

ORIGINAL

IN THE SUPREME COURT OF OHIO

PANTHER II TRANSPORTATION, INC.)
)
 Plaintiff-Appellee,)
)
 vs.)
)
 VILLAGE OF SEVILLE BOARD OF)
 INCOME TAX REVIEW,)
)
 Defendant-Appellant)
)
 and)
)
 NASSIM M. LYNCH AND THE)
 CENTRAL COLLECTION AGENCY,)
)
 Defendant-Appellants.)

Consolidated Case Nos:
2012-1589; 2012-1592

On Appeal from the Medina
County Court of Appeals,
Ninth Appellate District

Court of Appeals
Consolidated Case Nos.
11CA0092-M; 11CA0093-M

APPELLANTS NASSIM M. LYNCH AND THE CENTRAL COLLECTION AGENCY'S
 MOTION FOR RECONSIDERATION OF DECISION ON THE MERITS

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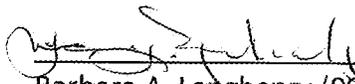
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MOTION FOR RECONSIDERATION

Pursuant to S.Ct. Prac. R. 18.02(B)(4), Appellants, Nassim M. Lynch and the Central Collection Agency, hereby move this Honorable Court to reconsider its decision and order journalized on March 19, 2014, to affirm the lower court's decision in this case. The grounds for this Motion are set forth in the attached Memorandum.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Appellants, Nassim M. Lynch and the Central Collection Agency, urgently request the Court to reconsider its decision that former R.C. 4921.25 expressly preempts a municipal net profits tax as that tax applies to the income earned by Appellee, Panther II Transportation, Inc. ("Panther") and every other motor transportation company defined under Chapter 4921.

The majority's opinion will extend well beyond exempting the *income* earned by motor transportation companies since as the majority noted in its opinion, Chapter 4921 has been revised and reorganized with the term "motor transportation company" being replaced by the term "for-hire motor carrier." 2012 Am.Sub.H.B. No. 487. The term "for-hire motor carrier" under current law not only includes the former "motor transportation companies" but clearly extends to include "private motor carriers" and "towing companies" as well. *Id.* This Court's opinion means that all of these entities are now exempt from a municipal income tax levied on the income earned by them based on new R.C. 4921.19(J) (which had been former R.C. 4921.25). The majority is urged to reconsider its opinion from this standpoint alone.

The majority notes that "our duty is to apply [R.C. 4921.25] rather than interpret it[.]" Opinion at ¶16. However, the Court's authority in that regard is limited by its constitutional role as a judicial, rather than legislative body. In construing a legislative enactment, it is clearly the Court's duty to ascertain and implement the intent of the legislature. *See Slingluff v. Weaver*, 66 Ohio St.621, 64 N.E. 574, (1902) paragraph one of the syllabus ("The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it[)"). To "apply" a statute, in whole or in part, for a

purpose never intended is to do violence to it. *See generally Harris v. Von Hoose*, 49 Ohio St. 3d 24, 26, 550 N.E.2d 461, 462 (1990).

The constructional issue presented in this case was what was meant by the term “taxes” in former R.C. 4921.25. The majority has chosen to read this term as if it stated “taxes of any kind whatsoever.” If the statute had used such clarity of expression, it would have been unambiguous and required to “be applied in a manner consistent with the plain meaning of the [statutory language.]” *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997). Such clarity, however, did not exist.

The majority assumes that the General Assembly did not intend to limit the scope of the term “taxes” to regulatory-type taxes because the statute exempts the general property tax. While the statute could have been drafted better to include the general property tax and any other general revenue tax that *might ever* come into existence, the intent in that respect nevertheless seems clear—that motor transportation companies were not exempt from any such tax.

Also troubling is the Court’s reliance on statements by amici. In the opinion, the majority cites to “statements by amici Con-Way Freight, Inc. and United Parcel Service [which] indicate that, for the most part, trucking companies have successfully persuaded local governments that former R.C. 4921.25 does preempt the [municipal income] tax.” Opinion at ¶19. What does that prove? That amici *may* have convinced some tax officials not to proceed against them (*if true*) is of no significance and not the issue here. Clearly, amici here are not some disinterested party—they *stand to gain a lot if no city tax is paid*. Such statements were therefore not only irrelevant but self-serving. Although amici can serve an important role, the

majority gave way too much credence to said statements in a case of pure statutory construction.

In his dissent, Justice Pfeifer got it absolutely right that “[t]he General Assembly made clear that it intended to preempt only the area of transportation-related taxes and fees when it excepted ‘the general property tax’ from the scope of the statute in R.C. 4921.25.” Opinion at ¶26. Justice Pfeifer’s opinion should have been the decision of the entire Court. It’s not too late to rectify this situation.

CONCLUSION

For the reasons discussed herein, the Court should reconsider its decision finding R.C. 4921.25 to be an express statutory provision preempting a municipality’s authority to levy a net profit income tax on the *income* earned by Panther and every other motor transportation company (“for-hire motor carrier”) defined under R.C. Chapter 4921.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that a copy of this Motion For Reconsideration Of Decision On The Merits was sent by ordinary U.S. mail to counsel for appellee, James F. Lang and N. Trevor Alexander, Calfee, Halter & Griswold LLP, The Calfee Building, 1405 East Sixth Street, Cleveland, Ohio 44114-1607; counsel for appellant, Village of Seville Board of Income Tax Review, Theodore J. Lesiak, Roderick Linton Belfance, LLP, One Cascade Plaza, Suite 1500, Akron, Ohio 44308; and counsel for amicus curiae, The Ohio Municipal League, Philip Hartman, Rebecca K. Schaltenbrand, Stephen J. Smith, Ice Miller LLP, 250 West Street, Columbus, Ohio 43215 and John Gotherman, Esq., Ohio Municipal League, 175 South Third Street, Suite 510, Columbus, Ohio 43215-7100, on this 26th day of March 2014.


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