

IN THE SUPREME COURT OF MISSOURI

ST. CHARLES COUNTY, et al.,)
)
 Appellants,)
)
v.) SC 85309
)
CITY OF ST. PETERS, et al.,)
)
 Respondents.)

BRIEF OF RESPONDENT / INTERVENOR
ATTORNEY GENERAL OF MISSOURI

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STATEMENT OF FACTS

Respondent Attorney General of Missouri hereby adopts and incorporates the “Statement of Facts” set forth in the “Brief of Appellants” insofar as it is relevant to the issues addressed herein.

ARGUMENT

Point Relied On: The Trial Court did not err in declaring that the TIF Act does not violate Article VI, Sections 23 and 25, of the Missouri Constitution because the TIF Act does not authorize “grants” to private corporations in that, under § 99.845, EATS may not be given or “granted” to private corporations but must be expended in furtherance of the public purpose of redeveloping blighted areas.

Introduction

This is a lawsuit between St. Charles County and the City of St. Peters over the implementation of a Tax Increment Financing district. St. Charles County alleged eight counts in its petition; of these claims; only one – Count VIII, Appellant’s Brief at Point V – raised a facial challenge to the constitutionality of the Real Property Tax Increment Allocation Redevelopment Act found within §§ 99.800 through 99.865 (“the Act” or “the TIF Act”).¹ The Missouri Attorney General intervened and is a party only as to this facial challenge. Accordingly, the Missouri Attorney General takes no position on the

¹Count VIII of Plaintiffs’ petition (LF 31) alleged that the TIF Act is unconstitutional and the Missouri Attorney General defended on that basis. However, as set forth in Point Relied On V (Appellants’ Brief, p. 101), Plaintiffs now seem to be characterizing this as an as-applied challenge. The Missouri Attorney General takes no position on such an as-applied challenge but maintains the position as presented to the trial court.

merits of the remainder of this lawsuit regarding the TIF Act implementation dispute between St. Charles County and the City of St. Peters.²

St. Charles County claims that the TIF Act, specifically § 99.845 RSMo (Cumm. Supp. 2003), violates Article VI, Sections 23 and 25 of the Missouri Constitution because it authorizes local governments to use increases in economic activity taxes (“EATS”) resulting from the TIF development to “aid” private corporations.

This Court has repeatedly affirmed the constitutionality of the TIF Act. See Tax Increment Financing Commission of Kansas City v. J.E. Dunn Constr. Co., 781 S.W.2d 70, 77 (Mo. banc 1989) (rejecting argument that funding redevelopment with payments in lieu of taxes (“PILOTS”) improperly lends political subdivision’s credit in violation of Article VI, Sections 23 and 25); County of Jefferson v. Quiktrip Corp., 912 S.W.2d 487 (Mo. 1995) (rejecting claim that reallocation of increases in EATS amounts to levying a

²St. Charles County initially also asserted in Count VII of its petition a facial attack on the constitutionality of the TIF Act under Article X, Section 10(a), but then conceded at oral argument before the trial court that Count VII was actually only an “as applied” challenge to the manner in which St. Peters had implemented the TIF district and not a facial attack on the constitutionality of the TIF Act. (Appellant’s Brief Appendix, A-30). The trial court rejected this “as applied” challenge, and plaintiffs have not appealed that ruling. This leaves Count VIII as the only remaining claim that the TIF Act is unconstitutional, and the only Count on which the State expresses a position.

new tax in violation of the Hancock Amendment). Neither of these decisions, however, though they speak at length to the public purposes furthered by the TIF Act and the redevelopments it encourages, expressly holds that using a portion of the EATS attributable to a redevelopment to help pay for that redevelopment does not violate the constitutional prohibitions against grants of public money “to” or “in aid of” private corporations. St. Charles County’s efforts to articulate a constitutional claim within the gap between these two cases (and thus a basis for appellate jurisdiction in this Court) must fail based on the plain language of the constitutional provisions at issue and the plain language of the TIF Act itself. This Court should reject, as the trial court did, Plaintiffs’ claim that the TIF Act violates Article VI, Sections 23 and 25.

