



Ohio Municipal League

Our Cities and Villages ★ Bringing Ohio to Life

MEMORANDUM

Date: April 19, 2005

To: House Transportation, Public Safety and Homeland Security Committee

From: Susan J. Cave, Executive Director

Subject: Opposition to HB 56

The purpose of this memorandum is to express the opposition of the Ohio Municipal League to HB 56 and request a “NO” vote.

After careful review we have concluded that the proposal is not a general law and merely represents another attempt by the General Assembly to preempt municipal powers granted by the Ohio Constitution. Enclosed is an opinion letter requested by me and prepared by OML Legal Counsel for the OML explaining why such a law if enacted would most likely be found unconstitutional.

Local resources have diminished because of a poorly performing economy for the past four years. In addition cuts in state assistance through the local government funds have occurred and further cuts have been proposed in this state budget. Municipalities need flexibility to allocate scarce resources especially for public safety. While traffic enforcement is very important, solving more serious felonies and providing homeland security may be considered more of a priority when the public safety work-force is faced with possible reduction in strength.

If you have questions, please feel free to contact me.

“The opinion expressed in this letter is directed only to the Ohio Municipal League and is not intended and may not be relied upon as legal advise to others. The issues discussed must be referred to the readers legal counsel for his or her views and advise if the reader seeks legal advise relative to HB 56. The letter appears on this website only as a method of explaining the reasons why the OML opposes HB 56.”

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April 18, 2005

Susan J. Cave
Executive Director
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Dear Ms. Cave:

I

You have asked me to review the provisions of HB 56 (the “Bill”), with respect to its validity when applied to municipal corporations.

After review of the applicable cases, some of which are set out below, it is my opinion that in a properly argued case correctly decided by the court the Bill is unconstitutional as violating the provisions of Article XVIII, Ohio Constitution, the home rule amendment. The remainder of this letter will be devoted to an explanation of the reasons for this opinion.

Section 3 of Article XVIII grants all powers of local self-government, including police powers to municipalities. There are two issues, and if the municipal point of view prevails in either event the Bill is unconstitutional.

II

The first issue is whether a municipality is engaged in a power of local self-government. I believe it goes without reviewing the case law at great length here that streets and the municipal control of its streets constitutes a power of local self-government.

When the state attempts to dictate its will upon municipalities, charter or non-charter, with respect to substantive matters as is the case here, the state statute would be invalid under Article XVIII, Section 3.

The regulation of municipal streets has been routinely held to be a matter of local concern, not of state-wide concern.

A landmark case for home rule authority in Ohio is Perrysburg v. Ridgeway, (1923), 108 Ohio St. 245, 140 N. E. 595. In it the Supreme Court recognized that Article XVIII, Section 3 directly conferred all “powers of local self-government” to municipalities, and required no further legislative authorization from the General Assembly. The power to control the use of streets, establish, improve and maintain and repair streets has been determined to be a power of local self-government that may not be limited or denied by statute.

The Bill can not be justified as a matter of statewide concern since all of the important interests are in favor of the municipalities with no impact outside the municipalities; the easiest of all circumstance to conclude is that the interest of the municipality far out weighs any state interest. In point of argument there really does not seem to be any interest the state may have in this matter.

III

The second issue is whether the Bill is an exercise of the state's regulatory or police power. Under Article XVIII Section 3, municipalities may “—enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” The case of Struthers v. Sokol, 108 Ohio St. 263 (1923) established the law which has been followed throughout the years as to what constitutes a conflict where a general law is involved. In Struthers v. Sokol, the Ohio Supreme Court held that the usual test for conflict is a matter of determining whether the local exercise of police power permits or licenses that which the statute forbids and prohibits and visa versa. But in order to constitute a conflict the state's law must be a “general law” as required in Section 3 of Article XVIII. In other words, a “general law” must create the conflict. Youngstown v. Evans, 121 Ohio St. 342 (1929), West Jefferson v. Robinson 1 Ohio St. 2d 113 (1965).

A law that purports to authorize or prohibit the exercise of police power is not a general law. To be a general law that will be recognized to create a conflict under Section 3 of Article XVIII, the statute must be a substantive exercise of the state's police power. The most recent case that nails down the concept that only a general law may create a conflict and defines what is meant by a general law is Canton v. State, 95 Ohio St. 3d 149, 2002 - Ohio <2005. The syllabus of the court sets out the requirement of a statute to constitute a general law.

“To constitute a general law for purposes of home-rule analysis, a statute must be part of (1) a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.”

It is my opinion that if the Bill is an exercise of the state's police power (regulatory powers) it is clearly not a general law. Rather it purports to regulate the police power of the municipalities of Ohio by providing in Division (B) (1) that “—no law enforcement agency shall use a traffic law photo-monitoring device to determine compliance with or to detect a violation of a municipal ordinance or any provisions of the Revised Code that governs or regulates the operation of motor vehicles.” That is an effort by the General Assembly to preempt municipal police power. The Bill is not a general law. The Bill is in violation of Article XVIII, Section 3 of the Ohio Constitution.

Respectfully submitted,

John E. Gotherman

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