

CLIENT ALERT

Ohio Supreme Court Strikes Down Local Ordinance Imposing Residency Requirements of Ohio's Workers on Public-Construction Contracts

By: [Michael R. Reed](#) & [A.J. Hense](#)

On September 24, 2019, the Ohio Supreme Court announced the General Assembly has broad authority to regulate public-works contracts that subject Ohio's workers to residency preferences or restrictions. In *The City of Cleveland v. The State of Ohio*, the Court concluded the General Assembly properly enacted R.C. 9.75, which prohibits municipalities and other political subdivisions from requiring a contractor on a public-improvement project to employ a certain number or percentage of local residents. The statute also prohibits municipalities and other political subdivisions from providing a bid award bonus or preference to contractors as an incentive to employ a certain number or percentage of its own residents.

The decision stemmed from the City of Cleveland's local ordinance requiring "public-construction contracts in an amount of \$100,000.00 or more to include a provision mandating that city residents perform 20 percent of the total construction work hours under the contract." The purpose of the ordinance was to help alleviate unemployment and poverty in Cleveland and included penalties for a contractor's failure to comply with the contractual provision. In 2016, the General Assembly enacted R.C. 9.75, which was in direct conflict with the city's ordinance. The city of Cleveland sought an injunctive relief and a judgment declaring R.C. 9.75 to be unconstitutional because it conflicted with the Home Rule Amendment, Article XVIII, Section 3 of the Ohio Constitution, which reserves all powers of local self-government to municipalities that are not in conflict with general laws. The Eighth District Court of Appeals affirmed the ruling of the trial court permanently enjoining enforcement of R.C. 9.75, finding the statute was not within the General Assembly's authority under Article II, Section 34 of the Ohio Constitution, and violated the Home Rule Amendment.

The Ohio Supreme Court reversed the court of appeals, concluding R.C. 9.75 was a valid exercise of the General Assembly's power under Article II, Section 34 of the Ohio Constitution. The Court concluded Article II, Section 34 of the Ohio Constitution grants the General Assembly broad authority to pass laws "fixing and regulating the hours of labor, establishing minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power." The Court interpreted the plain meaning of Article II, Section 34 as permitting the General Assembly to advance the comfort and general welfare of employees without limitations or impairment by the Home Rule Amendment.

The Court held R.C. 9.75 offers all Ohioans the equal opportunity to compete for work on public improvement projects regardless of their residence, and supersedes any local ordinance requiring provisions mandating residency preferences or restrictions for Ohio's workers in public-construction contracts.



MICHAEL R. REED

HAHN LOESER & PARKS LLP

65 East State Street | Suite 1400 | Columbus, Ohio 43215

p: 614.233.5165 | f: 614.221.5909 | e: mreed@hahnlaw.com



A.J. HENSEL

HAHN LOESER & PARKS LLP

65 East State Street | Suite 1400 | Columbus, Ohio 43215

p: 614.233.5179 | f: 614.221.5909 | e: ajhensel@hahnlaw.com