

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND,)	Case No. 2012-1616
)	
Plaintiff-Appellee)	
)	On Appeal from the Cuyahoga
vs.)	County Court of Appeals,
)	Eighth Appellate District
STATE OF OHIO)	
)	
Defendant-Appellant)	Court of Appeals
)	Case No. 97679

**APPELLEE CITY OF CLEVELAND'S MEMORANDUM IN
OPPOSITION TO DEFENDANT-APPELLANT STATE OF OHIO'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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RECEIVED
OCT 24 2012
CLERK OF COURT
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FILED
OCT 24 2012
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I. INTRODUCTION

On March 19, 2009 the City of Cleveland (“City”) filed a complaint seeking a declaratory judgment that certain preemption language that had been incorporated in then existing R.C. 4921.30¹ was unconstitutional and in violation of Article XVIII, Section 3 of the Ohio Constitution, the Home Rule Amendment. The City was not contesting the authority of the Public Utilities Commission of Ohio (“PUCO”) to regulate tow truck operators with the General Assembly’s amendments to R.C. Chapter 4921, rather the City challenged the State’s attempt to summarily preempt by statute *all* existing local tow truck regulations, irrespective of any conflict with the established general laws of the State. The restrictive tow truck preemption language adopted with R.C. 4921.30 (R.C. 4921.25)² was distinctly unrelated to the PUCO’s otherwise established scheme for the regulation of motor transportation companies (“MTC”).

The Eighth District Court of Appeals analyzed the preemption statute in the context of *Canton v. State of Ohio*, 95 Ohio St.3d 149, 766 N.E.2d 963 (2001) and correctly concluded that the statutory preemption did not constitute a “general law” for purposes of the conflict test established in Article XVIII, Section 3 of the Ohio Constitution. The Eighth District did not suggest that tow trucks were not subject to PUCO regulation, only that the broad, exclusionary preemption of local authority to regulate tow truck operators attempted by the General Assembly was unconstitutional in

¹ As noted in the State’s jurisdictional memorandum, R.C. Chapter 4921 was significantly revised by Am. Sub. H.B. 487 (Mid Biennial Budget Review Bill) which was enrolled on June 11, 2012 (see <http://www.sos.state.oh.us/SOS/LegnAndBallotIssues/GAJournal.aspx>). R.C. 4921.30, the statute challenged by the City with its declaratory judgment action was renumbered and is now identified as R.C. 4921.25.

² The City will hereafter refer to the former R.C. 4921.30 by its current designation, R.C. 4921.25, in the balance of this memorandum.

the absence of R.C. 4921.25 qualifying as a general law. Taking into account the years of precedent set by this Court, the correctness of the Eighth District's holding that the General Assembly had unconstitutionally overstepped its authority with the attempt to preempt local authority to regulate tow truck operators is evident and inescapable.

II. STATEMENT OF APPELLEE CITY OF CLEVELAND'S POSITION

A. **The case is not one of public or great general interest as it is well established that the State of Ohio does not have preemption authority over the City of Cleveland and other Municipalities.**

The City's right to enact local regulations on behalf of its citizens is found in Article XVIII, Section 3, of the Ohio Constitution, the Home Rule Amendment, wherein the people of Ohio granted municipalities the power “* * * to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” The statute challenged by the City in this litigation, currently identified as R.C. 4921.25, reads as follows:

Any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is engaged in the towing of motor vehicles is subject to regulation by the public utilities commission as a for-hire motor carrier under this chapter. *Such an entity is not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles.* (emphasis added)

The City specifically alleged in its complaint that “[t]he State’s adoption of R.C. § [4921.25] and attempted preemption of the City’s local regulation and enforcement of local tow truck ordinances is an unconstitutional limitation and restriction on recognized home rule authority bestowed on the City by Article XVIII, Section 3 of the Ohio Constitution.”

