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Tom Enneking, Editor

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Yes, You Can Fight City Hall – When Zoning Is a “Regulatory Taking”

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<http://www.bdbl.com/article/detail.asp?id=111>
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Property owners and governments have struggled for years to balance the government’s need to regulate property with the property owners’ constitutionally protected rights. Most people understand that if the government physically takes possession of your property, in an eminent domain or appropriation proceeding, you are guaranteed fair and just compensation. What has caused the most confusion is when property is not physically taken but is regulated to such an extent that there is no effective way for the owner to use it. There has also been confusion over temporary

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Researching Ohio Legislation

Tom Enneking
Assistant Law Librarian

We at the Cincinnati Law Library look to our members for inspiration. Your questions and comments provide us with a barometer against which we measure our collection and services. If we are repeatedly asked for the same title or service, we buy it, just as we discontinue those that have outlived their usefulness. We had some questions recently on how to track down Ohio legislation and we hope this article will provide some guidance.

The Laws of Ohio (KFO 25. A23)

Perhaps the best place to begin researching Ohio legislation is the *Legislative Acts Including Appropriation Acts Passed and Joint and Concurrent Resolutions Adopted by the General*

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Carl: 10 hours, 11 sources, 6 bathroom breaks

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Ohio Legislation, cont'd from page 1

Assembly of Ohio. First published in 1792 as the *Laws Passed in the Territory of the United States North-West of the River Ohio*, it is usually known as the *Laws of Ohio*. This title is the official publication of the enactments of the General Assembly. It is the equivalent to the U.S. Statutes at Large and the only official source of statutory law in Ohio.

Published at the end of each biennial session of the General Assembly, the *Laws of Ohio* contain first the Senate bills, followed by the House bills in the numerical order in which they are assigned, not in the order in which they are enacted. It also contains the full text and titles of acts, uncodified law, and laws later vetoed by the Governor. More importantly, the text shows how earlier acts affected a statute and what exact changes to a section of law were made by prior acts. For example, editors indicated changes in the following ways:

- Prior to 1927: changes in session not indicated;
- 1927-1969: *** indicated deletions, whereas additions indicated by *Italics*;
- Since 1969: line ~~striking through~~ text indicates deletions, and underlined text indicates additions to the statute.

SECTION 1. That sections 153.011 and 153.99 of the Revised Code be amended to read as follows:
 Sec. 153.011. (A)(1) ~~Whenever~~ Except as provided in division (D) of this section, whenever any building or structure, including highway improvements, in whole or in part supported by the state

There are a number of ways to access the information found in the *Laws of Ohio*. First, if you know the bill number, you may jump directly to that particular entry. Second, you may consult the topical index located in the last volume of a general assembly session (volume V for the 124th General Assembly, 2001-2002). If you know that a certain bill deals with the collection of DNA samples, you will discover that the index refers to House Bill 427, which begins on page 7894. Third, if you

know the section of an amended *Ohio Revised Code* statute, you can consult the table of Revised Code Sections Affected by Enacted Bills. If you know that *ORC* § 2108.08 had been amended, you can consult the table to learn that Senate Bill 108 amended that statute.

Using the paper versions of the *Laws of Ohio* has its drawbacks. It is a voluminous publication – the 124th General Assembly is nearly 10,000 pages long and spans five volumes. More frustrating is that the General Assembly is perpetually behind in publishing the *Laws of Ohio*. We are in the 126th General Assembly at present, but the most recently published is the 124th. You must look elsewhere to find that information.

The Web Page of the Ohio General Assembly

The Ohio General Assembly's web page (<http://www.legislature.state.oh.us/>) contains current information on Ohio legislation, including that from the 125th and 126th General Assemblies. You can access legislation from the 122nd General Assembly (1997-1998) to present.

Finding current legislation on the Ohio General Assembly's web page is very easy. If you know the bill's number, simply enter it in the search bar, select House, Senate, or both and hit Go. If you know only a few relevant keywords, you can enter them in the lower search bar and hit Go.

Current Legislation
2005-2006

Find Bill Number

House Senate Both

Find Bills, Analyses, Synopses & Fiscal Notes by Keyword

House Senate

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Ohio Legislation, cont'd on from page 3

For legislation that predates the current General Assembly, you will have to select Search for Legislative Information from the table near the top of the screen.

Legislative Schedules	About Ohio's State Government	Laws, Acts, and Legislation
The Ohio House of Representatives	Search for Legislative Information	The Ohio Senate
Ohio's Legislative Agencies	Session Video	Executive & Judicial Branches
	Education Topics	

Once inside, you will be presented with a number of options, including a function that allows you to search different General Assemblies via bill numbers. Other options include searching by sponsor or keyword.

