

IN THE SUPREME COURT OF OHIO

Case No. 13-1277

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| Bradley L. Walker, |) | |
| |) | On appeal from the Lucas County |
| |) | Court of Appeals, |
| Plaintiff-Appellee, |) | Sixth Appellate District |
| |) | Case No. L-12-1056 |
| |) | |
| v. |) | |
| |) | |
| City of Toledo, <i>et al.</i> , |) | |
| |) | |
| |) | |
| Defendants-Appellants. |) | |

APPELLEE BRADLEY L. WALKER'S MOTION TO FILE SUPPLEMENTAL AUTHORITY

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Walker respectfully requests this Court to take judicial notice of and entertain Brice Village Ordinance 10-13 when determining Walker's motion for reconsideration, particular Section 2 of the ordinance.¹ In candor, Walker acknowledges that no rule specifically permits supplementing a motion to reconsider. But this court has inherent discretion to permit it if it might assist this Court in potentially reconsidering its decision. Further, Brice's ordinance is not available on normal legal-research databases and therefore was unknown until recently.²

Brice enacted this ordinance in response to the General Assembly's enactment of H.B. 606, which repealed the Brice mayor's court and therefore left the Franklin county municipal court as the only court with original jurisdiction of violations of Brice's non-criminal ordinances. This was no doubt intended to be a check on perceived abuses of municipal powers.

And Brice's response crystallizes why this court should reconsider: for if this court's decision were correct, enactments such as H.B. 606 that deliberately repeal mayor's courts and leave municipal courts intact, would serve no purpose because any municipality could enact an ordinance similar to the Brice ordinance in response to any conferral or taking away of jurisdiction that the municipality disagreed with. If this court doesn't reconsider, ordinances like this will be enacted across this state without any checks or balances available under Art, IV, Sec. 1.

The ordinance provides:

WHEREAS, HB-606 of the 129th Ohio General Assembly removed from the Village of Brice and other villages with under 200 population authority to conduct Mayor's courts;

WHEREAS, the Ohio Supreme Court in *Mendenhall v. Akron*, 881 N.E.2d 255, 117 Ohio St.3d 33, 2008 Ohio 270, confirmed the authority of Ohio municipalities under the home rule provisions of § 3, Article XVIII of the Ohio Constitution to provide for civil penalties for the violation of municipal ordinances traffic ordinances that are identical otherwise identical to the related provisions of the Ohio Revised Code.

¹ Similar to the hypothetical ordinance in Walker's motion for reconsideration, the Brice ordinance at Section 2 exempts *multiple* offenses from the municipal court's jurisdiction, including drug cases.

² The ordinance comes to light as media outlets highlighted that Brice's legal counsel previously opined that the ordinance is unconstitutional:

<http://www.dispatch.com/content/stories/local/2015/01/01/brice-just-keeps-on-ticketing.html>

WHEREAS, an automated traffic control photographic system will assist the Brice Police Division by alleviating the necessity for conducting extensive conventional traffic enforcement at high accident intersections; and

WHEREAS, the adoption of an automated traffic control photographic system will result in a significant reduction in the number of red light violations and/or accidents within The Village of Brice, Ohio: NOW, THEREFORE

BE IT ORDAINED by the council of the Village of Brice, Ohio:

Section 1. That Chapter 78 of the Brice Basic Code shall be adopted as follows:

78.01 Civil Penalties for Basic Code Violations.

In lieu of issuing a criminal citation for any violation of any section contained in Chapter 70,71,72,73,74,75,76,90,91,92,93, and 94 of the Ohio Basic Code as adopted by the Village of Brice for which the Council of the Village of Brice has established a civil penalty, the accused violator may be issued a civil citation providing notice of the civil penalty being assessed along with notice of an opportunity for hearing on the assessment of the civil penalty or the amount of the civil penalty.

78.02 Civil Citation

(A) The civil citation giving notice of liability for the civil penalty shall be served in the same manner as a criminal traffic citation. The civil citation shall be signed by the accused violator merely to acknowledge receipt of the civil citation and the receipt of information contained therein and to confirm the accuracy of the name and address of the person receiving the civil citation. If the accused violator refuses to sign the civil citation, the officer shall note on the civil citation the refusal to sign and deliver a copy of the civil citation to the accused violator. The officer's notation that the accused violator refused to sign and the delivery of a copy of the civil citation shall be sufficient notice of the civil penalty and the opportunity to request a hearing. The civil citation shall contain the following words in bold type: "By signing this citation, I acknowledge receipt of a copy and that my name and address are correct, but without admitting liability."

(B) The civil citation shall include:

(1) The license plate number of the motor vehicle involved in the violation;

(2) The Brice Basic Code section of which the charge is a civil violation;

(3) The location of the violation;

(4) The date and time of the violation;

(5) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made; and

(6) A warning that a timely failure to exercise the options provided under this section is an admission of liability and may result in an increased civil penalty.

(7) The accused violator's right to a hearing and the manner in which the right may be exercised.

78.05 Administrative Hearing.

(A) A person who receives a civil citation under this chapter may do one of the following:

(1) Pay the civil penalty, in accordance with instructions on the civil citation; or

(2) Contest the civil citation within fifteen calendar (15) days after the date of the civil citation by filing a written request for review of the civil citation along with an administrative hearing deposit in an amount equal to the amount of the standard civil penalty payable to the Village of Brice. If the filing is made by United States mail, postage prepaid, the filing is complete upon mailing. If the fifteenth day falls on a Saturday, Sunday or legal holiday, the request for hearing shall be timely if filed on the following business day. The deposit must be received before the hearing will be scheduled.