The City’s challenge arises within the understanding that the constitutional power

of home rule, “expressly conferred upon municipalities,” cannot be withdrawn by the General Assembly. *Fondessy Ents., Inc. v. Oregon*, 23 Ohio St.3d 213, 215, 492 N.E.2d 797 (1986). Local authority to legislate is grounded in the Constitution, not the General Assembly, with “section 3, art. 18, [being] as complete a grant of power as the General Assembly has received in section 1, Art. 2.” *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220, 227, 124 N.E. 134 (1919).

Local police-power ordinances are intended to “protect the public health, safety, or morals, or the general welfare of the public.” *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, 896 N.E.2d 967 at ¶ 30 quoting *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, 880 N.E.2d 906, ¶ 11. Chapter 677A of the City’s Codified Code addresses local regulation of tow truck operations occurring within its municipal boundaries.³

In *Ohioans for Concealed Carry, Inc.* this Court further allowed:

But as we stated in *Am. Fin.*, “[a] statement by the General Assembly of its intent to preempt a field of legislation is a statement of legislative intent” that may be considered in a home-rule analysis but does not dispose of the issue. *Am. Fin. Servs. Assn.*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 31. Accordingly, although... [the statutes at issue]...embody the General Assembly’s intent to occupy the field ..., that intent “does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws.” *Id.* We therefore proceed to apply the test established in *Canton*.

³ The memorandum in support of jurisdiction filed by Amicus Curiae Towing & Recovery Association of Ohio concerning local towing ordinances is written in a tone and manner (“may result” “could also impact” “would likely create” “could be of significant impact”) that suggests local towing ordinances were just recently discovered and enacted in an attempt to invade long established statewide control and preemption practices. Just the opposite is true as the regulation of towing has historically been a local municipal function.

The Eighth District Court of Appeals correctly applied the *Canton* test and concluded that R.C. 4921.25 was not part of a comprehensive scheme for tow truck operations and the preemption of local authority it intended was unconstitutional.

B. No substantial constitutional question is presented as the Eighth District Court of Appeals correctly applied the requisite *Canton* test in determining that R.C. 4921.25 (formerly 4921.30) is not a general law for under Article XVIII, Section 3.

The General Assembly's intended preemption of the City's authority to regulate tow truck operators was not part of the comprehensive scheme established by then existing R.C. Chapter 4921, and the legislative attempt to summarily withdraw local authority to regulate tow trucks was contrary to the Ohio Constitution. "The power granted to municipalities to adopt and enforce police regulations is limited only by general laws in conflict therewith upon the same subject-matter." *Akron v. Scalera*, 135 Ohio St. 65, 66, 19 N.E.2d 279 (1939).

In criticizing the Eighth District's opinion the State asserts the court "offers no explanation as to why the legislature's choice to include towing within an existing framework, instead of enacting towing-specific regulations, fails to establish comprehensive, statewide regulation of towing." (States Memorandum at p. 7). The State misperceives what the appellate court duly recognized with its analysis, that the challenged preemptive language is isolated to tow trucks and such isolation is outside the PUCO's "existing framework" for regulating MTC's otherwise established in R.C. Chapter 4921 at the time R.C. 4921.25 was enacted.

At the time (and after) R.C. 4921.25 was adopted, Chapter 4921 did not contemplate preemption, rather the statutory framework recognized local authority in a

fashion that conformed to the conflict standard inherent in Article XVIII, section 3 of the Ohio Constitution:

(H) Supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities, except as provided in this section and section 4921.05 of the Revised Code.

The commission, in the exercise of the jurisdiction conferred upon it by this chapter and Chapters 4901., 4903., 4905., 4907., 4909., and 4923. of the Revised Code, may prescribe rules affecting motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license, or permit enacted, adopted, or granted by any township, municipal corporation, municipal corporation and county, or county. In case of conflict between any such ordinance, resolution, license, or permit, the order or rule of the commission shall prevail.

Local subdivisions may make reasonable local police rules within their respective boundaries not inconsistent with those chapters and rules adopted under them.

