

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

City of Akron)
161 S. High Street, Suite 202)
Akron, Ohio 44308)

Plaintiff) JUDGE:

v.)

State of Ohio)
c/o Ohio Attorney General Jim Petro)
State Office Tower)
30 E. Broad Street, 17th Floor)
Columbus, OH 43215-3428)

VERIFIED COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF

and)

Governor Bob Taft)
30th Floor)
77 South High Street)
Columbus, Ohio 43215-6117)

and)

Jim Petro)
Attorney General)
State Office Tower)
30 E. Broad Street, 17th Floor)
Columbus, OH 43215-3428)

Defendants.

Now comes the Plaintiff, City of Akron, by and through counsel, and does hereby state as follows:

Nature of this Action

1. This is an action for declaratory and injunctive relief against the enforcement of Senate Bill No.82, which was passed by the 126th Ohio General Assembly on January 18, 2006 and signed into law by Defendant Governor Taft on January 27,

2006. Defendant, State of Ohio has undertaken to legislate residency requirements of municipal employees through the enactment of Senate Bill No. 82. Unless declared unconstitutional and enjoined, Senate Bill No. 82, codified as R.C. §9.481 will take effect on May 1, 2006, in violation of the Ohio Constitution and the Charter of the City of Akron, which imposes residency requirements upon Akron municipal employees. Prompt judicial intervention is necessary to avert immediate and irreparable harm, not only to Plaintiff, but also to municipal employees who may rely to their detriment on the unconstitutional statutory provisions enunciated in R.C. §9.481 .

2. A dispute exists between the Plaintiff City of Akron and the Defendants State of Ohio, Governor Taft and Attorney General Jim Petro with respect to the constitutionality of R.C. §9.481, and a judgment declaring the respective rights and obligations of the parties relative to the validity of R.C. §9.481 is necessary and appropriate at this time.

The Parties

3. Plaintiff City of Akron is a political subdivision located wholly in Summit County, Ohio. Plaintiff City of Akron has adopted a Charter pursuant to its home rule authority granted under Article XVIII of the Constitution of the State of Ohio.
4. Defendant State of Ohio is a state of the United States of America.
5. Defendant Governor Bob Taft is the Chief Executive of the State of Ohio and, in that capacity, is charged with enforcement of the laws of the State of Ohio, including R.C. §9.481.

6. Defendant Jim Petro is the Attorney General of the State of Ohio and, in that capacity, is charged with enforcement of the laws of the State of Ohio, including R.C. §9.481.

The Charter of the City of Akron

7. Plaintiff City of Akron's Charter, as approved by the voters of the City of Akron, generally requires City of Akron employees to reside within the City of Akron.

8. Section 105a of the Charter of the City of Akron states:

No person shall retain any position in the unclassified service unless he be a resident citizen of the City of Akron within six months of his appointment and remain a resident for the period during which he occupies said position in the unclassified service, provided, however, that the provisions of this Section shall not be applicable to persons occupying said positions in the unclassified service on June 8, 1976.

9. In accordance with Section 105a of the Charter of the City of Akron, candidates for employment with the City of Akron for an unclassified civil service position agree upon being appointed to a position with the City of Akron to become City of Akron residents within six months of becoming a City of Akron employee, and agree to remain City of Akron residents throughout the duration of their employment with the City of Akron.

10. Section 105a of the Charter was approved by the electors of the City of Akron in 1976.

11. Section 106 of the Charter of the City of Akron states, in pertinent part:

It is hereby provided and the rules and regulations shall provide:

(5b) For declaring that no person shall hold an appointed or promoted position in the classified service of the City of Akron unless he shall become a resident citizen of the City of Akron

within twelve (12) months of his appointment or promotion, and remain a resident citizen of the City of Akron during the term of his employment, except that such provisions shall not be applicable to:

