
CITY OF CARLISLE, OHIO, : Court of Appeals
 : Case No. CA2009-05053
Appellant. :

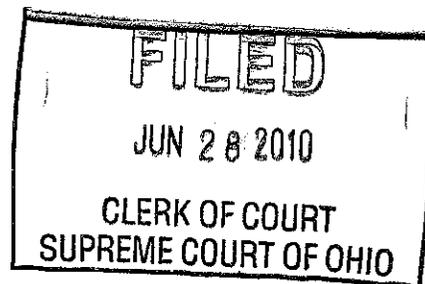
**BRIEF OF *AMICUS CURIAE*
THE OHIO MUNICIPAL LEAGUE
IN SUPPORT OF APPELLANT
THE CITY OF CARLISLE, OHIO**

Stephen L. Byron (0055657) (COUNSEL OF RECORD)
Schottenstein, Zox & Dunn Co., L.P.A.
4230 State Route 306, Suite 240
Willoughby, Ohio 44094
P: (440) 951-2303; F: (216) 621-5341
E-mail: sbyron@szd.com

John Gotherman (0000504)
General Counsel, the Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100
P: (614) 221-4349; F: (614) 221-4390
E-mail: jgotherman@columbus.rr.com

Stephen J. Smith (0001344)
Jeremy M. Grayem (0072402)
Schottenstein, Zox & Dunn Co, LPA
250 West Street
Columbus, Ohio 43215
P: (614) 462-2700; F: (614) 462-5135
E-mail: ssmith@szd.com

*Counsel for the Amicus Curiae
The Ohio Municipal League*



David A. Chicarelli (0017434)
David A. Chicarelli Co., LPA
614 E. Second Street
Franklin, Ohio 45005
P: (937) 743-1500
F: (937) 743-1501

Counsel for Appellant
the City of Carlisle, Ohio

Rupert E. Ruppert (0025972)
Ruppert, Bronson & Ruppert
1063 E. Second Street, P.O. Box 369
Franklin, Ohio 45005
P: (937) 746-2832
F: (937) 746-2855

Counsel for Appellees
Wallace and Helen Campbell

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INTRODUCTION

The Ohio Municipal League ("the League"), as amicus curiae on behalf of the City of Carlisle, Ohio ("the City"), urges this Court to reverse the Decision of the Twelfth Appellate District in *Wallace R. Campbell v. City of Carlisle, Ohio*, CA2009-05053, 2009-Ohio-675. While the League supports all of the arguments put forward by the City in its merit brief, the League wishes to emphasize the importance of certain aspects of this case.

This case involves the interpretation and application of R.C. 709.42, the section of Ohio's detachment statutes that establishes the standard for detaching farm-land from a municipality. R.C. 709.42 provides a four-part test that a landowner must satisfy in order to detach farm-land from a municipality. One prong of that four-part test provides that a landowner must demonstrate that the property is taxed "for municipal purposes in substantial excess of the benefits conferred" upon the property by the municipality.

The property that is the subject of this lawsuit qualified for tax valuation under the Ohio Current Agricultural Use Valuation (CAUV) program, R.C. 5713.30, *et seq.* The tax valuation for property that qualifies under this program disregards the highest and best use of the property and values the property based on its current agricultural use. This typically results in a lower tax valuation and, consequently, a lower annual property tax.

The Twelfth Appellate District erroneously held that, when making the determination of whether the subject property is taxed in "substantial excess" of the benefits conferred, the property's non-CAUV tax rate must be utilized. The Twelfth Appellate District's use of the non-CAUV rate, in conjunction with its interpretation of the "substantial excess" prong, will have a far-reaching impact on municipalities throughout Ohio and on other court cases that are pending

in various courts of this State. Accordingly, the League respectfully requests that this Court reverse the judgment of the Twelfth Appellate District and reinstate the trial court's decision, which denied Appellee's detachment petition.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of over 750 Ohio cities and villages. Municipalities in Ohio that have farm-land within their corporate boundaries have a fundamental interest in the outcome of this case and, specifically, the manner in which R.C. 709.42 is construed and applied. The effect of the lower court's holding, if it is allowed to stand, would (by disregarding the statutory standard) make detachment a relatively simple process, a result not envisioned by Ohio's lawmakers. This, in turn, would cast doubt on the permanency of the borders of Ohio's municipalities and make economic development – the essence of municipal development – uncertain.

STATEMENT OF THE CASE AND FACTS

The League hereby adopts, in its entirety, the Statement of Case and Facts contained within the City of Carlisle's Brief of Appellants.

ARGUMENT

Proposition of Law: A request to detach farm-land property from a municipality pursuant to R.C. 709.42, must be evaluated based upon the actual taxes paid for “municipal purposes;” this means, when applicable, the lower taxes paid for “municipal purposes” as a result of a CAUV pursuant to R.C. 5713.30, *et seq.*, Ohio's CAUV statute.