Standard of Review

This is an appeal of a trial court order granting summary judgment upholding the constitutionality of a state statute. Review of the trial court’s decision is *de novo*. ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 871, 876 (Mo. banc 1993). Statutes are afforded a strong presumption of constitutionality. Blaske v. Smith & Enteroth, Inc., 821 S.W.2d 822, 828 (Mo. banc 1991). Unless appellant can show that the statutory provisions being challenged “clearly and undoubtedly contravene[] the constitution” and “plainly and palpably affront[] fundamental law embodied in the constitution,” then the statute must be upheld. Adams v. Children’s Mercy Hosp., 832 S.W.2d 898, 903 (Mo. banc 1992).

Argument

In Point V of Appellants' Brief (and the corresponding Count VIII of their Petition), Plaintiffs claim that the TIF Act, and specifically § 99.845, is unconstitutional under Article VI, Sections 23 and 25, of the Missouri Constitution. These Sections provide, in relevant part:

Section 23. No county, city or political corporation or subdivision of the state shall . . . lend its credit or grant public money or thing of value to or in aid of any corporation[.]

Section 25. No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation[.]

The General Assembly enacted the TIF Act in 1982 for the purpose of providing the means for local communities to improve, rejuvenate, and redevelop those parts of the community that are “an economic or social liability or a menace to the public health, safety, morals, or welfare.” § 99.805.1. See J.E. Dunn Constr. Co., 781 S.W.2d at 73.

The General Assembly sought to achieve this public purpose by authorizing political subdivisions to create local tax increment financing commissions to create a detailed redevelopment plan when a legislative determination is made that a blighted area exists. The General Assembly chose to aid in funding these public purposes (and yet still ensure no real tax losses to the interested taxing districts), by leaving pre-existing tax

allocations in place – for both real estate taxes and economic activity taxes – but by diverting a certain percentage³ of any increases in those revenues into a “special fund . . . for the purpose of paying redevelopment costs and obligations.” § 99.845.1(2)(a).

Plaintiffs claim that, in authorizing political subdivisions to use EATS to pay for part of the redevelopment costs of blighted areas, the General Assembly violated the prohibitions in Article VI, Sections 23 and 25, against using public funds to benefit private corporations. This argument fails for two reasons. First, Article VI, Sections 23 and 25, only prohibit “grants” to private corporations, and the TIF Act does not require or permit such grants. Second, Article VI, Sections 23 and 25, are not offended when public funds are spent in furtherance of public purposes, which is precisely what the TIF Act requires with respect to political subdivisions’ use of EATS.

TIF Act Does Not Authorize “Grants” to Private Corporations

³One hundred percent of the increases attributable to enhanced value of real estate (“PILOTS”) is put into the special fund. § 99.845.1(2). Only fifty percent of the increases attributable to enhanced economic activities (“EATS”) are placed in the fund. § 99.845.2.

Sections 23 and 25 of the Article VI prohibit political subdivisions from engaging in two acts: “lending its credit” to private corporations, or giving “grants” to private corporations. Plaintiffs have conceded that the TIF Act does not require the “lending of credit” and do not attack on that ground. See Appellants’ Brief at 107. Thus, Plaintiffs’ only argument is that the TIF Act requires political subdivisions to “grant” public funds to private corporations. But Plaintiffs nowhere allege, and have not shown, how this is so. The plain language of the TIF Act only permits EATS to be spent for “redevelopment costs and obligations.” § 99.845.1(2)(a). Even on the facts of this case, Plaintiffs have not alleged and cannot show that St. Peters has made a “grant” to Costco or any other private corporation.

According to Plaintiffs, the only EATS flowing to Costco are those which are used to reimburse Costco under the Redevelopment Agreement for certain improvements to the City’s infrastructure such as “property assemblage costs; utility relocation and extensions; construction and reconstruction of roads; traffic control signalization and improvements to existing public roadways; acquisition of floor protection system right-of-way and flood protection system construction.” See Appellants’ Brief at 31 (quoting the parties’ Stipulation of Facts (LF 1234-50)). Thus, Plaintiffs admit that the EATS paid to Costco were for services rendered in making infrastructure improvements, not as “grants.”

Article VI, Sections 23 and 25, does not prohibit all payments to private corporations. If it did, every contract entered into by a political subdivision would be invalid. Rather, the Constitution only prohibits “grants”⁴ to private corporations, and Plaintiffs’ argument ignores this distinction. Accordingly, this Court must reject Plaintiffs’ constitutional attack on the use of EATS authorized by § 99.845 of the TIF Act.