R.C. 4921.04(H). (emphasis added).⁴ While this language is not the source of the City's inherent local regulatory authority, which flows from the Constitution, the State had recognized with the language that there was no outright preemption of local authority intended or in effect within the PUCO's existing regulatory scheme at the time R.C. 4921.25 was adopted. The State misses this point in basically arguing that the new statute "leverage[ed]existing regulatory tool to address new subject matter, as opposed to creating an entirely new legislative scheme..." (State's Memorandum at p.1). Such argument fails to recognize that the new statute was doing more than just leveraging an existing regulatory scheme. R.C. 4921.25 seeks in contrary fashion to bootstrap a

⁴ R.C. 4921.04 has been subsequently repealed by Am. Sub. H.B. 487. R.C. 4921.05 was also repealed. This statute had established the need for the consent of municipal corporations within the context of the regulation of motor transportation companies carrying passengers whose complete ride is within the municipality or includes the territorial limits of contiguous municipal corporations.

preemption not otherwise found in the Chapter. The General Assembly's targeted preemption on long-standing local regulation of tow trucks does not "leverage" existing regulations, it seeks to withdraw local home rule authority in a manner not otherwise suggested by the MTC regulatory scheme to which it was joined.

The State understands that regulation of tow truck operators has historically been local. (State's Memorandum at p. 4). It was well established and long recognized at the time R.C. 4921.25 was enacted that "[t]he Public Utilities Commission should at all times give due consideration to local conditions, which are best known to municipal authorities." *Nelsonville v. Ramsey* 113 Ohio St. 217, 225, 148 N.E. 694 (1925). The General Assembly in attempting to authorize tow truck operators to disregard "*any ordinance, rule, or resolution of a municipal corporation*" addressing the "*regulation of entities that tow motor vehicles*" not only dispensed with "due consideration to local conditions" but also dispensed with the required recognition of the conflict standard established in Ohio's Home Rule Amendment, and previously recognized in R.C. 4921.04.

The City does not dispute the State's representation that after the enactment of R.C. 4921.25 "the same regulations in the Ohio Administrative Code that govern the operation of for-hire motor carriers...apply to vehicle towing companies." However, as R.C. 4921.04(H) made clear, the "existing framework" when R.C. 4921.25 was adopted recognized that the City and other municipalities would be allowed to supplement the OAC with local, non-conflicting regulations for regulated MTC's. The preemption exception crafted solely for tow truck operators with R.C. 4921.25 was clearly outside the

“existing framework” governing MTC’s and indeed, the effect is that tow trucks are not regulated in the same fashion as the scheme otherwise contemplated for MTC’s.

The Eighth District in applying the *Canton* analysis to R.C. 4921.25 found the statute was not a general law and that the provision “is not part of a larger regulatory scheme for tow truck operators.” *Cleveland v. State*, 2012 -Ohio- 3572, 974 N.E.2d 123, ¶ 39 (8th Dist.). The appellate court correctly recognized that the statute is “simply a limit on the legislative powers of municipal corporations to adopt and enforce specified police regulations.” *Id.*, quoting *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999). No substantive constitutional question remains to be resolved, and it is without question that the Eighth District in striking down the preemption contained in R.C. 4921.25 properly applied the governing law to a clearly unconstitutional attempt to preempt the City’s home rule authority.

III. ARGUMENT IN SUPPORT OF APPELLEE’S POSITION

Appellant State of Ohio’s Proposition of Law No. 1:

Because R.C. 4921.25 is part of a comprehensive, statewide legislative framework that regulates tow truck operations, it is a general law that displaces municipal tow truck ordinances.

Appellee City of Cleveland’s Position concerning Appellant’s Proposition of Law:

The Eighth District Court of Appeals properly applied the general law test established in *Canton v. State of Ohio* in concluding that R.C. 4921.25 (formerly R.C. 4921.30) is not a general law as would displace local Authority to regulate established under Article XVIII, Section 3 of the Ohio Constitution.

