

IN THE SUPREME COURT OF OHIO

State, ex relator	:	
	:	
Village of Bellville	:	
Teri L. Brenkus, Mayor	:	
142 Park Place	:	
Bellville OH 44813,	:	
	:	
Relator,	:	
	:	VERIFIED COMPLAINT
vs.	:	ORIGINAL ACTION IN
	:	MANDAMUS
Washington Township	:	
Annette Depue, Fiscal Officer	:	
2480 Possum Run Road	:	
Mansfield OH 44903,	:	
	:	
And	:	
	:	
Washington Township Board of Trustees	:	
Annette Depue, Fiscal Officer	:	
2480 Possum Run Road	:	
Mansfield OH 44903,	:	
	:	
Respondents.	:	

Facts Common to All Counts

1. Relator Village of Bellville (“Bellville”) is a duly incorporated village operating under state law. See generally Ohio Revised Code Chapter 707; Affidavit of Larry Weirich, Village Administrator, para.2, Exhibit A hereto.

2. The real estate comprising Bellville is located both in Washington and Jefferson Townships, Richland County, Ohio. Id.

3. Respondent Washington Township “is a body politic and corporate, for

the purpose of enjoying and exercising the rights and privileges conferred upon it by law. It may sue and be sued, plead and be impleaded, ...”, Ohio Revised Code 503.01.

4. The Jefferson Township Board of Trustees maintains a fire department by authority of law, including Ohio Revised Code 505.37.

5. Bellville residents who own property or reside in Jefferson Township pay taxes to Jefferson Township, inclusive for fire protection.

6. The Jefferson Township fire department serves that portion of Bellville located in Jefferson Township as a matter of jurisdiction and legal duty.

7. The Washington Township Board of Trustees maintains a fire department by authority of law, including Ohio Revised Code 505.37.

8. Bellville residents who own property or reside in Washington Township pay taxes to Washington Township, inclusive for fire protection.

9. The Washington Township fire department serves that portion of Bellville located in Washington Township as a matter of jurisdiction and legal duty.

10. On February 4, 1993, Washington Township entered into an Agreement for Mutual Aid for Additional Fire Protection with Jefferson Township pursuant to Ohio Revised Code 9.60.

11. On November 20, 1995, the Washington Township Board of Trustees and the Village of Bellville signed a Fire Protection Contract, by which the Washington Township Fire Department would service that portion of Bellville located in

Washington Township, in consideration of Bellville paying a portion of Bellville’s bed tax, real and personal property tax revenues, in perpetuity, Exhibit B hereto, which provides in relevant part:

“Township shall continue to provide fire protection to the Territory and further agrees to reasonably consider, plan for and provide such long term fire protection as the Territory may require from time to time including, but not limited to, particular firefighting apparatus or equipment.”

12. In addition to Bellville owners and residents paying property taxes to Washington Township including for fire protection services, Bellville has paid pursuant to the Fire Protection Contract a total of \$1,195,803.73 for the same service, Affidavit of Larry Weirich, Village Administrator, para. 6, Exhibit A hereto.

13. The Washington Township Fire Department does not distinguish how many fire runs it makes to Bellville pursuant to its general legal duty versus fire runs funded by Bellville revenues under the Fire Protection Contract, making the combined number of runs annually as follows:

Runs	Wash Twp. - Bellville	Wash Twp. Total	Percent
2021	35	987	4%
2022	35	1118	3%
2023 (5 mo)	19	401	5%
3-Year:	89	2506	4%

Source: Washington Township Public records request response, May 30, 2023.

14. While the Fire Protection Contract requires as part of its consideration

that, “Township *** agrees to reasonably consider, plan for and provide *** particular firefighting apparatus or equipment”, nevertheless the Township refuses such consideration, stating that Bellville’s request “is not pertinent. We don’t plan, etc. for the Village of Bellville. Only Washington Township as a whole.” Washington Township Public records request response, May 30, 2023.

15. At a meeting by Administrator Weirich with the Washington Township fire chief to discuss what equipment had been purchased, the fire chief confirmed that nothing specifically had been purchased for that Village of Bellville or its annexed area. Affidavit of Larry Weirich, Village Administrator, para. 7, Exhibit A hereto.

