

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

~~ORIGINAL~~
FILED
NOV 22 2013
NANCY S. REINBOLD
STARK COUNTY OHIO
CLERK OF COURTS

CHARLES OSBORNE,
Plaintiff,

CASE NO. 2013CV02037

v.

JUDGE HAAS

CITY OF NORTH CANTON,

Defendant.

JUDGMENT ENTRY

Presented for filing 11/22/13
Time Stamp Omitted in Error.
Algraga

This matter came on for consideration upon a Motion to Dismiss filed by Defendant, City of North Canton. Plaintiff filed a Response. Thereafter, North Canton filed a Reply Memorandum.

Standard

Specifically, North Canton moves this Court to dismiss Plaintiff's Complaint pursuant to Civil Rule 12(B)(6). Under Ohio Civ. R. 12(B)(6), a party may move to dismiss a complaint or counterclaim for failure to state a claim upon which relief may be granted. When construing a complaint or counterclaim upon a motion to dismiss for failure to state a claim, it is presumed that all factual allegations contained therein are true and it must appear beyond doubt that the party can prove no set of facts warranting recovery.¹ When a court considers matters outside the pleadings, it is converting a Rule 12(B)(6) motion into a Rule 56 motion for summary judgment.² Thus, this Court must accept as true the allegations of Plaintiffs' Complaint and any decision must be made entirely from facts alleged therein.

¹ *Tulloh v. Goodyear Atomic Corp.* (1992), 62 Ohio St. 3d 541.

² *State ex rel. Baran v. Fuerst* (1990), 55 Ohio St. 3d 94.

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Background

On July 8, 2013, the Defendant, City of North Canton's City Council, passed ordinance number 47-13 which "established the rates of compensation for elected officials of the City of North Canton, Ohio, effective December 1, 2013." The ordinance was passed with an emergency provision. The reason stated for the emergency provision was, "to meet the Stark County Board of Election's filing requirements for the November 5, 2013 general election." The ordinance was signed into law by North Canton's mayor on that same day.

Plaintiff alleged in his complaint that Defendant's municipal ordinance number 47-13 is invalid because it fails to specify or justify the necessity of its emergency clause. Plaintiff further alleges that the "ordinance was passed under false premises of emergency legislation" to prevent the right of referendum, and therefore is unconstitutional.

Relevant Statutes

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."

In *State ex rel. Moore v. Abrams*, the Supreme Court held " '[w]here an ordinance, passed by the council of a municipality, is declared to be an emergency in accordance with 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.’ ”³ “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.”⁴

Revised Code 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.⁵

North Canton Ordinance 47-13

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 of office or any part thereof.” Charter Section 4.04. Salaries and Bonds. Without the ordinance, 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. Mayor.

The Fifth District Court of Appeals has held that a municipal ordinance, which stated that the reason for an emergency provision was that the village was unable to

³ (1991), 62 Ohio St.3d 130, quoting *Jurcisin v. Cuyahoga Cty. Bd. Of Elections* (1988), 35 Ohio St.3d 137.

⁴ *Moore* at 132.

⁵ State ex rel. *Waldick v. Williams*, 74 Ohio St.3d 192 (1995).

maintain three positions due to a lack of funds, which affected the economic well-being of the village was sufficient to meet the requirements of R.C. 731.30.⁶ Likewise, the Eleventh District Court of Appeals 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 legislative requirements.⁷

Upon review, this Court finds that the reasoning for the emergency is stated with sufficient detail, and is not conclusory, illusory, or tautological. Further, council's ordinances took effect immediately upon its passage to satisfy the requirements of the Charter and the Stark County Board of Election's filing deadline, thus it satisfies the immediacy requirement.

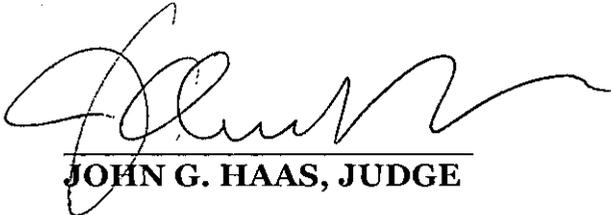
Upon review of the pleadings, and accepting the allegations contained in Plaintiff's Complaint as true, this Court can say beyond doubt that the Plaintiff can prove no set of facts warranting the relief sought. Accordingly, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Dismiss is hereby **GRANTED**. **This is a final appealable order and there is no just cause for delay.**

⁶ *Gillespie v. Village of Crooksville*, 5th Dist. No. CA-482, 1995WL495276.

⁷ *City of Warren ex rel. Bluedorn v. Hicks*, 124 Ohio App.3d 621, 627.

IT IS SO ORDERED.



JOHN G. HAAS, JUDGE

To: Atty. Robert Cyperski
Atty. Timothy L. Fox