COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF NORTH CANTON	JUDGES:
Plaintiff-Appellee	Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. John W. Wise, J.
-vs-	Case No. 2014CA00231
CHARLES OSBORNE, ET AL.	
Defendants-Appellants	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Common pleas Court, Case No. 2014CV00757
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	July 20, 2015
APPEARANCES:	
For Plaintiff-Appellee	For Defendants-Appellants
TIMOTHY L. FOX 145 North Main Street North Canton, Ohio 44720	ROBERT H. CYPERSKI 1201 - 30th Street, NW Suite 102-B Canton, Ohio 44709
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Hoffman, P.J.

{¶1} Defendants-appellants Charles Osborne, et al. appeal the December 2, 2014 Judgment Entry entered by the Stark County Court of Common Pleas, which declared the Initiative Healthcare Ordinance to be void ab initio. Plaintiff-appellee is the City of North Canton ("North Canton").

STATEMENT OF THE CASE AND FACTS

{¶2} North Canton is a charter municipal corporation under Article XVIII, Section 7 of the Ohio Constitution. North Canton's electorate adopted the municipality's original Charter on November 8, 1960. The North Canton Charter specifically adopts and incorporates the provisions of the Ohio Constitution and laws of Ohio. The North Canton Charter also specifically includes provisions addressing the setting of compensation for Council members, and initiative petitions.

{¶3} Section 4.04 of the North Canton Charter provides:

> The Council shall have the power to fix compensation of its members and that of the Mayor, the Director of Administration, the Director of Finance, the Director of Law, officers of the municipality, of each job classification, and the members of any board, commission, of the municipality, whether elected, appointed or chosen.

{¶4} Section 5.07 of the North Canton Charter provides:

> (1) INITIATIVE. The electors of the municipality shall have the power to propose ordinances and other measures by initiative petition in accordance with the provisions of the Constitution and laws of Ohio now or hereafter in effect.

{¶5} Appellants, who are residents of North Canton, circulated an initiative petition entitled: ENDING CITY-PAID FAMILY HEALTH INSURANCE BENEFITS RECEIVED BY FAMILY MEMBERS OF PART-TIME ELECTED OFFICIALS AND LIMITING CITY-PAID HEALTH INSURANCE BENEFITS FOR INDIVIDUAL PART-TIME ELECTED OFFICIALS ("Initiative Healthcare Ordinance"). The Initiative Healthcare Ordinance received the required number of signatures to be placed on the ballot for the Stark County General Election held November 6, 2012, and subsequently received a majority of affirmative votes in that election. The Initiative Healthcare Ordinance had an effective date of December 1, 2013.

{¶6} North Canton believed and officially declared the Initiative Healthcare Ordinance conflicted with the North Canton Charter, and refused to recognize it. Thereafter, City Council passed Ordinance 23-14, which mirrored and, therefore, repealed and replaced, the Initiative Healthcare Ordinance. Ordinance 23-14 will be effective December 1, 2015, or earlier with respect to any newly-appointed elected officials.

{¶7} Appellants threatened North Canton with a lawsuit if it did not formally recognize the Initiative Healthcare Ordinance as a validly-enacted, voter-initiated ordinance. To avert Appellants' threats, North Canton filed a Complaint for Declaratory Judgment on March 28, 2014, seeking, inter alia, a declaration the Initiative Healthcare Ordinance is contrary to the North Canton Charter and, therefore, is void ab initio, as well as a declaration Ordinance 23-14 repealed and replaced the Initiative Healthcare Ordinance. Appellants filed an answer and counterclaim seeking declaratory judgment

and asserting claims for abuse of process and violations of their constitutional rights. After filing joint stipulations, the parties briefed their respective positions.

{¶8} Via Judgment Entry filed December 2, 2014, the trial court ruled the Initiative Healthcare Ordinance was void ab initio. The trial court found the Initiative Healthcare Ordinance was invalid as it conflicted with the North Canton Charter.

