Supreme Court of Ohio Clerk of Court - Filed July 25, 2018 - Case No. 2017-0563

IN THE SUPREME COURT OF OHIO

CASE NO. 2017-0563

STATE EX REL BOARD OF TRUSTEES
OF ST. CLAIR TOWNSHIP, BUTLER COUNTY, OHIO

and

TOM BARNES
TRUSTEE

and

JOHN R. SNYDER
TRUSTEE

and

JUDY VALERIO
TRUSTEE

Relators,

v.

CITY OF HAMILTON, OHIO

and

JOSHUA SMITH
CITY MANAGER OF HAMILTON

and

THOMAS VANDERHORST
FINANCE DIRECTOR OF HAMILTON

Respondents,

Original Action in Mandamus

MERIT BRIEF OF RELATORS

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STATE EX REL BOARD OF TRUSTEES
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STATEMENT OF FACTS

A. Background and Context

To understand this case, it is necessary to provide some background and context culminating in the events which occurred during 2016 that led to the filing of this case.

The corporation limit of the Respondent City of Hamilton is composed of territory that, over many decades, was annexed from four Butler County townships- Fairfield Township, Hanover Township, Ross Township, and Relator St. Township (hereafter shortened to "four townships" or "the four townships"). (Stipulated Facts and Exhibit #2, at p.2). Historically, after territory was annexed into Hamilton, the (current and former) Butler County Auditors assigned the newly annexed territory to a Hamilton taxing district that did not include the township from which such territory had been annexed. (Stipulated of Facts and Exhibits #2, at p.2). This was a mistake because an annexation does not change township boundaries. But in the four townships' case, the granting of an annexation meant no more inside millage for them from any annexed territory. In severing annexed territory from the township from which it had been annexed into Hamilton, the (present and former) Auditors acted contrary to longstanding Ohio annexation law which held:

"4. Following an annexation other than a merger, there is no statutory basis for automatically treating township boundaries as being conformed to municipal boundaries or for allocating tax payments as if the township boundaries have been conformed to the municipal boundaries. Unless action is taken pursuant to R.C. §503.07 or R.C. §503.09, the township boundaries remain unchanged."

2005 Ohio Atty.Gen.Ops. No. 2005-024, paragraph 4 of the syllabus.

But the mistaken treatment of township territory after an annexation occurred was not confined to the Butler County Auditor's office. For historically, after territory was annexed from one of the four townships into Hamilton, the Butler County Board of Elections also adjusted Hamilton's election district boundaries to remove the annexed township territory from its former township election district such that after an annexation, the electors in the annexed territory never again voted in a township election. (Stipulation of Facts and Exhibits at #10) because the annexed territory was placed in a Hamilton-only election district, (Stipulation of Facts and Exhibits at #9 and Exhibit 11, Attachment A).

The Board of Elections action was also contrary to Ohio law which provides:

"3. Following an annexation other than a merger, if the annexing municipality does not initiate proceedings pursuant to R.C. §503.07 to make the boundary lines of annexed township territory identical with the limits of the municipal corporation, and if the electors of the unincorporated area of the township do not take action pursuant to R.C. §503.09 to exclude the annexed territory from being located in any township, then the annexed territory remains part of the township, inhabitants residing in the annexed territory are residents of both the municipal corporation and the township, and, unless a statute provides a specific exclusion, those residents are entitled to vote on both municipal and township officers, issues, and tax levies."

2005 Ohio Atty.Gen.Ops. No. 2005-024, paragraph 3 of the syllabus.

A well-written statement of the law applicable to the boundary between a municipality and a township following an annexation is found in 1974 Ohio Atty.Gen.Ops. No. 1213. There, Ohio's Attorney General opined:

"All the taxable property in the township" includes the taxable property of a village in the township. The practice is and seems always to have been to make the general levies of the township to cover all property within the township. Because some part of the territory of a township becomes a village does not seem to operate to take the area within the village out of the township for voting or for taxing purposes."

"The general rule is, therefore, that the taxable value of a township includes property within the incorporated areas of the township."

"An exception to this general rule applies if a statute authorizes a board of township trustees to levy a tax upon less than all the property in the township."

B. Events in 2016 Leading to the Filing of this Case

In the spring of 2016, Relator St. Clair Township's legal counsel contacted the Butler County Auditor[1] regarding the taxing districts in Hamilton and asserted that each year St. Clair Township should be receiving a share of inside millage for territory annexed into Hamilton from St. Clair Township (Stipulation of Facts and Exhibits at #11) because there was no evidence that any legal process, such as a boundary adjustment, had ever taken place to cause a sharing of inside millage to come to an end.

It is undisputed that during the summer of 2016, (Exhibit #6, at pp.18-20) the Butler County Auditor's Office investigated its records to determine whether Relators' Counsel's claim was true. At the end of that investigation and after speaking with the State Department of Taxation and the State Tax Commissioner, the auditor's office concluded that, with one exception,[2] so far as its records would allow it to peer into the past[3] it was true and an "adjustment" (Exhibit #6, p. 25) in the inside millage tax allocation was in order between

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[1] In the spring of 2016 Relators' legal counsel also approached the Butler County Board of Elections concerning its improper drawing of election precincts and boundaries in St. Clair Township.

[2] The investigation showed that sometime in the mid-1990's Hanover Township had entered into a revenue sharing agreement with Hamilton related to territory Hamilton had annexed from Hanover Township in order to build a Lowe's Home Improvement Store and a WalMart.

[3] The auditor's records enabled his staff to look back into the 1970's- (Exhibit 6, at p.19),

Hamilton and Trenton and the townships from which each had annexed territory. [4]

Faced with a massive retooling of its records, the county auditor informed Hamilton and Trenton that unless "something was adjusted," (Exhibit #6, at p. 24-25), the two cities faced an appreciable loss of inside millage tax revenue. Rather than remain neutral and enforce existing Ohio law, the Butler County Auditor decided to choose sides.[5] He become an advocate for the cities in order to defeat the effects of the error his office had discovered. He suggested (Exhibit #6, at p. 58) to Hamilton and Trenton that they secured a boundary adjustment. This process would serve to remove the territory of the short-changed townships from within Hamilton and Trenton's corporate limits and relocate that removed territory into a "paper township" that would be formed when the boundary adjustment was granted

In retrospect, the objective of the auditors office's plan to have the cities of Hamilton and Trenton secure a boundary adjustment appears calculated and obvious.[6] First, it would enable the auditor's office to avoid having to undertake the massive retooling of its records to create: (1) new taxing districts; (2) a new shared tax rate for the tax parcels located in the newly created taxing district(s) representing territory annexed into Hamilton from St. Clair Township but not

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[4] Deputy Auditor Julie Joyce-Smith also testified during her deposition that the treatment of Butler County townships and municipalities as regards shared inside millage was not uniform, and no one could explain the reason for the inconsistent treatment to her. (Exhibit 6, at pp. 17-19)

[5] The auditor's office could not simply unilaterally reimburse the adversely impacted townships for what they were denied because the syllabus of Ohio Attorney General's Opinion- 2016 Ohio Atty.Gen.Ops. No. 2016-012- said such reimbursement was beyond an auditor's authority.

[6] It is at best picking sides in a zero sum game pitting the revenue stream due Butler County municipalities against the revenue stream due Butler County townships for the auditor's office to side with the municipalities against the townships by informing the municipalities how they could avoid the effect of the auditor's decades-long error by securing a boundary adjustment.

removed; and (3) new permanent parcel numbers for the 26,807 tax parcels identified in Hamilton's boundary adjustment petition that, without a boundary adjustment, would have been subject to "adjustment." (Exhibit #6, at p. 57). Second, it would punish St. Clair Township by denying it a share of Hamilton and Trenton's inside millage going forward for the territory each had annexed from St. Clair Township but never sought to remove from it. Effectively, Relator St. Clair Township's reward for rightfully pointing out the county auditor's decades-long mistake would be: (1) no shared inside millage with Hamilton moving forward (Exhibit #6, at p. 60); and (2) the legitimization of the *status quo* at the point in time when the inside millage misallocation error was pointed out. (Exhibit #6, at p. 57).

More closely examined the difference in outcomes between electing to secure a boundary adjustment and not securing one crystalizes the effect of a boundary adjustment on the four townships.

Unlike Hamilton, when informed of the auditor's mistake and provided with the "suggestion" that it secure a boundary adjustment to resolve the inside millage misallocation error his office had uncovered, Trenton elected not to secure a boundary adjustment. (Exhibit #6, at p. 25). Its refusal to seek a boundary adjustment meant the portion of Trenton's territory that had been annexed from St. Clair Township, but not removed, would begin to share its inside millage with St. Clair Township. (Exhibit #6, at p. 25).

After Trenton elected not to secure a boundary adjustment, the auditor's office had to: (1) create a new shared inside millage taxing district for the overlapping territory of Trenton and St. Clair Township (identified as "R81") (Exhibit 6, at p. 56); (2) create a new inside millage tax rate allocation to St. Clair Township of 1.62 mills (Exhibit 6, at p. 56) for the overlapping territory of

Trenton and St. Clair Township; and (3) create new Butler County Auditor Permanent Parcel Numbers (hereafter "Permanent Parcel Numbers") for the R81 taxing district.

Hamilton, on the other hand, took the auditor's suggestion and secured a boundary adjustment from the Butler County Commissioners (hereafter "Commissioners" or "the Commissioners") of all the territory annexed into Hamilton before 2002 from one of the four townships. It is undisputed that, with one exception,[7] following Hamilton's boundary adjustment, it was *not necessary* for the auditor to take any action to: (1) create any new taxing district(s); (2) create a new shared inside millage rate for the portions of St. Clair Township that overlapped with Hamilton's city limits; or (3) create any new Permanent Parcel Numbers to replace the existing Permanent Parcel Numbers that had been assigned to the twenty-six thousand eight hundred and seven (26,807) Permanent Parcel Numbers set forth in the two hundred and eighty-six (286) page exhibit attached to Hamilton's boundary adjustment petition.

