



SUMMIT COUNTY PROSECUTING ATTORNEY
SHERRI BEVAN WALSH

FALL 2010



NEWS FROM THE CIVIL DIVISION

A MESSAGE FROM PROSECUTOR SHERRI BEVAN WALSH

The Prosecutor



Since our last newsletter, a lot has happened on the Northeast Ohio Regional Sewer District (NEORS) matter. Numerous defendants, including the Summit County communities involved in this case, filed or joined in motions to dismiss NEORS's declaratory judgment and preliminary injunction.

To date, the Summit County defendants' motion to dismiss, filed in the very beginning of this case, was denied. Various Cuyahoga County defendants filed another motion to dismiss, which the Summit County communities and a number of other communities joined, but this motion has not yet been ruled upon.

The defendants opposing NEORS's proposed storm water management program and NEORS have entered into an agreement that prevents NEORS from imposing any fee for storm water management unless it provides at least 60 days notice that it intends to proceed with the imposition of the fee. If that occurs, the opposing defendants will have the opportunity to renew their motion for preliminary injunction.

Discovery continues, and the cutoff date for factual discovery is December 31, 2010. If the parties file motions for summary judgment, they must do so by January 31, 2011. Briefs in opposition to motions for summary judgment are due February 28, 2011. A hearing is scheduled for oral arguments on the motions for summary

judgment for March 15, 2011 at 10:00 a.m.

The Civil attorneys now assigned to NEORS are Corina Gaffney and Marvin Evans.

In the past year, we have had some personnel changes within the Civil Division. The following pages will introduce you to our Civil Division attorneys who are supervised by Mary Ann Kovach with the help of Brad Gessner.

MEET OUR CIVIL DIVISION ATTORNEYS

MEET MARVIN EVANS

Hire Date: March, 2002

Hometown: Akron

Law Degree: Cleveland State University, 1991

Background: University of Akron, B.S. in Accounting, 1984, and M. Tax, 2004. Before joining the Prosecutor's Tax Division in 2002, I worked for 18 years in accounting and finance. I spent 15 years with Standard Oil and BP in Cleveland and London, and also worked for Steris Corporation in Mentor, Ohio. I attended law school at night while working full-time at BP.



Little known facts: 1) Received a private pilot license in 1979 and earned an instrument rating in 1997. The training for the instrument rating was one of the most challenging things I've ever done. 2) I'm an NRA certified pistol instructor and enjoy trap shooting.

Most Memorable Work Experience: I was asked to work with a team of BP employees and travel to Bolivia and Brazil to discuss Air BP getting airport fueling concessions in those countries. Our trip spanned a weekend that allowed us to have an amazing time in Santa Cruz, Bolivia and Rio de Janeiro on our days off. In Rio, the girl from Ipanema asked me to go walking with her, but I turned her down. Probably was a good decision.

Some of Marvin Evans' Areas of Responsibility are:

ADM Board
Summit County Board of Education
County Engineer
Public Libraries
State Auditor
Workers' Compensation
Consumer Affairs Board
Law Library Resources Board

Council

Assisted by Mary Ann Kovach, Brad Gessner & Margaret Scott

MEET CORINA GAFFNEY

Hire Date: February 26, 2006

Hometown: Akron, Ohio

Law Degree: J.D. from University of Akron School of Law,
May 1991



Background: Over 14 years in private practice handling bankruptcies, wills, estates, divorces, civil and criminal litigation prior to joining the Prosecutor's Office. Married to Michael Gaffney with two children, Elise, 20, and Tessa, 17. Professional singer for 25 years; enjoy cooking, baking, knitting, crocheting, and making jewelry.

Little Known Fact: I once sang with Darius Rucker (of Hootie and the Blowfish fame, currently a solo country artist) when he was in town for Dan Marino's Hall of Fame induction.

