

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

NANCY S. REINBOLD  
CLERK OF COURTS  
STARK COUNTY, OHIO

2014 DEC -2 AM 9:34

<b>CITY OF NORTH CANTON,</b>	)	<b>CASE NO. 2014CV00757</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE HAAS</b>
	)	
<b>VS.</b>	)	<b>JUDGMENT ENTRY</b>
	)	
<b>CHARLES OSBORNE, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

This matter came on for consideration upon separate motions for declaratory judgment.

This action involves the validity of the Initiative Healthcare Ordinance passed by the voters of the City of North Canton in the General Election held on November 6, 2012. On March 28, 2014, North Canton initiated this action with the filing of a Complaint for Declaratory Judgment seeking a declaration that the Initiative Healthcare Ordinance is invalid.

The parties have filed stipulations leaving one disputed legal issue for the Court's consideration: whether the Defendants' initiative action is contrary to North Canton's Charter or whether the initiative ordinance is a valid and enforceable ordinance in the City of North Canton.

North Canton asserts that because the Defendants initiative action seeks to reduce or deny North Canton's elected officials' health care benefits, it conflicts with its Charter requirement that City Council shall set those compensation levels, which levels include health care benefits. Defendants, on the other hand, maintain that the Initiative Healthcare Ordinance is valid and enforceable municipal legislation.

ENTERED BY 6

It should be noted that, even though North Canton believes that the Charter conflict rendered the initiative action void, because it reflected the will of the electorate, North Canton enacted a mirror ordinance to repeal the initiative and enacted a mirror ordinance in its place. The parties have stipulated that North Canton's elected officials have not just reduced their health care benefits to comply with the mirror ordinance, all eight of them have completely waived North Canton-paid health care benefits for themselves and their families.

### **Declaratory Judgment**

In order to obtain a declaratory judgment, a moving party must show the following essential elements: 1) a real controversy exists between the parties; 2) the controversy is justiciable in character; and 3) speedy relief is necessary to preserve the rights of the parties.<sup>1</sup>

Given the facts as admitted in the pleadings and Joint Stipulations, the Court finds that all three elements have been met.

### **Initiative Healthcare Ordinance is Void**

North Canton has been a charter municipality since November 8, 1960. The Charter specifically adopts and incorporates the provisions of the Constitution and laws of Ohio regarding initiative petitions and setting compensation for council. The initiative provision contained in the Charter provides as follows,

(1) INITIATIVE. The electors of the municipality shall have the power to propose ordinances and other measures by initiative petition in

---

<sup>1</sup> *Wymsyulo v. Bartec, Inc.*, 132 Ohio St.3d 167, 176, 2012-Ohio-2187.

accordance with the provisions of the Constitution and laws of Ohio now or hereafter in effect. Article V, Section 5.07(1).

The initiative power is, without doubt, an important component of a democratic government. However, the power is not without limitation. It is a well-settled principle that that a municipal ordinance in conflict with its charter is void.<sup>2</sup> This is true whether passed by the legislative body or initiated by the electorate.<sup>3</sup> North Canton's Charter provides as follows:

The Council shall have the power to fix the 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 of commission of the municipality, wither elected, appointed, or chosen. Article IV, Section 4.04.

Defendants contend that because Section 4.04 does not say that Council shall have **exclusive** power, the power of both city council and the people to legislate compensation runs concurrent. The Court is not persuaded by this argument. North Canton's charter does not conflict with Ohio's statutes regarding City Council setting compensation levels and with initiative actions.<sup>4</sup> Additionally, "[m]unicipal charters must be construed to give effect to all separate provisions and to harmonize them with statutory provisions whenever possible."<sup>5</sup> In applying these principles, the Court finds that 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 members.

---

<sup>2</sup> *Reed v. City of Youngstown*, 173 Ohio St. 265 (1962).

<sup>3</sup> *Id.*

<sup>4</sup> See, ORC §§ 731.08 and 731.31.

<sup>5</sup> *State ex rel. Comm. For the Proposed Ordinance to Repeal Ordinance No. 146-02, W. End Blight Designation v. Lakewood*, 100 Ohio St.3d 252, 2003-Ohio-5771.

The Supreme Court of Ohio has spoken to the issues before this Court. In *State ex rel. Werner v. Koontz*, the Supreme Court examined an initiative petition for a proposed ordinance that five men filed with the City of Columbus Clerk of Council.<sup>6</sup> The initiative petition contained provisions fixing a minimum number of officers, members, and employees of the fire and police departments and fixing their minimum salaries.<sup>7</sup> After examining the initiative petition with respect to the Columbus Charter, the Court found that the charter provided that the city council shall fix the salary or compensation of council members, the mayor, and all other officers and employees. The Court found that “[I]t is perfectly plain that the designated proposed ordinance if adopted would be directly contra to the charter’s compensation provision.”<sup>8</sup> The Court held that the initiative was actually a proposed charter amendment, cloaked “under the guise of initiating and adopting an ordinance.”<sup>9</sup> The Court went on to say that any amendment to the charter could be effected only in the manner prescribed by the charter. Likewise, if the North Canton electorate wishes to amend the Charter, it may, but the proper procedure must be followed.

Based upon the foregoing, the Court finds that the Initiative Healthcare Ordinance is invalid because it conflicts with the North Canton Charter. Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED** that Defendants’ Initiative Healthcare Ordinance is void, ab initio. Because Defendants’ remaining claims are contingent upon the validity of the ordinance, those claims are hereby **DISMISSED**. **This is a final appealable order and there is no just cause for delay.**

---

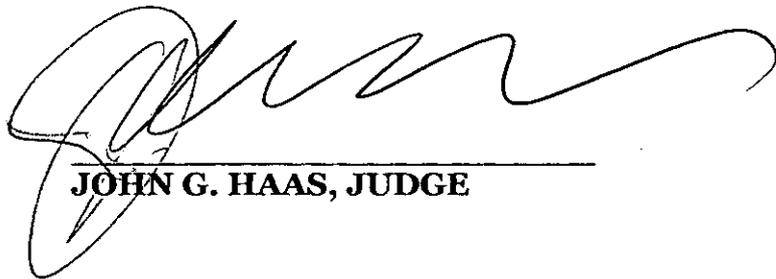
<sup>6</sup> 153 Ohio St. 325, 326 (1950).

<sup>7</sup> *Id.* at 331.

<sup>8</sup> *Id.* at 332.

<sup>9</sup> *Id.*

**IT IS SO ORDERED.**



**JOHN G. HAAS, JUDGE**

To: Atty. Timothy L. Fox  
Atty. Neil D. Schor  
Atty. Robert Cyperski  
Atty. James R. Vaughn