In light of the different consequences which occurred following Trenton's election not to file a boundary adjustment and Hamilton's decision to secure one, there can be no dispute that

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[7] Deponent Deputy Auditor Julie Joyce-Smith testified (Exhibit 6, at p. 13) the exception that resulted in the creation of a new taxing district in Hamilton (identified as taxing district "P63") resulted from the mistaken removal of territory from St. Clair Township after that territory was annexed by Hamilton in 2002 using a newly-created Type-2 annexation process which Amended Substitute Senate Bill 5 (hereafter "S.B. 5") of the 124th General Assembly (Ohio's annexation reform statute that took effect in 2002) expressly forbid being removed from its township absent agreement with the township trustees of the impacted township. There was no such agreement. Hence, this territory had to be restored to a status indicating it was territory located in both Hamilton and St. Clair Township. However, since the property located in Taxing District P63 consisted exclusively of exempt Baptist church property, the removal mistake that was uncovered had no financial consequence. (Exhibit 6, at pp. 78-79). Taxing District P63 was assigned an inside millage tax rate of 1.32 mills in 2016 (Joyce-Smith Deposition, Exhibit C, at p. 3) and one ore more new Permanent Parcel Numbers were assigned.

following the county auditor's suggestion to secure a boundary adjustment meant preserving Hamilton's inside millage intact but sharing inside millage in Trenton beginning in 2016 and the future.

This mandamus action is not about the auditor's inside millage mistake. It is actually about the "cure" the auditor suggested for that mistake and Respondent Hamilton's securing of a R.C. §503.07 boundary adjustment from the Butler County Commissioners in Resolution 2016-10-03663. (Stipulated Exhibit #4).

Upon receiving the auditor's suggestion that it secure a boundary adjustment to preserve its inside millage (so it need not share a portion of it with the four townships), Respondent Hamilton's City Manager and Finance Director decided a boundary adjustment was necessary. In order to secure Hamilton City Council's concurrence in the city administration's decision to petition the county commissioners for a boundary adjustment, the benefits and detriments of seeking a boundary adjustment had to be explained to council members. Respondent Thomas Vanderhorst, who was then Respondent Hamilton's Finance Director, presented Hamilton City Council with a "City Council Meeting Staff Report" (Stipulated Exhibit #2). In it, Vanderhorst recommended that City Council immediately adopt an ordinance authorizing the filing of a boundary adjustment petition because the Butler County Auditor had informed[8] Hamilton officials

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[8] Although Exhibit #2 makes it clear that the county auditor's office communicated to Hamilton his office's conclusion respecting a misallocation of inside millage within Hamilton concerning property annexed into Hamilton from all four townships, no written version of the auditor's communication to Hamilton has been discovered. But the language of page 2 of Exhibit 2 makes clear that such a communication indeed took place and was received by Respondents.

the auditor's office had concluded it had erred in the allocation and distribution of inside millage[9] within the overlapping jurisdiction of the City of Hamilton and its four surrounding townships where their jurisdictional boundaries overlapped. (Stipulated Exhibit #2, at p.2). Specifically, the auditor's error was that when an annexation occurred, his office (as well as his predecessors' staffs) treated the annexation not only as an annexation[10] but also a boundary adjustment that resulted in the removal of the newly annexed territory from its former township and culminated in the inside millage collected from within the City of Hamilton not including or distributing any inside millage to any of the four townships. In effect, due to this error, Hamilton got 100 percent of the inside millage which should have been being allocated and shared between Hamilton and he four townships with respect to property that was annexed into Hamilton from one or more of the four townships. (Exhibit #6 at p.57).

There is no dispute that, following the receipt of Vanderhorst's Staff Report on September 14, 2016, City Council adopted Emergency Ordinance EOR 2016-9-81 (Stipulated Exhibit #1) authorizing Respondent City Manager Joshua Smith to file a boundary adjustment petition (Exhibit #3) with the Commissioners.

There is no dispute that a boundary adjustment petition was filed with the Butler County Commissioners on September 21, 2016 seeking to remove twenty-six thousand eight hundred and seven (26,807) tax parcels [11] located within Respondent Hamilton's corporate limits (which had

[9] Millage within the ten mill limit. (Exhibit 6 at pp. 15-17)

[10] Annexations are governed by R.C. Chapter 709, while boundary adjustments are provided for in R.C. §503.07.

[11] This is the number of parcels listed in Hamilton's Boundary Adjustment Petition attached to the Commissioner Resolution 2016-10-03663. Not included in the twenty-six

previously been annexed from one or more of the four townships) and relocate those removed parcels into a "new" Hamilton Township." (Stipulated Exhibit #3).

As filed with the commissioners, Respondent Hamilton's boundary adjustment petition was unconventional in one major aspect and arguably illegal in another. Hamilton's boundary adjustment petition was unconventional in that instead of using a legal description- a descriptive process which uses direction and distance calls to form a connected line defining the perimeter boundary of a piece of real estate such as is used in a deed, mortgage, or annexation petition- to describe the territory sought to be removed from the four townships and be relocated into "Hamilton Township", it used Permanent Parcel Numbers[12] to describe the territory sought to be removed. Hamilton's boundary adjustment petition failed to establish a boundary line with the four townships.

The reason Permanent Parcels Numbers were used in Respondents' boundary adjustment petition instead of a legal description is unclear. Perhaps the Petition was filed using Permanent Parcel Numbers instead of a legal description because Permanent Parcel Numbers would be the easiest organizational method for the auditor's office to use because it was an already understood point of reference.

The reason Respondents' Petition, as filed and approved, was arguably illegal is it violated

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thousand eight hundred and seven (26,807) tax parcels identified in an Exhibit to Hamilton's boundary adjustment petition were a handful of tax parcels (which were annexed into Hamilton after March 27, 2002, when S.B. 5 - a major annexation law amendment- took effect.

[12] Permanent Parcel Numbers are not really "permanent." They can disappear forever upon the replatting of large tracts for development or as a result of a combination of two or more lots into one new lot. More significantly, streets and alleys are not assigned a Permanent Parcel Number. Thus, Hamilton's boundary adjustment petition did not include any Hamilton streets or alleys located there.

two sections of the Ohio Revised Code. Both sections prohibit any two townships in the same county having the same name.[13] The last sentence in R.C. §503.04 provides- *"No two townships in any county shall be incorporated by the same name."* The last sentence in R.C. §503.08 contains virtually the same language providing: "No two townships in any county shall have the same name." Attached as Exhibit 9 is a certified copy of an 1867 Butler County Commissioner boundary adjustment resolution in which Hamilton Township was created at Hamilton's request from a portion of Fairfield Township. Relators submit that while R.C. §503.07 imposes a mandatory duty on a Board of County Commissioners to approve a city's boundary adjustment petition, a mandatory duty cannot be imposed in such a fashion as to result in a violation of a different section of the Revised Code.[14]

Had there been any doubt as to whether a Hamilton Township already existed, in their due diligence leading to the filing of their boundary adjustment petition filing Respondents could have examined the county's boundary adjustment book required to be kept by R.C. §503.04 which provides:

"The board shall cause the boundaries of such township, so changed or altered, or new township laid off, to be recorded in a book to be kept for that purpose, and shall give each new township, so laid off, an appropriate name."

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[13] Deputy Auditor Julie Joyce-Smith found a reference to this boundary adjustment resolution in the course of her investigation into Relators' claims about inside millage. (Exhibit #6, at p.62). Relators' counsel located it before she did in local historian Ester Benzing's book.

[14] A better example of the questionable continued validity of the mandatory duty to approve a boundary adjustment set out in R.C. §503.07 would be an attempt by a city to seek the removal of territory from a township citing R.C. §503.07 when removal of that territory is barred by the terms of a previously approved annexation using an expedited Type-2 annexation process which forbids subsequent removal of that territory from the township- a situation where a mandatory duty would collide with a statutory prohibition on the action to be taken.

Commissioners Resolution 2016-10-03663 states on its face that it is relying on R.C. §503.07 for its authority to approve Respondent Hamilton's boundary adjustment petition. R.C. §709.19(B), which is at the heart of this mandamus action, also relies on the approval of a R.C. §503.07 resolution in order to create a township's right to receive "lost tax revenue compensation" from a municipal corporation after a R.C. §503.07 boundary adjustment.

C. Purpose of This Action

In this original action in mandamus, the Relators- the Board of St. Clair Township Trustees and its individual members- seek a writ of mandamus from this Honorable Court commanding the Respondents- the City of Hamilton, Ohio, its City Manager Joshua Smith, and its Finance Director David C. Jones to comply with the command of R.C. §709.19(B) which provides:

> "If unincorporated territory is annexed to a municipal corporation and excluded from a township under section 503.07 of the Revised Code, upon exclusion of that territory, the municipal corporation that annexed the territory shall make payments to the township from which the territory was annexed only as provided in this section, ..."

To be entitled to an extraordinary remedy in mandamus, the relator must establish a clear legal right to the relief requested, a clear legal duty on the part of the Respondent to provide the relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 117 Ohio St.3d 480, 2008-Ohio-1593, 884 N.E.2d 1075, ¶9. Relators must prove entitlement to the writ by clear and convincing evidence. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, paragraph three of the syllabus.

According to R.C. §709.19(B) ,Respondents have a clear legal duty to pay Relator St.

Clair Township lost tax revenue compensation as a consequence of securing a boundary adjustment from the Butler County Commissioners. However, they have not complied with that clear legal duty by making any lost tax revenue compensation payments to Relators or entering into an agreement with Relators to make lost tax revenue compensation.

