

FILED  
COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

2022 MAR 11 PM 3:38

IN THE COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

JEANNE M. STEPHEN  
CLERK OF COURTS

STATE OF OHIO, EX REL.,

RICHARD P. HOMRIGHAUSEN

Plaintiff-Relator,

-vs-

CITY OF DOVER, OHIO, *et al.*,

Defendants-Respondents.

CASE NO.: 2022-CV-02-0104

JUDGE: MICHAEL J. ERNEST

MOTION FOR TEMPORARY  
RESTRAINING ORDER

---

NOW COMES Plaintiff Richard P. Homrighausen ("Plaintiff" or "Mayor"), pursuant to Rule 65 of the Ohio Rules of Civil Procedure, and hereby moves this Honorable Court for a temporary restraining order against Defendants City of Dover, Ohio ("Dover" or "City") and Douglas O'Meara ("O'Meara") in his official capacity as Law Director for the City (collectively "Defendants"), immediately restraining Defendants, and any individual or entity acting in aid or in concert with Defendants as follows:

- (a) restraining Defendants from directly or indirectly enforcing the terms of the settlement agreement approved by Dover's City Council through Ordinance No. 7-22 during its March 10, 2022 meeting;
- (b) restraining Defendants from directly or indirectly preventing the Mayor from obtaining legal counsel at the City's cost pursuant to R.C. § 733.51 or otherwise interfering with the Mayor's attempts to obtain legal counsel.

The basis for Plaintiff's request for a temporary restraining order is detailed in the attached Memorandum in Support. A proposed order is also attached as Attachment 1.

Respectfully Submitted,

/s/ Richard P. Homrighausen

Richard P. Homrighausen

110 East Third Street

Dover, Ohio 44622

Phone: 330-243-6726

Email: mayor.homrighausen@doverohio.com

*Plaintiff-Relator*

IN THE COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

FILED  
COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

2022 MAR 11 PM 3:37

JEANNE M. STEPHEN  
CLERK OF COURTS

STATE OF OHIO, EX REL.,

RICHARD P. HOMRIGHAUSEN

Plaintiff-Relator,

-VS-

CITY OF DOVER, OHIO, *et al.*,

Defendants-Respondents.

CASE NO.: 2022-CV-02-0104

JUDGE: MICHAEL J. ERNEST

PLAINTIFF'S MEMORANDUM  
IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING  
ORDER

**I. INTRODUCTION**

Plaintiff-Relator, Mayor Richard P. Homrighausen ("Plaintiff" or "Mayor"), respectfully seeks a temporary restraining order against Defendants City of Dover ("Dover" or "City") and Douglas O'Meara ("O'Meara") (collectively "Defendants") and any individual or entity acting in aid or in concert with Defendants.

The sworn facts in support of this motion are set forth in Plaintiff's Amended Verified Complaint ("Amended Complaint"). Defendants have approved and entered into a settlement agreement with three former employees regarding those employees' appeals of their terminations which are currently pending before the State Personnel Board of Review ("SPBR"). Law Director O'Meara did not inform the Mayor that the appeals had been filed and instead entered into settlement discussions (which culminated in the settlement agreement) with the three employees behind closed doors. The settlement agreement contains a plethora of problematic provisions

(some of which are contrary to Ohio law), including an admission of guilt on behalf of Mayor Homrighausen, who was not privy to the settlement discussions or the drafting of the agreement.

Law Director O'Meara then advised Dover's City Council to approve the settlement agreement, which it did on February 8, 2022. Mayor Homrighausen vetoed this approval on February 17, 2022, then contemporaneously filed a motion to stay at SPBR and a mandamus action in this Court, requesting that the City appoint legal counsel to represent him in his official capacity due to his statutory legal counsel (Law Director O'Meara) refusing to represent him.

City Council overrode the Mayor's veto on March 10, 2022. Law Director O'Meara publicly announced that the three employees executed the settlement agreement prior to the March 10<sup>th</sup> meeting. And he also announced that he executed the settlement agreement on behalf of the City of Dover immediately after the meeting on March 10<sup>th</sup>. Upon information and belief, Defendants are in the process of implementing the terms of the settlement agreement. Absent an Order from this Court restraining the Defendants, Plaintiff will continue to be irreparably harmed and otherwise unlawfully wronged.