- A. It was well recognized prior to the adoption of R.C. 4921.25 that the City and other local subdivisions had the authority to make reasonable local police regulations relating to motor transportation companies so long as the local regulations did not conflict with the PUCO’s regulations.**

The PUCO’s entire authority and power is conferred by statute. *New York Cent.*

R. Co. v. Public Utilities Commission, 123 Ohio St. 370, 175 N.E. 596 (1931), (syllabus). This Court “has consistently recognized that the Public Utilities Commission is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute.” *Pike Natural Gas Co. v. Public Utilities Commission of Ohio*, 68 Ohio St.2d 181, 183, 429 N.E.2d 444 (1981). The State can not delegate more authority to the PUCO (e.g. express preemption over local tow truck regulations) than the State has under the Ohio Constitution. The General Assembly has no power to declare a public policy that conflicts with the Constitution. *Stange v. City of Cleveland*, 94 Ohio St. 377, 380, 114 N.E. 261 (1916). Simply put, the State has no authority to delegate all encompassing preemptive authority to the PUCO as was attempted with R.C. 4921.25.

As noted above, the City has ordinances that regulate tow truck companies in the exercise of its police authority under the Home Rule Amendment at Chapter 677A of the City’s Codified Ordinances. By way of example, CCO 677A.11 provides the following:

CCO 677A.11 Responding to the Scene of an Accident

No person licensed under Section 677A.02, or any of his agents or employees, shall respond to the scene of an accident unless either summoned by a person having a direct interest in the vehicle or vehicles involved or dispatched thereto as provided in the rules and regulations promulgated by the Director of Public Safety pursuant to Chapter 135.

It goes without saying that by regulating the response of tow trucks to an ongoing accident scene that the local ordinance is serving a local public safety interest. No comparable state statute or regulation of tow trucks exists and there would be no conflict in the absence of preemption. The State’s evident lack of comprehensive tow truck specific laws affects public safety and points up the incomplete and improper nature of the intended preemption of all local authority contained in R.C. 4921.25.

The attempted preemption in R.C. 4921.25 further disregards that R.C. Chapter 4921 had been well understood to allow for reasonable local police regulations:

Under R.C. Chapter 4921, local subdivisions may make reasonable local police regulations relating to motor transportation companies so long as the local regulations are not inconsistent with the authority of the PUCO. R.C. 4921.04(H) and 4921.25. In interpreting the balance between local police regulations and the authority of the PUCO, the Ohio Supreme Court has stated that local police regulations “should be reasonable in character and not designed to nullify and set aside the orders of the Public Utilities Commission by materially interfering with the efficiency of the utility as authorized by the Public Utilities Commission.” *Nelsonville v. Ramsey* (1925), 113 Ohio St. 217, 225, 148 N.E. 694, 696 (applying G.C. 614-86 [110 Ohio Laws 214], predecessor to R.C. 4921.04). See, also, *Lorain St. Rd. Co. v. Pub. Util. Comm.* (1925), 113 Ohio St. 68, 69, 148 N.E. 577, 577.

Coventry Twp. v. Ecker, 101 Ohio App.3d 38, 43-44, 654 N.E.2d 1327 (9th Dist. 1995).

The General Assembly disregarded the long recognized local/state balance in the regulation of MTC’s. Merely adding tow trucks to the MTC regulatory mix and a preemption on local authority exhibits a misunderstanding of the public safety issues presented by the intended preemption of all local tow truck laws

B. The Eighth District correctly applied *Canton* in holding that the Preemption language incorporated in R.C. 4921.25 is not a General Law Under Article XVIII, Section 3 of the Ohio Constitution

In *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, the Court held that “[a] state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute,⁵ (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.” *Id.* at ¶ 9. (emphasis added). There is no dispute that most if not all of the City’s ordinances in Chapter 677A regulating tow truck operators are correctly identified as an exercise of the

⁵ Clearly, the conflict arises with the State’s acknowledged intention to preempt all local tow truck regulations not by virtue of specific identified conflict.

