ORIGINAL

IN THE SUPREME COURT OF OHIO

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

REPLY BRIEF OF CROSS-APPELLANT LORAIN COUNTY

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INTRODUCTION

In its 2008 decision, the Supreme Court restricted this case to one question: "whether Elyria is entitled to the specific relief reflected by the figures in Exhibit G of the notices of appeal." *Elyria v. Lorain Cty. Budget Comm.*, 117 Ohio St.3d 403, 2008-Ohio-940 at ¶28. The Court also imposed strict limitations on the BTA's jurisdiction in deciding this question on remand. Specifically, the BTA lacked jurisdiction to reinstate the Old Alternative Method previously used to allocate the Lorain County LGF, *id.* at ¶29, or to apply the statutory method of allocation. *Id.* at ¶30. Moreover, should Elyria succeed in invalidating the 2004 Formula, the BTA would ordinarily either have to reinstate the Old Alternative Method or employ the statutory method; but, since the Board lacked jurisdiction to do either, it would have to dismiss Elyria's appeals. *Id.* at ¶31.

In ruling that the 2004 Formula was valid and controls these allocations and that nothing in the Revised Code guaranteed Elyria's past allocation percentage for future years, the BTA complied with the Supreme Court's directive and decided that Elyria is not entitled to the "specific relief reflected by the figures in Exhibit G of its notices of appeal." This ruling is correct and should be affirmed.

But the BTA's decision to treat $250,000 of Lorain County's 2004 allocation as if it were a re-allocation of the 2003 LGF ignored the limitations the Supreme Court imposed on what issues remained in the case, because it awarded Elyria relief that ***was not*** requested or reflected in Exhibit G to the notices of appeal. The Board's decision on the $250,000 component of the 2004 Formula is also contrary to law because it ignored the commands of R.C. 5747.51, 5747.53, and well-established case authority interpreting these statutes. Consequently, this part of the BTA's decision is unreasonable and unlawful and should be reversed.

CROSS-APPELLANT'S PROPOSITION OF LAW NO. 1:

IN A LOCAL GOVERNMENT FUND APPEAL, THE BTA MUST STRICTLY COMPLY WITH THE STATUTORY LIMITATIONS CONTAINED IN R.C. CHAPTER 5747. THE BTA MAY NOT ALLOCATE THE LOCAL GOVERNMENT FUND IN ANY MANNER THAT IS NOT SPECIFICALLY PERMITTED BY R.C. SECTIONS 5747.51, 5747.53, AND 5747.55.

The BTA's decision on the $250,000 component of the 2004 Formula violates the Supreme Court's directive on remand because it awards relief that was not reflected by the figures in Exhibit G to Elyria's notices of appeal. Exhibits G to the 2004, 2005, and 2006 notices of appeal never mention the $250,000 component of the 2004 Formula or seek any relief directed to this element of the Formula. Appellants' Appx. pp. 62-65, 84-88, 112-116. Instead, the specific relief sought in those exhibits was Elyria's pre-2004 Formula percentage as applied to the total LGF allocation.

Additionally, the prayers for relief in the 2004, 2005, and 2006 notices of appeal did not ask for the $250,000 component of the Formula to be re-allocated. Appellants' Appx. pp. 56, 77-78, 104-05. Those prayers for relief each requested: 1) a declaration that the 2004 Formula was invalid; 2) a reallocation of the LGF in accordance with the Old Alternative Method; and 3) a reallocation of the LGF so that Elyria would keep its pre-2004 Formula allocation percentage.

When the BTA re-allocated a single component of the 2004 Formula—the $250,000 portion—it gave Elyria something different from "the specific relief reflected by the figures in Exhibit G of the Notices of Appeal." This, the Supreme Court said it could not do. The BTA's decision on the $250,000 element must therefore be reversed.

The Board's decision on this $250,000 issue is also wrong as a matter of substantive law because it fails to strictly comply with Revised Code Chapter 5747. Under R.C. 5747.51(B), the LGF can be allocated only pursuant to the statutory method or pursuant to a properly-adopted alternative method. The Revised Code does not give the BTA authority to make any other form

of allocation. See cases cited at pp. 6-7 of Lorain County's Merit Brief. Because no party challenges the validity of the 2004 Formula, under R.C. 5747.51 and 5747.53 that Formula governs these LGF allocations as a matter of law. *Id.* at pp. 9-10. Section 5747.55(D) does not change this result, both because the 2004 Formula had nothing to do with the allocation for the one year—2003—that Elyria was not party to an appeal and because the facts showed that Elyria's 2003 allocation did not change. Moreover, under Elyria's theory, Lorain County could not have been over-allocated—even relating to the $250,000 component—because it's allocation declined under the 2004 Formula, and Lorain County—like appellants—was not a party to Lorain's prior appeal. Therefore, the County could not be required to pay a portion of its allocation to Elyria. The BTA's opinion never dealt with any of these points.

Neither does Elyria. Its answer brief to the Court:

- fails to address the statutory basis for allocating the LGF or explain why the use of "shall" in R.C. 5747.51 does not mean "shall";
- ignores the cases that say there are only two ways—statutory method or alternative formula—to allocate the LGF;
- offers no authority to support its request for a third, non-statutory, non-alternative formula, method of allocation in this appeal;
- ignores this Court's prior holding that any decision invalidating the 2004 Formula requires this appeal to be dismissed for lack of jurisdiction;
- ignores the fact that the 2004 Formula satisfied all of the requirements of R.C. 5747.53 for adopting an alternative formula;
- ignores the unanimous case law saying the Board must allocate pursuant to a valid alternative formula where one has been adopted;
- ignores the fact that the 2004 Formula had nothing to do with the allocation for the one appeal year —2003—where Elyria was not a party;
- ignores the fact that Lorain County's allocation under the 2004 Formula declined and, like Elyria, the County was not a party to the 2003 LGF appeal; thus, under Elyria's legal theory, it would be legally and factually impossible for the County to be an over-allocated subdivision under the 2004 Formula;

- never explains how it could take funds from Lorain County when Elyria presented no evidence that the County received an over-allocation and the sole fact Elyria relies upon—that the 2004 Formula was adopted as a part of the settlement of the City of Lorain's 2003 appeal—has nothing to do with whether any subdivision received an over-allocation under the Formula.