## **II. FACTS**

The full listing of sworn facts in support of this motion are set forth in Plaintiff's Amended Complaint. In or around December 2021, Mayor Homrighausen removed three City employees from their respective positions due to a loss of confidence in their ability to perform the essential functions of their positions. (Ver. Compl. ¶ 8). On or around January 7, 2022, the three employees appealed their removals to the SPBR, alleging that Mayor Homrighausen violated Ohio's Whistleblower Statute. (Ver. Compl. ¶ 10). In violation of his duty of representation to Mayor Homrighausen, Law Director O'Meara failed to inform him that the appeals had been filed. *Id.*

The Mayor has been excluded from executive sessions over the past two years and was likewise excluded from settlement discussions with the three Appellant employees which took place during the first week of February 2022. (Ver. Compl. ¶¶ 11-12). Law Director reviewed (if not drafted) the terms of a settlement agreement which admits liability on behalf of Mayor Homrighausen and contains a number of other provisions which are not in the Mayor's best interest and are contrary to Ohio law. (Ver. Compl. ¶¶ 14-19). This settlement agreement was approved on February 8, 2022 by Dover's City Council on the advice of Law Director O'Meara. (Ver. Compl. ¶ 20).

Mayor Homrighausen filed a Motion to Intervene in the SPBR cases filed by the three Appellant employees on February 11, 2022, after realizing that his statutorily appointed attorney (Law Director O'Meara) was not protecting his legal interests. (Ver. Compl. ¶ 21). On February 14, 2022, the SPBR Administrative Law Judge assigned to the Appellants' case issued a Procedural Order permitting the Mayor to submit an optional affidavit by February 24, 2022. (Ver. Compl. ¶ 22). Mayor Homrighausen is not comfortable submitting an affidavit to a quasi-judicial entity without legal counsel (O'Meara has repeatedly refused to represent him), and to that end filed a Motion to Stay Proceedings with SPBR on February 25, 2022. (Ver. Compl. ¶ 25-27).

Mayor Homrighausen vetoed Ordinance 7-22 (the Ordinance approving the settlement agreement) on February 17, 2022. (Ver. Compl. ¶ 28). On March 1, the three Appellants filed a Response in Opposition to the Mayor's Motion to Stay SPBR proceedings. (Ver. Compl. ¶ 30). That same day, Law Director O'Meara also filed a Response in Opposition, suggesting that instead of the City obtaining proper legal counsel for the Mayor, that he (O'Meara) could represent the City and could hire an Assistant Law Director (Law Director O'Meara's subordinate) to represent the Mayor. (Ver. Compl. ¶ 31). The Mayor filed a Reply in Support of his Motion to Stay the

SPBR Proceedings on March 2, 2022. (Ver. Compl. ¶ 32). The Motion to Stay has not been ruled on as of the date of this filing. *Id.* Also on March 2, 2022, O'Meara filed for sanctions against the Mayor, accusing him of the unlawful practice of law. (Ver. Compl. ¶ 33).

On March 10, 2022 Dover's City Council convened in a Special Meeting to override the Mayor's veto of Ordinance 7-22. (Ver. Compl. ¶ 34). In doing so, City Council approved the settlement agreement between the City of Dover and the three Appellant employees in the SPBR matter. *Id.* O'Meara signed the agreement on behalf of the City. *Id.* Also during this Special Meeting, O'Meara announced that a status conference was to be held with the ALJ assigned to the SPBR matter at 1:00 p.m. on March 11, 2022, at which point the settlement agreement would (according to O'Meara) presumably be accepted by the ALJ and submitted to the SPBR Board for final approval. (Ver. Compl. ¶¶ 36-37).<sup>1</sup>

Now, left with no other adequate remedy at law, Mayor Homrighausen respectfully moves this Court for a temporary restraining order to prevent Law Director O'Meara and the City of Dover from enforcing the terms of the settlement agreement.

