

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

**FRANKLIN COUNTY
BOARD OF COMMISSIONERS**

373 South High Street, 26th Floor :
Columbus, Ohio 43215, :

PLAINTIFF, :

Case No.

v. :

Judge

THE STATE OF OHIO :

c/o Marc Dann, :
Attorney General :
180 East Broad Street, 17th Floor :
Columbus, Ohio 43215, :

and :

MARC DANN :

OHIO ATTORNEY GENERAL :
180 East Broad Street, 17th Floor :
Columbus, Ohio 43215, :

DEFENDANTS. :

COMPLAINT SEEKING DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

NATURE OF THE ACTION AND JURISDICTION

1. This is an action seeking declaratory judgment and injunctive relief to determine and enforce the rights and obligations of the Franklin County Board of Commissioners under Amended Substitute House Bill No. 694 (“H.B. 694”) of the 126th General Assembly. The Franklin County Board of Commissioners requests this Court for a declaration of rights under H.B. 694 regarding the following provisions: the applicability of H.B. 694

to contributions made prior to its effective date, the applicability of H.B. 694 to contracts approved by a multi-member public office where less than the majority have received a contribution covered by H.B. 694, and whether H.B. 694 requires that contributions made to office holders of multi-member boards be aggregated for purposes of determining whether the proscribed contribution amounts have been exceeded.

2. The jurisdiction of this Court is invoked pursuant to Ohio Revised Code Section 2721.03 to have this Court determine questions of construction arising under H.B. 694 and declare the rights, status, and other legal relations of the Franklin County Board of Commissioners under H.B. 694.
3. Plaintiff Franklin County Board of Commissioners and Defendants State of Ohio and Attorney General Marc Dann are parties to this action pursuant to Ohio Revised Code Section 2721.12.
4. Venue is proper for this Court, as Franklin County is the county in which Defendants maintain their principal offices.

PARTIES

5. Plaintiff, Franklin County Board of Commissioners (“the Board”), is authorized under the Revised Code to award contracts for goods and services on behalf of Franklin County.
6. The Board is a multi-member public office and is comprised of three members, each of whom is elected to the Board of Commissioners. A majority of the board is required to approve contracts for goods and services on behalf of Franklin County.
7. Defendant Marc Dann is the duly elected Ohio Attorney General, and as such, is charged with the defense of and representation of the state of Ohio in matters where the constitutionality of a statute is raised.

BACKGROUND INFORMATION

8. The effective date of H.B. 694 is April 4, 2007.
9. H.B. 694 amended and enacted new provisions of the Ohio Revised Code regarding state and local government contracts and political contributions. These provisions purportedly apply to Plaintiff.
10. H.B. 694 imposes restrictions upon political contributions by individuals and organizations that are signatories with Plaintiff to contracts for goods or services in excess of five hundred dollars.
11. Plaintiff is responsible for negotiating and entering contracts for goods and services for the benefit of all county offices and agencies. Many of these contracts for goods and services exceed five hundred dollars in value.
12. Plaintiff is currently planning to construct a new common pleas courthouse. Prior to the effective date of H.B. 694, Plaintiff entered into contracts with a design professional, construction manager and owner's representative in order to design and construct a new common pleas courthouse.
13. It is necessary for Plaintiff to issue general obligation bonds in excess of \$100 million dollars in order to finance the construction of the new common pleas courthouse.
14. In order to issue general obligation bonds of the County, it is necessary to engage bond counsel pursuant to the provisions of Revised Code § 305.14.
15. Members of Plaintiff Board have received campaign contributions from various donors, both individuals and organizations, prior to the effective date of H.B. 694, April 4, 2007. Those contributions have been received from individuals, partners, and/or their spouses,

associated with law firms which specialize in the representation of political subdivisions in public finance matters.

16. The contributions referenced above are in excess of the amounts proscribed by R.C. § 3517.13(I) and (J).
17. At the time those contributions were made and received, there were no prohibitions or restrictions on the ability to contract for goods and services on the part of the County or the vendors based upon such contributions.

