

OHIO MUNICIPAL LEAGUE OPPOSITION TO H.B. 192

My name is Garry Hunter, General Counsel for the Ohio Municipal League. This written testimony is in opposition to HB 192. If enacted this bill would violate Ohio's Home Rule Constitution Article XVIII.

The bill enacts Ohio Revised Code Section 4933.40 which states “[n]o political subdivision shall prohibit or limit any of the following: 1). The use of any fossil fuel for the purpose of electricity generation; or 2). The construction or use of a pipeline for transportation of oil or gas.”

This bill if enacted violates Ohio's Constitutional Home Rule Provisions Article XVIII, Section 3 which reads “Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” and Section 4 which reads: “Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.”

While it is true municipal laws may not be in conflict with General Laws, General Laws for purposes of Home Rule analysis are not all laws enacted by the General Assembly. The Supreme Court of Ohio in *Canton v. State*, 95 Ohio St. 3d 149 (2002) delineated a four-part test defining what constitutes a “general law” for purposes of Home Rule. The third part of that test is: “set forth police, sanitary, or similar regulation, **rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar**

regulations.” (emphasis supplied). Clearly, this bill violates this part of the Home Rule test and is not a general law under Home Rule analysis. Since it is not a general law, the legislation violates municipal home powers pursuant to Ohio Constitution Article XVIII, Section 3.

In addition, Ohio Constitution Article XVIII, Section 4, permits municipalities to acquire, construct, own, lease, and operate within or without its corporate limits any public utility. In relation to public utilities, the Ohio Supreme Court has held the State’s exercise of its police power had only an incidental effect on the municipal corporation’s operation of a public utility. *Canton v. Whitman*, 44 Ohio St.2d. 62 (1975). This means that for the state to regulate a municipality right to control a public utility, the state’s right must be authorized in the Constitution. Since there is no such right in the Constitution concerning the subject of this legislation granting the State the power to limit the municipality’s right, the bill violates Ohio Constitution Article XVIII, Section 4.