

# OHIO BOARD OF TAX APPEALS

Clayton Mrohaly, Trustee, <sup>1</sup>	)	
	)	CASE NO. 96-P-1422
Appellant,	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Cuyahoga County Board of Revision,	)	ORDER RETAINING
the Cuyahoga County Auditor and the	)	JURISDICTION
Cleveland Board of Education,	)	
	)	
Appellees.	)	

**APPEARANCES:**

For the Appellant, Clayton Mrohaly, Trustee		- Todd W. Sleggs Attorney at Law 1015 Euclid Avenue – Third Floor Cleveland, Ohio 44115
For the County Appellees		- William D. Mason Cuyahoga County Prosecuting Attorney By: Timothy Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the School District		- Karrie M. Kalail David Seed Means, Bichimer, Burkholder and Baker Co. L.P.A. Summit One, Suite 540 4700 Rockside Road Independence, Ohio 44131

Entered: February 4, 2000

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

We now consider our jurisdiction of this appeal. The original complaint filed in the captioned matter lists the owner of the property as Clayton Mrohaly-trustee, and the complainant is listed as Brite Metal Treating, Inc. The complaint was

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<sup>1</sup> It appears from the stipulation of fact filed in the captioned matter, that Clayton Mrohaly is deceased. Since this appeal is not extinguished, a motion for substitution of a proper party will be entertained by the board of tax appeals.

presumably prepared and signed by the corporate C.E.O. [Statutory Transcript, Exhibit “A”] Can jurisdiction be assumed upon this complaint? This is the question before us. Upon careful review of applicable authorities and the existing law, we believe it can.

Upon our initial review of the statutory transcript, we issued a show cause order upon the question of jurisdiction. The matter was then held in abeyance pending certain decisions of the supreme court. See *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, and *Worthington City School Dist. Bd, of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156. After those decisions were announced, we scheduled a hearing to elicit facts concerning the jurisdictional issue. The parties, however, elected to waive such hearing and instead offered the following stipulation of facts under date of August 2, 1999, which was accepted and filed:

“Now comes the parties hereto and stipulate that the following facts and evidence shall constitute evidence in this matter, and may be considered by this Board in deciding this matter. The facts and evidence are as follows:

“1. Legal title to the real property located at 8640 Bessemer Avenue, Cleveland, Ohio identified by the Cuyahoga County Auditor’s office as permanent parcel number 127-06-009 was in the name of Clayton Mrohaly, Trustee.

“2. Clayton Mrohaly was the trustee of the Roy Curtis Children’s Trust until the time of his death in January of 1997.

“3. Steven B. Curtis is the sole beneficiary of the Roy Curtis Children’s Trust.

“4. The Roy Curtis Children’s Trust assigned the right to lease the property described in Paragraph 1 above to SBC Investments.

“5. SBC Investments leased the property described in Paragraph 1 above to Brite Metal Treating, Inc.

“6. Steven B. Curtis is the Chief Executive Officer of Brite Metal Treating, Inc.

“7. Steven B. Curtis prepared, signed and filed the Complaint on the Assessment of Real Property for the tax year 1994 as the sole beneficiary of the trust, and beneficial owner of the property described in paragraph 1 above, as well as being Chief Executive Officer of the lessee, Brite Metal Treating, Inc.

“Attached are the following exhibits:

“1. Quit-Claim Deed transferring the subject property from David B. Shillman, Trustee to Clayton J. Mrohaly, Trustee.

“2. Irrevocable Trust Agreement entered into on July 23, 1969 by and between Roy Curtis as Grantor and David B. Shillman as Trustee.

“3. Lease Agreement executed January 23, 1992 by and between the assignees of the Roy Curtis Children’s Trust and Brite Metal Treating, Inc.”

We now consider this matter based upon the record before us which includes the notice of appeal, the statutory transcript, the various memoranda filed in response to our show cause order, the foregoing stipulation of facts and the attached exhibits.

