

IN THE SUPREME COURT OF OHIO

STATE ex rel.	*	CASE NO. 2015-2092
CORNERSTONE DEVELOPERS, LTD.,	*	
	*	(Expedited Election Case Under
Relator,	*	S.C.Prac.R. 12.08 – Original Action
	*	in Mandamus and Prohibition)
vs.	*	
	*	
GREENE COUNTY BOARD OF	*	
ELECTIONS, et al.,	*	
	*	
Respondents.	*	

**ANSWER OF RESPONDENT, CITY OF CENTERVILLE,
TO RELATOR'S VERIFIED COMPLAINT IN ORIGINAL ACTION
FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

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Respondent, City of Centerville, states the following for its Answer to the Relator's Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition (hereinafter "Complaint").

FIRST DEFENSE

1. Respondent admits the allegations of Paragraphs 3, 8, 9, 10, 11, 16, 17, 27, 28, 29, 30, 31, 33, 36, 37, 38, 39, 40, 41, 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 60, 62, 63, 64, 65, 71, 72, 73, 74, 80, 81, and 83 of Relator's Complaint.

2. Respondent admits the allegations of Paragraph 1 of Relator's Complaint, that Sugarcreek Township is attempting to use R.C. § 505.37 to illegally remove incorporated areas from fire and EMS protection for the stated purpose of warding off any possible future annexation of its land by municipalities, and that pursuant to R.C. § 505.37, the only legitimate purpose to create a fire district is to guard against the occurrence of fires or protect property and lives of its citizens. Respondent is without knowledge or information sufficient to form a belief as to the remainder of the allegations contained in Paragraph 1 of Relator's Complaint and, therefore, denies same.

3. Respondent admits the allegations of Paragraph 2. Respondent further states that the writs of mandamus and/or prohibition sought by Relator should be issued because the Township's actions relating to the proposed 5.3 mill tax levy violate Ohio's Open Meetings Act set forth in R.C. § 121.22 and Ohio's procedural requirements for levying a property tax set forth in R.C. § 5705.03(B), each for the reasons more fully set out herein, including, but not limited to, as set forth in Paragraphs 39 - 56.



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4. Respondent admits the allegations of Paragraph 4 of Relator's Complaint, that Sugarcreek Township's attempted creation of a Replacement Fire District to deter future annexations is not a proper purpose under R.C. § 505.37, and is at the expense of the safety and welfare of its citizens, people frequenting Sugarcreek Township, and the owners of certain businesses and properties located within Sugarcreek Township. Respondent states that the remainder of the allegations in Paragraph 4 of Relator's Complaint state a legal conclusion to which no response is required.

5. Respondent states that the allegations in Paragraph 5 of Relator's Complaint purport to state a legal conclusion to which no response is required.

6. Respondent admits the allegations of Paragraph 6 of Relator's Complaint, that without showing that "improvements arising from the TIF will result in an increased demand for fire protection and emergency services or that increased demand for these services will place the Township in dire fiscal straights," Sugarcreek Township Trustees passed resolutions on October 19, 2015, attempting to create a Replacement Fire District for unincorporated areas, and attempting to place on the ballot a 5.3 mill tax levy to support the Replacement Fire District. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 6 of Relator's Complaint and, therefore, denies same.

7. In response to the allegations of Paragraph 7 of Relator's Complaint, Respondent states that it incorporates, by reference, as if fully restated herein, all responses and defenses set forth herein in this "Answer of Respondent, City of Centerville, to Relator's Verified Complaint



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in Original Action for Writ of Mandamus and/or Prohibition” and further denies any and all allegations not specifically admitted in this Answer.

8. Respondent admits the allegations of Paragraph 12 of Relator’s Complaint, that all property that will be immediately affected by Sugarcreek Township’s efforts to remove fire and EMS services is incorporated in the City of Centerville. Respondent denies the remainder of the allegations of Paragraph 12.

9. Respondent admits the allegations of Paragraph 13 of Relator’s Complaint, that the Court possesses original jurisdiction over the subject matter of this action and over all Respondents, except the City of Centerville, pursuant to Chapter 2731 of the Ohio Revised Code. Respondent denies the remainder of the allegations contained in Paragraph 13 of Relator’s Complaint as it is not a party whose joinder is required, including, but not limited to, pursuant to Chapter 2731 of the Ohio Revised Code and Civ.R. 19 and 19.1.

