

IN THE SUPREME COURT OF OHIO

CHARLES OSBORNE,	:	Case No. 2014-1527
	:	
Appellant,	:	On Appeal from the Stark
	:	County Court of Appeals,
v.	:	Fifth Appellate District
	:	
CITY OF NORTH CANTON,	:	Court of Appeals
	:	Case No. 2013 CA 00246
Appellee.	:	

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MEMORANDUM IN OPPOSITION OF JURISDICTION  
APPELLEE CITY OF NORTH CANTON

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## **I. INTRODUCTION.**

Appellant Charles Osborne presents no compelling reason why this Court should grant jurisdiction to hear his appeal. The genesis of this case is that he challenged North Canton City Council's authority to designate one of its ordinances, Ordinance 47-13, as an emergency. He did not allege (1) that it passed the ordinance in contravention of its own laws; (2) that its laws are insufficient or not well defined; or (3) that City Council did not state the reason for the ordinance or the necessity of its urgency. Appellant disagrees only with the soundness of City Council's decision in declaring the emergency, together with both the trial and court of appeals' decisions, and he now seeks jurisdiction from this Court in hopes of re-litigating the matter. To Appellant, an emergency ordinance is invalid if it does not "sound like an emergency."

While this case may be one that is of interest to the parties themselves, it is not one that reaches the threshold of public or great general interest. Appellant's issue is not novel; it does not present a critical issue of constitutional or statutory law requiring this Court's consideration; and it does not present an unsettled or conflicting issue in Ohio's district courts of appeals. Indeed, this Court and Ohio's district courts of appeals have examined Appellant's issue on countless occasions and provided Ohio's trial courts with a well-settled legal framework to evaluate municipal legislation. Therefore, this Court should decline jurisdiction over this matter.

## **II. WHY THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST.**

This case results from Appellant Charles Osborne's allegation that North Canton City Council did not have a valid reason for declaring an ordinance was an emergency; his issue is neither novel nor unsettled. And although Appellant's Memorandum in Support of Jurisdiction presents wildly inflated—*incorrect*—emergency ordinance rates, together with an impassioned plea that our courts have ignored their constituents, the facts demonstrate that Ohio's General

Assembly, this Court, and Ohio’s district courts of appeals have provided our trial courts with a clear legal framework for analyzing emergency legislation.

Indeed, this Court and Ohio’s district courts of appeals have analyzed Appellant’s issue on several occasions and in each instance held that “[d]etermining the emergency and necessity for immediate operation is a legislative function.” *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 145, 519 N.E.2d 347 (1988), citing *State ex rel. City of Fostoria v. King*, 154 Ohio St. 213, 94 N.E.2d 697 (1950), paragraph four of the syllabus; *Taylor v. London*, 88 Ohio St.3d 137, 723 N.E.2d 1089 (2000) fn. 3. A court’s role is not to review a municipality’s determination of whether an emergency exists—that duty and responsibility vests solely with the municipal legislature. *Jurcisin* at paragraph three of the syllabus. The court’s role is to determine whether the municipal legislature complied with the legal framework allowing emergency legislation. *City of Youngstown v. Aiello*, 156 Ohio St. 32, 37, 100 N.E.2d 62 (1951).

Had Appellant evaluated Ordinance 47-13 not by “whether it sounds like an emergency,” but instead by the emergency legislation standards described in Article II, Section 1d of Ohio’s Constitution, R.C. 731.30, North Canton’s charter, and the guidance provided by this Court, he should have concluded that it complies with all four. North Canton’s ordinances and resolutions are presumed valid, and this 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, 658 N.E.2d 241 (1995).

Appellant’s sole Proposition of Law for this Court’s consideration is, “The language of an emergency ordinance must be sufficiently specific to adequately apprise the voters of the true nature of the emergency.” Appellee does not disagree with this proposition. Indeed, Ordinance

47-13 clearly states its purpose, “*establishing the rate of compensation for elected officials of the City of North Canton, Ohio, effective December 1, 2013*” and the necessity for its urgency, “*to meet the Stark County Board of Elections filing deadline for the November 5, 2013 General Election.*” Both the Stark County Court of Common Pleas and the 5<sup>th</sup> District Court of Appeals agree and found that Ordinance 47-13 states its purpose and reason for its urgency according to the legal standard, that being with enough detail to apprise “voters ‘that their representatives did have valid reasons for the necessity of declaring that the ordinance was an emergency.’” *State ex rel. Moore v. Abrams*, 62 Ohio St.3d 130, 133, 580 N.E.2d 11 (1991), quoting *Fostoria*, 154 Ohio St. at 220-221, 94 N.E.2d 697.