R.C. §709.19 also clearly provides the lost tax revenue compensation is to be paid by the municipality to the township whose territory was removed *"upon the exclusion of that territory;"* that is, when removal is approved by commissioners. Hence, Relators ask the Court to enforce the plain and unambiguous language of R.C. §709.19(B) and command Respondents to perform their legal duty to Relators. Moreover, as more fully explained in the Third Proposition of Law, Relators ask this Court to command Respondent Hamilton to take whatever action is necessary to remove Respondents' claimed inability to pay lost compensation revenue because the auditor's failure to follow te law historically in combination with the timing of its boundary adjustment action makes it impossible for it to comply with R.C. §709.19(B).

ARGUMENT

FIRST PROPOSITION OF LAW

When a municipal corporation's R.C. §503.07 boundary adjustment petition is granted by county commissioners, R.C. §709.19(B) imposes a clear legal duty upon that municipal corporation to pay, and grants the township whose boundary has been adjusted a clear legal right to receive, lost tax revenue compensation payments in an amount to be determined by either an agreement between the township and the municipal corporation or, absent such an agreement, the amount provided in R.C. §709.19(C) and (D).

R.C. §709.19(B), on which Relators' mandamus claim is grounded, provides:

"(B) If unincorporated territory is annexed to a municipal corporation and excluded from a township under section 503.07 of the Revised Code, ***upon exclusion of that territory***, the municipal corporation that annexed the territory shall make payments to the township from which the territory was annexed only as provided in this section, except that, if the legislative authority of the municipal corporation enters into an agreement under section 701.07, 709.191, or 709.192 of the Revised Code with the township from which the territory was annexed that makes alternate provisions regarding payments by the municipal corporation, then the payment provisions in that agreement shall apply in lieu of the provisions of this section." ***(Italic emphasis added)***

When this Court considers the meaning of a statute, its first step is always to determine whether the statute is "plain and unambiguous." *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, -N.E.3d- ¶8. For when this Court concludes that a statute's language is clear and unambiguous, it applies it as written, *In re Estate of Centorbi*, 129 Ohio St.3d 78, 2011-Ohio-2267, ¶ 14, citing *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶ 9, giving effect to its plain meaning. *Slingluff v. Weaver* (1902), 66 Ohio St. 621, 64 N.E. 574, paragraph two of the syllabus. R.C. §709.19 is clear and unambiguous and thus needs no interpretation.

R.C. §709.19(B) contemplates two preconditions to a municipal corporation's duty to make lost tax revenue compensation payments. First, annexation of territory by a municipal corporation (here Respondent Hamilton) from a township (here Relator St. Clair Township). Second, exclusion (i.e., removal) of that annexed territory from the township by the annexing municipal corporation using the boundary adjustment process provided in R.C. §503.07.

The first and sixth recitals in Commissioners' Resolution 2016-10-03663 (Stipulated Exhibit #4) expressly state the boundary adjustment petition that is being approved is grounded on R.C. §503.07 and that it was brought before the Commissioners by Respondent Hamilton.

Because the two statutory pre-conditions imposed in R.C. §709.19(B) to Hamilton's clear legal duty to make lost tax revenue compensation payments to St. Clair Township have both been satisfied, Hamilton's clear legal duty to make those payments has now attached as a matter of law and Relators are entitled to a writ of mandamus commanding Respondents to commence computing and paying the lost tax compensation revenue due Relators. Relators cannot find any reference in R.C. §709.19(B) as imposing any duty on the county auditor's office to pay lost tax revenue to the township due it. Consequently Realtors say the duty to perform whatever R.C. 709.19(B) commands be done, be performed by Respondent Hamilton- sing whatever means and resources it finds appropriate to make and compute the payments the law requires it to make. After all, Hamilton is first receiving the tax revenue which should be distributed to St. Clair Township, and only after Hamilton receives that money is it obliged to pay St. Clair Township.

Having demonstrated that Relators' entitlement to lost tax revenue compensation is clear and unambiguous as a matter of both law and fact, it is worth considering the basis for Respondent Hamilton's refusal to comply with its R.C. §709.19(B) duty. In a word, it is greed.

The reason(s) why Respondent Hamilton sought the boundary adjustment were explained in a "City Counsel Staff Meeting Report" from Hamilton Director of Finance Thomas Vanderhorst (Stipulated Exhibit #2)- the same day Hamilton City Council adopted legislation calling for the City Manager to file a boundary adjustment petition. There, in the "Background Information" portion (on page 2) of that Report, Vanderhorst states:

"Over time, the City has annexed property from four surrounding townships. No documentation has been located indicating that the City has ever filed a subsequent petition with the county commissioners to remove annexed territory from a township after annexations were completed. Failure to remove the territory from a township following annexation results in the property being located in joint or overlapping jurisdictions -- both in the City and in the township

following annexation. This may affect both taxation and voting. It appears that Butler County has treated annexations themselves as automatically removing the annexed territory from a township, leaving it solely in the City of Hamilton for both voting and tax purposes. St. Clair Township has recently raised questions with the Butler County Auditor about the allocation of inside millage. The township claims that the auditor has made a mistake in the past years by automatically removing territory from the township after annexations have occurred. Thus, the township is entitled to its share of inside millage and perhaps other taxes which have not been paid to the township. The assertion has been made that the township is entitled to its share of the inside millage both before and after the enactment of Amended Substitute Senate Bill 5 in 2002 and the township is entitled to be included as a taxing district within the City of Hamilton as taxes are determined, collected and distributed by the county in the future."

"In order to correct voting and tax entitlement issues, Hamilton would have to authorize a petition to be filed with the Butler County Board of County Commissioners asking that the territory previously annexed from the four various townships be consolidated into a new township (Hamilton Township) that would exist solely within the City's boundaries. Erecting this new township located entirely within the City should result in the portions of the inside millage attributable to property in the City of Hamilton continuing to go to the City and not going to any townships, essentially the position that exists today. Creating a new Hamilton Township should, by operation of law, create what is often referred to as a 'paper township' with no duties or responsibilities and no tax entitlements. This process would then straighten up any inaccuracies of the Butler County Auditor in failing to properly attribute taxes in the past and Butler County Board of Elections on voting districts and correct those errors for the future. Property annexed to the City of Hamilton after the effective date of Amended Substitute Senate Bill 5 (March 27, 2002) cannot be taken out of the existing townships and therefore would not be included in Hamilton Township. Those properties (approximately 50 acres) would remain in the township and that township may be entitled to consideration in the allocation of inside millage by the County Budget Commission as we move forward."

Hamilton's refusal to pay lost tax revenue compensation as required by R.C. §709.19(B) helps bring into focus the third element needed for a writ of mandamus- the absence of an adequate remedy in the ordinary course of the law. *State ex rel. McClaran v. City of Ontario*, 119 Ohio St.3d 105, 2008-Ohio-3867, 892 N.E.2d 440 ¶ 15. To be considered an "adequate" remedy, the remedy must be complete, beneficial, and speedy. *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245 ¶8.

As Hamilton's staff report to its city council (Stipulated Exhibit #2) concedes, for

decades, St. Clair Township was deprived of its lawful share of the inside millage because the Butler County Auditor misidentified Respondent Hamilton's boundary with Relator St. Clair Township and paid St. Clair Township's share of its inside millage to Hamilton. Relator St. Clair Township is not only immediately entitled to lost tax revenue compensation as a matter of law, like every political subdivision, it needs the revenue. Forcing St. Clair Township to expend its limited resources to pursue Hamilton through a declaratory judgment and collection action first through the common pleas court, then through the Twelfth District Court of Appeals, and ultimately before this Court is not a speedy beneficial or complete remedy for monies R.C. §709.19(B) says are already due St. Clair Township right now.

This Court should find the absence of an adequate remedy at law in this case because:

(1) unless any potential adequate remedy at law that can be pursued in a lower court also includes mandamus relief, St. Clair Township would only win the right to collect money owed it, not the recognition that Hamilton has a clear legal duty to make payments provided by either R.C. §709.19(C) and (D) and St. Clair Township the clear legal right to receive such payments;

(2) R.C. §709.19(B) clearly and unambiguously imposes a mandatary legal duty upon Hamilton to begin paying St. Clair Township lost tax revenue compensation payments now, not years from now when Hamilton has exhausted all avenues of avoiding its legal duty to pay;

(3) due to the Butler County Auditors' mistakes, for decades St. Clair Township has been denied inside millage real estate tax dollars to which it was entitled as a matter of law, while Hamilton has illegitimately profited from that mistake and now attempts to

continue receiving that windfall without compensating St. Clair Township.

It is also vital to recognize that the Ohio General Assembly intended the twelve years of payments which R.C. §709.19(B) requires are intended to compensate a township for its lost tax revenue that suddenly occurs (absent a lost tax compensation agreement grounded on R.C. §§701.07, 709.191, or 709.192 between the township and the municipal corporation. To force a township, whose tax revenue stream has already been reduced by the boundary adjustment's result, to wait for years while a remedy other then mandamus winds its way through Ohio's judicial system would frustrate the General Assembly's intent as presented in the language of R.C. §709.19(B) to begin the lost tax revenue compensation payment stream *"upon exclusion of the "territory."* As this Court recognized in State ex rel. Pressley v. Indus. Comm., 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph six of the syllabus:

"The extraordinary remedies of statutory mandamus and statutory mandatory injunction are not plain and adequate remedies in the ordinary course of the law and the availability of these extraordinary remedies in the Common Pleas Court is not a ground upon which the Supreme Court can adopt or adhere to a rule that it is error for the Supreme Court or the Court of Appeals to exercise jurisdiction in a mandamus action filed originally therein."

SECOND PROPOSITION OF LAW

The uncodified language in of Amended Substitute Senate Bill 5 of the 124th General Assembly (hereafter "S.B. 5") does not eliminate the duty of a municipal corporation to pay a township R.C. §709.19(B) lost tax revenue compensation for territory that was: (1) annexed into a municipal *before* S.B. 5 went into effect on March 27, 2002, and (2) was removed from that township by a R.C. §503.07 boundary adjustment petition filed *after* S.B. 5 went into effect.

