

In the
Supreme Court of Ohio

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

MERIT BRIEF OF DEFENDANT-APPELLANT STATE OF OHIO

BARBARA A. LANGHENRY (0038838)
Interim Director of Law

MICHAEL DEWINE (0009181)
Attorney General of Ohio

GARY S. SINGLETARY* (0037329)
Assistant Director of Law
**Counsel of Record*
City of Cleveland
601 Lakeside Avenue
Room 106
Cleveland, Ohio 44114-1077
216-664-2737
216-664-2663 fax
gsingletary@city.cleveland.oh.us

ALEXANDRA SCHIMMER* (0075732)
Solicitor General
**Counsel of Record*

MATTHEW P. HAMPTON (0088784)
Deputy Solicitor
PEARL M. CHIN (0078810)
Associate Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Plaintiff-Appellee
City of Cleveland

Counsel for Defendant-Appellant
State of Ohio

DAVID A. FERRIS (0059804)
The Ferris Law Group LLC
6797 N. High Street, Suite 214
Worthington, Ohio 43085
614-844-4777
614-844-4778 fax
dferris@ferrislawgroup.com

Counsel for *Amicus Curiae*
Towing & Recovery Association of
Ohio, Inc.

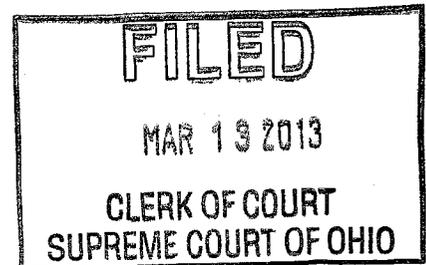


TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	2
A. In 2003, the General Assembly included towing companies in Ohio’s regulatory regime governing motor carriers that transport property.....	2
B. As for-hire motor carriers, towing companies are subject to comprehensive, statewide regulation administered and enforced by PUCO.	4
C. Following the enactment of R.C. 4921.25, the City of Cleveland continued to enforce its municipal towing ordinances.	7
D. The City of Cleveland sought a declaration that R.C. 4921.25 is unconstitutional; the trial court upheld the statute, but the Eighth District reversed and invalidated the law on home-rule grounds.	7
ARGUMENT	9
<u>Appellant State of Ohio’s Proposition of Law:</u>	
<i>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.....</i>	9
A. R.C. 4921.25 is part of a statewide, comprehensive legislative enactment governing towing.	12
B. The State’s towing regulations operate uniformly throughout Ohio.	19
C. The State’s towing regulations are an exercise of the police power.....	20
D. The State’s towing regulations prescribe a rule of conduct upon citizens generally.....	21
CONCLUSION.....	22
CERTIFICATE OF SERVICE	unnumbered

APPENDIX:

Notice of Appeal, September 24, 2012.....	Exhibit A
Judgment and Opinion, Eighth Appellate District Court of Appeals, August 9, 2012.....	Exhibit B
Journal Entry and Opinion, Cuyahoga County Common Pleas Court, November 15, 2011.....	Exhibit C
Ohio Const. Article XVIII, § 3	Exhibit D
R.C. 4921.25	Exhibit E
R.C. 4905.80	Exhibit F
R.C. 4905.81	Exhibit G
Cleveland Codified Ordinances Chapter 677A	Exhibit H

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Am. Fin. Servs. Ass'n v. City of Cleveland</i> , 112 Ohio St. 3d 170, 2006-Ohio-6043.....	<i>passim</i>
<i>City of Canton v. State</i> , 95 Ohio St. 3d 149, 2002-Ohio-2005.....	<i>passim</i>
<i>City of Cleveland v. State</i> , 128 Ohio St. 3d 135, 2010-Ohio-6318.....	18, 20
<i>City of Cleveland v. State</i> , No. 97679, 2012-Ohio-3572 (8th Dist.).....	<i>passim</i>
<i>City of Columbus v. Ours Garage & Wrecker Serv., Inc.</i> , 536 U.S. 424 (2002).....	3, 4
<i>Clermont Envtl. Reclamation Co. v. Wiederhold</i> , 2 Ohio St. 3d 44 (1982).....	17, 20
<i>Mendenhall v. City of Akron</i> , 117 Ohio St. 3d 33, 2008-Ohio-270.....	10
<i>Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted</i> , 65 Ohio St. 3d 242 (1992).....	13, 17, 20, 21
<i>Ohioans for Concealed Carry, Inc. v. City of Clyde</i> , 120 Ohio St. 3d 96, 2008-Ohio-4605.....	<i>passim</i>
<i>State ex rel. McElroy v. City of Akron</i> , 173 Ohio St. 189 (1962).....	13, 14
FEDERAL STATUTES, RULES AND CONSTITUTIONAL PROVISIONS	
49 C.F.R. Part 382.....	6
49 C.F.R. Part 391.....	6, 15
49 C.F.R. Part 395.....	6
49 C.F.R. Part 396.....	6
STATE STATUTES, RULES AND CONSTITUTIONAL PROVISIONS	
110 Ohio Laws 214 (1923)	2

148 Ohio Laws 6577 (2000)	3
148 Ohio Laws 6583 (2000)	3
150 Ohio Laws 157 (2003)	3
Ohio Adm. Code 4901:2-1-01	6, 7, 16
Ohio Adm. Code 4901:2-1-03	6, 16
Ohio Adm. Code 4901:2-5-01 to -15	6, 16
Ohio Adm. Code 4901:2-5-02	6
Ohio Adm. Code 4901:2-5-03	15
Ohio Adm. Code 4901:2-5-04	6
Ohio Adm. Code 4901:2-7-01 to -22	7
Ohio Adm. Code 4901:2-13-01 to -11	5, 16
Ohio Adm. Code 4901:2-21-01 to -09	5, 16
Ohio Const. Article XVIII, Section 3	9
R.C. 4905.80	5, 12
R.C. 4905.81	5, 12, 13
R.C. 4921.03	5, 15, 16
R.C. 4921.09	5, 16
R.C. 4921.19	5, 15, 16
R.C. 4921.25	<i>passim</i>
R.C. 4923.01	2, 3
R.C. 4923.03	3
R.C. 4923.04	7, 16
R.C. 4923.06	7, 16
R.C. 4923.99	7, 16

MUNICIPAL ORDINANCES

Akron Code of Ordinances 111.59114

Akron Code of Ordinances 111.59214, 15

Cleveland Codified Ordinances 677A.027, 15

Cleveland Codified Ordinances 677A.037, 15

Cleveland Codified Ordinances 677A.097, 14

Cleveland Codified Ordinances 677A.107, 14

Cleveland Codified Ordinances 677A.127

Cleveland Codified Ordinances 677A.137

Cleveland Codified Ordinances 677A.14 to .237, 15

Mansfield Codified Ordinances 763.0215

Mansfield Codified Ordinances 763.1214

Mansfield Codified Ordinances 763.1314

Mansfield Codified Ordinances 763.1415

Youngstown Codified Ordinances 343.0215

Youngstown Codified Ordinances 343.0315

Youngstown Codified Ordinances 343.0714

Youngstown Codified Ordinances 343.0815

INTRODUCTION

In Ohio, the Public Utilities Commission of Ohio (“PUCO”) regulates motor carriers—entities engaged in the motorized transport of goods and people. Before 2003, towing companies were exempt from these regulations. But that changed with the enactment of R.C. 4921.25 (formerly R.C. 4921.30) (the “towing law”), App’x Exh. E, which subjected towing companies to regulation as “for-hire motor carriers” and prohibited municipal ordinances concerning the “licensing, registering, or regulation” of towing.

In 2009, the City of Cleveland, which has its own towing regulations, filed suit, seeking a declaration that the towing law violates the Home Rule Amendment of the Ohio Constitution. The trial court granted summary judgment to the State, but the Eighth District Court of Appeals reversed 2-1, concluding that the towing law failed the four-part general law test outlined in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005. This Court should reverse the judgment below.

The towing law and its limit on municipal regulation are integral to the General Assembly’s plan for uniform, statewide regulation of towing and easily meet the four-part test outlined in *Canton*. *One*: The towing law is undeniably part of a comprehensive, statewide enactment governing towing. And the extensive regulations now governing towing companies clearly demonstrate the comprehensive nature of that plan. *Two*: Because the towing law (along with the other towing regulations) applies to all parts of the State alike, which the City does not dispute, it meets *Canton*’s uniformity requirement. *Three*: The towing law—as part of the General Assembly’s statutory framework regulating towing—sets forth police regulations and thus does more than limit local legislative authority. *Four*: For much the same reason (*i.e.*, it is part of the comprehensive regulation of towing), the towing law prescribes a rule of conduct

upon citizens generally—those wishing to offer for-hire towing services—and thus satisfies *Canton*'s final prong.

In reaching a contrary conclusion, the Eighth District applied a novel test, grafting onto the general law test new requirements that are incompatible with the analysis required by this Court's home-rule cases. Two aspects of the State's towing regulations drove the Eighth District's conclusion: 1) the General Assembly failed to adopt *towing-specific regulations* and instead extended the existing system of for-hire motor carrier regulations to towing companies and 2) the towing regulations apply differently to "for-hire" and "private" towing companies and are thus non-uniform. But these observations do not alter the fact that the towing law is a general law. It plainly is part of a comprehensive regulatory scheme governing towing, and nothing in this Court's home-rule cases permit the Eighth District to sweep away that reality simply because it disagrees with the General Assembly's chosen regulatory solution. As to the Eighth District's second criticism, *Canton* demands *geographic*, not *regulatory*, uniformity. And geographic uniformity is exactly what the towing law provides.

For these and the other reasons below, this Court should conclude that the towing law is a general law and reverse the judgment below.

STATEMENT OF THE CASE AND FACTS

A. In 2003, the General Assembly included towing companies in Ohio's regulatory regime governing motor carriers that transport property.

Statewide regulation of motor carriers has a long history in Ohio, and PUCO has overseen that regulatory system since 1923. *See* 110 Ohio Laws 214-15 (1923), G.C. 614-86. The current statutory framework is set out primarily in Chapters 4921 and 4923 of the Ohio Revised Code, and it divides motor carriers into two categories: "for-hire motor carriers" and "private motor carriers." *See* R.C. 4923.01(C). "For-hire" carriers are in the business of

“transporting persons or property by motor vehicle *for compensation.*” R.C. 4923.01(B) (emphasis added). “Private motor carriers” conduct mostly the same activities but for proprietary purposes. R.C. 4923.03(D). The State regulates safety for all motor carriers, but for-hire motor carriers are subject to more extensive oversight.

Until 2003, towing companies were exempt from these motor-carrier regulations—the for-hire and private regimes alike. *See* 148 Ohio Laws 6577 (2000), R.C. 4921.02(A)(8) (effective Sept. 1, 2000); 148 Ohio Laws 6583 (2000), R.C. 4923.02(A)(10) (effective Sept. 1, 2000). Towing companies were regulated, if at all, at the local level. And historically, such local regulation made sense, as most towing enterprises operated only in a small geographic area, often as little more than an ancillary service provided by a mechanic or filling station. *See* John Hawkins II, *The World History of the Towing & Recovery Industry* 278 (1989).

But that model has changed dramatically, as many towing companies now operate across municipal and state lines. Hence the General Assembly’s decision in 2003 to include towing companies in the State’s regulatory regime governing motor carriers. *See* Am. Sub. H.B. 87 § 1, 150 Ohio Laws 157-58 (2003) (enacting R.C. 4921.30).