Appellant disagrees, however, and believes that emergency ordinances require a level of specificity greater than that required by Ohio’s Constitution, our statutory rules, applicable charter provisions, and our appellate courts. Appellant refuses to concede that a court should not find an emergency ordinance fails to comply with Ohio’s statutory law, R.C. 731.30, simply because its rationale may appear inarticulate, *Moore* at 133, or that, provided the ordinance sets forth a reason that is not “purely conclusory, tautological, or illusory,” it satisfies R.C. 731.30’s emergency requirements and the common law. *Id.* at 132-133.

This Court has already held that a municipal ordinance, which provided the reason for its emergency clause was “the imminence of the next election date,” “clearly stated the reason [it] was to go into effect immediately: *The ordinance had to become effective immediately to be certified to the election authorities for placement on the November 6 ballot.*” (Emphasis added.) *Jurcisin*, 35 Ohio St.3d at 146, 519 N.E.2d 347. Appellant’s dispute with this Court’s holding in *Jurcisin*, with the trial and court of appeals’ decisions herein, and with this Court’s long-held legal framework to evaluate emergency ordinances, does not elevate this case to one of public or

great general interest. Therefore, Appellee respectfully requests Appellant's appeal for jurisdiction be denied.

Manifestly this court cannot go outside of the provisions of the act and the facts which it judicially knows for the purpose of ascertaining whether the Legislature had valid reasons for declaring this to be an emergency law. Primarily this is a legislative, and not a judicial, policy, and the subject-matter comes naturally within the legislative, and not the judicial, field. We should hesitate to determine judicially that the lawmakers of the state had violated their oaths by making a false statement in their declaration of emergency.

*State ex rel. Durbin v. Smith*, 102 Ohio St. 591, 598-599, 133 N.E. 457 (1921).

### **III. ARGUMENT IN RESPONSE TO APPELLANT'S PROPOSITION OF LAW: NORTH CANTON'S ORDINANCE COMPLIES WITH OHIO'S STATUTORY LAW, ITS CHARTER, AND THE COMMON LAW.**

Appellant raised only a single Proposition of Law for this Court's consideration: "The language of an emergency ordinance must be sufficiently specific to adequately apprise the voters of the true nature of the emergency." Appellant also alleges, however, that North Canton passes too many emergency ordinances and provides the Court with vastly overstated emergency ordinance rates. Appellant further alleges North Canton passed Ordinance 47-13 in a "hurried manner," but failed to inform the Court that, in fact, it met on five occasions during the three-week period between introducing the legislation and enacting it; that it gave the legislation two public readings; and that it debated the issue publicly on three occasions and discussed it once in executive session. Thus, a review of Appellant's complaint, together with the subsequent pleadings and memoranda reveal that his true contention is not with timing, but simply that he insists legislation affecting elected officials' compensation may never lawfully be passed with an emergency measure because it does not *sound like an emergency*.

Whether or not legislation sounds like a valid emergency is not relevant to the analysis. *Fostoria*, 154 Ohio St. at 220-221, 94 N.E.2d 697 (because emergency legislation provisions

safeguard referendum rights by requiring substantially more than a majority vote to enact the legislation). Appellant should have evaluated the ordinance not by “whether it sounds like a valid emergency,” but instead by the emergency measure standards described in Article II, Section 1d of Ohio’s Constitution, R.C. 731.30, North Canton’s Charter, and this Court’s case law. Indeed, North Canton’s ordinances and resolutions are presumed valid, and this 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.” *Waldick*, 74 Ohio St.3d at 193, 658 N.E.2d 241.

Appellant demands a personal level of scrutiny not even provided to our courts: if validly enacted, “the existence of an emergency or the soundness of [the] reasons” presented for “declaring the emergency” are not even within the purview of the reviewing court. *Fostoria* at 220. A court’s role is not to review a municipality’s determination of whether an emergency exists—that duty and responsibility vests solely with the municipal legislature. *Jurcisin*, 35 Ohio St.3d 137, 519 N.E.2d 347 at paragraph three of the syllabus. The court’s role is to determine only whether the municipal legislature complied with the legal framework allowing emergency municipal legislation. *Aiello*, 156 Ohio St. at 37, 100 N.E.2d 62, 100; *State ex rel. State ex rel. Laughlin v. James*, 115 Ohio St.3d 231, 2007-Ohio-4811, 874 N.E.2d 1145, ¶ 28.