Relators' Second Proposition of Law addresses the scope of the obligation to pay lost tax revenue compensation. That is, what St. Clair Township parcels, if any, included in Hamilton's boundary adjustment petition, would *not* entitle St. Clair Township to lost tax revenue compensation.

In their earliest communication with Relators about their obligation to pay lost tax revenue compensation, Respondents claimed Relators had no right to lost tax revenue compensation from Respondents for territory that Hamilton: (1) annexed from St. Clair Township *before* S.B. 5 took effect on March 27, 2002,[15] and (2) removed from St. Clair Township using a R.C. §503.07 boundary adjustment petition filed *after* S.B. 5 took effect. Effectively, Hamilton claimed the S.B. 5 version of R.C. 709.19(B), (that went into effect on March 27, 2002). does not apply to territory that was annexed into Hamilton *before* March 27, 2002, if it was removed from St. Clair Township *after* S.B. 5 took effect.[16] Respondents base this claim on the uncodified law found in Section 3 of S.B. 5. It provides:

"The provisions of Section 1 of this act shall apply only to *annexation petitions* filed on or after the effective date of this act. All *annexation petitions* filed before the effective date of this act shall be processed under the provisions of Chapter 709. of the Revised Code in effect at the time a particular petition was filed." (Italics added for emphasis)

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[15] The effective date of S.B. 5 was determined to be March 27, 2002, by this Court in *Thornton v. Salak*, 112 Ohio St.3d 254, 2006-Ohio-6407, because there was an unsuccessful attempt to conduct a statewide referendum of that enactment in 2001.

[16]Yet, in a mind-bending inconsistency, those are exactly the same characteristics which define all twenty-six thousand eight hundred and seven (26,807) Permanent Parcel Numbers Hamilton included in its 2016 boundary adjustment petition. (Stipulated Exhibit 3). An outside observer would have to question why Hamilton's 2016 boundary adjustment petition included only parcels annexed into Hamilton before March 27, 2002, if Ohio law was what Hamilton now claims it to be. For to seek removal would be unnecessary when such parcels were already excluded (under the language of uncodified Section 3) from being the basis for an obligation to make lost tax revenue compensation payments.

The error in Respondents' Section 3 uncodified law argument can be quickly dispatched.

Provisions like the uncodified law found in Section 3 are included in legislative enactments to resolve issues of retroactivity concerning procedural/remedial aspects of new statutes. They are necessary because procedural and remedial provisions of a new law can sometimes be applied retroactively. *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, ¶17, and the General Assembly generally has the authority, in the first instance, to determine the retroactivity of new statutes. *State v. Rush*, 83 Ohio St.3d 53, 57, 1998-Ohio-423 (1998).

In the case of S.B. 5, the reason Section 3 was added was to resolve the question of whether the new "expedited" annexation petition procedures enacted in S.B. 5 could be utilized in an already pending annexation proceeding when S.B. 5 took effect. The uncodified language of Section 3 makes it clear that the new "expedited" annexation petition procedures enacted in S.B. 5 apply only to annexations filed after S.B. 5 goes into effect, and not to already pending annexations proceedings.

A second way of quickly disclosing of the error in Respondents' analysis is by examining the S.B. 5 version of R.C. §709.19(B) and Hamilton's own boundary adjustment history. According to the S.B. 5 version of R.C. §709.19(B), lost tax revenue compensation becomes payable *"upon exclusion of the territory"* from a township. Exclusion means removal, not annexation to a municipal corporation.

Exhibits in the record indicate Hamilton secured a boundary adjustment of some Fairfield Township territory in 1867 (Exhibit #9) and a second boundary adjustment took place in 2016 involving Fairfield, Hanover, Ross and St. Clair Township territory. (Stipulated Exhibit #4). Even

though Hamilton probably included the territory it had initially removed from Fairfield Township in 1867 in its 2016 petition,[17] that territory had, in fact, already been removed from Fairfield Township in 1867 ([before the S.B. 5 version of R.C. §709.19(B) took effect], Consequently, it should not be included in any lost tax revenue compensation due Fairfield Township as a result of the 2016 boundary adjustment. After all, the territory was removed from Fairfield Township in 1867, not in 2016. It follows that 1867-removed territory was no longer located in Fairfield Township when S.B. 5 took effect on March 27, 2002, and it does not qualify for S.B. 5 lost tax revenue compensation treatment. Other than this, however, the territory which was removed from Fairfield, Hanover, Ross and St. Clair Townships by commissioners in October 3, 2016 (obviously after S.B. 5 went into effect on March 27, 2002) *is* subject to being part of the lost tax revenue compensation calculation for all four of the townships that suffered a loss of tax revenue as a result of Hamilton's 2016 boundary adjustment petition.

A third reason why Section 3's uncodified language does not apply to the S.B. 5 version of R.C. §709.19(B) is that the subject of the two sentences which make up Section 3 is *"annexation petitions."* When a court interprets the meaning of a statute, it must give effect to all the statute's words. *Carter v. Reese*, 148 Ohio St.3d 226, 2016-Ohio-5569, ¶39. R.C. §709.19(B) is not about "annexation petitions" (the kind of laws Section 3 addresses) because in order to remove territory using R.C. §503.07, it must first have already been annexed. R.C. §709.19(B) is about boundary adjustment/removal petitions and is thus not subject to the uncodified law language of

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[17] Hamilton's Ordinance authorizing the filing of its 2016 boundary adjustment petition indicated the petition to be filed should include all territory annexed into Hamilton except territory annexed after S.B. 5 took effect on March 27, 2002. Thus, it is likely the territory removed in 1867 boundary adjustment resolution was likely included in the 2016 adjustment petition.

Section 3. To reach the understanding Respondents seek from R.C. §709.19(B) as enacted in S.B. 5, it is necessary to add words of qualification to the scope of the duty to pay lost tax revenue compensation that are not there. However, to do this violates the statutory interpretation maxim that where the language of a statute is clear and unambiguous, it is the duty of the courts to enforce the statute as written, making neither additions to nor subtractions therefrom. *Hubbard v. Canton City School Bd. of Edn.*, 97 Ohio St.3d 451, 2002-Ohio-6718, ¶ 14. Moreover, the General Assembly is perfectly capable of limiting the reach of a statute when it wants to do so. *Sherwin-Williams Co. v. Dayton Freight Lines, Inc.*, 112 Ohio St.3d 52, 2006-Ohio-6498, ¶ 17.

The fourth reason why Respondents' reading of R.C. §709.19(B) is not credible is that the uncodified language of Section 3, on which Respondents rely, went into effect along with the rest of S.B. 5 on March 27, 2002. However, the S.B. 5 version of R.C. §709.19(B) was repealed[18] and replaced with an amended version of R.C. §709.19(B) adopted in House Bill 233 of the 131st General Assembly, (Appendix Item 5), (hereafter shortened to "H.B. 233"). The H.B. 233 version of R.C. §709.19(B) went into effect less than two months *before* Hamilton commenced its 2016 boundary adjustment petition. Consequently, Respondents construction of R.C. §709.19(B) is not only not supported by the uncodified language of Section 3 from S.B. 5, the S.B. 5 version of R.C. 709.19(B) *was not event in effect* when Hamilton's boundary adjustment petition was filed, and approved. It had already been repealed and replaced by H.B. 233. Moreover, the H.B. 233 version of R.C. §709.19(B) did not incorporate the limiting language of uncodified Section 3

[18] Appendix Item 5, House Bill 233, at Section 2.

of S.B. 5 into either its uncodified law[19] or the actual text of R.C. §709.19(B). The General Assembly expressly refers to uncodified law in the text of R.C. §124.86. (Appendix 6).

Should Respondents make any attempt to try to secure this Court's reliance on the uncodified language of Section 3 of S.B. 5, they are being intellectually dishonest. The S.B. 5 version of R.C. §709.19(B) *was not even in effect* when Hamilton secured its 2016 boundary adjustment.

A fifth reason and final why Respondents' efforts to avoid the effect of §R.C. 709.19(B) on their 2016 boundary adjustment petition is a practical one. Where was Hamilton for the decades and decades that passed before the S.B. 5 version of R.C. §709.19(B) took effect. Hamilton could have sought a R.C. §503.07 boundary adjustment at any time before the S.B. 5 version of R.C. §709.19(B) took effect. It did not. A recent decision of this Court- *Fairfield Township Bd. of Trustees v. Testa*, Slip Opinion No. 2018-Ohio-2381, ¶29, contains a cogent statement that applies in this instance:

> ..."As discussed, the parties have stipulated that the township did not take action pursuant to H.B. 427 to preserve the priority of the TIF exemption and thereby retain its right to service payments. *Because the township did not avail itself of the statutorily created opportunity to preserve its rights, it has been injured by its own omissions rather than by the operation of the statute itself." (Italics added for emphasis)*

When Respondent Hamilton failed to secure a R.C. §503.07 boundary adjustment before the S.B. 5 version of R.C. 709.19(B) took effect (altering the conditions which would trigger the duty to pay lost tax revenue compensation), it effectively inflicted the financial consequences of its

[19] It makes sense that the uncodified language of Section 3 of S.B. 5 would not be included in HB 233. HB 233 went into effect after the effective date of SB 5 so it was no longer necessary to address which annexation petition law applied to a new annexation petition.

delay upon itself. It should not now be heard to complain about the consequences of its own delay in acting to protect its interest against the duty imposed by R.C. §709.19(B).

THIRD PROPOSITION OF LAW

Self-inflicted impossibility to comply with a statutory duty is not a defense to an action to enforce that duty. A party may not validly proclaim itself unable to perform a statutory duty when the reason for the claimed impossibility is voluntary action taken by the party claiming the impossibility.

