

IN THE SUPREME COURT OF OHIO

State of Ohio ex relators Ruth Brown et al.,

Relators,

v.

Seneca County Board of Commissioners, David G. Sauber, Sr., Benjamin E. Nutter, and Jeffery D. Wagner in their official capacities,

Respondents.

Case No.

11-2133

Relators' Motion For Temporary Restraining Order, Preliminary Injunction, And Emergency Alternative Writ Of Mandamus

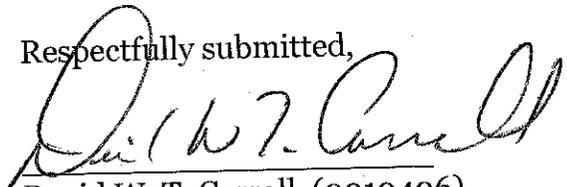
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Motion

Relators move the court for an order granting a Temporary Restraining Order and Preliminary Injunction, ancillary to the original action in mandamus, restraining the Respondents from permitting the demolition of any portion of the 1884 Seneca County Courthouse pending this court's ruling on the writ of mandamus, the initial part of which demolition is scheduled to commence Tuesday, December 20, 2011.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Operative Facts

As the Respondents acknowledged in their own resolutions based studies they commissioned, the current temporary court facilities are inadequate for the efficient administration of justice in Seneca County and the most cost-efficient means of correcting the deficiencies requires restoration and rehabilitation of the 1884 Courthouse. The Respondent Commissioners made a number of binding commitments over the last 18 months by which it would undertake the rehabilitation of the 1884 courthouse, but on November 17, 2011, Respondents

entered into a contract to demolish the only cost-effective means of providing an adequate courthouse. By its terms, the contract is terminable for convenience. The asbestos removal portion of the demolition is scheduled to begin December 20, 2011.

Preliminary Injunction

Relators seek a preliminary injunction to prevent Respondents from demolishing the only reasonable opportunity for the Seneca County Commissioners to provide a courthouse consistent with its clear legal obligations and its "binding commitment" made "to the people of Seneca County" related to the 1884 courthouse. [Resolution of January 6, 2011.]

Relators duly made a demand on the Seneca County Prosecutor to bring this action to require the Board of Commissioners to do its clear legal duty. The prosecutor promptly declined.

There is precedent for an action of this nature in *State ex rel. Badgett v. Mullen*, 177 Ohio App.3d 27, 2008-ohio-2373, in which the Fourth District Court of Appeals issued a writ of mandamus in a taxpayer's suit ordering the Marietta City Council to conform to its clear legal duty to provide adequate court facilities for the efficient administration of justice in the Marietta Municipal Court.

The Legal Standard for Preliminary Injunction.

{¶6} The purpose of a preliminary injunction is to preserve the status quo of the parties pending a final adjudication of the case upon the merits. *Back v. Faith Properties, L.L.C.*, Butler App. No. CA2001-12-285, 2002-Ohio-6107, ¶36, citing *Yudin v. Knight Industries Corp.* (1996), 109 Ohio App.3d 437, 439. In ruling on a motion for preliminary injunction, a trial court must consider whether (1) the moving party has shown a substantial likelihood that he or she will prevail on the merits of their underlying

substantive claim; (2) the moving party will suffer irreparable harm if the injunction is not granted; (3) issuance of the injunction will not harm third parties; and (4) the public interest would be served by issuing the preliminary injunction. *Planck v. Cinergy Power Generation Servs., L.L.C.*, Clermont App. No. CA2002-12-104, 2003-Ohio-6785, ¶17, citing *Sinoff v. Ohio Permanente Med. Group, Inc.*, 146 Ohio App.3d 732, 741, 2001-Ohio-4186, ¶40. The party seeking the preliminary injunction must establish each of these elements by clear and convincing evidence. *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.* (1996), 109 Ohio App.3d 786, 790.

DK Prods., Inc. v. Miller (Ohio App. 2/2/2009). 2009 Ohio 436.

