

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND	:	Case No. 12-1616
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County Court
v.	:	of Appeals, Eighth
	:	Appellate District
	:	
STATE OF OHIO,	:	Court of Appeals
	:	Case No. 97679
Defendant-Appellant.	:	

BRIEF *AMICUS CURIAE* OF CITY OF CINCINNATI IN SUPPORT OF PLAINTIFF-APPELLEE

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE CITY OF CINCINNATI	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
A. R.C. 4921.25 is not a general law, because it is not part of a statewide legislative enactment that prescribes a rule of conduct for citizens in general, but instead purports only to limit the legislative power of municipal corporations.....	2
1. R.C. 4921.25 is not a statewide comprehensive legislative enactment & not a rule of conduct for citizens.....	3
2. R.C. 4921.25 is not a police, sanitary, or similar regulation. Rather, purports only to limit the legislative powers of municipal corporations.....	6
CONCLUSION.....	7
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Mendenhall v. City of Akron</i> 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255	2
<i>Canton v. State</i> 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963	2,6,7
<i>American Financial Services Association v. City of Cleveland</i> 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 766	3
<i>Ohians for Concealed Carry, Inc. v. City of Clyde</i> 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967	3
<i>Village of Linndale v. State</i> 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999)	3,4,6,7
<i>West Jefferson v. Robinson</i> 1 Ohio St.2d 113, 205 N.E.2d 382 (1965)	4
<i>Youngstown v. Evans</i> 121 Ohio St. 342, 168 N.E 844 (1929)	4

OHIO CONSTITUTION

Article XVIII, Section 3	passim
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STATUTES:

R.C. 4513.60	1
R.C. 4921.25	passim
R.C. 1.63	3
R.C. 9.68	3
R.C. 4921.19(J)	5
R.C. 4905.81(G)	5
R.C. 4921.01(B)	6

INTEREST OF AMICUS CURIAE
CITY OF CINCINNATI

The City of Cincinnati (“City”) is a charter municipal corporation with home-rule authority through Article XVIII of the Ohio Constitution. Citizens of Cincinnati rely on City Council to regulate local issues when and where necessary. One such local issue on which citizens consistently seek City Council action is in the area of tow truck regulations.

The City has experienced many problems stemming from tow trucks operators within City limits. Recently, Cincinnatians experienced a significant increase in “predatory towing.” Predatory towing occurs when tow truck operators charge affected citizens more than statutorily permitted by R.C. 4513.60. The City cannot adequately address this problem under the current state law, R.C. 4921.25, which attempts to prevent local regulation of towing companies and practices. For instance, the City would benefit from having an ordinance similar to Cleveland Municipal Code Section 667A.12, “Transport Sheet Required.” Such an ordinance would provide documentation to City officials that tow trucks are operating in compliance with R.C. 4513.60.

The City joins Cleveland in urging this Court to find that R.C. 4921.25 is an unconstitutional infringement on municipalities’ home-rule authority. The Eighth District Court of Appeal’s ruling is correct. Overturning its ruling will materially impact the City’s ability to effectively regulate tow trucks for the benefit of Cincinnatians.

SUMMARY OF ARGUMENT

Article XVIII, Section 3, of the Ohio Constitution states: “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.” Municipalities may exercise their police powers provided that they are not conflicting

with general laws. *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. To qualify as a general law, a statute must be part of a statewide legislative enactment that prescribes a rule of conduct for citizens in general. *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 21. The language of R.C. 4921.25 in no way indicates that the General Assembly intended to provide a comprehensive legislative enactment. Instead, R.C. 4921.25 is definitional in nature and purports only to limit the legislative powers of municipal corporations. Therefore, R.C. 4921.25 is not a general law, because it is not part of a statewide legislative enactment that prescribes a rule of conduct for citizens in general, but instead purports only to limit the legislative power of municipal corporations.

ARGUMENT

- A. R.C. 4921.25 is not a general law, because it is not part of a statewide legislative enactment that prescribes a rule of conduct for citizens in general, but instead purports only to limit the legislative power of municipal corporations.

The linchpin of this case is whether R.C. 4921.25 meets the four part test of *Canton*. When a statute fails to meet the *Canton* test, the statute is not a general law, and a municipal corporation can legislate in that area, even if the legislation conflicts with the statute. *Id.* at ¶37. In order to constitute a general law, a statute must meet four requirements. It 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. *Id.* at 21. R.C. 4921.25 fails to meet three of the four prongs of the *Canton* test and therefore is not a general law of Ohio.

