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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

CHARLES OSBORNE	)	**CASE NO. 2013CV02037**
	)	
Plaintiff,	)	
	)	JUDGE JOHN G. HAAS
v.	)	
	)	**MOTION TO DISMISS AND**
CITY OF NORTH CANTON	)	**MEMORANDUM IN SUPPORT**
	)	**(NON-ORAL HEARING REQUESTED)**
Defendant.	)	

Defendant, City of North Canton ("North Canton"), by and through the undersigned legal counsel, respectfully moves the Court for an order dismissing Plaintiff, Charles Osborne's ("Osborne") complaint for three reasons. First, pursuant to Civ.R. 12(B)(6), Osborne failed to state in his complaint a cause of action against North Canton upon which relief may be granted. Second, pursuant to R.C. 2721.12(A), Osborne failed to join persons who have or claim an interest that would be affected by his complaint. And third, because he challenged the constitutionality of a municipal ordinance, he was required to serve the attorney general with a copy of the proceedings—*which he did not*—thus denying this Court jurisdiction to provide declaratory relief. *Id.*

The law and facts supporting this motion to dismiss are more fully set forth in the attached memorandum in support.

SCANNED

BY 6

Respectfully submitted,

By: _____

Timothy L. Fox (#0081029)
145 North Main Street
North Canton, OH 44720
Telephone: (330) 499-1293
Telefax: (330) 499-2080
E-Mail: tfox@northcantonohio.gov
Counsel for Defendant,
City of North Canton

MEMORANDUM IN SUPPORT

I. BACKGROUND

The facts relevant to this motion are straightforward and brief. Defendant, City of North Canton's ("North Canton") City Council ("City Council"), having recognized that its elected officials had not received a salary increase for 11 years, passed a municipal ordinance on July 8, 2013, which appropriated money and stated therein that it "established the rates of compensation for elected officials of the City of North Canton, Ohio, effective December 1, 2013." Ordinance 47-13 states both the reason for the ordinance, *to establish the compensation rates for future elected officials*, and the reason for its urgency, *to meet the Stark County Board of Election's filing requirements for the November 5, 2013, general election.*

Signed into law on the same day by North Canton's mayor, the ordinance became effective just prior to the deadline posed by the Charter of the Municipality of North Canton ("Charter"), which states that the "compensation of the Mayor and each member of Council shall be fixed at least thirty (30) days prior to the filing date of the nominating petitions for the terms beginning on the next succeeding first of December, and shall not be changed during the term of office or any part thereof." Charter Section 4.04. Salaries and Bonds.

Prompt passage of the ordinance was further necessary to meet the Stark County Board of Election's filing deadline, which was 90 days prior to the November 5, 2013, general election. Thus, the combination of the Charter's compensation-fixing requirement and the Board of Election's filing requirement necessitated enacting the ordinance into law at least 120 days prior to November 5, 2013, general election.

With the understanding that if the ordinance was not enacted without delay, the Charter's mid-term change in compensation prohibition for elected officials would prevent the ordinance from being enacted into law until the terms of office for next slate of elected officials has expired—two years—City Council lawfully passed Ordinance 47-13 with an emergency provision.

Plaintiff, Charles Osborne, ("Osborne") filed a complaint against North Canton alleging therein that Ordinance 47-13 is invalid because "the reasons for the declaration of the ordinance are not specified and/or are insufficient to justify an emergency and/or are not valid reasons for an emergency," and that the "ordinance was passed under false premises of emergency legislation" to prevent the right of referendum, and therefore is unconstitutional under the laws of the State of Ohio.

North Canton respectfully moves this Court to dismiss Osborne's complaint: 1) under Civ.R. 12(B)(6) for his failure to prove a set of facts entitling him to relief; 2) under R.C. 2721.12(A) for his failure to join persons who have or claim an interest that would be affected by his complaint; and 3) also under to R.C. 2721.12(A), because he alleged the unconstitutionality of a municipal ordinance, Osborne was required—yet failed—to serve the attorney general with a copy of the complaint in this matter.

II. LAW AND ARGUMENT

A. Dismissal is appropriate under Civ.R. 12(B)(6) where the non-moving party can prove no set of facts entitling it to relief.