On page 3 of Respondents' Response to Relators' Motion for a Peremptory Writ of Mandamus they make three claims. First, Relators have not identified which of the twenty-six thousand eight hundred and seven (26,807) Permanent Parcel Numbers that were included in its 2016 boundary adjustment petition came from St. Clair Township. Second, Relators have not identified the taxes St. Clair Township would have received but for the "annexation." Third, Relators have not identified the amount St. Clair Township claims it is due under the R.C. 709.19(B) as a result of Hamilton's 2016 boundary adjustment. Since the second claim is most easily disposed of, it will be addressed first.

In this action, Relator St. Clair Township is seeking lost tax revenue compensation pursuant to R.C. §709.19(B). In order to be entitled to any lost tax revenue compensation there must first be an annexation and later a removal of territory from a township. Since annexation and removal are two distinct processes, how much inside millage Relators should have shared with Respondents before Respondents removed territory from St. Clair Township is irrelevant to how much lost tax revenue compensation the township should now receive in compensation for the removal of annexed territory from its boundaries. Therefore, this claim is irrelevant to a lost

tax revenue compensation dispute.[20]

Respondents also claim Relators are unable to determine which of the twenty-six thousand eight hundred and seven (26,807) Permanent Parcel Numbers Hamilton included in its 2016 boundary adjustment petition were annexed from St. Clair Township. Not true. Exhibit A attached to Hamilton's Boundary Adjustment Petition (Stipulated Exhibit 3) is a color map of the City of Hamilton showing the remaining boundaries between Hanover, Ross and St. Clair Townships in different colored shades of green.[21] Exhibit A shows the boundary between St. Clair Township and Ross and Hanover Townships is a straight line. (Exhibit 8, Attachments A and B) contain depictions of St. Clair Township's boundary from the Butler County Recorder's Atlases of 1875 and 1914. The Atlases show St. Clair Township has a straight line boundary with Hanover and Ross Townships. The Butler County Engineer's Office provides tax maps to the Butler County Auditor pursuant to R.C. §5713.09. A map of all of Butler County is available on line at *gis.bceo.org/MAP/* . By scrolling in to the City of Hamilton on the engineer's county map, one can locate the former boundary line between: (1) St. Clair Township and Ross Township, and

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[20] Since (1) the Butler County Auditor's Office failed to do its duty to calculate the inside millage which Hamilton and the four townships would share [a real money saver since that would involve the auditor's office examining twenty-six thousand eight hundred and seven (26,807) Permanent Parcel Numbers] to arrive at a figure; and (2) Hamilton secured a boundary adjustment before the appropriate offices could complete the calculations necessary to come up with the shared inside millage for each of the four townships, Hamilton is cleverly trying to take advantage of its prior overcompensation and hasty boundary adjustment to erect barriers to St. Clair Township's entitlement to future lost tax revenue compensation.

[21] Since the Great Miami River separates Fairfield Township from Hanover, Ross, and St. Clair Townships, the only boundaries that need to be clarified are the boundary between St. Clair and Ross Township and also St. Clair Township and Hanover Township.

(2) St. Clair Township and Hanover Township. Scrolling in still further leads the user to the current Permanent Parcel Numbers used in Hamilton for territory annexed from St. Clair Township. It is also possible to learn the former town, section and range in each of the four townships from which a current Hamilton Permanent Parcel Number was annexed.

The Butler County Auditor employs a Permanent Parcel Numbering system which allows a parcel's location to be determined by using its Permanent Parcel Number. As can be seen from Hamilton's boundary adjustment petition, (Stipulated Exhibit 3), use of the designator "P" indicates the parcel is located in Hamilton. The auditor's system Permanent Parcel Numbering system was explained even further by Deputy Auditor Julie Joyce Smith in her deposition. (Stipulated Exhibit 6, pp. 72-74). There, she testified as to the organization of the Permanent Parcel Number system in Hamilton following the now-abandoned ward system in Hamilton resulting in the first four (4) numbers after the "P" designator signaling: (1) the location of the parcel on the west side of the great Miami River, and (2) north or south of Hamilton's Main Street. The bottom line is, between the Engineer's GIS map and Exhibit A to Hamilton's boundary adjustment petition, whether a current Hamilton tax parcel was annexed from St. Clair, Ross, or Hanover Township can be determined but with one complication- which Permanent Parcel Numbers should be used.

Exhibit 10 addresses Respondents' Counsel securing of a Master List of all Butler County Tax Parcels with the help of Deputy Auditor Julie Joyce-Smith on December 8, 2016. That Master List consisted of a total of one hundred and sixty-one thousand eight hundred and sixteen (161.816) Permanent Parcel Numbers in Butler County. There were a total of thirty-one thousand six hundred and nine (31,609) "P" parcels in the Master List. However, Exhibit B to

Hamilton's boundary adjustment petition listed only twenty-six thousand eight hundred and seven (26,807) Permanent Parcel Numbers in Hamilton as of September 21, 2016- a difference of four thousand eight hundred and two (4,802) more parcels on the Master List than in Hamilton's boundary adjustment petition. Respondents have not offered any evidence as to how many Hamilton Permanent Parcel Numbers were *not* included in its boundary adjustment petition (for one reason or another known only to Hamilton) and why they were not included. Respondents evidence also does not indicate how many tax parcels in Hamilton were not included in its boundary adjustment petition.

Relators can and have identified the Permanent Parcel Numbers which its believes were annexed from St. Clair Township by physically comparing the parcel numbers and addresses with the Engineer's website- gis.bceo.org/MAP/ . But that process is complicated by the fact that the number of parcels in Hamilton's boundary adjustment petition is four thousand eight hundred and two (4,802) parcels less than were included in the Master List dated December 8, 2016. This open question remains unresolved.

Finally, Respondents claim Relators cannot identify the amount Respondents owe them as a result of their 2016 boundary adjustment. While it is true Relators cannot state the amount owed them with certainty, the reason they cannot do so is directly related to Respondents' securing of a boundary adjustment. Here's how. First, the auditor never recognized any need for an inside millage tax rate for the overlapping territory of St. Clair Township and Hamilton because his office misapplied Ohio law. Upon being convinced, in the summer of 2016, of the need to: (1) establish such an overlapping jurisdiction inside millage rate in cooperation with the appropriate

offices, and (2) actually begin paying St. Clair Township an inside millage share for the overlapping territory of Hamilton and St. Clair Township, the auditor also realized the scope of the corrective measures facing his office. After contacting the State Tax Commissioner, the auditor decided to suggest to Hamilton that it secure a boundary adjustment (and thereby remove the overlap and avoid having to determine the shared inside millage rate for Hamilton's overlapping territory with St. Clair Township) .

Hamilton's hasty filed boundary adjustment petition thus served two ulterior motives. First, it protected Hamilton's existing inside millage payment stream against having to be shared with St. Clair Township. (Exhibit 2, p. 2). Second, it eliminated the auditor's statutory obligation to secure the inside millage rate for the overlapping territory of St. Clair Township and Hamilton, (because no overlap remained after the boundary adjustment), a millage rate that is used to compute the lost tax revenue compensation due St. Clair Township.

Effectively, what Hamilton is arguing is it does not owe St. Clair Township any R.C. §709.19(B) lost tax revenue compensation as a result of its 2016 boundary adjustment because: (1) the auditor wrongfully never caused an inside millage tax rate to be established (for the overlapping territory of St. Clair Township and Hamilton), and (2) Hamilton secured its boundary adjustment (thus obviating the need for an overlapping territory inside millage rate) *before* such a rate could be established. Consequently, it is now impossible (because of Hamilton's boundary adjustment rendered it unnecessary to create such a rate) to determine a rate of tax applicable to the lost tax revenue computation. Hence, Hamilton doesn't have to pay lost tax revenue compensation because its boundary adjustment made it impossible to determine that rate.

R.C. §709.19(B) provides two means by which a municipal corporation removing territory

from a township using R.C. §503.07 can meet its lost tax revenue compensation obligation to the township which suffered the removal. They are: (1) relying on authority contained in R.C. §701.07. R.C. §709.191, and R.C. §709.192 the municipal corporation and the township reach an agreement on how much lost tax revenue compensation to pay;[22] and (2) pay the statutory amount described in R.C. §709.19(C) and (D). Those subsection calls for a twelve (12) year payment stream by the municipal corporation to the township consisting of a declining percentage of the taxes the township would have received for the overlapping territory had there not been a boundary adjustment.

What happened in the cities of Trenton and Hamilton after the auditor suggested to each they secure a boundary adjustment best illustrates the prejudice St. Clair Township has suffered at the hands of the Hamilton. Trenton did not seek a boundary adjustment. As a result, the auditor responded in 2016 by creating a new taxing district- R81- and securing a new shared inside millage tax rate of 1.62 mills for the overlapping territory of St. Clair Township and Trenton . (Stipulated Exhibit #6, Deposition Exhibit #6, pp. 3-4). Hamilton, on the other hand, did secure a boundary adjustment. As a result, the auditor responded by *not* creating a new taxing district and *not* securing a new inside millage tax rate for the overlapping territory of St. Clair Township and Hamilton (because the overlap ceased to exist by virtue of the boundary adjustment).

By taking action (that is, securing a boundary adjustment in combination with auditor's historic failure to create a statutorily-required inside millage rate for overlapping township and

[22] An agreement is not in play. Hamilton has never approached St. Clair Township about reaching an agreement, and denies it has any liability for any R.C. §709.19(B) payments. Moreover, in light of the affidavit of Thomas Vanderhorst (Respondent's Exhibit with No Number) on Hamilton's precarious financial position and exhaustion of reserves in calendar 2020, Relators would need some assurances of future payment in the event of a contractual settlement.

municipal corporation territory) St. Clair Township was left with no inside millage rate on which to calculate the lost tax revenue compensation due it. Effectively, Hamilton's boundary adjustment and the auditor's historic misapplication of Ohio law destroyed the ability to calculate the tax revenue stream to which the R.C. §709.19(C) and (D) percentages would otherwise have been applied.