The property in question is a small manufacturing facility built in 1947. The building contains 22,963 square feet and sits upon a 44,649 square foot site. It was used for many years as a metals foundry and extensive environmental contamination is alleged. We find that at the time the complaint was filed, the fee ownership of the property was vested in “Clayton Mrohaly, Trustee”, as a successor trustee under the terms of the Roy Curtis Children’s Trust dated July 23, 1969. Mr. Curtis is the sole beneficiary of the trust and beneficial owner of the trust *res*. The trust assigned the right to lease the property to SBC Investments. Possession and control of the subject property was vested in Brite Metal Treating, Inc. under a five-

year lease with SBC Investments, together with three successive five-year options to renew. Steven B. Curtis prepared, signed and filed the original complaint as chief executive officer of Brite Metal Treating, Inc. Mr. Curtis, individually, is also the owner of property in Cuyahoga County. See, *Mrohaly, Trustee v. Cuyahoga Cty. Bd. of Revision*, B.T.A. Case No. 96-P-1423, decided this date.

The auditor placed a taxable value of \$74,200 upon this property for the 1994 tax year, which is the first year of a sexennial reappraisal for Cuyahoga County. The Cuyahoga County Board of Revision took jurisdiction of the Brite Metal complaint, conducted a hearing, and determined there should be no change in valuation. This appeal ensued.

The threshold issue of jurisdiction was whether the complaint must be dismissed since it appears from its face that it was prepared and signed by a corporate officer, where there is no suggestion he is an attorney, as precluded by the rule in *Sharon Village, supra*. During the pendency of this matter, the 122<sup>nd</sup> General Assembly amended R.C. 5715.19(A)(1) and R.C. 5715.13 by enacting Am. Sub. H.B. No. 694, effective March 30, 1999, and Am. Sub. H.B. 283, effective July 1, 1999, 147 Ohio Laws. The original complaint was filed naming the trustee as owner, by Brite Metal Treating, Inc. seeking redress for the 1994 tax year - a tax year mentioned specifically in Am. Sub. H.B. No. 283:

“The amendment by Sub. H.B. 694 of the 122<sup>nd</sup> General Assembly of sections 5715.13 and 5715.19 of the Revised Code is remedial legislation and applies to any complaint that was timely filed under either of those sections respecting valuations for tax year 1994, 1995, 1996, or 1997, and to complaints filed for tax years 1998 and thereafter.” (Emphasis added.)

In *34501 Heritage Ltd. v. Cuyahoga Cty. Bd. of Revision* (Jun. 18, 1999), B.T.A. No. 97-M-1059, unreported, we found an original complaint that was previously jurisdictionally insufficient, conferred jurisdiction by virtue of Am. Sub. H.B. No. 694. Am. Sub. H.B. 694 specifically provided that “if the person is a \* \* \*

corporation, an officer [or] a salaried employee \* \* \* may file such a complaint \* \* \* .” By stipulation, it is established that Mr. Curtis is chief executive officer of Brite Metal.

A further question of jurisdiction arises from consideration of the provisions of R.C. 5715.19(A)(1) and R.C. 5715.13. First, R.C. 5715.19(A)(1) states that a person “owning” taxable real property in the county or in a taxing district with territory in the county may file a complaint seeking review of the valuation placed upon property in the county by the auditor:

“Any person owning taxable real property in the county or in a taxing district with territory in the county \* \* \* may file such complaint \* \* \*.”

It is established that the owner of the property at the time the complaint was filed was Clayton Mrohaly, Trustee. The complaint was signed by a corporate officer of Brite Metal, who also individually is an owner of property in Cuyahoga County.

At the time this complaint was filed R.C. 5715.13 provided:

“The county board of revision shall not decrease any valuation unless a party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.” [Emphasis added.]

The supreme court addressed the relationship of R.C. 5715.19(A)(1) to R.C. 5715.13 in *Soc. Natl. Bank v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 401:

“ \* \* \* [W]e believe that our decision in *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, 658 N.E.2d 267, requires that consideration of this matter start with R.C. 5715.19. In *Middleton* we stated, ‘R.C. 5715.19 is a general statute providing *who may complain* about various actions taken by the auditor.’ [Emphasis supplied by the court.] *Id.* At 227, 658 N.E.2d at 268. A review of the pertinent language of R.C. 5715.19(A)(1), which lists the persons and entities that have standing to file a complaint, shows only one classification for

which Society might qualify as a complainant, and that is, ‘[a]ny person owning taxable real property in the county.’