1. Full-time permanent employees of the City of Akron whose continuous employment began prior to and continued through November 7, 1978; or
 2. Appointment or promotion to a position entailing work performed primarily outside of the corporate limits of Akron; or
 3. Employees of agencies which serve areas outside of the City of Akron and which receive most of their funding from other than City of Akron Funds. However, these employees must live within the region their agency serves. ***
12. In accordance with Section 106(5b) of the Charter of the City of Akron, candidates for employment with the City of Akron for a classified civil service position agree upon being appointed to a position with the City of Akron to become City of Akron residents within twelve months of becoming a City of Akron employee, and agree to remain City of Akron residents throughout the duration of their employment with the City of Akron.
13. Section 106(5b) of the Charter was approved by the electors of the City of Akron in 1978.
14. Sections 105a and 106(5b) of the Charter of the City of Akron are self-executing and have continued in effect, with certain minor amendments, since their passage. Sections 105a and 106(5b) of the Charter of the City of Akron are attached hereto as Exhibits A and B respectively.
15. On or about November 7, 1995, a proposed amendment to the Charter of the City of Akron was placed on the ballot to permit a classified City employee the option

of residing outside the City of Akron but in Summit County or an adjoining County after five years of employment with the City of Akron.

16. The electors of the City of Akron rejected the November 7, 1995 proposed Charter amendment.
17. Sections 105a and 106(5b) of the City of Akron Charter were enacted by the electors of the City of Akron pursuant to the City of Akron's powers of home rule as granted in Article XVIII of the Constitution of the State of Ohio.
18. By passing and amending residency requirements, and by rejecting further amendments to the City of Akron's residency requirements, City of Akron electors have exercised the powers of local self-government that are specifically conferred upon them by Article XVIII of the Ohio Constitution.
19. The enactment and enforcement of Sections 105a and 106(5b) of the City of Akron Charter are legitimate exercises of the City of Akron and its inherent constitutional authority as granted in Article XVIII of the Constitution of the State of Ohio.
20. The City of Akron's residency requirements, Section 105a and 106(5b) of the City of Akron Charter, do not violate an individual's inalienable and fundamental right to choose where to live pursuant to Section 1 of Article I, Ohio Constitution.
21. The City of Akron intends to enforce the Charter of the City of Akron after the effective date of R.C. §9.481.

Senate Bill No. 82, Codified as R.C. §9.481

22. Despite the wishes of the City of Akron's electors and the City of Akron's inherent home rule power to impose an employee residency requirement, , the

126th General Assembly of the State of Ohio passed Senate Bill No. 82 on January 18, 2006.

23. Senate Bill No. 82 was signed into law by Governor Taft on January 27, 2006 and has an effective date of May 1, 2006. Senate Bill No. 82 is attached hereto as Exhibit C.
24. Senate Bill No. 82, as codified at R.C. §9.481, purports to prohibit subdivisions from requiring its permanent full-time employees to reside within the boundaries of the political subdivision.
25. Plaintiff, City of Akron, is a “political subdivision” as defined in R.C. §9.481.
26. R.C. §9.481 is directly in conflict with the City of Akron’s Charter and charters of other political subdivisions throughout the State, causing uncertainty for thousands of employees throughout the State of Ohio, as well as the political subdivisions which employ them.
27. R.C. §9.481 is unconstitutional under the Constitution of the State of Ohio.
28. City of Akron employees may detrimentally rely on the unconstitutional provisions of R.C. §9.481 and they, and Plaintiff City of Akron, will be irreparably harmed by the enactment and enforcement of R.C. §9.481.

Count 1- Violation of the Ohio Home Rule Amendment

29. Plaintiff incorporates paragraphs one through twenty-eight of this Complaint as if fully rewritten herein.
30. Article XVIII of the Ohio Constitution confers upon the Plaintiff City of Akron the authority to exercise all powers of local self-government.

