

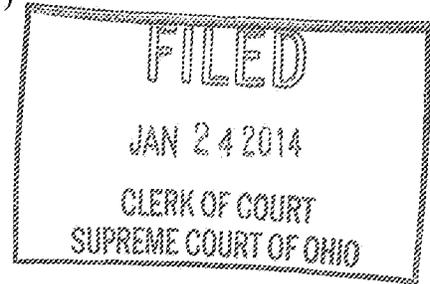
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IN THE SUPREME COURT OF OHIO

Bradley L. Walker,	:	Case No. <u>13-1277</u>
	:	
Appellees,	:	On Appeal from the
	:	Sixth District Court of Appeals
v.	:	Lucas County, Ohio
	:	
City of Toledo, et al.,	:	Court of Appeals
	:	Case No. L-12-1056
Appellants.	:	
	:	
	:	

BRIEF OF AMICUS CURIAE THE OHIO MUNICIPAL LEAGUE, CITY OF COLUMBUS, AND CITY OF DAYTON IN SUPPORT OF APPELLANTS CITY OF TOLEDO, ET AL.

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**INTRODUCTION: THIS CASE INVOLVES MATTERS
OF GREAT GENERAL AND PUBLIC INTEREST**

The Ohio Municipal League (“League”), the City of Columbus, and the City of Dayton, as amicus curiae on behalf of the City of Toledo (“City”), urge this Court to reverse the decision of the Sixth District Court of Appeals (“Sixth District”) in *Walker v. Toledo*, 2013-Ohio-2809. In *Walker*, the Sixth District erroneously reversed the trial court’s dismissal of the suit by finding that the City’s photo-enforcement administrative process amounted to “usurpation of jurisdiction” and, therefore, violated Ohio Constitution, Article IV, Section 1.

The precise issue before this Court is whether municipalities have the constitutional right to conduct pre-suit administrative hearings in furtherance of their traffic photo-enforcement programs pursuant to home rule powers established under Article XVIII, §§ 3 and 7 of the Ohio Constitution; or whether municipal courts have the *exclusive* jurisdiction to hear and decide citations issued under those programs pursuant to Article IV § 1 of the Ohio Constitution and R.C. 1901.20(A). The Sixth District erroneously declared the latter. This is both a substantial constitutional question and an issue of great public interest and importance. The impact of this issue will affect almost two dozen Ohio cities, including six of Ohio’s seven largest cities, and potentially every Ohioan who drives or owns a vehicle.

Additionally, the legal implication of the Sixth District’s decision goes far beyond red-light cameras. If the decision becomes the settled law in Ohio, it would render all administrative hearings conducted by municipal boards and commissions – hearings to determine ordinance violations – unconstitutional. Enforcement boards created by ordinance would have no authority to conduct hearings because such hearings would have to *start* in a municipal court. The Sixth District has set dangerous precedent that could lead to immense disruptions in city administrations throughout Ohio.

A city's photo-enforcement administrative process is constitutionally valid because Ohio municipalities have the home rule authority to maintain pre-suit administrative procedures, which includes conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances.

This Court has an opportunity to clarify the scope of R.C 1901.20(A). The impact of this case is not limited simply to photo-enforcement programs, but also greatly affects all Ohio cities' ability to establish administrative procedures by ordinance. For example, by the Sixth District's own admission, municipal courts would necessarily have exclusive jurisdiction over violations of the City's Pedicab Code. Presently, the City has established a Taxicab Board of Review to administer permits, violations, and appeals of this code. If the Sixth District's decision stands, municipal courts will have exclusive jurisdiction over pedicab code violations and appeals of those violations. The Taxicab Board of Review is just one of several enforcement boards that will be affected by this decision.

Moreover, this matter involves significant constitutional issues regarding municipalities' home rule authority. Presently, the Ohio Constitution grants municipalities the authority to exercise all powers of local self-government and to adopt and enforce within their limits local police power and other similar regulations. The Sixth District's decision severely limits municipalities' ability to enforce local police powers.

These issues implicate matters of great general and public interest. First, the decision of this case implicates the exercise of valid authority protected and reserved to municipalities under the home rule provision of Section 3, Article XVIII of the Ohio Constitution. As discussed above, these issues will affect the way in which administrative programs are implemented and enforced in all municipalities across the state. If the decision stands, municipal courts will be

inundated with the administration of pedicab violations, violations of cities' health and environment rules and regulations, violations of the cities' business regulations code, etc. The Sixth District's decision usurps jurisdiction from municipal enforcement boards and commissions, and grants exclusive authority on these matters to the municipal courts. Accordingly, these issues address matters that pertain to all Ohio municipalities as most, if not all, have established boards and commissions to hear and decide violations of city ordinances.

