

[Cite as *Youngstown v. State*, 2009-Ohio-5679.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

CITY OF YOUNGSTOWN,)	
)	
PLAINTIFF-APPELLANT,)	
)	
VS.)	CASE NO. 07-MA-223
)	
STATE OF OHIO,)	OPINION
)	
DEFENDANT-APPELLEE.)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 06CV1677

JUDGMENT: Affirmed

APPEARANCES:
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JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: September 9, 2009

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DONOFRIO, J.

{¶1} Plaintiff-appellant City of Youngstown appeals a decision of the Mahoning County Common Pleas Court declaring R.C. 9.481 constitutional. R.C. 9.481 prohibits political subdivisions from imposing residency requirements on employees as a condition of employment.

{¶2} On November 4, 1986, Youngstown voters approved an amendment to the City’s charter which provides that “[a]ll employees, elected officials and all appointees to commissions or boards shall be residents and domiciled in the City of Youngstown.”

{¶3} The Ohio General Assembly enacted R.C. 9.481, which became effective on May 1, 2006. It 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). Interestingly, R.C. 9.481(C) adds that “employees of political subdivisions of this state have the *right* to reside any place they desire.” (Emphasis added.)

{¶4} Obviously, the City’s charter conflicts with State law. The same day R.C. 9.481 became effective, the City filed suit against the state seeking a declaration that the statute is unconstitutional. It argued that R.C. 9.481 violates the home rule provision, uniformity clause, and contract clause of the Ohio Constitution. The trial court disagreed, finding the statute constitutional on November 7, 2007. The trial court reasoned that R.C. 9.481 was a general welfare law enacted pursuant to Section 34, Article II of the Ohio Constitution, which could not be impaired by the City through the home rule provision. This appeal followed.

{¶5} The Third and Ninth District ruled R.C. 9.481 unconstitutional based on a determination that it was not a general welfare law enacted pursuant to Section 34, Article II of the Ohio Constitution. As such, they ruled that R.C. 9.481 could not interfere with a political subdivision’s authority to “exercise all powers of local self-government” under Section 3, Article XVIII of the Ohio Constitution. *Lima v. State*, 177 Ohio App.3d 744, 2007-Ohio-6419, 896 N.E.2d 149 (3d Dist.); *Akron v. State*, 9th Dist. No. 23660, 2008-Ohio-38. During the pendency of this appeal, the Ohio

Supreme Court accepted the two cases to determine R.C. 9.481's constitutionality. In this case, the City waived oral argument and the matter was submitted for decision. Recognizing that the Ohio Supreme Court's decision in the Third and Ninth District cases would be dispositive of the issues presented by this appeal, the appeal was held in abeyance pending that decision. On June 11, 2009, the Ohio Supreme Court decided both cases in a singular decision. *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, 909 N.E.2d 616.

GENERAL WELFARE CLAUSE vs. HOME RULE PROVISION

{¶16} The City asserts five assignments of error. The first and second are related and can be addressed simultaneously. They state:

{¶17} "The trial court erred when it granted the State, and failed to grant the City, summary judgment because Ohio Constitution Article II, § 34 – the employee general welfare clause – does not empower the State with blanket authority to restrict municipalities from requiring that their employees reside in the communities they serve."

{¶18} "The trial court erred when it granted the State, and failed to grant the City, summary judgment because Ohio Const. Art. XVIII, Section 3 – the home-rule clause – precludes the State from interfering with municipalities' right to require that employees reside in the communities they serve."

{¶19} In *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, 909 N.E.2d 616, the Ohio Supreme Court declared R.C. 9.481 constitutional. It focused on two key provisions of the Ohio Constitution – the general welfare clause versus the home rule provision.

{¶110} The general welfare clause is found in Section 34, Article II. It states that the General Assembly may enact laws "providing for the comfort, health, safety and general welfare of all employes [sic]; and no other provision of the constitution shall impair or limit this power."

{¶111} The home rule provision is found in Section 3, Article XVIII. It provides that "[m]unicipalities 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.”

{¶12} The general welfare clause’s instruction that “no other provision of the constitution shall impair or limit this power” applies to and includes the home rule provision. Thus, any law enacted pursuant to the home rule provision cannot impair or limit the power of the General Assembly to enact laws pursuant to the general welfare provision.