There is also no doubt that a 2002 case from Ohio in the United States Supreme Court shined a spotlight on the many problems posed by the patchwork of municipal towing laws around Ohio. In *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424 (2002), a towing company and a towing trade group challenged the City of Columbus’s towing ordinances, arguing that federal law preempted municipal towing regulations. *Id.* at 430-31. Ultimately, the towers lost; the Supreme Court ruled that federal law was no obstacle to State and local regulations concerning motor-carrier (including tow-company) safety. *Id.* at 432-42. Nonetheless, the case drew attention to the towing industry’s evolution “[f]rom its origins as a

quintessentially local service” to an intrastate and interstate industry, and to the considerable challenges posed by subjecting towing companies to a patchwork of municipal regulations. *See* Brief for Respondents, *Ours Garage*, 536 U.S. 424 (2002) (No. 01-419), 2002 U.S. S. Ct. Briefs LEXIS 199 at **13-22. The respondents and their amici explained how the notion of vehicle-towing as a local service “is antiquated and no longer accurate.” Brief of Amicus Curiae Towing and Recovery Association of America in Support of Respondents, *Ours Garage*, 536 U.S. 424 (2002) (No. 01-419), 2002 U.S. S. Ct. Briefs LEXIS 194 at **1-8. Instead, today’s towing industry consists of “multi-million dollar transportation companies conducting business in many jurisdictions.” *Id.* at **4-5. “[T]ow-truck operations have necessarily become multi-jurisdictional, often traveling many miles through numerous jurisdictions in the course of a single tow.” *Id.* at **6.

The legal landscape in Ohio changed the very year after *Ours Garage* called national attention to the difficulties presented by the municipal regulation of towing. The Ohio General Assembly enacted Am. Sub. H.B. No. 87 to bring towing companies into the State’s uniform regulatory regime governing motor carriers and to displace most municipal towing regulations. *See* R.C. 4921.25 (formerly R.C. 4921.30 renumbered by Am. Sub. H.B. 487 (2012)) (stating that towing companies would now be regulated “by the public utilities commission as . . . for-hire motor carrier[s]” and that such companies are “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.”).

B. As for-hire motor carriers, towing companies are subject to comprehensive, statewide regulation administered and enforced by PUCO.

As articulated by the General Assembly, the reasons for regulating motor carriers, including tow companies, are: to promote “safe conditions” in these operations; to ensure “safe

and secure service . . . without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices”; to maintain a “highway transportation system properly adapted to the needs of commerce and the state”; to ensure coordination between motor carriers and other carriers; and to ensure regulatory coordination with other States, the federal government, and the regulated community. R.C. 4905.80, App’x Exh. F.

To achieve those goals, the General Assembly created a comprehensive statutory framework for motor carriers, including towing companies, and gave a single state agency, PUCO, authority to supervise and regulate them. R.C. 4905.81(A), App’x Exh. G. The General Assembly also made clear, in multiple ways, its intent to displace most municipal regulations on the same subjects. *See* R.C. 4905.81(G) (PUCO “shall . . . [s]upervise and regulate motor carriers in *all other matters* affecting the relationship between those carriers and the public *to the exclusion of all local authorities.*”) (emphases added); *see also id.* (PUCO “may adopt rules affecting motor carriers, notwithstanding the provisions of any ordinance, resolution, license, or permit enacted, adopted, or granted by” a municipal authority; and “[i]n case of conflict, . . . the order or rule of the commission shall prevail.”)

Having been brought into the motor-carrier regulatory regime, towing companies are therefore subject to comprehensive state regulation. Like all for-hire motor carriers, towing companies operating in intrastate commerce in Ohio must register annually with PUCO and obtain a “certificate of public convenience and necessity.” R.C. 4921.03; *see also* Ohio Adm. Code 4901:2-21-01 to -09 (PUCO rules implementing annual registration process). They must pay a per-vehicle fee for each annual registration period. R.C. 4921.19(A). They must demonstrate financial responsibility through proof of adequate insurance or a surety bond. R.C. 4921.09; *see also* Ohio Adm. Code 4901:2-13-01 to -11 (PUCO rules on financial

responsibility). They must maintain “accurate and adequate records of [their] business and operations . . . , including bills of lading, freight bills, manifests, invoices, receipts and trip sheets or drivers’ logs . . . for a period of three years.” Ohio Adm. Code 4901:2-1-03. And those records must, upon request, be made available to PUCO for inspection and copying. *Id.* 4901:2-1-01.

Towing companies must also comply with a panoply of safety regulations. *See generally* Ohio Adm. Code 4901:2-5-01 to -15. These include both Ohio-specific requirements and federal requirements established by the U.S. Department of Transportation and adopted by PUCO. *See* Ohio Adm. Code 4901:2-5-02 (adopting federal motor-carrier regulations). These state-adopted federal requirements include:

- Maintaining a driver-qualification file for each driver they use, as required by 49 C.F.R. Part 391;
- Complying with hours-of-service regulations and maintaining log books for a period of six months, as required by 49 C.F.R. Part 395;
- Keeping maintenance and driver-safety records and completing repairs of safety items before the commercial motor vehicle may be dispatched again, as required by 49 C.F.R. Part 396;
- Conducting annual vehicle inspections and maintaining inspection records, as required by 49 C.F.R. Part 396;
- Conducting alcohol and drug testing, as required by 49 C.F.R. Part 382.

The State’s regulatory regime also establishes qualifications and medical certification procedures for drivers. *See* Ohio Adm. Code 4901:2-5-04. And if warranted following an inspection, PUCO may declare vehicles or drivers unfit and place them “out of service.” *Id.* 4901:2-5-07. Towing companies must also place certain identifying markings on their vehicles or use mud flaps if their vehicles exceed a specified weight limit. *Id.* 4901:2-5-08 & -10.

Finally, towing companies are subject to PUCO's broad investigative and enforcement powers. PUCO may seek search warrants or compel the production of documents and testimony. *See* R.C. 4923.04(C). The agency has safety inspection authority. R.C. 4923.06; *see also* Ohio Adm. Code 4901:2-1-01. And it may assess civil penalties or seek an injunction to remedy regulatory infractions. R.C. 4923.99; *see also* Ohio Adm. Code 4901:2-7-01 to -22.

C. Following the enactment of R.C. 4921.25, the City of Cleveland continued to enforce its municipal towing ordinances.

In 1981, the City of Cleveland adopted a series of ordinances covering towing operations. *City of Cleveland v. State*, No. 97679, 2012-Ohio-3572, ¶ 2 (8th Dist.) (“App. Op.”), App’x Exh. B; *see also* Cleveland Codified Ordinances Chapter 677A, App’x Exh. H. These ordinances impose a variety of requirements upon towing companies operating within the City—requirements that differ from yet cover the same subject matter as state regulations. Under the City’s ordinances, companies must obtain a license from the City and pay a registration fee to the City, *id.* 677A.02 & .03, and they must comply with other City requirements concerning insurance, *id.* 677A.09, vehicle identification, *id.* 677A.10, recordkeeping, *id.* 677A.12 & .13, and driver licensing and qualifications, *id.* 677A.14 to .23. *See also* App. Op. ¶ 2 (summarizing the City’s ordinances). The City has continued to enforce its ordinances even after enactment of the State’s towing law.

D. The City of Cleveland sought a declaration that R.C. 4921.25 is unconstitutional; the trial court upheld the statute, but the Eighth District reversed and invalidated the law on home-rule grounds.

In 2009, the City sued the State, seeking a declaration that the towing law violates the Home Rule Amendment. Applying this Court’s general law test outlined in *Canton*, the trial court granted summary judgment to the State, concluding that R.C. 4921.25 “is a general law that does not infringe on the City of Cleveland’s home rule authority.” Journal Entry and Op. 2,

Nov. 15, 2011, App'x Exh. C. Specifically, the court found the towing law was part of R.C. Chapter 4921, “which constitutes a statewide and comprehensive legislative enactment to further state policy and confers upon PUCO the power and authority to supervise and regulate” for-hire motor carriers and “applies to all parts of the state alike and operates uniformly through the state.” *Id.* And, the court concluded, the towing law, “by its language,” “is directed to towing entities and not to any legislative body” and “does not grant or limit any municipality’s legislative power.” *Id.*

The City appealed, and the Eighth District reversed in a 2-1 decision, concluding that the towing law failed the *Canton* test. App. Op. ¶ 42. According to the majority, R.C. 4921.25 is not a general law because it is not part of a comprehensive, statewide scheme governing tow truck operators. This is so, in the Eighth District’s view, because there was no legislative plan enacted specifically for tow truck enterprises. App. Op. ¶ 34. Instead, the General Assembly added tow truck operators to the “existing scheme” that “pertains to for-hire motor carriers.” *Id.* And although the City never argued that the towing law failed *Canton*’s second prong—the uniformity requirement—the majority nonetheless concluded that the regulations applicable to towing were non-uniform. App. Op. ¶¶ 35-38. Finally, applying the same reasoning that drove its conclusion that the towing law is not part of a comprehensive, statewide enactment, the majority concluded that the towing law failed *Canton*’s third and fourth prongs. App. Op. ¶ 39 (Because the General Assembly has not “established police regulations for the operation of tow truck enterprises,” the towing law is merely an improper limit on local police power.); App. Op. ¶ 41 (The towing law does not “prescribe[] a rule of conduct upon citizens generally” because “it is not a part of a system of uniform statewide regulation” of towing.).

In dissent, Judge Cooney noted that a requirement that the towing regulations be “newly enacted” and “specifically tow truck regulations” in order to satisfy *Canton*’s statewide-comprehensive-enactment prong appears nowhere in *Canton*. App. Op. ¶ 47 (Cooney, J., dissenting). And heeding this Court’s command to consider the entire statutory framework, the dissent concluded that the State’s towing law, along with the other statutes and rules governing for-hire motor carriers, is “an undisputed statewide legislative enactment.” *Id.* ¶ 48. The dissent also found that the State’s towing law meets the remaining three prongs of the general law test and therefore concluded that “the City failed to meet its burden of showing beyond a reasonable doubt that the Uniform Towing Law violated the Ohio Constitution.” *Id.* ¶¶ 50-58.

The State appealed, and this Court accepted jurisdiction. *City of Cleveland v. State*, 2013-Ohio-158.

ARGUMENT

Appellant State of Ohio’s Proposition of Law:

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.

Under the Home Rule Amendment, “[m]unicipalities shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such police, sanitary and other regulations, as are not in conflict with general laws.” Ohio Const. Article XVIII, Section 3, App’x Exh. D. But this grant of legislative authority is not absolute. Although it gives municipalities the “broadest possible powers of self-government in connection with all matters which are *strictly* local,” the Home Rule Amendment was never intended to “impinge upon matters which are of a state-wide nature or interest.” *Am. Fin. Servs. Ass’n v. City of*

Cleveland, 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶ 30 (“*AFSA*”) (emphasis in original) (internal citation omitted).

This Court uses a familiar three-step analysis to evaluate a home-rule challenge. First, the Court asks whether the subject matter involves an exercise of local self-government or the police power. *AFSA*, 2006-Ohio-6043 ¶ 23; *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, ¶ 17. If the matter relates only to municipal self-governance, “the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.” *AFSA*, 2006-Ohio-6043 ¶ 23. But if the dispute implicates the police power (for instance, health and safety issues), then the court proceeds to step two, asking whether the disputed state statute is a “general law” under the *Canton* test. *AFSA*, 2006-Ohio-6043 ¶¶ 23-24. If the statute is a “general law,” the Court then moves to step three, asking whether the municipal ordinances conflict with the state statute. *Id.* ¶ 37. If a conflict exists, the municipal ordinances are invalid. *Id.* ¶ 48; see also *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, ¶¶ 24-26 (outlining three-part inquiry).

The first and third steps are not at issue in this case. As to the first step, the City concedes that its towing ordinances concern the “police power.” Opp. Jur. 10-11. As to the third step, no conflict analysis is needed now because the issue was never addressed below. It is a question, in the first instance, for a lower court and a different day.

The dispute between the City and the State—and the basis for the Eighth District’s decision invalidating the State’s law—pertains only to the second step of the home-rule analysis: whether the state statute is a “general” law” under the four-part *Canton* test. The State’s towing law satisfies all four prongs of that test. See *Canton*, 2002-Ohio-2005 ¶ 21.