Find Bills by Bill Number

Bill Number:

House Senate Both

126th General Assembly (2005-2006)

125th General Assembly (2003-2004)

124th General Assembly (2001-2002)

123rd General Assembly (1999-2000)

122nd General Assembly (1997-1998)

Ohio Capitol Connection

What is Ohio Capital Connection (<http://www.ohcapcon.com>)? It is a subscription-based database available at the Law Library that contains Ohio legislative information. One of the important features of Ohio Capital Connection is its analysis of Ohio legislation, which includes the status of bills and any available committee reports.

If you are interested in researching current Ohio legislation, the best place to start is on the webpage covering the 126th Ohio General Assembly. Simply enter a house bill or senate bill number in the search bar, hit Enter, and you are taken to a wealth of information related to your bill. A drop-down menu permits you to search bills dating from the 117th General Assembly (1989).

For example, if you entered House Bill 66 and selected the 126th General Assembly, you will find the text of the act, amended and substitute bills, bill history and LSC analysis. Other information accompanies your search results, such detailed budgetary activity and different versions as the bill passed through Ohio's legislative houses.

If you are interested in the deeper legislative offerings of Ohio Capitol Connection, it has an entire set of web pages devoted to legislative research. On the front page, you can search bills that have been introduced and passed during the current legislative session. If you know the topic of a bill but not its number, you can search them by full-text. Furthermore, you can conduct a full-text search of analyses and reports.

On most of the research pages, you will find the QuickStat option. QuickStat is the one-stop menu for all information on any bill from any session. It contains the same information as if you did a regular bill search.

QuickStat 126th

126th GA

Enter a bill number HB10,HB101

QuickStat is the one-stop menu for all information on any bill from this session or previous sessions!

[Ohio Session Law](#)

Special Session: [HB1 SB1](#)

Conclusion

What did we learn? We learned that while at the Law Library, you can accomplish nearly all of your Ohio legislative research. We learned that from the Ohio General Assembly's web page, you can do some at home or at the office. If you desire deeper legislative analysis, you must visit (or at least contact) the Law Library.

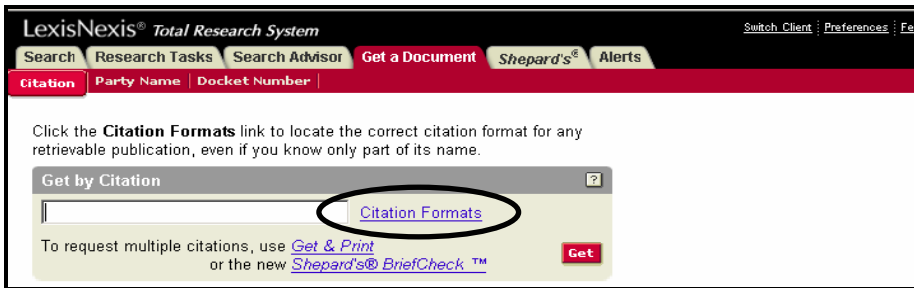
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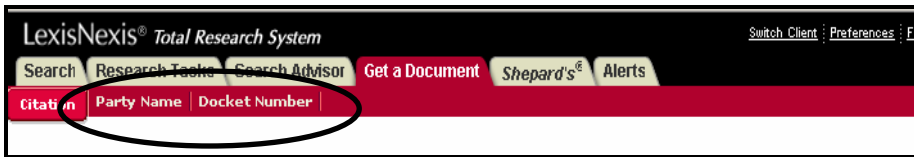
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Once you have selected the “Get a Document” tab, enter your citation. For help with citation formats, click on the blue link.



You may also find a case quickly if you have the Party Name or Docket Number simply by clicking on corresponding sub tab



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takings – that is, when property is taken only temporarily or when its beneficial use is temporarily diminished. After years of uncertainty in this area, the Ohio Supreme Court has created a standard to determine when regulation rises to the level of a regulatory taking and entitles the property owner to just compensation.

In a landmark decision on April 10, 2002, the Ohio Supreme Court clearly established the right of Ohio property owners to be compensated for improper regulatory action. The Supreme Court's decision in *State ex rel. Shemo v. Mayfield Hts.* (2002), 95 Ohio St. 3d 59, paved the way for a takings claim against the City of Mayfield Heights. This case found Mayfield Heights zoning was unconstitutional and therefore represented a temporary regulatory taking.

Shemo v. Mayfield Hts. involved a series of lawsuits relating to a 22.6-acre parcel of vacant land located in Mayfield Heights, Ohio. The property owner purchased the property in January of 1992 and just three months later filed a complaint requesting that the court declare the current U-1 Single-Family zoning of the property unconstitutional. That case was dismissed in June of 1995 and then refiled. The owner claimed that the U-1 Single-Family zoning was unconstitutional and requested that the property be rezoned to U-4 Local Retail and Wholesale District. Mayfield Heights stipulated that the U-1 zoning classification was invalid and then rezoned the property to U-2-A Planned Unit Development even though the owner objected to this classification.