10. Respondent states that the allegations of Paragraph 15 of Relator’s Complaint purport to state a legal conclusion to which no response is required.

11. Respondent admits the allegations of Paragraph 18 of Relator’s Complaint, that in 2006, in conjunction with the type-2 annexation of the Development, as referenced in Relator’s Complaint, Centerville entered into an understanding with Relator Cornerstone’s predecessor to finance public infrastructure for the annexed property which included the option of a tax-increment financing (“TIF”) plan. Respondent denies the remainder of the allegations in Paragraph 18 of Relator’s Complaint.



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12. Respondent admits the allegations of Paragraph 19 of Relator's Complaint, that Sugarcreek Township attempted to place a TIF ("Sugarcreek TIF") on the development from which it now seeks to withdraw fire and EMS services. Respondent is without knowledge or information sufficient to form a belief as to the remainder of the allegations contained in Paragraph 19 of Relator's Complaint and, therefore, denies same.

13. In response to the allegations of Paragraph 20 of Relator's Complaint, Respondent admits that the City of Centerville ultimately enacted a TIF which redirected a portion of Centerville and Township property taxes so that these dollars could be used for public infrastructure improvements related to the Development. Respondent denies the remainder of the allegations of Paragraph 20 of Relator's Complaint.

14. In response to Paragraph 21 of Relator's Complaint, Respondent admits that the Township previously filed suit in the Greene County Court of Common Pleas, in a case captioned *Sugarcreek Twp. v. Centerville*, Greene C.P. No. 2006-CV-0784, which sought, *inter alia*, a declaration that Centerville could not establish a TIF plan covering township taxes applicable to the land at issue. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in Paragraph 21 of Relator's Complaint and, therefore, denies same.

15. To the extent the allegations in Paragraph 22 of Relator's Complaint refer to the Ohio Supreme Court's decision in *Sugarcreek Twp. v. Centerville*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, Respondent states that the decision speaks for itself and no



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response is required. Respondent admits the remaining allegations of Paragraph 22 of Relator's Complaint.

16. To the extent the allegations in Paragraph 23 of Relator's Complaint refer to the Ohio Supreme Court's decision in *Sugarcreek Twp. v. Centerville*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, Respondent states that the decision speaks for itself and no response is required. Respondent admits the remaining allegations of Paragraph 22 of Relator's Complaint.

17. To the extent the allegations in Paragraph 24 of Relator's Complaint refer to the Ohio Supreme Court's decision in *Sugarcreek Twp. v. Centerville*, 133 Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261, Respondent states that the decision speaks for itself and no response is required. Respondent admits the remaining allegations of Paragraph 22 of Relator's Complaint.

18. Respondent admits the allegations of Paragraph 26 of Relator's Complaint, that following the Ohio Supreme Court's confirmation of the validity of a Centerville TIF, Cornerstone began construction on the development. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 26 of Relator's Complaint and, therefore, denies same.

19. Respondent admits the allegations of Paragraph 32 of Relator's Complaint, that Sugarcreek Township's Fire Department covers all of Sugarcreek Township, except for the City of Bellbrook and the City of Kettering. Respondent is without knowledge or information



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sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 32 of Relator's Complaint and, therefore, denies same.

20. Respondent admits the allegations of Paragraph 42 of Relator's Complaint, that the Dayton Daily News quoted Mr. Tiffany as stating in an interview that "the decision was made because Centerville was not offering enough funds from its tax collection on the Cornerstone property to cover the operating costs of the fire departments." Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 42 of Relator's Complaint and, therefore, denies same.

21. Respondent admits the allegations of Paragraph 43 of Relator's Complaint, that the Dayton Daily News quoted Mr. Tiffany as stating in an interview that, "It doesn't make good business sense," and that the Township's Resolution gave Centerville "a couple of months to either get something negotiated properly with us or with someone else to provide those services." Respondent further admits the allegations of Paragraph 43 of Relator's Complaint, that Centerville does not have its own fire department. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 43 of Relator's Complaint and, therefore, denies same.

22. Respondent admits the allegations of Paragraph 45 of Relator's Complaint, that on or about January 1, 2015, a Dayton Daily News article indicated that the Cities of Kettering and Bellbrook, and Washington Township, declined an invitation to bid for fire and EMS services for the development, I-675 and surrounding roads, and that various entities could not provide such services. Respondent further states that best practices for the provision of fire and



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EMS services to interstate travelers recommends a level of specialized training that the Sugarcreek Township fire department personnel currently possess. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 45 of Relator's Complaint and, therefore, denies same.