### **III. LAW AND ARGUMENT**

Ohio Courts consider four factors when determining whether to grant a temporary restraining order: (1) whether there is substantial likelihood that the plaintiff will prevail on the merits; (2) whether plaintiff will suffer irreparable injury if the injunction is not granted; (3) whether any third parties will be unjustifiably harmed if the injunction is granted; and (4) whether the public interest will be served by the injunction. *See Procter & Gamble Co. V. Stoneham*, 140

---

<sup>1</sup> ALJ Geis cancelled the 1:00 p.m. call on March 11, 2022 after receiving "a true copy of the Parties' settlement agreement prior to today's 1:00 pm deadline." *See* Exhibit O to Amended Complaint. This email from ALJ Geis indicates that the settlement agreement will be on the SPBR Board's agenda at their upcoming meeting on March 23, 2022, which makes the Mayor's Mandamus Action and Motion for Temporary Restraining Order all the more time sensitive.

Ohio App.3d 260 (1st Dist. 2000). These factors are not dispositive prerequisites; they are instead “balanced according to their relative strengths.” *Fed. Savs. & Loan Ins. Corp. v. Quinn*, 711 F. Supp. 366, 367 (N.D. Ohio 1989) vacated on other grounds, 922 F.2d 1251 (6th Cir. 1991). “When there is a strong likelihood of success on the merits, preliminary injunctive relief may be justified even though a plaintiff’s case of irreparable injury may be weak. In other words, what plaintiff must show as the degree of irreparable harm varies inversely with what plaintiff demonstrates as to its likelihood of success on the merits.” *Cleveland v. Cleveland Elec. Illuminating Co.*, 115 Ohio App.3d 1, 24 (8th Dist. 1996) (citing *Friendship Materials, Inc. v. Michigan Brick, Inc.* (6th Cir. 1982)).

As set forth below, Mayor Homrighausen has a strong likelihood of success on the merits, and the remaining factors weigh in favor of a TRO as well.

**A. There Is A Substantial Likelihood That Mayor Homrighausen Will Prevail On The Merits In His Mandamus Action Against Defendants.**

Ohio law provides: “In case an officer or board of a municipal corporation fails to perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty.” R.C. § 733.58. In this case, Law Director O’Meara is willfully failing to perform one of the duties expressly enjoined by law and by ordinance – representing Mayor Homrighausen as legal counsel and attorney. This duty is set out in R.C. § 733.51, which states: “The city director of law shall . . . serve the several directors and officers provided in Title VII of the Revised Code as legal counsel and attorney.” One of the “several directors and officers” referenced in this statute indisputably includes the Mayor. Further, Chapter 137 of the Codified Ordinances of Dover specifically references “O.R.C. § 733.51 et seq.” as the source of the Law Director’s “powers and duties.”

The Mayor's Mandamus action was brought under R.C. § 733.59, which provides: "If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation. Any taxpayer of any municipal corporation in which there is no village solicitor or city director of law may bring such suit on behalf of the municipal corporation. No such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding." Mayor Homrighausen has not served a prior written request upon Law Director O'Meara asking him to institute suit on behalf of the City, as referenced in O.R.C. § 733.59, but he is not required to do so when such a request would be "futile." *See, e.g., State ex rel. Lally v. City of Cleveland*, 2021-Ohio-2513, ¶19-31, 2021 Ohio App. LEXIS 2473 (8<sup>th</sup> Dist.).

Any request from Mayor Homrighausen to Law Director O'Meara to represent him in this matter pursuant to his statutory obligation is futile for any number of independently sufficient reasons, including:

- Law Director O'Meara's multiple public statements that he does not and will not represent the Mayor; instead, he represents the interests of the City of Dover.
- Law Director O'Meara drafting/approving a settlement agreement that contains any number of terms that are contrary to Mayor Homrighausen's best interests. This includes, but is not limited to: an express statement admitting that Mayor Homrighausen engaged in whistleblower retaliation and other "unlawful" acts, an express statement limiting his duties as the City's Appointing Authority (and revoking his employment decisions, including both hirings and terminations), an express statement prohibiting him from exercising duly-provided powers in the future, an express statement subjecting the Mayor to potential legal liability and future potential legal liability, and not including him as a released entity in the four corners of the settlement agreement.
- Had Mayor Homrighausen submitted a written request to Law Director O'Meara, Law Director O'Meara would presumably not "make an application" to himself to represent Mayor Homrighausen, or otherwise take legal action against himself for failing to appropriately represent Mayor Homrighausen in these matters.