1. **R.C. 4921.25 IS NOT A STATEWIDE COMPREHENSIVE LEGISLATIVE ENACTMENT & NOT A RULE OF CONDUCT FOR CITIZENS**

R.C. 4921.25 is not part of a statewide comprehensive legislative enactment because it does not indicate a legislative intent to create a comprehensive legislative enactment for tow trucks. In *American Financial Services Association*, the Court held that the predatory lending statute is a statewide comprehensive legislative enactment. *Am. Fin. Servs. Ass'n v. City of Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 766, ¶33. In reaching this holding, the Court determined that the General Assembly clearly indicated its intent to create a comprehensive regulation by listing with specificity all elements of consumer mortgage lending industry. *Id.* The Court held the language of R.C. 1.63 which permits the state to “solely *** regulate the business of originating, granting, servicing, and collecting loans,” indicated the intent to create a comprehensive statewide legislative regulation. *Id.*

Moreover, in the case of *Ohioans for Concealed Carry, Inc. v. City of Clyde*, this Court examined R.C. 9.68 and determined that it was a statewide comprehensive legislative enactment. *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶41. In *Ohioans for Concealed Carry*, the Court stated, “the General Assembly could not have been more direct in expressing its intent for statewide comprehensive handgun–possession laws.” *Id.* This Court made this determination based on the clear language in R.C. 9.68, which states in part: “the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, *** transport, storage, carrying, *** or other transfer of firearms.” *Id.* at ¶ 40.

Alternatively, this Court also reviewed Ohio statutes that have done nothing more than purport to grant or limit the legislative power granted to municipalities. For instance, in *Village of Linndale v. State*, this Court found that R.C. 4549.17 was not a general law. 85 Ohio St.3d 52,

55, 706 N.E.2d 1227 (1999). R.C. 4549.17 sought solely to limit a municipality's ability to regulate traffic conditions. *Id.* at 54. In *Village of Linndale*, this Court protected a municipality's constitutional right to home-rule authority by reiterating, "general laws***are not statutes which purport only to grant or limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary, or other similar regulations." *Id.* (quoting *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382 (1965)).

Unlike the clear and precise statutory language evaluated by this Court in *Am. Fin. Servs. Ass'n and Ohioans for Concealed Carry*, R.C. 4921.25 does not indicate a legislative intent to create a comprehensive legislative enactment for tow trucks. Rather, R.C. 4921.25 is analogous to the statute in *Village of Linndale*, because R.C. 4921.25 merely states that tow trucks are "subject to regulation by the public utilities commission as a for-hire motor carrier." Then the statute purports to completely eliminate a municipality's constitutional right to self-govern with regards to tow trucks, not as to motor carriers as a whole. A plain reading of R.C. 4921.25 shows no legislative intent to create a statewide comprehensive enactment. Like the statute in the *Village of Linndale*, R.C. 4921.25 unconstitutionally purports to limit the legislative authority to self-govern that is constitutionally guaranteed to municipalities.

Likewise, R.C. 4921.25 does not prescribe a rule of conduct for citizens. For over eighty years, this Court has affirmed that statutes not prescribing a rule of conduct for citizens, but merely purporting to grant or limit the legislative power of municipalities, are not general laws. *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 117, 205 N.E.2d 382 (1965)(discussing *Youngstown v. Evans* 121 Ohio St. 342, 345, 168 N.E. 844 (1929)). R.C. 4921.25 does not prescribe a rule of conduct for citizens; it merely states that tow trucks are subject to regulation by the Public Utilities Commission of Ohio ("PUCO") as a for-hire motor carrier. Generally, and

specifically with regards to R.C. 4921.25, statutory definitions do not prescribe a rule of conduct on individuals. Therefore, the only statutory purpose to R.C. 4921.25 is to limit the legislative powers of municipalities contrary to Article XVIII of the Ohio Constitution. Accordingly, R.C. 4921.25 fails the fourth prong of the *Canton* test.