23. Respondent admits the allegations of Paragraph 46 of Relator's Complaint, that in a December 26, 2014 article in the Dayton Daily News, Centerville City Manager, Greg Horn, is quoted as stating that "The Sugarcreek Twp. trustees have chosen to play 'political football' with vital safety services . . . Sugarcreek Twp. Trustees have not been able to get over the fact that this property was annexed to the city of Centerville at the request of the property owner and upheld by the courts." Respondent is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 46 of Relator's Complaint and, therefore, denies same.

24. Respondent admits the allegations of Paragraph 59 of Relator's Complaint, that in the October 19, 2015 meeting, the Township Trustees and Administrator indicated that the purpose in passing Resolutions 6, 7, and 8 was to discourage further annexations of township territory into municipalities, including the City of Centerville.

25. Respondent admits the allegations of Paragraph 69 of Relator's Complaint, that the effect of the Respondent Board of Elections actions as described in paragraph 67 of Relator's Complaint, would be to place an issue on the March 15, 2016 ballot that is in violation of R.C. § 505.37(C). Respondent states that the remainder of the allegations of Paragraph 69 of Relator's Complaint purports to state a legal conclusion to which no response is required



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26. In response to the allegations of Paragraph 70 of Relator's Complaint, Respondent states that it incorporates, by reference, as if fully restated herein, all responses and defenses set forth herein in this "Answer Of Respondent, City Of Centerville, To Relator's Verified Complaint In Original Action For Writ Of Mandamus And/Or Prohibition" and further denies any and all allegations not specifically admitted in this Answer.

27. To the extent the allegations in Paragraph 76 of the Relator's Complaint refer to R.C. § 505.37(C), Respondent states that the statute speaks for itself and no response is required.

28. To the extent the allegations in Paragraph 77 of the Relator's Complaint refer to R.C. § 505.37(C), Respondent states that the statute speaks for itself and no response is required.

29. In response to the allegations of Paragraph 79 of Relator's Complaint, Respondent states that it incorporates, by reference, as if fully restated herein, all defenses and any responses set forth herein in this "Answer of Respondent, City of Centerville, to Relator's Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition" and further denies any and all allegations not admitted in this Answer.

30. To the extent the allegations in Paragraph 82 refer to R.C. § 505.37(C), the statute speaks for itself and no response is required.

31. To the extent the allegations in Paragraph 85 refer to R.C. § 505.37(C), the statute speaks for itself and no response is required.



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32. To the extent the allegations in Paragraph 86 refer to R.C. § 505.37(C), the statute speaks for itself and no response is required.

33. Respondent admits the allegations of Paragraph 87 of Relator's Complaint, that Centerville has not consented to Sugarcreek Township's removal of fire and EMS services to areas of the Township incorporated within Centerville. The remainder of the allegations of Paragraph 87 purport to state a legal conclusion to which no response is required.

34. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 14, 25, 34, 35, 56, 61, 66, 67, 68, 75, 78 and 84 of Relator's Complaint, and, thereby denies same.

35. Respondent denies each and every allegation of Relator's Complaint not hereinbefore specifically admitted.

SECOND DEFENSE

36. Relator fails to state a claim upon which relief can be granted against this answering Respondent.

THIRD DEFENSE

37. Relator has failed to join parties as required under Civ.R. 19 and 19.1.

FOURTH DEFENSE

38. Respondent is not a proper party to this action as it does not have an interest requiring or permitting joinder to this action.



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FIFTH DEFENSE

39. Respondent, City of Centerville, incorporates by reference, as if fully restated herein, the allegations of “Relator’s Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition” (“Complaint”), and the City of Centerville’s “Answer of Respondent, City of Centerville, to Relator’s Verified Complaint in Original Action for Writ of Mandamus and/or Prohibition”, (“Answer”).

40. In seeking Writs of Prohibition and Mandamus, Cornerstone asserts that Defendants, Greene County Board of Elections and Jon Husted, Ohio Secretary of State, are without authority or jurisdiction to place issues on the ballot which are not in compliance with the laws of the State of Ohio.