The trial court found that the U-2-A zoning was unconstitutional as it applied to the owner's property because it did not substantially advance a legitimate health, safety or welfare concern of Mayfield Heights and that the U-2-A zoning rendered the

property economically nonviable. Facts supporting the court's determination that the property was not properly zoned as residential were that this property was adjacent to Interstate 271 and Mayfield Road, that it was adjacent to commercially developed property, and that there were high-tension wires impacting upon the property.

Under Ohio law, for zoning to be unconstitutional it must either result in the property not having an economically viable use or not substantially advance a legitimate interest in the health, safety or welfare of the government. In 2000, the Supreme Court found in *Shemo* that the zoning was unconstitutional because the owners had shown "that the City lacks any legitimate governmental health, safety, and welfare concerns in support of the U-2-A zoning classification." The Supreme Court also found that there was competent and credible evidence that the property was not suitable for residential use and that the proposed commercial use was reasonable.

After the Supreme Court's 2000 *Shemo* decision, Mayfield Heights took certain actions that appeared to be attempts to block the development of the property. The City claimed an interest in the property through "paper streets" (streets that were dedicated in 1927 but never used or constructed). Mayfield Heights also refused the owner's application for a permit because the owner had not obtained a wetlands permit for the property, despite the fact that the city had no ordinance authorizing the denial of permits based on environmental regulations. In addition, the City limited the point of access for the property to use by emergency vehicles only.

The City's actions resulted in the owner filing another lawsuit to compel the City to grant final approval of their road improvement

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plans, including unrestricted, nonemergency access to the property and to commence appropriation proceedings to determine the amount of the City's alleged regulatory taking of the property. In granting the requested relief, the Court also clarified that a regulatory taking will occur if the property owners can prove that the zoning, as applied to the property, does not substantially advance a legitimate state interest or denies an owner economically viable use of his land. If a property owner proves either one of these elements, the owner is entitled to claim a taking.

The Shemo decision also followed a recent United States Supreme Court decision concerning the significance of an owner's knowledge of zoning restrictions when the property was purchased. Historically, this prior knowledge would bar a challenge of the zoning. Shemo states that this prior knowledge is not an absolute bar to challenging the constitutionality of the zoning. This decision allowed the owner in Shemo to pursue its claims despite purchasing the

property with knowledge of its residential zoning.

The ultimate cost of the Shemo decision to Mayfield Heights is uncertain. I have already seen that this decision has caught the eye of both governments and property owners. It seems to be on the minds of both in their approach to obtaining regulatory approval or regulating the use of property. What is certain is that Shemo provides a roadmap to challenging the constitutionality of zoning and, if successful, to obtaining compensation for the resulting regulatory taking.

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Elder Law CLE

Location: Cincinnati Law Library Association, 1000 Main Street, Room 601

Date: Friday, July 21

Time: 12:30 pm - 2pm (Lunch from 12:30 to 1pm)

Speaker: Miriam Sheline, Pro Seniors

Members: \$15 **

Non-Members: \$50 **

** Box lunch included

Ms. Sheline, Pro Seniors' Staff Attorney & Medicaid Specialist, will provide an update on recent Medicaid changes including:

- Ohio's New Medicaid Assisted Living Waiver
- Ohio's New Crime of Medicaid Eligibility Fraud
- Medicaid Changes Included in the Federal Deficit Reduction Act of 2005
- Changes to Ohio's Medicaid Estate Recovery Law & Medicaid Estate Recovery Liens.

Law Library Annual Meeting

The Law Library Association's annual meeting will be held on Thursday, June 29, 2006, from noon-1pm. David Whelan, the Law Librarian, will give the annual report for 2005. All members are encouraged to come and participate in the meeting.

Regulation and Articles Amendments

The Association membership will be asked to vote on an amendment to the Association's regulations and amended articles of incorporation. The amendment will allow free public access to the Law Library, within limitations set by the Board of Trustees. Currently, public access is restricted by a daily use fee of \$5.

The amendment will align the Law Library with many of the other Ohio county law libraries that already provide public access to some parts of the

collection, while maintaining the high quality of services and materials the Law Library's membership expects.

The primary amendment to the regulations and articles is as follows:

Members of the public who are not members of the Association ~~may~~ **shall** be admitted to the Law Library ~~upon the payment of a fee for each day's use~~ **free of charge and shall have** ~~their use of the facilities may be limited use of the facilities upon such terms and conditions as by Resolution of the Board of Trustees~~ **shall from time to time determine by Resolution.**

If you would like the documents in their entirety before the meeting, feel free to e-mail David Whelan (dwhelan@cms.hamilton-co.org) for a PDF copy.

**Cincinnati Law Library Association
Hamilton County Courthouse
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Cincinnati, OH 45202**

ADDRESS CORRECTION REQUESTED

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