Relators will Likely Prevail on the Merits

In 1884, the Seneca County Board of Commissioners (or its predecessor in authority) complied with the predecessor to RC §307.01 to provide a permanent courthouse for the Seneca County Common Pleas Court located in the public square, Tiffin Ohio. They provided not just any courthouse, but a permanent courthouse “not for an age, but for centuries.”¹ Since that courthouse fell into disrepair, the divisions of the common pleas court have been housed in temporary facilities.

The Seneca County Board of Commissioners determined by several resolutions from 2009 through 2011 that the most economical solution to providing a courthouse was to restore and rehabilitate the 1884 courthouse in accordance with the plans and financing arrangements assembled and presented by the nonprofit Seneca County Courthouse and Downtown Redevelopment Group. On August 25, 2009, the Comm. Six issioners made the following

¹ From the speech of Gen. William Harvey Gibson, June 24, 1884, delivered at the Seneca County Courthouse cornerstone laying: “We are not building for ourselves, but for countless generations, not for an age, but for centuries.”

findings of fact in connection with their resolution to move forward to provide adequate court facilities for all divisions of the common pleas court:

WHEREAS, The Seneca County Commissioners, Benjamin E. Nutter, David G. Sauber and Michael A. Bridinger met this 25th day of August, 2009 in open and regular session, and

WHEREAS, The Seneca County Commissioners recognize **the urgent need to provide adequate and appropriate space** to the court system of Seneca County; and

WHEREAS, The **Juvenile and Probate Divisions of Seneca County Common Pleas Court are currently in a building of inadequate size and is not compliant with the Americans with Disabilities Act**; and

WHEREAS, The building known as the 1884 Seneca County Courthouse has fallen into disrepair and is not fit for the conduct of Seneca County business and currently is vacant of public offices due to its poor condition; and

WHEREAS, The Seneca County Courthouse and Downtown Development [sic.] Group has presented the commissioners with a proposal that would bring the former 1884 Courthouse back to its original usefulness and grandeur for less than eight million dollars; and

WHEREAS, Of the estimated eight million dollar renovation project, approximately one million four hundred thousand will be needed to restore the magnificent dome and clock tower, which the SCCDDG has committed to raising private funds to cover this portion of the project; and

...

WHEREAS, **Based on the cost estimate of the renovation project by the SCCDDG and coupled with the financial support of the State of Ohio and private citizens this restoration project will save the local taxpayer a significant amount of money over removing and replacing the 1884 Courthouse with a new structure....**

Section 1. Seneca County hereby **commits** to moving forward with developing final plans to renovate and restore the 1884 Seneca County Courthouse for renewed Courthouse use, contingent only upon obtaining the necessary financing to undertake the project. [Emphasis added.]

As recently as January 6, 2011, a unanimous resolution of the Seneca County Board of Commissioners provided in part:

WHEREAS, the Seneca County Courthouse and Downtown Redevelopment Group (Redevelopment Group), working on behalf of and in cooperation with the Board of Commissioners of Seneca County, (Seneca County) has provided project services to Seneca County relating to planning, financing, designing and estimating and has produced an extensive analysis of renovation costs and a renovation plan that **supports the lowest possible project cost** for the Seneca County taxpayers,

WHEREAS the SCCDRG [sic. Redevelopment Group] renovation plan authorized by the Board of Commissioners has demonstrated that the project will result in the needed functional, practical, and pleasant facilities for the Seneca County justice system....
[Emphasis added.]

