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State ex rel. Board of Comm'rs v. Tablack

Supreme Court of Ohio

July 28, 1999, Submitted ; September 1, 1999, Decided

No. 99-261

Reporter

86 Ohio St. 3d 293 *; 714 N.E.2d 917 **; 1999 Ohio LEXIS 2651 ***; 1999-Ohio-103

THE STATE EX REL. BOARD OF COMMISSIONERS OF MILL CREEK **METROPOLITAN PARK DISTRICT**, APPELLEE, v. TABLACK, AUDITOR, ET AL.; CITY OF CAMPBELL ET AL., APPELLANTS.

Subsequent History: [***1] As Amended December 30, 1999.

Prior History: APPEAL from the Court of Appeals for Mahoning County, No. 97 CA 240.

Disposition: Judgment affirmed.

Core Terms

ordinances, municipal, park district, local self-government, powers, mandamus, auditor, taxes

Case Summary

Procedural Posture

Appellant municipalities sought review of a decision of the Court of Appeals for Mahoning County (Ohio) finding that appellants' **ordinances** exempting residents from a previously approved tax were unconstitutional and granting a writ of mandamus sought by appellee **park district**.

Overview

The court of appeals determined that appellants' **municipal ordinances** withdrawing the municipalities from appellee **park district** and exempting their residents from appellee's previously approved tax were unconstitutional and that appellants, two municipalities, did not have an adequate legal remedy by way of a declaratory judgment action. The appeals court granted appellee **park district**'s motion for

summary judgment and writ of mandamus. The supreme court determined that appellants' **ordinances** withdrawing the municipalities from appellee **park district** and exempting their residents from appellee's previously approved tax were unconstitutional. The supreme court rejected appellants' claim that their **ordinances** were enacted pursuant to their powers of local self-government under the Ohio Home-Rule Amendment, [Ohio Const. art. XVIII, § 3](#), and found that the **ordinances** were unconstitutional because they did not involve the exercise of appellant municipalities' powers of local self-government and they conflicted with the general laws in [Ohio Rev. Code Ann. § 1545](#). The supreme court declared the **ordinances** invalid.

Outcome

The court affirmed the judgment granting the writ of mandamus sought by appellee **park district** and finding that appellant municipalities' **ordinances** that withdrew the municipalities from appellee **park district** and exempted their residents from appellee's previously approved tax were unconstitutional because the **ordinances** did not involve appellants' exercise of **municipal** powers of local self-government.

LexisNexis® Headnotes

Constitutional Law > State Constitutional Operation

Governments > Local

Governments > Ordinances & Regulations

[HN1](#) [Download]

Constitutional Law, State

Constitutional Operation

In order to determine if a **municipal ordinance** is invalidated by [Ohio Rev. Code Ann. § 1545](#) the court must resolve whether the challenged **ordinance** involves the exercise of powers of local self-government, the state statutes are general or special laws, and if there is any conflict between the **ordinances** and state law.

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Ordinances & Regulations

[HN2](#) [↓] **Constitutional Law, State Constitutional Operation**

To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly.

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Ordinances & Regulations

[HN3](#) [↓] **Common Law Writs, Mandamus**

The constitutionality of a statute or **ordinance** may in certain circumstances be challenged by mandamus.

Civil Procedure > Judgments > Declaratory Judgments > General Overview

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

Civil Procedure > Remedies > Injunctions > Mandatory Injunctions

Civil Procedure > Remedies > Writs > General Overview

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

[HN4](#) [↓] **Judgments, Declaratory Judgments**

In general, if declaratory judgment would not be a complete remedy unless coupled with extraordinary ancillary relief in the nature of a mandatory injunction, the availability of declaratory judgment does not preclude a writ of mandamus.