(1) *The towing law is part of a comprehensive and statewide legislative scheme governing towing:* The General Assembly's desire for uniform, statewide regulation of towing is apparent from its decision to incorporate towing into the existing scheme governing motor carriers. And that scheme in fact comprehensively regulates towing operators. The Eighth District's contrary view—premised on its demand for newly-enacted regulations specific to towing—does not hold up. App. Op. ¶ 34. Its novel test finds no support in this Court's home-rule cases and is undercut by the reality that towing companies *are* comprehensively regulated, notwithstanding the absence of towing-*specific* regulations.

(2) *The towing law is uniform because it applies to all parts of the State alike and operates uniformly throughout the State:* The towing law is also uniform because it applies to all parts of the State alike. The Eighth District's contrary conclusion rests on a glaring departure from precedent and its failure to recognize that *Canton* prohibits geographic disparities, not regulatory classifications.

(3) *The State's towing laws set forth police, sanitary, or similar regulations rather than purport to only grant or limit municipal power:* As part of a comprehensive framework governing towing, the towing law plainly sets forth police regulations and does not merely limit local legislative authority.

(4) *The towing laws prescribe rules of conduct upon citizens generally:* The State's towing laws indisputably prescribe rules of conduct for those engaged in for-hire towing. The Eighth District's contrary conclusion was again based on its erroneous view that the towing law is not part of a broader regulatory scheme governing towing.

A. R.C. 4921.25 is part of a statewide, comprehensive legislative enactment governing towing.

Under *Canton's* first prong, the State's towing law, R.C. 4921.25, must be "part of [a] comprehensive statewide legislative regulation that relates to" towing. *AFSA*, 2006-Ohio-6043 ¶ 33. The Court has used two markers to evaluate this prong. It asks whether the General Assembly "express[ed] its intent for statewide comprehensive . . . [towing] laws." *Clyde*, 2008-Ohio-4605 ¶ 41. It also examines whether "comprehensive statewide legislative regulation" in fact exists. *AFSA*, 2006-Ohio-6043 ¶ 33.

With respect to the first marker, the General Assembly's intent in passing R.C. 4921.25 was clear: to incorporate towing into the comprehensive and uniform regulation of motor carriers, thereby creating a uniform scheme for towing itself. The General Assembly emphasized that "[t]he policy of this state is to" regulate motor carriers, including towing companies, so as (1) to promote "the inherent advantages of, and foster safe conditions" in motor-carrier transportation; (2) to avoid "unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices"; (3) to coordinate "transportation by and regulation of" motor carriers and other carriers; (4) to "preserve a highway transportation system properly adapted to the needs of commerce and the state"; and (5) to ensure cooperation with other states, the federal government, and the regulated community in administering and enforcing the statewide scheme. R.C. 4905.80.

The General Assembly called for the legislative scheme to be administered by a single state agency, PUCO. R.C. 4905.81. And the duties assigned to PUCO confirm the capacious nature of the State's towing regulations. Among other things, PUCO is charged with supervising and regulating each motor carrier, R.C. 4905.81(A); adopting safety rules for "the highway transportation of persons or property in interstate and intrastate commerce," R.C. 4905.81(C);

establishing safety rules for the towing of “hazardous materials in interstate and intrastate commerce,” R.C. 4905.81(D); and ensuring that the hazardous-waste rules “shall not be incompatible with the requirements of the United States department of transportation.” R.C. 4905.81(D).

If those enumerated duties left any doubt about the General Assembly’s intent to regulate towing comprehensively and uniformly, the legislature included a final duty that is both a catch-all and that explicitly excludes local regulation: “The public utilities commission shall . . . [s]upervise and regulate motor carriers in *all other matters* affecting the relationship between those carriers and the public to the exclusion of all local authorities,” save for limited situations where local regulation is still permitted. R.C. 4905.81(G) (emphasis added).

As explained at pages 2-4 above, before 2003, most towing companies were exempt from this regulatory framework. Recognizing, however, that vehicle-towing is no longer a matter of primarily local concern, the General Assembly enacted the towing law to provide the necessary uniformity and coordination of towing regulations throughout Ohio. As the Court has observed, “many things which were once considered a matter of purely local concern and subject strictly to local regulation . . . have now become a matter of statewide concern, creating the necessity for statewide control.” *State ex rel. McElroy v. City of Akron*, 173 Ohio St. 189, 192 (1962). Accordingly, the validity of legislative efforts to establish uniform regulation on a particular subject by displacing conflicting municipal regulation with a statewide plan is well-settled. *See, e.g., Clyde*, 2008-Ohio-4605 ¶ 40 (upholding limitation on local regulation of carrying a concealed firearm in order to ensure uniform regulation on that subject throughout Ohio); *Ohio Ass’n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d 242, 244-45 (1992) (upholding a state statute prohibiting local licensing requirements for private security

personnel and finding that restriction was part of a system of regulation that promoted statewide uniformity); *cf. McElroy*, 173 Ohio St. at 192 (rejecting a home-rule challenge to a statute curtailing local licensing for watercraft and finding that “the need for a uniform standard of safety regulations” is a “statewide concern requiring uniform and general regulation by the state”).

The towing law and its limit on local regulation are essential to achieving a comprehensive and uniform system of towing regulations. In their absence, any towing company that crosses municipal lines will face the daunting task of identifying and complying with a variety of city-specific regulations and licensing requirements, to say nothing of the financial costs associated with the need to pay numerous licensing fees.

A look at the current towing regulations in several Ohio cities confirms that the General Assembly’s concern about inconsistent municipal regulation is real. For instance, Akron, Mansfield, and Youngstown—like Cleveland—all have their own towing laws. But they regulate towing differently. One example: each city requires towers to provide proof of insurance, but they differ in their requirements concerning the amount and type of coverage. *See* Cleveland Codified Ordinances 677A.09 (requiring \$300,000 of general liability and \$100,000 of property coverage); Youngstown Codified Ordinances 343.07 (same); Akron Code of Ordinances 111.592 (requiring \$100,000 of general liability and \$25,000 of property coverage); Mansfield Codified Ordinances 763.12 & .13 (requiring various coverage levels and separate fire, theft, or explosion coverage). Another example: Cleveland, Akron, and Youngstown impose one set of requirements for vehicle markings: colors that contrast with the background and lettering of specific dimensions—2” by 3/8” or 3” by 3/8” depending on the type of information. Cleveland Codified Ordinances 677A.10; Akron Code of Ordinances 111.591;

Youngstown Codified Ordinances 343.08. Mansfield, in contrast, requires some information to be displayed in letters 4" high while other information need only be printed in lettering that is "clearly visible." Mansfield Codified Ordinances 763.14. And a final example: Cleveland imposes a special licensing regime for tow truck drivers, Cleveland Codified Ordinances 677A.14 to .23, while the others have no such requirements.

A comparison of these local regulations with the statewide scheme is also instructive. For instance, under state law, towing companies may operate in Ohio so long as they are registered with PUCO. R.C. 4921.03. Yet each of the cities above purports to restrict towing operations within their borders to those entities that also obtain a *city* license, to say nothing of the fact that each city also seeks to impose a separate licensing fee. *See* Cleveland Codified Ordinances 677A.02 & 03; Akron Code of Ordinances 111.592; Mansfield Codified Ordinances 763.02; Youngstown Codified Ordinances 343.02 & 03. On this score, the General Assembly's desire for uniformity is even clearer. Through R.C. 4921.19(J), the General Assembly stated that "all fees, license fees, annual payments, license taxes, or taxes or other money exactions, except the general property tax, assessed, charged, fixed, or exacted by local authorities . . . are illegal and, are superseded by sections 4503.04 and 4905.03 and Chapter 4921 of the Revised Code." State law also establishes the qualifications for drivers. *See* Ohio Adm. Code 4901:2-5-03(B) (adopting the federal rules for driver qualifications outlined in 49 C.F.R. Part 391). But, as noted above, Cleveland has also established its own licensing regime and driver qualifications. *See* Cleveland Codified Ordinances 677A.14 to .23.

Thus, not only do the municipal ordinances discussed above prove why the General Assembly is rightly concerned about the possibility of inconsistent municipal towing regulations, but the licensing regimes established by these cities also, in effect, seek to prohibit what the State

permits. *AFSA*, 2006-Ohio-6043 ¶ 40 (quoting *Struthers v. Sokol*, 108 Ohio St. 263, syl. ¶ 2 (1923)). Or in the case of the licensing fees, permit what the State prohibits. This hodgepodge of ordinances demonstrates exactly why the towing law is so critical to the State's ability to establish statewide uniformity of towing regulations. The General Assembly has determined that PUCO, not local authorities, should establish the regulatory floor. And absent a limit on local regulation, that would be all but impossible.

The second marker is easily satisfied too. A "comprehensive statewide legislative regulation" of towing in fact exists. *AFSA*, 2006-Ohio-6043 ¶ 33. As for-hire motor carriers, state law regulates towing companies extensively. State law requires towers to register annually with PUCO and pay an annual fee. *See* R.C. 4921.03 (registration requirement); R.C. 4921.19(A) (fee requirement); *see also* Ohio Adm. Code 4901:2-21-01 to -09 (PUCO rules implementing registration process). State law also requires them to maintain adequate insurance coverage. R.C. 4921.09; *see also* Ohio Adm. Code 4901:2-13-01 to 11. State law further prescribes myriad safety requirements. *See generally* Ohio Adm. Code 4901:2-5-01 to -15. And it requires towing companies to maintain business records and to make those records available to PUCO upon request. Ohio Adm. Code 4901:2-1-01 to -03. On top of all of that, towing companies are subject to PUCO's investigative and enforcement powers. *See* R.C. 4923.04(C); *see also* R.C. 4923.06 (authorizing PUCO safety inspections); R.C. 4923.99 (PUCO authority to assess civil forfeitures and seek injunctions to ensure regulatory compliance).

In short, through R.C. 4921.25, the General Assembly has plainly made towing subject to a comprehensive, statewide regulatory plan. And the first *Canton* prong is therefore easily met.

In reaching a contrary conclusion, the Eighth District erred in applying a test unmoored from both law and logic. According to the majority, the towing law is not part of a

comprehensive legislative enactment because “the legislature has not set forth a comprehensive plan or scheme for the licensing, regulation, or registration of tow truck enterprises” *specifically*. App. Op. ¶ 34. In other words, in the Eighth District’s view, the General Assembly’s failure to enact towing-specific regulations—and its decision instead to include towing in the scheme governing motor carriers—means that R.C. 4921.25 cannot be seen as creating a comprehensive, statewide scheme for towing. *Id.*

That conclusion is flawed in multiple ways. First, it brushes aside the plain fact that towing is a well-established type of motor-carrier operation and therefore logically encompassed in the “considerable state and federal regulation of motor carriers.” *Id.* Second, and as the dissent observed, nowhere does the *Canton* general law test require the comprehensive scheme to be newly enacted or specific to towing. App. Op. ¶ 47 (Cooney, J., dissenting). Third, to the extent the Eighth District objects to R.C. 4921.25 as a general law because it simply incorporates towing into an existing regulatory regime, this Court has not found such a feature to invalidate state laws on home-rule grounds. To the contrary, in *North Olmstead*, for instance, the Court rejected a home-rule challenge to new language in R.C. 4749.09 that prohibited local licensing requirements and fees for private investigators. According to the Court, because the statute “*in its entirety* does provide for uniform statewide regulation of security personnel,” the challenged provision limiting municipal regulations was “a general law of statewide application.” *North Olmstead*, 65 Ohio St. 3d at 245 (emphasis added). The Court applied similar logic in *Clermont Env'tl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44 (1982), upholding a new provision prohibiting municipal regulation of hazardous waste disposal, which “read in *pari materia*,” with the rest of the statutory scheme created a comprehensive legislative framework. *Id.* at 48. And most recently, this Court rejected Cleveland’s home-rule challenge to R.C. 9.68, which regulates

firearms. *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318. The Court concluded that R.C. 9.68, along with “a host of state and federal laws regulating firearms,” is “part of a comprehensive statewide legislative enactment.” *Id.* ¶ 17.

