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COURT OF APPEALS

STATE OF NEW YORK

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ST. LAWRENCE COUNTY,

Appellant,

-against-

NO. 43

CITY OF OGDENSBURG,

Respondent.

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20 Eagle Street  
Albany, NY  
April 18, 2023

Before:

ACTING CHIEF JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE CANNATARO: Number 43, matter of St.  
2 Lawrence County v. City of Ogdensburg.

3 MR. PIERCE: We'd like to reserve two minutes for  
4 our rebuttal, please.

5 CHIEF JUDGE CANNATARO: You have two minutes.

6 MR. PIERCE: Good afternoon, Your Honors. I'm  
7 Alan Piece of Hancock Estabrook, and along with St.  
8 Lawrence County Attorney Stephen Button, we represent the  
9 Appellants, here.

10 We're here today because 2021, the City of  
11 Ogdensburg passed local law number 2, unilaterally  
12 requiring the county to enforce the collection of unpaid  
13 city real property taxes and to make whole the City of  
14 Ogdensburg for those uncollected city real property taxes.  
15 We've - - -

16 JUDGE SINGAS: Why can't they do that?

17 MR. PIERCE: They can't, Your Honor.

18 JUDGE SINGAS: Why not?

19 MR. PIERCE: Because first of all, there's no  
20 authority for it in the real property tax law, and it  
21 impairs the powers of the county in violation of the state  
22 constitution and the municipal home rule law.

23 JUDGE GARCIA: If they hadn't opted out in '94,  
24 what would have happened?

25 MR. PIERCE: If they had not opted out, they'd be



1 governed by Article 11.

2 JUDGE GARCIA: I mean, would you be collecting  
3 city taxes under this scheme, then, if they hadn't opted  
4 out in '94?

5 MR. PIERCE: Not necessarily, no, Your Honor.  
6 They would have - - - they would then have been subject to  
7 an 1150 agreement, which is what we say they're now subject  
8 to.

9 ACTING CHIEF JUDGE CANNATARO: Would they  
10 mandatorily have been subject to an 1150 agreement had they  
11 never opted out at all?

12 MR. PIERCE: I believe so, Your Honor.

13 JUDGE GARCIA: Well, what happened in other  
14 counties where cities didn't opt out? Do you know?

15 MR. PIERCE: Not for certain. What we know and  
16 is in the record are some agreements between two cities and  
17 two counties, and - - -

18 JUDGE GARCIA: But are those cities that opted  
19 out and then wanted to go back?

20 MR. PIERCE: I'm not a hundred percent sure of  
21 that. I don't believe so, Your Honor.

22 JUDGE TROUTMAN: What's the purpose of opting  
23 out, then?

24 MR. PIERCE: The purpose of opting out of Article  
25 11 back in 1994 was so that the city could continue to do

1 their own collection of - - -

2 JUDGE TROUTMAN: Right.

3 MR. PIERCE: - - - city taxes.

4 JUDGE TROUTMAN: Until they decided, arguably,  
5 they didn't want to.

6 MR. PIERCE: Right, which was 2021, and so what  
7 the Appellate Division majority here completely missed that  
8 the dissent ceased on was that part of local law number 2,  
9 they actually repealed their opting out law - - -

10 JUDGE GARCIA: Right.

11 MR. PIERCE: - - - from 1994, so now they're in  
12 Article 11 and their method, as a city, for having the  
13 county do the enforcement and make whole of the city on  
14 real property taxes is 1150.

15 JUDGE TROUTMAN: Does the legislation provide  
16 that once you opt out, you're forever forbidden from going  
17 backward?

18 MR. PIERCE: Not that I'm aware of, Your Honor,  
19 and that's why we say 1150 was put into Article 1, we  
20 believe, by the legislature so that it would fit this  
21 situation where a city like Ogdensburg opted out when they  
22 had the chance, timely opted out in '93, '94, but later  
23 changed their mind and no longer want to do it themselves.

24 ACTING CHIEF JUDGE CANNATARO: There seems to be  
25 - - -

1 JUDGE RIVERA: Well, there you go. Go ahead.

2 CHIEF JUDGE CANNATARO: I just want to - - -  
3 there seems to be a tension in my mind between 1106, which  
4 provides that you can opt back in from by amending the  
5 charter from time to time or something like that, and 1150  
6 which only speaks in permissive terms about the agreements.

7 So under this scheme, it seems as is what  
8 happened here is an imaginable consequence of the way these  
9 laws are written. You could have someone opt back in and  
10 then not do an agreement and on their face, at least, it  
11 seems to me none of these RPTL provisions are violated.

12 MR. PIERCE: Well, we think that the provision  
13 here that because the city has opted back in - - - well,  
14 they repealed their opt out, so essentially, they're back  
15 in.