Headnotes/Summary

Headnotes

Parks -- *Withdrawal of municipalities from a **park district** -- Mandamus to compel Mahoning County Auditor and Mahoning County Treasurer to continue assessing, collecting, and paying Board of **Park** Commissioners of Mill Creek **Metropolitan Park District** the **park** tax on all taxable real estate in the city of Campbell and the municipality of Sebring -- Writ granted, when.*

[*293] On May 3, 1988, Mahoning County electors approved the conversion of the Youngstown Township **Park District** to the Mill Creek **Metropolitan Park District** ("**Park District**") pursuant to the procedure specified in [R.C. 1545.041](#).¹ The geographic boundaries of

¹ [R.C. 1545.041](#) provides:

"(A) Any township **park district** created pursuant to [section 511.18 of the Revised Code](#) that includes **park** land located outside the township in which the **park district** was established may be converted under the procedures provided in this section into a **park**

the **Park District** are the same as the boundaries of Mahoning County. At the same election, Mahoning County electors also approved a tax for the operation and maintenance of the **Park District**. The tax [*294] was to be levied on all taxable real estate within the county at a rate not to exceed \$ 1.9 mills for each dollar of valuation for a period of fifteen years, beginning with the 1988 tax year.

[***2] At the November 1997 general election, electors of appellants, the city of Campbell and the municipality of Sebring, approved **ordinances** amending their charters to provide for the withdrawal of the municipalities from the **Park District** and the

district to be operated and maintained as provided for in this chapter, provided that there is no existing **park district** created under [section 1545.04 of the Revised Code](#) in the county in which the township **park district** is located. The proposed **park district** shall include within its boundary all townships and **municipal** corporations in which lands owned by the township **park district** seeking conversion are located, and may include any other townships and **municipal** corporations in which lands owned by the township **park district** seeking conversion are located.

"(B) Conversion of a township **park district** into a **park district** operated and maintained under this chapter shall be initiated by a resolution adopted by the board of **park** commissioners of the **park district**. * * * The resolution may also include a proposed tax levy for the operation and maintenance of the proposed **park district**. * * *

"(C) Upon adoption of the resolution provided for in division (B) of this section, the board of **park** commissioners of the township **park district** seeking conversion under this section shall certify the resolution to the board of elections of the county in which the **park district** is located * * * . * * * The question shall provide for a tax levy if such a levy is specified in the resolution.

" * * *

"(E) If the proposed conversion is approved by at least a majority of the electors voting on the proposal, the township **park district** that seeks conversion shall become a **park district** subject to [Chapter 1545. of the Revised Code](#) effective the first day of January following approval by the voters. * * * "

exemption of their residents from the payment of any **Park District** tax levied under [R.C. Chapter 1545](#). Campbell and Sebring are both located in the **Park District**. Campbell and Sebring claimed that these **ordinances** were authorized by their constitutional home-rule powers.

Shortly after the November 1997 election, appellee, Board of Commissioners of the **Park District** ("board"), filed a complaint in the Court of Appeals for Mahoning County for a writ of mandamus to compel the Mahoning County Auditor and Mahoning County Treasurer to continue assessing, collecting, and paying the board the **Park District** tax, including the tax on all taxable real estate in Campbell and Sebring. The board claimed that the Campbell and Sebring **ordinances** amending their charters were unconstitutional because they conflicted with [R.C. Chapter 1545](#). The court of appeals granted the auditor and treasurer's motion to join Campbell and Sebring as respondents, and Campbell [*3] and Sebring filed motions to dismiss and for summary judgment. Campbell and Sebring filed affidavits of their mayors in support of their motions. The board also filed a motion for summary judgment.

In December 1998, the court of appeals granted the board's motion for summary judgment and granted the writ of mandamus. The court of appeals determined that the Campbell and Sebring **ordinances** were unconstitutional and that the board did not have an adequate legal remedy by way of a declaratory judgment action.

This cause is now before the court upon an appeal as of right.

Counsel: Manchester, Bennett, Powers & Ullman, John F. Zimmerman, Jr. and Thomas J. Lipka, for appellee.

Brian J. Macala, Campbell Law Director, for appellant city of Campbell.

Nadler, Nadler & Burdman Co., L.P.A., and Robert S. Hartford, Jr., for appellant municipality of Sebring.

Kincaid, Randall & Craine and Samuel B. Randall, urging affirmance for amicus curiae, Columbus and Franklin County **Metropolitan District**.

Baker & Hostetler L.L.P., Elliot S. Azoff and Todd

A. Dawson, urging affirmance for amicus curiae, Cleveland **Metropolitan Park District** Board of **Parks** Commissioners.

[***4] Spengler Nathanson, P.L.L., and B. Gary McBride, for amici curiae, Toledo Area **Metropolitan Park District** and Hamilton County **Park District**.