The doctrine of legal impossibility, while relevant to the enforcement of contractual obligations, has no application to the performance of responsibilities imposed by statute. *Quality Ready Mix, Inc. v. Mamone*, 35 Ohio St.3d 224, 520 N.E.2d 193 (1988), paragraph three of the syllabus. A party cannot be permitted to act in such a fashion as to render it impossible for that party to perform its statutory obligations. When Hamilton acted in a fashion that, in combination with the auditor's failure to perform his office's statutory duties in the manner required by law, it rendered it impossible for Hamilton to pay the R.C. §709.19(B) lost tax revenue compensation due St. Clair Township under R.C. §709.19(C) and (D). Hamilton's 2016 boundary adjustment created a situation in which Hamilton self-created its own impossibility defense to its obligation to comply with R.C. §709.19(C) and (D). But impossibility to fulfill one's statutory duty, self-imposed or not, is not a defense to a statutory obligation. *Mamone. supra.* Consequently, this Court needs to issue a writ of mandamus to Respondents directing them to take whatever action is necessary for the auditor to calculate an inside millage for the overlapping territory of Hamilton and St. Clair Township for use in the R.C. §709.19(C) and(D) calculation of the amounts due St. Clair Township. When that inside millage rate is secured, Relators' pray this court will issue of writ of mandamus commanding Hamilton to take such action as is necessary for Hamilton to promptly pay St. Clair Township the lost tax revenue compensation that R.C. §709.19(C)and (D)

provides it is due.

CONCLUSION

Relators' have a clear legal right to R.C. §709.19(B) lost tax revenue compensation because, on October 3rd 2016, Respondents secured a boundary adjustment of territory previously annexed into Hamilton from St. Clair Township. R.C. §709.19(B) imposes the duty to make lost tax revenue compensation payments on the municipal corporation that annexed and then later removes that territory from a township. The obligation to make lost tax revenue compensation begins upon removal of the annexed territory from the township in which it was located when it was annexed. A writ of mandamus directed to Respondents to immediately commence making lost tax revenue compensation payments to Relators for the year 2016 and forward in the statutory amount provided in R.C. §709.19(C) and (D) is warranted. It is warranted because Relators and Respondents never reached an agreement addressing the amount of lost tax revenue compensation Respondents would pay Relators as a result of the 2016 boundary adjustment. Absent an agreement, R.C. §709.19(B) provides for the payment of lost tax revenue compensation in an amount set by statute, R.C. §709.19(C) and (D).

The writ of mandamus issued to Respondents also needs to make clear that the lost tax revenue compensation Respondents owe Relators includes any territory Respondents *annexed* from St. Clair Township anytime in the past and removed from St. Clair Township on October 3, 2016, when the county commissioners adopted Resolution 2016-10-03663. The unambiguous language of R.C. §709.19(B) sets no limits on the date of annexation for which lost tax revenue compensation is due upon removal. It certainly does not limit compensation to only annexations occurring after March 27, 2002- (the date S.B. 5 took effect). Respondents' attempt to limit the

scope of their liability for making lost tax revenue compensation payments exclusively to territory annexed after March 27, 2002, finds not support in the uncodified language of Section 3 of S.B.5 which was no longer in effect when Respondents filed their boundary adjustment on September 21, 2016, or in the H.B. 233 version of R.C. 709.19(B) that was in effect when the Commissioners' actually granted Hamilton's boundary adjustment petition.

The writ of mandamus directed to Respondents also needs to make clear Respondents are required to take whatever action is necessary to allow appropriate county or city officials to secure the inside millage due Relators for the overlapping territory of Hamilton and St. Clair Township for 2016. Had the county auditor been performing the duties of his office as the law requires prior to Hamilton's securing of a boundary adjustment, there would already be such an inside millage rate for the overlapping territory of Hamilton and St. Clair Township. And that rate could be used to compute the lost tax revenue compensation to which St. Clair Township is entitled. By granting Respondent Hamilton's boundary adjustment petition before that inside millage rate for the overlapping territory of Hamilton and St. Clair Township could be secured, Hamilton effectively self-created a situation in which the rate element of the lost tax revenue compensation does not exist thus preventing Hamilton from being able to calculate the lost tax revenue compensation which is due.

Bottom line, Relators seek a writ of mandamus which: (1) recognizes Respondents's duty to pay Relators lost tax revenue compensation arising from Respondents' 2016 boundary adjustment; and (2) commands Respondents begin making such payments in the statutory amount set by R.C. §709.19(C) and (D); and (3) commands Respondents to remove any and all obstacles they have created in order to relieve themselves of their duty to make such payments.

As to calculating the precise dollars amount to which Relators are entitled, that task is of such scope, size and complexity that it needs the attention of a special commissioner or master commissioner to help the parties sort the dollar figure out.

Respectfully submitted,

/s/ Gary L. Sheets

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Counsel For Relators

CERTIFICATE OF SERVICE

The undersigned certifies that on the same date as this Merit Brief of Relators was filed with this Court using the Court's E-Filing Portal, Relators' Counsel served a complete copy of such Merit Brief and its Appendix by electronic means (e-mail) upon Respondents' legal counsel, Ms. Cunningham and Ms. Lewis, by addressing same to the e-mail addresses provided on the cover page of this Brief.

/s/ Gary L. Sheets

Gary L. Sheets (0019384)
Counsel for Relators

APPENDIX

Appendix Item 1- R.C. §709.19
Appendix Item 2- R.C. §503.04
Appendix Item 3- R.C. §503.07
Appendix Item 4- R.C. §503.08
Appendix Item 5- House Bill 233, 131st Ohio General Assembly
Appendix Item 6- R.C. §124.86

Appendix Item 1
R.C. §709.19

R.C. §709.19 Compensating township for lost tax revenue.

(A) As used in this section:

(1) "International airport" means any airport that is:
(a) Designated as an international airport or a landing rights airport by the United States secretary of the treasury;
(b) Owned and operated by a municipal corporation;
(c) An unincorporated area not contiguous to the municipal corporation that owns it.
(2) "Commercial," "industrial," "residential," and "retail," in relation to property, mean property classified as such by the tax commissioner for the purposes of valuing property for taxation, except that "commercial," in relation to property, does not include any property classified as "retail."

(B) If unincorporated territory is annexed to a municipal corporation and excluded from a township under section 503.07 of the Revised Code, upon exclusion of that territory, the municipal corporation that annexed the territory shall make payments to the township from which the territory was annexed only as provided in this section, except that, if the legislative authority of the municipal corporation enters into an agreement under section 701.07, 709.191, or 709.192 of the Revised Code with the township from which the territory was annexed that makes alternate provisions regarding payments by the municipal corporation, then the payment provisions in that agreement shall apply in lieu of the provisions of this section.

(C)
(1) Except as provided in division (C)(2) of this section, the municipal corporation that annexed the territory shall make the following payments to the township from which the territory was annexed with respect to commercial and industrial real, personal, and public utility property taxes using the property valuation for the year that the payment is due:
(a) In the first through third years following the annexation and exclusion of the territory from the township, eighty per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(b) In the fourth and fifth years following the annexation and the exclusion of the territory from the township, sixty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(c) In the sixth and seventh years following the annexation and exclusion of the territory from the township, sixty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(d) In the eighth and ninth years following the annexation and exclusion of the territory from the

township, fifty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(e) In the tenth through twelfth years following the annexation and exclusion of the territory from the township, forty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred.

(2) If there has been an exemption by the municipal corporation of commercial and industrial real, personal, or public utility property taxes pursuant to section 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.45, 5709.62, or 5709.88 of the Revised Code, there shall be no reduction in the payments owed to the township due to that exemption. The municipal corporation shall make payments to the township under division (C)(1) of this section, calculated as if the exemption had not occurred.

(D) The municipal corporation that annexed the territory shall make the following payments to the township from which the territory was annexed with respect to residential and retail real property taxes using the property valuation for the year that the payment is due:

(1) In the first through third years following the annexation and exclusion of the territory from the township, eighty per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;

(2) In the fourth and fifth years following the annexation and exclusion of the territory from the township, fifty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;

(3) In the sixth through tenth years following the annexation and exclusion of the territory from the township, forty per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;

(4) In the eleventh and twelfth years following the annexation and exclusion of the territory from the township, twenty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred.

(E) If, pursuant to division (F) of this section, a municipal corporation annexes an international airport that it owns, the municipal corporation shall pay the township one hundred per cent of the township taxes in the annexed territory that would have been due the township if no annexation had occurred for each of the twenty-five years following the annexation.

(F)

(1) Notwithstanding any other provision of this chapter, a board of county commissioners may authorize a municipal corporation to annex an international airport that the municipal corporation owns. Unless a contract is entered into pursuant to division (F)(2) of this section, any municipal corporation that annexes an international airport under this division shall make

payments to the township from which the international airport is annexed, in the manner provided in division (E) of this section. No territory annexed pursuant to this division shall be considered part of the municipal corporation for the purposes of subsequent annexation, except that the board of county commissioners may authorize subsequent annexation under this division if the board determines that subsequent annexation is necessary to the continued operation of the international airport.

(2) The chief executive of a municipal corporation that annexes territory pursuant to this division may enter into a contract with the board of township trustees of the township that loses the territory whereby the township agrees to provide the annexed territory with police, fire, or other services it is authorized to provide in exchange for specified consideration as agreed upon by the board of township trustees and the chief executive. In no instance shall the consideration received by the township be less than the payments that would be required under division (F)(1) of this section if no contract were entered into.
Amended by 131st General Assembly File No. TBD, HB 233, §1, eff. 8/5/2016.

Effective Date: 10-26-2001.

(Effective Date delayed until March 27, 2002 due to statewide referendum effort.)

Appendix Item 2
R.C. §503.04

R.C. §503.04 Notice of hearing - record of boundaries.

