From Youngstown brief

B. The General Assembly's general authority under Article II, § 34 to enact laws fixing labor hours, establishing a minimum wage, and for the comfort, health, safety, and general welfare of all employees does not empower the legislature to proscribe municipalities' authority in this area - because the law has nothing to do with those things,

R.C. 9.481 ensures that the City's employees will not be as geographically accessible to serve the community.

Residency requirements are considered to further the objective of having public safety personnel nearby and able to quickly respond during emergencies or while off duty on short notice."[

Furthermore, "continuous residency requirements are believed to be a reasonable means to promote a stable and diverse urban population and as a means to enhance the performance of employees by giving them an interest in the community in which they serve."[FN88]

FN88. 16A The Law of Municipal Corporations § 45.32 (McQuillin ed. 2002).

● Residents are likely to be more knowledgeable of the City's issues and conditions, more sympathetic to the plights faced by the persons they will serve in carrying out municipal functions, more sensitive to the expenditure of municipal funds, and more representative of the City's ethnic and racial make-up.

● Residency helps maintain housing values and population in urban centers that have been devastated economically and continue to suffer. Losing residency can send cities into a downward spiral. A study by Professor Robert Simons of the ***22** nationally ranked Levin College of Urban Affairs at Cleveland State University[FN89] shows a potentially devastating economic effect on housing values, population, and tax base in Youngstown if the State succeeds in encroaching upon the City's residency qualification for its public servants

The Colorado Supreme Court recognized numerous justifications for a city's residency qualification. These included employees being more readily available during civic emergencies, and more attentive, compassionate, and diligent in their work; as well as the investment of city tax dollars in the community.[FN93]

With the enactment of R.C. 9.481 the Ohio General Assembly has improperly attempted to prohibit Cleveland, Akron, and other municipalities from exercising the long-standing powers of local self government guaranteed to them by the Home Rule Amendment to the Ohio Constitution.

It is the position of the state and the unions that the General Assembly's constitutional authority under Article II Section 34 to pass laws providing for the "general welfare" of employees encompasses the authority to enact Section 9.48.1, which prohibits employee residency requirements by political subdivisions so that employees will have the freedom to choose where to reside. Akron's position, on the other hand, is that the scope of the General Assembly's authority to pass laws for the general welfare of employees under

Article II Section 34 is not without limits and does not extend to this legislation. *State of Ohio v. Akron*, 9th Dist. No. 23660, 2008 -Ohio- 38, at ¶15.

1. **The appointment, removal, and establishment of qualifications, compensation, and duties required of municipal officers and employees are strictly matters of local self government that do not affect the general public of the State and do not implicate statewide concern.**
. Municipal residency requirements implicate only matters of local concern and are not a matter of statewide concern.

Ohio Municipal League

The state's reliance on Article II, Section 34 of the Ohio Constitution is misplaced because municipal residency requirements do not interfere with the constitutional rights of municipal employees and the statute does not provide "for the "comfort, health, safety and general welfare of all employees

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of more than 750 Ohio cities and villages, all of which have an interest in maintaining constitutionally granted home-rule powers.

When the Ohio General Assembly improperly attempts to prevent municipalities from exercising their constitutionally granted home rule powers, the League frequently assists municipalities defending those powers.

This case, however, is not about the comfort, health, safety or ***4** general welfare of employees, and is not controlled by Article II, Section 34 of the Ohio Constitution. It is not about conditions of employment.

Rather, the case involves conditions preceding employment; specifically, the case is about a new employees willingness to move into a municipality, and live there, as a condition of being permitted to start work for the municipality.

This language grants to the Ohio General Assembly the authority to protect workers in the work place, and was adopted in response to conditions of labor in the late nineteenth and early twentieth centuries, and in response to cases such as *Lochner v. New York* (1905), 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937. *See*, *Lima v. State*, 2007-Ohio-6419, ¶¶ 38-47. There is no basis for comparison of hour, wage and work place safety regulations, which directly affect worker safety, and a residency requirement, which does not.

This leads to the ultimate conclusion that although Section 34 general-welfare powers are broad, they are broad within the context of the working environment. This authority is properly limited to the enactment of laws which actually affect employee health and economic welfare.

Municipalities have an interest in having employees as members of the community in which they work. By calling their place of work "home, employees have a vested interest in the success of the community as a vibrant place to live. Employees living in the municipality which employs them ensures a certain amount of taxpayer dollars (paid to the municipal employees) will be reinvested in the community, through ordinary

economic activities and through the support of the community's public schools via the payment of property taxes.

In addition to these reasons, the qualification, duties and selection of municipal officers has traditionally been within a municipality's home-rule authority.

FOP brief

In *Canton, Supra,* the court stated that a general law must:

1. Be part of a statewide and comprehensive legislative enactment;

2. Apply to all parts of the state alike and operate uniformly throughout the state;

3. Set forth police, sanitary, or similar regulations rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and

4. Prescribe a rule of conduct upon citizens generally.

Despite our belief that *Canton,* Supra. is not relevant here, O.R.C. §9.481 satisfies each of these four prongs including the third prong which the court of appeals relied upon in its decision.

Third District opinion

{¶24} At oral argument, Lima asserted that "conditions of employment" and "conditions for employment" are distinct issues, because the former means conditions within the working environment, whereas the later means qualifications for employment.

Lima concedes that Section 34's grant of authority covers working environment conditions, but disagrees that it extends to qualifications for employment. We agree with

Lima that Section 34's language, legislative history, and case law support a more limited grant of legislative authority than the state presents.

The general-welfare clause grants the General Assembly authority to pass laws addressing "employment issues directly related to the working environment."

General welfare means "the public's health, peace, morals, and safety."

Query—does a residency requirement fall within the general welfare clause of article 34? Is there a difference between conditions for employment (residency requirement) and conditions of employment (which are covered by 34)

{¶34} The general-welfare clause of Section 34 grants the General Assembly authority to pass laws "providing for the comfort, health, safety, and general welfare of all employes." As we noted above, Section 34's first clause grants the General Assembly the authority to pass laws "fixing and regulating the hours of labor," and Section 34's second clause grants the General Assembly authority to pass laws "establishing a minimum wage." The hours and minimum-wage clauses address working terms and conditions within the working environment context; they do not address qualifications for employment nor do they address issues outside of the working environment. Therefore,noscitur a sociis instructs that the general-welfare clause should, likewise, be interpreted to address working environment conditions.

{¶47} R.C. 9.481 does not fall within Section 34's original intent as evidenced by the historical context and the Convention proceedings. Rather, R.C. 9.481 attempts to regulate aspects of employment having nothing to do with the working environment— namely, where an employee resides after leaving work.

The early 1900s were difficult times for American factory workers. The working environment often included long hours, low wages, and dangerous working conditions.

Thus, it is evident from Section 34's debates that the constitutional delegates were well aware of both the working conditions in American factories and the legal climate with respect to labor reform.

Mr. Crites began his remarks noting that:
"[f]irst, you will note that this proposal is for the *sole purpose* of limiting the number of hours of labor; second, to establish a minimum wage for the wageworker." Id. at 1331. (Emphasis added). During his remarks in support of the proposal, Mr. Dwyer commented that employers ought to give your employees fair living wages, good sanitary surroundings *during hours of labor*, protection as far as possible against danger, a fair working day. Make his life as pleasant for him as you can consistent with his employment.

Key argument:

Section 34’s general-welfare clause is limited to the working environment.