

IN THE  
SUPREME COURT OF MISSOURI

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No. SC86116

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HENRY G. LANE, ET AL.,

Plaintiffs-Appellants,

v.

PATRICIA S. LENSMEYER, Boone County Collector, AND COLUMBIA 93  
SCHOOL DISTRICT,

Defendants-Respondents.

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APPEAL FROM THE CIRCUIT COURT OF BOONE COUNTY  
THIRTEENTH JUDICIAL CIRCUIT  
HONORABLE FRANK CONLEY, JUDGE

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BRIEF OF AMICUS CURIAE  
MISSOURI SCHOOL BOARDS' ASSOCIATION, MISSOURI ASSOCIATION  
OF SCHOOL ADMINISTRATORS AND MISSOURI MUNICIPAL LEAGUE

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<sup>1</sup> All references will be to the 2000 edition of Missouri Revised Statutes unless otherwise noted.

## **STATEMENT OF JURISDICTION**

This action involves the question of whether a governmental entity may set tax rates factoring in collection rates of less than one hundred percent (100%), and hence is an issue of general interest and importance because it effects all taxpayers and all Missouri governmental entities that set tax rates.

This action involves the interpretation of the term “substantially the same revenues” in §67.110 as it applies to setting tax rates, and hence it is an issue of general interest and importance because it will impact all taxpayers and all Missouri governmental entities that set tax rates. In addition, the Court has exclusive jurisdiction in the construction of a revenue law. *Mo.Const.art.V, §3.*

Finally, this action involves whether §139.031.5, RSMo. 2000 may be applied in a challenge to the legality of a tax rate applicable to all property, and hence involves the construction of a revenue law over which this Court has exclusive jurisdiction.

*Mo.Const.art.V, §3*

## **STATEMENT OF FACTS**

MSBA adopts the statement of facts submitted by the Columbia 93 School District in its brief to this Court.

## POINTS RELIED ON

**I. The Court of Appeals erred by requiring the district to contemplate a collection rate of 100 percent when setting a tax rate because using a 100 percent collection rate is fiscally irresponsible, practically unfeasible, and contrary to §67.110.**

*Buechner v. Bond*, 650 S.W.2d 611 (Mo.banc 1983)

*Kuyper v. Stone County Commissioner*, 838 S.W.2d 436 (Mo.banc 1992)

*Southwestern Bell Telephone Co. v. Feuerstein*, 529 S.W.2d 371 (Mo. 1975)

§52.260 RSMo. 2000

§67.110.2

§137.720

**II. The Court of Appeals erred in determining the district's 2001 property tax levies violated §67.110 by generating revenues that were not "substantially the same" as the district's declared needs because the district's excess tax revenues are within acceptable surpluses allowed by Missouri courts.**

*Salisbury R-IV School District v. Westran R-I School District*, 686 S.W.2d 491 (Mo.App.W.D. 1984)

*St. Louis-Southwestern Railway Co. v. Cooper*, 496 S.W.2d 836 (Mo.banc 1973)

*Southwestern Bell Telephone Co. v. Hogg*, 569 S.W.2d 195 (Mo.banc 1978)

*Southwestern Bell Telephone Co. v. Mahn*, 766 S.W.2d 443 (Mo.banc 1989)

§67.110

§137.073

**III. The Court of Appeals erred in applying the “mistakenly and erroneously provision in §139.031.5 and granting taxpayers a refund because subsection 5 of §139.031 is only intended for rare situations in which 1) a single taxpayer is involved, 2) payment under protest or an injunction is not feasible and 3) a refund without prior notice of the claim would not disrupt the certainty in revenue collections for governmental entities.**

*B & D Investment Co., Inc. v. Schneider*, 646 S.W.2d 759 (Mo.banc 1983)

*Buck v. Leggett*, 813 S.W.2d 872 (Mo.banc 1991)

*Crest Communications v. Kuehle*, 754 S.W.2d 563 (Mo.banc 1988)

*State ex rel. Council Apartments, Inc. v. Leachman*, 603 S.W.2d 930 (Mo. 1980)

§139.031.1 and .2

§139.031.5 RSMo. Supp. 2003

## **ARGUMENT**

**I. The Court of Appeals erred by requiring the district to contemplate a collection rate of 100 percent when setting a tax rate because using a 100 percent collection rate is fiscally irresponsible, practically unfeasible, and contrary to §67.110.**

The Court of Appeals held that the district cannot set a tax rate that exceeds its budget. However, the Court also prohibits the district from contemplating less than a one hundred percent (100%) collection rate when setting a tax levy, or risk setting an illegal tax. *Opinion*, pg. 23-24. The Court of Appeals decision puts the district and all governmental entities between a rock and a hard place. Because, historically, counties are unable to collect 100% of taxes levied, and districts cannot budget using a fictional number, the holding by the Court of Appeals forces districts to artificially inflate their budgets to account for the reality that the Court refuses to allow districts to openly recognize or suffer chronic budget shortages.