31. Appointment to and hiring for a position of employment with the City of Akron is a matter of local self-government, is a matter of purely local concern, and is not a matter of general statewide concern.
32. The residency of an employee of a political subdivision is a matter of purely local concern and not a matter of general statewide concern.
33. Under Article XVIII of the Ohio Constitution, municipal charter provisions exercising powers of local self-government are valid and enforceable even in the face of a conflicting state statute.
34. There is no right to be employed by a municipality while residing elsewhere.
35. There is no right to be employed by the City of Akron while residing in another municipality.
36. R.C. §9.481 is not a general law and does not address a matter of statewide concern.
37. Through R.C. §9.481, the State of Ohio has attempted directly and indirectly to regulate matters of local self-government.
38. R.C. §9.481 violates the Ohio Constitution because it impermissibly interferes with the exercise of the City of Akron's powers of local self-government.
39. R.C. §9.481 does not fix and regulate the hours of labor, establish a minimum wage, nor provide for the comfort, health, safety and welfare of all employees in the State of Ohio pursuant to Article II, Section 34 of the Ohio Constitution.
40. R.C. §9.481 does not rationally relate to the goal of providing for "the comfort, health, safety, and general welfare of all employees" pursuant to Article II, Section 34 of the Ohio Constitution.

41. R.C. §9.481 is not a legitimate exercise of authority to regulate on behalf of all employees within the State as found in Article II, Section 34 of the Ohio Constitution.
42. Article II, Section 34 of the Ohio Constitution does not authorize the State of Ohio to enact or enforce R.C. §9.481.
43. In the maintenance of constitutional restraint upon the exercise of state power at the expense of Home Rule municipalities, and to prevent irreparable harm and injure the public interest, Plaintiff City of Akron is entitled to injunctive relief against the application, enforcement, or other effectuation of R.C. §9.481.
44. Because R.C. §9.481 impermissibly interferes with the exercise of the City of Akron's powers of local self-government, Plaintiff is entitled to a declaratory judgment that R.C. §9.481 violates Article XVIII of the Ohio Constitution.

Count 2- Violation of the Uniformity Clause

45. Plaintiff incorporates paragraphs one through forty-four of this Complaint as if fully rewritten herein.
46. R.C. §9.481 does not prohibit a municipality from requiring its volunteers, part-time, and seasonal employees to reside within its municipality.
47. R.C. §9.481 does not prevent a private corporation from requiring its employees to reside in the municipality in which it operates.
48. R.C. §9.481 treats full-time political subdivision employees differently than non-political subdivision employees and differently from political subdivision employees who work part-time, for only part of the year, or on a volunteer basis.

49. The Uniformity Clause (Article II, Section 26) of the Ohio Constitution requires that “[a]ll laws of a general nature, shall have a uniform operation throughout the State.”
50. Under the Uniformity Clause, all general laws must have “universal operation as to all persons and things in the same condition or category.”
51. To the extent that R.C. §9.481 purports to be a general law, it violates the Uniformity Clause of the Ohio Constitution because, without justification, it treats municipal full-time employees differently than non-municipal employees and differently from municipal employees who work part-time, for only part of the year, or on a volunteer basis.
52. R.C. §9.481 violates the Uniformity Clause of the Ohio Constitution, Article II, §26.
53. Because R.C. §9.481 violates the Uniformity Clause of the Ohio Constitution, Article II, §26, and will cause irreparable harm and injure the public interest, Plaintiff is entitled to injunctive relief against the application, enforcement, or other effectuation of R.C. §9.481.
54. Because R.C. §9.481 does not apply universally as to all persons and things in the same condition or category, Plaintiff is entitled to a declaratory judgment that R.C. §9.481 violates Article II, §26 of the Ohio Constitution.