{¶9} It is from this judgment entry Appellants appeal, raising the following assignments of error:

{¶10} "I. THE TRIAL COURT ERRED IN FINDING THAT THE PEOPLE'S INITIATIVE HEALTHCARE ORDINANCE CONFLICTS WITH THE NORTH CANTON CHARTER.

{¶11} "II. THE TRIAL COURT ERRED IN FINDING THAT AN AMBIGUITY IN THE NORTH CANTON CHARTER MUST BE RESOLVED IN FAVOR OF THE PLAINTIFF."

I

{¶12} In their first assignment of error, Appellants contend the trial court erred in finding the Initiative Healthcare Ordinance conflicted with the North Canton Charter.

{¶13} A municipal charter acts as the constitution of the municipality. *Calco v. Stow* (Apr. 29, 1981) 9th Dist. No. 9990, at 4, citing *State ex rel. Pell v. Westlake* (1980), 64 Ohio St.2d 360, 361, 415 N.E.2d 289. Accordingly, when provisions of a city's charter and its ordinances conflict, the charter provision prevails, and the ordinance in conflict is void. *Reed v. Youngstown* (1962), 173 Ohio St. 265, 181 N.E.2d 700, paragraph two of the syllabus. See, also, *Deluca v. Aurora* (2001), 144 Ohio App.3d 501, 511, 760 N.E.2d 880.

{¶14} Where the language of a city charter is plain, clear, and unambiguous, such language must be given its usual and ordinary meaning. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St.3d 543, 545, 660 N.E.2d 463, 465–466. In matters of construction, courts have an obligation to give effect to the words used, not to delete words used or to insert words not used. *State ex rel. Cater,* 69 Ohio St.3d at 324, 631 N.E.2d at 1055–1056; *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50, 524 N.E.2d 441, paragraph three of the syllabus. In other words, where the intent of a city charter provision is clear, it may not be enlarged, restricted, or abridged.

{¶15} At issue herein are Sections 4.04 and 5.07 of the North Canton Charter. As set forth, supra, Section 4.04 provides:

> The Council shall have the power to fix compensation of its members and that of the Mayor, the Director of Administration, the Director of Finance, the Director of Law, officers of the municipality, of each job classification, and the members of any board, commission, of the municipality, whether elected, appointed or chosen.

{¶16} Section 5.07 of the North Canton Charter provides:

> INITIATIVE. The electors of the municipality shall have the power to propose ordinances and other measures by initiative petition in accordance with the provisions of the Constitution and laws of Ohio now or hereafter in effect.

{¶17} Appellants argue because the North Canton Charter did not expressly confer upon Council the sole and exclusive authority to set compensation for Council

members, Section 5.07 of the North Canton Charter must be interpreted to confer concurrent authority on the citizens of North Canton to legislate on the subject of compensation. We disagree.

{¶18} In *State, ex rel. Werner v. Koontz*, 153 Ohio St. 325, 91 N.E.2d 473, the Ohio Supreme Court addressed a nearly identical situation. The Petitioners filed with the clerk of the city of Columbus a petition submitting to city council a proposed ordinance, signed by the requisite number of registered voters. *Id.* at 326. The proposed ordinance contained provisions fixing the minimum number and minimum wage of members of the divisions of fire and police. *Id.* at 327. After examining the proposed ordinance, the city council refused to certify the proposed ordinance to the board of elections or take any steps to have the ordinance submitted to the electors of Columbus. *Id.* at 326. The Petitioners filed a writ of mandamus. *Id.* at 327.

