

1 BCL Enterprises, Inc., Appellee, v. Ohio Department of Liquor Control,  
2 Appellant.

3 [Cite as *BCL Enterprises, Inc. v. Ohio Dept. of Liquor Control* (1997),  
4 \_\_\_\_\_ Ohio St.3d \_\_\_\_\_.]

5 *Civil procedure -- Court of Common Pleas of Franklin County is vested*  
6 *with subject-matter jurisdiction over claims asserted in a*  
7 *complaint concerning Department of Liquor Control's action on*  
8 *an application for a state agency store in Butler County.*

9 (No. 95-2189 -- Submitted October 16, 1996 -- Decided February  
10 19, 1997.)

11 Appeal from the Court of Appeals for Franklin County, No.  
12 95APE02-224.

13 BCL Enterprises, Inc. ("BCL"), appellee, initiated this action by filing  
14 a complaint in the Franklin County Court of Common Pleas seeking a  
15 declaratory judgment and injunctive relief. Named as defendants were  
16 Steve O'Bryan, d.b.a. O'Bryan's Deli ("O'Bryan"), and the Ohio  
17 Department of Liquor Control ("department").

1           In its first cause of action, BCL alleged that the department  
2 "advertised for agency applications for a state agency store" in Butler  
3 County, Ohio, *i.e.*, Location No. 514; that the applications were to be  
4 submitted to the department no later than November 5, 1993; that on  
5 November 3, 1993 the president of BCL filed an application with the  
6 department; and that no other applications were filed by the November 5  
7 deadline. BCL further alleged that the department's application called for  
8 the liquor-store business to commence operations on or before  
9 December 15, 1993 or such other date as established by the department;  
10 that BCL informed the department that its business could not begin  
11 operating by December 5, 1993, but that BCL would attempt to  
12 commence operations in February 1994; and that the department agreed  
13 that BCL need not begin operations on December 15, 1993.

14           The complaint further alleged that BCL began working toward  
15 opening the business, and informed the department in May 1994 that it  
16 was ready to commence operations as a liquor, beer and wine store, but

1 that the department then informed it that too much time had elapsed, and  
2 that the department intended to seek new applications for the location.  
3 BCL characterized the cancellation of its application as arbitrary,  
4 capricious, and not in accordance with law.

5 In its second cause of action, BCL alleged that the department  
6 solicited a second time for applications for Location No. 514, and that, in  
7 this second round of advertising, the department stated an anticipated  
8 date of September 12, 1994 for commencement of operations at Location  
9 No. 514. BCL asserted that, in spite of BCL having timely filed a second  
10 application, the department nevertheless executed a written agency  
11 agreement with O'Bryan rather than BCL, even though O'Bryan did not  
12 intend to commence operations until November 2, 1994, and even though  
13 "BCL was ready, willing, and able to commence operations in accordance  
14 with [its] application." BCL characterized these department actions as  
15 arbitrary, capricious, and unreasonable, and claimed that it would suffer

1 irreparable harm if the department and O'Bryan were not enjoined from  
2 executing and performing an agency contract for Location No. 514.

3 As for relief, BCL sought (1) a declaration of "the rights of all parties  
4 pursuant to the application and the agency contract for Location #514";  
5 (2) a temporary restraining order, preliminary injunction, and permanent  
6 injunction prohibiting the department from executing a contract for the  
7 location with any entity other than the plaintiff; and (3) a mandatory  
8 injunction requiring the department to evaluate the plaintiff's original  
9 application and award the contract to BCL if that application met  
10 department requirements.

11 Each defendant separately filed a Civ. R. 12(B) motion to dismiss.

12 Both defendants asserted that dismissal was warranted in that, *inter alia*,  
13 the trial court lacked subject-matter jurisdiction over BCL's claims.

14 The trial court dismissed the complaint, finding that "R.C.  
15 4301.10(B)(1) \*\*\* deprives this court of jurisdiction." The court of appeals  
16 reversed and remanded the cause for further proceedings, holding that

1 the Court of Common Pleas of Franklin County has subject-matter  
2 jurisdiction over the matters raised in the complaint.

3 The cause is now before this court upon the allowance of a  
4 discretionary appeal.

5 *Berry, Shoemaker & Clark and Kevin L. Shoemaker*, for appellee.

6 *Betty D. Montgomery*, Attorney General, and *James M. Guthrie*,  
7 Assistant Attorney General for appellant.