The function of a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is to test the legal sufficiency of a statement of claim. *State ex rel. Hanson v.*

Guernsey County Board of Commissioners, 65 Ohio St.3d 545 (1992). When construing a complaint upon a motion to dismiss for failure to state a claim, "all factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the non-moving party." *Byrd v. Faber*, 57 Ohio St.3d 56, 60 (1991). Material incorporated into a complaint may be considered part of the complaint for purposes of determining a Civ.R. 12(B)(6) motion to dismiss. *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 249 (1997), fn. 1.

In order to grant a 12(B)6 motion, it must appear "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. University Community Tenant's Union*, 42 Ohio St.2d 242 (1975), syllabus. This standard does not, however, permit unwarranted inferences drawn from facts, groundless conclusions of law, and "mere incantations of abstract legal principles." *See Byrd.* Indeed, the court need not assume the truth of conclusions unsupported by factual allegations. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 193 (1989).

B. Osborne can prove no set of facts entitling him to relief.

i. Ordinance 47-13 conforms to the requirements of R.C. 731.30 and North Canton's Charter.

Osborne alleged in paragraph one of his complaint, and as the foundation of all his allegations, that North Canton Ordinance 47-13 "is not a valid emergency ordinance in that the reasons for the declaration of the ordinance are not specified and/or are insufficient to justify an emergency and/or are not valid reasons for an emergency." A copy of Osborne's complaint is attached hereto and incorporated herein as North Canton's **Exhibit 1**. Osborne also alleged in paragraph 18 of his complaint that City Council "has had more than enough time to enact

legislation" during its term of office. This conclusory allegation begs the question that North Canton's finances are static, and that its fiscal reserves remained unchanged during City Council's two-year term of office.

The enactments of a municipal legislative authority are presumed valid, and the presumption "continues until bad faith or abuse of legislative discretion * * * is clearly proven, or it is manifest that the legislative authority has exceeded its powers, or if the legislation bears no reasonable relation to the public health, safety, welfare, or morals." *State ex rel. Waldick v. Williams*, 74 Ohio St.3d 192, 193 (1995). Osborne's baseless allegation that North Canton "had more than enough time to enact legislation" falls well short of the necessity to clearly prove or demonstrate that North Canton's legislative authority exceeded its powers to invalidate the presumption of a valid municipal legislative enactment. *Id.*

Furthermore, although residents of a municipality generally have a constitutional right to subject municipal ordinances to a referendum vote, municipalities may enact emergency legislation that is insulated from a referendum. Ohio Constitution, Article II, Section 1(f); R.C. 731.30. North Canton's Charter provides that "the electors of the municipality shall have the power to approve or reject at the polls any ordinance or other measure enacted by Council in accordance with the provisions of the Constitution and laws of Ohio now or hereafter in effect." Charter 5.07. Initiative, Referendum, Recall.

The Ohio legislature has provided that R.C. 731.30 dictates the scope of such legislation and provides that legislative bodies may "[e]nact emergency ordinances or measures necessary for the immediate preservation of the public peace, health, or safety in such municipal corporation, [which] shall go into immediate effect. Such emergency ordinances or measures

must, upon a yea and nay vote, receive a two-thirds vote of all the members elected to the legislative authority, and the reasons for such necessity shall be set forth in one section of the ordinance or other measure." North Canton's Charter requires an even higher level of scrutiny from its members to pass emergency legislation. A "super majority" vote is necessary to pass legislation that contains an emergency measure. Indeed, to be enacted into law, a North Canton ordinance that contains an emergency measure requires the affirmative vote of at least six of its seven council members, in addition to the signature of its mayor. Charter Section 2.05. Legislative Procedure. As a result, Ohio law provides that a municipal emergency ordinance, such as Ordinance 47-13—which the General Assembly excepted from its general legislative authorization of municipal referendum in R.C. 731.29—is not reviewable by courts because the statutory provisions safeguard referendum rights by requiring substantially more than a majority vote to enact emergency legislation. *Taylor v. London*, 88 Ohio St.3d 137 (2000), fn. 3; *State ex rel. City of Fostoria v. King*, 154 Ohio St. 213, 220 (1950).

