

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS

City of Cleveland)
)
Plaintiff,)
)
vs.)

Case No. 590414

State of Ohio)
)
)
Defendant.)
and)

State of Ohio ex rel. Cleveland Fire)
Fighters Assoc. Loc. 93 of the)
International Assoc. of Fire Fighters,)
et al.)

Case No. 06-590463

Plaintiff-relators,)

ORDER
DECLARATORY JUDGMENT

vs.

Frank G. Jackson, et al.)
)
Defendant-respondents.)

Peter J. Corrigan, J.:

Since 1982, the City of Cleveland (“City”) has imposed a requirement on all its employees that, as a condition of employment, all employees must reside within the city. This requirement is embodied in Section 74 of the City Charter. Those employees who do not comply with the charter face termination. On May 1, 2006, Sub.S.B. 82, codified as R.C. 9.481, became law. R.C. 9.481 provides that “no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.” R.C. 9.481 (B)(1). Thus, by the enactment of this bill, the stage was set

creating a direct conflict between a local law and state law. In the face of this new law, lawsuits were immediately filed across the state asking for court intervention and guidance as many political subdivisions have enacted similar residency requirements. See e.g., *Fraternal Order of Police, Akron Lodge No. 7, et al. v. City of Akron, et al.* Case No. CV-2006-05-2797 (Summit Cty. C.P.); *American Federation of State, County and Municipal Employees, Local #74, et al. v. City of Warren, et al.* Case No. 06-CV-1489 (Trumbull Cty. C.P.); *City of Lima v. State of Ohio* Case No. CV2006-0518 (Allen Cty.C.P.[recently upheld state law]. These instant cases, Case Nos. 590414 and 590463, are typical of the ongoing litigation.

In Case No. 590414, the City seeks a declaratory judgment that R.C. 9.481 is an unconstitutional law because it improperly attempts to deprive the City of well-defined powers of local self-government accorded to it by Section 3, Article XVIII of the Ohio Constitution (the Home Rule Amendment). In Case No. 590463, the Firefighter and Police Unions (“safety forces”) and the State of Ohio (“State”) filed a complaint against the City and other municipal defendants seeking a declaration that Section 74 of the City Charter is preempted by R.C. 9.481 according to Section 34, Article II of the Ohio Constitution. As both cases concern the same issue, i.e., whether R.C. 9.481 is constitutional, this Court consolidated the cases for review. Shortly after consolidation, the Court set a briefing schedule for dispositive motions. Thereafter, all parties filed summary judgment motions.

The parties agree that there is no issue of material fact and that the only issue to be decided is one of law, thus, the matter is appropriate for summary disposition. Civ. R. 56. Moreover, a declaratory judgment is appropriate if a real controversy exists between

the parties; the controversy is justiciable; and speedy relief is necessary to preserve the rights of the parties. *Burger Brewing Co. v. Ohio Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97. In applying this standard, this court must remember that the provisions of the Declaratory Judgment Act are remedial and “shall be liberally construed and administered.” R.C. 2721.13.

The first inquiry requires the existence of a real controversy between the parties, which is met when there is “a genuine dispute between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Wagner v. Cleveland* (1988), 62 Ohio App.3d 8, 13. This inquiry is answered in the affirmative since there is a real legal dispute as to whether Section 74 of the City Charter is superseded as a matter of law by the enactment of R.C. 9.481. Moreover, the safety forces must comply with the local charter provision or lose their livelihood. Thus, this issue immediately impacts them.

Next, in determining whether a controversy is justiciable in nature, the question concerns whether the issues are ready for judicial resolution and there is a hardship to the parties if relief is denied. *Burger Brewing Co. v. Ohio Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97. These requirements are easily met. On May 1, 2006, Sub.S.B. 82 went into effect and the issues presented became ready for judicial resolution. By that date, Mayor Frank Jackson had disseminated a letter to all city employees establishing the City’s position that Sub.S.B. 82 was not a valid legislative act and had no application to the City. The letter also expressed the City’s intent to terminate the employment of any employee who attempted to exercise his or her rights under Sub.S.B. 82. Thus, the safety forces litigants, are caught in a dilemma; whether to exercise their constitutional

rights as declared in R.C. 9.481 (i.e., the inalienable and fundamental right of an individual to choose where to live pursuant to Section 1, Article I of the Ohio Constitution, as set forth in Section 2 of R.C. 9.481) and face the possibility of termination by their employer or forego the exercise of their constitutional right and maintain their employment.