41. Cornerstone alleges that Respondent, Sugarcreek Township, has sought to place on the March 15, 2016, ballot, issues relating to the funding of an improperly formed fire district and that said issues are not in compliance with the laws of the State of Ohio for reasons which include:

A) Sugarcreek Township is prohibited from forming a Fire District which excludes Fire and EMS services for the incorporated areas of Centerville located within Sugarcreek Township under the terms of a prior decision of this court, *Sugarcreek Township v. City of Centerville, Ohio St.3d 467, 2012-Ohio-4649, 979 N.E.2d 261*;

B) Sugarcreek Township’s October 19, 2015, attempt to form a Fire District violates R.C. § 505.37(C), which provides for the creation of a fire district for portions of a township “whenever it is expedient and necessary to guard against the occurrence of fires or protect the



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property and lives of the citizens against damages resulting from their occurrence,” because the Township attempted to create a Fire District as an “anti-annexation” measure to discourage future annexation of township territory by municipalities not for the statutorily authorized purpose to “guard against the occurrence of fires or protect the property and lives of citizens;”

C) Sugarcreek Township’s attempted creation of the Fire District is prohibited by law as under the terms of R.C. § 505.37(C), because the Township cannot remove fire and EMS services from incorporated portions of the Township, without the consent of the municipal legislative authority for the incorporated area.

42. Cornerstone further alleges that because the formation of the fire district is contrary to a prior decision of this Court and, as well, the terms of R.C. § 505.37, that the ballot measure funding such a district is not in compliance with the laws of the State of Ohio and cannot, therefore, be placed on the ballot.

43. Sugarcreek Township’s failures to comply with Ohio law in attempting to form a Fire District, as alleged in Relator’s Complaint, would preclude any measure funding such a district from being placed on the ballot. However, the failures identified in Relator’s Complaint are not the only failures in the process and procedure Sugarcreek Township employed to create the district that preclude the Township’s Fire District funding measures from being placed on the March 15, 2016 ballot. Specifically, in attempting to create and to fund the Fire District, Sugarcreek Township violated Ohio’s Open Meeting Act, R.C. §121.22 and Ohio’s procedural requirements for levying a property tax, set forth in R.C. § 5705.03(B).



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(Open Meetings Act Violation)

44. R.C. §121.22(F) states that “Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and a place of all regularly scheduled meetings and the time, place and purpose of all special meetings. ... the rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.”

45. At the time of the October 19, 2015, meeting at which Sugarcreek Township passed the resolutions attempting to form and fund a Fire District, Sugarcreek Township did not have in place a rule, as required by R.C. §121.22(F), establishing a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings, or which provided that any person upon request and payment of a reasonable fee may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.

46. R.C. § 121.22(H) provides that, “A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.” The rule goes on to provide that, “A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated Division (F) of this section.”

47. Under the express terms of R.C. § 121.22, as Sugarcreek Township did not have a rule establishing “a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings” or a rule which provided “that any person, upon request



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and payment of a reasonable fee, could obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed”, any resolution, rule or formal action adopted at the October 19, 2015 meeting was invalid, was not in compliance with the laws of the State of Ohio, and cannot be placed on the ballot by either the Greene County Board of Elections or the Ohio Secretary of State.

(Unlawful Levy Enactment)

48. R.C. § 5705.03(B) sets forth Ohio’s procedures and requirements applicable to a taxing authority when it seeks to levy a tax outside the 10 mill limitation authorized in Section 2 of Article XII of the Ohio Constitution.

49. Sugarcreek Township Resolution No. 2015.10.19.07 attempts to implement and to place on the ballot a levy for taxes outside of the 10 mill limitation and was, therefore, required to comply with the requirements of R.C. § 5705.03(B).

50. As part of a two-resolution process, R.C. § 5705.03(B)(1) first requires a taxing authority to certify to a county auditor a resolution or ordinance requesting the auditor to certify to the taxing authority the total current valuation of the sub-division and the number of mills required to generate a specific amount of revenue, or the dollar amount of revenue that would be generated by a specific number of mills.

51. The second resolution in the two resolution process is required under R.C. § 5705.03(B)(3). Upon receiving certification from the county auditor, if the taxing authority decides to proceed with submitting the issue of the levy of the tax to the voters, the taxing authority is to certify a resolution or ordinance, accompanied by a copy of the county auditor’s



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certification, to the proper county board of election in the manner and within the time prescribed by the Ohio Revised Code.