16 ACTING CHIEF JUDGE CANNATARO: Yeah.

17 MR. PIERCE: Is 1150, and they work together  
18 perfectly to allow a - - -

19 ACTING CHIEF JUDGE CANNATARO: But 1150 only says  
20 you may enter into an agreement.

21 MR. PIERCE: Yes.

22 ACTING CHIEF JUDGE CANNATARO: Which seems to  
23 imply that you may not enter into an agreement.

24 MR. PIERCE: and the County here did not.

25 ACTING CHIEF JUDGE CANNATARO: They didn't?



1 MR. PIERCE: They asked us to.

2 JUDGE RIVERA: So then what happens when you're  
3 at an impasse like that?

4 MR. PIERCE: Well, they would have - - -

5 JUDGE RIVERA: They can never, ever opt back in  
6 if we'll call it that?

7 MR. PIERCE: They would have certain remedies.  
8 One would be to make the deal sweet enough to get the  
9 County to do an 1150 agreement. Another might be to get  
10 the legislature to act.

11 We pointed out in our brief, RPTL 999, where the  
12 legislature actually directed the situation between the  
13 City of Geneva and Ontario County back in the '60s.  
14 Exactly how that came about, I don't know, but - - -

15 JUDGE WILSON: That's way before - - -

16 MR. PIERCE: It's before Article 11.

17 JUDGE WILSON: Yeah, and so isn't - - - I mean,  
18 when you just say it's a - - - you can disagree with me if  
19 you'd like. A fair interpretation of the legislative  
20 history or intent behind Article 11 was the state decided  
21 there was too much disparity among counties and how taxes  
22 were being collected.

23 Article 11 provided a uniform way that the  
24 legislature thought would be a good thing, but they allowed  
25 cities, towns, whatever to opt out if they wanted to. They

1 had to meet some criteria, but the idea was they would kind  
2 of get tired of opting out and be allowed to opt back into  
3 the comprehensive uniform system; is that fair?

4 MR. PIERCE: Yes, and that - - - Ogdensburg got  
5 tired of collecting, said its, you know, operational - - -

6 JUDGE WILSON: And so that kind of comports with  
7 - - - and they're falling into the uniform scheme that's  
8 sort of in Article 11 is what the legislature had hoped for  
9 when it passed it, and then so my next question then is how  
10 does 1150 work for you if Ogdensburg is no longer a tax  
11 district?

12 MR. PIERCE: Well, that's putting - - - that's  
13 the ultimate issue, because they're - - - the only basis  
14 they assert for what they did, a unilateral amendment of  
15 the city charter is the definition of tax district in  
16 section 1102 (6) (b) .

17 JUDGE WILSON: Well, so that goes back kind of to  
18 Judge Garcia's initial question, which was suppose they  
19 hadn't opted out in the first place or hadn't qualified for  
20 the opt out. Would they then have been a tax district?

21 MR. PIERCE: I believe they would be a tax  
22 district.

23 JUDGE WILSON: If they failed to opt out and they  
24 fell under Article 11, initially, they would still have  
25 been a tax district?

1 MR. PIERCE: I believe so, Your Honor.

2 JUDGE WILSON: Why?

3 MR. PIERCE: Well, because they would be  
4 collecting taxes. They would be collecting their own  
5 taxes. You know, the legislatures agree - - -

6 JUDGE WILSON: If they fell under the provisions  
7 of Article 11, wouldn't the County have been collecting  
8 their taxes; isn't that the whole purpose of Article 11?

9 MR. PIERCE: I don't believe so, Your Honor.

10 JUDGE WILSON: Okay.

11 MR. PIERCE: And here, they're relying on  
12 1102(6)(b) for the definition of tax district. That's a  
13 substantive - - - that's a procedural definition, and like  
14 this Court's decision in Town of Irondequoit - - -

15 JUDGE TROUTMAN: Who determines whether they're a  
16 tax district or not?

17 MR. PIERCE: Yes, and in fact, here - - -

18 JUDGE TROUTMAN: No, that's the question.

19 MR. PIERCE: Oh.

20 JUDGE TROUTMAN: Who determines? You said they  
21 changed the charter?

22 MR. PIERCE: Yes.

23 JUDGE TROUTMAN: And you suggest they can't do  
24 that?

25 MR. PIERCE: They can't - - -





1 JUDGE TROUTMAN: Who can make that determination?

2 MR. PIERCE: Well, they can do an agreement or  
3 they can go to the legislature like City of Geneva and  
4 County of Ontario.

5 ACTING CHIEF JUDGE CANNATARO: That defines  
6 whether or not they're a tax district?

7 MR. PIERCE: They're a tax district because the  
8 definition of tax district there is a city other than a  
9 city for which the County enforces delinquent taxes, so  
10 here, the city would be a tax district because the County  
11 is not.

12 ACTING CHIEF JUDGE CANNATARO: Okay, but under  
13 local law 2, they relinquished their tax - - - you know,  
14 their tax enforcement scheme. They said, here to forward,  
15 this will all be done by the County, so if you're using a  
16 function - - - if you're using the functional definition  
17 which seems to be implied in 1102, once they relinquished  
18 those responsibilities, then it would seem - - - and this  
19 is the holding I think of the majority of the Appellate  
20 Division that they were no longer a tax district; isn't  
21 that what they held?

22 MR. PIERCE: It is what they held, and  
23 interestingly enough, the city in its brief says the  
24 majority was wrong in stating and relying on - - - that  
25 they were wrong, because this comes back to the fact that

1 they did it unilaterally by city charter amendment.