Argument that the General Assembly intended to create a comprehensive statutory scheme is undermined by the inherent incompatibility that exists between R.C. 4921.19(J), R.C. 4905.81(G), and R.C. 4921.25. R.C. 4921.19(J) specifically permits local police ordinances relating to motor carrier taxes and fees that are not in conflict with state law. R.C. 4921.19(J) states that “[upon] compliance with section 4503.04 and 4905.03 and Chapter 4921 of the Revised Code, all local ordinances***shall cease to be operative as to the persons in compliance *except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with sections 4503.04 and 4905.03 and Chapter 4921 of the Revised Code.*” (Emphasis added.) Further, R.C. 4905.81(G) addresses the general duties of the PUCO as those duties relate to motor carriers and states: “Local subdivisions may adopt reasonable local police rules within their respective boundaries not inconsistent with those chapters and rules adopted under them.” These sections of the Ohio Revised Code expressly authorize local legislation of tow trucks, and directly undermine any claim that R.C. 4921.25 is intended to create a statewide comprehensive legislative authority on tow trucks, or give sole authority to the State. The General Assembly created conflicting laws; through R.C. 4921.19(J) and R.C. 4905.81(G), municipalities are permitted to regulate tow trucks, yet municipalities are prohibited from regulating tow trucks through R.C. 4921.25. In situations such as these, the Court must give deference to the rights granted to municipalities by the Ohio Constitution.

2. R.C. 4921.25 IS NOT A POLICE, SANITARY, OR SIMILAR REGULATION. RATHER, PURPORTS ONLY TO LIMIT THE LEGISLATIVE POWERS OF MUNICIPAL CORPORATIONS.

R.C. 4921.25 does not set forth a police, sanitary, or similar regulation; rather it purports only to limit the legislative powers of municipal corporations. R.C. Chapter 4921 does contain provisions that set forth police regulations for tow trucks (among other vehicles). R.C. 4921.25, however, is not an exercise of police power as it is merely definitional in nature.

In *Canton*, this Court held that subsections (A) and (B) of R.C. 3781.184 constituted an exercise of police powers, but that subsections (C) and (D) did not. *Canton* at ¶ 39. Similar to the analysis employed in *Canton* case, this Court should differentiate R.C. 4921.25 from the remainder of Chapter 4921 and the police regulations set forth therein. R.C. 4921.25 accomplishes two goals: (1) it redundantly and unnecessarily states that tow trucks are subject to the PUCO's regulations despite the definition of a "for-hire motor carrier" in 4921.01(B); and (2) it prohibits a municipality from exercising its home rule authority to self-govern under Article XVIII, Section 3 of the Ohio Constitution. "For-hire motor carriers" are defined in R.C. 4921.01(B), and for-hire tow trucks meet that definition. Therefore, R.C. 4921.25 unnecessarily states that tow trucks fall within the definition of a for-hire motor carrier. Accordingly, R.C. 4921.25 adds nothing to Chapter 4921 and has no effect other than to prohibit local regulation of tow trucks. The effect of R.C. 4925.21 is to restate a definition, which is already known, and preempt municipalities from regulating tow trucks. As this Court stated in *Village of Linndale*, statutes that only purport to limit the powers of a municipal corporation, must be struck down as unconstitutional. *Village of Linndale* at 53. As such, R.C. 4921.25 also fails the third prong of the test established by this Court in *Canton*, and must be struck down as unconstitutional.

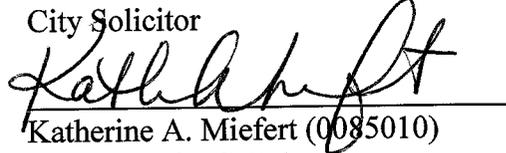
CONCLUSION

Article XVIII, Section 3 of the Ohio Constitution states “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.” Contrary to the explicit language of Article XVIII, Section 3, R.C. 4921.25 seeks to eliminate current and future municipal tow truck regulations irrespective of whether these regulations are in conflict with the state law. As stated in *Canton*, when statutes are not general laws, “they are an unconstitutional attempt to limit the legislative home-rule power*** and must be struck down as unconstitutional.” *Canton* at ¶ 11.

The residents of Cincinnati demanded that the City curtail predatory towing. The City, however, cannot adequately address this problem under the current state law, R.C. 4921.25, which unconstitutionally limits the City’s power to regulate tow trucks. The decision of the Eighth District Court of Appeals correctly held that R.C. 4921.25 is not a general law. R.C. 4921.25 does nothing more than purport to limit those powers granted to municipalities by the Ohio Constitution. As this Court so precisely stated in the *Village of Linndale*, “an attempt to limit the powers of a municipal corporation to adopt or enforce police regulations, must be struck down as unconstitutional.” *Village of Linndale* at 53. Accordingly, the rights granted to municipalities by the Ohio Constitution must be protected, and the decision of the Eighth District Court of Appeals upheld.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief Amicus Curiae of the City of Cincinnati in support of the Plaintiff-Appellee, City of Cleveland, was served by ordinary U.S. Mail, postage prepaid, this 1st day of May, 2013 upon the following:

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