52. R.C. § 5705.03(B) requires a taxing authority to issue two separate resolutions to place a levy on a ballot, the first resolution requesting a certification from the county auditor of as to the amount of revenue and a second resolution, post county auditor certification, certified to the county board of elections, requesting that the issue be placed on the ballot. The requirement of a two resolution procedure is contemplated under the plain terms of the statute and is reflected in guidance to taxing authorities set forth in the “Ohio Ballot Questions and Issues Handbook,” issued by the Ohio Secretary of State, Jon Husted, Section 2 “Tax Levies”, at 2-9 “A. Basic procedural requirements,” which describes the implementation of a tax under R.C. § 5705.03(B) as requiring a “resolution-certification-resolution-certification” process.

53. Contrary to the terms of the statute, Sugarcreek Township seeks to have the Fire District levy issue placed upon the ballot with the passage of only one resolution.

54. While Sugarcreek Township Resolution 2015.10.19.07 meets or attempts to meet the requirements of R.C. § 5705.03(B)(1), Sugarcreek Township has failed to meet the requirement for a second resolution, as contemplated by R.C. § 5705.03(B)(3), following receipt of a county auditor’s certification. Further, even if Sugarcreek Township was not required by statute to issue a second resolution under R.C. § 5705.03(B)(3), Sugarcreek Township, in Resolution 2015.10.19.07, failed to comply with the requirements of R.C. § 5705.03(B)(3), by acts and omissions including, but not limited to: 1) deciding to proceed with submission of the tax to the voters prior to county auditor certification of revenue; 2) failing to obtain county



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auditor certification prior to certifying any resolution to the board of elections; 3) failing to re-certify the original resolution to the county board of elections, post county auditor certification of revenue; and 4) failing to otherwise properly certify or submit a resolution to the proper county board of elections.

55. As Sugarcreek Township has failed to comply with the requirements of R.C. § 5705.03(B), the ballot issue is not in compliance with the laws of the State of Ohio. Further, under Ohio law, this defect cannot be cured in time for the issue to be properly placed on the March 15, 2016 ballot. Ohio Revised Code § 5705.19 requires the second resolution to proceed to be certified to the Board of Elections “not less than ninety days before the election.”

56. Sugarcreek Township’s enactment of Resolution No. 2015.10.19.07 violated both R.C. § 121.22 and R.C. § 5705.03(B) and these violation provide bases, in addition to any deficiencies identified in Relator’s Complaint, for issuing a Writ of Prohibition or Mandamus precluding the Greene County Board of Elections or the Ohio Secretary of State from placing the issue of any funding of the purported Sugarcreek Township Fire District on the March, 2016 ballot.

WHEREFORE, Respondent, City of Centerville, through counsel, requests relief as follows:

- A. That it be dismissed from this action, with prejudice, and at Relator’s cost, as it is not a necessary or interested party to this proceeding.
- B. That the relief requested in Relator’s Complaint be granted as to all other parties.



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Respectfully submitted,

/s/Scott A. Liberman

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CERTIFICATE OF SERVICE

This is to certify that in accordance with S.Ct.Prac.R. 12.08(c), a true copy of the foregoing has been served this 7th day of January, 2016, upon **Joseph L. Trauth, Esq./Michael T. Cappel, Esq./Sophia R. Jannace, Esq.**, Attorneys for Relator, KEATING MEUTHING & KLEKAMP PLL, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202, at facsimile #(513) 579-6457 and jtrauth@kmlaw.com; upon Greene County Board of Elections, 552 Ledbetter Road, Xenia, Ohio 45385, at facsimile #(937) 562-6171; upon Sugarcreek Township, 2090 Ferry Road, Sugarcreek Township, Ohio 45305, at facsimile #(937) 848-7060; upon counsel for Greene County Board of Elections and Sugarcreek Township, **Stephen K. Haller, Esq.**, Prosecuting Attorney, Greene County Prosecutor's Office, 61 Greene St., Suite 200, Xenia, Ohio 45385, at facsimile #(937) 562-5258 and shaller@co.greene.oh.us; and upon Jon Husted, Ohio Secretary of State, 180 E. Broad Street, Floor 16, Columbus, Ohio 43215, at facsimile #(614) 644-0649 and upon counsel for Jon Husted, Ohio Secretary of State, **Damian Sikora, Esq.**, Section Chief, Ohio Attorney General, Constitutional Offices Section, 30 E. Broad Street, 14th Floor, Columbus, Ohio 43215, at facsimile #(614) 728-7592 and damiansikora@ohioattorneygeneral.gov.

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