2 JUDGE TROUTMAN: What about the powers argument?

3 MR. PIERCE: Yes, the powers argument, the city  
4 here and this Court adopts the dissent's definition of  
5 impair, as to weaken, and they say, well, the descent  
6 didn't factor in or look at - - - impair the power, what's  
7 the power.

8 And they use some dictionary definitions, and I  
9 say the Black's Law Dictionary is better. A better  
10 definition for purposes of this case and the Constitution  
11 and the municipal home rule law, and power in that  
12 circumstance includes what you can do and what you don't  
13 have to do.

14 And here, the county didn't have to collect the  
15 city's delinquent real property taxes before this  
16 unilateral charter amendment, but now, according to the  
17 Appellate Division majority, they do have to do that.

18 That is weakening the power, and the other powers  
19 here, we know County Law provisions 215 and 204 say that  
20 the board of supervisors or legislatures shall have the  
21 general care and control of the corporate, real, and  
22 personal property, and County Law 204 says the county board  
23 has the power to establish positions of employment.

24 The record here shows that once this law passed  
25 and was upheld by the trial court, and part of the papers

1 in the original motions, the county immediately had to go  
2 when the law was passed and try to find an office in the  
3 City of Ogdensburg to do this.

4 They had to - - -

5 JUDGE RIVERA: Well, why aren't they right, that  
6 all it means is that you're now subject to Article 11? How  
7 is that - - - that's what the legislature anticipated  
8 anyway.

9 MR. PIERCE: And the city is subject to Article  
10 11 now because they've repealed their opting out, and so  
11 their option is 1150.

12 JUDGE GARCIA: But Counsel, if they would have  
13 opted in in '94, wouldn't you have had to do all the things  
14 you just talked about, opening office, and so is the '94,  
15 that '93, '94 legislation unconstitutional also to allow  
16 and opt out and opt in?

17 I mean, would you have had to have change the way  
18 you did things if they had opted in in '94?

19 MR. PIERCE: Well, I go back to my answer to the  
20 question. I don't believe the county would be then  
21 required even back then to have done what this local law  
22 has required them to do.

23 ACTING CHIEF JUDGE CANNATARO: In what specific  
24 sense do you mean that?

25 MR. PIERCE: They would not have been required to

1 enforce delinquent, unpaid city real property taxes and  
2 make the city whole.

3 JUDGE GARCIA: That doesn't seem like an opt in,  
4 opt out. It seems like an opt out or maybe you opt in.

5 MR. PIERCE: Well, I think one of the - - - what  
6 it comes down to here under the RPTL in many ways is that  
7 the Appellate Division majority, in its opinion, at least,  
8 ignores the fact that local law 2 repealed the old opting  
9 out.

10 It's a central focus of the dissent. Certainly,  
11 the majority knew it.

12 JUDGE GARCIA: And explain that. I don't really  
13 understand that point very well. What's the difference if  
14 they repealed it or if they just said, now we're opting  
15 out?

16 MR. PIERCE: Well, a main focus of the majority  
17 opinion was the fact that they did opt out.

18 JUDGE GARCIA: Right.

19 MR. PIERCE: And the majority said - - -

20 JUDGE GARCIA: I understand that argument. I'm  
21 not so sure I understand the dissent's argument.

22 MR. PIERCE: About that they repealed it?

23 JUDGE GARCIA: That they did this by repealing  
24 their opt in. I mean, it's just a mechanism they used  
25 that's deficient here, or substantively, they couldn't do

1 this? I'm having some trouble with that argument.

2 MR. PIERCE: Well, Your Honor, by repealing it,  
3 the dissent makes clear that now they're subject to Article  
4 11 and that the definition of tax district does - - -

5 JUDGE GARCIA: What was the alternative to  
6 repealing that wouldn't have made them subject to Article  
7 11, but opting back in? That's my question, I guess.

8 MR. PIERCE: I - - -

9 JUDGE GARCIA: Is it the mechanism they use, the  
10 fact that they repealed it and scolded a repeal, or is it  
11 just the fact that they tried to opt back in?

12 MR. PIERCE: Well, the only way they opted back  
13 in was by repealing that provision.

14 JUDGE GARCIA: But was there another way they  
15 could have done that that wouldn't have run afoul of your  
16 argument in the dissent's view?

17 MR. PIERCE: I think going to the County and  
18 agreeing to an 1150 agreement. I think - - -

19 JUDGE GARCIA: That's the only way to opt in?

20 MR. PIERCE: Well, besides repealing their opt  
21 out, I believe so, Your Honor, so I - - - you know, as I  
22 said, the city here actually says in their brief to this  
23 court that a linchpin of the majority opinion was wrong.

24 When they said that the city was statutorily  
25 authorized to amend its charter under RPTL 1104(2). The

1 city says they're wrong. That and the opt out are the  
2 linchpins to the majority opinion, and the majority didn't  
3 address the repeal or the opt out.

4 And the city admits, yes, we did repeal the opt  
5 out, and the majority's wrong to rely on 1104(2), to allow  
6 us to do this by amendment of our city charter. I think  
7 between those two admissions by the city, I don't see how  
8 they have any authority under the RPTL to do this, and then  
9 we have the constitutional problem that they've largely  
10 adopted the dissent's position on the constitutional and  
11 municipal home rule provision.