By failing to represent Mayor Homrighausen as legal counsel and attorney, Law Director O'Meara is willfully violating R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover. This willful violation of Ohio law is depriving Mayor Homrighausen of his recognized right to legal representation by and through R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover. Accordingly, Mayor Homrighausen is likely to succeed on the merits of his Mandamus action.

**B. Mayor Homrighausen will suffer Irreparable Harm If The Settlement Agreement Is Enforced; Thus, Injunctive Relief Is The Only Adequate Remedy.**

Irreparable harm exists when a substantial threat of material injury cannot be adequately compensated through monetary damages. *Leaseway Distrib. Centers Inc. v. Ohio Dep't of Adm. Serv.*, 49 Ohio App.3d 99 (10th Dist. 1988). If Defendants are permitted to enforce the terms of the settlement agreement, Mayor Homrighausen's statutorily appointed attorney will be permitted to admit liability on the Mayor's behalf in a legally binding document. Further, the appeals pending at SPBR will be "resolved" without the approval of the appointing authority for the City of Dover. Mayor Homrighausen has no other adequate remedy at law, save for injunctive relief, to be made whole if the settlement agreement is enforced. Ohio courts have recognized that a plaintiff seeking reinstatement through a preliminary injunction can be irreparably harmed if the injunctive relief is not granted. *See Haynes v. Zoological Soc. Of Cincinnati*, 1990 Ohio App. LEXIS 5434 (1st Dist. 1990). Mayor Homrighausen will continue to suffer irreparable harm until and unless the Defendants' improper conduct is restrained.

**C. No Substantial Harm To Others Will Occur As A Result Of The Issuance Of The Requested Injunctive Relief.**

There is no discernable injury to any third party that would result from issuing the injunctive relief requested by Mayor Homrighausen as such relief would simply put a temporary hold on the settlement discussions between the City and the three terminated employees until the Mayor is able to obtain proper legal counsel. In fact, by preventing Defendants from enforcing the terms of the settlement agreement, the Court will in fact *prevent* harm to a third party, Aaron Feller, as the settlement agreement requires Aaron Feller to be terminated effective immediately.

No substantial harm would come to the Defendants as a result of this Court entering injunctive relief. Defendants have operated for nearly three months without these employees working for the City and hired [name] to fulfill some of the job duties that were held by the terminated employees. Further, no substantial harm would come to the three terminated employees, as their appeals before SPBR would still move forward without the settlement agreement in place. Moreover, given that numerous terms of the settlement agreement are contrary to Ohio law, the injunctive relief requested herein would save these former employees from enjoying the benefits of the illegal settlement agreement only to have those benefits revoked down the line.

There is no harm to the Defendants or to any third party that would result from the requested injunctive relief. In fact, numerous third parties would *benefit* from preventing the enforcement on the settlement agreement, which contains illegal terms and is likely *void ab initio*.

**D. The Public Interest Favors Granting Injunctive Relief.**

By granting this motion, the Court furthers the public's interest as it relates to the trust that the public has in its elected officials. Law Director O'Meara is an elected official who is willfully and intentionally refusing to fulfill his statutory duty to act as the Mayor's legal counsel and

attorney and is pushing an illegal settlement agreement through Dover's City Council. It is indisputably in the public's interest to ensure that elected officials comply with the statutes and ordinances that delineate their powers and duties. This motion furthers the public's interest in that it will correct the actions of an elected official who is operating contrary to Ohio law.

#### IV. CONCLUSION

The Court should grant Mayor Homrighausen's motion and enter the temporary restraining order requested herein. Mayor Homrighausen prays for preliminary and permanent injunctive relief which will prevent the Defendants from further complicating this situation to the detriment of the public.

Respectfully Submitted,

/s/ Richard P. Homrighausen

Richard P. Homrighausen

110 East Third Street

Dover, Ohio 44622

Phone: 330-243-6726

Email: mayor.homrighausen@doverohio.com

*Plaintiff-Relator*

FILED  
COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO  
2022 MAR 11 PM 3:38  
JEANNE M. STEPHEN  
CLERK OF COURTS

#### INSTRUCTIONS FOR SERVICE

Please serve the Defendant-Respondents at their above-captioned addresses by certified mail, return receipt requested.

/s/ Richard P. Homrighausen

Richard P. Homrighausen