



# The Fight Over Residency Requirements:

## The Statehouse v. The Courthouse

BY MARSHAL PITCHFORD

**O**ver the loud and virtually unanimous objection of municipalities across Ohio, Governor Bob Taft signed into law S.B. 82 on January 27, 2006. This legislation prohibits residency requirements for municipal employees on a statewide basis. The battle has been won, but the war has just begun. While the first round appears to have gone to the Statehouse politicians, it is no doubt a matter that will ultimately be decided by our courts.

The new law bans local governments from imposing residency requirements. Specifically, local municipalities must permit their employees to live anywhere in the state. The rule has several exceptions, including a provision permitting a restriction to the same or adjacent county. But that is not the point.

Opponents of S.B. 82 claim the new law violates the “Home Rule” Amendment of the Ohio Constitution. This “Home Rule” provision – the power of local self-government as granted to municipal corporations under the Ohio Constitution – can only be overcome when there is a state law, addressing a matter of “statewide concern,” that conflicts with the local law. “Where there is a direct conflict, the state regulation prevails.” *City of Akron v. Callaway* (2005), 162 Ohio App.3d 781.

To that end, the Supreme Court of Ohio has been liberal in its application of the Home-Rule Amendment. In fact, as a general policy, municipalities have the “broadest possible powers of self-gov-

ernment” for local political issues. *State Personnel Bd. of Revision v. Bay Village Civ. Serv. Comm.* (1986), 28 Ohio St.3d 214, 218. Stated another way, is the law a local political question or one of statewide concern? Unfortunately, no definitive test exists.

The court has offered this guidance: The power of local self-government “relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of statute conferring a broader power, municipal legislation must be confined to that area.” Where a proceeding is such that it affects not only the municipality itself but the surrounding territory beyond its boundaries, such proceeding is no longer one which falls within the sphere of local self-government but is one which must be governed by the general law of the state.

*Beachwood v. Cuyahoga Cty. Bd. of Elections* (1958), 167 Ohio St. 369, 370-371. In short, municipalities cannot adopt ordinances that have an impact beyond municipal borders.

Courts generally recognize the local nature of employment issues. Both U.S. and Ohio Supreme Court decisions hold that employees have no constitutional right to choose their place of residence over their employers’ residency requirements. *McCarthy v. Philadelphia Civil Service Comm’n* (1976), 424 U.S. 645; *Buckley v. Cincinnati* (1980), 63 Ohio St.2d 42. Even the Legislative Service Commission, the research arm of the General Assembly, has concluded, “residency requirements for municipal employees most likely are the matter of local self-government.”

Anticipating the “Home Rule” challenge, the

General Assembly declared its intent to recognize the “inalienable and fundamental right of an individual to choose where to live” and determined the issue to be one of “statewide concern.” The court battle will come down to whether these legislative “findings” will be sufficient to uphold the ban.

The legislature also invoked Section 34 of Article II of the Ohio Constitution, which states the General Assembly may pass laws providing for the “comfort, health, safety, and general welfare of all employees” in that no other provision of the Ohio Constitution, including its Home Rule provision, impairs or limits this power. This leads to another interesting wrinkle. Challengers will likely argue that S.B. 82 could overturn collective bargaining agreements which impose residency requirements by agreement between management and labor.