While §67.110.2 RSMo. 2000<sup>2</sup> requires districts to set tax rates to collect “substantially the same revenues” as the district’s budget requires, the term “revenues” is neither defined in the statute nor by any Missouri court. Courts have, however, defined the term “revenues” as used in similar statutes. The most used definition of “revenues” comes from *Buechner v. Bond*, 650 S.W.2d 611 (Mo.banc 1983). There the Missouri

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<sup>2</sup> All references will be to the 2000 edition of Missouri Revised Statutes unless otherwise noted.

Supreme Court defines “revenue” as “the annual or periodic yield of taxes, excises, customs, duties and other sources of income that a nation, state or municipality collects and receives into the treasury for public use.” *Id.* at 613; *see also Kuyper v. Stone County Commissioner*, 838 S.W.2d 436, 438 (Mo.banc 1992).

Applying the Supreme Court’s definition of “revenue,” it is clear that uncollectible taxes are not considered revenue under state law. The Court’s definition of “revenue” in *Buechner* only includes taxes the governmental entity “collects and receives.” No taxing entity will ever “collect and receive” 100% of the tax money levied each year due to delinquent taxpayers and operation of state law. *See* §52.260; §137.720. Therefore, districts and other governmental agencies should be allowed to only contemplate monies reasonably received when setting a tax rate pursuant to §67.110.

The Court of Appeals relies on *Southwestern Bell Telephone Co. v. Feuerstein*, 529 S.W.2d 371 (Mo. 1975), in finding that the district has “no statutory authority” for using a collection rate under 100% to calculate their prospective tax levy. *Id.* at 374. However, the court in *Feuerstein* did not rule solely on the lack of statutory authority, but also because the parties had stipulated to alternative calculations and because there was no evidence of an accurate collection rate entered in the record. These factors are not present in the current case.

By relying on *Feuerstein*, the Court of Appeals disregards the definition of “revenue” advanced in *Buechner* and the disastrous effect of requiring a district to use inaccurate tax revenue figures in setting the yearly budget. It is irresponsible for a school district, or any other taxing entity, to budget funds that will not be, and historically have

not been, available. A shortfall will inevitably occur causing a lack of funds to pay bills and support programs near the end of the fiscal year. Should this Court impose a collection rate greater than that reasonably calculated to produce actual revenues, governmental entities will resort to “creative” budgeting in order to secure the amount of funds necessary to cover the district’s needs and still be in compliance with the Court of Appeal’s interpretation of §67.110. Districts will have to artificially inflate their budgets in order to justify a tax rate that will generate the necessary revenue. This practice is bad public policy for governmental entities and taxpayers because it would blur the true needs of the entity and disguise a previously transparent process.

**II. The trial court did not err in determining the district’s 2001 property tax levies complied with §67.110 by generating revenues that were “substantially the same” as the district’s declared needs because the district’s excess tax revenues are within acceptable surpluses allowed by Missouri courts.**

Section 67.110 requires political subdivisions to calculate tax rates to “produce substantially the same revenues in the annual budget adopted as provided in this chapter.” The conflict revolves around the phrase “substantially the same” and whether the district’s tax levy violated this statutory provision.

School districts cannot be expected to set a levy that will yield exactly the same revenue as the district’s declared needs. *See St. Louis-Southwestern Railway Co. v. Cooper*, 496 S.W.2d 836, 841 (Mo.banc 1973). In recognition of the difficulty inherent

in the budgeting process, the Court of Appeals adopted the Missouri Supreme Court's interpretation of a phrase nearly identical to §67.110's "substantially the same" language. *See Opinion*, pg. 16-17. The Court of Appeals finds that "substantially" is "synonymous with 'practically,' 'nearly,' 'almost,' 'essentially' and 'virtually.'" *Opinion*, pg. 16-17 (*citing Cooper* at 842). Hence, school districts are not required to set a levy to generate exactly their required needs, but the levy rate should be "very close to it." *Southwestern Bell Telephone Co. v. Hogg*, 569 S.W.2d 195, 201 (Mo.banc 1978). Applying this interpretation of "substantially the same" to the current case, the district's 2001 tax rate levy must have been set to generate "practically, nearly, almost, essentially (or) virtually" the same amount of revenue as the district's "2001-2002 School Year Budget's" stated needs.