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“If Society had proven that it was a ‘person owning taxable real property in the county,’ then a consideration of the elements of R.C. 5715.13 would have become relevant. However, Society failed to show that it met the threshold standing requirement of R.C. 5715.19(A)(1), and, consequently, failed to invoke the jurisdiction of the BOR. Therefore, we need not consider whether Society met the requirements of R.C. 5715.13.” [Emphasis added.]

Thus under *Soc. Natl. Bank and Middleton, supra*, a two prong test was established. Under the first prong of the test we must look to see if a complaint satisfies the threshold requirements of R.C. 5715.19(A)(1). It is established that the owner of the subject property in whose name the complaint was filed was Clayton Mrohaly, Trustee.<sup>2</sup> See stipulation of facts, *supra*. The complainant was Brite Metal, a party in privity with the owner under the terms of a lease agreement, which specifically granted to the lessee the right to contest the assessment of taxes.

The Brite Metal lease contains the following provision:

“Taxes and Assessments:

4.01(a) Lessee shall pay and fully discharge all taxes, special assessments, and governmental charges of every character imposed during the term of this lease on or with respect to the leased premises or any part thereof, and all improvements erected thereon. \* \* \* Lessee shall pay all such taxes, charges and assessments to the public officer charged with the collection thereof not less than seven (7) days before the same shall become delinquent, and Lessee agrees to indemnify and save harmless Lessor from all such taxes, charges, and assessments. Lessee shall have the right, in good faith, and at its cost and expense, to

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<sup>2</sup> Although we decide the matter of jurisdiction on other grounds, this appeal was taken on behalf of the Trustee, as owner. An owner is entitled to appeal a decision of the board of revision pursuant to R.C. 5717.01 even though no complaint was filed under R.C. 5715.19. *Columbus Apartments Assoc. v. Franklin Cty. Bd. of Revision* (1981) 67 Ohio St.2d 85.

contest any such taxes, charges, and assessments in the name of the Lessor if necessary and shall be obligated to pay the contested amount only if and when finally determined to be due” [Emphasis added; Stipulation, Exhibit 3.]

Continuing the analysis suggested by *Soc. Natl. Bank*, the record does not indicate that Brite Metal is the owner of other property in Cuyahoga County; however, we would conclude that a lessee should be deemed an owner for purposes of R.C. 5715.19(A).

In an earlier edition, *Black’s Law Dictionary*, Revised Fourth Edition (1968), it was observed that “owner” is not a term of art. Rather it is a *nomen generalissimum*:

“The term [owner] is \* \* \* a nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied.”

A *nomen generalissimum* is “a name of the most general kind; a name or term of the most general meaning.” *Black’s Law Dictionary, supra*.

In an early case, the supreme court was confronted with the question of whether the term “owner” encompassed the holder of less than a freehold estate. In *Choteau v. Thompson* (1853), 2 Ohio St. 114, the court favored an interpretation that construed a lessee to be an “owner” within the meaning of the statute under consideration:

“The other points made in the case require us to construe the act ‘to create a lien in favor of mechanics and others, in certain cases,’ passed March 11, 1843, 41 Ohio L. 66. The task is by no means an easy one, for we are unaided by any previous construction of the Supreme Court, and the act is so loosely drawn as to be open to constructions very different, or, indeed, quite opposite. We have therefore given it much consideration, and have finally, though not without difficulty, arrived at

conclusions that are satisfactory to us all. These conclusions are

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1. That the word ‘owner,’ in the first section of the act, is not limited in its meaning to an owner of the fee, but includes also an owner a leasehold estate.” (Emphasis added.)

