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Ohio Suit Against Soccer Team Tests Anti-Relocation Law

By **Zachary Zagger**

Law360 (March 8, 2018, 9:15 PM EST) -- The state of Ohio and city of Columbus are going to court to keep the Columbus Crew Major League Soccer club from leaving the city, a suit that could test the bounds of an Ohio state law and have broader implications for the states and cities in danger of losing a professional sports team to relocation.

Ohio Attorney General Mike DeWine and the city of Columbus hit the operator of the Crew — Precourt Sports Ventures, or PSV — and MLS with a **lawsuit in state court Monday**, alleging PSV and the league are violating Ohio Rev. Code Ann. § 9.67, a law colloquially known as the Art Modell Law, by seeking to move the team to Austin, Texas.

The law, which was passed after Cleveland lost its NFL team to Baltimore in 1996, obligates professional sports team owners in Ohio that have received public benefits such as tax subsidies, public assistance or publicly subsidized financing for stadiums and facilities to provide the municipality it plays in at least six months' notice of an intent to move and provide local investors an opportunity to purchase the team. The law further obligates the team to enter into an agreement with the municipality to leave.

The law was passed after then-Cleveland Browns owner Art Modell moved his National Football League franchise from its longtime home to Baltimore amid struggles to upgrade Cleveland's aging Municipal Stadium. The team rebranded as the Ravens after a deal was struck to leave.

Relocations of professional sports franchises continue to be a hot-button legal and political issue, especially when states and cities have invested money in stadiums or other benefits to either lure the team to the city or keep it there.

The Ohio law is perhaps the only example of such a law that seeks to give states a way to protect that investment, though experts say there are serious questions over its constitutionality and enforcement that could be sorted out in this case.

"The law was enacted to prevent these owners from getting the financial benefit from the city they are in, and then essentially shopping the team around to other cities," said sports attorney Joseph M. Hanna of Goldberg Segalla. "That seems to be exactly what Columbus did. ... It is a very interesting challenge."

The Crew is one of the oldest and most storied franchises in MLS, joining the league as an original member in 1996. The team further started a new trend in U.S. professional soccer in 1999 when it moved into what is now known as Mapfre Stadium, the first soccer-specific stadium in MLS.

Despite this history, the team has been near the bottom in average attendance in recent years, finishing 20th out of 22 teams last season with an average of 15,439 fans per game, according to figures released by the league, despite fielding a team that made it to the Eastern Conference finals.

Just before that playoff run last year, it was revealed that PSV owner Anthony Precourt was looking to move the team from Columbus to Austin if a new stadium deal could not be worked out with Columbus.

The news sparked immediate backlash from Crew supporters and fans of other teams across MLS rallying behind the slogan #SaveTheCrew.

PSV has since said that the city of Columbus has failed to offer "concrete ideas or a meaningful proposal" to address its stadium concerns. Meanwhile, MLS named nearby Cincinnati as one of four finalists for the league's next round of expansion.

The state and city say that the Crew and its affiliates have received a litany of benefits from the state, including \$5 million in state taxpayer-funded improvements to the parking facilities and state property tax exemptions for the land where Mapfre Stadium is located. The stadium itself was publicly subsidized, and the team has received other financial assistance from Ohio and Columbus, according to the complaint.

Therefore, PSV and MLS must comply with the Ohio Rev. Code Ann. § 9.67, the state and city allege, arguing the "statute is a narrowly written, common-sense response to owners who accept taxpayer benefits from one location and then shop their teams to the highest bidders."

In December, DeWine sent Precourt a letter informing him of the obligations under the statute, to which neither Precourt nor anyone affiliated with PSV or MLS, which is the owner of the team under the league's single-entity structure, has responded, according to the complaint.

However, Marquette University Law School sports law professor Matthew Mitten said the attempted application of the statute likely violates the dormant commerce clause, a constitutional doctrine inferred from the Commerce Clause that prohibits state laws that improperly discriminate against interstate commerce.

The Ohio statute would seemingly prohibit a sports team from moving from one state to another, protecting the interest of the locality regardless of the commercial reasons for relocating the team.

"It is basically a Hail Mary," he said. "I think it is unlikely to be successful, which is a shame."

"Congress has the exclusive authority to regulate interstate commerce, which includes the movement of the professional sports

franchises," said Mitten, who has written on legal issues with professional team relocations.

The dormant commerce clause arose in a series of legal disputes between the city of Oakland, California, and the Oakland Raiders in the 1980s when the late owner of the team Al Davis wanted to move it to Los Angeles.

Oakland had attempted to keep the team in the city by taking it from Davis through eminent domain. While the California Supreme Court ruled that such a taking could be legal, the city ultimately lost after a trial court blocked the move on remand. That decision was upheld by a state appellate court, saying the eminent domain process in that situation was the "precise brand of parochial meddling with the national economy that the commerce clause was designed to prohibit."

Davis moved the Raiders to L.A. in 1982, only to then move the team back to Oakland 12 years later. The team's current owner, Mark Davis, the son of Al Davis, has a deal in place to move the team to Las Vegas.

Ohio and Columbus may have no other legal option to keep the Crew. Many Ohio sports fans know all too well the harsh reality of losing a team from when the Browns left in the late 1990s. A new franchise has since returned to Cleveland adopting the Browns name, colors and history, but the team has not had nearly the same success as it had before Modell moved his franchise.

"I think this one is going to have to play itself out in the courts," said Denis Braham, a sports and real estate development attorney with Winstead PC who helped the Houston Texans' owners win an NFL expansion franchise after the Oilers moved to become the Tennessee Titans. "If I was the state of Ohio, I would be fighting hard to keep them. Certainly, they are a key asset to Columbus."

Still, the move is not set in stone. There are questions as to whether Austin will be **able to develop a stadium** and whether it is efficient to have another team in Texas. There are already MLS teams in Dallas and Houston, while San Antonio has been vying for a franchise as well.

The outcome of Ohio and Columbus' lawsuit could have further broader impacts beyond soccer, as similar laws could be used by other states to keep beloved sports teams.

"This is as interesting it gets," said Hanna. "It is not every day in the sports law world that we have an issue with the constitutionality of a law."

--Additional reporting by Philip Rosenstein. Editing by Philip Shea and Catherine Sum.

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