

# **The Construction Conversation**

## **Ohio's Legislative, Administrative, and Judicial Two-Way Newsletter**

January, 2020

A Service of Luther L. Liggett, **Graff & McGovern, LPA**  
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### **Legislative: Water, Sewer Funding Threatened for Non-Residents**

The General Assembly is considering punitive legislation against cities which charge a profit on water and sewer fees to non-residents, thus prohibiting infrastructure construction funding for certain practices. (Cont'd page 2.)

### **Administrative: ODOT Vertical Construction**

The Ohio Department of Transportation is selecting design professionals for an \$11 million full-service maintenance facility in Pickaway County. (Cont'd page 2.)

### **Judicial: License Appeal in Home County**

A Court of Appeals has held that the Ohio Department of Transportation's revocation of a "certificate of qualification" is a "license", subject to appeal to the court of the holder's home county. (Cont'd p. 2.)

### **Legislative: Unilateral License "Reciprocity"**

Both chambers are considering legislation to mandate an automatic Ohio license for out-of-state competitors who hold another state's license, on the theory that professional licenses are an obstacle to job creation in this state. (Cont'd p. 2.)

### **Administrative: OCILB Enforcement**

While continuing its enforcement efforts, the Ohio Construction Industry

Licensing Board honored long-time, original Board member Frank Alexander who passed away. Mr. Alexander was instrumental in the original enactment of the OCILB law. (Cont'd p. 3.)

### **Judicial: No Arbitration Without Signed Contract**

A Court of Appeals denied a stay pending arbitration, notwithstanding that the owner-to-prime and prime-to-sub contracts contained arbitration provisions, because the owner signed no direct contract with the subcontractors. (Cont'd p. 3.)

### **Legislative: Storm Shelter Moratorium**

Ohio's building code requirement for the construction of School Storm Shelters is under a moratorium, to be extended by legislation in the Senate General Government and Agency Review Committee as too costly and unnecessary. (Cont'd p. 3.)

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## **Legislative: Water, Sewer Funding Threatened for Non-Residents (Cont'd)**

House Bill 163 is sponsored by Representative Tom Brinkman (R, Cincinnati), who is concerned that the City of Cincinnati overcharges non-residents for water and sewer from systems constructed with state funding.

Litigation ensued in the 1980's, resulting in a metropolitan agreement that recently expired, leading to another court fight. If passed, the legislation will re-direct state construction financing away from the offending city to the locality seeking the services.

The bill will be heard at its sixth hearing in the House Public Utilities Committee on January 29, 2020.

## **Administrative: ODOT Vertical Construction (Cont'd)**

Statements of Qualifications from Architects and Engineers are due January 31, 2020, for a 22,000 square foot Truck Storage Building, along with eight ancillary facilities. Trades will include Mechanical, Electrical, Plumbing, and Fire Safety.

The project is expected to start in design during June, 2020, and achieve substantial completion in May, 2022.

For further information, see Ohio Facilities Construction Commission, "Opportunities."

## **Judicial: License Appeal in Home County (Cont'd)**

When a state licensing agency denies an exam for admission, denies renewal, revokes or suspends a license, the licensee

may appeal to the common pleas court of the county "in which the place of business of the licensee is located or the county in which the licensee is a resident." R.C. 119.12(A)(1).

In the ODOT case, the Department argued that the local court had no subject matter jurisdiction, because a "certificate" is not a license. Because the company could not conduct business without the certificate, the Court held it to be a license.

*Karvo Companies v. ODOT*, 9<sup>th</sup> Dist. Summit, 2019-Ohio-4556

## **Legislative: Unilateral License "Reciprocity" (Cont'd)**

House Bill 432 is sponsored by Representative Jena Powell (R, Arcanum), who delivered sponsor testimony claiming that only Arizona and Pennsylvania "broadly" recognize out-of-state licenses. Even if the other state does not license the profession requiring an Ohio license, the sponsor noted that under her bill, "an applicant can qualify for an Ohio license if they have a private certification and have worked for at least two years in that profession, or if they have worked for at least three years in that occupation in their home state." No provision requires reciprocal treatment for licensed Ohioans.

Senate Bill 246 is parallel legislation, sponsored by Senator Kristina Roegner (R, Hudson). During the bill's second, proponent hearing, Senators expressed concern about Ohio license agencies maintaining adequate control over the qualifications for determining equality of requirements.

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## **Administrative: OCILB Enforcement** (Cont'd)

The Board issued Notices for Hearings for discipline of unlicensed contractors practicing without a license, allowing others to use the license, or for more than one company: four in Electrical, five in Plumbing/Hydraulics, and three in HVAC/Refrigeration.

The Board also approved new applicants to take the test: 28 in Electrical, 19 in Plumbing/Hydraulics, and 13 in HVAC/Refrigeration.

The Board continued processing Reciprocity Agreements with various other states, requiring that if Ohio recognized the other state's license, the other state shall recognize Ohio's contractor license.

## **Judicial: No Arbitration Without Signed Contract** (Cont'd)

The prime contractor ceased work and disappeared from the job jurisdiction. The owner sued, and the trial court granted a default judgment against the prime contractor.

The unpaid subcontractors sued the owner, who then insisted on arbitration to avoid any court action. Without a mechanics' lien, the subcontractors sued for unjust enrichment and quantum meruit.

As the owner had no direct contract with the subcontractors, then the suing parties had not agreed to arbitration. Even though arbitration is preferred, the parties must include an arbitration clause in a written, signed contract together.

Accordingly, the owner is a third party to the prime subcontracts, and could not enforce arbitration.

*Sterling Contracting, LLC v. Main Event Entertainment*, 8<sup>th</sup> Dist. Cuyahoga, 2020-Ohio-0184.

## **Legislative: Storm Shelter Moratorium** (Cont'd)

Sponsored by Senator Tim Schaffer (R, Lancaster), the legislation would delay the requirement until the end of 2022. The Senator explained that schools currently maintain adequate storm shelters, that additional facilities would add 5% to the cost of construction, and "there has only been one fatality from a school being hit by a tornado since 1887."

The legislation has had only one hearing, but is expected to be heard further.

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Join us in

## **The Construction Conversation**

### **Call-In**

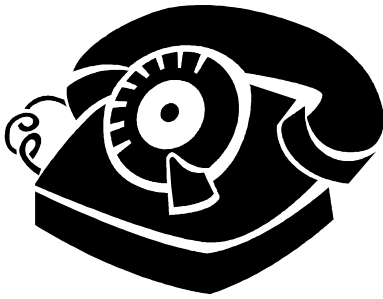
on

**Thursday, February 13, 2020**

3:30 p.m.

Call in and Participate

Dial In: 805-309-0010  
Access Code 754-477-909 #



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