

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

JOSEPH RUMAN,  
DAVID J. PETERS and,  
CYNTHIA A. PETERS,  
individually and as representatives of  
a class of similarly-situated persons  
and entities,

Plaintiffs,

vs.

Case No. 2022-2396-CZ

CITY OF WARREN, MICHIGAN,  
a municipal corporation,

Defendant;

CONSOLIDATED WITH:

JOHN BATE, individually and as  
representative of a class of similarly-  
situated persons and entities,

Plaintiffs,

vs.

Case No. 2022-2395-CZ

CITY OF ST. CLAIR SHORES, MICHIGAN,  
a municipal corporation,

Defendant.

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OPINION AND ORDER

The parties have filed competing motions for summary disposition.

I. BACKGROUND

Plaintiffs Joseph Ruman, David J. Peters and Cynthia A. Peters filed this action (Case No.

2022-2396-CZ) on June 30, 2022. Plaintiffs assert they are property owners in defendant City of Warren who are subject to taxation to fund defendant's Police and Fire Pension Plan. Defendant has imposed taxes for the Police and Fire Pension Plan that far exceed the need to fund its contributions to the Plan without voter approval. Defendant improperly uses the excess funds for obligations not related to the Plan.

Accordingly, plaintiffs' complaint alleges a violation of the Headlee Amendment as a class action.

The parties subsequently moved for summary disposition.

An *Order Granting Defendant's Motion to Consolidate Case with Bate v St. Clair Shores, Case Number 2022-2395-CZ, Pursuant to MCR 2.505* was signed October 12, 2022 for the limited purpose of deciding the motions for summary disposition. The consolidated case raises the same essential arguments with respect to defendant City of St. Clair Shores.

## II. STANDARDS OF REVIEW

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim and must be decided on the pleadings alone; all well-pled facts and reasonable inferences drawn therefrom are taken as true. *Markis v Grosse Pointe Park*, 180 Mich App 545, 551; 448 NW2d 352 (1989). The motion should be denied unless the claim is clearly so unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Id.*

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. The reviewing court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it in the light most favorable to the nonmoving party. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). After a moving party identifies an issue upon which he believes there is no disputed fact and supports that belief with evidence, the

nonmoving party must proffer evidence establishing a material issue of disputed fact exists for trial to avoid summary disposition. MCR 2.116(G)(4).

### III. ANALYSIS

Plaintiffs aver defendants are limited to imposing taxes sufficient to fund their (defendants') actual annual contributions to pensions under the Michigan Fire Fighters and Police Officers Retirement Act, MCL 38.551 *et seq.* (1937 PA 345). However, defendants impose taxes in excess of those needed to fund their annual contributions to the Act 345 pension plans by also imposing taxes to fund retirement health care. Hence, plaintiffs argue the excess taxes violate the Headlee Amendment.

In response and support of their own motions for summary disposition, defendants contend Act 345 merely imposes a minimum on the amount of appropriations to the Police and Fire Retirement Commission. The revenue produced by the Act 345 millage, adopted well before the Headlee Amendment, funds only a portion of police and fire retirement benefits and is supplemented by general operating funds. Thus, defendants deny any Headlee violation.

The parties' replies have been considered.

In *Taxpayers United for Michigan Constitution, Inc v City of Detroit*, 196 Mich App 463, 466-467; 493 NW2d 463 (1992), the court explained:

Legislation challenged on a constitutional basis is clothed in a presumption of constitutionality. This presumption is particularly strong when addressing tax legislation. *Ace Tex Corp v Detroit*, [195 Mich App 609, 614; 463 NW2d 166 (1990)]; *O'Reilly v Wayne Co*, 116 Mich App 582; 323 NW2d 493 (1982). In this case, plaintiffs contend the legislation reviving the city utility users tax violated Const 1963, art 9, § 31, which provides in relevant part:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.

Clearly, tax levies not authorized at the time of ratification of Const 1963, art 9, § 31 or those increasing the rate of an already existing tax authorization, must be approved by a majority of the electorate in order to be valid

As a preliminary matter, there is no dispute that voters in both cities have approved the creation and maintenance of police and fire retirement systems under Act 345.