Depending on the tax collection rate used to calculate the district's tax revenues for the year, the tax levy rate was set to generate either \$57,287,725 or \$60,944,388.<sup>3</sup> Regardless of the collection rate used, the district's 2001 tax levy rate was calculated to produce "substantially the same" revenues as the district required. The \$57,287,725 collected under the 94% collection rate generates an excess of \$1,055,220 for a percentage excess of 1.84196%. *See Opinion*, pg. 12-13. In *Cooper*, the court accepted a percentage excess of 5.5% as satisfying the "substantially the same" provisions of

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<sup>3</sup> The \$57,287,725 figure assumes a collection rate of 94% while the \$60,944,388 figure assumes a collection rate of 100%. These figures are adopted from the Court of Appeals opinion at page 12-13.

§137.037. *See Cooper* at 842-843. The district's percentage excess of 1.84196% falls well below the excess accepted as "substantially the same" in *Cooper*. As a result, the district's tax levy rate meets the requirements of §67.110.

Even assuming an impractical and historically infeasible collection rate of 100%, the district still meets the "substantially the same" provision of §67.110. A collection rate of 100% would create a percentage increase of 7.73144%. *See Opinion*, pg. 12-13. This percentage falls below the percentage excess the *Cooper* court found was not "substantially the same." Considering the difficulty setting tax levy rates and the flexibility courts have historically offered school districts, a tax levy that creates an excess of 7.73144%, assuming a historically inaccurate 100% collection rate, is set to generate "'practically,' 'nearly,' 'almost,' 'essentially' and 'virtually'" the same as the district's proposed needs.

Budgeting by school districts is an "inexact practice" that requires flexibility. *See Southwestern Bell Telephone Co. v. Mahn*, 766 S.W.2d 443, 445 (Mo.banc 1989); *citing Salisbury R-IV School District v. Westran R-I School District*, 686 S.W.2d 491, 496 (Mo.App.W.D. 1984). Additionally, Missouri courts have recognized that school districts often factor in a surplus of revenues to account for the difficulties of accurately determining both tax revenues and district expenses. *See Salisbury R-IV School District* at 496. Further, the purpose of statutes such as §67.110 and §137.073, statutes that require tax rates to generate "substantially the same" revenues as the taxing entity's stated needs, is to "prevent 'windfalls.'" *Cooper* at 841. Considering the difficulty in setting a tax levy that generates the necessary revenues while staying within the

requirements of §§67.110 and 137.073, and the need for a surplus to ensure enough resources to meet all of the district's responsibilities, a percentage excess of 7.73144% is not a windfall for the district. This surplus should be considered acceptable under the precedents discussed above.

**III. The trial court did not err in refusing to apply the “mistakenly and erroneously” provision in §139.031.5 and denying taxpayers a refund because subsection 5 of §139.031 is only intended for rare situations in which 1) a single taxpayer is involved, 2) payment under protest or an injunction is not feasible and 3) a refund without prior notice of the claim would not disrupt the certainty in revenue collections for governmental entities.**

The trial court's refusal to grant a refund based on §139.031.5 follows the overwhelming weight of precedent in Missouri courts. Numerous Missouri courts have held that a taxpayer must follow the requirements of §§139.031.1 and .2 in order to receive a refund where the tax is allegedly invalid as applied to that individual taxpayer. The Court of Appeals, however, goes beyond the current refund structure to grant individual taxpayers a refund under 139.031.5 when the challenge is based on the taxing entity's tax levy rate. This decision expands current tax law and violates the public policy promoting certainty in revenue collections. In addition, the decision allows taxpayers to evade the strict statutory requirements of §§139.031.1 and 2.

Taxpayers challenging the legality of a tax currently may 1) seek an injunction against the collection of the tax, or 2) pay the tax under protest pursuant to §139.031.1,

RSMo. In fact, the appellants selected the second option and paid their taxes under protest. Nevertheless, under the Court of Appeal's decision taxpayers now have a third option – to pay the tax and then later claim that the tax was “mistaken” or “erroneous” under §139.031.5.