City's police power. The central issue, therefore, relates to step three of the *Canton* analysis: is R.C. 4921.25 a general law? Statutes that do not constitute a general law, but that are intended to limit municipal legislative home rule powers "violate the Home-Rule Amendment, Section 3, Article XVIII, Ohio Constitution and, as such, must be struck down as unconstitutional." See *Canton* at ¶¶10-11. The Eighth District correctly concluded that the intended preemption is not a general law under the *Canton* test.

In *Canton* the Court formalized a four-part test that has been subsequently recognized and used by the Courts in determining whether a state statute would constitute a "general law" for purposes of an Article XVIII, Section 3 Home Rule analysis. Under *Canton* a statute will be recognized as a general law for purposes of home rule conflict analysis only where the provision: (1) is part of a statewide and comprehensive legislative enactment; (2) applies to all parts of the state alike and operates uniformly throughout the state; (3) sets forth police, sanitary, or similar regulations, rather than granting or limiting municipal legislative power; and (4) prescribes a rule of conduct upon citizens generally. *Id.* at ¶ 2. A statute that fails to meet any one of the four conditions established in *Canton* will not be recognized as a general law. *Id.* at ¶ 21.

(1) RC 4921.25's preemption language is not comprehensive and falls outside of the comprehensive PUCO scheme established to regulate MTC's.

The first prong of the *Canton* general law test requires that the statutory language being challenged be part of a statewide and comprehensive legislative enactment. The State describes that "[t]o be sure, the regulations that now govern towing predate R.C. 4921.25, and rather than create a new legislative scheme, the General Assembly chose to include the tow trucks within that existing regulatory framework." (State's Memorandum at p. 11). As discussed above, the identified "existing regulatory framework" for MTC's

had always contemplated reasonable local regulation. The General Assembly's adoption of R.C. 4921.25 established no comprehensive program beyond the inclusion of tow trucks into an existing PUCO scheme that recognized and contemplated the existence of reasonable local regulations. The Eighth District found under the circumstances there was no comprehensive tow truck scheme justifying the preemption of local authority:

Similarly, in this matter, although there has been considerable state and federal regulation of motor carriers, there has not been a comprehensive legislative enactment with respect to tow truck enterprises. To date, the legislature has not set forth a comprehensive plan or scheme for the licensing, regulation, or registration of tow truck enterprises. Instead, the existing scheme pertains to for-hire motor carriers and adopts federal safety regulations. This absence of a comprehensive scheme for tow truck operations stands in stark contrast with the detailed, comprehensive scheme through which the City sought, through its police powers, to regulate tow truck operations under CCO 677A. We therefore cannot infer an intent to preempt local legislation based upon broad regulatory enactment in this field. Accordingly, we conclude that R.C. 4921.[25] is not part of a statewide and comprehensive legislative enactment.

Cleveland v. State, at ¶ 34.

The clear lack of an enacted comprehensive tow truck regulatory scheme that can be differentiated from the PUCO's existing MTC regulations clearly distinguishes R.C. 4921.25 from the State's citation to *Ohio Assn. of Private Detective Agencies v. North Olmsted*, 65 Ohio St.3d 242, 602 N.E.2d 1147 (1992), *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 442 N.E.2d 1278 (1982), and *Cleveland v. State*, 128 Ohio St.3d 135, 2010 -Ohio- 6318, 942 N.E.2d 370

