ORIGINAL

IN THE SUPREME COURT OF OHIO

City of Elyria, et al.,	)	
	)	
Appellants,	)	Case No. 2010-0564
	)	
v.	)	
	)	On Appeal from the
Lorain County	)	Ohio Board of Tax Appeals
Budget Commission, et al.,	)	
	)	
Appellees.	)	

MERIT BRIEF OF APPELLEE CITY OF LORAIN

John R. Varanese (0044176)
85 East Gay St., Ste. 1000
Columbus, Ohio 43215
614.220.9440; 614.220.9441 (fax)
jrvlawof@sbcglobal.net
Counsel for City of Lorain

John T. Sunderland (0010497)
John B. Kopf (0075060)
Thompson Hine LLP
41 South High St., Suite 1700
Columbus, Ohio 43215
614.469.3200; 614469.3361 (fax)
John.Sunderland@ThompsonHine.com
John.Kopf@ThompsonHine.com
Counsel for Lorain County and Lorain County Board of Commissioners

Gerald A. Innes (0009020)
Assistant Prosecuting Attorney
Lorain County Prosecutor's Office
Lorain County Justice Center
225 Court St., 3rd Fl.
Elyria, Ohio 44035
440.329.5398; 440.329.5430 (fax)
jerry.innes@lcprosecutor.org
Counsel for Lorain County Budget Commission

Terry S. Schilling (0018763)
Michelle d. Nedwick (0061790)
Elyria City Law Director
131 Court St., #201
Elyria, Ohio 44035
440.326.1464; 440.3261466 (fax)
tshilling@cityof elyria.org
Counsel for Elyria City and Amherst Twp.

Eric H. Zagrans (0013108)
Zagrans Law Firm LLC
474 Overbrook Rd.
Elyria, Ohio 44035
440.452.7100
eric@zagrans.com
Counsel for City of North Ridgeville

William J. Kerner, Sr.
Avon Lake City Law Director
150 Avon Belden Rd.
Avon Lake, Ohio 44012
440.930.4122
wkerner@avonlake.org
Counsel for City of Avon Lake

FILED
AUG 16 2010
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

INTRODUCTION.....1

ARGUMENT IN OPPOSITION TO APPELLANTS' APPEAL.....2

Appellee's Proposition of Law No. 1.....2

The provisions of R.C. 5747.55(D) have no application to a budget commission's exercise of discretion or execution of duties and responsibilities in the adoption and related allocation of undivided local government funds pursuant to an alternate formula under R.C. 5747.53.....2

CONCLUSION.....4

CERTIFICATE OF SERVICE.....5

TABLE OF AUTHORITIES

CASES

City of Canton v. Stark Cty. Budget Comm. (1988),
40 Ohio St.3d 243, 249, 533 N.E.2d 308,314.....3

STATUTES

R.C. 5747.53.....2,3

R.C.
5747.55(d).....passim

INTRODUCTION

This case is again before the Court after remand to the Ohio Board of Tax Appeals. In the first appeal, this Court determined that the provisions R.C. 5747.55 were applicable to a notice of appeal challenging the allocation of the local government fund under either a statutory or alternate formula method of allocation pursuant to R.C. 5747.51 and R.C. 5747.53, respectively. The Court also found that Appellants' notices of appeal complied with the statute's provisions and remanded the case to the BTA for a determination of whether they were entitled to the specific relief reflected in Exhibit G of their appeals.

Those exhibits reflected that Lorain County received an overallocation of local government funds for distribution years 2004, 2005 and 2006. However, the evidence showed that the 2004 alternate formula governing the allocations for these years specifically allocated to the county those funds that Appellants claim the county was overallocated. On remand, the BTA found the 2004 alternate formula to be legally valid but modified that portion which included a pro-rata payback to the county from the political subdivisions for a cash payment made to the city of Lorain to settle an earlier year appeal in which the Appellants were not named parties. Specifically, the BTA ordered the county to pay over to Appellants their pro-rata portion of the payback, which the BTA characterized as 2003 local government funds even though the payback was deducted from 2004 local government funds.

The Appellants had argued and the BTA concurred that R.C. 5747.55(D) precluded an alternate formula from containing terms implementing a settlement of a

prior year's appeal that reimbursed one subdivision from the funds of another if that subdivision was not a named party in the prior year's appeal.

R.C. 5747.55 is again at the center of the controversy before the Court. This time however, the issue is whether R.C. 5747.55(D) applies to a budget commission's exercise of discretion and execution of its duties and responsibilities in the adoption and related allocation of undivided local government funds pursuant to an alternate formula under R.C. 5747.53. Appellee submits that by the clear meaning of its unambiguous terms and this Court's own pronouncements, it does not apply. Accordingly, Appellants' appeal must fail.

STATEMENT OF FACTS

Appellee Lorain City, adopts *in toto* the "Statement of Facts" set forth in the Merit Brief of Appellees Lorain County and Lorain County Board of County Commissioners.

ARGUMENT IN SUPPORT OF PROPOSTION OF LAW

PROPOSITION OF LAW NO. 1: THE PROVISIONS OF R.C. 5747.55(D) HAVE NO APPLICATION TO A BUDGET COMMISSION'S EXERCISE OF DISCRETION OR EXECUTION OF DUTIES AND REPSONSIBILITIES IN THE ADOPTION AND RELATED ALLOCATION OF UNDIVIDED LOCAL GOVERNMENT FUNDS PURSUANT TO AN ALTERNATE FORMULA UNDER R.C. 5747.53.