The lesson from those precedents is clear. The comprehensiveness of a legislative scheme depends not on the novelty of the regulatory regime or the sequence in which legislation is enacted. Rather, it turns on an evaluation of the statutory framework *as a whole*. The Eighth District ignored those commonsense teachings, relying instead on a hollow distinction between legislative enactments that leverage an existing regulatory scheme and entirely new regulatory plans. And it therefore erred in concluding that R.C. 4921.25 is not part of a comprehensive, statewide enactment governing towing.

Finally, reality on the ground also proves the Eighth District wrong. That is, the purported lack of a newly-enacted, towing-specific regulation has not in any way hindered the State’s ability to regulate towing companies. Since 2003, more than a thousand tow truck operators have registered with PUCO as for-hire motor carriers. *See* Affidavit of Alan Martin, Deputy Director of Transportation at PUCO, ¶ 8 (attached to State’s Reply MSJ Br.) (Supp. 1-5). Just as with other for-hire motor carriers, PUCO actively enforces its regulations against towing companies, conducting safety compliance review audits and driver/vehicle inspections. *See id.* ¶¶ 11-12, 14-15 (Supp. 3-4). PUCO has also issued notices of violation and assessed civil penalties for regulatory infractions committed by towing companies. *Id.* ¶¶ 12-13, 16 (Supp. 3-5). Notwithstanding the Eighth District’s inexplicable demand for towing-specific legislation, this Court need look no further than PUCO’s own enforcement record for proof of the comprehensive and statewide nature of the regulations that now govern towing.

In sum, by every objective measure, the General Assembly, through R.C. 4921.25, has adopted a comprehensive legislative scheme for towing, and therefore the statute easily meets the statewide-and-comprehensive-legislation element of *Canton*'s first prong.

B. The State's towing regulations operate uniformly throughout Ohio.

The State's towing laws operate uniformly throughout Ohio—indeed, the City has never claimed otherwise—and therefore *Canton*'s second prong is also easily satisfied. *Canton*, 2002-Ohio-2005 ¶ 25 (To be uniform, a law must ““apply to all parts of the state alike.””); *see also* App. Op. ¶ 51 (Cooney, J., dissenting) (“The City does not dispute” that R.C. 4921.25 applies “to all parts of the State alike and operates uniformly throughout the State.”); Opp. Jur. 13 (quoting the Eighth District's uniformity analysis but making no claim that the towing law applies differently in different parts of the State).

The Eighth District's contrary conclusion was again based on a test of its own invention. The court said that the State's towing regulations are not “uniform” because they exempt “private” towing entities (as compared to for-hire towing entities) from regulation under Chapter 4921. App. Op. ¶ 38. That distinction is irrelevant. The uniformity analysis is informed not by substantive regulatory line-drawing, but by *geographic* disparities in the application of a statute. The *Canton* statute, for instance, was deemed non-uniform because it “effectively appl[ied] only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions or no longer have active homeowner associations.” 2002-Ohio-2005 ¶ 30. But if the statute “applies to all municipalities in the same fashion,” meaning “the statute does not operate differently based on different locations in our state,” then there is no uniformity problem. *Clyde*, 2008-Ohio-4605 ¶ 45.

In short, the Eighth District strayed far off base in finding non-uniformity based solely on a regulatory classification. *Id.* at ¶¶ 45-46 (holding that the State’s concealed carry law was uniform because it applied to all municipalities in the same way and that it was immaterial that the law drew a regulatory distinction between public and private property). Because the towing law plainly applies to all regions of the State in the same fashion, it satisfies Canton’s uniformity prong.

C. The State’s towing regulations are an exercise of the police power.

Under the *Canton* test’s third prong, the state legislative scheme must do more than “restrict the ability of a municipality to enact legislation.” *AFSA*, 2006-Ohio-6043 ¶ 35. It must also set “forth police, sanitary or similar regulations.” *Id.*

Applying this prong, the Eighth District recycled its critique as to the first prong, concluding that R.C. 4921.25 “is not part of a larger regulatory scheme for tow truck operators” and therefore is nothing more than a limit on municipal police power. App. Op. ¶ 39.

The problem with that conclusion is that it wrongly views the municipal-displacement clause in isolation. But this Court has consistently affirmed the General Assembly’s authority to displace municipal regulations when that displacement is part of a broader legislative scheme that promulgates police, sanitary, or safety regulations. In *North Olmstead*, for instance, the Court held that the statute there “in its entirety” provides for uniform, statewide regulation on a police power matter even though it also “prohibits a municipality from exercising a local police power.” 65 Ohio St. 3d at 245. And this Court has repeatedly upheld similar statutes limiting municipal regulation as *part* of an effort to establish statewide, uniform rules. *See, e.g., Cleveland*, 2010-Ohio-6318 ¶¶ 27-28; *AFSA*, 2006-Ohio-6043 ¶¶ 32-36; *Clermont*, 2 Ohio St. 3d at 48.

Here, too, the municipal-displacement portion of R.C. 4921.25 is only a piece of the picture. The statute—and the entire regulatory scheme in Chapter 4921 that R.C. 4921.25 makes applicable to towing entities—sets forth “police, sanitary, or similar” regulations. *AFSA*, 2006-Ohio-6043 ¶ 35; *see also* Opp. Jur. 10-11 (City of Cleveland noting that the regulation of towing involves an exercise of “police power”). The scheme imposes a litany of regulations on towing companies, including licensing, recordkeeping, safety, and financial-responsibility requirements. That this scheme also contains a restriction on municipal authority is of no import for this part of the *Canton* test because as long as it is “*both* an exercise of the state’s police power *and* an attempt to limit legislative power of a municipal corporation,” it does not offend *Canton*’s third prong. *Clyde*, 2008-Ohio-4605 ¶ 50 (emphases added).

D. The State’s towing regulations prescribe a rule of conduct upon citizens generally.

Finally, the State’s towing laws meet *Canton*’s fourth prong because they “prescribe a rule of conduct upon citizens generally.” 2002-Ohio-2005 ¶ 21. The Eighth District concluded that R.C. 4921.25 failed this prong, once again saying that R.C. 4921.25 “is not a part of a system of uniform statewide regulation on the subject of tow truck operation,” and therefore merely limits municipal legislative power rather than prescribing rules of conduct upon citizens generally. App. Op. ¶ 41.

This reasoning, too, is flawed and largely for the reasons already discussed. Under the fourth prong of *Canton*, the Court must ask whether R.C. 4921.25 “[is] part of a comprehensive and uniform statewide enactment . . . that prescribes a general rule of conduct.” *AFSA*, 2006-Ohio-6043 ¶ 36. Unquestionably, the statute meets that standard—it is part of a comprehensive legislative scheme that “prescribes a rule of conduct for any citizen seeking to” engage in for-hire towing. *Clyde*, 2008-Ohio-4605 ¶ 51.

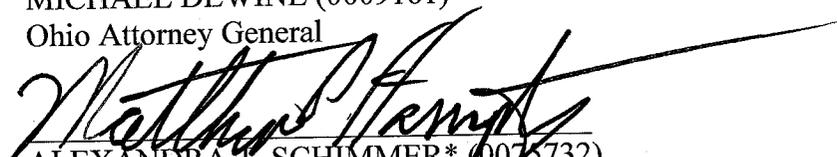
In sum, the City's home-rule challenge fails because R.C. 4921.25 satisfies all of the *Canton* prongs. And the Eighth District's contrary conclusion rests on gross departures from precedent and on reasoning that bears no relation to the inquiry called for by *Canton* and its progeny. This Court should therefore reverse the judgment below.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment below.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General



ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General

**Counsel of Record*

MATTHEW P. HAMPTON (0088784)
Deputy Solicitor

PEARL M. CHIN (0078810)

Associate Assistant Attorney General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Defendant-Appellant
State of Ohio

CERTIFICATE OF SERVICE

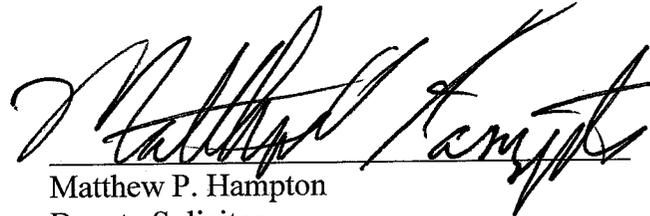
I certify that a copy of the foregoing Merit Brief of Defendant-Appellant State of Ohio was served by regular U.S. mail this 13th day of March, 2013 upon the following:

Barbara A. Langhenry
Interim Director of Law
Gary S. Singletary
Assistant Director of Law
601 Lakeside Avenue
Room 106
Cleveland, Ohio 44114-1077

Counsel for Plaintiff-Appellee
City of Cleveland

David A. Ferris
The Ferris Law Group LLC
6797 N. High Street
Suite 214
Worthington, Ohio 43085

Counsel for *Amicus Curiae*
Towing & Recovery Association of Ohio, Inc.

A handwritten signature in black ink, appearing to read "Matthew P. Hampton", is written over a horizontal line. The signature is cursive and somewhat stylized.

Matthew P. Hampton
Deputy Solicitor

APPENDIX

In the
Supreme Court of Ohio

CITY OF CLEVELAND, : Case No. **12 - 1616**
: :
Plaintiff-Appellee, : :
: :
v. : :
: :
STATE OF OHIO, : Court of Appeals Case
: :
: :
Defendant-Appellant. : No. 97679

NOTICE OF APPEAL OF DEFENDANT-APPELLANT STATE OF OHIO

BARBARA A. LANGHENRY
Interim Director of Law

GARY S. SINGLETARY* (0037329)
Assistant Director of Law
601 Lakeside Avenue
Room 106
Cleveland, Ohio 44114-1077
216-664-2737
216-664-2663 fax

Counsel for Plaintiff-Appellee
City of Cleveland

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ALEXANDRA T. SCHIMMER* (0075732)
Solicitor General
**Counsel of Record*

MATTHEW P. HAMPTON (0088784)
Deputy Solicitor

PEARL M. CHIN (0078810)
Associate Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
alexandra.schimmer@ohioattorneygeneral.gov

Counsel for Defendant-Appellant
State of Ohio

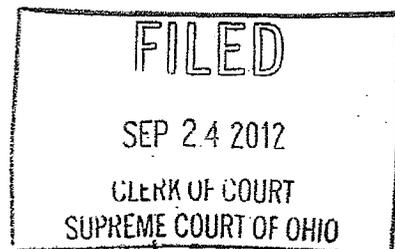


EXHIBIT A

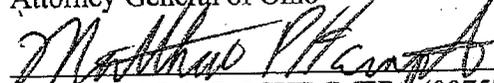
**NOTICE OF APPEAL OF
DEFENDANT-APPELLANT STATE OF OHIO**

Defendant-Appellant State of Ohio gives notice of its claimed appeal as of right and discretionary appeal to this Court, pursuant to Ohio Supreme Court Rule 2.1(A)(2) and (3), from a decision of the Eighth District Court of Appeals, journalized in Case No. 97679 on August 9, 2012. Date-stamped copies of the Eighth District's Journal Entry and Opinion and the Cuyahoga County Common Pleas Court's Journal Entry and Opinion are attached as Exhibits A and B, respectively, to the Defendant-Appellant's Memorandum in Support of Jurisdiction.