In *Ohio Assn. of Private Detective Agencies* this Court conducted a "conflict analysis" in determining that a challenged statutory prohibition on local licensing fees did not conflict with Article XVIII, Section 3. The Court concluded that R.C. Chapter 4749 "in its entirety does provide for uniform statewide regulation of security personnel" and that "[a]ccordingly, R.C. 4749.09 must be considered a general law of statewide

application.” *Id.* at 245. R.C. Chapter 4749 did not attempt, however, to preempt all local authority. R.C. 4749.09 further mandated that a regulated licensee “who operates in a municipal corporation that provides by ordinance for the licensing, registering, or regulation of private investigators, security guard providers, or their employees *shall conform to those ordinances insofar as they do not conflict with this chapter.*” (emphasis added). The State’s reliance on *Clermont* is likewise misplaced. In *Fondessy Ents., Inc. v. Oregon*, 23 Ohio St.3d 213, 492 N.E.2d 797 (1986), the Court addressed its earlier decision and made clear that *Clermont* had not endorsed statutory preemption of municipal authority contrary to Article XVIII, Section 3. See *Fondessy*, discussion at pp. 215-216. *Fondessy* makes clear that statutory language “cannot be employed to nullify the police power granted ...[cities]...by the Home Rule Amendment.” *Id.* at 217.

In *Cleveland v. State*, 128 Ohio St.3d 135, 2010 -Ohio- 6318, 942 N.E.2d 370 this Court in upholding the restriction on local authority concerning firearm regulations contained in R.C. 9.68 explicitly recognized the continuing existence of the constitutional “conflict” standard in lieu of preemption. *Id.* at ¶ 12. Unlike the various firearm statutes addressed and cited to in *Cleveland* in finding R.C. 9.68 was part of a comprehensive scheme to regulate firearms, there are no statutes or administrative code provisions specifically regulating tow trucks in a fashion that would support preemption of local tow truck laws. The tow truck preemption statute is not part of a comprehensive scheme and the General Assembly has improperly sought to eliminate non-conflicting local laws that clearly address local public safety issues and concerns.

(2) The Eighth District considered the need for uniformity as required by the *Canton* general law analysis.

In testing whether the tow truck preemption provision provided for uniformity

as would be required under the second prong of the *Canton* general law test, the Eighth District found as follows:

Likewise, in this matter, ...[R.C. 4921.25] ...does not apply to private tow companies or otherwise include them in the PUCO regulatory scheme for for-hire motor carriers. The exclusion for private tow truck enterprises defeats the claimed statewide concern of generally regulating tow truck enterprises, because it permits that which the statute prohibits. This exclusion is therefore inconsistent with the statute's purpose of providing uniform regulation throughout the state. As was the case in *Canton*, regulation imposed upon public for hire tow truck operators is not applicable to private tow truck enterprises and arbitrarily permits disparate rules and regulations regarding those companies. Accordingly, we find that ...[R.C. 4921.25] ...does not have uniform operation throughout the state.

Cleveland v. State, 2012 -Ohio- 3572, ¶ 38

- (3) **R.C. 4921.25's preemption improperly attempts to limit municipal legislative authority and the Eighth District properly concluded that the statute failed the third prong of the *Canton* general law analysis.**

The Eighth District properly understood that R.C. 4921.25 fails the third part of the *Canton* test when the General Assembly only seeks to limit local legislative authority:

Proceeding to the third prong of the general law test outlined in *Canton*, we next consider whether...[R.C. 4921.25]...sets forth police, sanitary, or similar regulations; or, instead, simply purports only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations. Again, the legislature has not established police regulations for the operation of tow truck enterprises, and the ...[R.C. 4921.25]...preemption provision is not part of a larger regulatory scheme for tow truck operators. That is, in the years following the enactment of...[R.C. 4921.25], no other statutory provisions have been enacted to address such enterprises, and there is no clear indication that tow truck regulation is indeed a matter of such general interest that it is necessary to make it subject to statewide control. Like R.C. 4549.17, which was deemed unconstitutional in *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227, ...[R.C. 4921.25]... is "simply a limit on the legislative powers of municipal corporations to adopt and enforce specified police regulations." Therefore, we conclude that the preemption language simply curtails the City's police powers in this area and does not meet the third element of the *Canton* test.

