

LAW OFFICES
BRICKER & ECKLER LLP
100 SOUTH THIRD STREET
COLUMBUS, OHIO 43215-4291
TELEPHONE (614) 227-2300
FAX (614) 227-2390
EMAIL: INFO@BRICKER.COM
INTERNET HOME PAGE: HTTP://WWW.BRICKER.COM

WRITER'S DIRECT DIAL NUMBER

(614) 227-8815

May 1, 2001

VIA TELECOPY

Mary Lynn Readey, Esq.
Assistant Attorney General
Chief, Education Section
30 East Broad Street
16th Floor
Columbus, Ohio 43215-3428

Re: Dale R. DeRolph, et al. v. State of Ohio, et al.; Case No. 99-0570

Dear Lynn:

I received your telefaxed letter of April 30, 2001 at approximately 1:00 p.m. today. I was, needless to say, disappointed with the approach your office has taken to the issue of discovery and find it necessary to respond to at least some of the points set forth therein.

First, with respect to the entitlement of the Plaintiffs to discovery in this matter, please note that the Court's order of January 25, 2001 expressly directs the parties to file "any evidence they intend to present as early as practicable." As no evidentiary hearing has been established in this proceeding, we must look to the Court's rules for guidance. The Court's constitutional jurisdiction over this case is the same as in the case of original actions. Supreme Court Rule X, Section 7, provides, "To facilitate the consideration and disposition of original actions, counsel, when possible, should submit an agreed statement of facts to the Supreme Court. *All other evidence* shall be submitted by affidavits, stipulations, depositions, and exhibits." Clearly, the Court's rules would support the view that depositions as well as other applicable discovery should be available at this time in this proceeding.

Second, with respect to your assertion that our request is unfair to be presented at this time, we made it clear to you last July that it was the position of the Plaintiffs that discovery was appropriate by the submission of interrogatories to you. Notwithstanding the fact that the General Assembly has had since May 11, 2000 to begin the process of responding to the Supreme Court's directions in *DeRolph*, it is only within the past two weeks that any significant legislation such as Senate Bill 2 followed by, late last week, Substitute House Bill 94 have been

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introduced. Each of those pieces of legislation references very specific factual assumptions upon which significant portions of the legislation are premised. We believe that it is appropriate to determine exactly what facts have been established to support those assumptions or, conversely, to clarify that no facts exist which would support those assumptions. It is regrettable that the Defendants in this case appear to be of the view that the development of legislation is a "secret" process and that the only relevant data is the end of the process rather than that which takes place at other stages. No less than the public in general, the Plaintiffs in this case have the right to know how this legislation was developed and we intend to pursue that right.

Finally, with respect to the pending public records request, I would direct your attention to Revised Code Section 149.43(B)(1) requiring that "all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." Although we acknowledge that the scope of information requested is, in some cases, fairly broad we also expect that the public offices to whom these requests have been submitted will abide by their legal responsibilities and make these records available promptly. We are willing to work with you, and with them, to arrange for a process of orderly inspection and copying. However, any belief on your part that public officials may drag their feet for "several weeks" in response to these requests is unwarranted and inappropriate. You have had the Request for Production of Documents since April 19 and the public records requests since April 25. To this time, we have had no response to any of our requests.

In view of your client's position that our discovery requests will be refused, we see no choice but to proceed to the Court for an order compelling discovery.

Very truly yours,

Nicholas A. Pittner

NAP/pas

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bcc: John F. Birath
Susan B. Greenberger
Quintin F. Lindsmith
Sue W. Yount
William L. Phillis