For the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, this case both involves a substantial constitutional question and is one of public and great general interest.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Attorney General of Ohio


ALEXANDRA T. SCHIMMER (0075732)
Solicitor General

**Counsel of Record*

MATTHEW HAMPTON (0088784)
Deputy Solicitor

PEARL M. CHIN (0078810)
Associate Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
alexandra.schimmer@ohioattorneygeneral.gov

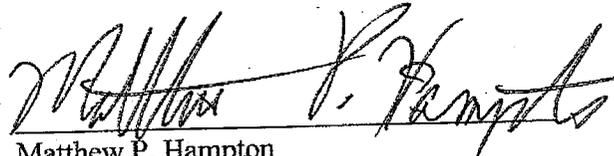
Counsel for Defendant-Appellant
State of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal of Defendant-Appellant State of Ohio was served by U.S. mail this 24 day of September, 2012, upon the following counsel:

Barbara A. Langhenry
Interim Director of Law
Gary S. Singletary
Assistant Director of Law
601 Lakeside Avenue
Room 106
Cleveland, Ohio 44114-1077

Counsel for Plaintiff-Appellee
City of Cleveland


Matthew P. Hampton
Deputy Solicitor

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97679

CITY OF CLEVELAND

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-687935

BEFORE: Kilbane, J., Blackmon, A.J., and Cooney, J.

RELEASED AND JOURNALIZED: August 9, 2012

EXHIBIT B

ATTORNEYS FOR APPELLANT

Barbara Langhenry
City of Cleveland Interim Director of Law
Gary S. Singletary
Assistant Director of Law
Cleveland City Hall, Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114-1077

ATTORNEYS FOR APPELLEE

Mike Dewine
State of Ohio Attorneys General
Pearl M. Chin
Jeannine Lesperance
Assistant Attorney General
Constitutional Offices Section
30 East Broad Street, 17th Floor
Columbus, Ohio 43215-3428

**FILED AND JOURNALIZED
PER APP.R. 22(C)**

AUG 09 2012

**GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
V.  DEP**

MARY EILEEN KILBANE, J.:

{¶1} The city of Cleveland (“the City”) appeals from the order of the trial court that rejected its challenge to the preemption provision of R.C. 4921.30. For the reasons set forth below, we conclude that R.C. 4921.30 is not a general law because it is not part of a comprehensive, statewide legislative enactment, does not operate uniformly throughout the state, does not set forth police regulations but simply purports to limit municipal legislative power, and does not prescribe a rule of conduct upon citizens generally. We therefore conclude that R.C. 4921.30 unconstitutionally limits a municipality’s home-rule police powers, so we reverse the trial court’s grant of summary judgment to the state and direct that the trial court enter summary judgment for the City.

{¶2} In 1981, the City adopted Cleveland Codified Ordinances (“CCO”) Chapter 677A, entitled “Tow Trucks,” adopted in 1981. Under the provisions of this chapter, every person driving a tow truck within the city of Cleveland must obtain a license from the City’s Commissioner of Assessments and Licenses. It additionally contains provisions regarding the qualifications and fitness of tow truck operators, provisions regarding identifying information for vehicles, provisions barring an uninvited response to accident scenes, and rules outlining mandatory record keeping or “transport sheets” detailing, inter alia, the location and charges for each tow.

{¶3} In March 2003, the Ohio General Assembly adopted R.C. 4921.30,

which provides:

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.

{¶4} Also in March 2003, the Ohio General Assembly rescinded the exclusion set forth in R.C. 4921.02(A)(8), and therefore included companies “[e]ngaged in the towing of disabled or wrecked motor vehicles” within the definition of a “[m]otor transportation company.”

{¶5} This legislation, in effect, added tow trucks to the state’s PUCO regulation of transportation for-hire motor carriers, and preempted local laws pertaining to the licensing, registering, or regulation of entities that tow motor vehicles regulation.

{¶6} CCO 677A remained in effect. The City maintained that the state statute unconstitutionally interfered with its home-rule authority, and in reliance upon CCO 677A, impounded tow trucks that did not meet the City’s

licensing requirements. See *Rodriguez v. Cleveland*, 619 F.Supp.2d 461 (N.D. Ohio 2009).¹

{¶7} On March 19, 2009, the City filed a declaratory judgment against the state of Ohio, seeking determinations that (1) R.C. 4921.30 is not a “general law,” and (2) that R.C. 4921.30 violates the City’s power of local self-government to regulate the towing of motor vehicles. In its answer, the state denied that the City is entitled to declaratory relief, and the parties subsequently filed dispositive motions.

{¶8} In its motion for summary judgment, the City maintained that the state had simply added tow trucks to its PUCO scheme of regulating motor transportation companies. R.C. 4921.30 is not part of a comprehensive legislative enactment for tow truck operators, but rather, simply purports to abolish all local regulation. Moreover, the preemption language is at odds with the local regulatory authority over motor transportation companies recognized in R.C. 4921.25 that permits local subdivisions to “make reasonable local police

¹In that case, Rodriguez filed suit in federal court against the City, the arresting officers, and others alleging a violation of 42 U.S.C. 1983 and other claims, and the City defendants claimed that they were entitled to qualified immunity based upon the facial validity of CCO 677A. Ultimately, the United States Court of Appeals for the Sixth Circuit agreed that the defendants in that case were entitled to qualified immunity because it was unclear whether CCO 677A came within the Section 14501(c)(2)(A)’s exception to federal preemption, and because it was also unclear whether the ordinance was preempted by Ohio law. *Rodriguez v. Cleveland*, 439 Fed.Appx. 433, (6th Cir.2011).

regulations relating to motor transportation companies * * * not inconsistent with the authority of the PUCO.”

{¶9} In opposition, the state noted that the Ohio General Assembly has given the PUCO authority to supervise and regulate “motor transportation companies” since 1923, and this term has included tow trucks since 2003. Applying the analytic framework set forth in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, the state argued that R.C. 4921.30 does not simply limit the legislative power of cities, but is part of a comprehensive statewide scheme of regulations. The state further argued that R.C. 4921.30 operates uniformly across the state and prevents “conflicting patchwork regulation by the cities.” It additionally argued that R.C. 4921.30 is part of a safety regulatory scheme that adopts and enhances safety regulations of the U.S. Department of Transportation, and that it prescribes a rule of conduct upon citizens generally.

{¶10} The state additionally noted that R.C. 4921.30 preempts licensing, registering, and regulation of entities that tow motor vehicles, but does not preempt all local authority over tow trucks and allows municipalities to exercise local police powers over matters outside the jurisdiction of the PUCO.

{¶11} On November 17, 2011, the trial court concluded that R.C. 4921.30 is a valid general law that does not unconstitutionally infringe upon the City’s home-rule authority and granted the state’s motion for summary judgment.

{¶12} The City now appeals. For its sole assignment of error, the City argues that the trial court erred in concluding that R.C. 4921.30 is a general law and that its preemption provision does not violate municipal home-rule authority.

{¶13} With regard to procedure, we note that appellate review of a trial court's grant of summary judgment is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241.

{¶14} The moving party carries the initial burden of providing specific facts that demonstrate its entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107, 662 N.E.2d 264. Civ.R. 56(C) provides that before summary judgment may be granted, a court must determine:

- (1) no genuine issue as to any material fact remains to be litigated;
- (2) the moving party is entitled to judgment as a matter of law; and
- (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the nonmoving party.

{¶15} Once the moving party has met its initial burden, the nonmoving party must produce competent evidence establishing the existence of a genuine issue for trial. *Dresher* at 288. In responding to a motion for summary judgment, a nonmoving party may not rest on "unsupported allegations in the pleadings." *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). Rather, Civ.R. 56 requires a nonmoving party to respond

with competent evidence to demonstrate the existence of a genuine issue of material fact.

{¶16} We additionally note that statutes enjoy a strong presumption of constitutionality. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 41. The party challenging the constitutionality of a statute bears the burden of proving that it is unconstitutional beyond a reasonable doubt. *Id.*

{¶17} Section 3, Article XVIII of the Ohio Constitution, the home-rule amendment, gives municipalities the “authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

{¶18} As explained in *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776:

[T]he constitutional provision as adopted gave municipalities the exclusive power to govern themselves, as well as additional power to enact local health and safety measures not in conflict with general laws, [but] “exclusive state power was retained in those areas where a municipality would in no way be affected or where state dominance seemed to be required.” (Emphasis sic.)

Id. at ¶ 27, quoting Vaubel, *Municipal Home Rule in Ohio*, at 1107-1108 (1978).

{¶19} In *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 9, the Ohio Supreme Court set forth a three-part test for evaluating conflicts under the home-rule amendment. Pursuant to that test, a state statute takes

precedence over a municipal ordinance and does not unconstitutionally infringe upon municipal home-rule authority when: (1) the ordinance is in conflict with the statute; (2) the ordinance is an exercise of the police power, rather than of local self-government; and (3) the statute is a general law. Where the statute fails to meet all of these conditions, it is not a general law, and, as such, it must yield to the municipal ordinance in question. *Id.* at 151.

{¶20} In this matter, the City alleged in its complaint and in its motion for summary judgment that R.C. 4921.30 is not a "general law," and therefore, that is the focus of our analysis herein.

{¶21} "A general law has been described as one which promotes statewide uniformity." *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 244, 1992-Ohio-65, 602 N.E.2d 1147. "Once a matter has become of such general interest that it is necessary to make it subject to statewide control as to require uniform statewide regulation, the municipality can no longer legislate in the field so as to conflict with the state." *State ex rel. McElroy v. Akron*, 173 Ohio St. 189, 194, 181 N.E.2d 26 (1962).

{¶22} The *Canton* court adopted a four-part test for determining whether a statute is a general law for purposes of home-rule analysis. The statute must "(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant

or limit legislative power of a municipal corporation to set forth police, sanitary or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at syllabus.

1. Statewide and Comprehensive Legislative Enactment

{¶23} In determining whether a challenged statute is part of a comprehensive, statewide scheme or plan, courts look to the range of activity subject to regulation under the enactment and whether it serves a statewide concern. See *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 442 N.E.2d 1278 (1982); *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967.

{¶24} In this matter, we note that in the Motor Carrier Safety Act of 1984, the United States Department of Transportation, through the Federal Motor Carrier Safety Regulations, implemented safety regulations for drivers of commercial motor vehicles. *Gruenbaum v. Werner Ent., Inc.*, S.D. Ohio No. 09-CV-1041, 2011 WL 563912 (Feb. 2, 2011). Ohio adopted the safety regulations in Ohio Adm.Code 4901:2-5-02. *B&T Express, Inc. v. Pub. Util. Comm.*, 145 Ohio App.3d 656, 662, 763 N.E.2d 1241 (10th Dist.2001). See Ohio Adm.Code 4901:2-5-02.

{¶25} R.C. 4921.02 sets forth the general powers of the Public Utilities Commission to regulate certain carriers, and includes in its definition of

common carrier "every corporation, company * * * engag[ed] in the business of transporting persons or property, or the business of providing or furnishing such transportation service, for hire, whether directly or by lease or other arrangement, for the public in general."

{¶26} Prior to March 2003, R.C. 4921.02(A)(8) specifically excluded companies "[e]ngaged in the towing of disabled or wrecked motor vehicles" from the definition of a "[m]otor transportation company." See Am.Sub.H.B. 87.

{¶27} Over time, however, the federal government has, through various enactments, deregulated the motor carrier industry, and in 49 U.S.C. 14501(c) of the Interstate Commerce Commission Termination Act, Congress enacted a provision preempting "a State, political subdivision of a State, or political authority of 2 or more States [from enacting or enforcing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier * * * with respect to the transportation of property."

{¶28} In June 2002, the United States Supreme Court acknowledged that Section 14501 generally preempts state and local regulation, but under an exception set forth in Section 14501(c)(2)(A), states maintained "safety regulatory authority" and authority to require minimum financial responsibility. The court therefore concluded that the state power preserved in Section 14501(c)(2)(A) may be delegated to municipalities, permitting them to

exercise safety regulatory authority over local tow truck operations. See *Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 438, 122 S.Ct. 2226, 153 L.Ed.2d 430 (2002). The court also stated that “[t]ow trucks, all parties to this case agree, are ‘motor carrier[s] of property’ falling within § 14501(c)’s compass.” The court explained:

The Ohio Constitution currently grants municipalities within the State general authority “to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws.” Art. XVIII, § 3. * * * Particularly relevant here, Ohio has exempted tow trucks from the State’s regulation of motor carriers, § 4921.02(A)(8), thus leaving tow truck regulation largely to the cities. *Cincinnati v. Reed*, 27 Ohio App.3d 115, 500 N.E.2d 333 (1985).