No court has relied on §139.031.5 as a remedy for the levy of an allegedly illegal tax rate, and it would be inappropriate for the Court to look to §139.031.5 as a remedy in this situation. Courts that have analyzed §139.031.5 have interpreted the “mistakenly and erroneously” standard narrowly. The reported cases interpreting §139.031.5 involve disputes regarding property valuations or assessments, not challenges to the rate set. *See Buck v. Leggett*, 813 S.W.2d 872 (Mo.banc 1991); *Crest Communications v. Kuehle*, 754 S.W.2d 563 (Mo.banc 1988); *B & D Investment Company, Inc., v. Schneider*, 646 S.W.2d 759 (Mo.banc 1983); *State ex rel. Council Apartments, Inc. v. Leachman*, 603 S.W.2d 930 (Mo. 1980). These courts have interpreted “mistakenly and erroneously” narrowly and insisted that taxpayers rely instead on other available remedies. *Buck*, 813 S.W.2d at 878; *Quaker Oats Co. v. Stanton*, 96 S.W.3d 133, 140-41 (Mo.App.W.D. 2003). If an excessive assessment does not constitute a “mistake” or “error” under §139.031.5, it is unclear why an excessive tax rate would. *See Buck*, 813 S.W.2d at 878.

Section 139.031.5 is intended to provide a remedy in rare situations where the government made an error that affects an individual taxpayer – such as double payment of taxes, levying taxes against a tax-exempt entity, or clerical errors in applying the levy by the governmental entity. Limiting the application of §139.031.5 is important because the provision does not require the taxpayer to provide notice to the taxing entity of their

proposed challenges. Because these situations are rare, permitting refunds years later without notice should not do significant harm to a governmental entity or disrupt the performance of its responsibilities.

Allowing the application of §139.031.5 to a situation where multiple taxpayers are challenging the legality of a tax rate that is applicable to all taxpayers in the school district – not just one or a few taxpayers is improper. This challenge occurred after appropriate notice and a hearing was held prior to setting the tax rate. The taxpayers knew the details of how the tax rate was set and even paid the taxes under protest. There was no “error” or “mistake” involved in the payment of these taxes.

If §139.031.5 is interpreted to allow challenges of the tax rate applicable to all property, the resulting refunds will cause enormous harm to governmental entities. Taxpayers have no incentive to challenge tax rates promptly. The levies set by taxing entities could now be challenged long after the taxes are collected with no notice to the taxing entity of a potential dispute. Literally thousands of people could flood the collector with applications for a refund because their tax was “mistakenly or erroneously paid” after the revenue has been committed by the political subdivision. A mass refund could bankrupt a governmental entity. This effect is compounded by the fact that §139.031.5 was amended in 2003 to extend the deadline for applying for a refund from one year to three years. *See §139.031.5, RSMo. Supp. 2003.* Although the change in the law does not affect the Decision, it will amplify the negative impact this application of §139.031.5 will have on Missouri governmental entities.

Disputes regarding taxes must be resolved quickly so that the governmental entities may continue their work without concern that their budgets will be disrupted by claims of refunds from years past. *B & D*, 646 S.W.2d at 762 (Refunds “could create serious financial problems for the taxing authority.”); *Quaker Oats*, 96 S.W.3d at 143(“[A] narrow construction of the relief available in subsection 5 of section 139.031 is necessary, considering that there needs to be certainty for taxpaying entities and the ability of the collector to disburse the taxes.”)

Allowing taxpayers to challenge any tax levy rate one or even three years after they paid their taxes destroys any certainty in the budgetary process and could cause governmental entities to pay hundreds of thousands of dollars in refunds years after the money is collected. The end result is that schools and other governmental entities will be reluctant to spend money received and will keep an overly large surplus fund in case the tax rate is challenged years later. This will ultimately harm the students, schools and the communities governmental subdivisions serve.

### **CONCLUSION**

For the foregoing reasons, the Missouri School Boards’ Association, the Missouri Association of School Administrators and the Missouri Municipal League pray this court uphold the trial court’s decision denying appellants a refund under §139.031.5.

Requiring the district to contemplate a 100% collection rate is fiscally irresponsible and will lead to “creative” budgeting by school districts and other governmental entities.

Further, the district’s tax levy was set to comply with §67.110’s “substantially the same” language as defined by the Missouri Supreme Court in *St. Louis-Southwestern Railway*

*Co. v. Cooper*, 496 S.W.2d 836 (Mo.banc 1978). Finally, allowing refunds to individual taxpayers and in individualized situations under §139.031.5 opens governmental entities to thousands of refund claims and eliminates certainty in the already tenuous taxing and budgeting processes.

## CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2004, I served a copy of the foregoing pleading via first class mail upon the following counsel of record:

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**RULE 84.06 CERTIFICATION**

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b) and contains 3,658 words. The disk submitted with this brief has been scanned for viruses and to the best of my knowledge is virus-free.

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