The supreme court stated at page 124, “To hold that an owner in fee only is meant, would be directly subversive of the policy of the act, and in a great degree render it useless.” Following *Choteau, supra*, in *Dutro v. Wilson* (1854), 4 Ohio St. 101, the Court held, in the first branch of the syllabus,

“The word ‘owner’ in section 1 of the mechanics’ lien law, is not limited in its meaning to an owner of the fee, but includes, also, an owner of a leasehold estate. If the ownership is in fee, the lien is upon the fee; if it is a less estate, the lien is upon such smaller estate.”

Then in *Baltimore & Ohio Railroad Company v. Walker* (1888), 45 Ohio St. 577, 585, the supreme court applied statutes applicable to a railroad company leasing trackage holding:

“An owner is not necessarily one owning the fee simple, or one having in the property the highest estate it will admit of. One having a lesser estate may be an owner, and indeed, there may be different estates in the same property vested in different persons and each be the owner thereof.” [Emphasis added.]

This issue was again before the supreme court in *The Iroquois Company v. Meyer* (1909), 80 Ohio St. 676. There the supreme court in construing a gambling

statute against an owner of a building used for gambling purposes, boldly stated at page 683:

“Any intelligent construction of the word ‘owner’ embraces one who is in possession of property by right with the power of control.” [Emphasis added.]

The court further observed at page 684:

“As given by Bouvier’s Law Dictionary, an owner is one ‘who has dominion of a thing real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases.’” [Emphasis added.]

Consistent with this view is *Cooper v. Roose* (1949), 151 Ohio St. 316, where in the syllabus the supreme court held:

“1. Occupation and control of premises by a party are attributes of their ownership. \* \* \*

2. A lease ordinarily transfers those attributes of ownership to the lessee.” (Emphasis added.)

*Carney v. Cleveland* (1962), 173 Ohio St. 56, is also worthy of mention. There the supreme court was presented with a tax case involving the question of whether a lessee was an “owner.” The supreme court observed at page 58:

“A generally recognized principle is that one who is in the possession and control of property and is occupying, managing and operating the same as a lessee is often to be treated as the owner thereof.” (Emphasis added.)

In *McCarthy V. Hansel* (1915), 4 Ohio App. 425, 436, an appellate court observed:

“No doubt the meaning of the word ‘owner’ depends upon the connection in which it is used, and may or may not mean one who holds the fee simple or highest estate \* \* \*” [Emphasis added]

These cases demonstrate that more than one person may be an “owner” of real property under the “bundle of rights” theory underlying the law of real property..<sup>3</sup>

We fail to discern a significant difference between the policies set forth in those statutes and the statutory provisions in R.C. 5715.19 now before us. This statement applies equally well here. The policy consideration in the matter *sub judice* of allowing those who hold a right to possession and control of real property to contest the valuation placed upon their property seems obvious. The General Assembly enacted this remedial legislation to foster a full and fair review of governmental actions by those whose interests they affect. We find Brite Metal to be an “owner” of taxable real property and entitled to make a complaint against its valuation.

Then under the second prong of the test, in *Soc. Natl. Bank, supra*, we are to consider whether the requirements of R.C. 5715.13 have been satisfied. The ultimate question here is whether in the purview of R.C. 5715.13 Brite Metal was an affected party or the agent of an affected party. The supreme court held in *Middleton, supra*, at page 228:

“We hold that a party affected by a complaint to decrease the value of property is one upon whom the decrease will produce material influence or effect.” (Emphasis added.)

Brite Metal is performe the “one upon whom the decrease will produce material influence or effect.” By virtue of the lease provision, Brite Metal must pay all taxes, and indemnifies the Lessor from all such taxes. Therefore Brite Metal is a “party affected” within the meaning of R.C. 5715.13. If on the other hand, the “party affected” is deemed to be the owner in fee, then under the terms of the lease, paragraph 4.01(a), supra, Brite Metal is the agent of the owner, trustee, the party affected. Accordingly, we find the complaint filed on behalf of the trustee, by Brite Metal is sufficient to vest jurisdiction in the Cuyahoga County Board of Revision and in turn ourselves.

