

Written testimony of Kevin Flynn, Cincinnati, to the Transportation Committee,
Ohio Senate March 1, 2023

Chairwoman Kunze, Ranking Member Antonio and Honorable Members of the Committee:

I submit this today asking you to oppose enactment of the proposed modifications to the Ferguson Act to be codified as ORC 746.01 – 746.07 as a part of the Transportation budget (HB 23), allowing for the sale of the Cincinnati Southern Railway to Norfolk Southern.

The Cincinnati Southern Railway has been a significant asset for the City of Cincinnati for nearly 150 years. For almost that long, there have been voices urging the sale of the Railway. Luckily for the city, those voices have not been heeded and the Railway has remained a significant asset of the city, with the rent from the Railway constituting 43% of the total General Capital in the approved Cincinnati FY 2023 Capital Budget. Since 1987, the rent paid to the city has increased from \$11 Million to almost \$24 Million. However, even at \$24 Million per year, the rent remains exponentially below the Fair Rental Value that the city is entitled to receive under the terms of the lease renewal. The experts retained by the trustees acknowledge that rent has not kept pace with the value of the Railway to Norfolk Southern. The city is in the unique position to unlock tremendous growth in the rent to be received for the lease of the Railway because the current rent structure expires in 2026. Conservatively, the rent under the renewal which would occur in 2026 would exceed \$64 Million per year (with annual increases for inflation) and the city would retain ownership of the Railway.

Proponents argue that sale of the Railway will allow for diversified investment of the sale proceeds, and that the proceeds will be protected in a 'lock box', allowing the proceeds to grow and not be diminished by the spending whims of politicians. Forgive my skepticism, but we Cincinnatians have heard this refrain before: when Blue Cross converted from a mutual company, proceeds received by the city were to remain as an endowment, those proceeds are gone; when the city sold the Blue Ash Airport, those proceeds were to remain an endowment, with only earnings to be spent, those proceeds are gone. Proponents argue that this time it will be different because an independent body will be in charge of the proceeds. I have nothing but respect for the current Trustees and deep appreciation for the thankless work and uncountable hours put in. Just as the Railway has existed for 150 years, so too will the Board of Trustees investing the proceeds of the sale. Although the Ferguson Act set up that the Board would have staggered terms, with a new trustee being appointed or reappointed each year, the city has ignored this requirement of state law. Unlike elected officials at the state and local level, and unlike most appointed Board positions at the state and local level, Trustees have no term limits. Appointments are made by a single elected official, the Mayor. In the past, when the Trustees responsibilities were mostly ministerial, this structure may not have mattered. However, the discretion granted to the Trustees under the proposed state law changes could have a significant deleterious effect on the city's finances. Instead of an apolitical Board, the opportunity for a hyper-political Board under the control of one person exists.

The proposed language governing how the funds generated by the sale proceeds must be tightened up. I am sure that the language is well intentioned and is meant to provide a source of funding to fix the city's dilapidated infrastructure, ignored capital maintenance, and hopefully bring the city into compliance with State and Federal laws governing accessibility for persons with disabilities. That would be my hope. Unfortunately, my experience as a former member of Cincinnati City Council and as a former member of the Cincinnati Board of Park Commissioners argues against this hope. The language is drafted broadly enough, that I foresee two potential adverse outcomes. The first is that the City

Administration will continue to divert monies from the Capital Budget to pay salaries that in good conscience be paid from the Operating Budget, avoiding hard choices and lessening the ability of the Capital Budget to pay for its intended purposes. The second is that funding will be earmarked for the 'pet project of the day', whether it be: covering Ft. Washington Way; expanding the Convention Center and environs; reconstructing an indoor arena; remodeling the Football and Baseball Stadia; creating affordable housing; creating more protected bicycle lanes on city streets, or any of a myriad of other ideas. While any or all of these uses may be worthwhile, money should not be spent on them so long as existing capital needs to fix what we already have remain unmet. Some city Departments (Parks and Recreation) have already identified their needs by having third party reports created.

If you remain committed to amending the Ferguson Act and permitting the Trustees to sell the Railway, don't let it be as a part of the Transportation budget. The proposed legislation can be made better by reforming and restructuring the Board of Trustees, constraining the Trustees by requiring any investment policies or investment spending policies be approved by City Council and the city electorate, and restricting any funds generated from the sale or earnings on the sale from being spent until current existing city infrastructure, as identified by third party reports, is maintained and repaired to good condition.

Please oppose the current proposed 746.01-746.02 and remove it from the Transportation budget.
Thank you.

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