* * *

§ 14501(c)(2)(A) shields from preemption only “safety regulatory authority” (and “authority of a State to regulate * * * with regard to minimum amounts of financial responsibility relating to insurance requirements”). Local regulation of prices, routes, or services of tow trucks that is not genuinely responsive to safety concerns garners no exemption from § 14501(c)(1)’s preemption rule.

{¶29} In March 2003, following the *Ours Garage* decision, the Ohio General Assembly rescinded the exclusion for tow trucks set forth in R.C. 4921.02(A)(8), and therefore included companies “[e]ngaged in the towing of disabled or wrecked motor vehicles” within the definition of a “[m]otor transportation company.”

{¶30} Also in March 2003, the Ohio General Assembly adopted R.C.

4921.30, which provides:

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.

{¶31} This overview of the events surrounding the enactment of R.C. 4921.30 indicates that tow trucks were simply included within the state's regulation of for-hire motor carriers following the *Ours Garage* decision.

{¶32} Moreover, we conclude that this matter is similar to the situation presented in *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. In *Canton*, the city's ordinance prohibited "manufactured homes" within the city limits as principal or accessory structures for residential use. Thereafter, the legislature enacted R.C. 3781.184 that pertained to manufactured homes. Subsections (A) and (B) addressed construction and safety standards, Subsection (C) of the statute prohibited political subdivisions from barring or restricting manufactured homes in single-family zones, Subsection (D) set forth an exception to subsection (C) and permitted private landowners to incorporate restrictive covenants in deeds to prohibit the inclusion of, among other things, manufactured homes.

{¶33} In concluding that Subsections (C) and (D) are not part of a statewide and comprehensive zoning plan, the Supreme Court noted:

R.C. Chapter 3781 relates to building standards but varies widely in its content * * *.

Moreover, the state does not have a statewide zoning scheme, nor does the state have a comprehensive plan or scheme for the licensing, regulation, or registration of manufactured homes. Instead, R.C. 3781.184(A) and (B) simply refer to the current federal standards regulating the construction of manufactured homes. A United States district court has held that “[t]he [Federal Manufactured Home Construction and Safety Standards Act of 1974, Section 5403, Title 42, U.S.Code] preempts only construction and safety standards and does not apply to local zoning ordinances that purport to regulate the placement of certain types of dwellings in the community.” The court held that the codes at issue (Canton Ordinances 1123.57 and 1129.11) are zoning ordinances not aimed at construction and safety standards. “Because Congress intended to regulate safety and construction only, local laws aimed at purposes outside that area are not preempted by the Act. There is no indication that Congress intended to regulate any other aspect of the manufactured home industry.” See *Ohio Manufactured Hous. Assn. v. Canton* (Dec. 4, 1998), N.D. Ohio No. 5:97 CV 1190. Accordingly, we conclude that R.C. 3781.184(C) and (D) do not provide for uniform, statewide regulation of manufactured housing.

Canton at ¶ 23-24.

{¶34} 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. 4921.30 is not part of a statewide and comprehensive legislative enactment.

2. Uniform Operation Throughout the State

{¶35} General laws must “apply to all parts of the state alike.” *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 13, quoting *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 82-83, 167 N.E. 158 (1929).

{¶36} In this matter, however, the definition of motor transportation company set forth in R.C. 4921.02(A), does not include private motor carriers, as it incorporates an exclusion for companies meeting the definition set forth in R.C. 4923.02(A), i.e., companies “engaged in the business of private carriage of persons or property, or both, or of providing or furnishing such transportation service, for hire * * * [.]”

{¶37} Therefore, private tow truck companies may have their own rules, policies, and practices. Again, *Canton* is instructive. In evaluating the statutory exception to R.C. 3781.184, which provided that, “[t]his section does not prohibit a private landowner from incorporating a restrictive covenant in

a deed, prohibiting the inclusion on the conveyed land of manufactured homes," the Ohio Supreme Court noted:

[T]he statute will effectively apply only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions or no longer have active homeowner associations. Because we find that R.C. 3781.184(D) permits that which the statute prohibits, we find that it is inconsistent with the statute's stated purpose, i.e., to encourage placement of affordable manufactured housing units across the state. Thus, we hold that R.C. 3781.184(C) and (D) do not have uniform application to all citizens of the state, and as such are not general laws.

{¶38} Likewise, in this matter, R.C. 4921.30 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. 4921.30 does not have uniform operation throughout the state.

3. Establishes Police Regulations Rather Than Granting or Limiting Municipal Legislative Power

{¶39} Proceeding to the third prong of the general law test outlined in *Canton*, we next consider whether R.C. 4921.30 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. 4921.30 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. 4921.30, 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, 1999-Ohio-434, 706 N.E.2d 1227, R.C. 4921.30 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.

4. Prescribes a Rule of Conduct Upon Citizens Generally

{¶40} With regard to the final element of the *Canton* test, the *Linndale* Court also defined general laws as “those operating uniformly throughout the state, prescribing a rule of conduct on citizens generally and operating with general uniform application throughout the state under the same circumstances and conditions.” *Linndale* at 54. Statutes that pertain to certain entities only do not prescribe a rule of conduct upon citizens generally, so they do not meet this element. *Id.* Conversely, statutes that go beyond merely limiting municipal authority and establish a rule of conduct for those who are the subject of the legislation have satisfied this element of the *Canton* test. *See Am. Fin. Servs. Assn.*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776.

{¶41} In determining whether R.C. 4921.30 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.

{¶42} In accordance with the foregoing, R.C. 4921.30 does not meet the test set forth in *Canton*, so we conclude that it is not a general law. Further,

because R.C. 4921.30 is not a general law, it unconstitutionally attempts to limit municipal home-rule authority.

{¶43} We therefore conclude that the trial court erred in granting the state of Ohio's motion for summary judgment. We reverse that order and direct the trial court to enter summary judgment in favor of the City.

{¶44} Reversed and remanded with instructions to enter judgment in favor of appellant.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


MARYEILEEN KILBANE, JUDGE

PATRICIA A. BLACKMON, A.J., CONCURS;
COLLEEN CONWAY COONEY, J., DISSENTS (SEE SEPARATE
DISSENTING OPINION)

COLLEEN CONWAY COONEY, J., DISSENTING:

{¶45} I respectfully dissent. I would affirm the trial court judgment.

Statewide and Comprehensive

{¶46} The first prong of the *Canton* test requires the statute in question be part of a statewide and comprehensive legislative enactment. The City argues that R.C. 4921.30 is not part of such legislative enactment, while the State argues that when taken in context with PUCO regulations, R.C. 4921.30 is clearly part of a statewide and comprehensive legislative enactment.

{¶47} The City argues that the PUCO regulations do not constitute statewide legislation because they are not 1) newly enacted, nor 2) specifically tow truck regulations. I am not persuaded by this argument because neither is a requirement under the *Canton* test.

{¶48} By defining any organization that operates tow trucks as “for-hire motor carrier[s]” under this statute, R.C. 4921.30 successfully encompassed all tow truck operators under the pre-existing laws of the PUCO. In turn, R.C. 4921.30 is part of the PUCO, an undisputed statewide legislative enactment. The City’s interpretation of the statute in question appears to occur in a vacuum, not acknowledging PUCO on a statewide basis. *See Am. Fin. Servs. Assn. v. Cleveland (“AFSA”)*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776 (the Ohio Supreme Court found that legislation that defined covered loans and authorized the state to “solely regulate” said loans was part of comprehensive

statewide legislation). See also *Ohio Assn. of Private Detective Agencies v. N. Olmsted*, 65 Ohio St.3d 242, 1992-Ohio-65, 602 N.E.2d 1147 (Ohio Supreme Court found that a statutory provision, when considered in isolation, "may fail to qualify as a general law because it prohibits a municipality from exercising a local police power while not providing for uniform statewide regulation of the same subject matter. See *Youngstown v. Evans* (1929), 121 Ohio St. 342, 168 N.E. 844." However, when the provision's chapter is read in its entirety it could reveal a statewide regulation.)

{¶49} Thus, I would find that the statute in question satisfies the first prong of the *Canton* test.

Uniformity

{¶50} The second prong of the test requires that the statute apply to all parts of the State alike and operate uniformly throughout the State.

{¶51} The State argues that R.C. 4921.30 does apply to all parts of the State alike and operates uniformly throughout the State. The City does not dispute this argument. Thus, I would find that R.C. 4921.30 satisfies the second prong of the *Canton* "general law" test.

Police, Sanitary, or Similar Regulations

{¶52} The third prong of the test requires that the statute set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation.

{¶53} The City concedes that the regulation of tow trucks in the context of traffic regulation is clearly an exercise of the State's police power. As addressed above in the first prong, prior case law indicates that individual statutes should not be read in isolation but within the larger statutory scheme. R.C. Chapter 4921 in its entirety, along with the PUCO, clearly sets forth regulations as opposed to strictly limiting the municipality's legislative power.

{¶54} Thus, I would find that R.C. 4921.30 satisfies the third prong of the *Canton* "general law" test.

Rule of Conduct Upon Citizens

{¶55} The fourth prong of the test requires that the statute prescribes a rule of conduct upon citizens generally.

{¶56} The City fails to articulate a reason why this statute does not prescribe a rule of conduct upon citizens generally, and instead rehashes its argument that the law limits the municipality's legislative power without setting forth independent regulations. The State compares R.C. 4921.30 to the statutes found in *AFSA* and in *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, both of which were found to satisfy the fourth prong by prescribing a rule of conduct upon citizens generally. When taken as a whole, it appears to me that R.C. Chapter 4921 and the PUCO establish rules of conduct for all Ohio operators who provide intrastate towing services, without

exception. I see no distinction for private motor carriers as the majority finds, nor has the City raised such a claim.

{¶57} Thus, I would find that R.C. 4921.30 satisfies the fourth prong of the *Canton* “general law” test.

{¶58} Having satisfied the four elements of the *Canton* test, I would find that R.C. 4921.30 constitutes a “general law” and does not violate the Home Rule Amendment of the Ohio Constitution. The City has failed to meet its burden of showing beyond a reasonable doubt that R.C. 4921.30 violated the Ohio Constitution.

{¶59} Accordingly, I would affirm the trial court.

STATE OF OHIO }
CUYAHOGA COUNTY } SS.

IN THE COURT OF COMMON PLEAS

CASE NO. CV-687935

CITY OF CLEVELAND,]
Plaintiff,]
- vs -]
STATE OF OHIO,]

Defendant.]



JOURNAL ENTRY AND OPINION

JOAN SYNENBERG, JUDGE:

This cause came on for hearing upon the parties' cross-motions for summary judgment. In this action for declaratory judgment, plaintiff City of Cleveland seeks a declaration that the preemption language of R.C. § 4921.30 unconstitutionally infringes upon the City's home rule authority established by Article XVIII, Section 3 of the Ohio Constitution. Defendant State of Ohio argues that R.C. § 4921.30 is a valid general law which takes precedence over any conflicted ordinances enacted by the City.