“The statutory requirement of stating reasons for declaring the emergency is provided only to satisfy voters that their representatives did have valid reasons for the necessity of declaring that the ordinance was an emergency. If there was in fact no emergency or if the reasons given for such necessity are not valid reasons, the voters have an opportunity to take

appropriate action in the subsequent election of their representatives.” *Moore*, 62 Ohio St.3d at 132, 580 N.E.2d 11, quoting *Fostoria*, 154 Ohio St. at 220-221, 94 N.E.2d 697.

**A. North Canton’s ordinance exceeds Ohio’s statutory requirements and complies with its municipal charter.**

Article II, Section 1d of Ohio’s Constitution and R.C. 731.30 dictate the scope of legislation and provide that legislative bodies may enact emergency legislation necessary for the immediate preservation of the public peace, health, or safety, and which “shall go into immediate effect” upon “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 states that “Each emergency resolution and ordinance shall contain a statement of the necessity for such emergency action, and its enactment shall require the affirmative vote of at least six (6) members of Council.” Charter. Section 2.05. Legislative Procedure. Thus, in contrast to the two-thirds vote required under Ohio’s Constitution and R.C. 731.30, North Canton’s charter requires a “super majority” to pass legislation with an emergency measure.

R.C. 731.30 also provides a duty to set forth the reasons for an emergency measure in one section of the ordinance and this Court held that failing to do so prevents the ordinance from taking immediate effect. *Aiello*, 156 Ohio St. 32, 100 N.E.2d 62, paragraph 2 of the syllabus. And a plain reading of Ordinance 47-13 reveals both its purpose, *to establish the compensation rates for future elected officials effective December 1, 2013*, and the necessity for its urgency, *to meet the Stark County Board of Election’s filing requirements for the November 5, 2013, General Election*.

As a result of (1) clearly describing the reason for the ordinance and the necessity for the emergency measure; (2) complying with North Canton’s super-majority vote requirement; and

(3) having the ordinance take effect immediately to comply with the Board of Election and charter's filing deadlines, Ordinance 47-13 fully complies with Ohio's Constitution, R.C. 731.30, and North Canton's charter.

**B. North Canton's ordinance complies with the common law.**

Ohio's common law requires that municipal legislative bodies set forth the reasons for an emergency measure and the basis therefore with *some* specificity. *Waldick*, 74 Ohio St.3d at 195, 658 N.E.2d 241. "The statutory requirement of stating reasons for declaring the emergency is provided only to satisfy voters that their representatives did have valid reasons for the necessity of declaring that the ordinance was an emergency." *Laughlin*, 115 Ohio St.3d 231, 2007-Ohio-4811, 874 N.E.2d 1145, at ¶ 27, quoting *Fostoria*, 154 Ohio St. at 220-221, 94 N.E.2d 697; *Moore*, 62 Ohio St.3d at 132, 580 N.E.2d 11. The failure to set forth any reason for the emergency measure or to do so "by including purely conclusory, tautological, or illusory language in the emergency measure" does not meet the minimum requirements of R.C. 731.30. *Laughlin* at ¶ 28; *Moore* at 132-133.

Although emergency measures seek to address situations requiring a prompt response, specific language that their enactment is an immediate necessity is not required. *Laughlin* at ¶ 32. In addition, a court should not find an ordinance illusory or tautological simply because it appears inarticulate. *Moore* at 133. Indeed, courts have found emergency measures to be illusory or tautological only when the reasons and necessities appear so vague that they "fail to apprise the voters that their representatives did have valid reasons for the necessity of declaring that the ordinance was an emergency." *Id.*

*Walsh v. Cincinnati City Council* provides an example of "illusory or tautological" legislation in that the court found the stated reason for the emergency provision was that it was

declared an emergency, “because it was an emergency.” 54 Ohio App.2d 107, 112, 375 N.E. 2d 811 (1st Dist.1977), paragraph one of the syllabus. Ohio’s appellate courts have cited *Walsh* 13 times—three of those being this Court—as an example of an emergency measure that is “tautological or illusory.” *State ex rel. Webb v. Bliss*, 99 Ohio St.3d 166, 789 N.E. 2d 1101, 2003-Ohio-3049, ¶ 17; *Waldick*, 74 Ohio St.3d at 195; *Moore*, 62 Ohio St.3d at 133. And in *Aiello*, this Court held that the municipal ordinance was not an emergency because the legislation provided absolutely no reason for the necessity. 156 Ohio St. 32, 100 N.E.2d 62, at paragraph 3 of the syllabus.