The Supreme Court of Ohio has repeatedly affirmed the proposition that a court has no authority to review a city council's determination of the existence of an emergency. *State ex rel. Moore v. Abrams*, 62 Ohio St.3d 130, 132 (1991); *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137 (1988), paragraph three of the syllabus. The duty and responsibility for determining the existence of and the reasons for an emergency is vested solely in the municipal legislature. *Moore* at 132; *Jurcisin* at paragraph three of the syllabus.

"Where an ordinance, passed by the council of a municipality, is declared to be an emergency in accordance with that municipality's laws and sets forth the reasons for the immediate necessity thereof, the legislative determination of the existence of an emergency is not reviewable by a court." *Moore* at 132, quoting *Jurcisin* at paragraph three of the syllabus. "The

existence of an emergency or the soundness of such reasons is subject to review only by the voters at such a subsequent election of their representatives. They are not subject to review by the courts." *Moore* at 132, quoting *Fostoria* at 220-221. Therefore, provided Ordinance 47-13's emergency clause conforms to the requirements of R.C. 731.20 and North Canton's Charter, "the legislative determination of the existence of an emergency is not reviewable by a court." *Moore* at 132, quoting *Jurcisin* at paragraph three of the syllabus.

R.C. 731.30 requires municipal legislative bodies to set forth the reasons for the emergency measure and the basis therefore with some specificity. Although emergency measures seek to address situations requiring a prompt response, there is no requirement that it contain specific language that its enactment is an immediate necessity. Municipal legislatures may not, however, enact such measures using reasons that are conclusory, illusory, or tautological. *Waldick*, 74 Ohio St.3d at 195. Reasons that are general, repetitious, or circular do not meet the requirements of R.C. 731.30. *City of Cincinnati ex rel. Newberry v. Brush*, 1st Dist. Hamilton No. C-830674, 1984 WL 4180, (Jan. 11, 1984), (per curiam); *State ex rel. Luff v. Sommer*, 9th Dist. Summit No. 10169, 1981 WL 4089, (July 30, 1981), (per curiam).

In *Huebner v. Miles*, the court found an emergency measure that stated its reason was that the city "must comply with the EPA imposed deadlines for the improvements to its water system" defined the emergency and was sufficiently specific. 92 Ohio App.3d 493, 497, (12th Dist.1993). In *Walsh v. Cincinnati City Council*, however, the court found the ordinance invalid because the emergency clause merely stated that it was an emergency because it was an emergency. 54 Ohio App.2d 107, (1st Dist. 1977).

In *Moore*, the Supreme Court of Ohio, in a per curiam decision, held that although the reason stated for the municipality's emergency ordinance was inarticulate, that the statement "in order to proceed with the Portsmouth Downtown Improvement Program, this constitutes an emergency, requiring immediate action in that we are well into the 1990 construction season" sufficiently set forth and defined the emergency. 62 Ohio St.3d at 133. In *Gillespie v. Village of Crooksville*, the Fifth District Court of Appeals held that a municipal ordinance, which stated that the reason for an emergency provision was that the village was unable to maintain three positions due to a lack of funds, which effected the economic well-being of the village, was sufficient to meet the requirements of R.C. 731.30. 5th Dist. Perry No. CA-482, 1995 WL 495276, (May 9, 1995).

More recently, the Fifth District Court of Appeals held that an Alliance municipal ordinance, declared an emergency ordinance "necessary for the immediate preservation of the public peace, for the further reason that the integrity of R-1 districts will continue to erode without this ordinance," sufficiently set forth the reasons for its passage as an emergency measure. *Sherry's Treasures, LLC v. Alliance Board of Zoning Appeals*, 5th Dist. Stark No. 20006 CA 003432007, 2007 WL 2852150, (Oct. 1, 2007). Moreover, an Ohio appellate court found that an emergency ordinance, passed *for the purpose of granting pay increases for elected officials,* which stated the reasoning for the emergency in sufficient detail, were not conclusory, illusory, or tautological, *and which took effect within a week of their passage*, satisfied necessary emergency legislative requirements. *City of Warren ex rel. Bluedorn v. Hicks*, 124 Ohio App. 3d 621, 627, (11th Dist.1997); a discretionary appeal to the Supreme Court of Ohio was not allowed in 81 Ohio St.3d 1512 (1998).