Plaintiffs Ruman, David Peters and Cynthia Peters acknowledge the Warren Police and Fire Retirement Board of Trustees also serve as the Warren Police and Fire Retirement Health Benefits Plan and Trust Board of Trustees. Defendant St. Clair Shores appoints a majority of its Police and Fire Retirement Board as well as its Police and Fire Retiree Health Care Trust Board. See also MCL 38.553 (requiring city treasurer to be custodian of all retirement system funds). Consequently, while the respective boards are ostensibly separate legal entities, the degree of common control and joint purpose render them single entities under defendants' control. Compare MCL 38.552(2) and 38.552(8) (allowing a retirement board to retain legal, clerical or other services to disburse pensions and other benefits). Indeed, plaintiffs Ruman, David Peters and Cynthia Peter recognize the Warren Police and Fire Pension Plan and Other Post-Employment Benefits Plan cover the full cost of the provided health care benefits.

MCL 38.556 provides for the payment of both age and service retirement benefits (i.e., traditional monetary compensation benefits) as well as disability/death benefits. MCL 38.556d also provides a municipality may provide retirement benefits "in *any other method* considered appropriate". (Emphasis added.) The provision of health care coverage would come within this plain language. See also MCL 38.599(2) (referring to "pensions *and other benefits*" [emphasis added]); compare MCL 38.2803(m) (" 'Retirement benefit' includes a *retirement health benefit* or retirement pension benefit, or both" [emphasis added]) and MCL 38.2803(p) (" 'Retirement system' means a retirement system...that...provides retirement pension benefits *or retirement*

*health benefits, or both*” [emphasis added).

Plaintiffs Ruman, David Peters and Cynthia Peters correctly note MCL 38.562(1) provides “the retirement system...shall include each police officer and fire fighter”. However, plaintiffs Ruman, David Peters and Cynthia Peters fail to proffer any authority for their argument that the closure of health care coverage to defendant City of Warren’s police officers after July 1, 2005 and fire fighters after October 13, 2000 precludes the Other Post-Employment Benefits Plan from being part of the Police and Fire Pension Plan. See *Cornforth v Borman’s, Inc*, 148 Mich App 469, 479; 385 NW2d 645 (1986) (party may not simply announce a position or argument in a brief and then leave it up to the court to discover and rationalize the basis of its claims).

Notwithstanding, MCL 38.556e permits collective bargaining over any matter relating to retirement systems provided in Act 345. As such, Act 345 envisions retirement plans could have differing terms. Subsequently, defendant City of Warren could collectively bargain for the closure of retirement health care without violating Act 345 as long as its Police and Fire Pension Plan still covers every police officer and fire fighter.

Similarly, plaintiff Bate has not cited any authority for the proposition that defendant St. Clair Shore’s apparent failure to rely on actuarial data in determining appropriations for retiree health care expenses precludes defendant St. Clair Shores from otherwise using Act 345 to fund those expenses. Recall *Cornforth, supra*. Instead, the appropriate remedy may be injunctive relief compelling defendant St. Clair Shores to use actuarial data in determining appropriations for retiree health care expenses and/or otherwise comply with Act 345 requirements regarding funding retiree health care expenses.

Finally, Act 345 was originally adopted in 1957 and permitted—without limitation—the imposition of taxes to fund police and fire pensions long before the Headlee Amendment was

ratified. MCL 38.556d provides for the same type of tax rather than a new tax and does not change the Act 345's rate authorization. As a result, MCL 38.566d does not violate the Headlee Amendment. Compare *Taxpayers United*, 196 Mich App at 466 (Headlee Amendment only prohibits novel taxes and an increased rate of an existing tax).

Therefore, defendants may utilize Act 345 to fund their retirement health care benefits.

#### IV. CONCLUSION

For the reasons set forth above:

A. Plaintiffs Joseph Ruman, David J. Peters and Cynthia A. Peters' motion for summary disposition is DENIED;

B. Plaintiff John Bate's motion for summary disposition is DENIED;

C. Defendant City of Warren's motion for summary disposition is GRANTED and

D. Defendant City of St. Clair Shores' motion for summary disposition is GRANTED under MCR 2.116(C)(10).

Accordingly, plaintiffs' complaints are DISMISSED, with prejudice. MCR 2.116(I)(1).

This *Opinion and Order* resolves the last pending claim in this matter and closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.



A handwritten signature in black ink, appearing to read "Joseph Toia", is written over a horizontal line.

**HON. JOSEPH TOIA,  
CIRCUIT COURT JUDGE**

Date: January 5, 2023

cc: Attorneys of Record via e-service