This case provides an opportunity for the Court to clarify the scope of R.C. 1901.20 specifically, as well as the ability of municipalities to establish administrative procedures by ordinance pursuant to their home rule powers. For these reasons and the reasons contained herein, Appellants urge this Court to reverse the decision of the Sixth District in *Walker v. Toledo*, 2013-Ohio-2809.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of more than 700 Ohio cities and villages. The Ohio Municipal League and its members have an interest in ensuring the proper application of R.C. 1901.20 in order to preserve home rule powers of political subdivisions, enforcement of their ordinances, and avoid unwarranted and unnecessary liability and costs incurred as a result of piecemeal litigation. If the Sixth District's decision stands, municipalities across the State will be vulnerable not only to lawsuits pertaining to their red-light cameras, but also to lawsuits regarding enforcement of city ordinances that are administered through their various enforcement boards and commissions.

STATEMENT OF THE CASE AND FACTS

The League hereby adopts, in its entirety, and incorporates by reference, the statement of the case and facts contained within the Brief of Appellant City of Toledo, Ohio.

ARGUMENT

In addition to the following arguments, the Ohio Municipal League incorporates, to the extent applicable, the well-reasoned arguments and authorities contained in the briefs of Appellant City of Toledo and Appellant Redflex.

Proposition of Law No. 1: Ohio municipalities have the home rule authority to maintain pre-suit administrative procedures, which includes conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances.

Section 1, Article IV of the Ohio Constitution vests judicial power in the Supreme Court, the courts of appeals, the common pleas courts, and such other courts “as may from time to time be established by law.” Bradley L. Walker (“Walker”) contends that the General Assembly vested jurisdiction over “all red light ordinance violations” in the municipal courts. Walker relies on R.C. 1901.20(A)(1), which provides that “the municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory,” Walker interprets this language to mean that the legislature has vested judicial power in the municipal courts for photo-enforcement ordinance infractions, to the exclusion of any pre-suit enforcement mechanisms, such as the procedures provided under Toledo Municipal Code (“T.M.C.”) 313.12. Walker then stretches this interpretation of R.C. 1901.20(A)(1) to the conclusion that the City lacks jurisdiction to enforce T.M.C. 313.12 because such exercise of jurisdiction is unconstitutional pursuant to Section 1, Article IV. Walker’s argument is simply erroneous.

Ohio Revised Code (“R.C.”) 1901.20(A)(1) does not grant exclusive jurisdiction to the Toledo Municipal Court for all matters contained in the City’s municipal code. R.C. 1901.20(A)(1) reads in pertinent part as follows: “[t]he municipal court has jurisdiction of the violation of any ordinance” “Any”, however, is not “all”. Stated differently, “jurisdiction” does not mean “*exclusive* jurisdiction,” and the ability of municipal courts to address violations

of city ordinances does not mean that *only* municipal courts can address violations of ordinances. No words in the statute indicate exclusivity or even arguably signal that the Ohio General Assembly contemplated providing the Municipal Court exclusive jurisdiction for this purpose. The Ohio General Assembly enabled, but did not require, the municipal courts to be used as a forum for city code enforcement. This distinction in language is both critical and determinative.

While it is correct that the home rule provision of the Ohio Constitution in Article XVIII, Section 3, does not give the City the power to regulate the jurisdiction of courts as established by the Constitution or General Assembly, T.M.C. 313.12 completely comports with both the Ohio Constitution and the Ohio Revised Code. T.M.C. 313.12 in no way operates to regulate the jurisdiction of the courts as provided by the Ohio General Assembly.

Additionally, as the trial court recognized, Ohio law is clear that “[w]hen the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language.” *State ex rel. Banc One v. Walker*, 86 Ohio St.3d 169, 171-72, 712 N.E.2d 742 (1999). The Ohio General Assembly has specified by clear and plain language those purposes for which exclusive jurisdiction is provided. For instance, R.C. 2151.23(A) provides that the “juvenile court has *exclusive* original jurisdiction under the Revised Code * * * .” (Emphasis added) R.C. 3781.20(B) provides a “certified local board of building appeals has *exclusive* jurisdiction to hear and decide all adjudication hearings arising from rulings of the local chief enforcement official * * * .” (Emphasis added) R.C. 2101.24(A)(1) provides that “except as otherwise provided by law, the probate court has *exclusive* jurisdiction * * * .” (Emphasis added) The section continues by enumerating the purposes for which the specific authority is granted.