Finally, the last requirement, that speedy relief is necessary to preserve the rights of the parties, is also met. Three of the individuals named as plaintiffs in this suit submitted requests for an exemption from the City's residency requirement. All three requests were denied. And, every day that the plaintiffs are precluded from residing in a location of their choosing is an infringement of their rights provided for in R.C. 9.481. Accordingly, the plaintiffs have established that relief is obtainable under the Declaratory Judgment Act. Thus, the issue presented in these cases, whether R.C. 9.481 is a valid exercise of General Assembly authority, is appropriate for declaratory judgment review.

The issue before this Court is whether this statutory enactment is constitutional. When the constitutionality of a statute is at issue, this Court is mindful of the well-established principle that courts are required to presume the constitutionality of legislative enactments. *Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375. To overcome this strong presumption of constitutionality, the challenger of the law must provide proof, beyond a reasonable doubt, that the legislation and the Constitution are clearly incompatible. *Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St.3d 103, 111.

The City asserts that R.C. 9.481 is unconstitutional because it denies a municipality its home rule power, guaranteed by Section 3, Article XVIII of the Ohio

Constitution to require residency as a qualification for employment of its employees, a matter, the City contends, of purely local concern. However, the State and safety forces contend that R.C. 9.481 is a valid exercise of General Assembly authority pursuant to Section 34, Article III of the Ohio Constitution and as such, supercedes the home rule power in Section 3, Article XVIII. This court agrees with the State and safety forces.

Section 3, Article XVIII provides:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

This provision, commonly referred to as the “Home Rule Amendment,” grants authority to municipalities to legislate in areas of local self-government. *Canton v. State of Ohio* (2002), 95 Ohio St.3d 149. However, the Supreme Court of Ohio has determined that the powers of local self-government under the Home Rule Amendment are not unlimited. *City of Reading v. Public Utilities Commission of Ohio* (2006), 109 Ohio St.3d 193. In fact, even issues of local concern must yield to matters of general and statewide interest. *Cleveland Electric Illuminating Co. v. City of Painesville* (1968), 15 Ohio St.2d 125, 129.

In *Cleveland Electric*, the court held that regulation of electric utilities is a matter of statewide concern that preempts all local regulations of electric utilities. In so holding, the court reasoned that “[i]f the result [of a municipal act] affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality.” *Id.* at 129. However, if the impact of a local regulation is not confined to the particular municipality

and “affects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest.” *Id.*

When the issue is one involving a statewide concern, another provision of the Ohio Constitution is implicated. This is Section 34, Article III and it states:

“Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.”

In construing this provision, the Supreme Court of Ohio determined that the provision constitutes a broad grant of authority to the legislature to provide for the welfare of all working people, and that no other provision, including the home rule provision, may impair the General Assembly’s power under Section 34, Article XVIII. *State ex rel. Bd. of Trustees of Pension Fund v. Bd. of Trustees of Relief Fund* (1967), 12 Ohio St.2d 105.

Thus, the focus is whether R.C. 9.481 is a law of statewide concern that impacts the general welfare of working people. Clearly, the answer to this question is yes. In fact, the statute itself states in Section 3:

“The General Assembly finds, in enacting section 9.481 *** that it is a matter of statewide concern to generally allow the employees of Ohio’s political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees.”

R.C. 9.481 was enacted to provide for the general welfare for full-time employees of all of Ohio's political subdivisions by allowing them to choose where they want to live. Thus, the law provides these employees the freedom to reside in a location that is in the best interest of their families and falls squarely within the authority granted to the General Assembly under Section 34, Article II. The Court rejects the City's argument that R.C. 9.481 attempts to create a right to demand city employment while choosing to live elsewhere. The only right created by the statute is the right to choose where to live.

The City also argues that the law violates Section 26, Article II (the Uniformity Clause: "all laws, of a general nature, shall have a uniform operation throughout the state") because it applies only to full-time employees and not volunteers or part-time employees and allows a political subdivision to require residency in the county or adjacent counties. See R.C. 9.481 (A)(2); (B)(1); (B)(2)(a); (B)(2)(b). The Court finds no such violation.

When considering whether a statute violates the Uniformity Clause, courts must ascertain "(1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state." *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 541.

