



## Legislation Text

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**File #:** ORD-0046-2019, **Version:** 1

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TO AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT AND MUTUAL RELEASE WITH ALLEN, STOVALL, NEUMANN, FISHER & ASHTON LLP.

WHEREAS, on or about July 3, 2012, the firm Allen, Stovall, Neuman, Fisher & Ashton LLP, filed a lawsuit against the City of Gahanna, Jennifer Teal, in her capacity as the Tax Administrator, and the Regional Income Tax Agency, as described in the lawsuit known as *Douglas LaBorde, et al. v. The City of Gahanna, et al.*, Franklin County Common Pleas Court, Case No. 12 CV 0008517; and

WHEREAS, the lawsuit alleged that the City of Gahanna's interpretation of the reduced tax credit language, updated on February 8, 1989, improperly required taxpayers who live in Gahanna, but pay income taxes to another municipality, to pay more than the taxpayer should have paid to the City of Gahanna for tax years beginning in 2008 through 2014; and

WHEREAS, on or about February 8, 1989, the City of Gahanna amended its income tax ordinance by eliminating a sentence which included the word "lesser." The complaint alleged that this change meant that taxpayers who live in Gahanna and pay taxes to a different city, like Columbus, at a rate higher than 1.5%, should get a 100% credit, effectively paying nothing to the City of Gahanna; and

WHEREAS, on September 11, 2014, Franklin County Court of Common Pleas Judge Kimberly Cocroft granted summary judgment in favor of the Plaintiffs on their declaratory judgment claims and certified the following class: All individual taxpayers who resided in the City of Gahanna, had taxes withheld or paid to a municipality other than Gahanna at a tax rate greater than 1.5%, and who filed a municipal tax return with Gahanna on or after July 3, 2008, and the Court indicated that the exact amount of damages owing to the Class would be determined at a later date; and

WHEREAS, the Plaintiffs legal counsel sought \$16,217,461.97, plus interest and costs; and

WHEREAS, on May 25, 2016, Judge Kimberly Cocroft adopted a Civil Rule 23 notice plan to all class members that permitted them an opportunity to opt out of the class; and

WHEREAS, a damages hearing was held February 20-21, 2018 before Judge Kimberly Cocroft; and

WHEREAS, Gahanna asserted that if the determination of liability is correct (which the Defendants dispute) the Defendants owed the Class \$10,335,435.02, plus interest of \$1,780,163.81, plus refundable penalties of \$654,059.85, for a total of \$12,769,658.69; and

WHEREAS, on October 31, 2018, the Court issued a written decision finding that the Class was owed \$13,269,658.69 in damages; and

WHEREAS, the Judge Kimberly Cocroft asserted the tax dollars collected by the city were properly used for safety, streets, and stormwater maintenance as intended; and

WHEREAS, on November 19, 2018, the Plaintiffs filed a motion for attorney's fees seeking a fee award of 45% and payment of their expenses, and class representative incentive awards to Douglas

and Karla LaBorde of \$50,000.00 each; and

WHEREAS, on November 20, 2018, Gahanna and R.I.T.A. each filed a Notice of Appeal before the Tenth District Court of Appeals, asserting separate assignments of error, and challenging the decision on liability issued September 11, 2014. The Plaintiffs filed a cross-appeal, *Douglas LaBorde v. City of Gahanna, et al.*, Tenth District Court of Appeals Case Nos. 2018-AP-906 and 2018-AP-923; and

WHEREAS, the City of Gahanna has engaged in good faith negotiations with all parties and the lowest presented amount herein has been accepted by all interested parties; and

WHEREAS, the City of Gahanna and Jennifer Teal have agreed to a one-time principal only payment to be sent by wire or delivered as a certified check in the amount of Nine Million One Hundred Thousand Dollars (\$9,100,000) made payable to the law firm of Allen, Stovall, Neuman, Fisher & Ashton LLP.

WHEREAS, the Parties desire to resolve all litigation and matters between them.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GAHANNA, COUNTY OF FRANKLIN, STATE OF OHIO:

Section 1. That the Mayor is hereby authorized to enter an Agreement and Mutual Release with the law firm of Allen, Stovall, Neumann, Fisher & Ashton LLP, 17 S. High Street, Columbus, OH 43215; said agreement attached hereto as EXHIBIT A, and made a part herein.

Section 2. That the second reading of this legislation is hereby waived.

Section 3. That this Ordinance shall be in full force and effect upon passage by Council and 30 days after the signature of approval by the Mayor.