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City's residency rule hinges on debate of 'original intent'

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On Jan. 27, Gov. Bob Taft signed into law Senate Bill 82, which seeks to overturn the municipal residency requirements in effect in Cleveland and more than 100 cities and villages throughout the state. The adoption of this statute raises complex issues under the Ohio Constitution.

In November 1912, during the reform-minded Progressive Era, the voters of Ohio adopted 34 of the 42 constitutional amendments proposed by Ohio's fourth and last constitutional convention, including amendments to authorize worker's compensation, municipal home rule, wage-and-hour regulation, the initiative and referendum, and civil service.

The Home Rule Amendment gave municipalities the power to govern themselves. Previously, municipalities could exercise only those powers delegated to them by the General Assembly. The amendment changed the relationship between state and local governments by granting municipalities the constitutional power to choose their own form of government, to exercise power over local affairs and to operate and control public utilities.

The most important provision in the Home Rule Amendment is section 3, which broadly grants municipalities the "authority to exercise all powers of local self-government" as well as the power to "adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Although "general" state laws can trump "local police, sanitary and other similar regulations," the Ohio Supreme Court has held that the General Assembly does not have power under section 3 to enact general laws that limit the municipal exercise of the power of self-government. Thus, the court has resolved conflicts between local ordinances and state statutes in favor of the municipalities on such issues as the local power to appoint police officers, to define the jurisdiction and composition of civil service commissions and to set the wages of municipal employees.

To be sure, municipal home rule power, including the power of self-government, is subject to other provisions of the state constitution as well as to state legislation on issues of "statewide concern" such as the annexation of territory, the location of hazardous waste disposal facilities, public employee collective bargaining rights, prevailing wages on public improvement projects and public utilities. Consequently, municipalities cannot adopt ordinances that impinge on these "statewide concerns" or that have an impact beyond municipal borders

It is difficult to see how the state interest in the residency of municipal employees is a matter of statewide concern, and if the Home Rule Amendment stood alone, Cleveland and other cities with municipal residency requirements would likely have little problem resisting the new state law. In areas involving employment, however, the state has an additional source of power. The 1912 Constitutional Convention also proposed, and the voters approved, a constitutional provision, Article II, section 34, permitting the General Assembly to pass laws "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety, and general welfare of all employees" This provision also sought to insulate legislation enacted under it from the judicial activism of the day by stipulating that "no other provision of the constitution shall impair or limit this power."

Section 34 was enacted primarily to protect maximum-hour and minimum-wage statutes from constitutional challenges by business interests. In 1989, however, the Ohio Supreme Court in a controversial 4-3 decision held that the provision also gave the General Assembly the power to adopt other legislation, including the Public Employees Collective Bargaining Act under which the city of Rocky River was compelled to submit a dispute with its firefighters union to binding arbitration. In so ruling, the court relied on the "no other provision" language to reject the city's home rule claim.

The Rocky River precedent is the major obstacle that Cleveland and other cities with municipal residency requirements must overcome. And cities can point out that SB 82 is a narrowly drawn statute that takes direct aim at what is undoubtedly an attribute of the power of municipal self-government: the right to determine the qualifications of municipal employees.

On the other hand, representatives of the affected public employees will likely rely on the Rocky River case and argue that if the state has the constitutional authority to compel municipalities to submit labor disputes to binding arbitration, it surely has the right to guarantee public employees what SB 82 characterizes as the "inalienable and fundamental right of an individual to choose where to live."

This controversy raises difficult issues under the Ohio Constitution, and it is unclear whether the Ohio courts will treat SB 82 as an appropriate exercise of legislative power. What is clear, however, is that this issue will ultimately be resolved by the Ohio Supreme Court, the final arbiter of the meaning of the Ohio Constitution.

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