The first part of the test has already been established. The second part of the test is also met. In *State ex rel. Stanton v. Powell* (1924), 109 Ohio St. 383, 385, the Supreme Court of Ohio stated that:

"[the Uniformity Clause] was not intended to render invalid every law which does not operate upon all persons, property or political subdivisions within the state, It is sufficient if a law operates upon every person included within its operative provisions,

provided such operative provisions are not arbitrarily and unnecessarily restricted. And the law is equally valid if it contains provisions which permit it to operate upon every locality where certain specified conditions prevail. A law operates as an unreasonable classification where it seeks to create artificial distinctions where no real distinction exists.”

Thus, the test is not whether the statute applies to all employees or classifications of employees. Instead, the test is whether the statute applies to all areas of the state equally. Here the uniformity of R.C. 9.481 is established because the law operates on every political subdivision and every person included (full-time employees) within its operative provisions and these provisions are not arbitrary or unnecessarily restrictive. Why the General Assembly chose to include only full-time employees and allows a political subdivision to require residency in the county or adjacent counties is immaterial. The City’s arguments raise political questions that are best addressed by the General Assembly.

Finally, the City contends that R.C. 9.481 is unconstitutional because it violates Section 28, Article II of the Ohio Constitution: “the General Assembly shall have no power to pass *** laws impairing the obligation of contracts ***.” Specifically, the City argues that R.C. 9.481 unconstitutionally impairs contracts because it interferes with agreements made between the City and its employees concerning the employees’ residence. This argument lacks merit.

Despite the general prohibition found in Section 28, Article II of the Ohio Constitution does not bar all interference with contracts. In fact, Section 28, Article II specifically allows for laws that impair the right to contract if it is enacted to provide for

the comfort, health, safety, and general welfare of employees. *Ohio Edison Co. v. Power Siting Comm.* (1978), 56 Ohio St.2d 212, 217-218.

The General Assembly expressly declared its intent in enacting R.C. 9.481 to provide for the comfort, health, safety and general welfare of the citizens of Ohio. See Section 2(B) of Sub.S.B. 82:

“In enacting section 9.481 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize *** Section 34, of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.”

This Court finds that by providing employees of political subdivisions with the ability to choose where they want to live, the General Assembly has provided for the general welfare of these individuals with a law that is neither arbitrary nor unreasonable.

The Court summarily rejects the City’s argument that previous cases have upheld local residency requirements. None of these decisions analyzed the legality of residency requirements subsequent to the enactment of R.C. 9.481.

The City attempts to divert the Court’s analysis of the constitutionality of R.C. 9.481 by interjecting predictions of dire and irreparable financial harm that the City and its expert claim with certainty. This Court cannot speculate as to the accuracy of the crystal ball that prognosticates these employees will all abandon their neighborhoods and neighbors in a mass exodus of biblical proportions. However, the City may employ its considerable resources to entice its employees to live in the City by any lawful incentives available in the same manner the City uses to attract businesses, tourists and other

sources of revenue. Clearly, requiring residency as a qualification of employment guarantees captive employee taxpayers, but does not guarantee the efficacy of the workforce. The City implies employees will not be as effective or will not care about the quality of their work without residency forcing their financial or emotional investment in the community. The Court rejects such rationale and the implication that where one resides affects the quality of the work performed. The hard-working, dedicated and compassionate qualities found in resident employees today is a function of their individual personalities and integrity and not a function of where they live. To suggest otherwise, impugns those very qualities necessary for an effective workforce including those risking their lives in the City's safety forces.

Having considered and rejected all the City's arguments, this Court grants summary judgment in favor of the State and the safety forces and denies summary judgment in favor of the City. In so ruling, this court specifically determines that R.C. 9.481 was lawfully enacted by the General Assembly to provide for the general welfare of employees of Ohio's political subdivisions and is a matter of statewide concern. Section 34, Article II of the Ohio Constitution is the controlling constitutional provision, and conflicting local laws passed pursuant to the city's home rule power found in Section 3, Article XVIII must succumb to state law. R.C. 9.481 is constitutional and is upheld.

IT IS SO ORDERED.

Peter J. Corrigan, Judge

Date: February ____, 2007

CERTIFICATE OF SERVICE

A copy of this ruling has been mailed by regular U.S. Mail this ____ day of February 2007 to:

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