We wish to make a further observation. We draw attention to the General Assembly’s choice of the phrase “party affected” in R.C. 5715.13 in conjunction with the phrase “person owning taxable real property” in R.C. 5715.19(A)(1). The question occurs: If General Assembly desired to limit the scope of persons coming within the ambit of these statutes to those owning only the highest possible estate in real property why did it not choose a phrase such as “owner,” “record owner,” “owner of record,” “fee owner,” or the like in both such instances? “Party affected” is a term reflective of one who bears the burden of the tax. *Middleton, supra*. It is commonplace for commercial tenants in shopping centers, office buildings, warehouses and manufacturing buildings to be contractually responsible for tax payments. Such commercial taxpayers have frequently sought review of the valuation of real property by county auditors have made which affect their interests. See, for example, *The Park Investment Co. v. Cuyahoga Cty. Bd. of Revision* (1962), 115 Ohio App. 523, *Trebmal Construction, Inc. v. Cuyahoga Cty.*

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<sup>3</sup> For an interesting case see *Bd. of Edn. of the Cincinnati School District v. Hamilton Cty. Bd. of Revision* (June 13, 1997), B.T.A. No. 96-J-158, unreported, where the entire tax parcel and economic unit consist of property leased upon “air rights.”

*Bd. of Revision* (1986), 29 Ohio App. 3d 312, *The Mead Corporation v. Hamilton Cty. Bd. of Revision* (Oct. 4, 1996), B.T.A. No. 96-D-1048, unreported, *Richmond Mall, Inc. v. Cuyahoga Cty. Bd. Of Revision* (June 18, 1993) B.T.A. No. 90-P-115. unreported, *Upper Arlington City Schools v. Franklin Cty. Bd. of Revision* (Nov. 5, 1993), B.T.A. No. 91-G-1673, unreported, *Sutton Grove Ltd. Partnership Traditional Living Communities, Inc. v. Hamilton Cty. Bd. of Revision* (Mar. 19, 1993), B.T.A. No. 90-G-1261, unreported, *Schiear v. Hamilton Cty. Bd. of Revision* (Aug. 14, 1992), B.T.A. No. 90-K-1577, unreported.<sup>4</sup> in which the board has held that a lessee had authority to file a complaint against valuation within the purview of R.C. 5715.13. This list does not include the many cases in which the standing of a lessee to file a complaint was not questioned. In *Baltimore & Ohio Railroad Company, supra*, the supreme court admonished:

“In the construction of statutes, to ascertain the proper meaning of such terms, regard must be had to their various provisions, and such effect given them as these provisions clearly indicate they were intended to have, and as will render the statute operative.” (Emphasis added.)

The remedial legislation by the General Assembly would be rendered substantially impaired if we were to cut such a large population from review of the actions of county assessors affecting their interests. The gravity of this issue can not be understated. Millions of dollars have been invested in real property improvements by those who own less than the fee estate possible in lands. It has been customary practice for many years for lessees to accept contractual responsibility to pay real property taxes and thereby succeed to an accompanying right to contest real property taxes. Are we to now hold such persons have no right to protest and protect their interest in valuation? Many of these leases were negotiated years ago. Parties invested in major real estate developments in reliance upon such practices. Hotels,

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<sup>4</sup> We would observe that many of our cases were decided upon the premise that a lessee stood in the stead of the fee simple owner. At the time R.C. 5715.13 contained the language “party affected thereby or his agent.”

office buildings and other structures of major importance are built upon “ground leases.” The owner of the fee estate may now have little interest in real property taxes - - - for tax collection proceedings are *in rem*, not *in personam*. Such underlying title may pass over the years to strangers or investment institutions with little or no motivation to assist the lessee. The decision in *The Park Investment Co., supra*, that a 99 year lease is “equivalent” to ownership recognizes the problem but provides little satisfaction. Terms of leases vary significantly in duration. If we fail to afford standing to such lessees to contest the actions by county assessors that affect their interests a whole class of persons will be foreclosed from review.<sup>5</sup>

Going back to the supreme court’s decision in *Soc. Nat’l Bank, supra*, as followed in *N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1998), 122 Ohio App.3d 654, we believe there could be unintended consequences from such a narrow rule which would preclude a lessee from filing a complaint against valuation. The ability to file such a complaint might turn upon whether the lessee owned other real property in the county which would support jurisdiction or the lack of such ownership of other real property would preclude jurisdiction.<sup>6</sup> Such a result seems to create an unequal classification of taxpayers.

