

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: Supreme Court of Ohio

Case Name: *Lima v. State*, 2009-Ohio-2597

Decided: June 12, 2009

Issue(s): Residency requirements for employment with municipalities

Summary of Opinion: The cities of Lima and Akron both maintained ordinances establishing a residency requirement for city employees. Recently, Ohio Revised Code § 9.481 was enacted stating that “no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.” As a result, Lima and Akron both filed suit contending that the statute was unconstitutional under Section 34, Article II, of the Ohio Constitution because it does not provide for the comfort, health, safety, and welfare of employees. Moreover, Lima and Akron claimed that the statute interfered with the powers of local self-government guaranteed by Section 3, Article XVIII of the Constitution.

In the *Lima* case, the trial court granted summary judgment to the state, ruling that the statute was constitutional, but the court of appeals reversed, holding that R.C. § 9.481 did not concern employees and therefore, could not have been enacted pursuant to Section 34, Article II, of the Constitution. The procedural history of the *Akron* case basically mirrored that of *Lima*, with the trial court granting summary judgment for the state, and the appellate court reversing. The State appealed both decisions, and the appeals were consolidated.

The Ohio Supreme Court concluded that R.C. § 9.481 prevails over conflicting local laws because no other provision of the Constitution can limit or impair laws enacted

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pursuant to Section 34. The Court reasoned that the General Assembly's authority under Section 34, to provide for general welfare of employees, was broad. Furthermore, the Court explained that the statute provided for the general welfare of city employees by giving them more freedom of choice of residency.

Additionally, the Court concluded that R.C. § 9.481 prevails over any conflicting city ordinances. Although Section 3, Article XVIII guarantees municipalities the powers of self-government, the Court explained that no other provision of the Constitution may impair the legislature's power under Section 34. Therefore, the home-rule sections of the Constitution did not apply.

The Court held that R.C. § 9.481 is constitutional and, therefore, municipalities shall not require their employees to reside in a particular city, other than as provided in R.C. § 9.481(B)(2)(b) (which states that municipalities may require certain emergency personnel to live within a one county radius to ensure adequate response times).

Justices Moyer and Lazinger dissented, arguing that the majority interpreted the reach of Section 34 too broadly, reasoning that allowing the state legislature to ban residency requirements could open the door to an evisceration of municipal home rule.

The judgments were reversed.

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