Judges: MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

Opinion

[*295] [**919] **Per Curiam.** Campbell and Sebring assert that the court of appeals erred in granting the writ of mandamus because the board did not establish any of the requirements for issuance of the writ. In order to be entitled to a writ of mandamus, the board had to establish a clear legal right to the requested relief, a clear legal duty on the part of the auditor and treasurer to provide this relief, and the lack of an adequate remedy in the ordinary course of law to compel them to perform the requested acts. [State ex rel. Fattlar v. Boyle \(1998\), 83 Ohio St. 3d 123, 125, 698 N.E.2d 987, 988.](#)

Regarding the first two requirements for the writ, the dispositive issue is whether Campbell's and Sebring's **ordinances** withdrawing the municipalities from the **Park District** and exempting their residents from the previously approved **Park District** tax are unconstitutional. Campbell and Sebring claim that their **ordinances** were enacted [***5] pursuant to their powers of local self-government under the Home-Rule Amendment, which authorizes Ohio municipalities "to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." [Section 3, Article XVIII, Ohio Constitution; Linndale v. State \(1999\), 85 Ohio St. 3d 52, 54, 706 N.E.2d 1227, 1229.](#) The board counters that the **ordinances** are invalid because they were not enacted pursuant to the municipalities' powers of local self-government and they conflict with the general, state laws in

[R.C. Chapter 1545.](#)

HN1[↑] In order to determine if the **municipal ordinances** are invalidated by [R.C. Chapter 1545](#), we must resolve whether (1) the challenged **ordinances** involve the exercise of powers of local self-government, (2) the state statutes are general or special laws, and (3) there is any conflict between the **ordinances** and state law. See [Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted \(1992\), 65 Ohio St. 3d 242, 244-245, 602 N.E.2d 1147, 1149-1150; Fairview Park v. Barefoot Grass Lawn Serv., Inc. \(1996\), 115 Ohio App. 3d 306, 310, 685 N.E.2d 300, 302, \[***6\] discretionary appeal not allowed \(1997\), 77 Ohio St. 3d 1544, 674 N.E.2d 1184.](#) For the reasons that follow, we conclude that the Campbell and Sebring **ordinances** are unconstitutional because they did not involve the exercise of the municipalities' powers of local self-government and they conflict with the general laws in [R.C. Chapter 1545.](#)

The first inquiry requires an analysis of whether the **ordinances** were enacted pursuant to the municipalities' powers of local self-government. We have applied the following test:

[*296] "To **HN2**[↑] determine whether legislation is such as falls within the area of local self-government, the result of such legislation or [***920] the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly." [Beachwood v. Cuyahoga Cty. Bd. of Elections \(1958\), 167 Ohio St. 369, 371, 5 Ohio Op. 2d 6, 7-8, 148 N.E.2d 921, 923; Kettering v. State Emp. Relations Bd. \(1986\), 26 Ohio St. 3d 50, 54, 26 Ohio B. Rep. 42, 45-46, 496 N.E.2d 983, 987. \[***7\]](#)

The Campbell and Sebring **ordinances** were not enacted pursuant to their powers of local self-government because the **ordinances** have manifest extraterritorial effects, *i.e.*, they exempt the municipalities' citizens from taxes intended to benefit the larger **Park District**, which has boundaries coextensive with the

county.

In next determining whether the provisions of [R.C. Chapter 1545](#), which provide for **park districts**, are general or special laws, we find that **park districts** may exist in and affect people in every county in the state, and all of the people of the state are benefited by these **districts**. [Willoughby Hills v. Bd. of Park Commrs. of Cleveland Metro. Park Dist. \(1965\)](#), [3 Ohio St. 2d 49, 50, 32 Ohio Op. 2d 27, 28, 209 N.E.2d 162, 163](#); [State ex rel. Bryant v. Akron Metro. Park Dist. \(1929\)](#), [120 Ohio St. 464, 471, 166 N.E. 407, 409](#), affirmed (1930), [281 U.S. 74, 50 S. Ct. 228, 74 L. Ed. 710](#). See [Desenco, Inc. v. Akron \(1999\)](#), [84 Ohio St. 3d 535, 541-542, 706 N.E.2d 323, 330](#). Therefore, the provisions of [R.C. Chapter 1545](#), which empower Campbell and Sebring to determine their own geographic boundaries and to levy taxes [***8] to maintain and operate the **Park District**, are general rather than special laws. These general laws must be accorded a uniform operation throughout the state. [Section 26, Article II, Ohio Constitution](#); [Desenco, Inc.](#)

For the last determination of the three-part inquiry, the Campbell and Sebring **ordinances** also conflict with [R.C. Chapter 1545](#) because they permit Campbell and Sebring to withdraw from the **Park Districts** and exempt their residents from **Park District** taxes in contravention of [R.C. Chapter 1545](#). See [Struthers v. Sokol \(1923\)](#), [108 Ohio St. 263, 140 N.E. 519](#), paragraph two of the syllabus.