The circumstances surrounding North Canton Ordinance 47-13 are very closely aligned to those in *Jurcisin* where the preamble to Cleveland's municipal ordinance stated that the reason for the emergency clause was that the ordinance had to be certified to the county election authorities immediately in order for the proposed charter amendment to appear on the election ballot. 35 Ohio St.3d at 146. The Supreme Court of Ohio held that "the ordinance clearly stated the reason the ordinance was to go into effect immediately: the imminence of the next election date. *The ordinance had to become effective immediately to be certified to the election authorities for placement on the November 6 ballot.*" (Emphasis added.) *Id.*

Just as in *Jurcisin*, North Canton Ordinance 47-13 was "declared to be an emergency measure necessary for the preservation of health, safety and peace of the City of North Canton and further necessary to meet the Stark County Board of Election's filing deadline for the November 5, 2013 general election," which was 90 days prior to the November 5, 2013, general election. In addition, North Canton's Charter states that the "compensation of the Mayor and each member of Council shall be fixed at least thirty (30) days prior to the filing date of the nominating petitions for the terms beginning on the next succeeding first of December, and shall not be changed during the term of office or any part thereof." Charter Section 4.04. Salaries and Bonds. Because the term of office for North Canton's council members and its mayor is two years, had the ordinance not been passed and enacted into law on July 8, 2013, the salaries could not have been fixed for an additional two years. Charter Sections 2.01. Powers, Membership, Term and Organization and Section 3.01. The Mayor.

By setting forth with some specificity the reason for Ordinance 47-13's emergency measure, "the imminence of the next election date," which is not conclusory, illusory, or tautological, and because the ordinance took effect immediately upon its passage to satisfy the

requirements of the Charter and the Stark County Board of Election's filing deadline, the emergency clause sufficiently demonstrated: 1) that City Council fully considered the issue prior to declaring the emergency; and 2) that it provided relevant information the public regarding the necessity of the emergency. As a result, Ordinance 47-13 complies with the requirements of R.C. 713.30 and North Canton's Charter, and therefore, constitutes valid and binding emergency legislation not subject to referendum or further review by the court. *Juricisin*, 35 Ohio St.3d at 146.

Osborne also alleged in paragraph 19 of his complaint that the passage of Ordinance 47-13 was done under emergency circumstances to undermine the right referendum. Although North Canton vehemently denies this allegation, the Supreme Court of Ohio has held—*time and again*—that Ohio law recognizes the right of a municipal council to defeat the right to a referendum on legislation by enacting legislation as an emergency measure. *State ex rel. Laughlin v. James*, 115 Ohio St. 3d 231, 2007-Ohio-4811, ¶ 37; *State ex rel. Tester et al. v. Board of Elections of Ottawa County*, 174 Ohio St. 15, 16 (1962); *Taylor*, 88 Ohio St.3d at fn. 3; *Fostoria*, 154 Ohio St. at 220-221.

ii. <u>Ordinance 47-13 is an administrative act not subject to a referendum.</u>

Article II, Section 1(f), of the Ohio Constitution provides initiative and referendum power only on those questions that municipalities "may now or hereafter be authorized by law to control by *legislative* action." (Emphasis added.) "Pursuant to Section 1f, Article II of the Ohio Constitution, actions taken by a municipal legislative body, whether by ordinance, resolution, or other means, that constitute administrative action, are not subject to referendum proceedings." *Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St.3d 539 (1998), paragraph two of the syllabus.

"The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence." *Donnelly v. Fairview Park*, 13 Ohio St.2d 1 (1968), paragraph two of the syllabus. In applying this test to Ordinance 47-13, North Canton's Charter provides that City Council shall fix the compensation of "its members," the mayor, and of each job classification together with the members of all boards and commissions of the City, whether elected, appointed, or chosen. Charter Section 4.04. Salaries and Bonds. Indeed, through their collective votes, North Canton electors have unquestionably provided City Council with the legal authority necessary to set salaries for all municipal employees, including the elected officials. *Id.* As opposed to enacting new law, Ordinance 47-13 merely executes and administers law already provided by the Charter.