12 ACTING CHIEF JUDGE CANNATARO: Thank you,  
13 Counsel.

14 MR. PIERCE: Thank you.

15 ACTING CHIEF JUDGE CANNATARO: So Counsel, is the  
16 city a tax district presently?

17 MR. CORTESE: No, Your Honor, and may it please  
18 the Court. Nick Cortese from Coughlin & Gerhart on behalf  
19 of the city, Respondents. No, and they're not because of  
20 the charter amendments, and just to give the court a little  
21 bit of a background to hopefully help to clarify this opt  
22 in, opt out thing.

23 So prior to the enactment of the current Article  
24 11, the city had enforced their taxes or their delinquent  
25 taxes pursuant to unique provisions in the city charter.

1 The city charter included provisions by which the city  
2 would collect the county's taxes, the city would make the  
3 county whole, and that has nothing to do with the current  
4 Article 11 of the RPTL at all.

5 And so the way that - - - the way that we read  
6 1104 is that you can - - - as of 1993, you could opt out  
7 and continue to enforce your unique taxation collection  
8 scheme via your charter, or you could repeal that - - - you  
9 could repeal the opt out because you had to pass a local  
10 law in order to opt out first, or you could repeal the opt  
11 out and make yourself subject to the provisions of Article  
12 11.

13 JUDGE RIVERA: But where does it provide for this  
14 repealing, because what's the point of the opt out? Where  
15 is the provider for that? Why have a date? Why not just  
16 say you can opt out? Can you just opt out and opt in at  
17 will?

18 MR. CORTESE: No, I think that you - - - I think  
19 that you can opt - - - you could have opted out in 1993 and  
20 when Article 11 was enacted, and then you could opt back  
21 in, but I don't believe that you can opt back out again.

22 JUDGE RIVERA: Like I say, where does the statute  
23 say you get to do that?

24 MR. CORTESE: I believe that that is - - - it's a  
25 different provision of Article 11, Your Honor, but off the

1 top of my head, I cannot remember what it is, but there is  
2 a separate provision of Article 11 that explains the opt in  
3 procedure, which is a repeal of your - - -

4 JUDGE RIVERA: Well, wouldn't that be the crux of  
5 the case if it actually allows for such a procedure, and  
6 then the question is, did you follow that procedure?

7 MR. CORTESE: I think that - - - I think - - -

8 JUDGE RIVERA: I thought their position was,  
9 there is no such language that allows it. All you can do  
10 is try and enter one of these agreements with them, and if  
11 you're at an impasse, you got to do something else.

12 MR. CORTESE: So if you make yourself - - - if  
13 the city makes itself subject to Article 11, which it did,  
14 and that's our position, I mean, you can't - - - and all  
15 local laws can be repealed.

16 So if you can pass a local law that does a  
17 certain thing based on your statutory authorization to do  
18 so, you can repeal that local law.

19 JUDGE GARCIA: But are you basing that on 1104(2)  
20 which says the code or special law made from time to time  
21 be amended; is that the statute you're talking about that  
22 lets you opt back in?

23 MR. CORTESE: No. It's a separate provision of  
24 Article 11, Your Honor, and I believe - - -

25 ACTING CHIEF JUDGE CANNATARO: Is it 1106?





1 MR. CORTESE: Yes, I - - - no, 1102 is the  
2 definitions. 1104 is the opt out, and 1106 I do believe is  
3 the provision that allows you to repeal.

4 ACTING CHIEF JUDGE CANNATARO: It takes about  
5 repeals - - -

6 MR. CORTESE: Yes. Yes, Your Honor.

7 ACTING CHIEF JUDGE CANNATARO: - - - of opt ins  
8 without the need for a referendum of various - - -

9 MR. CORTESE: Yes, Your Honor.

10 ACTING CHIEF JUDGE CANNATARO: And it also  
11 includes a provision about a transition period when you  
12 repeal your opt out? There has to be a certain amount of  
13 time in which if a parcel is subject to both a lien or  
14 liens rising out prior to the effective date to the lien,  
15 the procedure's applicable to the enforcement and the  
16 delinquent taxes shall depend on the lien, et cetera, et  
17 cetera.

18 Your repeal didn't include a transition period.  
19 The way I read it, and correct me if I'm wrong, you just  
20 handed the whole thing over to the County and sort of said,  
21 we're done with it, you take care of it now; isn't that  
22 right?

23 MR. CORTESE: I think that's basically the way  
24 that it happened. Yes, Your Honor.

25 ACTING CHIEF JUDGE CANNATARO: So is it possible

1 that your repeal was defective under 1106?

2 MR. CORTESE: I don't believe it was, Your Honor.  
3 I believe that it was done effectively and you know, if  
4 we're - - - it's interesting because the dissent in the  
5 Appellate Division seems to indicate that if we never  
6 effectively opted out, that we could do what we did in this  
7 situation.

8 Our position is that opting back in and  
9 subjecting ourselves to the provisions of Article 11 gives  
10 us the benefit of the definition of tax district.

11 JUDGE WILSON: So what is it about your opting  
12 back in to Article 11 that also if I understand it  
13 correctly, switches the liability for the uncollectible  
14 county taxes, because I take it you've been compensating  
15 the - - - you've been bearing the burden of uncollectible  
16 county taxes until you opted out?