8 MOYER, C.J. The sole question we must answer in this appeal is  
9 whether the Court of Common Pleas of Franklin County is vested with  
10 subject-matter jurisdiction over the claims asserted by BCL.

11 "Subject-matter jurisdiction of a court connotes the power to hear  
12 and decide a case upon its merits \*\*\*." *Morrison v. Steiner* (1972), 32  
13 Ohio St.2d 86, 61 O.O.2d 335, 290 N.E.2d 841, paragraph one of the  
14 syllabus. Section 4(B), Article IV of the Ohio Constitution, states that  
15 "[t]he courts of common pleas and divisions thereof shall have such  
16 original jurisdiction over all justiciable matters \*\*\* as may be provided by

1 law." It is well settled that "[t]he court of common pleas is a court of  
2 general jurisdiction. It embraces all matters at law and in equity that are  
3 not denied to it." *Schucker v. Metcalf* (1986), 22 Ohio St.3d 33, 34, 22  
4 OBR 27, 28, 488 N.E.2d 210, 212 (quoting *Saxton v. Seiberling* [1891],  
5 48 Ohio St. 554, 558-559, 29 N.E. 179, 180; *Dumas v. Estate of Dumas*  
6 [1994], 68 Ohio St.3d 405, 408, 627 N.E.2d 978, 980).

7 Pursuant to the Declaratory Judgment Act, courts of common pleas  
8 may "declare rights, status, and other legal relations whether or not  
9 further relief is or could be claimed," R. C. 2721.02. *Am. Life & Acc. Ins.*  
10 *Co. of Kentucky v. Jones* (1949), 152 Ohio St. 287, 40 O.O. 326, 89  
11 N.E.2d 301; *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128, 130, 73  
12 O.O.2d 442, 443, 339 N.E.2d 626, 628. See, also, *Jones v. Chagrin Falls*  
13 (1997), \_\_\_\_\_ Ohio St.3d \_\_\_\_\_, \_\_\_\_\_ N.E.2d \_\_\_\_\_, decided today.

14 Pursuant to R.C. 2727.02 *et seq.*, courts of common pleas have  
15 jurisdiction to grant injunctive relief.

1           The appellant contends, however, that R.C. 4301.10(B)(1) and  
2 4301.31 operate to divest the Court of Common Pleas of Franklin County  
3 of subject-matter jurisdiction over BCL's complaint. The first of those  
4 statutes, R.C. 4301.10(B)(1), at the time this action was initiated  
5 provided: "*The department* [of liquor control] may \*\*\* [s]ue, but *may be*  
6 *sued only in connection with* the execution of leases of real estate and  
7 such purchases and contracts necessary for the operation of the state  
8 liquor stores that are made under this chapter and Chapter 4303. of the  
9 Revised Code \*\*\*." (Emphasis added.) The second statute, R.C.  
10 4301.31, provided at the time the action was initiated: "Except as  
11 provided in section 4301.28<sup>1</sup> of the Revised Code, *no court, other than*  
12 *the court of common pleas of Franklin county, has jurisdiction of any*  
13 *action against the \*\*\* department of liquor control, to restrain the exercise*  
14 *of any power or to compel the performance of any duty* under Chapters  
15 4301. and 4303. of the Revised Code." (Emphasis and footnote added.)

1           The court of appeals held that, despite these statutory provisions,  
2           the Court of Common Pleas of Franklin County is vested with jurisdiction  
3           to entertain actions against the department seeking declaratory or  
4           injunctive relief even where the case does not involve real estate leases  
5           or contracts and purchases necessary for the operation of state liquor  
6           stores. While expressing no opinion as to whether such relief should be  
7           granted, we affirm the holding of the court of appeals that the Franklin  
8           County Court of Common Pleas does have subject-matter jurisdiction to  
9           consider BCL's entitlement to such relief.

10           We reject the contention that R.C. 4301.31 *establishes* subject-  
11           matter jurisdiction in the Court of Common Pleas of Franklin County to  
12           restrain or compel departmental action. In providing that "no court, *other*  
13           *than* the court of common pleas of Franklin County has jurisdiction" to  
14           restrain or compel the department's conduct, R.C. 4301.31 operates not  
15           to *confer* jurisdiction on the Franklin [C]ounty Court of Common Pleas,

1 but rather to *abrogate* subject-matter jurisdiction of all other courts of the  
2 state.