Instead of addressing these questions, Elyria relies on a single argument: that R.C. 5747.55(D) prevents an alternative formula from ***ever*** changing its allocation percentage if that formula was in any way related to the 2003 appeal year. Appellants' Br. pp. 3-4, 9-10.

Thus, this appeal offers two radically different views of statutory interpretation. Elyria reads section 5747.55(D) in isolation, as if it were the only provision in Chapter 5747, and as if sections 5747.51 and 5747.53 did not exist. Elyria's interpretation places the different sections of Chapter 5747 in direct conflict. Sections 5747.51 and 5747.53 command that a valid alternative formula controls the LGF allocation. If Elyria were correct and section 5747.55(D) prevented either a statutory method or an alternative formula allocation, these three provisions could not co-exist. Elyria offers no hint as to how to resolve the conflict its interpretation would create, or why section 5747.55 should trump sections 5747.51 and 5747.53.

Ohio law requires this Court to attempt to avoid potential conflicts among various statutory provisions. Thus, related statutory provisions—those statutes dealing with the same general subject matter—must be read *in pari materia*. When interpreting related statutes *in pari materia*, the court must accord full application to all the statutes unless they are in hopeless conflict. *State ex rel. Gains v. Rossi* (1999), 86 Ohio St.3d 620, 622; *Maxfield v. Brooks* (1924), 110 Ohio St. 566, syllabus ¶2. Or, as the Court later phrased it, all provisions of the Revised Code bearing upon the same subject matter must be construed harmoniously unless they are irreconcilable. *Couts v. Rose* (1950), 152 Ohio St. 458, 461; *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St.3d 234, 2009-Ohio-2610, at ¶25.

Lorain County's interpretation harmonizes the LGF allocation statutes. Section 5747.51 provides that allocations must be made pursuant to the statutory method or, if an alternative formula has been adopted according to R.C. 5747.53, pursuant to that alternative formula. Section 5747.55 deals with appeals of a specific year's allocation. It defines who must be made a party to an appeal and what must go into the notice of appeal. The section protects potential subdivisions who are not parties to a given year's appeal by insuring that their allocations—***for the specific appeal year where they are not parties and only that appeal year***—will not change. When section 5747.55 is read to apply to a single year, it meshes perfectly with the overall allocation structure set forth in Chapter 5747. If, however, section 5747.55 were read as Elyria insists and as the Board treated it for purposes of the $250,000 component of the 2004 Formula, the Court could not give effect to the remaining LGF allocation statutes.

Elyria's and the Board's reasoning would also lead to an absurd result. The subdivisions in Lorain County could propose exactly the same alternative formula at exactly the same time. If the proposed formula were adopted in order to get a prior appeal dismissed, it would be invalid. But if the prior appeal were dismissed before the formula was adopted, then the alternative formula would be perfectly legitimate. Ohio law does not encourage statutory interpretations that lead to such a ridiculous result. *State ex rel. Dispatch Printing Co. v. Wells* (1985), 18 Ohio St.3d 382, 384 (statutes must be construed to avoid unreasonable or absurd consequences) (citing *State ex rel. Cooper v. Savord* (1950), 153 Ohio St. 367; *Canton v. Imperial Bowling Lanes, Inc.* (1968), 16 Ohio St.2d 47).

Ultimately, the answer to the question of whether Elyria is entitled to the specific relief sought by the Exhibits G to the notices of appeal is a simple no. The BTA had no jurisdiction to return to the Old Alternative Method or to apply the statutory method. That leaves the 2004

Formula. If this Formula is invalid, the Board was obliged to dismiss the appeal because it lacks jurisdiction to reinstate the former method or use the statutory method. Elyria claims it no longer seeks to "invalidate" the 2004 Formula, merely to "amend" that Formula, Appellants Br. p. 4, but that statement offers a distinction without a difference. Neither Elyria nor the BTA can explain how or upon what legal authority the 2004 Formula could be amended, transformed into some other method of allocation, without rendering it invalid. Because there are only three legally possible means of allocating the LGF here—two alternative and one statutory method—and because Elyria neither seeks nor is entitled to relief under any of those three choices, it is not entitled to the specific relief sought in its notices of appeal.

CONCLUSION

The BTA's decision that the 2004 Formula is valid and controls these allocations is correct and should be affirmed. Its decision to treat part of the 2004 allocation as if it were a 2003 re-allocation is unreasonable and unlawful, and should be reversed. The Budget Commission's 2004, 2005, and 2006 allocations were correct and should remain intact.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Cross-Appellant Lorain County was served by email, pursuant to S. Ct. Prac. R. 14.2(B)(1), upon the following on October 5, 2010:

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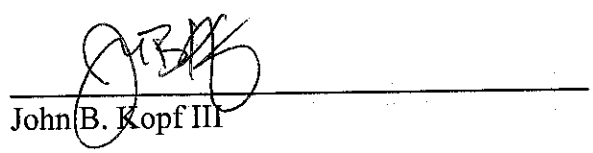

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