

Commission's Human Resources director about her supposed biases either. (Complaint at ¶27-28.) As such, the Lottery Commission urges the Court to grant it summary judgment under Rule 56(B).

II. MR. BENTKOWSKI'S PUBLIC-POLICY CLAIM IS NOTHING MORE THAN A DISGUISED "WHISTLEBLOWER" CLAIM, THE DISGUISE BEING NECESSARY BECAUSE HIS CLAIMS ARE NOT ACTIONABLE UNDER OHIO'S WHISTLEBLOWER STATUTES.

There are two "whistleblower" statutes in Ohio. One is found in R.C. 124.341, and it applies when an employee believes his or her employer is violating state or federal law. The employee must first "file a written report identifying the violation." If the employer later retaliates, the employee must then "file an appeal with the state personnel board of review within thirty days," and the employee may appeal the board's decision to a common pleas court. **The Court of Claims lacks jurisdiction over R.C. 124.31 claims.** *E.g., Dargart v ODOT*, 2005-Ohio-4463 (Ct. of Claims). The other is found in R.C. 4113.52(A), and it applies when an employee becomes aware of a "criminal offense" that "*the employee's employer has authority to correct.*" (Emphasis added.) **Needless to say, the Lottery Commission has no authority to "correct" criminal violations by Seven Hills officials.** Mr. Bentkwoski does not, in other words, have a valid statutory whistleblower claim.

III. MR. BENTKOWSKI DOES NOT HAVE A VALID COMMON-LAW PUBLIC-POLICY CLAIM.

Common-law claims of wrongful discharge in violation of public policy are similarly narrow. First, the "policy" must be "plainly manifested." *Elam v Carcorp, Inc.*, 2012-Ohio-1635 (10th Dist.) at ¶11. Second, the employee must demonstrate that his or her discharge would jeopardize that policy. *Id.* And third, the employee must demonstrate that his or her discharge was motivated by conduct related to that policy. *Id.* Together, these three requirements are referred to as the *clarity*, *jeopardy* and *causation* elements. Though employers

who retaliate against employees who oppose *their own* “corrupt practices” may be subject to common-law public policy suits, not a single case authorizes such a suit when the “corrupt practices” were those of *a different employer*. *Id.* at ¶25 (noting no public policy “prohibiting employers from terminating their employees for suing third parties”).

IV. MR. BENTKOWSKI’S VAGUE ALLEGATIONS OF “BIAS” CANNOT SUPPORT A RETALIATION CLAIM.

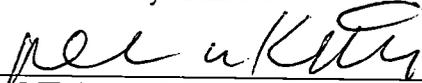
Mr. Bentkowski’s contention that he “gently cautioned” the Lottery Commission’s Human Resources director about her supposed biases cannot give rise to a retaliation claim. (Complaint at ¶¶27-28.) “[A] vague charge of discrimination in an internal letter or memorandum is insufficient to constitute opposition to an unlawful employment practice.” *Coriskey v Automotive Industry Action Group*, 40 F. Supp.2d 877, 898 (E.D. Mich. 1999). Mr. Bentkowski says only that he “was working on documenting” instances of bias by the Lottery Commission’s Human Resources director. (Complaint at ¶30.) And that is much too vague to amount to a retaliation claim.

V. CONCLUSION

Mr. Bentkowski’s two-count complaint is baseless, and, as such, the Lottery Commission urges the Court to grant it summary judgment.

Respectfully Submitted,

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