



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
**February 23, 2018**

**CALL TO ORDER/ROLL CALL**

A special meeting of Powell City Council was called to order by Mayor Jon C. Bennehoof on Friday, February 23, 2018 at 4:11 p.m. City Council members present included Jon C. Bennehoof, Frank Bertone, Tom Counts, Brian Lorenz, Brendan Newcomb, Melissa Riggins and Daniel Swartwout. Also present were Eugene Hollins, Law Director; Dave Betz, Development Director; Debra Miller, Finance Director; Karen J. Mitchell, City Clerk and interested parties.

**OPEN SESSION**

**PLEDGE OF ALLEGIANCE**

**CITIZEN PARTICIPATION**

Mayor Bennehoof opened the citizen participation session for items not included on the agenda. Hearing none, the Mayor closed the public comment session.

**FIRST READING: ORDINANCE 2018-10: AN ORDINANCE TO AMEND THE CITY INCOME TAX CODE TO ADOPT SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY. (EX. A)**

Gene Hollins, Law Director: Thanks to Council for being willing to meet at such a late hour on Friday afternoon to consider this. We did get an unexpected and interesting opinion from the court. I will give you a run down on that and recommend for now to adopt this Ordinance on second reading. Later, perhaps, we may come back to you with a recommendation to repeal it depending on what this court or further courts may do.

I don't think the attorneys on either side of this were expecting what we got from the court. We were expecting a ruling on a preliminary injunction which would have stayed the new state law regarding centralized collection. While the trial court took its time to look fully into the merits of the action and we expected a fairly in-depth opinion because these are difficult and somewhat novel issues of first impression of the Ohio Constitution, none of us expected anything that would amount to a final decision on the merits. Thereby obviating somewhat the need for the preliminary injunction which was supposed to preserve the status quo until he got to a final opinion. One positive thing I can say about this opinion, and it puts everything else in context, is we believe this really is an issue of law, straight-up. It concerns application of three provisions of the Ohio Constitution and some case law under those three from the Ohio Supreme Court and how to apply that to a statute relating to this subject. That doesn't take a whole lot of fact finding. He did identify this as a straight up issue of law and not a lot that was done on the two days of testimony really entered into his decision. A lot of that had to do with harmed municipalities versus harm to the public, harm to the taxpayers. But at the end of the day, he said that sort of related to other issues about preliminary injunctions and since he was just going to skip the preliminary injunction step and didn't enter into much of his thinking.

On the issue of law, he then gave us what appears to be a superficial opinion. We didn't get any consideration or discussion of our main issues. He doesn't acknowledge that it's really not about centralized collection, it's really about the starting point which is the overriding of our taxing ability and then only granting it back to us if we do as dictated. That wasn't discussed in the opinion.

My thought on this is, if it is an issue of law, we have a 70-year old judge who's not going to be around past this year. He knows on issues of law nobody really pays much attention to what the trial court ruling was anyway. It will be looked at with a fresh set of eyes without any deference to his opinion by the Court of Appeals. So his job was to issue an opinion, get it out of his court, and move it along to the Court of Appeals, and not spend a whole bunch of time trying to understand tax law or Home Rule constitutional issues.

Obviously we are disappointed. Even if he is right about round two and potentially round three being more important, we would have liked to have prevailed on round one as well. There are some positives in the sense that no one would have expected us to be able to get it to the Court of Appeals this quickly without expending a lot more of our funds doing the trial court proceeding.

A little update on the trial court phase. When you are a political subdivision and you do get a final ruling, one thing you can do is ask for a stay of judgment pending appeal and no bond is necessary. We are entitled to stays of judgment pending appeal as a matter of right. Combine that with some precedent that is out there that says when there was a preliminary injunction in place, which there was from December 21<sup>st</sup> until tomorrow, and we are preserving the status quo with the stay pending appeal, that status quo may mean, in essence, the preliminary injunction stays in place – which is sort of the relief we were asking for from the court. We will file our motion for a stay pending appeal and we will submit a proposed order to the court that basically stays this whole thing. Our motion has been drafted and will be filed today. It will be interesting to see what the court does with that.

On your Ordinance, I don't think there is any harm in adopting it, removing any risk of some taxpayer making an issue of the fact that we didn't adopt it. If in the future we can get this set aside, we will come back to you with a recommendation to repeal it. From what we have heard, there are 400,000 taxpayers who have a net profits tax liability in the state of Ohio. Of those 400,000 potential net profit tax filers, approximately 453 have signed up because everybody thinks Ohio Business Gateway is extremely difficult and unwieldy. They have to sign up by March 1<sup>st</sup> for tax year 2018. The state may be pushing for something that's going over like a lead balloon.

Councilwoman Riggins: I had a chance to read through the opinion quickly yesterday. I believe that the judge said the preliminary injunction was terminated as of when it was filed. [Mr. Hollins: As of the opinion date of Feb. 21<sup>st</sup>.] I know what we were talking about before as our issue of wanting to make sure that we did this before the ruling. Since the ruling came early and the preliminary injunction was terminated two days ago, does that leave a two day window open that you were concerned about – allowing a taxpayer to make the claims you outlined?

Mr. Hollins: Yes, but I think it can be cured with the state pending appeal because that would, in essence, suspend animation on his own termination of the preliminary injunction. I mean we are sort of appealing the fact that he terminated the injunction with that, and with that appeal, asking him to sort of continue with it since we have put his order terminating that date...

Councilwoman Riggins: Which I was surprised with because from what I recall, it was already said that it went to "x" date and then here he is terminating it early.

Mr. Hollins: He just terminated the case period. By the way, there is still a case pending in Lucas County. The City of Toledo is off on their own quest. The judge up there thought about consolidating it with this case down here too, but since there is now not a case in common pleas to consolidate it with, they will go forward with it on their own up there. They may still get an injunction up there and that would be applicable statewide.

Councilman Lorenz: Gene, is the appeal just for the City of Powell or is that group-wide?

Mr. Hollins: For everybody and it would apply statewide as well.

Councilman Counts: Debra, just give us some perspective in terms of what this means for the City, how many taxpayers, if you know, pay net profits and what the dollar amount is?

Debra Miller, Finance Director: When you look at our collections dollar-wise, it's about four percent, so we are looking in the \$400,000 range for what we collect and it's really not that many businesses for the City of Powell.

Mr. Hollins: And then it would only be those that opted in. Have we received any notices?

Ms. Miller: I have received one notice that I sent on to RITA.

Mayor Bennehoof: I believe I understand Section 3. At the end of it, it says, "718-04(A) of the Ohio Revised Code are not declared to be unconstitutional." So we are enacting this, should they end up prevailing?

Mr. Hollins: Yes.

Mayor Bennehoof opened this item to public comment. Hearing none, he closed public comment and opened the floor for comments and questions from Council.

MOTION: Councilman Counts moved to adopt Ordinance 2018-10. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

**OTHER COUNCIL MATTERS**

*There was none.*

**ADJOURNMENT**

MOTION: Councilman Swartwout moved to adjourn the meeting at 4:29 p.m. Councilman Lorenz seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

**MINUTES APPROVED: March 6, 2018**

<u>Jon C. Bennehoof</u>	<u>3/19/2018</u>	<u>Karen J. Mitchell</u>	<u>3/19/2018</u>
Jon C. Bennehoof	Date	Karen J. Mitchell	Date
Mayor		City Clerk	



**City Council**  
Jon C. Bennehoof, Mayor

Frank Bertone	Tom Counts	Brian Lorenz	Brendan Newcomb	Melissa Riggins	Daniel Swartwout
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