

ORIGINAL

IN THE SUPREME COURT OF OHIO

PANTHER II TRANSPORTATION, INC.)

Plaintiff-Appellee,)

v.)

VILLAGE OF SEVILLE BOARD OF)
INCOME TAX REVIEW, et al.,)

Defendants/Appellants.)

CASE NOS. (2012-1589), 2012-1592
(consolidated)

On appeal from the Medina County Court
of Appeals, Ninth Appellate District
Court of Appeals Case Nos. 11CA0092-M,
11CA0093-M, consolidated

MEMORANDUM OF APPELLEE PANTHER II TRANSPORTATION, INC. IN
RESPONSE TO THE MOTIONS FOR RECONSIDERATION OF APPELLANTS
VILLAGE OF SEVILLE BOARD OF INCOME TAX REVIEW, NASSIM M. LYNCH,
AND THE CENTRAL COLLECTION AGENCY

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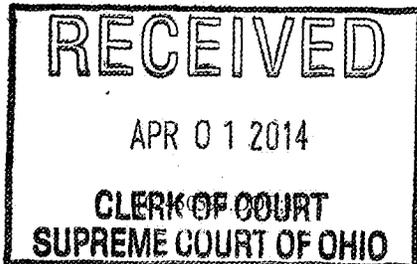
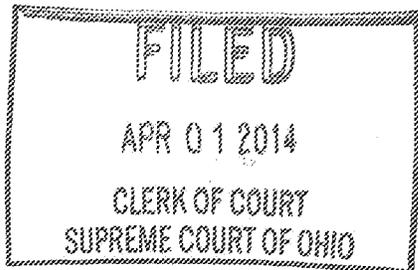
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I. Seville and CCA Have Not Stated Valid Grounds For Reconsideration.

In its March 19, 2014 decision, the Court held that Seville's tax on Panther's corporate net profits was preempted by former R.C. 4921.25. The CCA and Seville are unhappy with the result, but fail to state valid grounds for reconsideration. The Court should deny their motions for reconsideration.

A. The Court should reject CCA's and Seville's attempts to reargue the case.

For the most part, CCA and Seville restate their arguments on brief. CCA again proposes that this Court should insert the phrase "regulatory-type" before "taxes" in the statute. CCA Mem. at 2. Seville again objects to the Court's reading of the preemption language in former R.C. 4921.25 and to the Court's explanation, in a footnote, of the syllabus of *Angell v. City of Toledo*, 153 Ohio St. 179, 91 N.E.2d 250 (1950). Seville Mem. at 2-4. However, the Court's rules are clear that a motion for reconsideration "shall not constitute a reargument of the case." S.Ct.Prac.R. 18.02(B). See *State ex rel. Shemo v. City of Mayfield Heights*, 96 Ohio St.3d 379, 2002-Ohio-4905, 775 N.E.2d 493, ¶ 9. Thus, not only are these contentions wrong as discussed in Panther's merit brief and as determined by the Court in its decision, but they do not warrant reconsideration.

B. Policy arguments are the province of the General Assembly.

Reconsideration also is not justified by criticisms that the plain language of the statute will have consequences that appellants do not like. Both Seville and CCA complain that motor carriers regulated by the state as public utilities will be exempt from local taxation if the Court's decision is not reversed (Seville Mem. at 1; CCA Mem. at 1), but that is a policy choice made by the General Assembly. The General Assembly is presumed to know the consequences of its legislation. *State v. Miller*, 96 Ohio St.3d 384, 2002-Ohio-4931, 775 N.E.2d 498, ¶ 34. Indeed, the General Assembly acted as recently as 2012 to continue this tax exemption for for-hire motor

carriers. 2012 Am.Sub.H.B. 487 (codifying R.C. 4921.19(J)). It is not this Court's role to pass judgment on the wisdom of legislation. *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633, ¶ 14. Regardless, such an exemption from local income taxes for public utilities is not surprising or unusual, as it furthers state policy to regulate public utilities at the state level. *See* R.C. 718.01(H)(6); Panther Merit Brief at 5-10. Because Seville and CCA ask this Court to interfere on policy grounds with the General Assembly's lawful exercise of its authority to restrict local taxes under Article XIII, § 6, and Article XVIII, § 13, of the Ohio Constitution, their motions should be denied.