17 MR. CORTESE: Yes.

18 JUDGE WILSON: And part of the issue here is now  
19 you're asking that they bear them. What is it about if  
20 anything, opting into Article 11 changes that?

21 MR. CORTESE: Because that touches off the whole  
22 - - - it's the first domino in the analysis that knocks  
23 over all of the other dominoes.

24 JUDGE WILSON: Well, that doesn't really help me.  
25 Where - - -

1 MR. CORTESE: I understand.

2 JUDGE WILSON: Yeah.

3 MR. CORTESE: But so let me explain. Opting back  
4 into Article 11 gives us the ability to take advantage of  
5 the benefit of the definition of tax district, and that  
6 says that a city is a tax district unless the county  
7 collects - - -

8 JUDGE WILSON: That's fine, so you're no longer a  
9 tax district.

10 MR. CORTESE: Right, so we're no longer a tax  
11 district, which means that by default, the county is now  
12 the delinquent tax collection enforcement authority for the  
13 city, just as it is presently for all towns in St. Lawrence  
14 County and villages as well.

15 JUDGE WILSON: So I got that. It's collecting,  
16 but what renders it liable for the delinquency of your  
17 taxes?

18 MR. CORTESE: Oh, RPTL 936, and that provision  
19 which states that - - -

20 JUDGE WILSON: That's not in Article 11.

21 MR. CORTESE: That's true. You're right.

22 JUDGE WILSON: So how do we get to there?

23 MR. CORTESE: So in Article - - - so there's a  
24 definition in Article 11 of delinquent tax, and the  
25 definition of delinquent tax in Article 11 - - - let me

1 just find it really quick here, and I can share it with  
2 you.

3 Yes. So the definition of delinquent tax in  
4 Article 11 is, it defines unpaid taxes as imposed on real  
5 property by or on behalf of a municipal corporation  
6 relating to any parcel which is included in the return of  
7 unpaid delinquent taxes pursuant to RPTL 936 or such other  
8 general special or local law as may be applicable.

9 So under Article 11, there is a definition that  
10 cross-references RPTL section 936 that defines delinquent  
11 taxes as any tax that's included in a return that's  
12 provided to the county as a collection - - -

13 JUDGE WILSON: And so now I've gotten to the  
14 point that those taxes are delinquent. How do I find who  
15 is responsible for bearing the uncollectible amount?

16 MR. CORTESE: I'm sorry, Your Honor. I don't  
17 really understand your question.

18 JUDGE WILSON: Yeah. I think all you've gotten  
19 me to so far is a definition that says the taxes that are  
20 delinquent are the taxes that appeared on a tax roll.

21 MR. CORTESE: Well, those are the - - - the  
22 delinquent taxes are the taxes that go unpaid. They're not  
23 paid timely.

24 JUDGE WILSON: Right. So who is responsible for  
25 the bearing the cost of the ones you can't collect, and is

1 that different whether it's a county tax or an Ogdensburg  
2 tax? Where do I find that?

3 MR. CORTESE: Under the scheme that presently  
4 exists, if the city is unable to collect and enforce its  
5 own delinquent taxes, the default collector and enforcer is  
6 the county under RPTL - - - under Article 9, and under  
7 various provisions of Article 11 as well.

8 I feel like I'm not answering your question very  
9 well but I'm doing my best because I'm having a little bit  
10 of a difficult time understanding it.

11 JUDGE WILSON: Yeah, it's - - - it's - - - maybe  
12 I'm making it too - - - sure. Counsel said that there were  
13 two changes here, who's collecting the taxes and who's  
14 responsible for the ones that you can't collect. The  
15 person is gone and you can't get them, right?

16 It used to be the case that for, as I understood  
17 it, up until you opted out, if there were county taxes that  
18 couldn't be collected because the person was nowhere and  
19 they owed the tax, you made the county whole for that.

20 Your argument, I believe, is that now that you've  
21 opted into Article 11, they are now responsible not only  
22 for their delinquent taxes - - - that they can't be  
23 uncollectible taxes, but for your uncollectible taxes as  
24 well, and I'm wondering, where is the provision that says  
25 that?

1 MR. CORTESE: So that's the definition in 1102,  
2 is we've abrogated our status as a tax district, and  
3 because we have abrogated our status as a tax district, the  
4 uncollectible taxes have to be collected by someone, and  
5 the default in the RPTL is the county.

6 Previously, previously, our collection scheme was  
7 based only on our charter. It was not within the scope of  
8 Article 11 of the RPTL. It was a unique system that  
9 existed prior to the enactment of Article 11.

10 JUDGE GARCIA: Can I try this question maybe a  
11 little bit differently? Are you saying collection - - -  
12 liability follows collection responsibility so there's no  
13 distinction - - - so if you have the responsibility to  
14 collect, you have the responsibility to make whole?

15 MR. CORTESE: Yes. Yes, Your Honor. As it  
16 relates to - - - as it relates to delinquent tax  
17 enforcement, yes. If you are collecting and enforcing  
18 delinquent tax, that's one function, yes.

19 ACTING CHIEF JUDGE CANNATARO: So under the old  
20 regime, prior to the opt in, opt out, your inability to  
21 collect county taxes would trigger a responsibility on your  
22 part to make the County whole for the uncollected taxes?