For years, the Appellants have argued that the 2004 Alternate Formula unlawfully reduced their local government fund allocations because it was adopted and approved pursuant to a settlement of the city of Lorain's 2002 BTA appeal in which they were not named parties. It is well past time for this argument to finally be put to rest.

R.C. 5747.55(D) provides as follows, " [o]nly the participating subdivisions named pursuant to [the notice of appeal] 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."

By its very terms, R.C. 5747.55(D) only applies to the BTA when it allocates the funds pursuant to a notice of appeal. This Court said as much when it held:

> "The clear meaning of these provisions is that the amount to be allocated upon appeal is the total amount that has been allocated to the appellant and appellees before the BTA. No change may be made in any amount allocated to participating subdivisions that are not appellees before the BTA."

City of Canton v. Stark Cty. Budget Comm. (1988), 40 Ohio St.3d 243, 249, 533 N.E.2d 308,314.

In the entire record of these appeals, which includes the record of the city of Lorain's 2002 BTA appeal, the BTA has never allocated the Lorain County local government fund. If R.C. 5747.55(D) is to somehow apply to an allocation under the 2004 alternate formula, that application must be authorized by some other provision in the Revised Code. However, neither R.C. 5747.53, the statute that authorizes budget commissions to adopt and allocate funds under an alternate formula, nor any other provision of law, subjects alternate formulas to the provisions of R.C. 5747.55(D). While it is true that the genesis of the 2004 alternate formula was the settlement of the city of Lorain's 2002 BTA appeal, there is simply no basis in law or fact for Appellants to argue that R.C. 5747.55(D) has been violated.

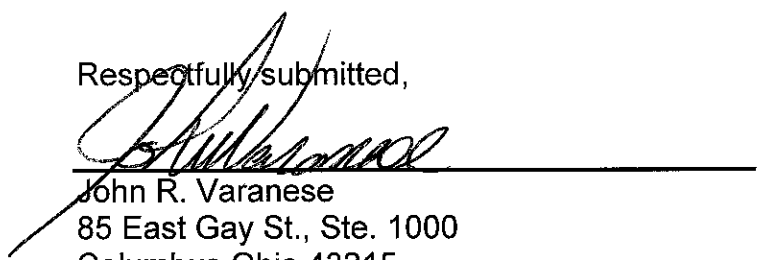
Appellants were displeased with the result of the 2004 Alternate Formula and its impact on their future allocations. Understandably, the Appellants have reasoned that R.C. 5747.55(D) should include their specific situation, but they must first petition the General Assembly for a legislative amendment. Quite simply, what the Appellants are requesting from this Court, and what they have received in part from the BTA, is an

equitable remedy, notwithstanding that neither the BTA under any circumstance, nor this Court under the circumstances presented, has jurisdiction in equity.

CONCLUSION

The BTA's decision declaring the 2004 alternate formula legally valid should be affirmed. Necessarily, such a ruling must also consider the applicability of R.C. 5747.55(D) to the 2004 alternate formula's provisions for distribution year 2004. Based upon all of the foregoing, the Court should rule that R.C. 5747.55(D) only applies to the BTA when it allocates the local government fund upon appeal and not in the manner advanced by the Appellants and applied by the BTA in this case.

Respectfully submitted,



John R. Varanese
85 East Gay St., Ste. 1000
Columbus Ohio 43215
614.220.9440; 614.220.9441 (fax)
Counsel for City of Lorain

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Appellee City of Lorain was served by email, pursuant to S. Ct. Prac. R. 14.2(B)(1), upon the following on August 16, 2010:

Terry S. Shilling, **tshilling@cityofelyria.org**, Counsel for City of Elyria and Amherst Township;

Eric Zagrans, **eric@zagrans.com**, Counsel for North Ridgeville;

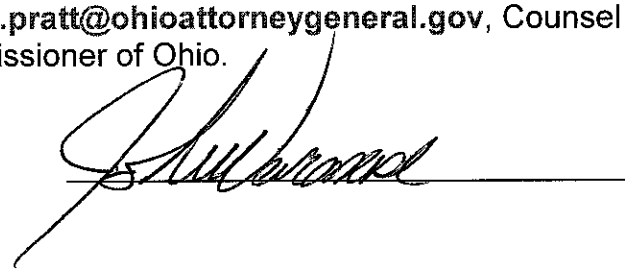
William J. Kerner, Sr., **wkerner@avonlake.org**, Counsel for City of Avon Lake;

Gerald A. Innes, **jerry.innes@lcprosecutor.org**, Counsel for Lorain County Budget Commission;

Eric Severs, **ersevers@oberlin.net**, Counsel for City of Oberlin;

Thomas Smith, **tsmith@wickenslaw.com**, Counsel for Sheffield Village;

John A. Gasior, **jgasior@ssgavonlaw.com**, Counsel for City of Avon;

Anthony Pecora, **apecora@sheffieldlaw.com**, Counsel for City of Amherst; and

Lawrence D. Pratt, **lawrence.pratt@ohioattorneygeneral.gov**, Counsel for Richard A. Levin, Tax Commissioner of Ohio.