Id. at ¶ 39. While R.C. Chapter 4921 sets forth police regulations, the insertion of isolated preemptive language that applies only to tow trucks, and not the other MTC's

being regulated by the Chapter is telling in this regard. The State's reference to an apparent "plain as day" standard (see State's memorandum at p. 13) for finding police regulation has no application in the context of tow truck specific laws. R.C. Chapter 4921 and the administrative regulations referenced therein, along with the existing statutory recognition of reasonable local regulations, predated the General Assembly's adoption of R.C. 4921.25. The existing scheme is clearly at odds with the unrelated, outlying preemption provision. R.C. 4921.25 presents no context for finding other than it was intended as a limit on municipal legislative authority – for tow trucks alone. The OAC provisions cited by the State at page 13 apply to all MTC's, not just tow trucks. The palpable legislative disdain for local authority evident in the language of R.C. 4921.25 was not a part of and unrelated to the PUCO's long standing regulation of MTC's.

(4) The Eighth District correctly concluded that R.C. 4921.25's preemption language does not prescribe a rule of conduct upon citizens generally.

The fourth prong of the *Canton* test requires that a general law must prescribe a rule of conduct upon citizens generally. In conjunction with the analysis undertaken of the first three *Canton* requirements, it is without serious question that the Eighth District correctly found the statute fails to prescribe a rule of conduct upon citizens generally:

In determining whether...[R.C. 4921.25]... prescribes a rule of conduct upon citizens generally, we conclude that it is not a part of a system of uniform statewide regulation on the subject of tow truck operation. It is a statute that simply provides that municipalities, counties, and townships may not license, register, or regulate entities that tow motor vehicles; it does not prescribe a rule of conduct upon citizens generally. Accordingly, the fourth element of the *Canton* test is not met.

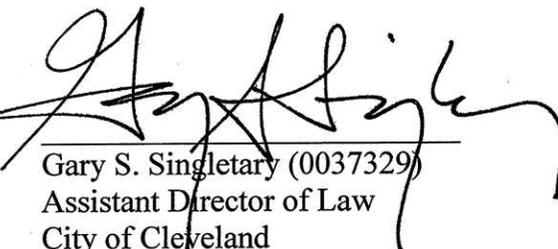
Id. at ¶ 41. It is evident that the preemption language employed by R.C. 4921.25 does not prescribe a rule of conduct upon citizens generally. The expressed preemption was contrary to and inconsistent with the authority provided in R.C. Chapter 4921.

IV. CONCLUSION

The limited and expressed preemption language contained in R.C. 4921.25 is outside the recognized regulatory scheme for Ohio motor transportation companies established at R.C. Chapter 4921. The Eighth District properly analyzed the provision under the four part general law test established in *Canton*. The court properly concluded that R.C. 4921.25 is not a general law and the attempted preemption of local authority violates Ohio's Home Rule Amendment. The City would request that this Court deny jurisdiction and uphold the Eighth District's decision that the preemption of local authority contained in R.C. 4921.25 is unconstitutional.

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CERTIFICATE OF SERVICE

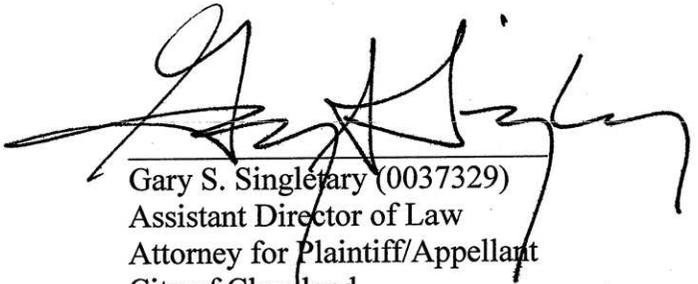
A true copy of the foregoing "Appellee City of Cleveland's Memorandum in Opposition to Defendant-Appellant State of Ohio's Memorandum in Support of Jurisdiction" was duly served by regular U.S. Mail, postage prepaid, this 23rd day of October, 2012, upon:

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