Furthermore, North Canton's Charter provides that "[e]ach resolution and ordinance providing for the appropriation of money * * * and any emergency resolution or ordinance necessary for the immediate preservation of public peace, health or safety, shall take effect, unless a later date be specified therein, upon its approval by the Mayor * * *." Charter Section 2.05. Legislative Procedure. Although the Charter does not define "appropriation ordinance," undefined language used in a municipal charter should be construed according to its ordinary and common usage. *State ex rel. Fattlar v. Boyle*, 83 Ohio St.3d 123, 127 (1998); *State ex rel. Minor v. Eschen*, 74 Ohio St.3d 134, 138 (1995). Indeed, the Supreme Court of Ohio has found that the ordinary and common meaning of the comparable phrase "appropriation bill" is a "measure before a legislative body which authorizes 'the expenditure of public moneys and stipulat[es] the amount, manner, and purpose of the various items of expenditure." *State ex rel. Akron Edn. Assn. v. Essex*, 47 Ohio St.2d 47, 49 (1976).

It is patently clear from the one-page ordinance that 47-13's purpose is to set the rates of compensation, appropriate money, for North Canton's future mayor, president of council, and its council members. Therefore, *whether or not an emergency measure applied*, Ordinance 47-13—an appropriation ordinance—became effective upon the mayor's signature, July 8, 2013,

Because Ordinance 47-13 is City Council's act of administering or executing a law already put in place by North Canton's Charter, and because it went into immediate effect as an appropriation of money, its enactment constitutes an administrative action, which is not properly the subject of either referendum or initiative seeking its repeal. *State ex rel. Commt. for the Referendum of Ordinance No. 3844-02 v. Norris*, 99 Ohio St.3d 336, 2003-Ohio-3887.

iii. A referendum, the provisions of which are contrary to a municipal charter, is not properly submissible to the municipality's electors.

Osborne prayed in his complaint that the Court declare invalid, Ordinance 47-13—whose sole purpose is to appropriate money to set the salaries of future elected officials—so that he may seek a referendum to set salaries for North Canton elected officials. Osborne's Complaint paragraph 24, and paragraph 4 of his prayer for relief. The Supreme Court of Ohio has previously considered such circumstances, however, and held quite clearly—*and tersely*—that an ordinance contrary to the provisions of a municipal charter is not properly submissible to a city's electors under a an initiative or referendum petition. *State ex rel. Lautz v. Diefenbach*, 165 Ohio St. 495, 496 (1956), (per curiam).

In *Lautz*, the question before the Court was whether a proposed ordinance fixing the compensation of certain city employees should be submitted to the electors by way of an initiative petition when the city's charter provided that city council fixed the compensation of all city employees. *Id.* The Court found that initiative and referendum actions are impermissible

when they are contrary to a city's charter, *such as fixing salaries for city employees*, when the applicable charter placed that responsibility upon the city council. (Emphasis added.) 165 Ohio St. at 496.

Osborne prayed in his complaint that this Court declare invalid an ordinance setting the salaries for certain North Canton employees so that he may attempt to set them through a referendum. But just as in *Lautz*, North Canton's Charter provides that City Council shall fix the compensation of "its members," the mayor, and of each job classification together with the members of all boards and commissions of the City, whether elected, appointed, or chosen. Charter Section 4.04. Salaries and Bonds. There is no doubt that North Canton's Charter places the burden to fix the salaries of all of the municipal employees upon City Council. *Id.* As a result, Osborne's prayer that Ordinance 47-13 be declared invalid for the sole reason that he may attempt to place the issue of fixing North Canton's future mayor and City Council's salaries before the electorate on a referendum petition is moot. Our state's highest court has determined that a referendum or initiative measure contrary to the provisions of a municipal charter, such as Osborne's prayer to invalidate Ordinance 47-13 for a proposed referendum in contravention of North Canton's Charter, is not properly submissible to the electors. *Lautz* at 496.