Count 3-Violation of Right to Vote

55. Plaintiff incorporates paragraphs one through fifty-four of this Complaint as if fully rewritten herein.

56. R.C. §9.481 disfranchises the citizens of political subdivisions by infringing on their constitutional right to adopt a Charter and to vote.
57. R.C. §9.481 disfranchises the electors of the City of Akron by infringing on their constitutional right to adopt a Charter and to vote.
58. Because the public, and City of Akron electors, have an overriding interest in the effectiveness of maintaining its will as enunciated through democratic electoral process and the Charter of the City of Akron, Plaintiff is entitled to injunctive relief against the application, enforcement, or other effectuation of R.C. §9.481.
59. Because the public, and City of Akron electors, also have a legitimate interest in maintaining residency of municipal employees within the territorial limits of the municipality, Plaintiff is entitled to injunctive relief against the application, enforcement, or other effectuation of R.C. §9.481.
60. Because R.C. §9.481 violates the right to vote and to adopt a Charter as set forth in the Ohio Constitution, Plaintiff is entitled to a declaratory judgment that R.C. §9.481 violates Article XVIII of the Ohio Constitution.

Count 4- Constitutional Infringement on Right to Contract

61. Plaintiff incorporates paragraphs one through sixty of this Complaint as if fully rewritten herein.
62. R.C. §9.481 results in an unconstitutional impairment of contract under the Ohio Constitution, Article II, §28.
63. Because the Plaintiff and its employees have a legitimate interest in relying upon the terms of appointment and in establishing the terms of employment, and because R.C. §9.481 will cause irreparable harm and injure the public interest,

Plaintiff is entitled to injunctive relief against the application, enforcement, or other effectuation of R.C. §9.481.

64. Because R.C. §9.481 results in an unconstitutional impairment of contract, Plaintiff is entitled to a declaratory judgment that R.C. §9.481 violates the Ohio Constitution, Article II, §28.

WHEREFORE, the Plaintiff respectfully prays for the following relief:

1. An Order declaring Ohio Revised Code §9.481 unconstitutional and invalid, both generally and as applied to the Plaintiff in that it violates the City of Akron's home rule authority and rights of due process and equal protection guaranteed to Plaintiff under the Constitution of the State of Ohio.
2. An Order declaring that Ohio Revised Code §9.481 violates Article XVIII of the Ohio Constitution.
3. An Order declaring that Ohio Revised Code §9.481 violates an elector's right to vote and adopt a Charter pursuant to Article XVIII of the Ohio Constitution.
4. An Order declaring that Ohio Revised Code §9.481 violates Article II, §26 of the Ohio Constitution.
5. An Order declaring that Ohio Revised Code §9.481 violates Article II, §28 of the Ohio Constitution.
6. An Order declaring that the provisions of the Charter of the City of Akron cited herein; to wit: 105a and 106(5b), which were enacted prior to the passage of Senate Bill 82, are valid and constitutional legislative acts lawfully enacted pursuant to the constitutionally guaranteed power of local self-government provided in Article XVIII, Section 3 of the Constitution of the State of Ohio.

7. An Order declaring that the provisions of the Charter of the City of Akron cited herein; to wit: 105a and 106(5b) are valid exercises of a municipality's home rule authority and prevail over R.C. §9.481.
8. An Order or Orders permanently restraining and enjoining the Defendants named herein, their agents, employees and successors in office from taking any administrative, executive or judicial action against the City of Akron and its residents under the authority of Ohio Revised Code §9.481.
9. An Order awarding Plaintiff fees and the cost of this suit.
10. An Order granting Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

Max Rothal - No. 0009431
Director of Law

Patricia Ambrose Rubright – No. 0009435
Deborah M. Forfia - No. 0033581
Assistant Directors of Law
161 S. High Street, Suite 202
Akron, Ohio 44308
(330) 375-2030 Fax (330) 375-2041

VERIFICATION

I, Max Rothal, am the Director of Law of the Plaintiff City of Akron. As Director of Law I am charged by the Charter of the City of Akron to prosecute and defend all suits for or in behalf of the City. I have read the foregoing averments and state that they are true to the best of my knowledge, information and belief.

Max Rothal, Director of Law

State of Ohio)
) SS:
County of Summit)

Sworn to before me and subscribed in my presence this _____ day of May, 2006.

Notary Public, State of Ohio