R.C. 709.42 - Ohio's Detachment Statute

In order to prevail on a Petition for Detachment pursuant to R.C. 709.42, a landowner must establish **all of the following four (4) elements:**

- (1) the land in question is farm-land that was not within the original limits of the municipal corporation;
- (2) that because the farm-land is in the municipal corporation, the owner of the land is taxed and will continue to be taxed for municipal purposes in substantial excess of the benefits conferred on the landowner;
- (3) that detaching the farm-land will not adversely affect the best interests or good government of the municipal corporation; and
- (4) that five years has elapsed from the time the land was originally annexed by the municipal corporation.

R.C. 709.42; *Griffith v. Huron* (April 29, 1988), Sixth App. No. E-87-46, 1988 WL 39714.

This appeal deals only with the second prong of this four-part test - the substantial excess element. Pursuant to the statute, the Appellees, as landowners, must prove that they are taxed **for municipal purposes** in **substantial excess** of the benefits conferred upon them by virtue of being located in the City. The 40-acre property at issue in this lawsuit was taxed at a rate of

\$172.00 per year under the CAUV program. Had this property not been part of the CAUV program, the annual taxes would have been \$12,538.99.¹

The fundamental issue in this case is: what taxes “for municipal purposes” are to be attributed to a property owner, for purposes of an analysis under R.C. 709.42? Are the actual taxes that are paid by the property owner, which go to the City for municipal purposes, to be used in the analysis? Or are the taxes that would be paid if the non-CAUV tax rate were used, which the owner doesn’t actually pay, the relevant number for this analysis? The Twelfth Appellate District, without citing any legal authority or the legislative history of R.C. 709.42, concluded that the actual taxes paid to the City under the CAUV tax rate should not be utilized in the analysis as to whether the municipal tax is substantially in excess of the benefits conferred.

This conclusion was based upon the fact that the CAUV statute (which was enacted after the detachment statute) did not amend the detachment statute to specifically state that CAUV tax valuations should apply to the detachment analysis. This interpretation disregards the plain language of R.C. 709.42 (“is taxed and will continue to be taxed ***”), in favor of the application of the ambiguous statutory relationship between the CAUV statute and the detachment law. The interpretation also disregards the actual statutory history of the farm-land detachment statute, which was amended by the Ohio General Assembly in 1911 to make detachment more difficult.

For these reasons the lower court’s judgment should be reversed.

¹ There does appear to be an issue as to what taxes the lower courts evaluated under R.C. 709.42. The statute requires an evaluation of the amount that a farm-land owner is taxed “for municipal purposes.” There was a finding that “approximately 80 percent of the taxes go to the local school district.” Whether all of the taxes that don’t go to the local school district qualify as taxes “for municipal purposes” appears to be an unresolved question. There is no specification of whether the remaining taxes go to the county, park districts or other taxing jurisdictions, or what portion of the remaining taxes are used for “municipal purposes.” Regardless of the ultimate facts of this case, the fundamental issue before this Court is whether the CAUV tax rate or the non-CAUV tax rate should be utilized in the R.C. 709.42 analysis.

Statutory Construction
The Plain Language of R.C. 709.42 Dictates Use of the CAUV Tax Rate

The purpose of statutory construction is to ascertain and give effect to the intent of the legislature. *Featzka v. Millcraft Paper Co.* (1980), 62 Ohio St.2d 245, 405 N.E.2d 264. To ascertain the legislative intent, courts rely upon ordinary principles of statutory construction. *Cline v. Ohio Bur. of Motor Vehicles* (1991), 61 Ohio St.3d 93, 573 N.E.2d 77. A court must first look at the language of the statute, and if the statute conveys a meaning which is clear, unequivocal and definite, there is no need to apply rules of statutory interpretation. *Id.* Courts should give effect to the words of the statute and should not modify an unambiguous statute by deleting words used or inserting words not used. *Kelly v. Accountancy Bd. of Ohio* (1993), 88 Ohio App.3d 453, 459, 624 N.E.2d 292. In the absence of clear legislative intent to the contrary, words and phrases in a statute shall be read in context and construed according to their plain, ordinary meaning. *Kunkler v. Goodyear Tire and Rubber Co.* (1988), 36 Ohio St.3d 135, 137, 522 N.E.2d 477.

The language used in R.C. 709.42 is clear and unequivocal. Detachment is permitted (assuming the other three statutory requirements are satisfied) only if the land *is taxed*, and will continue to be *taxed* for municipal purposes, in substantial excess of the benefits conferred upon the landowner. The phrase “is taxed” has a plain and ordinary meaning - the amount an owner actually pays in taxes for municipal purposes.