C. Osborne failed to include the proper and necessary parties in this matter.

Osborne named only the City of North Canton as a defendant in his complaint, yet each allegation therein, and his demand for declaratory judgment, is lodged against North Canton's legislative body, City Council. A declaratory judgment may not be rendered, however, unless all persons having an interest in subject matter are proper parties to the action. *Zanesville v.*

Zanesville Canal & Mfg. Co., 159 Ohio St. 203, 209. (1953). In fact, the presence of all necessary parties in a declaratory action is jurisdictional. *Id.*

Because all legislative powers of the Charter and laws of the State of Ohio are vested in City Council, (Charter Section 2.01. Powers, Membership, Term and Organization), a court's declaration regarding an ordinance setting a mayor and council members' salaries requires that they all be proper parties to the action. *Mallory v. Cincinnati*, 1st Dist. Hamilton No. C–110563, 2012-Ohio-2861 ¶ 18, appeal not allowed, 133 Ohio St. 3d 1466, 2012-Ohio-5149. Consequently, Osborne's complaint is defective because his allegations are directed at North Canton's legislative authority regarding setting elected officials' salaries, yet he did not name them as parties in his complaint. *Id.*; *Zanesville* at 209; R.C. 2721.12(A).

Moreover, R.C. 2721.12(A) provides that in any proceeding alleging a municipal ordinance to be unconstitutional, "the attorney general shall also be served with a copy of the proceeding and shall be heard." Our state's highest court has repeatedly held this to be a mandatory jurisdictional requirement. *Asbury Apts. v. Dayton Bd. of Zoning Appeals*, 77 Ohio St.3d 1229 (1997); *Ohioans for Fair Representation, Inc. v. Taft*, 67 Ohio St.3d 180, 183 (1993), paragraph one of the syllabus; *Sebastiani v. Youngstown*, 60 Ohio St.2d 166 (1979); *Westlake v. Mascot Petroleum Co., Inc.*, 61 Ohio St.3d 161, 163 (1991); and *Malloy v. Westlake*, 52 Ohio St.2d 103, 105-106 (1977).

Osborne alleged in paragraphs 19, 20, and 24 of his complaint that Ordinance 47-13 is either unconstitutional on its face or was unconstitutionally enacted, and prayed that this Court enter a judgment "declaring it an emergency as insufficient under Ohio law" and declaring it is invalid. Because he challenged the constitutionality of a municipal ordinance and demanded

declaratory relief thereof, Osborne was required to serve the attorney general with a copy of his complaint. Osborne has provided no evidence that he served the attorney general with a copy of his complaint.

Unless and until he complies with these mandatory requirements of including all of the proper parties in this action, Osborne has no entitlement to relief as this Court is without jurisdiction, and is therefore precluded from providing declaratory relief. *Id.*

III. CONCLUSION

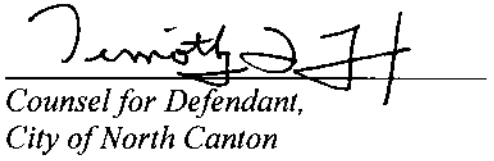
Osborne's complaint should be dismissed pursuant to Civ.R. 12(B)(6) because he failed to state in his complaint a cause of action against North Canton upon which relief may be granted. He also failed, pursuant to R.C. 2721.12(A), to join all necessary parties that would be affected by his complaint as an action praying for declaratory relief. In addition, also pursuant to R.C. 2721.12(A), because he challenged the constitutionality of a North Canton ordinance, he was required, yet failed to serve the attorney general with a copy of his complaint, thereby denying this Court jurisdiction to provide declaratory relief.

WHEREFORE, for all of these reasons, Defendant, City of North Canton, respectfully requests this Court dismiss Plaintiff's complaint with prejudice and at Plaintiff's costs.

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent by ordinary mail this 3d day of September, 2013 to the following:

Robert Cyperski
1201 - 30th Street NW, Suite 102-B
Canton, OH 44709
Counsel for Plaintiff



Counsel for Defendant,
City of North Canton

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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

CHARLES OSBORNE
307 Fairview Street SE
North Canton, Ohio 44720

Individually and on behalf of
all similarly situated residents
of North Canton, Ohio

Plaintiffs,

vs.