16. In 2011, Bellville ceased payments in its determination to discontinue the Fire Protection Contract. The Washington Township Board of Trustees sued, and on November 7, 2011, the Richland County Court of Common Pleas held that the Contract is a valid and binding obligation in perpetuity, Judgment Entry, Case No. 10 CV 974, Exhibit C hereto.

FIRST COUNT: Mandamus

17. This is an action for a writ of mandamus, for which this Court enjoys original jurisdiction pursuant to Article IV, Section 3(B)(1)(b) of the Ohio Constitution, and pursuant to R.C. 2731.02.

18. To be entitled to a writ of mandamus, Relator must establish a clear legal right to the requested relief, a clear legal duty on the part of Washington Township

and/or Board to provide that relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, para. 6.

19. Legislative Entrenchment: The Fire Protection Contract is void ab initio as requiring payment in perpetuity without a vote of the Bellville legislative authority, thus constituting “legislative entrenchment”, c.f.: *Ctr. for Investigative Reporting v. United States DOJ*, 14 F.4th 916 (9th Cir.2021), The election "process would be reduced to an exercise in futility were the newly elected representatives bound by the policy choice of a prior generation of voters.". Chief Justice Marshall articulated this early on: "one legislature cannot abridge the powers of a succeeding legislature." *Fletcher v. Peck*, 10 U.S. 87, 135, 3 L. Ed. 162 (1810). Entrenchment runs counter to the principles of our representative democracy. "Frequent elections are unquestionably the only policy by which" the legislature's accountability to the People can be achieved. The Federalist No. 52, at 251 (James Madison). See also: *Peterson Financial LLC v. City of Kentwood*, Supreme Court of Michigan, Case No. 163072, 988 N.W.2d 746 (April 28, 2023).

20. Unconstitutional Debt: The Fire Protection Contract is void ab initio as without a vote of Bellville electors or a proper appropriation, violating the debt limitation of the Ohio Constitution, Article II, Section 22, “No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.” See also Ohio

Constitution, Article VIII.

21. Unconstitutional Tax: The payments to Washington Township pursuant to the Fire Protection Contract constitute an unconstitutional tax in addition to the property taxes paid equally by all owners to Washington Township for the same fire protection, in violation of the Ohio Constitution Article XXI, Section 2: “Land and improvements thereon shall be taxed by uniform rule according to value,...”.

22. No Contract Consideration: The Fire Protection Contract is void ab initio as without consideration by Washington Township, as consideration cannot be performance of what already is a duty to perform, as stated in the Fire Protection Contract, paragraph 1, “Township shall continue to provide fire protection”, c.f.: *Cuspide Properties v. Earl Mechanical Servs.*, 6th Dist. Lucas, 2015-Ohio-5019, 53 N.E.3d 818 citing *Shannon v. Universal Mtge. & Discount Co.*, 116 Ohio St. 609, 621, 157 N.E. 478, 5 Ohio Law Abs. 366 (1927) [Syll. 3. [“A promise to pay a debt for which the promisor is already legally bound does not constitute a consideration sufficient to support a new contract.”]

23. Equity: The Fire Protection Contract is inequitable, as Bellville’s payments are excessive, and bear no relationship to the Washington Township Fire Department’s expenses.

24. Remedy in Mandamus: Washington Township has an existing legal duty to provide fire protection services to that portion of Bellville located in Washington

Township without regard to the illegal and void Fire Protection Contract, such that Washington Township and its Board should be ordered to provide Bellville and its residents with fire protection services consistent with its formation and maintenance of its Fire Department, without any additional agreement or payment such as is required by the Fire Protection Contract.

25. Because Relators do not seek damages, and have no remedy at law, mandamus is the appropriate remedy to maintain Washington Township's fire protection services in the absence of paying additional revenues pursuant to the Fire Protection Contract.

PRAYER FOR RELIEF

WHEREFORE, Relators demand as follows:

For the First Count, a peremptory writ of mandamus:

A. directing that Washington Township and its Board to provide Bellville and its residents with fire protection services consistent with its formation and maintenance of its Fire Department, without any additional agreement or payment such as is required by the Fire Protection Contract; and

B. such other relief as the Court deems just and proper.

/s/ Luther L. Liggett, Jr.

Luther L. Liggett, Jr. (0004683)
Attorney at Law
5053 Grassland Drive
Dublin OH 43016

614-561-2892, mobile
Lliggett@columbus.rr.com

Counsel for Relators