COUNT I: RETROACTIVE APPLICATION

18. Plaintiff incorporates as if fully rewritten all of the foregoing allegations set forth herein.
19. Ohio Constitution Article II, Section 28 prohibits retroactive laws.
20. Revised Code Section 1.48 presumes that statutes will be prospective in nature “unless expressly made retrospective.”
21. The General Assembly expressly provided in Sections 3 and 4 of H.B. 694 that certain provisions of H.B. 694 are to have retrospective application to January 1, 2007.
22. Language in H.B. 694 expressly provides that the restrictions placed upon contracting shall apply to Plaintiff as a result of contributions made “within the two previous calendar years”.
23. The Board has an interest under contracts duly let for the design and construction of a common pleas courthouse.
24. Plaintiff will be rendered unable to engage any bond counsel services if H.B. 694 is retroactively applied to restrict Plaintiff’s ability to contract as a result of political contributions made to members of Plaintiff’s Board which were lawful at the time such contributions were made.

25. Plaintiff has substantive rights in contracts already let for the design and construction of the new common pleas courthouse, which contracts will be impaired as a result of the Plaintiff being unable to engage bond counsel to assist in the issuance of the bonds necessary to construct the new courthouse.
26. H.B. 694 retroactively burdens these substantive rights in violation of the Ohio Constitution by attaching new liability to past actions.

COUNT II: IMPAIRMENT OF CONTRACT

27. Plaintiff incorporates as if fully rewritten all of the foregoing allegations of its complaint.
28. Ohio Constitution Article II, Section 28 prohibits laws impairing contracts.
29. The failure to issue bonds for the construction of a new courthouse would impair Plaintiff's ability to fulfill its obligations under contracts already let for the design and management of the construction of the new common pleas courthouse.

COUNT III: VIOLATION OF DUE PROCESS

30. Plaintiff incorporates as if fully rewritten all of the foregoing allegations of its complaint.
31. Ohio Constitution Article I, Section 16 secures due process of law.
32. H.B. 694 is unconstitutionally vague in its failure to specify how its provisions are to be applied to multi-member boards, such as the Plaintiff.
33. H.B. 694 does not define "holder of the public office having ultimate responsibility for the award" of a contract as it pertains to members of multi-member boards.
34. H.B. 694 does not specify if contributions made to members of a multi-member board are to be aggregated among the various members of such board.
35. H.B. 694 does not specify if contributions made to less than a majority of the members of a multi-member board by a particular "partner" or "owner" of a business entity would

prohibit the award of a contract in excess of \$500 to that business entity even if the member of such multi-member who received the contribution were to abstain from participating in any deliberation or vote on such contract.

36. H.B. 694 provides for penalties for a violation of its provisions, which may be imposed upon the members of a multi-member board.

37. H.B. 694 provides for the possible rescission of contracts awarded by a multi-member board by the Ohio Elections Commission based upon unspecified standards or requirements.

38. The requirements and penalties established by H.B. 694 are so imprecise and vague that it renders multi-member boards unable to comply with its provisions, and leaves them subject to penalties such as fines and the possible rescission of contracts without express standards or requirements.

39. H.B. 694 is unconstitutionally vague and arbitrary and capricious in violation of due process.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief:

- A. Declare that H.B. 694 does not apply to contributions made prior to its effective date.
- B. Enjoin the enforcement of H.B. 694 against Plaintiff as it pertains to contributions made prior to its effective date.
- C. Declare that H.B. 694 does not apply to contracts approved by a multi-member public office where less than the majority have received a contribution covered by H.B. 694 and where the member receiving the contributions in excess of the proscribed amounts abstains from participating in the discussion and vote regarding the contract award.

D. Declare that H.B. 694 does not provide for the aggregation of contributions among all members of a multi-member board.

E. Award such other relief as is appropriate.

Respectfully Submitted,

RON O'BRIEN
PROSECUTING ATTORNEY
FRANKLIN COUNTY, OHIO

Nick A. Soulas, Jr. 0062166
First Assistant Prosecuting Attorney
Denise L. Hanson 0063233
Assistant Prosecuting Attorney
373 S. High Street, 13th Floor
Columbus, Ohio 43215
Tel. (614) 462-3520
Fax. (614) 462-6012
nasoulas@franklincountyohio.gov
dlhanson@franklincountyohio.gov