CITY OF NORTH CANTON,
C/O MR. TIMOTHY FOX
LAW DIRECTOR FOR THE CITY
OF NORTH CANTON
145 NORTH MAIN STREET
NORTH CANTON, OH 44720

Defendant

CASE NO.: 2013CV02037

JUDGE:

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

1. Plaintiff Charles Osborne ("Osborne"), on his own behalf and on behalf of all similarly situated residents of the City of North Canton, Ohio, seeks to have Ordinance No. 47-13 passed by the City Council of Defendant City of North Canton ("City of North Canton") on July 8, 2013, declared as invalid. Osborne asserts that Ordinance No. 47-13 is not a valid emergency ordinance in that the reasons for the declaration of the ordinance as an emergency are not specified and/or are insufficient to justify an emergency and/or are not valid reasons for an emergency. Plaintiff asserts that the ordinance was passed under false premises of emergency legislation so as to undermine the referendum right of the residents of North Canton, Ohio.

ENTERED BY 6
DEFENDANT'S EX 1

Parties, Jurisdiction and Venue

2. Osborne is an individual who lives in the City of North Canton, Stark County, Ohio. He is a person within the meaning set forth in Ohio Revised Code Section 2721.01.

3. Osborne is also a party whose rights, status, or other legal relations are affected by Ordinance No. 47-13 and is bringing this action to have determined a question of construction or validity arising under the ordinance as permitted by Ohio Revised Code Section 2721.03.

4. City of North Canton is a body politic and municipal corporation, which can be sued and whose conduct in governed by Ohio Revised Code Chapter Seven.

5. This Court is vested with jurisdiction over this matter: (a) under the general jurisdictional provisions set forth in Ohio Revised Code Section 2305.01, (b) under the specific statutes relating to declaratory judgments set forth in Ohio Revised Code Chapter 2721 and (c) under the specific provisions set forth in Ohio Rule of Civil Procedure 57.

6. Pursuant to Ohio Rule of Civil Procedure 3, venue is proper in that Stark County is the county in which the parties are located, and in which all or a portion of the activity relating to this action occurred.

7. Osborne brings this action individually and also as a member of the class of current residents of the City of North Canton, Ohio.

8. He asserts that the number of members of the class of current residents of the City of North Canton, Ohio, is so numerous that joiner of all members of the class is impracticable.

9. He also asserts that the questions as to the invalidity of an ordinance passed under the false premises of emergency legislation so as to undermine the referendum rights of the residents of the City of North Canton are questions of law and fact common to the class.

10. Osborne states that the claims set forth in this Complaint are typical of the claims of the class.

11. He further states that he will fairly and adequately protect the interests of the class.

12. Moreover, Osborne asserts that the prosecution of separate actions by individual members of the class may create inconsistencies or varying adjudications, which would establish incompatible standards of conduct.

13. Furthermore, the adjudication with respect to this matter as presented in this Complaint would as a practical matter be dispositive of the interests of the other members not parties to the adjudications.

Background of Dispute and Claims for Relief

14. For quite some time, the City Council of the City of North Canton has routinely passed legislation, which contains language asserting that the ordinance is being passed as emergency legislation when in fact no specific reasons for passage as emergency legislation existed.

15. Through the end of June 2013, ninety percent (90%) of the legislation passed by North Canton City Council was on an emergency basis. In 2012, ninety-three percent (93%) of the legislation passed was by emergency, in 2011, eighty-three percent (83%) was passed by emergency and in 2010, ninety-two percent (92%) of legislation was passed by an emergency. Clearly, the City of North Canton's use of emergency legislation is designed to prevent the

citizens of North Canton from exercising their rights under the Ohio Constitution and North Canton Municipal Charter.

16. The language used in prior legislation is identical to that language employed in Ordinance 47-13. (A copy of which is attached to this Complaint as Exhibit A and incorporated herein by reference).