Before action is taken on an application for partition, alteration, change, or laying off of the boundaries of a township by the board of county commissioners, at least thirty days' notice of the time for the hearing on such application or petition shall be given by advertisement, at three public places within the bounds of the territory proposed to be partitioned, altered, changed, or laid off. The board shall cause the boundaries of such township, so changed or altered, or new township laid off, to be recorded in a book to be kept for that purpose, and shall give each new township, so laid off, an appropriate name. **No two townships in any county shall be incorporated by the same name.** (**Bold emphasis added)**

Effective Date: 10-01-1953 .

Appendix Item 3
R.C. §503.07

R.C. §503.07 Conformity of boundaries.

When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation. **The board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, shall upon the petition of a city change the boundaries of the township or erect such new township, and may upon the petition of a village change the boundaries of the township or erect such new township.** **(Bold emphasis added)**

Effective Date: 10-20-1961 .

Appendix Item 4
R.C. §503.08

R.C. §503.08 Disposition of remainder of township - name.

After a change of boundaries is made as provided by section 503.07 of the Revised Code, any township not having a municipal corporation remaining within its limits may be partitioned as provided in section 503.02 of the Revised Code. Unless and until a partition is made under that section, the remaining township territory shall remain intact. If the changes made under section 503.07 of the Revised Code require the remaining township to acquire a new township name, the board of county commissioners shall name the remaining township and record the name in a book kept as required in section 503.04 of the Revised Code. **No two townships in any county shall have the same name.** **(Bold emphasis added)**

Effective Date: 11-03-1999 .

Appendix Item 5
R.C. §503.09

§ 503.09. Petition to erect new township excluding territory of municipal corporation.

Where a township contains a municipal corporation, either in whole or in part, if a majority of the freehold electors owning land in the portion of such a township outside the municipal corporation's corporate limits, petitions, with a map accurately setting forth such territory, praying to have such territory erected into a new township, and excluding the territory within the municipal corporation, the board of county commissioners shall enter an order erecting such territory into a new township, the boundaries of which need not include twenty-two square miles of territory. Upon the erection of such new township, the territory lying within the limits of the municipal corporation in the original township shall be considered as not being located in any township.

Effective Date: 07-26-1982 .

Appendix Item 6
House Bill 233, of the 131st General Assembly
Limited to Section 709.19(B)

131st General Assembly (2015-2016)

House Bill 233

AN ACT

To amend sections 133.04, 133.06, 149.311, 709.024, 709.19, 3317.021, 4582.56, 5501.311, 5709.12, 5709.121, 5709.82, 5709.83, 5709.831, 5709.832, 5709.85, 5709.91, 5709.911, 5709.913, and 5715.27 and to enact sections 1710.14, 1724.12, 5709.45, 5709.46, and 5709.47 of the Revised Code to authorize municipal corporations to create downtown redevelopment districts and innovation districts for the purposes of promoting the rehabilitation of historic buildings, creating jobs, encouraging economic development in commercial and mixed-use areas, and supporting grants and loans to technology-oriented and other businesses, to specifically extend the charitable use property tax exemption to certain museum property that is open to the public and that belongs to a public or charitable organization, and to authorize collections of a special lodging tax that may be levied by certain counties to be used to not only construct, but to acquire or equip, a port authority facility.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 133.04, 133.06, 149.311, 709.024, *709.19*, 3317.021, 4582.56, 5501.311, 5709.12, 5709.121, 5709.82, 5709.83, 5709.831, 5709.832, 5709.85, 5709.91, 5709.911, 5709.913, and 5715.27 be amended and sections 1710.14, 1724.12, 5709.45, 5709.46, and 5709.47 of the Revised Code be enacted to read as follows:

(Irrelevant Statutory Enactments Omitted to Save Space)

Sec. 709.19. (A) As used in this section:

(1) "International airport" means any airport that is:
(a) Designated as an international airport or a landing rights airport by the United States secretary of the treasury;
(b) Owned and operated by a municipal corporation;
(c) An unincorporated area not contiguous to the municipal corporation that owns it.
(2) "Commercial," "industrial," "residential," and "retail," in relation to property, mean property classified as such by the tax commissioner for the purposes of valuing property for taxation, except that "commercial," in relation to property, does not include any property classified as "retail."

(B) If unincorporated territory is annexed to a municipal corporation and excluded from a township under section 503.07 of the Revised Code, upon exclusion of that territory, the municipal corporation that annexed the territory shall make payments to the township from which the territory was annexed only as provided in this section, except that, if the legislative authority of the municipal corporation enters into an agreement under section 701.07, 709.191, or 709.192 of the Revised Code with the township from which the territory was annexed that makes alternate provisions regarding payments by the municipal corporation, then the payment provisions in that agreement shall apply in lieu of the provisions of this section.
(C)(1) Except as provided in division (C)(2) of this section, the municipal corporation that annexed the territory shall make the following payments to the township from which the territory was annexed with respect to commercial and industrial real, personal, and public utility property taxes using the property valuation for the year that the payment is due:
(a) In the first through third years following the annexation and exclusion of the territory from the township, eighty per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(b) In the fourth and fifth years following the annexation and the exclusion of the territory from the township, sixty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(c) In the sixth and seventh years following the annexation and exclusion of the territory from the township, sixty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(d) In the eighth and ninth years following the annexation and exclusion of the territory from the township, fifty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred;
(e) In the tenth through twelfth years following the annexation and exclusion of the territory from the township, forty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for commercial and industrial real, personal, and public utility property taxes if no annexation had occurred.
(2) If there has been an exemption by the municipal corporation of commercial and industrial real, personal, or public utility property taxes pursuant to section 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.45, 5709.62, or 5709.88 of the Revised Code, there shall be no reduction in the payments owed to the township due to that exemption. The municipal corporation shall make payments to the township under division (C)(1) of this section, calculated as if the exemption had not occurred.

(D) The municipal corporation that annexed the territory shall make the following payments to the township from which the territory was annexed with respect to residential and retail real property taxes using the property valuation for the year that the payment is due:
(1) In the first through third years following the annexation and exclusion of the territory from the

township, eighty per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;
(2) In the fourth and fifth years following the annexation and exclusion of the territory from the township, fifty-two and one-half per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;
(3) In the sixth through tenth years following the annexation and exclusion of the territory from the township, forty per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred;
(4) In the eleventh and twelfth years following the annexation and exclusion of the territory from the township, twenty-seven and one-half per cent of the township taxes in the annexed territory that would have been due the township for residential and retail real property taxes if no annexation had occurred.

(E) If, pursuant to division (F) of this section, a municipal corporation annexes an international airport that it owns, the municipal corporation shall pay the township one hundred per cent of the township taxes in the annexed territory that would have been due the township if no annexation had occurred for each of the twenty-five years following the annexation.

(F)(1) Notwithstanding any other provision of this chapter, a board of county commissioners may authorize a municipal corporation to annex an international airport that the municipal corporation owns. Unless a contract is entered into pursuant to division (F)(2) of this section, any municipal corporation that annexes an international airport under this division shall make payments to the township from which the international airport is annexed, in the manner provided in division (E) of this section. No territory annexed pursuant to this division shall be considered part of the municipal corporation for the purposes of subsequent annexation, except that the board of county commissioners may authorize subsequent annexation under this division if the board determines that subsequent annexation is necessary to the continued operation of the international airport.
(2) The chief executive of a municipal corporation that annexes territory pursuant to this division may enter into a contract with the board of township trustees of the township that loses the territory whereby the township agrees to provide the annexed territory with police, fire, or other services it is authorized to provide in exchange for specified consideration as agreed upon by the board of township trustees and the chief executive. In no instance shall the consideration received by the township be less than the payments that would be required under division (F)(1) of this section if no contract were entered into.

(Irrelevant Statutory Enactments Omitted to Save Space)

SECTION 2. That existing sections 133.04, 133.06, 149.311, 709.024, *709.19*, 3317.021, 4582.56, 5501.311, 5709.12, 5709.121, 5709.82, 5709.83, 5709.831, 5709.832, 5709.85, 5709.91, 5709.911, 5709.913, and 5715.27 of the Revised Code are hereby repealed.

SECTION 3. The amendment by this act of section 5709.121 of the Revised Code applies to tax

years ending on or after the effective date of this act.

SECTION 4. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 149.311 of the Revised Code as amended by both Am. Sub. H.B. 483 and Am. Sub. H.B. 486 of the 130th General Assembly.
Section 5709.12 of the Revised Code as amended by both Am. Sub. H.B. 483 and Sub. S.B. 172 of the 130th General Assembly.

Appendix Item 6
R.C. §124.86

§ 124.86. Employee educational development fund

There is hereby created in the state treasury the employee educational development fund, to be used to pay the state administrative costs of any education program undertaken pursuant to specific collective bargaining agreements **identified in uncodified law governing expenditure of the fund.** The director of administrative services shall establish, and shall obtain the approval of the director of budget and management for, a charge for each such program that is sufficient only to recover those costs. All money collected from such a charge shall be deposited to the credit of the fund, and all interest earned on the fund shall accrue to the fund. The director of administrative services shall administer the fund in accordance with the respective collective bargaining agreements and may adopt rules for the purpose of this administration.
(Bold emphasis added)

History. Added by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.
Effective Date: 07-01-1993 .

Appendix Item 7
R.C. §5713.09

§ 5713.09 Tax maps of subdivisions

The board of county commissioners may designate the county engineer to provide for making, correcting, and keeping up to date a complete set of tax maps of the county, and shall employ the necessary number of assistants. Such maps shall show all original lots and parcels of land, and all divisions, subdivisions, and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision, or lot, all new divisions, subdivisions, or allotments made in the county, all transfers of property, showing the lot or parcel of land transferred, the name of the grantee, and the date of the transfer so that such maps shall furnish the county auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the county board of revision and the auditor, and shall be kept in the office of the auditor.

History. Effective Date: 10-02-1969 .

