

## IN THE SUPREME COURT OF OHIO

Sugarcreek Township,	:	Case No.: 2011-0926
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Greene County Court
v.	:	of Appeals, Second
	:	Appellate District
City of Centerville, et al.,	:	
	:	Court of Appeals
Defendants-Appellants.	:	Case No.: 2010 CA 0052

**REPLY BRIEF OF AMICUS CURIAE CITY OF MIDDLETOWN  
IN SUPPORT OF THE APPELLANT**

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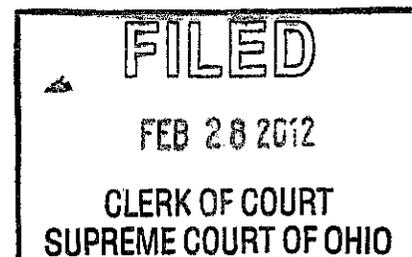
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## **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

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

The sole issue before this Court remains a rather simple one: Does R.C. 709.023(H) provide a guarantee to a township that its millage on a piece of property obtained through an annexation under that section of the code is protected from a tax exemption under R.C. 5709.409 implementing tax increment financing (TIF). In its brief, the township painstakingly describes the transition from the annexation procedures in Ohio prior to the enactment of Senate Bill 5 and the procedures after the enactment of that bill. The township relies upon the creation of three expedited annexation methodologies as its fundamental premise that its millage on a piece of property which is annexed through a “type 2 annexation” cannot be exempted in a tax increment financing process. The township argues that as a result of the reformed annexation laws, under a “type 2 annexation” real property cannot be removed from the township by the unilateral action of the city and that the fact that the property cannot be unilaterally removed by the city is designed to protect the tax base of the township.

The City of Middletown takes no issue with those general statements. It is clear from the statute that when a “type 2 annexation” process is used the property must remain within the township. It is also clear that the purpose of this legislative determination is to help protect the existing tax base of the township. These conclusions are clear from the plain language of the statute and the legislative history which supports the statute. The City of Middletown also accepts that one of the principle goals of the change of the annexation law was to encourage cooperation between local government entities. The problem in this case is that the lower courts and the township do not stop at the point

where the clear language of the legislation stops. They seek to lay on top of the clear language an analysis that that language also means that the property is not subject to TIF exemptions. Very simply, there is no support in the language of the statute or in the legislative history for this proposition. There is nothing that suggests that the intent of the legislature was to remove from property annexed under a “type 2 annexation” the TIF exemption which was and is present for all property in the State of Ohio.

One goal of the annexation statutes which the township continually refuses to address or deal with is the most fundamental goal behind the purpose of annexation; the right of a property owner to seek to have his or her property annexed into a municipality. Prior to the passage of Senate Bill 5, this Court clearly stated that it was the policy of the State of Ohio to encourage annexation by municipalities of adjacent property. See Middletown v. McGee, (1988), 89 Ohio St.3d 284, 530 N.E.2d 902. The underlying principle in McGee was the freedom of a property owner to choose the governmental subdivision in which they desired their property to be located. This continues to be the fundamental reason that annexation exists. This begs the question of why would a property owner who chooses to make this decision be deprived of a development tool which all other properties have available to them simply because a “type 2 annexation” was used.

The City of Middletown also agrees with the township that there are advantages and disadvantages to every type of annexation process available under the present law. One of the disadvantages of the “type 2 annexation” is the limitation on the size of the property. The property owner must also give up the right to appeal and must agree to a buffer should the new use in the city be incompatible with the surrounding uses. Another

disadvantage is that 100% of the owners must buy in to and support the annexation. There is nothing in the statute which suggests that there are other prerogatives of ownership which the property owner must sacrifice in order to exercise their rights to use the “type 2 annexation” process.

The argument of the township layers on top of the plain language of the statute a limitation of ownership which simply does not fit. Reading the township’s argument in its broadest application, all of the standard exemptions to property which would be available under Chapter 5709 of the Ohio Revised Code are no longer available if a “type 2 annexation” is involved. There is nothing in the statute that talks only about the TIF exemption. It is the township’s argument that the bare language prevents any type of exemption from the tax revenues which the township is entitled to receive. This simply does not make any sense. There is nothing in the language to support that a complete abandonment of tax exemptions was intended for these properties.

The language of the statute also does not reflect the intent which the township attributes to the General Assembly. The statute states that the annexed property “...remains subject to the townships real property taxes.” This does not suggest that exemptions, including the municipal TIF exemption, do not apply. Furthermore, the concept that the property “remains subject to” suggests the status quo is maintained. Prior to annexation, a TIF or any other type of taxation exemption is available to the property owner. Nothing in the language of the statute suggests that these exemptions go away, but rather, the statute specifically says it “remains subject to” the township’s real property taxes. It remains as it was before which is subject to the various exemptions which are available in Ohio Revised Code Chapter 5709. It is interesting that prior to

annexation reform, in many cases in Ohio, the territory was not taken from the township. The township got its real estate taxes and municipal TIF financing was available.

In addition, if you look at the changes that were made in conjunction with Senate Bill 5 to the taxation statutes, it is clear that the General Assembly addressed some of the issues dealing with inside millage in their changes to R.C. 5705.315, but did not discuss any changes to the outside millage. If the General Assembly had intended to protect the outside millage as alleged in this case, it would have been very simple to make the changes to that statute to make that intent clear. Those changes were not made.

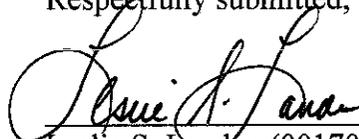
Finally, if we look carefully at the legislative intent cited by the township in their brief, it does not support the proposition which they suggest. It supports the very broad propositions which are clearly set forth in the statute; that the property remains within the township and that the purpose of this is to help support the tax base of the township. There is nothing more to the legislative history than that. The legislative history does not state that any exemption which previously existed is no longer available because of the use of a "type 2 annexation".

Every argument that the township makes is premised on an additional layer of legislative intent that cannot be found in the history of Senate Bill 5, in the clear language of the statute or in the changes that the General Assembly made to other statutes in connection with changing the annexation processes. This Court must search for the legislative intent to support any application of the statute that is beyond its clear language. There is nothing to suggest legislative intent to strip an owner of all property tax exemptions simply because the property was annexed under a "type 2 annexation" process.

## CONCLUSION

Every argument made by the township in their brief is premised on the faulty determination of the legislative intent to remove the ability of property annexed in a “type 2 annexation” to use the TIF exemption that is provided to property in Ohio. Hence all of their arguments must fail because the base premise of all of those arguments is without support. In sum, there is simply no indication that the General Assembly intended to achieve the result that the court below imposed in this case. The judicial role is to determine the intent of the legislature and to implement that intent. If the legislature had intended to do what the township is suggesting here, it would have been very easy to do in many ways. The legislature did none of these things. The legislative intent here stops with the language of the statute. In its interpretation, the lower court has placed its view of “what should be” in place of the General Assembly’s clear statement of “what is”. Therefore the decision below in this case must be reversed in order to implement the clear intent of the General Assembly.

Respectfully submitted,



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I hereby certify that a copy of the foregoing was served upon the following parties  
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