C. The Court did not give “too much credence” to statements of amici curiae.

CCA also believes that the Court “gave way too much credence” to statements in briefs of amici curiae that trucking companies in Ohio have relied upon R.C. 4921.25 to exempt them from municipal income taxes. CCA Mem. at 2. Yet CCA fails to show in what manner the Court improperly relied on these statements. The Court noted amici's statements merely as a counterpoint to CCA's suggestion that the Court should infer from Panther's prior history of tax payments “a general understanding that state law does not preempt the tax as to motor-transportation companies.”¹ Opinion at ¶ 9. However, this appeal presented the Court with an issue of pure statutory construction, which the Court decided by reading the plain language of the statute as written. CCA has not stated grounds for reconsideration.

¹ Seville takes a similar approach by claiming that, according to the CCA, the City of Cleveland collects net profits taxes from other motor transportation companies. Seville Mem. at 1. Seville provides no record support for this claim, however, as CCA's assistant tax administrator made no mention of other such taxpayers during the hearing before the Board of Tax Appeals.

D. The Court did not misapply the doctrine of *expressio unius est exclusio alterius*.

In order to justify reconsideration, Seville invents an argument the Court did not make and then criticizes the Court for making it. Seville argues that the Court, “without citing the doctrine, actually applies the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other).” Seville Mem. at 3. Seville is wrong. The Court determined that the General Assembly used plain and expansive terms – “all fees, license fees, annual payments, license taxes, or taxes or other money exactions . . . are illegal and, are superseded” – “to impose the broadest possible preemption of local taxing power.” Opinion at ¶ 14. The fact that the “general property tax” is the one exception to this broad preemption disproves Seville’s and CCA’s contention that only regulatory-type taxes are preempted. The Court isn’t inferring from the reference to “general property tax” that all other unidentified exceptions are excluded;² instead, the Court is finding that the plain, express language of the statute preempts all taxes and other monetary exactions. Because the Court did not err in making this finding, Seville has not stated valid grounds for reconsideration.

E. Seville erroneously relies on the preamble to 1923 Am.H.B. 474.

Seville also is perplexed that the Court did not cite to Seville’s argument on brief based on the preamble to 1923 Am.H.B. 474. Seville Mem. at 5. Although Seville finds comfort in the reference to “taxing of motor propelled vehicles” in that preamble, it ignores the controlling language in the same preamble to the Public Utilities Commission’s exclusive jurisdiction over

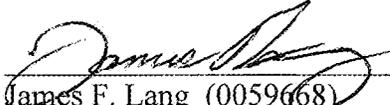
² See *Thomas v. Freeman*, 79 Ohio St.3d 221, 224-225, 680 N.E.2d 997 (1997) (maxim *expressio unius est exclusio alterius* means, “if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.” (citing Black’s Law Dictionary at 581 (6th ed. 1990)).

motor transportation companies. The preemption of all local taxes (and of local ordinances inconsistent with the state's regulatory scheme) is the result of state-wide regulation of motor transportation companies. The fact that the state imposes a tax on motor propelled vehicles – which in former R.C. 4921.18 was used exclusively in reference to busses – is irrelevant. The Court did not err in rejecting Seville's argument.

Conclusion

The Court correctly determined, based on the plain language of R.C. 4921.25, that Seville's not profits tax was expressly preempted as applied to motor transportation companies. Because CCA and Seville have not stated valid grounds for rehearing, the Court should deny their motions for reconsideration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via regular U.S. Mail, postage pre-paid, upon the following this 31st day of March, 2014:

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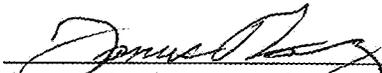
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