{¶19} The Ohio Supreme Court found the proposed ordinance was in direct conflict with the provisions of the City of Columbus charter, which authorized city council to determine the number of officers and employees in each department of the city government, and to fix the salary or compensation of all officers and employees of the city government. *Id.* at 331. Recognizing the initiative and referendum provisions of the City of Columbus charter, the High Court was "of the opinion that the proposed ordinance is not an ordinance at all but a proposal to amend the charter". *Id.* at 330. The Court noted the initiative and referendum provisions were not appropriate for the submission of an amendment of the charter to the electors, and refused to issue the writ. *Id.*

{¶20} Appellants assert *Werner* is distinguishable from instant case because the Columbus charter included the language "ordinances approved by an electoral vote shall not be repealed, amended or supplemented except by an electoral vote". Appellants contend the *Werner* Court premised its holding on that language as the proposed ordinance would repeal the provisions of the charter authorizing city council to determine staffing and compensation, and, under the guise of initiating and adopting an ordinance, would be an attempt to repeal two sections of the charter without compliance with the amendment provisions of the charter. Appellants maintain the Supreme Court did not hold "the people have no voice in the compensation and benefits of its elected officials, but that an initiative ordinance that effectively and completely strips the legislative body of any say in matters vested in it by charter must be pursued as an amendment to the charter, not an initiative ordinance." Brief of Appellants at 17. Appellants further submit the Supreme Court "recognized and accepted the concurrent legislation power of the people, just not under the circumstances presented in the *Werner* facts." *Id.* Appellants conclude because the North Canton Charter does not contain a provision declaring the "ordinances approved by an electoral vote shall not be repealed, amended or supplemented except by an electoral vote" language, the initiative power of the people of North Canton and the legislative power of Council run concurrently. Again, we disagree.

{¶21} Although the Columbus charter at issue in *Werner* contained language not found in the North Canton Charter, we find such does not render *Werner* distinguishable from or inapplicable to the matter before this Court. The Ohio Supreme Court focused on the substance of the proposed ordinance which contained provisions fixing a

minimum number of officers, members and employees of the divisions of fire and police and fixing their minimum salaries, which it found was "in direct conflict with present provisions in the charter" placing that power with city council. *Id.* at 331. We, as did the trial court, likewise, find the Initiative Healthcare Ordinance is not an ordinance, but rather an attempt to amend the Charter which would result in a direct conflict with Section 4.04. As such, we find the Initiative Healthcare Ordinance is void, and the trial court did not err in so finding.

{¶22} Appellants are trying to circumvent the power vested in Council by the North Canton Charter to fix compensation for its members. The Ohio Supreme Court rejected a virtually similar initiative petition ordinance in *Werner*. Section 5.07 of the North Canton Charter grants the electors of North Canton "the power to propose ordinances and other measures by initiative petition in accordance with the provisions of the Constitution and laws of Ohio now or hereafter in effect". Such is a delegation of general legislative authority. Section 4.04 is a specific delegation of power to Council to fix compensation. As an elementary rule of construction, in the absence of language to the contrary, we believe the specific provision trumps a general provision. See, *Quality Ready Mix, Inc. v. Mamone* (1988), 35 Ohio St.3d 224, 226–27, 520 N.E.2d 193.

{¶23} Appellants' first assignment of error is overruled.

II

{¶24} In their second assignment of error, Appellants maintain the trial court erred in finding an ambiguity in the North Canton Charter must be resolved in favor of North Canton.

{¶25} In its judgment entry, the trial court found "no ambiguity exists, and, even if there is an ambiguity, in harmonizing all provisions, it is clear that only council, as the legislative body, may set compensation for its member." December 2, 2014 Judgment Entry at 3. Appellants read this statement as a finding by the trial court that any ambiguity in the Charter must be resolved in favor of North Canton.

{¶26} As did the trial court, we find no ambiguity exists. The fact the trial court ruled in favor of North Canton based upon its analysis of the law does not create an ambiguity or a rule of law. The trial court's remark was simply that, a remark. The trial court conducted a thorough analysis of the applicable law and found in favor of North Canton.

{¶27} Appellants' second assignment of error is overruled.

{¶28} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Farmer, J. concur