

## IN THE SUPREME COURT OF OHIO

11-0926

Sugarcreek Township,

Plaintiff-Appellee,

v.

City of Centerville, et al.,

Defendants-Appellants.

On Appeal from the  
Greene County Court  
of Appeals, Second  
Appellate District

Court of Appeals  
Case No.: 2010 CA 0052

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**MEMORANDUM IN SUPPORT OF JURISDICTION  
OF AMICUS CURIAE CITY OF MIDDLETOWN**

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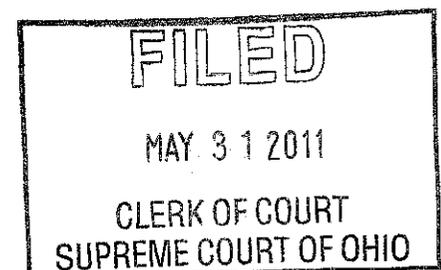
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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC  
OR GREAT GENERAL INTEREST AND INVOLVES A  
SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case involves one issue of great importance to most every city in the State of Ohio; does R.C. 709.023(H) provide a guarantee to the township that its voted outside millage on a piece of property obtained through an annexation under this section is protected from exemption under R.C. 5709.40 implementing tax increment financing (“TIF”). In its decision below, the Court of Appeals has determined that such a guarantee is provided to a township, thereby limiting the amount of voted outside millage which is subject to the tax exemption under a TIF structure. This decision has potentially significant impacts for development in the State of Ohio and for the financial stability of cities in the State of Ohio.

Tax increment financing is frequently used by cities and other political subdivisions to provide the backing for bonds to improve public infrastructure in areas undergoing development. The concept of TIF is that the valuation of the property over and above that which existed at the time the TIF was implemented is exempted from taxation and is paid into the political subdivision for the purpose of financing public infrastructure for a specific project or development. In most cases, the infrastructure is critical to the development of the territory. As a consequence, the TIF mechanism is extremely important to new developments. By limiting the amount of money that could be available for this public infrastructure, the decision of the Court of Appeals below, impacts development throughout the State of Ohio and the overall economic well-being of the State. Development which cannot receive sufficient public infrastructure to support it will seek alternate sites; in many cases outside the State of Ohio.

In addition, the laws that implemented annexations under R.C. 709.023 were effective in 2002. A multitude of these “type 2 annexations” have been undertaken since that law was put into place. The City of Middletown has annexed three territories using the “type 2 annexation” under R.C. 709.023 since its inception. All three of these territories are included in TIF’s. Because most of these annexations occur in undeveloped areas, public infrastructure is necessary to support development. As a result, many cities may have already committed bond funding supported by tax increment financing for public infrastructure in the intervening nine year period. The decision of this Court of Appeals undercuts the financial base for the support for the payment of these bonds. This could significantly damage the financial stability of those cities. Moreover, those cities made their commitments based on the understanding of the law at that time. The decision below results in the “financial rug” being pulled out from under these cities.

Finally, the decision of the Court of Appeals below, creates an interesting anomaly in Ohio law; territory which is subject to the jurisdiction of both a township and a municipality which was not annexed into the city under R.C. 709.023(H) will be subject to full tax exemption where TIF is implemented. However, those territories obtained by “type 2 annexations” will not be afforded the same status. There does not seem to be any basis in the law for this distinction to be made, and it simply does not make any sense.

For the reasons stated above, the City of Middletown urges the Supreme Court of Ohio to take this case as one that is of great public importance and interest.

## STATEMENT OF THE CASE AND FACTS

This case was originally filed by Sugarcreek Township in an effort to challenge and annexation conducted by the City of Centerville and in conjunction therewith a TIF plan which was developed by the City of Centerville. The trial court in this case determined that the annexation proceedings were appropriate, but ultimately determined that all outside millage which was levied by the township was not subject to the tax exemption under tax increment financing and therefore was not available as a source of funds using the TIF mechanism because the property was annexed under R.C. 709.023. The trial court held that sub-section (H) of that provision guaranteed the township that all of its taxes would be held unaffected, and the TIF could not be used to exempt those taxes.

This amicus curiae would anticipate that a more specific and detailed statement of the facts and of the case would be set-forth in the memorandum submitted by the Appellant and Appellee.