We must also note the decision in *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181. The supreme court was concerned there with establishing jurisdiction under R.C. 5715.19, where a person held an “equitable interest” under an executory real estate purchase contract and held:

“Consequently, to be the owner of real property, the person must hold legal title to the property, not simply an equitable interest.”

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<sup>5</sup> See, *Bd. of Edn. of the Cinci. Sch. Dist. v. Hamilton Cty. Bd. of Revision* (June 13, 1997), B.T.A. No. 96-J-158, unreported, where the tax parcel and economic unit consisted of property leased and constructed upon “air rights.”

<sup>6</sup> As we pointed out, *supra*, in *Clayton Mrohaly, Trustee v. Cuyahoga Cty. Bd. of Revision*, B.T.A. No. 96-P-1423, unreported, decided this date, we found from a stipulation, that Steven B. Curtis was an owner of other real property in Cuyahoga County, and thus an owner under R.C. 5715.19(A) and a party affected under R.C. 5715.13 as sole beneficiary of the Roy Curtis Children’s Trust and beneficial owner of the property assessed.

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“Thus, a person owning property has legal title to it; a person having the beneficial interest in property has possession of all characteristics of ownership other than legal title. Since R.C. 5715.19 does not contain language allowing someone other than the person holding legal title to file a complaint, we conclude that the owner of an equitable interest in real property does not have standing to file a complaint.” [Emphasis added.]

*Victoria Plaza* relies in part upon *Bloom v. Wides* (1955), 164 Ohio St. 138. But in *Bloom*, an application for a building permit and the permit itself, named a person not an owner of the property. The Court found both the application and the permit were fatally defective, and noted that “there is no reference at all to the owner.” *Ibid.* at page 141. Also cited by the court is *State, ex rel. Multiplex v. South Euclid* (1973), 36 Ohio St.2d 167, where the applicant for the building permits was the purchaser under an executory contract of sale, and the owner of the property did not join in or authorize the application. In such case the applicant was not entitled to a writ of mandamus to secure the building permit. In the instant appeal, however, the complainant does have legal title to and a possessory right to the real property under a lease for a term of years, a lesser ownership estate. On this basis, we believe the instant appeal is distinguishable from *Victoria Plaza, supra*, which deals with the purchaser’s equitable interest in the property arising from an executory real estate purchase contract. We believe the possession and control of a leasehold estate, such as we have here is sufficient to bring this lessee within the sphere of the meaning of the term “title.” Compare *Twin Value Stores, Inc. v. Cuyahoga Cty. Bd. of Revision* (Nov. 13, 1998), B.T.A. No. 98-M-253, unreported.

#### C O N C L U S I O N :

In our view the General Assembly intended to cast a broad net in its choice of the terms “party affected” together with “owning.” It did so to provide those whose interests are most affected by the actions of government officials a full

and fair opportunity for review of those actions. Nor, may we ignore the declaration of the General Assembly that this is remedial legislation, 147 Ohio Laws, *supra*. Thus, we find that the lessee in this appeal has standing to contest the valuation placed against real property in which it has an ownership interest, rendering the statute operative within the contemplation of the General Assembly.

Upon review of the history of this matter, and cognizant of the length of time this appeal has remained pending awaiting the determinations of the supreme court upon these jurisdictional issues, we believe it to be in the parties' best interest for us to exercise our discretion to divert this matter into our mediation program in accordance with the provisions of Ohio Adm. Code 5717-1-21. The parties will be advised of the scheduled time and date for a telephone mediation conference and are advised to seek authority and be prepared to participate meaningfully in the mediation process.

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