(B) The review hearing will be conducted by an administrative hearing officer. The accused violator and the village solicitor shall have the right to present such witnesses and evidence as the administrative hearing office may permit in the interests of justice. At the request of either party the administrative hearing officer may issue such administrative subpoenas as may be required. The burden of proof shall be on the village to prove the violation by the greater weight of the evidence, and a like burden proving any affirmative defenses shall be on the accused violator.

(C) The administrative hearing officer may make such findings and rulings as are supported by the evidence and upon finding a violation, may assess such civil penalty, including a greater or lesser amount, as is just. The amount of the civil penalty assessed after hearing may not exceed double the standard civil penalty established by Council of the Brice Village

(D) If the administrative hearing officer affirms the civil violation by the greater weight of the evidence, the deposit shall be applied up to amount the civil penalty assessed unless the accused violator appeals the matter pursuant to RC chapter 2506.

(E) If the administrative hearing officer finds that the evidence fails to support a finding of liability, the civil citation shall be dismissed and the deposit returned to the accused violator.

7 8.06 Civil Penalty.

(A) Imposition of a civil penalty for a traffic violation under this chapter is not a moving violation for the purpose of assessing points under Revised Code §4510.036; shall not be recorded on the driving record of the owner or operator of the vehicle, and shall not be reported to the Bureau of Motor Vehicles.

(B) If the civil penalty is not paid within 60 days and the Village Brice brings a civil action to collect the penalty, the penalty shall be increased by \$500.

(C) Failure to file a request for a hearing or to pay the penalty within 15 days shall increase the penalty by \$50. The clerk may waive this additional penalty for good cause shown for a late hearing request or for late payment.

(D) Payment plans. The clerk shall assess an additional \$20 fee for any payment plan for periodic time payments of any civil penalty. This fee shall be reduced to \$10 of the payment plan arrangement includes an automatic check handling (ACH) by which the accused violator authorizes the clerk to make automatic check withdrawals from the violator's checking account. The additional fee does not apply to a agreed full payment date within 30 days of the agreement.

78.07 Collection of Civil Penalty

If the civil penalty is not timely paid, the civil penalty imposed under the provisions of this chapter shall be collectible, together with any interest, penalties, and costs thereon, by civil suit. The Village of Brice may recover its reasonable attorneys' fees and expenses of collection in any action for collection of civil penalties.

Section 2. The Council of the village of Brice hereby adopts the following standard civil penalties for the violation of ordinances as specified below;

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| 70.02 Compliance with the order of police officer | \$100 |
| 70.07 Use of private property for vehicular travel | \$100 |

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|--|--------|
| 7030 Obeying traffic control devices | \$115 |
| 70.34 pedestrian-control signals | \$50 |
| 71.01 Display of license plates or validation stickers | \$75 |
| 71.02 Improper use of noncommercial motor vehicle | \$200 |
| 71.05 Display a certificate of registration | \$200 |
| 71.06 Use of unauthorized plates | \$250 |
| 71.07 Operating without dealer or manufacturer license plates | \$100 |
| 71.20 Drivers license is prohibited acts | \$500 |
| 71-21 Permitting minor to operate vehicle | \$100 |
| 71.22 License required as driver on public or private property | \$300 |
| 71.24 Restriction against owner lending vehicle | \$750 |
| 71.26 Display of license | \$500 |
| 71.27 Prohibition against false statements | \$750 |
| 71.28 Driving under suspension | \$750 |
| 71.29 Operating vehicle without a valid license | |
| 71.31 Driving under FRA suspension or cancellation | \$750 |
| 71.32 Failure to reinstate license | \$750 |
| Chapter 72 Traffic rules: all offenses | \$150 |
| 73-05 Reckless operation of vehicles | \$150 |
| 73-06 Reckless operation off streets | \$120 |
| 73.09 street racing | \$500 |
| 73.10 Speed limits | \$200 |
| 73.11 slow speed or stopping | \$100 |
| 73.14 presenting false name or information to officer | \$750 |
| 73.15 Prohibition against resisting officer | \$500 |
| 73.30 exchange of identity and vehicle registration after accident | \$500 |
| 73.31 Accident involving injury | \$500 |
| 73.32 Accident involving damage to Realty | \$500 |
| 73.33 Failure to report accident | |
| Chapter 74 equipment and loads: all offenses | \$100 |
| Chapter 75 Bicycles, motorcycles and off-road vehicles: all offenses | \$150 |
| Chapter 76 Parking regulations: all offenses except 76.05 | \$75 |
| 76.05 Handicapped Parking | \$500. |
| Chapter 91 Fireworks, explosives and fire prevention: all offenses | \$250. |
| Chapter 93 Nuisances: all offenses | \$150 |
| Chapter 94 Streets and sidewalks: all offenses | \$75 |

| | |
|---------------------------|------------------------------|
| Drug Possession | \$150 per individual package |
| 138.13 Drug Paraphernalia | \$150 |

Section 3. Due to the loss of the Mayor's court and the village's serious financial condition, the Council of the Village of Brice hereby declares an emergency so this ordinance shall go into immediate effect upon passage.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2015, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

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