That resolution of January 6, 2011, contained commitments to move forward with funding for the courthouse renovation:

BE IT RESOLVED that to provide for a courthouse in the manner **most economical for Seneca County taxpayers**, in accordance with the obligations of RC § 307.01, and to induce the United States Department of Agriculture to timely approve a \$5,000,000 long term, low interest loan, the Seneca County Commissioners hereby make the following **binding commitments** to the United States Department of Agriculture **and to the people of Seneca County**:

RESOLVED, That contingent upon official notification from the United States Department of Agriculture that funding for a \$5 million loan from the USDA's Government Facilities program has been secured for this project and as long as funds are available for appropriation or in the process of collection, the Seneca County Commissioners hereby make a **commitment** to appropriate \$350,000 for the renovation and rehabilitation of the Seneca County Courthouse from various 2011 general and non-general fund revenues, and

RESOLVED, that upon USDA notification and subject to approval as to form by the Seneca County prosecutor, the Seneca County Commissioners hereby make a **commitment** to timely execute the loan documents required by the United States Department of Agriculture for a Community Facilities program long-term low interest loan for the largest portion of the cost to rehabilitate and

renovate the historic 1884 Seneca County Courthouse....
[Emphasis added.]

The Seneca County Commissioners received official notification from the United States Department of Agriculture that funding for the \$5 million loan at 3.7% interest -- referred to in the resolution -- has been set aside to fund the renovation of the 1884 courthouse.

Suddenly the Seneca County Commissioners did an about-face and now have awarded a contract for the demolition of the 1884 courthouse which the Respondent Commissioners had previously found was more economical to rehabilitate than it was to demolish and rebuild. The Commissioners apparently plan to use the same money (and then some) for demolition previously committed to the renovation of the courthouse. The Respondent Commissioners have a legal duty to provide a permanent courthouse as well as temporary courthouse facilities until a permanent courthouse is built or otherwise provided.

The leading case is *Zangerle v. Court of Common Pleas of Cuyahoga County* (1943), 141 Ohio St. 70, 46 N.E.2d 865. In *Zangerle*, the judges of the common pleas court ordered the county sheriff to dispossess the Cuyahoga County auditor from offices assigned to him by the original courthouse building commission. The auditor brought an action in prohibition to prevent the court from keeping him out of his assigned offices, so they could be used by the Bureau of Domestic Relations set up and established by rule of the Cuyahoga County Common Pleas Court. The common pleas court took that action to dispossess the auditor because the court found that,

matters coming Before the Department of Domestic Relations
'cannot be properly handled in the basement of the county

courthouse in the depressing and unfit surroundings created by the cramped and crowded quarters, paper-thin partitions, inadequate lighting, poor ventilation and want of that privacy essential in the consideration of intimate problems of litigants involved in domestic controversies, and of rights and interest of wards of the court who are victims of such litigation'; that the problem created by such inadequacy of quarters was becoming increasingly acute by reason of the increasingly important and growing volume of duties devolving upon the court, which increases from year to year are therein recited; that facilities for dealing with such matters in the basement of the county courthouse, 'either in the present quarters, or in any other or additional space in the basement, are not fit or adequate for the performance of the duties and functions of the court, and to attempt to continue to do so will impede and imperil the due administration of justice in this county, particularly as it relates to domestic relations causes.'

141 Ohio St. at 77-78.

The Ohio Supreme Court approved the common pleas court's *ex parte* issuance of the order to the Sheriff to dispossess the auditor. The syllabus of *Zangerle* reads,

1. The primary and paramount purpose of a courthouse, as its name implies, is to furnish the rooms and facilities essential for the proper and efficient performance of the functions of the court.
2. Courts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.
3. Such courts may pass upon the suitability and sufficiency of quarters and facilities for their occupation and use, and may exercise control over the courthouse to the extent required to assure the provision, equipment and maintenance in the courthouse of rooms and facilities essential for their proper and efficient operation.

The Court noted that "the primary purpose of a courthouse is to provide a **permanent seat of justice** for such County, and therefore, in event of any controversy concerning space therein, the first and predominating right is that of

the court." [Emphasis added.] Justice Matthias writing the opinion for the Court said,

The opinion of this court in the case of *Mackenzie v. State ex rel. McMahon, Pros. Atty.*, 76 Ohio St. 369, 81 N.E. 638, which involved a controversy arising out of the proceedings for the construction of the very building in controversy in this case, supports the view that the statute authorizing the proceeding contemplates the erection of a 'courthouse.'