Most Memorable Work Experience: A company from Alabama who had supplied medical services to the Summit County Jail sued the County for approximately \$750,000 for alleged services rendered. The company claimed they had provided medical services and pharmaceuticals over and above the base contract price agreed to by the County and the company. The company claimed that the County owed approximately \$750,000 over the course of two years because the alleged services provided exceeded a \$150,000 "cap" and was above the more than \$3.1 million the County paid pursuant to the contract over those two years. The court agreed with the County's position that because there were no funds for any amounts over the base contract certified by the County Fiscal Officer, the contract was void and the company was not entitled to collect any money from the County. So, the County avoided a three-day trial and payment of up to \$750,000.

Some of Corina Gaffney's Areas of Responsibility are:

Fiscal Officer
Children Services Board
Environmental Services
Executive/Insurance
Planning
Probation
Bath Township
Copley Township
Northfield Center Township
Richfield Township
Sagamore Hills Township
Springfield Township
Twinsburg Township

Boston Township
Clerk of Courts
Court of Common Pleas
Juvenile Court
Domestic Relations Court
Probate Court
Court Administrator
Soil & Water Conservation
Writs/Judges

MEET MIKE TODD

Hire Date: May, 2007
Hometown: Medina, Ohio
Law Degree: Case Western Reserve University School of Law



Background: Mike hails from Northern Virginia and is a graduate of the United States Military Academy at West Point and Case Western Reserve University School of Law. While in the military, Mike served overseas in support of drug interdiction operations in Honduras and served as one of the night battle captains for deployment of service members to Afghanistan after 9/11. Prior to joining our Civil Division, Mike worked as a criminal prosecutor and as a civil litigator. Mike's previous civil litigation experience focused on employment and labor law and business transactions. Mike currently serves as Medina Township Trustee, where he was selected by his peers to serve as chairman.

Little Known Fact: When I was in Korea serving in the Army, I was the only American on our post's Korean wrestling team. I competed with the Koreans in numerous events and what made it interesting is that match-ups were chosen by the home team. Since I was one of the bigger guys wrestling, the home team often placed me against the fastest, smallest guy in the hopes that he would be quicker than me. The Koreans treated me very well and ultimately named me "The Tank."

Most Memorable Work Experience:

My most memorable experience is a case I had where a woman was raped by her husband in front of her nine-year-old granddaughter. Both the husband and the wife were illegal immigrants. The husband used this fact to physically and sexually take advantage of his wife, because he knew she would not call the police for fear of deportation. In this case, the nine-year-old called the police and reported the crime. This case really brought to light the plight of women who are illegal immigrants in the United States and some of the unique struggles and victimization they face.

Some Areas of Mike Todd's Responsibility:

Although Mike has transferred to the Civil Division, he will continue to maintain additional work duties in the Criminal Division as well.

Board of Elections
General Health District
Board of Developmental Disabilities
Sheriff
Veteran's Service Commission
Budget Commission
Job & Family Services
Metropolitan Park District
Medical Examiner
Dog Warden
Human Resource Commission

Prosecutor – HR, unemployment...
Adult Protective Services
Backup for Township questions
RICO cases in Criminal Division
Drug Court cases in Criminal Division

IN MY OPINION

Below is a compilation of recent opinions from Prosecutor Sherri Bevan Walsh. If you would like a copy of any of these opinions, please call Tracy Pletcher at (330) 643-2736.

Amended Prosecutor Opinion No. 10-023

Re: Foreclosure Prevention Program Mortgage Rescue Funds
Syllabus: The County of Summit is authorized to permit AMHA to release liens placed on real property owned by participants in the Foreclosure Prevention Program (Temporary Assistance to Needy Families [TANF] Prevention, Retention and Contingency [PRC]).

Prosecutor Opinion No. 10-026

Re: Obligation of the Sheriff to Arrest Deserters from the United States Armed Forces
Syllabus: Under 10 U.S.C.A. §§ 807, 808 and 809, it is permissible for civilian authorities having authority to apprehend offenders under the laws of the United States or of a state, commonwealth, possession, or the District of Columbia to apprehend deserters or AWOL soldiers from the armed forces and deliver them into the custody of those forces.