Having considered the motions for summary judgment, the court finds that R.C. § 4921.30 is a valid general law that does not unconstitutionally infringe upon the City's home rule authority established by Article XVIII, Section 3 of the Ohio Constitution. The court makes the following declarations:

1. Any person or entity that is engaged in the business of towing of motor vehicles ("towing entity") is a "motor transportation company" ("MTC") as that term is defined in sections 4905.03 and 4921.02 of the Revised Code. *R.C. 4921.01.*

2. Every towing entity is subject to regulation by the Public Utilities Commission of Ohio ("PUCO") as a for-hire motor carrier under Chapter 4921 of the Ohio Revised Code. *R.C. 4921.30.*
3. A towing 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. *R.C. 4921.30.*
4. *R.C. 4921.30* is a general law that does not infringe on the City of Cleveland's home rule authority guaranteed in O. Const. Sect. 3, Art. XVIII, known as the "Home Rule Amendment," which provides: "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."
 - a. *R.C. 4921.30* is part of *R.C. Chapter 4921* which constitutes a statewide and comprehensive legislative enactment to further state policy and confer upon PUCO the power and authority to supervise and regulate MTCs;
 - b. *R.C. 4921.30* applies to all parts of the state alike and operates uniformly through the state;
 - c. *R.C. 4921.30*, by its language, is directed to towing entities and not to any legislative body;
 - d. *R.C. 4921.30* does not grant or limit any municipality's legislative power.
5. *R.C. 4921.30* is part of *R.C. Chapter 4921*, a statewide and comprehensive legislative enactment that sets forth the policy of the state to:
 - (A) Regulate transportation by common and contract carriers by motor vehicle in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest [*R.C. 4921.03(A)*];
 - (B) Promote adequate, economical, and efficient service by such motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices [*R.C. 4921.03(B)*];
 - (C) Improve the relations between, and co-ordinate transportation by and regulation of, such motor carriers and other carriers [*R.C. 4921.03(C)*];

(D) Develop and preserve a highway transportation system properly adapted to the needs of commerce and the state [R.C. 4921.03(D)];

(E) Co-operate with the federal government and the several states, and the authorized officials thereof, and with any organization of motor carriers in the administration and enforcement of Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4905 of the Revised Code [R.C. 4921.03(E)].

6. R.C. 4921.30 is part of R.C. Chapter 4921, a statewide and comprehensive legislative enactment that confers jurisdiction on PUCO and sets forth its duties and powers to:

(A) Supervise and regulate each motor transportation company [R.C. 4921.04(A)];

(B) Fix, alter, and regulate rates [R.C. 4921.04(A)];

(C) Regulate the service and safety of operation of each motor transportation company [R.C. 4921.04(A)];

(D) Prescribe safety rules and designate stops for service and safety on established routes [R.C. 4921.04(A)];

(E) Prescribe safety rules applicable to the transportation and offering for transportation of hazardous materials in intrastate commerce within this state by motor transportation companies. * * * [R.C. 4921.04(E)];

(F) Require the filing of annual and other reports and of other data by motor transportation companies [R.C. 4921.04(F)];

(G) Provide uniform accounting systems [R.C. 4921.04(G)];

(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. [R.C. 4921.04(H)] [Emphasis added].

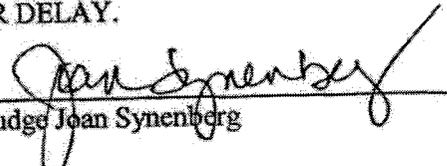
7. R.C. 4921.04(H) expressly provides that PUCO may prescribe rules affecting all MTCs, "notwithstanding the provisions of any ordinance, resolution, license, or permit enacted, adopted, or granted by any township, municipal corporation, municipal corporation and county, or county." R.C. 4921.04(H) further provides that "In case of conflict between any such ordinance, resolution, license, or permit, the order or rule of the commission shall prevail." Finally, R.C. 4921.04(H) provides that "Local subdivisions may make reasonable local police rules within their

respective boundaries not inconsistent with [Chapters 4901., 4903., 4905., 4907., 4909., and 4923 of the Revised Code, and PUCO's rules adopted under those Chapters].”

Motion for summary judgment of plaintiff City of Cleveland is denied. Motion for summary judgment of defendant The State of Ohio is granted.

Judgment accordingly.

IT IS SO ORDERED. NO JUST CAUSE FOR DELAY.



Judge Joan Synenberg

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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CITY OF CLEVELAND
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-09-687935

Judge: JOAN SYNENBERG



JOURNAL ENTRY

96 DISP. OTHER - FINAL

THIS CAUSE CAME ON FOR HEARING UPON THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT. IN THIS ACTION FOR DECLARATORY JUDGMENT, PLAINTIFF CITY OF CLEVELAND SEEKS A DECLARATION THAT THE PREEMPTION LANGUAGE OF R.C. § 4921.30 UNCONSTITUTIONALLY INFRINGES UPON THE CITY'S HOME RULE AUTHORITY ESTABLISHED BY ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION. DEFENDANT STATE OF OHIO ARGUES THAT R.C. § 4921.30 IS A VALID GENERAL LAW WHICH TAKES PRECEDENCE OVER ANY CONFLICTED ORDINANCES ENACTED BY THE CITY.

HAVING CONSIDERED THE MOTIONS FOR SUMMARY JUDGMENT, THE COURT FINDS THAT R.C. § 4921.30 IS A VALID GENERAL LAW THAT DOES NOT UNCONSTITUTIONALLY INFRINGE UPON THE CITY'S HOME RULE AUTHORITY ESTABLISHED BY ARTICLE XVIII, SECTION 3 OF THE OHIO CONSTITUTION. THE COURT MAKES THE FOLLOWING DECLARATIONS (OSJ):

MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF CITY OF CLEVELAND IS DENIED. MOTION FOR SUMMARY JUDGMENT OF DEFENDANT THE STATE OF OHIO IS GRANTED.

JUDGMENT ACCORDINGLY.

IT IS SO ORDERED. NO JUST CAUSE FOR DELAY.

..... OSJ

COURT COST ASSESSED TO THE PLAINTIFF(S).

OSJ

Judge Signature

Date

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CONSTITUTION OF THE STATE OF OHIO
ARTICLE XVIII. MUNICIPAL CORPORATIONS

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Oh. Const. Art. XVIII, § 3 (2013)

§ 3. Powers

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

HISTORY:

(Adopted September 3, 1912.)



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*** Annotations current through November 5, 2012 ***

TITLE 49. PUBLIC UTILITIES
CHAPTER 4921. FOR-HIRE MOTOR VEHICLE CARRIERS

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ORC Ann. 4921.25 (2013)

§ 4921.25. Entities engaged in towing of motor vehicles subject to regulation as for-hire motor carrier

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.

HISTORY:

2012 HB 487, § 101.01, eff. June 11, 2012.



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TITLE 49. PUBLIC UTILITIES
CHAPTER 4905. PUBLIC UTILITIES COMMISSION -- GENERAL POWERS
HAZARDOUS MATERIALS TRANSPORTATION

Go to the Ohio Code Archive Directory

ORC Ann. 4905.80 (2013)

§ 4905.80. State policy as to regulation of motor carriers

The policy of this state is to:

- (A) Regulate transportation by motor carriers so as to recognize and preserve the inherent advantages of, and foster safe conditions in, that transportation and among those carriers in the public interest;
- (B) Promote safe and secure service by motor carriers, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices;
- (C) Improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers;
- (D) Develop and preserve a highway transportation system properly adapted to the needs of commerce and the state;
- (E) Cooperate with the federal government and the several states, and the authorized officials thereof, and with any organization of motor carriers in the administration and enforcement of this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code.

HISTORY:

2012 HB 487, § 101.01, eff. June 11, 2012.



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and filed with the Secretary of State through File 201

TITLE 49. PUBLIC UTILITIES
CHAPTER 4905. PUBLIC UTILITIES COMMISSION -- GENERAL POWERS
HAZARDOUS MATERIALS TRANSPORTATION

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ORC Ann. 4905.81 (2013)

§ 4905.81. Duties of public utilities commission as to regulation of motor carriers

The public utilities commission shall:

- (A) Supervise and regulate each motor carrier;
- (B) Regulate the safety of operation of each motor carrier;
- (C) Adopt reasonable safety rules applicable to the highway transportation of persons or property in interstate and intrastate commerce by motor carriers;
- (D) Adopt safety rules applicable to the transportation and offering for transportation of hazardous materials in interstate and intrastate commerce by motor carriers. The rules shall not be incompatible with the requirements of the United States department of transportation.
- (E) Require the filing of reports and other data by motor carriers;
- (F) Adopt reasonable rules for the administration and enforcement of this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code applying to each motor carrier in this state;
- (G) Supervise and regulate motor carriers in all other matters affecting the relationship between those carriers and the public to the exclusion of all local authorities, except as provided in this section. The commission, in the exercise of the jurisdiction conferred upon it by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, may adopt rules affecting motor carriers, 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 adopt reasonable local police rules within their respective boundaries not inconsistent with those chapters and rules adopted under them.

The commission has jurisdiction to receive, hear, and determine as a question of fact, upon complaint of any party or upon its own motion, and upon not less than fifteen days' notice of the time and place of the hearing and the matter to be heard, whether any corporation, company, association, joint-stock association, person, firm, or copartnership, or their lessees, legal or personal representatives, trustees, or receivers or trustees appointed by any court, is engaged as a motor carrier. The finding of the commission on such a question is a final order that may be reviewed as provided in *section 4923.15 of the Revised Code*.

HISTORY:

2012 HB 487, § 101.01, eff. June 11, 2012.

EXHIBIT G

CHAPTER 677A – TOW TRUCKS

- 677A.01 Definitions
- 677A.02 License Required
- 677A.03 License Application
- 677A.04 Issuance of License
- 677A.05 Term of License
- 677A.06 Assignment or Transfer of License
- 677A.07 Denial, Suspension or Revocation of License
- 677A.08 Appeal from License Denial, Suspension or Revocation
- 677A.09 Liability Insurance Required
- 677A.10 Tow Truck Identification
- 677A.11 Responding to the Scene of an Accident
- 677A.12 Transport Sheet Required
- 677A.13 Records
- 677A.14 Drivers' Licenses
- 677A.15 Convictions Barring Issuance of License
- 677A.16 Drivers' Photographs
- 677A.17 Issuance, Form and Term of License
- 677A.18 Temporary Permits
- 677A.19 License Certificate
- 677A.20 Renewal of License
- 677A.21 License Fees
- 677A.22 Suspension or Revocation of License

677A.23 Records of Licenses

677A.99 Penalty

Cross-reference:

Commercial and heavy vehicles, CO Ch. 439

Impounding, CO Ch. 405

Towing requirements, CO 439.10

§ 677A.01 Definitions

As used in this chapter:

(a) “Driver” or “operator” means a person who drives or is in actual physical control of a tow truck on a public street or public right-of-way in the City.

(b) “Person” means a natural person, firm, copartnership, association or corporation.

(c) “Tow truck” means a truck or any other vehicle adapted or used for the purpose of towing, winching or otherwise removing disabled motor vehicles.

(d) “Tow truck owner” means a person engaged in the business of offering towing services for compensation, and includes a lessee in operation of a tow truck.

(e) “Towing” means the act of pulling or dragging a vehicle behind the tow truck which is doing such pulling or dragging. “Towing” includes flat bed towing. The towed vehicle can be self-supporting, carried on a dolly-type platform or supported on any other item necessary to facilitate such towing.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.02 License Required

(a) No owner of a tow truck shall permit such tow truck to be used for the purpose of towing in the City unless a valid tow truck owner’s license, obtained pursuant to this chapter, has been issued and is in force for that tow truck.

(b) This section does not apply when the property being towed is owned by the person doing the towing, and is being transported for recreation, sport or show, or when the property being towed has been picked up outside the City and is either in the process of being delivered to a location in the City, or is being towed through the City to be delivered elsewhere.

(c) Evidence of the ownership of a vehicle being towed shall be presented to a police officer or inspector upon demand and shall consist of either a certificate of title or a bill of sale for the vehicle.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.03 License Application

(a) An application for the license required by Section 677A.02 shall be made in person at the office of the Commissioner of Assessments and Licenses on forms provided and information as the Commissioner may deem necessary shall be given under oath. It shall be mandatory rejection of the application or revocation of an issued license if any of the required application information is misrepresented or untrue.