Therefore, the Campbell and Sebring **ordinances** are unconstitutional and invalid. The auditor and treasurer consequently had a duty under the Revised Code and the approved 1988 **Park District** tax to assess, collect, and disburse to the board the applicable tax from property in the entire **district**, including Campbell and Sebring.

In this regard, Campbell and Sebring's argument that they have no duty to perform the requested acts is irrelevant. The court of appeals merely joined them as respondents upon the request of the auditor and treasurer, so that they [*297] could assert [***9] their claims that the auditor and treasurer had no duty to collect **Park District** taxes on real estate in Campbell and

Sebring because of their **municipal ordinances** withdrawing them from the **Park District**.

In addition, Campbell and Sebring erroneously rely on the affidavits of their mayors concerning the intent of the General Assembly in its passage of [R.C. 1545.041](#) and the intent of the electorate in the passage of the challenged **municipal ordinances**. The challenged affidavits were not based on the personal knowledge of the affiants, [State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn. \(1994\)](#), [69 Ohio St. 3d 217, 223-224, 631 N.E.2d 150, 155](#); Civ.R. 56(E), were conclusory, [Fryberger v. Lake Cable Recreation Assn. \(1988\)](#), [40 Ohio St. 3d 349, 352-353, 533 N.E.2d 738, 742](#), and did not raise a genuine issue of material fact concerning the constitutionality of the **ordinances**. For example, the Campbell mayor did not specify that he had personal knowledge of the General Assembly's intent in enacting [R.C. 1545.041](#), and the fact that he was a state representative at least nine years *before* its [***10] enactment does not raise an inference of such personal knowledge. Similarly, the Sebring mayor did not, and could not, state that she had personal knowledge of the intent of each of the electors in voting for the **ordinance**.

Having shown its clear legal right of the board to the taxes and corresponding clear legal [***921] duty of the auditor and treasurer to assess, collect, and disburse to the board the taxes from the **district** property, the board had to establish the lack of an adequate remedy in the ordinary course of law in order to be entitled to the writ. [R.C. 2731.05](#). Campbell and Sebring claim that declaratory judgment, rather than mandamus, was the appropriate action to test the constitutionality of the **municipal ordinances**. We have recognized, however, that [HN3\[↑\]](#) the constitutionality of a statute or **ordinance** may in certain circumstances be challenged by mandamus. [State ex rel. BSW Dev. Group v. Dayton \(1998\)](#), [83 Ohio St. 3d 338, 345, 699 N.E.2d 1271, 1277](#).

Declaratory judgment would not be an adequate remedy here because it is not sufficiently complete. [HN4\[↑\]](#) In general, if declaratory judgment would not be a complete remedy unless coupled [***11] with extraordinary ancillary relief in the nature of a mandatory

injunction, the availability of declaratory judgment does not preclude a writ of mandamus. [State ex rel. Arnett v. Winemiller \(1997\), 80 Ohio St. 3d 255, 259, 685 N.E.2d 1219, 1222](#); see, also, [State ex rel. Huntington Ins. Agency, Inc. v. Duryee \(1995\), 73 Ohio St. 3d 530, 537, 653 N.E.2d 349, 355](#), citing [State ex rel. Fenske v. McGovern \(1984\), 11 Ohio St. 3d 129, 11 Ohio B. Rep. 426, 464 N.E.2d 525](#), paragraph two of the syllabus. Therefore, the board established that it lacked an adequate legal remedy because it would still need a mandatory injunction to compel the auditor and the treasurer not to abide by the challenged **ordinances**.

[*298] Based on the foregoing, the court of appeals correctly granted the writ. The board established all of the prerequisites for the issuance of a writ of mandamus. Accordingly, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

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