Prosecutor Opinion No. 10-030

Re: Shoepf Road Drainage Improvement Project
Syllabus: Because the Shoepf Road Drainage Improvement Project is considered "maintenance" and the cost of the project exceeds \$45,000, Northfield Center Township must competitively bid the project.

Prosecutor Opinion No. 10-032

Re: Abatement of Vegetation
Syllabus: Sagamore Hills Township is authorized under R.C. §505.87 to provide for the abatement, control or removal of vegetation from land in the township if the Board of Trustees determines that the owner's maintenance of that vegetation is a nuisance, and upon notice to the owner to abate the nuisance. If the owner fails to abate the nuisance within seven days after notice is given, or no agreement for its abatement is entered into, the township may provide for abatement of the nuisance, and the costs therefor shall be entered on the tax duplicate and are a lien upon the land.

FMLA: What you need to know

The Family and Medical Leave Act ("FMLA") was signed into law nearly 17 years ago. At that time, it made sweeping changes to an employee's ability to take time off of work for medical reasons. There are many employers, however, who still have not adopted policies to ensure that applicable rules under FMLA are enforced uniformly. Don't be one of those employers!

One of the biggest problems when dealing with FMLA is the computation of time. Under federal rules, an employee is entitled to take 12 weeks of FMLA time for various medical reasons within a 12 month period. Once these 12 weeks have expired, the employer may, at their discretion, terminate the employee. However, it is not as simple as it seems at first glance. There are four ways of computing the 12 month period under FMLA:

1. The calendar year;
2. Any fixed 12-month period, such as a fiscal year or one required by state law;
3. The 12-month period beginning when an employee first takes FMLA leave; or
4. A "rolling" 12-month period measured backward from the date an employee uses FMLA leave.

Each one of these methods could provide different results to a person trying to calculate when an employee's 12 week period elapses. The employer is responsible for setting a policy and informing an employee of what calculation is to be used when the employee begins taking FMLA. If the employer fails to provide this guidance, the 12 week period is calculated under whichever of the four methods the employee chooses. Without this guidance, different employees from the same organization could legally calculate and use FMLA under a different standard.

Let us suppose that an employee begins taking FMLA on November 1, 2010 and that they had used three weeks of FMLA from December 1, 2009 to December 22, 2009.

Under the first calculation method, the employee would be into their ninth week of FMLA by the end of the year. Beginning January 1, 2011, the new calendar year, the employee is entitled to a new 12 weeks of FMLA and would not be required to return to work until March 26, 2011. Therefore, the employee could be off for almost five months and still be protected under FMLA.

FMLA: What you need to know (CONTINUED)

Under the third calculation method, the employee's FMLA period would have begun on December 1, 2009. By December 1, 2010 the employee would have taken a little over seven weeks of FMLA, when a new 12 month period would begin, thereby permitting the employee to take 12 weeks from December 1, 2010. As such, under this calculation the employee could stay on FMLA until February 23, 2011.

Under the fourth method, the employee's 12 week FMLA period would begin on November 1, 2010, as the employee had not taken more than 12 weeks of FMLA time in the prior year. Under this calculation the employee's FMLA would expire on January 24, 2011.

Besides leading to disparity of treatment amongst employees, this lack of a policy leads to a human resources nightmare and makes oversight of FMLA time cumbersome, if not impossible, for large organizations. Furthermore, this ambiguity opens an unnecessary door for potential litigation should an employee who was or is under FMLA ever be terminated by the employer.

The bottom line is that every organization and/or employer needs to adopt and uniformly enforce a policy for the computation of time under FMLA. This will protect both the employer and employee with regards to FMLA and will set clear obligations and expectations.

LAW LIBRARY RESOURCES BOARD

The Law Library Resources Board (LLRB) was established in 2009 by action of the Ohio General Assembly. The LLRB consists of five members appointed by the Municipal and Common Pleas Courts, the County Prosecutor, and the County Executive. By the end of 2010, the LLRB will have taken over the operation of the former Akron Law Library located in the Summit County Courthouse, but one of the main duties of the Board will be to coordinate and administer the acquisition of legal research resources for all County offices. The LLRB will receive funding from all of the County's municipal courts and from the County's general fund. Since this is a new County entity, the Civil Division is working with the Board to address certain issues related to the legal and operational relationships between the LLRB and the County.