23 MR. CORTESE: The way that it existed under the  
24 charter is that the city was collecting the county's taxes,  
25 just timely taxes, and as well, making the county whole for

1 uncollected taxes.

2 JUDGE GARCIA: And that liability for making the  
3 county whole in your scenario was based on the fact that  
4 you were the collecting agency?

5 MR. CORTESE: Correct, yes. That's exactly  
6 right, Your Honor.

7 JUDGE WILSON: And you went for thirty years  
8 guaranteeing their delinquent taxes and only now decided to  
9 switch it?

10 MR. CORTESE: Yep.

11 JUDGE SINGAS: How does that not impair their  
12 powers?

13 MR. CORTESE: So the county's current argument  
14 with respect to impairment of powers relates to the idea  
15 that they believe that they have the power to do nothing at  
16 all.

17 But when - - - and I mean, that's a - - - they  
18 took it out of Black's Law Dictionary. I have no doubt  
19 that it's in there. That's fine in a vacuum, but in the  
20 present context, we're talking about governmental powers,  
21 and governmental powers are those that are vested in local  
22 municipalities by the New York State Constitution and by  
23 the state legislature.

24 And those powers are affirmative grants of powers  
25 to act, and - - -

1 JUDGE TROUTMAN: So his definition that you're  
2 preventing them from not doing something that they didn't  
3 opt to do is contrary to the definition?

4 MR. CORTESE: That's - - - yes, Your Honor.  
5 That's certainly our position, and - - - and further, I  
6 would argue that under the present circumstances, the  
7 county - - - and for the same reasons that we just got done  
8 discussing, the county doesn't have the ability to do  
9 nothing under the present circumstances anyway because they  
10 are the collection and enforcement agency for the city by  
11 virtue of our charter amendments, and they're also in  
12 reality right now, the collection and enforcement agency  
13 for all villages and all towns in St. Lawrence County.

14 ACTING CHIEF JUDGE CANNATARO: Counsel, I've  
15 heard it said that with great power comes great  
16 responsibility, and I at least understand part of the  
17 County's argument to be that by giving them this additional  
18 power to enforce the tax liabilities, you've created  
19 additional responsibilities on their part to modify  
20 whatever their enforcement mechanism is.

21 Hire more people, start more actions, just do  
22 more things than they had to do before, and that's at least  
23 partially what I understand their impairment argument to  
24 be.

25 Why isn't that an equally valid way of looking at



1 it?

2 MR. CORTESE: Because the fact that the practical  
3 consequence of the charter amendments may cause the county  
4 to make certain decisions about staffing, budgeting, et  
5 cetera, that doesn't impair their authority to make those  
6 decisions in any way.

7 And when we talk about governmental power, we're  
8 talking about the authority to do a thing, not what the  
9 practical consequence is of this scenario or not.

10 CHIEF JUDGE CANNATARO: So if they had - - -

11 JUDGE WILSON: What if they no longer had the  
12 authority to saddle you with their bad debt?

13 MR. CORTESE: What's that? I'm sorry?

14 JUDGE WILSON: They no longer have the authority  
15 to saddle you with their bad debt.

16 MR. CORTESE: Yeah.

17 ACTING CHIEF JUDGE CANNATARO: Thank you,  
18 Counsel.

19 MR. CORTESE: You're welcome. Thank you, Your  
20 Honors.

21 JUDGE GARCIA: Counsel, I'm sorry. Just on that  
22 last point, my understanding of this case was that it was  
23 focused solely at this point in the litigation on  
24 collection and responsibility for the city taxes?

25 MR. PIERCE: It is. It's been acknowledged and



1 admitted throughout here that one aspect of local law 2 is  
2 valid, and that is where they said, county, you go collect  
3 your own county taxes from city residence.

4 We have no dispute with that. There is case  
5 authority for that we've cited in our briefs.

6 JUDGE GARCIA: And the school district issue is  
7 not here either, right?

8 MR. PIERCE: It's not here. It's moot. I think  
9 what's really important here is, we talk about collection  
10 and enforcement is what's really - - - what I think has  
11 been at least missed by Counsel so far.

12 The City of Ogdensburg is still collecting taxes.  
13 It's only when they get to the point, oh, well, we weren't  
14 able to collect. Here's our bad tax debt. We weren't able  
15 to collect \$300,000 of city taxes. Here's our warrant and  
16 bill, county. You give us \$300,000.

17 It's the enforcement that they handed to us.  
18 They kept the collection.

19 JUDGE WILSON: But how are they collecting the  
20 taxes? How are they collecting taxes if they're no longer  
21 a tax district?

22 MR. PIERCE: That's a good question, Your Honor,  
23 and I don't know the answer because you can't, but that's  
24 it. They opted back in based on their charter amendment to  
25 some of Article 11 but not all of it, because if they



1 really opted in, they wouldn't still be doing the  
2 collecting, but they are, and I - - -

3 JUDGE WILSON: Is there somewhere in the record  
4 we can see that?

5 MR. PIERCE: Yes, Your Honor, in the local law  
6 that's in the record, and I made this - - - I pointed this  
7 out in our reply brief that they're doing a have your cake  
8 and eat it too argument because they opted in and they're -  
9 - - but they're still doing the collection.