{¶13} In *Lima*, the Court found that R.C. 9.481 “provides for the comfort and general welfare of employees.” *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, 909 N.E.2d 616, at ¶13. The Court explained:

{¶14} “By allowing city employees more freedom of choice of residency, R.C. 9.481 provides for the employees’ comfort and general welfare. Requiring employees to live in a specific city * * * conflicts with the prohibition in R.C. 9.481 against such residency restrictions. The General Assembly expressly declared in enacting the statute 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.’ 2006 Sub.S.B. No. 82, Section 3.” *Id.*

{¶15} The Court concluded that “R.C. 9.481 is constitutional and, therefore, that municipalities may not require their employees to reside in a particular municipality[.]” *Id.* at ¶17.

{¶16} Based on the Ohio Supreme Court’s decision in *Lima*, the City’s first and second assignments of error are without merit.

UNIFORMITY CLAUSE

{¶17} The City’s third assignment of error states:

{¶18} “The trial court erred when it granted the State, and failed to grant the City, summary judgment because Ohio. [sic] Const. Art. II, Section 26 – the uniformity

clause – causes R.C. § 9.481 to be unconstitutional in that the statute does not uniformly operate across the state.”

{¶19} The City argues that the trial court erred in failing to find that R.C. 9.481 violates the Uniformity Clause of the Ohio Constitution. Specifically, the City maintains that R.C. 9.481 does not operate uniformly because it only applies to permanent, full-time employees and does not prohibit the City from requiring volunteers, part-time employees, temporary employees, and seasonal employees to live in the City. The City also contends that R.C. 9.481 does not operate uniformly because it ignores and excludes existing residential restrictions in the Revised Code, citing nine different examples. For example, R.C. 2701.04 provides that if a state court of appeals judge removes their residence from their district they are deemed to have resigned and vacated their office.

{¶20} As indicated earlier R.C. 9.481(B)(1) 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.” That provision is subject to the exceptions set out in sections (B)(2)(a) & (b). Section (B)(2)(a) excepts volunteers. Section (B)(2)(b) excepts employees who are required to respond to emergencies or disasters:

{¶21} “To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state.”

{¶22} The Uniformity Clause of the Ohio Constitution is found at Section 26, Article II:

{¶23} “All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.”

{¶24} The purpose of the Uniformity Clause is “to prohibit the enactment of *special* or *local* legislation.” (Emphasis sic.) *Austintown Twp. Bd. of Trustees v. Tracy* (1996), 76 Ohio St.3d 353, 356, 667 N.E.2d 1174. Determination of whether a statute, such as R.C. 9.481, is constitutional under this provision entails a two-part test: “(1) whether the statute is a law of a general or special nature, and (2) whether the statute operates uniformly throughout the state.” (Citations omitted.) *Desenco, Inc. v. Akron* (1999), 84 Ohio St.3d 535, 541, 706 N.E.2d 323.

{¶25} The test to determine whether a statute’s subject matter is of a general or special nature is set forth in *Hixson v. Burson* (1896), 54 Ohio St. 470, 481, 43 N.E. 1000, 1001-1002:

{¶26} “[E]very subject of legislation is either of a general nature on the one hand, or local or special on the other. It can not be in its nature both general and special, because the two are inconsistent. If it is of a general nature, the constitution requires that *all* laws -not *some* laws- on that subject shall have a uniform operation throughout the state.

{¶27} “But how are we to determine whether a given subject is of a general nature? One way is this: if the subject does or may exist in, and affect the people of, every county, in the state, it is of a general nature. On the contrary, if the subject cannot exist in, or affect the people of every county, it is local or special. A subject matter of such general nature can be regulated and legislated upon by general laws having a uniform operation throughout the state, and a subject matter which cannot exist in, or affect the people of every county, can not be regulated by general laws having a uniform operation throughout the state, because a law can not operate where there can be no subject matter to be operated upon.” (Emphasis sic.)

{¶28} The first part of the test concerns a statute's subject matter, not geographical application. *Desenco*, 84 Ohio St.3d at 542, 706 N.E.2d 323. The subject matter of R.C. 9.481 is residency. As the Ohio Supreme Court observed in *Lima*, supra, "the General Assembly expressly declared in enacting the statute 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.'" Therefore, R.C. 9.481 is a law of general nature.

{¶29} The second part of the test, uniform operation throughout the state, means "universal operation as to territory; it takes in the whole state. And, as to persons and things, it means universal operation as to all persons and things in the same condition or category. When a law is available in every part of the state as to all persons and things in the same condition or category, it is of uniform operation throughout the state." *Austintown*, 76 Ohio St.3d at 356, 667 N.E.2d 1174.