(b) Each application for the license shall be accompanied by a fee of one hundred twenty-five dollars (\$125.00) for the original license and thirty dollars (\$30.00) for each additional license if a person licenses more than one (1) vehicle. Each application for the replacement of a lost, stolen, or missing license shall be accompanied by a fee of thirty dollars (\$30.00).

(Ord. No. 2393-02. Passed 2-3-03, eff. 2-3-03)

§ 677A.04 Issuance of License

Upon approval of the application provided for in Section 677A.03, the Commissioner of Assessments and Licenses shall issue the license and, as evidence thereof, a metal tag bearing the number of the license. The tag shall be six (6) inches by eight (8) inches and of an annual contrasting color as determined by the Commissioner. The tag shall be permanently fixed to the front bumper of the licensed tow truck.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.05 Term of License

All licenses issued pursuant to Section 677A.04 shall be issued for a period of two (2) years, expiring on the 30th day of September in odd numbered years, unless sooner revoked by the Commissioner, provided, however, that any license issued pursuant to Section 677A.04 between the effective date of this section and September 30, 1993 shall expire on September 30, 1995 unless sooner revoked by the Commissioner.

(Ord. No. 228-93. Passed 2-8-93, eff. 2-16-93)

§ 677A.06 Assignment or Transfer of License

No license issued pursuant to Section 677A.04 shall be assigned or transferred to any other tow truck.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.07 Denial, Suspension or Revocation of License

The Commissioner of Assessments and Licenses may deny the issuance of a tow truck owner's

license to a person who, upon investigation, clearly lacks the qualifications and fitness to be licensed under this chapter. A license granted or issued pursuant to the terms of Section 677A.04 may be suspended or revoked at any time by the Commissioner upon:

(a) Satisfactory proof of a violation of this chapter for reasons which could have been grounds for the refusal to issue an original license; or

(b) Satisfactory proof that the tow truck owner has failed to resolve complaints involving parts or property taken from an impounded vehicle or damage to an impounded vehicle when such complaints are substantiated by information contained in forms prescribed in rules and regulations promulgated by the Director of Public Safety.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.08 Appeal from License Denial, Suspension or Revocation

License issuance shall be authorized and under the control of the Commissioner of Assessments and Licenses. In case of the refusal to issue a license or the revocation or suspension of a license by the Commissioner, the applicant or licensee may appeal from such order to the Board of Zoning Appeals established pursuant to Charter Section 76-6, provided that written appeal is filed with the Board Secretary within ten (10) days of the date the decision being appealed was made. The Board shall conduct a hearing and render a decision in accordance with City ordinances and regulations governing its conduct and procedure.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.09 Liability Insurance Required

Each owner of a tow truck shall furnish, at the time of application and/or renewal of such license, a certificate of insurance or an acknowledgment thereof, by an insurance carrier licensed to do business in the State, evidence of garagekeepers' legal liability, to protect property left in his or her care, custody or control, in an amount not less than one hundred thousand dollars (\$100,000.00) and general liability in an amount not less than three hundred thousand dollars (\$300,000.00). The provisions of this section relating to garagekeepers' legal liability shall not apply to a tow truck owner who establishes to the satisfaction of the Commissioner of Assessments and Licenses that such owner does not own, operate or maintain garage or vehicular storage facilities.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.10 Tow Truck Identification

Any person engaged in the business of offering towing services shall have imprinted on both sides of any vehicle used as a tow truck, slide or tilt-bed carrier, or car hauler, the name, address and telephone number of the person owning such vehicle. The name shall be printed in letters at least three (3) inches high and not less than three-eighths (3/8) of an inch wide, while the address, place and phone number shall be in letters two (2) inches high and not less than three-eighths (3/8) of an inch wide. Lettering shall be done in color which will contrast sharply with the background upon which it is painted and shall

be placed in such position as to be easily seen by anyone wishing to identify the vehicle. Markings shall be kept clear and distinct at all times.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

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

No person licensed under Section 677A.02, or any of his or her 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.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.12 Transport Sheet Required

Tow truck operators shall at all times maintain a current transport sheet containing the following information in the proper sequence on motor vehicles that are moved from one (1) location to another:

- (a) Date and time;
- (b) Moved vehicle owner's name and address;
- (c) Moved vehicle's serial or license number; serial number required if vehicle is taken anywhere other than licensee's lot;
- (d) Year, make and model of moved motor vehicle;
- (e) Location of origin of transport;
- (f) Location of destination of transport;
- (g) Amount of charges;
- (h) Name of person who authorized transport.

Such entries on the transport sheet are to be made at the time of each act and recorded legibly, accurately and completely as directed in this section. These transport sheets shall be made available for inspection upon the request of any police officer. This section shall not apply to salvage motor vehicle dealers.

No tow truck shall have in tow a motor vehicle for which the operator does not have in his or her possession authorization to remove such vehicle. The authorization of the owner or of an officer of the Police Division shall include, but not be limited to, the name of the owner of such motor vehicle, the name and telephone number of the person authorizing the moving of the motor vehicle, the motor vehicle registration number and/or the vehicle identification number.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.13 Records

The owner of a truck shall maintain an accurate and complete file of transport sheets for each driver employed by him or her, including the owner if he or she is also an operator. Transport sheets shall be filed by date of occurrence and retained for a period of six (6) months. Upon the request of the Director of Public Safety or his or her designee, such sheets shall be immediately available for inspection.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.14 Drivers' Licenses

Every person driving a tow truck shall be licensed. Each applicant for a driver's license shall:

- (a) Be eighteen (18) years of age or over and an American citizen (or have declared his or her intention to become a citizen) on the date of such application;
- (b) Be of sound physique, with good eyesight and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body and mind which might render him or her or her unfit for the safe operation of a public vehicle;
- (c) Exhibit minimal competency in reading and writing the English language;
- (d) Produce, on forms provided by the Commissioner of Assessments and Licenses, two (2) character references of persons not related to the applicant; and
- (e) Fill out, on a form provided by the Commissioner, a statement giving his or her full name, residence and places of residence for five (5) years previous to moving to his or her present address; his or her age, height, color of eyes and hair and place of birth; the length of time he or she has resided at his or her present address; whether or not he or she is a citizen of the United States; places of previous employment; whether or not he or she has ever been arrested or convicted of a felony or misdemeanor; whether or not he or she has been summoned to court; whether or not he or she has previously been licensed as a driver or chauffeur, and if so, whether or not his or her license has ever been revoked and for what cause. Such statement shall be signed and sworn to by the applicant, and filed with the Commissioner, as a permanent record.

Any false statement made by the applicant shall be promptly reported by the Commissioner to the prosecuting attorney. The Commissioner is authorized to establish such additional rules and regulations, covering the issuance of drivers' licenses, not inconsistent with this chapter, as may be necessary and reasonable.

(Ord. No. 1551-10. Passed 12-6-10, eff. 12-10-10)

§ 677A.15 Convictions Barring Issuance of License

No driver's license provided for in Section 677A.14 shall be issued or renewed if the applicant therefor has been convicted of any of the following offenses:

- (a) Manslaughter or negligent homicide, resulting from the operation of a motor vehicle;
- (b) Driving a motor vehicle while under the influence of intoxicating liquors or drugs. A conviction under this subsection shall not bar the issuance of a license if the conviction occurred more than five (5) years prior to the date of application or, upon a recommendation of the Commissioner of Assessments and Licenses, more than three (3) years prior to the date of application.
- (c) A felony, in the commission of which a motor vehicle was used;
- (d) Failure to stop and render aid as required under the laws of the State, or leaving the scene of an accident as specified by the laws of the State;
- (e) Perjury or false swearing in making a statement under oath in connection with his or her application for a driver's license;
- (f) Conviction, or forfeiture of bail, not vacated, upon three (3) charges of a violation of the motor vehicle laws of the State within a period of twelve (12) months;
- (g) Conviction of a violation of a law involving violence, theft or any form of stealing, or a crime involving moral turpitude that is reasonably related to the license referred to in this chapter, within five (5) years preceding the filing of the application for such license;
- (h) Repeated violations of City ordinances, which affect the safety of human life or limb on the streets of the City; or
- (i) Possession by a tow truck driver, in his or her tow truck, of opened or unopened beer, whiskey or wine; of drugs or other stimulants not specifically prescribed for him or her by a medical doctor for his or her private use; or of gambling equipment or paraphernalia, stolen goods or contraband property of any kind.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.16 Drivers' Photographs

(a) Each applicant for the driver's license provided for in Section 677A.14 shall file with his or her application three (3) unmounted, unretouched photographs of himself or herself, in such position as the Commissioner of Assessments and Licenses may direct, taken within thirty (30) days preceding the filing of his or her application. Photographs shall be of a size which may be easily attached to his or her license. One (1) of the photographs shall be attached to his or her license when issued, and the others shall be filed with the application in the office of the Commissioner.

The photograph shall be so attached to the license that it cannot be removed and another photograph substituted without detection. Each licensed driver shall, on demand of an inspector of licenses, a policeman or an affected citizen, exhibit his or her license and photograph for inspection.

Where the application for a license is denied, two (2) copies of the photograph shall be returned to the applicant by the Commissioner.

- (b) Applications with photographs attached shall forthwith be forwarded to the Bureau of Criminal

Identification, Police Division. No license shall be issued under this chapter until the receipt in writing from such Bureau of a report showing the result of the investigation of the application.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.17 Issuance, Form and Term of License

Upon satisfactory fulfillment of the applicable requirements of this chapter, there shall be issued to the applicant a license, which shall be in such form as to contain the photograph and name of the licensee. A licensee who defaces, removes or obliterates an official entry made on his or her license, shall be punished by revocation of his or her license. Such license shall be issued for a period of one (1) year commencing on February 21, unless previously revoked.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.18 Temporary Permits

Except when an extraordinary public emergency arises adversely affecting transportation on the streets in the City, temporary permits when issued shall be on such terms and conditions as the Commissioner of Assessments and Licenses provides. However, such temporary permits shall in no event be granted for a longer period than fifteen (15) days and may be renewable for similar periods, as necessary, only on the written recommendation of the Commissioner made to Council and approved thereby.

The fee for such a temporary permit is three dollars (\$3.00) for the driver.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.19 License Certificate

The Commissioner of Assessments and Licenses shall issue a license certificate, bearing the photograph of the licensee, to each person licensed as the driver of a tow truck. Such license certificate must, under penalty of suspension or revocation of the license, be conspicuously displayed at all times in the vehicle operated by such licensee and in the manner required by the Commissioner. The certificate shall be of such form and design as the Commissioner prescribes.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.20 Renewal of License

Renewal of a driver's license issued under this chapter shall be in accordance with the procedure prescribed by the Commissioner of Assessments and Licenses.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.21 License Fees

A license fee of ten dollars (\$10.00) shall be paid for an original driver's license or for a renewal of a license.

(Ord. No. 2393-02. Passed 2-3-03, eff. 2-3-03)

§ 677A.22 Suspension or Revocation of License

A driver's license issued under this chapter may be suspended or revoked at any time by the Commissioner of Assessments and Licenses on his or her own initiative or on the recommendation of the Chief of Police. Before suspending or revoking such license, the Commissioner shall afford the licensee the opportunity of a hearing on the charges. The licensee may appeal from such order in the manner provided in Section 677A.08. A second suspension for the same reason, or a third suspension in any case, of a driver's license shall operate as a revocation of such license. No driver whose license has been revoked shall again be licensed as a tow truck driver in the City without the presentation of reasons satisfactory to the Commissioner. The Commissioner shall notify the Police Division of all suspensions or revocations of drivers' licenses.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.23 Records of Licenses

There shall be kept in the office of the Commissioner of Assessments and Licenses a complete record of each driver's license issued to a driver under this chapter, and of all renewals, suspensions and revocations thereof, which record shall be kept on file with the original application of the driver for such license.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

§ 677A.99 Penalty

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the second degree and shall be fined not more than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both. Any such violation shall constitute a separate offense on each consecutive day continued.

(Ord. No. 1053-A-80. Passed 1-12-81, eff. 2-21-81)

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