10 It was interesting. This was a topic at the  
11 Third Department. Who's doing the collection, and it's  
12 clear the city is doing the collection for 2022. Last I  
13 knew, they hadn't actually handed the county the delinquent  
14 tax bill and said, okay, give us the money.

15 JUDGE RIVERA: But what if the court concluded  
16 that, yeah, they can opt back in and then they're subject  
17 to Article 11 and they can't do this part that you're  
18 talking about?

19 MR. PIERCE: They need to come to the County and  
20 get an 1150 agreement, and I think there's been a question.  
21 What if they had never opted out? There is no express  
22 provision in Article 11 that requires a county to collect  
23 city real property taxes like the provision in the town law  
24 that does require a county to handle town tax, real  
25 property tax.

1           ACTING CHIEF JUDGE CANNATARO: I wanted to ask  
2           you about that. So in all the other towns and villages in  
3           the County that are not tax districts, you know, the way  
4           this one is defined as a tax district, is the county  
5           collecting and enforcing the local taxes and is your  
6           argument - - - I think I just understood you to say, that's  
7           because it's governed by a completely different statutory  
8           scheme?

9           MR. PIERCE: It is. In St. Lawrence County, we  
10          have one city, Ogdensburg. We have I don't know how many  
11          towns and a number of villages. By operation of real  
12          property tax law 976, the County is required to do the  
13          enforcement of town taxes.

14          Under for villages, the county is not statutorily  
15          required to handle village real property taxes, but St.  
16          Lawrence County is doing it, and the problem with this  
17          practical argument that the city makes, well, we're the  
18          only city, they're doing every other municipality in the  
19          County.

20          The problem with that is, first of all, it  
21          doesn't give you authority to do what they've done. Second  
22          of all, that's not the situation in lots of counties in  
23          this state. I looked It up. In fact, Westchester County  
24          ought to be very interested in what happens in this case  
25          because they have six cities.

1           What if six cities in the County of Westchester  
2           say, okay, oh, Ogdensburg got away with this. We'll do the  
3           same thing. I don't know their opt out, opt in status. I  
4           don't.

5           ACTING CHIEF JUDGE CANNATARO: So is the crux of  
6           your argument that Ogdensburg simply cannot lose its tax  
7           district status, that that's not an option that's available  
8           to them?

9           MR. PIERCE: Not in the way they did it here by  
10          unilateral city charter amendment with no authority for  
11          doing so. The authority that the Appellate Division  
12          majority said gave them that authority to do it, the city  
13          says the majority was wrong.

14          JUDGE TROUTMAN: And are you saying they only  
15          have given up the delinquent aspect? They're keeping the  
16          collective principle collection?

17          MR. PIERCE: Absolutely.

18          JUDGE TROUTMAN: It's only when things go bad  
19          they said, here, you take it?

20          MR. PIERCE: Yeah. They're now handing us their  
21          bad debt and saying, give us a check.

22          JUDGE TROUTMAN: Would your argument be the same  
23          if you had all of it?

24          MR. PIERCE: I'm not sure I understand all of it.

25          JUDGE TROUTMAN: You were collecting the taxes,

1 even the good - - - you're collecting the good taxes and  
2 the responsibility in whole.

3 MR. PIERCE: Well - - -

4 JUDGE TROUTMAN: You seem to have been arguing  
5 that they were - - - you said, having their cake and eating  
6 it too, and that did not seem necessarily fair.

7 MR. PIERCE: Right. It's not right. I don't  
8 think it would change - - - if they had unilaterally said,  
9 we want you to collect all our city taxes and make us whole  
10 for whatever you don't collect for us, I don't think our  
11 legal argument would be any different because there's no  
12 authority for them to unilaterally impose those obligations  
13 on the county.

14 There's none and it weakens our powers, but here,  
15 it's ironic that they're trying to claim, oh, we're back in  
16 Article 11, but they're not completely back in Article 11.

17 JUDGE RIVERA: It's hard to see who would enter  
18 these agreements - - -

19 MR. PIERCE: But - - -

20 JUDGE RIVERA: - - - given the position you've  
21 taken.

22 MR. PIERCE: But we've shown in the record that  
23 City of Binghamton and Broome County have, and I forget the  
24 other one that's in the record.

25 JUDGE GARCIA: But in '93 and '94, and if you

1           opted in, what happened, then, though, because there must  
2           have been authority for the county to do this for a city  
3           under the statute, and was 1150 in place at that time?

4                   MR. PIERCE: 1150 was, I believe, was part of the  
5           original Article 11 adopted by the legislature in 1993.

6                   JUDGE GARCIA: So under that statute that passed,  
7           unless you opted out, you were in, right?

8                   MR. PIERCE: Yes.

9                   JUDGE GARCIA: And if you were in, it only meant  
10          you were in if you could come to an 1150 agreement?

11                  MR. PIERCE: That's the only way a city could  
12          pass that obligation onto the county.

13                  JUDGE GARCIA: I understand that. You're saying  
14          that, but '93, '94, opt in, opt out. I mean, you opt out  
15          or you're in, so the city doesn't opt out. They're in.  
16          Now what happens?

