Wendy H. Gridley *Legislative Service Commission*

S.J.R. 6

126th General Assembly
(As Introduced)

Sens. Coughlin, Hottinger, Mumper, Stivers, Wachtmann

BILL SUMMARY

- Proposes to amend Sections 3, 4, 10, and 11 of Article XVIII of the Ohio Constitution to eliminate the Constitution's grant of eminent domain authority to municipal corporations.
- Provides, instead, that municipal corporations do not have authority to take private property for public use through the exercise of eminent domain authority unless the General Assembly has conferred that authority by law.

CONTENT AND OPERATION

Elimination of municipal eminent domain constitutional authority

Change in Article XVIII, Section 3

The joint resolution proposes to amend several sections of the Ohio Constitution, including the "home rule" provision that otherwise confers on municipal corporations "all powers of local self-government and . . . [the authority to adopt and enforce] such local police, sanitary and other similar regulations, as are not in conflict with general laws" (Section 3 of Article XVIII). The "home rule" provision in Section 3 of Article XVII has been found by the courts to include, as a power of local self-government, a grant of eminent domain authority to take property *within* a municipal corporation's borders. *Britt v. Columbus* (1974), 38 Ohio St.2d 1 and *State ex rel. Bruestle v. Rich* (1953), 159 Ohio St. 13.

The proposed amendments would provide, instead, that municipal corporations do not have authority to take private property by eminent domain under Article XVIII, but may do so if that authority is granted by the General

Assembly's exercise of its authority to pass laws under Section 1 of Article II of the Ohio Constitution.[1]

Change in Article XVIII, Section 4

The joint resolution also proposes to amend Section 4 of Article XVIII which currently authorizes municipal corporations to acquire, construct, own, lease, and operate any *public utility* for municipal inhabitants and includes the authority for municipal corporations to acquire the public utility through condemnation (i.e., eminent domain) or otherwise. The distinct eminent domain and other acquisition authority conferred by Section 4 of Article XVIII may be exercised within and *outside* of a municipal corporation's borders.

The proposed amendment to these provisions, instead, would authorize acquisition by any manner *other than* condemnation unless the General Assembly grants statutory authority to municipal corporations to use eminent domain for public utility purposes.

Changes in Article XVIII, Sections 10 and 11

Existing Section 10 of Article XVIII authorizes municipal corporations acquiring property by appropriation (i.e., eminent domain or condemnation) or otherwise to acquire an excess beyond what is to be occupied by an improvement and to sell the excess with restrictions appropriate to preserve the improvement. The joint resolution proposes to amend this section to authorize acquisition of excess property for public use in any manner *other than* condemnation unless the

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[1] *The State of Ohio is vested with the power of eminent domain or the right to appropriate property of its citizens under certain circumstances or for certain purposes because it is a "sovereign" state. The power of eminent domain reflects the principle that public necessity may result in private property becoming subservient to the public welfare without the property owner's consent. Ohio court decisions recognize that the general grant of "legislative power" to the General Assembly in Section 1 of Article II of the Ohio Constitution confers the authority to exercise the power of eminent domain upon the General Assembly. Consequently, the power of eminent domain generally may be exercised only by the General Assembly or* by authority of *(i.e., statutory delegation by) the General Assembly.* Giesby v. Cincinnati, Wilmington and Zanesville R.R. Co. *(1854), 4 Ohio St. 308, 323-327;* Railroad Co. v. Village of Belle Centre *(1891), 48 Ohio St. 273, 295;* Covington & Cincinnati Bridge Co. v. Magruder *(1900), 63 Ohio St. 455, 475;* Cincinnati v. Louisville & Nashville R.R. Co. *(1913), 88 Ohio St. 283, 294;* Bd. of Township Trustees v. Lambrix *(1978), 60 Ohio App. 2d 295, 298-299 (motion to certify record to the Sup. Ct. overruled 10/78); and* Union Cemetery Assn. v. Columbus *(1967), 10 Ohio Misc. 161, 167.*

General Assembly grants statutory authority to municipal corporations to use eminent domain for the purpose of acquiring excess property.

Similarly, the joint resolution proposes to amend Section 11 of Article XVIII. That section currently authorizes any municipal corporation appropriating private property for a public improvement to provide money for the appropriation, in part, by assessments upon benefited property. The joint resolution proposes to qualify this authority so that it applies if the General Assembly has granted municipal corporations eminent domain authority by law for the type of public improvement involved.

Effective date and repeal

If adopted by three-fifths each house of the General Assembly, the joint resolution would be submitted to the electors of the state at a special election on February 7, 2006. Then, if its amendments to the Ohio Constitution are adopted by a majority of the electors voting on them, the amendments will take effect July 1, 2006, and existing Sections 3, 4, 10, and 11 of Article XVIII will be repealed on that date.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-02-05	p. 1369

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