TIF Act Authorizes Expenditures for Manifestly Public Purposes

This Court has long held that “no violation of sec. 23 or 25, art. VI, Missouri Constitution, occurs where the expenditure of public funds is for a public purpose.” State ex rel. Mitchell v. Sikeston, 555 S.W.2d 281, 291 (Mo. banc 1977). See also State ex rel. Farm Elec. Coop., Inc. v. State Env. Improvement Auth., 518 S.W.2d 68, 74 (Mo. banc 1975) (rule has “long been recognized” that Article VI, Sections 23 and 25, are not violated “when money and property are expended or utilized to accomplish a ‘public purpose’”).

The TIF Act authorizes political subdivisions to use EATS only to accomplish redevelopment of “a blighted area, a conservation area, or an economic development

⁴ The word “grant,” as used in the context of Article VI, Sections 23 and 25, means: “2: something granted; esp: a gift (as of land or a sum of money) usu. For a particular purposes[.]” Webster’s Third New International Dictionary at 989 (1961) (emphasis added).

area, [that] has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing.” § 99.810. A “blighted area” is one that “constitutes an economic or social liability or a menace to public health, safety, morals, or welfare in its present condition and use.” § 99.805.1.

On questions of “public purpose, this Court has observed “the long-standing rule that determination of what constitutes a public purpose is primarily for the legislative department and will not be overturned unless found to be arbitrary or unreasonable.” State ex rel. Wagner v. St. Louis County Port Authority, 604 S.W.2d 592, 596 (Mo. banc 1980). Plaintiffs have failed to show that the General Assembly, in declaring the redevelopment of blighted areas a public purpose, acted arbitrarily or unreasonably. Nor could Plaintiffs have made such a showing given this Court’s determination in State ex rel. Atkinson v. Planned Industrial Expansion Authority of St. Louis, 517 S.W.2d 36, 45 (Mo. banc 1975), that substantially similar purposes in an earlier law “express[] a primary public purpose, and [thus] the relator’s contentions that the . . . granting of moneys are unconstitutional are ruled against him.”

It is irrelevant to the Plaintiffs’ constitutional claim whether Costco, or any other private corporation, also may derive a benefit from the expenditure of EATS to accomplish this public purpose.

The law does not require us to determine whether the public or private citizens benefit “more” by reason of the legislation. Rather, the rule is that if the primary purpose of the act is public, the fact that special benefits may accrue to some private persons does not deprive the government action of its public character, such benefits being incidental to the primary public purpose.

Id. at 45. See also State ex rel. Jardon v. Indus. Dev. Auth. of Jasper County, 570 S.W.2d 666, 674, 675 (Mo. banc 1978) (applying this test to affirm that legislation authorizing revenue bonds for use in building commercial building do not violate Art. VI, Sections 23 and 25, because “improved employment and stimulation of economy serve essential public purposes”).

Accordingly, the Plaintiffs have failed to establish that the use of EATS authorized by the General Assembly in § 99.845 is anything other than authority for political subdivisions to use those funds to further the public purpose of eliminating blight when and where they determine it exists.

CONCLUSION

Plaintiffs' claim that the TIF Act on its face violates Article VI, Sections 23 and 25, must fail because Plaintiffs have not shown that, under this law, the General Assembly requires or even permits political subdivisions to give "grants" of public money to private corporations. The General Assembly has authorized political subdivisions to use EATS to help fund essential infrastructure improvements incident to the redevelopment of a blighted area. This payment for services rendered furthers essential public purposes that both the General Assembly and this Court have recognized in the past. Accordingly, no violation of Article VI, Sections 23 and 25, has been or could be demonstrated. For these reasons, this Court should affirm the judgment of the trial court insofar as it upheld the constitutionality of the TIF Act.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 2490 words, excluding cover, this certification, signature block and appendix, as determined by WordPerfect 9 software;
2. That the attached brief includes all the information required by Supreme Court Rule 55.03;
3. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and
4. That two true and accurate copies of the attached brief and a floppy disk containing a copy of this brief, were mailed, postage pre-paid, this _____ day of _____, 2004, to:

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