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Ohio Supreme Court Upholds General Ban on Residency Restrictions for Public Employees

The Ohio Supreme Court, in [Lima v State, 2009-Ohio-2597](#), has held 5-2 that a state law prohibiting general residency requirements for public employees is valid and supersedes local laws to the contrary.

Many localities have provisions in their ordinances or charters that require their employees to reside within local boundaries. In 2006 the General Assembly enacted RC 9.481 (the Statute), which states that "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." The Statute has an exception that permits localities to require certain public employees to reside in either the locality's county or an adjacent county, to ensure "adequate response times...to emergencies or disasters...." The Statute does not apply to individuals who are not paid for their service, or who are employed on less than a permanent full-time basis.

The cities of Lima and Akron, both of which had residency requirements for certain public employees, filed separate suits to have the Statute invalidated, arguing the Statute violates the Home Rule provision of the Ohio Constitution (Section 3, Article XVIII), which restricts the state government from legislating on matters of local concern if such laws would conflict with local laws.

In the majority opinion delivered by Justice Pfeifer, the Ohio Supreme Court held that the Statute was enacted under an appropriate exercise of the General Assembly's Section 34, Article II, powers, providing for the "comfort" and "general welfare" of employees by providing more freedom in their choice of residency. Accordingly, the issue of Home Rule is irrelevant and any local laws to the contrary "cannot stand."

As a practical matter, although the Statute's survival means that most public employees cannot be required to live within municipal boundaries, some residency

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Contacts:

[Susan M. DiMichele](#)
+1.614.365.2842

[David S. Goodman](#)
+1.216.479.8649

[Susan C. Hastings](#)
+1.216.479.8723

[F. Barry Keefe](#)
+1.216.479.8535

[Richard D. Manoloff](#)
+1.216.479.8331

[Matthew L. Sagone](#)
+1.614.365.2701

[Ryan A. Sobel](#)
+1.216.479.8489

[Gregory W. Stype](#)
+1.614.365.2742

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restrictions are permissible. By law, local firefighters and police officers may be restricted to living within their locality's county, or at least in an adjacent county within the state. Mayors, school district superintendents and other high-level public officials may also continue to face residency restrictions under the "emergency and disaster" exception to the Statute or under state laws specifically authorizing residency restrictions. For example, ORC 3319.01 allows a board of education the discretion to impose a residency requirement on its superintendent.

For more information about this decision or any other aspect of labor and employment law, please contact your primary Squire Sanders lawyer or any of the lawyers listed in this Alert.

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