

ORIGINAL

IN THE SUPREME COURT OF OHIO

Westlake Civil Service Commission,
et al.

Case No. 13-0052

Appellants,

On Appeal from the Cuyahoga
County Court of Appeals,
Eighth Appellate District

v.

Richard O. Pietrick,

Court of Appeals
Case No. 98258

Appellee.

APPELLANTS WESTLAKE CIVIL SERVICE COMMISSION, ET AL.
MOTION FOR RECONSIDERATION OF THE SUPREME COURT OF
OHIO'S REFUSAL TO ACCEPT JURISDICTION

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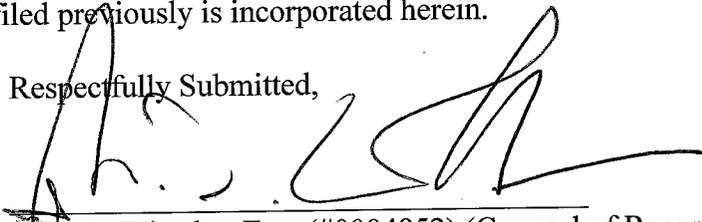
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COUNSEL FOR APPELLEE, RICHARD O. PIETRICK
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**MOTION FOR RECONSIDERATION OF THE SUPREME COURT
OF OHIO'S REFUSAL TO ACCEPT JURISDICTION**

Appellants Westlake Civil Service Commission and City of Westlake (hereinafter "Westlake") by and through Council, hereby respectfully move this Court to reconsider this Court's decision to deny jurisdiction and hear this case on the merits. Westlake moves that jurisdiction be granted. This motion is made pursuant to Rule 18.02(B)(1) of the Rules of Practice of the Supreme Court of Ohio and the accompanying memorandum. Further, the Statement of the Case and Facts and the Arguments set forth in Appellants' Memorandum in Support of Jurisdiction which Appellants filed previously is incorporated herein.

Respectfully Submitted,



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MEMORANDUM IN SUPPORT

“This Court has invoked the reconsideration procedures set forth in Supreme Court Practice Rule 18.02(B)(1) to correct decisions which, upon reflection, are deemed to have been made in error.” *Buckeye Community Hope Foundation v. City of Cuyahoga Falls*, 83 Ohio St.3d 539, 541 697 N.E.2d 181 (1998) quoting *State ex rel. Huebner v. Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1995). This appeal should be heard because it involves a great public interest. Public interest is something in which the public, the community at large, has some interest by which their legal rights or liabilities are affected. *State ex rel. Ross v. Guion* (1959), 82 Ohio Law Abs. 1, 161 N.E.2d 800, 803, citing *State ex rel. Freeling v. Lyon* (1917), 63 Okl. 285, 165 P. 419, 420.

The Appellee, Richard O. Pietrick (hereinafter “Pietrick”), in his Memorandum in Response to Appellants’ Memorandum in Support of Jurisdiction contends that under Ohio Revised Code §124.34(C) a court of common pleas is required to conduct a trial *de novo* of the proceedings held before a Civil Service Commission and thereby ignores the wholly inappropriate determination of the Eighth District Court of Appeals that criminal or unethical behavior is a pre-requisite under §124.34 to a finding of neglect of duty or failure of good behavior. Pietrick’s argument is that the Eighth District can judicially create a higher standard of misbehavior which merits punishment as opposed to the standards set forth in the statute. This gross misinterpretation of the law by the Eighth District and its potential for misuse and the resulting harm to public employers is precisely why this case is of public and great general interest.

Pietrick's misbehavior is reviewed in detail in the previous filings before this Court. Whether or not the conduct was criminal or unethical is irrelevant when that conduct is analyzed pursuant to §124.34(A) which states:

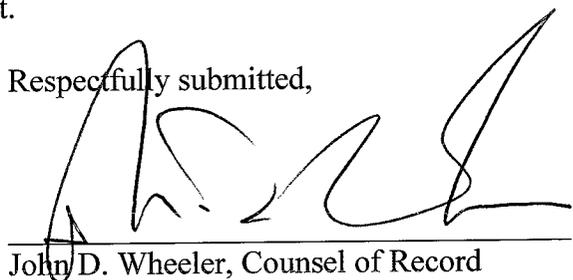
(A) The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts of the state, holding a position under this chapter, shall be during good behavior and efficient service. No officer or employee shall be reduced in pay or position, fined, suspended, or removed, or have the officer's or employee's longevity reduced or eliminated, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. The denial of a one-time pay supplement or a bonus to an officer or employee is not a reduction in pay for purposes of this section. (Emphasis added.)

Even though the conduct proscribed by the statute includes the conjunction "or" in reference to behavior, the Eighth District has held that discipline under "neglect of duty" or "other failure of good behavior" requires a finding that a criminal act (or unethical act, conduct also deemed criminal under Ohio Revised Code Chapter 102) was committed. The precedential impact of this decision cannot be overestimated as, pursuant to this holding, in the Eighth District of Ohio proper corrective measures for the failure of good behavior or neglect of duty by a public employee in the classified service can only be brought if the employee has committed a crime. There is no doubt that employees in the classified service who are accused of failure of good behavior will argue that no disciplinary action can be brought until after criminal prosecution and conviction, thus making it ever more difficult for public employers to discipline classified employees.

The Eighth District has, according to Pietrick, created a test for determining whether a classified employee can be disciplined for “neglect of duty” or “failure of good behavior”. The logical sequence of events for instituting such discipline is therefore as follows: firstly, the conduct must be criminal; secondly, the employee must be prosecuted; thirdly, the employee must be convicted of that crime or crimes beyond a reasonable doubt. Then, and only then, according to the District Court’s reasoning can the employee be disciplined. If steps one, two and three outlined above do not take place the employee will argue that the employer cannot contend that any criminal behavior actually occurred. The logical extension of the Eighth District’s holding is that this class of behavior must be established pursuant to the criminal standard of beyond a reason doubt before there can be any charge requiring discipline under “neglect of duty” or “failure of good behavior”.

This judicial definition of prohibited behavior under §124.34 as well as the attendant standard necessary for its proof was never intended by the legislature as is clear from a review of the statute, the body of which includes a prohibition against actual criminal behavior with the language “or conviction of a felony”. The Eighth District eviscerated the statute which was intended to protect public employers and the legislature’s intent in setting forth reasonable criteria for discipline. The Eighth District’s decision has far reaching consequences for public employers and deserves review by this Court.

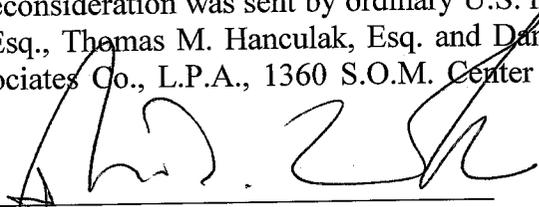
Respectfully submitted,



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Certificate of Service

I certify that a copy of this Motion for Reconsideration was sent by ordinary U.S. mail to counsel for Appellee, Joseph W. Diemert, Jr., Esq., Thomas M. Hanculak, Esq. and Daniel A. Powell, Esq. at Joseph W. Diemert, Jr. & Associates Co., L.P.A., 1360 S.O.M. Center Road, Cleveland, Ohio 44124 on May 16, 2013.



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