

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Aaron Riter, et al.

Court of Appeals No. L-08-1267

Appellants

Trial Court No. CI07-3135

v.

City of Toledo, et al.

DECISION AND JUDGMENT

Appellees

Decided: June 30, 2009

* * * * *

Donato Iorio, for appellants.

Adam W. Loukx, for appellees.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which dismissed appellants' challenge to the city of Toledo's municipal employee residency requirement set forth in Section 61 of the City of Toledo Charter. For the reasons set forth below, this court reverses the judgment of the trial court.

{¶ 2} Appellants, two officers from the Toledo Police Department and the Toledo Police Patrolman's Association ("TPPA"), set forth the following sole assignment of error:

{¶ 3} "The single assignment of error presented for this Court's review is whether the Trial Court committed prejudicial error when it dismissed Plaintiff's challenge to the residency requirement, rooted in R.C. 9.481's constitutionality, on the grounds that the Sixth District found that section 9.481 is not a proper legislative enactment encompassed by section 34, Article II, of the Ohio Constitution."

{¶ 4} The following undisputed facts are relevant to the issue raised on appeal. R.C. 9.481(B)(1) sets forth, "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." This newer state statute conflicted with many existing municipal employee residency requirements in cities throughout the state of Ohio.

{¶ 5} Section 61 of the Toledo City Charter states, "[e]xcept for special engagements by authority of Council, every officer and employee must be a resident of the city of Toledo." Appellants, TPPA and two officers who commenced employment with the Toledo Police Department in 2006, filed suit in 2007 disputing the municipal residency requirement in light of R.C. 9.481.

{¶ 6} Similarly, legal actions were filed in numerous other jurisdictions throughout Ohio challenging other municipal residency requirements in existence in a multitude of Ohio cities. Appellate court decisions were subsequently issued throughout

Ohio upholding municipal employee residency requirements in some jurisdictions while rejecting it in other areas of the state. The Supreme Court of Ohio has now spoken on the matter.

{¶ 7} Section 34, Article II, of the Ohio Constitution establishes that the General Assembly is vested with the power to enact laws, "providing for the comfort, health, safety and general welfare of all employes [sic]; and no other provision of the constitution shall impair or limit this power." The fundamental underlying legal dispute has been centered upon whether R.C. 9.481 was a proper legislative enactment pursuant to Section 34, Article II, of the Ohio Constitution.

{¶ 8} In its decision recently announced in *City of Lima v. State of Ohio*, Slip Opinion No. 2009-Ohio-2597, the Supreme Court of Ohio held that, "By allowing city employees more freedom of choice of residency, R.C. 9.481 provides for the employees' comfort and general welfare." Given this affirmation of the supremacy of R.C. 9.481(B)(1) over conflicting municipal residency provisions implemented pursuant Section 3, Article XVIII of the Ohio Constitution, the Home Rule Amendment, we find appellants' sole assignment of error well-taken.

{¶ 9} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed. Appellees are ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.