The lower court’s decision to utilize the non-CAUV tax rate was based on its interpretation of the statutes at issue and, in particular, their timeline of enactment. Because Ohio’s farm-land detachment statute, R.C. 709.42, was enacted before Ohio’s CAUV statute, the lower court stated that the legislature did not intend that the CAUV tax-rate would be applied in determining whether detachment should be permitted. The Court asserted that the legislature’s

failure to modify the detachment statute implied an intention that the non-CAUV tax rate be utilized. The argument could as easily be made that when the legislature enacted the CAUV statute, it knew there was a detachment statute in place. The legislature could have specifically stated that the new CAUV tax rate should not be applied to the detachment analysis, but it chose not to do so.

It is respectfully suggested the legislative intent behind the CAUV statute is ambiguous, relative to the issue of detachment and, therefore, courts should focus on the plain language of the detachment statute. The focus is on what the landowner "is taxed" - how much the landowner actually pays in taxes - not what the landowner would pay if he/she was not part of the CAUV program. The Twelfth Appellate District's decision disregards the plain meaning of the words of the statute, which is not an appropriate outcome of statutory interpretation, especially in light of the relevant statutory history.

Ohio's Public Policy and Legislative History
Both Favor the Annexation of Property

Ohio's annexation statutes reflect a clear public policy favoring annexation of property adjacent to municipalities. *City of Middletown v. McGee* (1988), 39 Ohio St.3d 284, 285, 530 N.E.2d 902, 904. The evolution of Ohio's detachment statute mirrors this public policy. The precursor to R.C. 709.42, was G.C. 3577-3579. This section was amended to include the "taxed for municipal purposes in substantial excess" language in the year 1911. See, 102 Ohio Laws 449. Prior to 1911, an applicant for detachment did not need to prove the land was taxed "for municipal purposes in substantial excess of the benefits conferred."

Prior to that legislative enactment, the applicable standard was whether the land “may be detached without materially affecting the good government of adjacent territory within the municipal limits.” See, 95 Ohio Laws 260, §2. The inclusion by the legislature of a higher standard of proof - the "substantial excess" language - is evidence of a statutory intent to make detachment of farm-land from a municipality more difficult. Employing the Twelfth Appellate District's use of the non-CAUV tax rate in the detachment analysis effectively delete's the concept of "substantial excess" from R.C. 709.42. The elimination of this longstanding statutory requirement is a policy choice that should be made by the legislature, not the courts.

CONCLUSION

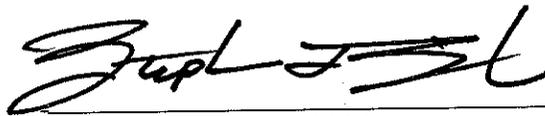
Ohio's detachment statute was designed to protect farm-land owners from overly burdensome municipal taxes in situations where those landowners did not enjoy municipal benefits. In many of these situations, the landowners have appropriately taken advantage of Ohio's CAUV program to lighten their annual tax burden. Presumably, land that is used for agricultural purposes requires fewer governmental services than land used for other purposes. The CAUV rate, concomitantly, decreases the taxes that are paid to the municipality. Not considering the tax rate the landowner actually pays to the municipality (the CAUV tax rate) when determining if the landowner is taxed in substantial excess of the municipal benefits conferred essentially rewrites the substance of the statute.

The effect of the Twelfth Appellate District's holding is to disregard the plain language of the statute and its statutory history, both of which require the municipal tax burden to be in “substantial excess” of the benefits conferred by the inclusion of the property in the municipality.

Such a holding is contrary to the public policy of Ohio, which favors the inclusion of land within municipal boundaries and would dramatically destabilize those boundaries.

Accordingly, the League respectfully requests that this Court reverse the decision of the Twelfth Appellate District and reinstate the trial court's decision which denied Appellee's detachment petition.

Respectfully submitted,



Stephen J. Smith (0001344)
Jeremy M. Grayem (0072402)
Schottenstein, Zox & Dunn Co, LPA
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-4938
Facsimile: (614) 222-3499
Counsel for the Amicus Curiae
The Ohio Municipal League

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Amicus Curiae the Ohio Municipal League in Support of Appellant the City of Carlisle, Ohio, was served via regular U.S. Mail, postage prepaid, on June 28th, 2010, upon the following:

David A. Chicarelli
David A. Chicarelli Co., LPA
614 E. Second Street
Franklin, Ohio 45005
*Counsel for Appellant
the City of Carlisle, Ohio*

Rupert E. Ruppert
Ruppert, Bronson & Ruppert
1063 E. Second Street, P.O. Box 369
Franklin, Ohio 45005
*Counsel for Appellees
Wallace and Helen Campbell*



Stephen J. Smith (0001344)
*Counsel for the Amicus Curiae
The Ohio Municipal League*