3 Historically, declaratory judgment actions were permitted against  
4 state agencies, and courts have been deemed to possess jurisdiction to  
5 issue injunctive relief. See, e.g., *Racing Guild of Ohio, Local 304 v. State*  
6 *Racing Comm.* (1986), 28 Ohio St.3d 317, 320, 28 OBR 386, 388, 503  
7 N.E.2d 1025, 1028, citing *Am. Life & Acc. Ins. Co.* See, also, *Hoffman*  
8 *Candy & Ice Cream Co. v. Dept. of Liquor Control* (1950), 154 Ohio St.  
9 357, 43 O.O. 250, 96 N.E.2d 203 (approving assertion of trial court's  
10 jurisdiction over the merits, but nevertheless finding the issuance of  
11 specific-performance relief affecting the Department of Liquor Control  
12 improper). Accordingly, underlying R.C. 4301.31 is an unstated  
13 assumption that jurisdiction to enter injunctive relief would exist in any  
14 common pleas court throughout the state but for the express language of  
15 the statute limiting jurisdiction to the Court of Common Pleas of Franklin  
16 County.

1 Nor does R.C. 4301.10(B)(1), which provides that the department  
2 "may be sued only in connection with" certain types of contractual  
3 agreements, affect the fundamental power, *i.e.*, jurisdiction, of a court of  
4 common pleas to hear the merits of a dispute in which the department of  
5 liquor control is named a defendant. In general, when the General  
6 Assembly has intended to abrogate the subject-matter jurisdiction of Ohio  
7 courts in particular types of actions it has done so expressly. See, *e.g.*,  
8 R.C. 3745.04 ("The environmental board of review has *exclusive original*  
9 *jurisdiction* over any matter which may, under [R.C. 3745.04], be brought  
10 before it." [Emphasis added.]); R.C. 2743.02(F) ("A civil action against an  
11 officer or employee \*\*\* shall first be filed against the state in the court of  
12 claims, which has *exclusive, original jurisdiction* to determine, initially,  
13 whether the officer or employee is entitled to personal immunity \*\*\* and  
14 whether the courts of common pleas have jurisdiction over the civil  
15 action." [Emphasis added.]) In contrast, R.C. 4301.10(B)(1) includes no

1 reference to "jurisdiction" of either courts or other adjudicatory or  
2 administrative bodies.

3 Rather we interpret R.C. 4301.10(B)(1) as creating a defense in the  
4 nature of a statutorily created immunity against suit which may be pled by  
5 the department as an affirmative defense. As such, R.C. 4301.10(B)(1)  
6 does not create a *jurisdictional* defense to a declaratory judgment action.

7 See *State ex rel. Koren v. Grogan* (1994), 68 Ohio St.3d 590, 594, 629  
8 N.E.2d 446, 450 ("In general, immunity is an affirmative defense, which  
9 must be raised and proven, *i.e.*, it usually does not affect the jurisdiction  
10 of the court." [Citations omitted.]). See, also, 1 Baldwin's Ohio Civil  
11 Practice (1988), Text 13.03, at 35 (providing the following as examples of  
12 affirmative defenses: "\*\*\*\* failure to exhaust available administrative  
13 remedies; *sovereign immunity*; self-defense; *official immunity*; parental  
14 immunity; policeman/fireman immunity; interspousal immunity; allowance  
15 of workers' compensation; *immune from suit*; charitable immunity; judicial  
16 immunity \*\*\*." [Emphasis added.]).

1           We acknowledge that, where the General Assembly has  
2           established a complete and comprehensive statutory scheme both  
3           creating new rights and prescribing a means to enforce them, review of  
4           administrative actions as to those rights may be deemed to be exclusively  
5           within the jurisdiction of a statutorily created administrative, rather than  
6           judicial, body. *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991),  
7           61 Ohio St. 3d 147, 153, 573 N.E.2d 655, 659 (Public Utilities  
8           Commission); *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of*  
9           *Police, Capital City Lodge No. 9* (1991), 59 Ohio St.3d 167, 572 N.E.2d  
10          87 (State Employment Relations Board). However, application of that  
11          doctrine to the case at bar would be inconsistent with the statutory  
12          acknowledgment in R.C. 4301.31 of jurisdiction in the Franklin County  
13          Court of Common Pleas to "restrain [the department from exercising] any  
14          power or to compel the performance of any duty under Chapters 4301.  
15          and 4303. of the Revised Code."



1           <sup>1</sup> R.C. 4301.28 authorizes administrative appeals of department  
2 actions to the Liquor Control Commission. The statute further provides  
3 for judicial review of Liquor Control Commission decisions pursuant to the  
4 provisions of R.C. Chapter 119.