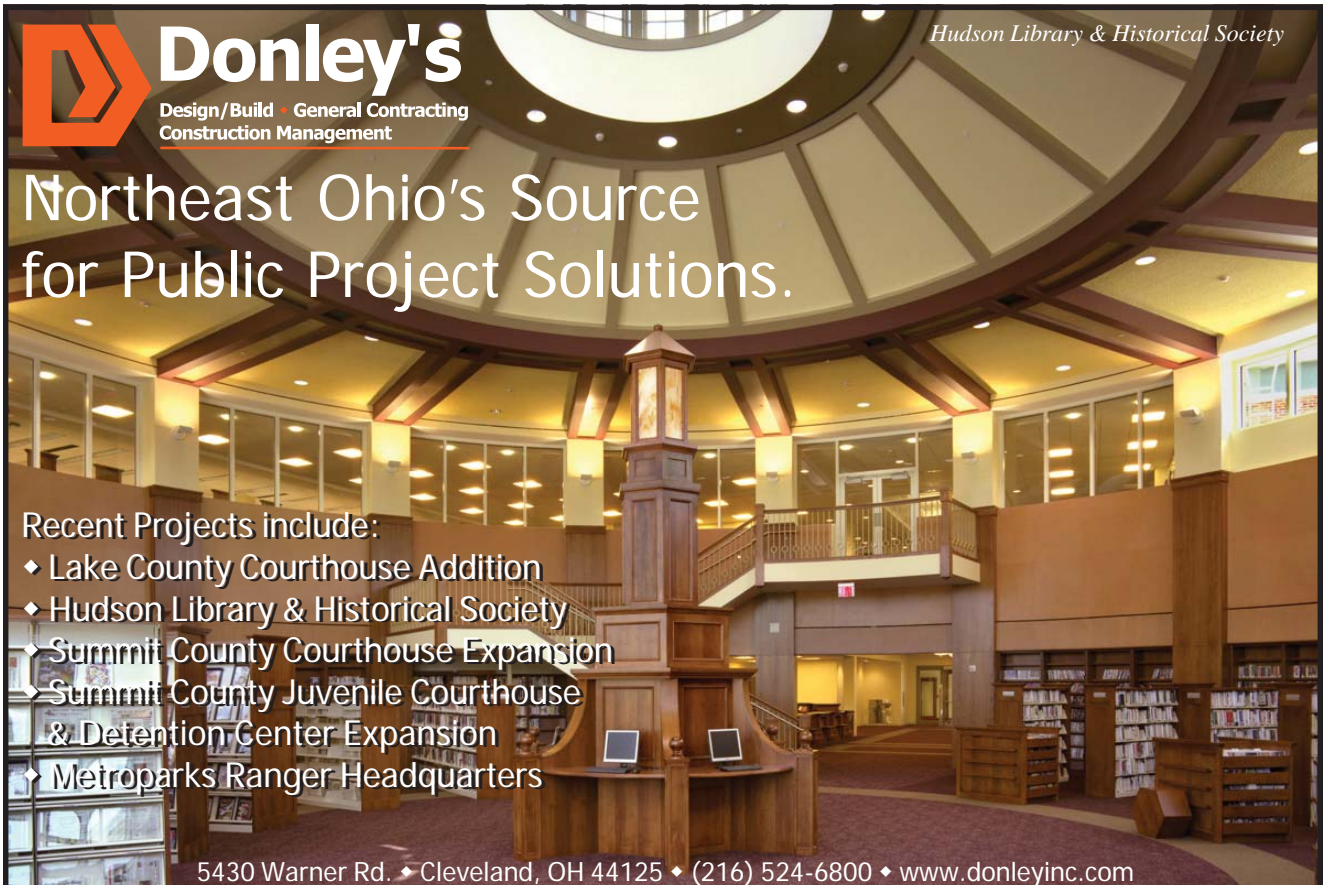
This Statehouse v. Courthouse battle is not new. In years past, similar legislation has been introduced in Columbus. This time, though, the bill gained momentum. Fire fighters and police officers from all over Ohio, especially from Cleveland, testified extensively in the law’s favor. S.B. 82 passed the House 68-28, with bipartisan support. The bill passed the State Senate 19-13.

The Ohio Municipal League reports that 125 cities and 13 villages across the state have some type of residency law. These requirements have been established

both by popular vote as well as local legislation. In some instances, these restrictions are limited to management employees, including City Manager, Finance Director, Treasurer, Law Director, Service Director, etc. However, many of the larger cities, such as Akron, Cleveland, Toledo and Youngstown have residency requirements for virtually every employee. (Columbus requires employees to live in Franklin or adjacent counties and Cincinnati requires its employees to live within Hamilton County.)

At the end of round one, the Statehouse politicians are up. They have dotted every “i” and crossed every “t.” The precedent on this subject, however, stacks the odds in favor of those opposed to S.B. 82. The stage is set; the battle lines are drawn. Our courts will make the call. **NEO**

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