



Ohio Supreme Court upholds prohibition of resident quotas in public construction contracts

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In [*The City of Cleveland v. The State of Ohio*](#),¹ the Ohio Supreme Court upheld Ohio Revised Code 9.75, which prohibits a public authority from requiring a contractor to “employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.”

To address the issue of unemployment and poverty, the City of Cleveland enacted the Fannie Lewis Law, which mandated that 20 percent of all hours worked on public construction projects over \$100,000 be reserved for city residents. The law included potential penalties of damages up to 2.5 percent of the total project amount and a possible disqualification from bidding on future city contracts. When the General Assembly enacted R.C. 9.75 in 2016, Cleveland challenged the statute as an unconstitutional infringement on its Home Rule powers. Home Rule is a constitutional authority reserved for charter municipalities to exercise powers of local self-governance, as long as the local regulations are not in conflict with general state laws.

Justice Sharon Kennedy’s plurality opinion upheld R.C. 9.75 under [Article II, Section 34](#) of the Ohio Constitution, which authorizes the General Assembly to enact laws “providing for the comfort, health, safety, and general welfare of all employees.” The Court found that Article 34 provides “a broad grant of authority to the General Assembly to legislate for the welfare of the working people of Ohio.” This broad grant supported the General Assembly’s authority to enact R.C. 9.75 in order to protect all employees engaged in the public construction trades from local ordinances that restrict a person’s ability to work. Because R.C. 9.75 impacts the general welfare of all Ohio construction workers, the Court found that the statute supersedes conflicting local ordinances.

Justice Pat DeWine concurred in the judgement but disagreed that R.C. 9.75 is constitutional under Section 34. He wrote that R.C. 9.75 does not “regulate hours, set a minimum wage, or regulate the workplace environment” and criticized the lead opinion as expanding the provision to incorrectly include R.C. 9.75. However, Justice DeWine concurred in judgment, because he found that R.C. 9.75 did not violate the Home Rule Amendment. Finding that R.C. 9.75 is a general law and the Fannie Lewis Law was an act within the city’s police power, Justice DeWine determined that R.C. 9.75 is lawful under the legislative power of the General Assembly.

Three members of the court dissented, with Chief Justice Maureen O’Connor stating that R.C. 9.75 is “not about wages, hours, or workplace conditions and hazards” and, therefore, an analysis of Section 34 was not appropriate. Rather, Chief Justice O’Connor would have employed a four part test from *Canton v. State*² to determine that R.C. 9.75 is not a general law, because “there is no ‘police, sanitary, or similar’ purpose served,” and the law does not apply to “Ohio citizens generally.” Therefore, Chief Justice O’Connor would have held that R.C. 9.75 is not lawful under the legislative power of the General Assembly.

In sum, all local political subdivisions are restricted from placing residency requirements into public construction contracts. The power of the legislature to enact statutes that provide for the welfare of Ohio employees was affirmed by a plurality. Therefore, Cleveland’s Fannie Lewis Law and laws instituting residency quotas in public construction contracts are unenforceable.

¹ Slip Opinion No. 2019-Ohio-3820 (Sep. 24, 2019)

² 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963

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