

General Assembly Seeks to Limit Municipality Employee Residency Requirements

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Over 130 cities and villages throughout Ohio have enacted some type of residency requirement for their non-fire and police employees. But a controversial new law purports to strip the ability of a municipality to require its employees to reside within its jurisdictional limits. Senate Bill 82, which was signed by Governor Taft on January 27, 2006, and will become effective on May 1, 2006, attempts to prohibit political subdivisions from requiring any employee, as a condition of employment, from residing in any specific area of the state. By purporting to curtail municipalities' ability to enact and enforce residency requirements, the legislature has stated its intention to recognize the rights of individuals to live wherever they choose. But many municipalities and legislators have expressed concern that Senate Bill 82 unconstitutionally infringes upon the municipal home rule power granted by Art. XVIII, Sec. 3 of the Ohio Constitution.

Operation of Senate Bill 82

Senate Bill 82 generally prohibits municipalities from conditioning employment on a residency requirement, declaring that "employees of political subdivisions of this state have the right to reside any place they desire." Despite this broad declaration of legislative policy, 2005 Ohio S.B. 82 endorses some exceptions to the general rule. Under the new law, municipalities are free to create residency requirements for

volunteers and to create, through voter initiative or ordinance, requirements that employees live either "in the county where the political subdivision is located or in any adjacent county." Thus, for example, the new law would prohibit the City of Columbus from requiring its employees to live within Columbus' city limits, but would allow the City to require, by law, that Columbus employees live in Franklin, Union, Delaware, Licking, Fairfield, Pickaway, or Madison counties.

Municipal Home Rule

Adopted in 1912, the "Home Rule Amendment," set forth in Art. XVIII, Sec. 3 of the Ohio Constitution, provides: "Municipalities shall have authority 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." By its terms, as interpreted by the courts, the Home Rule Amendment grants to municipalities all powers of local self-government, while recognizing that municipalities exercise their police powers concurrently with the State.

Many Ohio municipalities have invoked the constitutional home rule power to pass ordinances requiring that their employees reside within the jurisdictional boundaries of the municipality. The Supreme Court of Ohio has upheld such ordinances as constitutionally valid exercises of local government. Thus, where state legislatures remain silent on the issue

of residency requirements, it is clear that Ohio municipalities have the power to implement such restrictions.

Conflicts Between Home Rule And Statewide Legislation

Because of S.B. 82, an obvious conflict arises between the state law prohibiting municipalities from imposing a residency requirement upon employees and municipal ordinances containing such requirements. Accordingly, the question becomes whether S.B. 82 supersedes, and renders ineffective, municipal residency requirements enacted throughout Ohio.

Resolution of the conflict between S.B. 82 and municipal residency ordinances will inevitably rest upon the courts' interpretation and application of the Home Rule Amendment. Based upon the interpretation of the Ohio Supreme Court in a number of cases decided since the Home Rule Amendment's passage, whether the local ordinance or state statute will prevail depends largely on whether the municipal law touches upon a matter of statewide concern, or, instead, has only a local impact. Accordingly, if the courts deem a municipality's residency requirement to be only of local importance, the local requirement will supersede the state law. But if the courts determine that a local residency requirement for municipal employees is an issue of statewide concern, the state law would prevail over the local ordinance.

Courts have held that certain municipal government matters are of a statewide concern, such as proper sewage treatment standards, detachment of territory from a political subdivision, cross-county electrical lines, compliance with a prevailing wage law, and labor relations/collective bargaining laws. Conversely, courts have held that other municipal matters are not issues of statewide concern, such as the power to tax, incur debt, exercise eminent domain, and engage in urban renewal. The future of S.B. 82, and necessarily the future of municipal employee residency restrictions throughout Ohio, will therefore turn on whether the courts interpret employee residency restrictions as a matter of statewide concern.

Although the General Assembly has stated that the regulation of municipal workers' residences is a matter of statewide concern, that determination will not necessarily be given controlling weight by the courts when they are called upon to decide the enforceability of Senate Bill 82. Notably, Ohio's Legislative Service Commission has concluded, contrary to the General Assembly's assertion, that "[r]esidency requirements for municipal employees most likely are a matter of local self-government, which can be overcome only when there is a state law expressing a matter of statewide concern ... Ohio courts recognize the local nature of employment matters involving residency issues." If the courts find that residency requirements are a matter of local concern, "such a municipal ordinance would be upheld." There is little doubt that municipalities will challenge the new Ohio law and that the Supreme Court of Ohio will ultimately decide the issue.

Conclusion

Since local ordinances mandating certain residency for municipal employees within the municipality's jurisdiction appear to implicate matters of purely local concern, the new law may very well be an unconstitutional infringement by the General Assembly of municipalities' home rule powers, as guaranteed in Art. XVIII, Sec. 3 of the Ohio Constitution. While supporters of S.B. 82 may claim that the Constitution grants the General Assembly authority to ensure the general welfare of employees, it is at best questionable whether this authority warrants S.B. 82's broad encroachment on local authority. ❖

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