

Danyelle S.T. Wright¹ on Ninth District Court's Decision to Uphold Municipal Employee Residency Requirements: State of Ohio v. City of Akron (Jan. 9, 2008), Summit Cty. No. C.A. 23660, 2008 Ohio 38

Municipalities, such as the City of Akron, are permitted to enforce employee city residency requirements. The Ninth District Court of Appeals recently affirmed this proposition when it declared R.C. 9.48.1, a recent statutory enactment of the Ohio General Assembly, unconstitutional, as it purported to supersede city residency requirements.

I. Facts

For the past two decades the City of Akron, Ohio has required its employees to reside in the city.² R.C. 9.48.1, which became effective on May 1, 2006, prohibits political subdivisions from requiring their employees to live within their boundaries.³ Specifically, R.C. 9.48.1 states: “no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.”⁴

Akron challenged the statute's constitutionality through a declaratory judgment action.⁵ In a separate action, Akron police and firefighter unions sought a declaration that the statute was constitutional and supersedes the city's residency requirements.⁶ The cases were consolidated and the parties filed cross-motions for summary judgment.⁷ The trial court granted summary judgment to the state and unions, and denied Akron's motion for summary judgment, finding that R.C. 9.48.1 is constitutional and invalidates Akron's

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² *Ohio v. City of Akron* (Jan. 9, 2008), Summit Cty. No. C.A. 23660, 2008 Ohio 38, at ¶2, 2008 Ohio App. LEXIS 33.

³ *Id.* at ¶2.

⁴ *Id.* at ¶4.

⁵ *Id.* at ¶3.

⁶ *Id.*

⁷ *Id.*

employee residency requirements.⁸ The trial court found that the Ohio General Assembly enacted R.C. 9.48.1 pursuant to its authority under Article II Section 34 of the Ohio Constitution to pass laws providing for the “general welfare” of employees.⁹ The trial court further concluded that because Article II Section 34 provides that “no other provision of the constitution shall impair or limit this power[,]” the General Assembly’s constitutional authority to enact Section 9.48.1 supersedes the city’s home rule authority to pass a local employee residency requirement.¹⁰ Akron appealed to the Ninth District Court of Appeals.

II. Ninth District Appellate Court Decision

The Ninth District Court of Appeals upheld Akron’s residency requirements for two reasons: 1) The legislative authority to pass laws providing for the “general welfare” did not include authority to enact R.C. 9.48.1, a single-issue statute, and 2) The General Assembly was not authorized to circumvent the home rule authority of municipalities, as the provision did not satisfy the requisite statutory definition of a general law.¹¹

General Welfare

The General Assembly’s constitutional authority under Article II Section 34 to pass laws for the “general welfare” does not include authority to enact Section 9.48.1.¹² The court recognized that although the General Assembly had broad legislative authority to pass laws providing for the “general welfare” of employees, that authority did not

⁸ *Id.* at ¶7.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at ¶¶28-29, 32.

¹² *Id.* at ¶29.

include the ability to enact “single-issue statute[s] that seeks to reinstate a non-fundamental right that the employees voluntarily surrendered when they accepted government employment.”¹³

The court explained that Akron’s employee residency requirement, which was valid and enforceable, should not be found unenforceable, as the phrase “general welfare” could not reasonably undermine a municipality’s home rule authority. The Court further opined that such broad construction could lead to an absurd result and give the General Assembly limitless power¹⁴.

Home Rule

R.C. 9.48.1 would supersede Akron’s city residency requirement only if it qualified as a “general law”.¹⁵ The Ninth Appellate District Court concluded that R.C. 9.48.1 was not a “general law” because it “does not set forth police, sanitary, or similar regulations but merely limits the municipality’s power to do the same[.]”¹⁶ Thus, the General Assembly’s enactment of R.C. 9.48.1 was an attempt to circumvent the home rule authority of municipalities to maintain residency requirements for their employees.¹⁷

Ultimately, the court found that R.C. 9.48.1 violated Akron’s home rule authority under the Ohio Constitution to enact local employee residency requirements.¹⁸

III. Practical Implications:

The appellate decision prevents the Ohio General Assembly from circumventing municipalities’ home rule authority in Akron. City residency requirements are currently

¹³ *Id.* at ¶27.

¹⁴ *Id.* at ¶28.

¹⁵ *Id.* at ¶31.

¹⁶ *Id.* at ¶32.

¹⁷ *Id.* at ¶32.

¹⁸ *Id.* at ¶¶33-34.

being litigated in other appellate districts,¹⁹ and it is likely the issue will soon be certified to the Ohio Supreme Court to settle any dispute among the district appellate courts. For now though, the City of Akron can enforce its residency requirements, as municipalities have a right to self-government.

- One lesson for municipalities who wish to challenge the constitutionality of R.C. 9.48.1 is to attack the fact that it was single-issue legislation, which does not address significant social issues impacting the public at large, is not part of a comprehensive legislative scheme, and applies to a small segment of the population. Thus, the legislation does not satisfy the “general welfare” definition, and courts are not likely to allow such to supersede a city’s ability to enforce its own rules and regulations regarding its citizens.

- Employees challenging city residency requirements should consider whether residency is a condition to the employment. That is, although employees have the *freedom* to live where they choose, they do not necessarily have the *right* to live where they choose should they decide to become city employees.

¹⁹ See *Pate v. City of Dayton*, Montgomery Cty. App. No. 2007 CV 09143 (involving a City of Dayton employee’s appeal of the Civil Service Board’s Decision upholding his termination because he moved outside the city); *City of Lima v. Ohio* (Dec. 3, 2007), Allen Cty. App. No. 1-07-21, 2007-Ohio-6419 (finding that R.C. 9.48.1 is unconstitutional because it abridges a municipality’s right to enact residency requirements under home rule authority).

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