[141 Ohio St. 70 at 82.] Further, Judge Matthias said,

It seems significant that no authority is vested by statute in the county commissioners to provide permanent quarters for court purposes outside the courthouse, but specific authority is conferred to provide for county offices elsewhere, if that should become necessary, which, however, does not appear to be the case here.

If we look elsewhere for authority upon the proposition that the judiciary has the prior right to be located in the courthouse and the subordination of other uses thereof to the requirements for court purposes, we find in 21 *Corpus Juris Secundum*, Courts, p. 255, § 166, the following: 'The term 'courthouse' is used to designate the building where courts are held, and where the people attending such courts are supposed to congregate.'

The general principle is there stated that 'While other bodies or officers are charged with the duty of providing suitable buildings or rooms for the holding of courts, the court or judge may pass on the suitability of the quarters furnished and exercise control over the courthouse to the extent necessary to secure suitable rooms for, and to prevent interference with, the discharge of public business.'

[141 Ohio St. 70 at 83-84.]

Zangerle has been cited in 22 cases since 1943, and was specifically approved and followed by the Ohio Supreme Court in *State ex rel. Foster v. Wittenberg* (1968), 16 Ohio St.2d 89, 242 N.E.2d 884, a case in which a juvenile judge ordered a board of county commissioners to provide a certain budget and subsequently brought a writ of mandamus to enforce his order. Judge Matthias

again delivered the opinion of the court added after that it will not affect I can print out only now in which he said, 16 Ohio St. 89 at 92,

It is a well-established principle that the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers. The proper administration of justice requires that the judiciary be free from interference in its operations by such other branches. Indeed, it may well be said that it is the duty of such other branches of government to facilitate the administration of justice by the judiciary.

It is appropriate that we recall and reaffirm this basic principle as set forth in the second paragraph of the syllabus in *Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, 46 N.E.2d 865, viz:

'Courts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.'

The Respondent Commissioners are on notice of the many deficiencies in the current temporary court facilities which they have recognized in the resolutions quoted above. The Respondent Commissioners have a clear legal duty to provide a permanent courthouse with adequate facilities for the efficient administration of justice in Seneca County.

Furthermore, the Respondent Commissioners made a binding commitment to the people of Seneca County to rehabilitate the courthouse in accordance with the plan adopted in its various resolutions including the resolution of October 25, 2009 and January 6, 2011, attached to the complaint and quoted above.

Irreparable Harm

If this Court finds that Relators are likely to prevail on the merits, the harm is clearly irreparable. Once the 1884 courthouse is demolished, it is gone forever and the Commissioners will have irreparably breached their “binding commitment” to the people (i.e., taxpayers) of Seneca County.

Harm to Third Parties

The issuance of the temporary restraining order and preliminary injunction would only minimally impact third parties. Indeed the only party arguably harmed would be the demolition contractor. The demolition contractor’s contract has a typical “termination for convenience” clause that would require the demolition contractor to be compensated for costs expended, but only if the contract were terminated.

Issuance would Serve the Public Interest.

The public interest is profoundly served by preserving Ohio’s historic courthouses, built to be permanent, from needless loss and by providing for the efficient administration of justice. If this Court ultimately issues the requested writ of mandamus, the Court will save the taxpayers of Seneca County the cost of demolition and will retain the most economical alternative for a permanent and adequate courthouse that serves the efficient administration of justice.

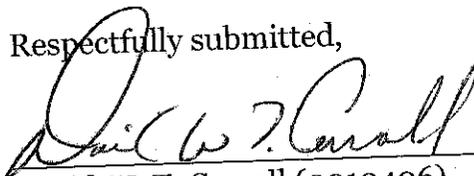
Even if the Court ultimate does not issue the writ, Seneca County loses nothing but a small amount of time during which it had no plans for the empty

site or plans to otherwise fulfill its clear legal duty to provide a permanent and adequate courthouse for the efficient administration of justice in Seneca County.

Bond

There is no cost to the county for delay in demolishing the historic courthouse. Accordingly, Relators request that bond be waived.

Respectfully submitted,



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