BALLOT GUIDELINES

The democratic process is founded on the principle that we as individuals are free to make decisions on who will represent us in office and have direct input on taxes that will affect our communities. For citizens to make these decisions, there is the entire elections process; to effectuate this guiding principle, the State of Ohio has devised a fair, uniform, and comprehensive way for candidates to be placed on the ballot so citizens can make these important choices.

For Candidates

It is important for candidates and local Boards of Elections to follow certain guidelines for candidates to receive signatures to place their name on the ballot. Recently, some of these issues were brought to light in the 17th Congressional District. Former Congressman James Traficant's application to place his name on the ballot as an independent candidate at first was rejected because his application did not have the required number of signatures. The issue raised, as it relates to ballot access, is important for all citizens in the State of Ohio.

Ohio law dictates that any candidate running for office in a multiple county district must file their petition for office in the most populous county. An independent candidate in a district where more than 5,000 votes were cast must at least get signatures equal to 1% of all votes cast in the district during the previous gubernatorial election. This requires each county Board of Elections to certify the number of votes cast in their county and in that district during the previous gubernatorial election. All of the four counties in the 17th District certified a number of electors in their district and Traficant was found to be 107 signatures short of his requirement. This certification, however, was inaccurate.

Two of the four counties had what are called split precincts, or precincts with more than one U.S. House district located within them. In that situation, only the portion of the precinct that voted in the 17th District should have been used in calculating the number of signatures required by an independent candidate. Those two Boards had to go back to the 2006 election and recreate the election results.

Statistics for these precincts did not include the breakdown of gubernatorial votes in each portion of the split precinct. The only way to recreate the results required going back to the original ballots cast, manually hand counting them. Record retention policies had already allowed these documents to be destroyed, so they could not be recounted. Each split precinct was then removed from the equation and the vote requirement was reduced. This reduction gave Traficant a sufficient number of signatures to place his name on the ballot.

BALLOT GUIDELINES (continued)

The lesson for Boards of Elections was to keep separate statistics in split districts for voters in gubernatorial elections. Alternatively a Board could retain the records from split precincts for at least four years after an election so that they could be recounted should an issue arise in the future.

Levies

Equally as important as our ability to vote for a candidate is the concept of "No Taxation Without Representation." A recent tax levy dilemma brought to light the importance of local entities following proper procedures before attempting to place a tax levy on the ballot. If proper procedures are not followed, then it is likely that the request for a levy to be placed on the ballot will be denied. The public will then not be able to participate in serious financial decisions that affect both their community and personal lives. Most requests for levies fall under Ohio Revised Code § 5705.03(B). The statutory construction of R.C. 5705.03(B) requires a multiple step process for a levy to be included on a ballot.

The first step requires the taxing authority to determine that there is a need for a levy outside of the ten-mill limitation. They then need to request the County Fiscal Officer to certify either how many mills it will take to reach a certain figure, or to certify how much money will be generated by a certain millage request. See R.C. 5705.03(B)(1).

Once this request is made of the County Fiscal Officer, they must provide certification to the taxing authority within ten days from the date of receiving the resolution or request from the taxing authority.

The final step is for the taxing authority to receive the certification, decide whether they want to proceed with the tax and pass a resolution to present the tax to the Board of Elections for the levy to be placed on the ballot. This is established in R.C. 5705.03(B)(3) where it states, "If, upon receiving the certification from the [County Fiscal Officer], the taxing authority proceeds with the submission of the question to the tax electors. . . ." then they must submit a resolution to the Board of Elections with the certification asking for the levy to be placed on the ballot. The key is that this step cannot be done until after the taxing authority receives the certification from the County Fiscal Officer on the funds that will be involved.

If a local government follows these steps, they will be one step closer to their request will be placed on the ballot and allow the public to make this important decision.

WE'RE ON THE WEB!
WWW.CO.SUMMIT.OH.US/PROSECUTOR

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