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

### **Proposition of Law No. I: R.C. 709.023(H) is not intended to protect township voted millage from a TIF exemption.**

As previously stated, the critical issue before this court is the impact of R.C. 709.023(H) on the tax exemption mechanism known as tax increment financing. The Court of Appeals has held that the use of a “type 2 annexation” by a city to annex property from a territory limits the ability of that city or municipal corporation to use TIF to capture voted outside township millage. This position is not consistent with the basic

tenants of tax law in the State of Ohio. Further, the intent of the bill which enacted R.C. 709.023(H) does not support the lower court's conclusion.

In crafting the major revision of Ohio annexation law in the early part of this decade, the General Assembly addressed a variety of issues related to annexation. The "type 2 annexation" was created by this law. In passing Senate Bill 5, the law which revised the annexation procedures, the General Assembly specifically noted the impact that annexation would have on inside millage and made changes to R.C. 5705.315 to assure that inside millage was split appropriately between cities and townships and to limit the ability of exemptions to affect this inside millage. However, the General Assembly chose not to address outside millage in a similar manner. This would not appear to be a simple oversight, but rather, a conscious decision on the part of the General Assembly not to change the law as it applied to outside millage.

A careful reading of R.C. 709.023(H) reflects the same intent. That sub-section reads:

"Notwithstanding anything to the contrary in section 503.07 of the Revised Code, unless otherwise provided in an annexation agreement entered into pursuant to section 709.192 of the Revised Code or in a cooperative economic development agreement entered into pursuant to section 701.07 of the Revised Code, territory annexed into a municipal corporation pursuant to this section shall not at any time be excluded from the township under section 503.07 of the Revised Code and, thus, remains subject to the township's real property taxes."

The clear language in this sub-division indicates intent on the part of the General Assembly not to change the law as it presently existed. The goal here was to maintain township taxes so that they would not lose their right to collect their taxes through the annexation proceeding which required the territory to remain within the township. There

is no expression of intent here to change any of the rules that relate to appropriate tax exemptions as they apply to this territory. The use of the term “remains” suggests that no change is anticipated. It would have been very easy for the General Assembly to add language which made it clear that tax exemptions under a TIF exemption would not apply to the property. They chose not to do so. The tenor of the statute and its specific wording indicates a conscious decision not to change the law and to permit outside millage to continue to be subject to exemption using a TIF mechanism.

In interpreting legislative acts, the intent of the legislative body is tantamount. There is certainly no a clear indication of legislative intent to change the fundamental basis of the TIF statutes. In undertaking a matter of this significance, one would hope the expression of the intent to do so would be obvious. In this circumstance, any intent to change the law to protect outside voted millage from this exemption is at best murky. It would have been very easy for the General Assembly to rewrite the law to make it clear that this was their intent. Having not done so, it would seem that the intent was the reverse, not to change the prior state of the law.

This is compounded by the absurdity created by this interpretation. Property annexed by any procedure other than a “type 2 annexation” is subject to a TIF exemption. But territory annexed under a “type 2 annexation” is not. This is true regardless of whether the territory is removed from the township or remains in the township. Property which is maintained in the township after annexation is subject to the tax exemption if it is not a “type 2 annexation”, but is not subject to the tax exemption if it is a “type 2 annexation”. This distinction makes no sense. There is no logical basis for this arbitrary

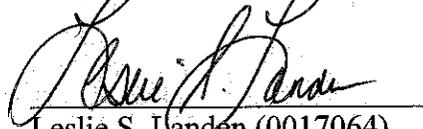
and disparate treatment of property. There is no logical reason to conclude that the General Assembly intended this result. In fact, logic dictates the contrary.

In summary, there is simply nothing to support a determination of legislative intent by the General Assembly to create the blanket exemption which the Court of Appeals has determined that exists in this case.

### **CONCLUSION**

For these reasons, it is the opinion of this amicus curiae that the decision of the Court of Appeals should be reviewed by the Supreme Court to more carefully look at the intent of the General Assembly.

Respectfully submitted,



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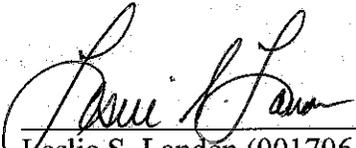
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by ordinary U.S. Mail this 31<sup>st</sup> day of May, 2011:

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