

# **Bond Case Briefs**

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## **ZONING & PLANNING - OHIO**

### **State ex rel. Harris v. Rubino**

**Supreme Court of Ohio - September 7, 2018 - N.E.3d - 2018 WL 4376880 - 2018 -Ohio-3609**

Taxpayers filed complaint for writ of mandamus, seeking to compel city finance director or city council to certify initiative petition proposing zoning ordinance and to compel county board of elections to place proposed ordinance general election ballot, and also filed motion for attorney fees and costs.

The Supreme Court of Ohio held that:

- City charter provision did not conflict with statute, and thus city finance director was required to certify petition in accordance with statute;
- Supreme Court lacked jurisdiction over taxpayers' constitutional challenges to provisions of city charter; and
- Taxpayers were entitled to award of fees and costs.

City charter provision, stating that zoning ordinance proposed by initiative petition "shall not become effective after the passage thereof, until Council submits such ordinance . . . to the electorate," did not conflict with statute setting forth manner for certification of initiative petitions by city auditor to county board of elections for placement on ballot, and thus city auditor, not city council, was required to certify to board sufficiency and validity of taxpayers' zoning initiative petition in accordance with statute; charter provision did not set forth procedure for submitting zoning initiative petition to city, verifying petition's signatures, or certifying petition to board, and any past practice by city was not entitled to deference.

Supreme Court lacked jurisdiction over taxpayers' constitutional challenges to two aspects of city charter, namely "ward veto" provision, under which zoning initiative would fail if not approved by a majority of electors in ward in which subject property was located, and purported "two vote" requirement, that charter required initiative to undergo two separate votes, in taxpayers' mandamus action seeking to compel city to certify zoning initiative petition and county board of elections to place initiative on general election ballot; to remedy taxpayer's constitutional challenges to ward veto and two-vote provisions would not require relief sought by taxpayers, but rather would require declaration that charter provision was unconstitutional and order prohibiting city from enforcing challenged provisions.

Taxpayers were entitled to award of costs and reasonable attorney fees, upon waiver of security for costs, under statute providing for an award of such costs and fees to a successful taxpayer in a suit arising from the failure of an officer or board of a municipal corporation to perform a duty, in taxpayers' successful mandamus action seeking to compel city auditor to certify initiative petition proposing zoning ordinance to county board of elections.