17                  MR. PIERCE: Whatever was in place before then,  
18          presumably like an agreement between any cities in a  
19          particular county.

20                  JUDGE GARCIA: But they have something that's  
21          going on on their own. They're doing their own collecting  
22          and enforcing. Now this law comes out in '93, '94, and  
23          they don't opt out. What happens? They want to go under  
24          this new law. They have to negotiate an agreement or  
25          they're in?

1 MR. PIERCE: Well, they're in, and there is - - -  
2 like I said, there is no express provision in Article 11 or  
3 Article 9. Article 9 really is with towns. We have this  
4 express provision in the town law - - - or Article 9,  
5 excuse me, that says the counties have to enforce and  
6 handle real property taxes for towns.

7 There is no such - - -

8 JUDGE GARCIA: I understand that, but I just  
9 think what I'm trying to get at is the cities, under the  
10 statute in '93, '94, they don't opt out, what happens to  
11 them? Now they want to go in. They're in. The county's  
12 responsible, so how does that work?

13 MR. PIERCE: I think that the issue - - - the  
14 County is not responsible, Your Honor. There is no  
15 provision that makes the county - - -

16 JUDGE GARCIA: So why opt out? I mean, you're  
17 out of it anyway.

18 JUDGE RIVERA: What are they getting? What are  
19 they getting to stay in or to be in?

20 MR. PIERCE: I don't know. I don't know why  
21 Ogdensburg opted out in 1994 in a timely fashion. I don't  
22 know why they did it.

23 JUDGE WILSON: Well, that's a different question.  
24 That's a different question. The question is, suppose they  
25 had done nothing. Then they're automatically under Article



1 11. What is the consequence of that? What does that  
2 statute mean for somebody who didn't do anything, didn't  
3 opt out? They're in. What does that mean?

4 MR. PIERCE: It means they're subject to Article  
5 11 and all of its provisions.

6 JUDGE RIVERA: And how is that different from  
7 what they were doing?

8 MR. PIERCE: I don't believe it is, Your Honor,  
9 in this case. The City of Ogdensburg - - -

10 ACTING CHIEF JUDGE CANNATARO: But they still  
11 collected their own taxes. The county would not have taken  
12 over their local tax enforcement and collection?

13 MR. PIERCE: Not been required to. They could  
14 have agreed to under 1150.

15 JUDGE GARCIA: So then why is there an opt out  
16 provision? I mean, there's no need to opt out. I mean,  
17 you're out unless the county agrees to it.

18 MR. PIERCE: Perhaps the city - - - perhaps  
19 various cities who did opt out, and there was more than  
20 Ogdensburg. I think I may have even - - - I alluded to the  
21 number, around twenty or something out of the sixty-two  
22 cities in the state opted out.

23 I'm sure they had their reasons. I don't know  
24 what they are. There's no record here of why Ogdensburg  
25 opted out. I mean, they made a record as to why they

1 wanted to come - - - wanted to repeal that opt out here,  
2 because it was a financial and administrative burden to  
3 them. They didn't want it.

4 JUDGE WILSON: The question isn't why they opt  
5 out. The question is for the ones who just sat there and  
6 therefore were under Article 11, if nothing changed for  
7 them, you're reading the whole legislation as if it had no  
8 effect.

9 MR. PIERCE: Well, I don't think so, Your Honor.  
10 Then now they're subject to whatever provisions there are  
11 in Article 11, such as 1150.

12 JUDGE WILSON: But you told us that even back in  
13 the 1960s, a county and a city reached an agreement on  
14 their own without the benefit of Article 11.

15 MR. PIERCE: No, there was legislation in the  
16 '60s dealing with the City of Geneva and the County of  
17 Ontario. The other ones that are in the record, and I  
18 apologize. I mean, I don't have the specific page, but  
19 they are in the record where, you know, we put them in the  
20 record, the County of Broome, City of Binghamton, and I  
21 think the City of Jamestown and the county it's in.

22 JUDGE WILSON: So all right. So this is becoming  
23 clearer, I guess. So you view Article 11 as essentially an  
24 all purpose version of the individual pieces of legislation  
25 of the type you were just describing. That is, through

1 1150, it facilitates the ability to reach agreements that  
2 they wouldn't have been able to reach with the cities in  
3 the first place?

4 MR. PIERCE: Yes. It sets up a series of  
5 provisions not dealing with ones that are covered elsewhere  
6 like school districts in Article 13 and the RPTL villages  
7 in Article 14. Towns in Article 9, so but there is no - -  
8 - I'm sorry.

9 I keep coming back to the fact there is no  
10 provision anywhere in the RPTL that makes a county  
11 responsible for a city's taxes, and I'm assuming the reason  
12 for that, I don't know, is that the legislature assumed  
13 that if you're that status of a city, you can handle your  
14 own real property tax issues and you should handle that.

15 ACTING CHIEF JUDGE CANNATARO: Thank you,  
16 Counsel.

17 MR. PIERCE: Thank you.

18 (Court is adjourned)

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C E R T I F I C A T I O N

I, Alexander Reaves, certify that the foregoing transcript of proceedings in the Court of Appeals of St. Lawrence County v. City of Ogdensburg, No. 43 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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