In *Moore*, however, this Court, in a per curiam decision, held that although the reason stated for the municipality’s emergency ordinance was inarticulate, 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, 580 N.E.2d 11. 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 measure was that the village was unable to maintain three positions due to a lack of funds, so “the ordinance is an emergency as it affects 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, \*2 (May 9, 1995).

More recently, the Fifth District Court of Appeals held that a City of Alliance municipal ordinance, declared to be an emergency “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-Ohio-5261, ¶ 41-42. Moreover, an Ohio appellate court found that an emergency ordinance passed *for the purpose of granting pay increases for elected officials*, stated the reasoning for the emergency in sufficient detail, was not conclusory, illusory, or tautological, and because it also took effect within a week of its passage, fully satisfied necessary emergency legislative requirements. *City of Warren ex rel. Bluedorn v. Hicks*, 124 Ohio App.3d 621, 624, 627, 707 N.E.2d 15 (11th Dist.1997).

The circumstances surrounding Ordinance 47-13 closely align with those in *Jurcisin v. Cuyahoga County Board of Elections* where the City of Cleveland's ordinance stated that the reason for the emergency clause was that the ordinance had to be certified to county election authorities immediately in order for the proposed charter amendment to appear on the election ballot. 35 Ohio St.3d at 146, 519 N.E.2d 347. This Court held that the ordinance "clearly stated the reason [it] 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.*

As in *Jurcisin*, North Canton City Council placed an emergency measure in Ordinance 47-13 "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," which was 90 days prior to the November 5, 2013, General Election. In addition, North Canton's Charter requires 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 compensation rates 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 the ordinance's emergency measure, *to establish the compensation rates for future elected officials effective December 1, 2013*, and because the ordinance took effect immediately to satisfy the Stark County Board of Election's and the Charter's filing requirement, the ordinance satisfies Ohio's Constitutional and statutory requirements and North Canton's charter requirements. And by stating the reason for the urgency for the emergency measure, *to meet the Stark County Board of Election's filing requirements for the November 5, 2013, General Election*, which is not conclusory, illusory, or tautological, the ordinance fully satisfied the common law requirements of this Court. As a result, Ordinance 47-13 constitutes valid emergency legislation.

**C. Emergency legislation is not subject to referendum.**

Appellant declared Ordinance 47-13 invalid because it was enacted with an emergency clause solely to undermine the right of referendum. Although North Canton vehemently denies this allegation, his argument is not well reasoned as this Court held—*time and again*—that pursuant to Article II, Section 1d of Ohio's Constitution and R.C. 731.30, Ohio law provides a municipal council the ability to defeat a referendum by enacting legislation with an emergency measure. *Laughlin*, 115 Ohio St.3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 at ¶ 37 (holding that council was not precluded from declaring the ordinance an emergency based on an intent to defeat a referendum); *State ex rel. Tester et al. v. Board of Elections of Ottawa County*, 174 Ohio St. 15, 17, 185 N.E. 762 (1962) (holding that council can defeat the right to a referendum by enacting an emergency measure); *Taylor*, 88 Ohio St.3d 137, 723 N.E.2d 1089, at fn. 3

(municipalities are not prohibited from circumventing a referendum by passing an ordinance to repeal the ordinance under referendum and passing another to reenact the substantially the same ordinance as repealed).

North Canton Ordinance 47-13 contains more than sufficient detail to be enacted with an emergency measure. The reason for its emergency is not conclusory, illusory, or tautological, and it took effect immediately upon passage. Having fully complied with Ohio's Constitution, R.C. 731.30, Ohio's common law, and North Canton's charter requirements for emergency legislation, Ordinance 47-13 is subject to neither referendum nor further review.

#### IV. CONCLUSION.

For the foregoing reasons, Appellee, City of North Canton, submits that this case involves no unsettled issues or issues of public or great general interest, and therefore, requests this Court deny jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition of Jurisdiction was served by ordinary U.S. Mail, postage pre-paid, this 24th day of September, 2014, to counsel for Appellant, Charles Osborne, at the following addresses:

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