{¶30} Here, R.C. 9.481 draws a distinction between employees who are full-time and those that are part-time or are volunteers. However, "the law is available in every part of Ohio to all individuals occupying the same position or category. In other words, all part-time employees or volunteers in every municipality in Ohio may be subjected to a residency requirement, while full-time employees may live where they choose." *Dayton v. State*, 176 Ohio App.3d 469, 487, 2008-Ohio-2589, 892 N.E.2d 506, at ¶98.

{¶31} The City also argues that the distinction between full-time employees and part-time employees or volunteers is arbitrary. The Ohio Supreme Court has rejected the argument that arbitrary classifications violate the Uniformity Clause. In *Austintown*, the Court emphasized that "arbitrary classifications violate the Uniformity Clause only where those classifications are contained in a statute first deemed to be

special or local as opposed to general.” *Austintown*, 76 Ohio St.3d at 358, 667 N.E.2d 1174.

{¶32} “Further, acceptance of the contention that the Uniformity Clause bars all legislatively created classifications deemed by the judiciary to be arbitrary would improperly and unnecessarily expand the scope of that constitutional provision. Traditionally, and more appropriately, it is equal protection analysis, rather than Uniformity Clause analysis, which mandates inquiry into whether legislatively created classifications of similarly situated persons bear a rational relationship to legitimate governmental purposes.” *Id.* at 359, 667 N.E.2d 1174. Therefore, R.C. 9.481 operates uniformly throughout the state.

{¶33} In sum, since R.C. 9.481 is a law of general nature and operates uniformly throughout the state, it is constitutional under the Uniformity Clause of the Ohio Constitution. The City’s third assignment of error is without merit.

DUE PROCESS

{¶34} The City’s fourth assignment of error states:

{¶35} “The trial court erred when it granted the State, and failed to grant the City, summary judgment because R.C. § 9.481 unconstitutionally impairs the City’s right to due process.

{¶36} Due course of law is provided by Section 16, Article I of the Ohio Constitution and procedural due process is protected by the Fourteenth Amendment to the United States Constitution. Despite failing to raise the claim in its complaint, the City argued in its summary judgment motion that R.C. 9.481 is unconstitutional because it violates the due process clause of the Ohio Constitution. The state pointed out this omission in its response. Apparently, the trial court took note because it declined to address the argument in its ruling.

{¶37} While the City’s failure to raise the issue in its complaint may be reason enough to disregard this assignment of error, there is an additional more compelling reason. The City, as a political subdivision created by the General Assembly, “may not assert any constitutional protections regarding due course of law or due process

of law against the state, its creator. Not having this protection, it may not now assert these protections against the state by asking this court to declare the statute unconstitutional for these reasons.” *Avon Lake City School Dist. v. Limbach* (1988) 35 Ohio St.3d 118, 122, 518 N.E.2d 1190.

{¶38} Accordingly, the City’s fourth assignment of error is without merit.

PROTECTION OF CONTRACTS

{¶39} The City’s fifth assignment of error states:

{¶40} “The trial court erred when it granted the State, and failed to grant the City, summary judgment because R.C. § 9.481 unconstitutionally impairs the City’s right of contract.”

{¶41} The Ohio Constitution protects contracts. Section 28, Article II provides that “[t]he general assembly shall have no power to pass * * * laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intentions of parties * * * by curing omissions, defects, and errors, in instruments * * *, arising out of their want of conformity with the laws of this state.” This protection is coextensive with the same protection found in the federal constitution. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 219, 2003-Ohio-5849, 797 N.E.2d 1256, at ¶10. The City argues that R.C. 9.481 violates these provisions.

{¶42} This constitutional protection of contracts is not absolute, however. Contracts can be impaired by statute if the legislation bears a substantial relation to public health, safety and welfare and if it is not unreasonable or arbitrary. *Ohio Edison Co. v. Power Siting Comm.* (1978), 56 Ohio St.2d 212, 217-218, 383 N.E.2d 588. Here, the General Assembly expressly declared and the Ohio Supreme Court has found that R.C. 9.481 provides for the comfort, health, safety, and general welfare of public employees. Nor, as already discussed, is it unreasonable or arbitrary.

{¶43} Accordingly, the City’s fifth assignment of error is without merit.

{¶44} The judgment of the trial court is hereby affirmed.

Vukovich, P.J., concurs.

Waite, J., concurs.