Appendix Item 8
R.C. §701.07

701.07 Cooperative economic development agreements

(A) The legislative authority of one or more municipal corporations, by ordinance or resolution, and the board of township trustees of one or more townships, by resolution, may enter into a cooperative economic development agreement under this section. The board of county commissioners of one or more counties may become a party to a cooperative economic development agreement upon the written consent of the legislative authority of each municipal corporation and the board of township trustees of each township that is a party to the agreement. Before entering into a cooperative economic development agreement pursuant to this section, the parties to the agreement shall jointly hold a public hearing concerning the agreement. The parties shall provide to residents of the territory affected by the agreement at least thirty days' public notice of the time and place of the public hearing in one or more newspapers of general circulation in that territory. During the thirty-day period prior to the public hearing, each party to the agreement, except the state or any state agency or any person or private entity that becomes a party to the agreement under division (C)(10) or (F) of this section, shall make available for public inspection a copy of the proposed agreement.

(B) A cooperative economic development agreement may be amended at any time in the same manner as it was initially authorized. A cooperative economic development agreement shall designate the territory the agreement covers.

(C) A cooperative economic development agreement may provide for any of the following:
(1) The provision of joint services and permanent improvements within incorporated or unincorporated areas;
(2) The provision of services and improvements by a municipal corporation in unincorporated areas;
(3) The provision of services and improvements by a county or township within the territory of a municipal corporation;
(4) The payment of service fees to a municipal corporation by a township or county;
(5) The payment of service fees to a township or a county by a municipal corporation;
(6) The issuance of notes and bonds and other debt obligations by a municipal corporation, county, or township for public purposes authorized by or under a cooperative economic development agreement and provision for the allocation of the payment of the principal of, interest on, and other charges and costs of issuing and servicing the repayment of the debt;
(7) The issuance of industrial development notes, bonds, and debt obligations by a municipal corporation to finance projects in territory located outside the municipal corporation but located within the territory covered by a cooperative economic development agreement and provision for the allocation of the payment of the principal of, interest on, and other charges and costs of issuing and servicing the repayment of the debt. To implement division (C)(10) of this section, a municipal corporation may undertake projects under Chapter 165., 761., or 902. of the Revised

Code even though the project is in territory located outside the municipal corporation.
(8) The territory to be annexed to a municipal corporation when agreed to by the municipal corporation to which annexation is proposed and the township in which the territory to be annexed is located;
(9) Any periods of time during which no annexations will occur and any areas that will not be annexed during the period when agreed to by the municipal corporation and township affected by the annexation moratorium;
(10) Agreements by a municipal corporation and a township, or by a municipal corporation and a county, with landowners or developers of land that is to be annexed, or with both such landowners and land developers, concerning the provision of public services, facilities, and permanent improvements. Any person or other private entity described in division (C)(10) of this section that enters into an agreement with a municipal corporation and a township, or with a municipal corporation and a county, pursuant to this division shall be considered to be a party to the agreement.
(11) The application of tax abatement statutes within the territory covered by the cooperative economic development agreement;
(12) Changing township boundaries under Chapter 503. of the Revised Code to exclude newly annexed territory from the original township and providing services to that territory;
(13) The earmarking by a municipal corporation for its general revenue fund of a portion of the utility charges it collects in territory located outside the municipal corporation but located within the territory covered by a cooperative economic development agreement, but only if the cooperative economic development agreement does not cover any matters relating to annexation;
(14) Payments in lieu of taxes, if any, to be paid to a township by a municipal corporation. These payments may be in addition to or in lieu of other payments required by law to be made to the township by that municipal corporation.
(15) Any other matter pertaining to the annexation or development of territory, whether the territory is owned by a governmental entity or a person or private entity.
As used in division (C)(2) of this section, "improvement" includes, but is not limited to, sewers, roadways, public utilities, and the acquisition of land.

(D) Cooperative economic development agreements shall not be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of a municipal charter, nor shall municipal corporations and townships, or municipal corporations and counties, agree to share proceeds of any tax levy, although such proceeds may be used to make payments authorized in a cooperative economic development agreement.

(E) If any party to a cooperative economic development agreement believes any other party has failed to perform its part of any provision of the agreement, including the failure to make any payment of moneys due under the agreement, the complaining party shall give notice to the other party clearly stating what breach the complaining party believes has occurred. The party receiving the notice has ninety days from the receipt of that notice to cure the breach. If the breach has not been cured within that ninety-day period, the complaining party may sue for the recovery of the

money due under the agreement, sue for specific enforcement of the agreement, or terminate the agreement by giving notice of termination to all other parties.

(F) In order to assist economic development or to provide appropriate state functions and services to any part of the state, the state or any state agency may become a party to a cooperative economic development agreement upon the approval of the governor and the written consent of the legislative authority or governing board of each government entity that is a party to the agreement and upon the approval of each person or private entity described in division (C)(10) of this section that is party to the agreement.

(G) A cooperative economic development agreement entered into under this section is in addition to any other agreements authorized by law between municipal corporations and counties or between municipal corporations and townships.

(H) The powers and authorizations provided for under this section and under any cooperative economic development agreement entered into pursuant to this section shall be liberally construed to allow parties to enter into cooperative economic development agreements and to carry out such an agreement by providing government improvements and facilities and services, by promoting and supporting economic development, by creating and preserving employment opportunities, and by allowing for the sharing by counties and townships in the benefits of economic development even if the economic development does not occur in an unincorporated area.

Effective Date: 03-22-1999 .

Appendix Item 9
R.C. §709.191

709.191 Annual payments to compensate for lost tax revenue.

In lieu of making any of the payments required by section 709.19 of the Revised Code and for any proposed annexation which does not require payments under that section, the legislative authority of a municipal corporation which proposes to annex unincorporated territory of a township may enter into an agreement with the board of township trustees of the township in which the territory to be annexed is located, whereby the municipal corporation agrees to make an annual payment to the township to compensate for lost tax revenues. The agreement shall set forth the amount of the annual payment and the number of payments to be made.
If a municipal corporation fails to make an annual payment pursuant to an agreement entered into under this section, the board of township trustees shall notify the county budget commission in writing of the amount owed by the municipal corporation to the township. The county budget commission shall reduce the amount apportioned to the municipal corporation from the undivided local government fund pursuant to section 5747.51 or 5747.53 of the Revised Code by the amount of the payment due the township under the municipal- township agreement and shall increase, by an amount equal to this reduction, the amount apportioned to the township from the undivided local government fund.

Effective Date: 02-02-1982 .

Appendix Item 10
R.C. §709.192

709.192 Annexation agreements.

(A) The legislative authority of one municipal corporation, by ordinance or resolution, and the board of township trustees of one or more townships, by resolution, may enter into annexation agreements under this section.

(B) An annexation agreement may be entered into for any period of time and may be amended at any time in the same manner as it was initially authorized.

(C) Annexation agreements may provide for any of the following:
(1) The territory to be annexed;
(2) Any periods of time during which no annexations will be made and any areas that will not be annexed;
(3) Land use planning matters;
(4) The provision of joint services and permanent improvements within incorporated or unincorporated areas;
(5) The provision of services and improvements by a municipal corporation in the unincorporated areas;
(6) The provision of services and improvements by a township within the territory of a municipal corporation;
(7) The payment of service fees to a municipal corporation by a township;
(8) The payment of service fees to a township by a municipal corporation;
(9) The reallocation of the minimum mandated levies established pursuant to section 5705.31 of the Revised Code between a municipal corporation and a township in areas annexed after the effective date of this section;
(10) The issuance of notes and bonds and other debt obligations by a municipal corporation or township for public purposes authorized by or under an annexation agreement and provision for the allocation of the payment of the principal of, interest on, and other charges and costs of issuing and servicing the repayment of the debt;
(11) Agreements by a municipal corporation and township, with owners or developers of land to be annexed, or with both those landowners and land developers, concerning the provision of public services, facilities, and permanent improvements;
(12) The application of tax abatement statutes within the territory covered by the annexation agreement subsequent to its execution;
(13) Changing township boundaries under Chapter 503. of the Revised Code to exclude newly annexed territory from the original township and providing services to that territory;
(14) Payments in lieu of taxes, if any, to be paid to a township by a municipal corporation, which payments may be in addition to or in lieu of other payments required by law to be made to the township by that municipal corporation;

(15) Any other matter pertaining to the annexation or development of publicly or privately owned territory.

(D) Annexation agreements shall not be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, by any other provisions of the Ohio Constitution, or by the provisions of a municipal charter, nor shall municipal corporations and townships agree to share proceeds of any tax levy, although those proceeds may be used to make payments authorized in an annexation agreement.

(E) If any party to an annexation agreement believes another party has failed to perform its part of any provision of that agreement, including the failure to make any payment of moneys due under the agreement, that party shall give notice to the other party clearly stating what breach has occurred. The party receiving the notice has ninety days from the receipt of that notice to cure the breach. If the breach has not been cured within that ninety-day period, the party that sent the notice may sue for recovery of the money due under the agreement, sue for specific enforcement of the agreement, or terminate the agreement upon giving notice of termination to all the other parties.

(F) In order to promote economic development or to provide appropriate state functions and services to any part of the state, the state may become a party to an annexation agreement upon the approval of the director of development and with the written consent of the legislative authority of the municipal corporation and each of the boards of township trustees that are parties to the agreement.

(G) The board of county commissioners, by resolution, or any person, upon request, may become a party to an annexation agreement, but only upon the approval of the legislative authority of the municipal corporation and each of the boards of township trustees that are parties to the agreement, except that, if the state is a party to the agreement, the director of development is responsible for giving the approval.

(H) The powers granted by this section and any annexation agreement entered into under this section shall be liberally construed to allow parties to these agreements to carry out the agreements' provisions relevant to government improvements, facilities, and services, and to promote and support economic development and the creation and preservation of economic opportunities.

Effective Date: 10-26-2001 .