17. Pursuant to the Charter of the Municipality of North Canton, Ohio, section 4.04 Salaries and Bonds, "the compensation of the Mayor and each member of Council shall be fixed at least thirty (30) days prior to the filing date of the nominating petitions for the terms beginning on the next succeeding first of December, and shall not be changed during the term of office or any part thereof."

18. The present members of North Canton City Council have held office since December 1, 2011. In over nineteen months of this council's term of office, City Council has had more than enough time to enact legislation increasing the Mayor's and their own salaries without emergency legislation.

Claim for Relief

(Declaratory Judgment and Injunctive Relief)

19. The passage of Ordinance 47-13 under these circumstances, as emergency legislation when no emergency is specifically stated, and/or for an invalid or an inadequate reason, undermines the rights conferred upon the residents of the City of North Canton, Ohio, to petition for a referendum on the legislation, and undermines fundamental democratic principles reserved by the citizens of the State of Ohio under its constitution.

20. Such rights are conferred upon the people of the City of North Canton, Ohio under Section 1f of Article II of the Ohio Constitution, which reads that "The initiative and

referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

21. Osborne has an interest in the legislation as a resident of the City of North Canton. He is opposed to the legislation given the current financial situation of North Canton and desires to have the matter put to a referendum vote before the residents of the City of North Canton, Ohio, in the true spirit of democracy but his desire to have the matter placed on the ballot has been undermined by the passage of Ordinance No. 47-13 under the pretext of emergency legislation.

22. Such a charade by the proponents of the legislation, threatens to undermine the constitutional rights of the voters as set forth in the Ohio Constitution and therefore compels Osborne to bring this action so as to vindicate that right.

23. Such actions by certain officials of the City of North Canton, acting under color of state law, undermine certain civil rights of Plaintiffs for which they are entitled to recovery.

24. The City Council of the City of North Canton has passed legislation, which contains language asserting that the ordinance is being passed as emergency legislation when in fact no valid reasons for passage as emergency legislation existed or actual emergency existed. Further, unless enjoined from enforcing this ordinance the people of North Canton will be deprived of the rights under the Ohio Constitution and the Charter of the Municipality of North Canton to seek a referendum of Ordinance 47-13.

WHEREFORE, Osborne prays for the following:

1. That this Court declare Ordinance No. 47-13 declaring it an emergency is insufficient under Ohio law;

2. That this Court declare Ordinance 47-13 is invalid;

3. That this Court temporarily and permanently enjoin the enforcement of Ordinance 47-13;

4. That this Court order the payment of reasonable attorneys fees, costs and other relief as this Court deems appropriate;

Respectfully submitted,

ROBERT H. CYPERSKI
Reg. #0026054
1201 - 30th Street NW
Suite 102-B
Canton, Ohio 44709
(330) 492-6659
Fax (330) 492-0943
Email: rcyperski@sbcglobal.net

Attorney for Plaintiffs

TO THE CLERK OF COURTS

Pursuant to Ohio Rule of Civil Procedure 4, please serve the named Defendant at the address indicated above with Summons and a copy of this Complaint

ROBERT H. CYPERSKI
Reg. #0026054
Attorney for Plaintiffs

RECORD OF ORDINANCES

Ordinance No. 47-13 Passed July 8 13

6/18/13-gmk
(Personnel & Safety)

Ordinance No. 47-13

An ordinance establishing the rates of compensation for elected officials of the City of North Canton, Ohio, effective December 1, 2013, and declaring the same to be an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That there be and are hereby established the following rates of compensation for the elected officials of the City of North Canton:

Mayor	$ 1,450.00/month $17,400.00/annually
President of Council	$ 675.00/month $ 8,100.00/annually
Council Members	$ 600.00/month $ 7,200.00/annually

Section 2. That the aforementioned rates of compensation set forth in Section 1., be, and are hereby effective December 1, 2013.

Section 3. That effective December 1, 2013, Ordinance No. 52-02, be, and the same is hereby repealed.

Section 4. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 5. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary to meet the Stark County Board of Election's filing deadline for the November 5, 2013 general election; wherefore, provided it receives the affirmative vote of six (6) or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

North Canton, OH
Passed: 7/8/13

MAYOR

SIGNED: 7/08, 2013

ATTEST:

CLERK OF COUNCIL

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