R.C. 1901.20 was intended to establish the jurisdiction of the municipal court over misdemeanor criminal offenses and traffic code violations that carry criminal penalties. Had the General Assembly intended to vest an *exclusive* jurisdiction in the municipal court over criminal violations of traffic ordinances *and* any parallel scheme that would treat the same violations as civil infractions, it would have used the word “exclusive,” as it has in many other code sections. It did not.

Absent language vesting exclusive jurisdiction for violations of city ordinances in the municipal court, Ohio cities retain the authority under the Ohio Constitution’s home rule powers to enact their own civil enforcement mechanisms.

The legal implication of the Sixth District’s decision goes far beyond red-light cameras. If the decision becomes the settled law in Ohio, it would render all administrative hearings conducted by municipal boards and commissions – hearings to determine ordinance violations – unconstitutional. Enforcement boards created by ordinance would have no authority to conduct hearings because such hearings would have to *start* in a municipal court. The Sixth District has set dangerous precedent that could lead to immense disruptions in city administrations throughout Ohio. This case is about much more than traffic cameras. This case implicates the legitimacy of every administrative enforcement board and commission established by an Ohio municipality.

Proposition of Law No. 2: Claims of restitution against municipalities that allege unjust enrichment fail as a matter of law.

In the matter before the trial court, Walker sought restitution of civil penalties he and others paid after receiving civil notices of liability for red-light or speed violations that were photographed by red-light cameras in the City. Walker sought restitution by alleging unjust

enrichment based on a lack of due process under the City's civil administrative traffic violation photo enforcement procedures.

However, Walker's restitution claim based on the unjust enrichment allegation fails as a matter of law. First, a claim for unjust enrichment arises when one person has unfairly benefitted from the services of another. In that event, courts have adopted a legal fiction, often referred to as a quasi-contract or implied contract, to provide a remedy allowing the aggrieved party to seek recovery for as much as he deserves. *Wright v. City of Dayton*, 158 Ohio App. 3d 152, 2004-Ohio-3770, 814 N.E.2d 514 (2nd Dist.) ; see also *Eastlake v. Davis*, 11th Dist. Lake No. 510, 1952 Ohio App. LEXIS 603 (May 3, 1952) (citing 28 Ohio Jurisprudence, 924, Section 575), *G.R. Osteland Co. v. City of Cleveland*, 8th Dist. Cuyahoga No. 77305, 2000 Ohio App. LEXIS 5225 (Nov. 9, 2000), and *Montz Sales & Serv. V. City of Barberto*, 9th Dist. Summit No. 11089, 1983 Ohio App. LEXIS 11126 (July 27, 1983). Here, the payment of a fine as assessed in a notice of liability is a civil fine for violating a traffic rule, not a payment for rendering a service. There is absolutely no implied or quasi-contract from which the City was unjustly enriched.

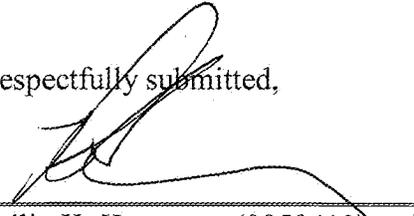
Second, even assuming, *arguendo*, that there was an implied contract, the law is clear that recovery cannot be had against a municipality. A municipality may not be bound to a contract unless the agreement is formally entered into. Implied and quasi contracts, by definition, do not meet the requisite formalities to form a binding agreement with a municipality, the City may not be held liable under those theories of recovery. See *Cleveland v. Village of Marblehead*, 6th Dist. Ottawa No. OT-00-018, 2001 Ohio App. LEXIS 1336 (March 6, 2001); and *Perrysburg Twp v. City of Rossford*, 149 Ohio App.3d 645, 2002-Ohio-5498, 778 N.E.2d 610 (6th Dist.).

For these reasons, claims for unjust enrichment against municipalities must fail as a matter of law.

CONCLUSION

This case presents a matter of great general and public interest to state and local governments throughout Ohio. The reversal of the Sixth District's decision is warranted and respectfully requested.

Respectfully submitted,



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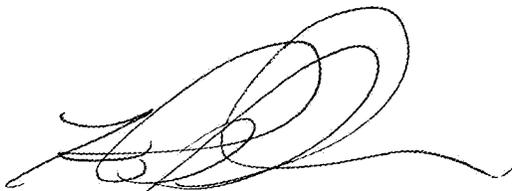
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