

IN THE SUPREME COURT OF MISSOURI

Case No. SC89114

FRANKLIN COUNTY, MISSOURI, et al.,

Appellants,

v.

FRANKLIN COUNTY COMMISSION, et al.,

Respondents.

Appeal from the Circuit Court of Cole County, Missouri

Case No. 06AC-CC01149

Honorable Patricia S. Joyce

BRIEF OF RESPONDENTS

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Table of Contents

Table of Authorities.....	3
Introduction	5
Jurisdictional Statement.....	5
Statement of Facts	6
Response to Plaintiffs’ Points Relied On	11
Argument.....	12
A. Introduction	12
B. Standard of Review	12
C. The Trial Court properly rejected Plaintiffs/Appellants’ Hancock Amendment challenge because the provisions of Article X, Section 22(a) of the Missouri constitution do not apply to the tax rate levies set by Franklin County in 2006.	13
1. The 2006 tax rate levies set by Franklin County were not increased in excess of the authorized tax rate ceiling established by the Hancock Amendment.	15
2. The assessed valuation of property did not increase by a greater percentage than the increase in the general price level.	17
D. The Trial Court properly held that section 137.073.2 RSMo. and the tax rate forms issued by the Auditor pursuant to 15 C.S.R. 40-3.120 are entirely consistent with Article X, Section 22(a) because the statute and tax forms limit	

increases in gross revenue even more than the Hancock Amendment. 22

E. The amount of the increase in revenue obtained by Franklin County in
2006 is too insignificant to support a violation of the Hancock Amendment..... 24

Conclusion 25

Certification of Service and of Compliance with Rule 84.06(b) and (c) 27

Appendix 28

Table of Authorities

Cases

<i>Arthur v. Jablonow</i> , 665 S.W.2d 364 (Mo. App. E.D. 1984).....	13
<i>City of Bridgeton v. Northwest Chrysler-Plymouth, Inc.</i> , 37 S.W.3d 867 (Mo. App. E.D. 2001)	16
<i>Ensor v. Director of Revenue</i>, 998 S.W.2d 782 (Mo. 1999)	19
<i>Farmers’ Electric Cooperative, Inc. v. State Environmental Improvement Authority</i> , 518 S.W.2d 68 (Mo. 1975)	13, 23
<i>Green v. Lebanon R-III Sch. Dist.</i> , 13 S.W.3d 278 (Mo. 2000).....	15, 16
<i>Koehr v. Emmons</i> , 55 S.W.3d 859 (Mo. App. E.D. 2001).....	5, 7, 10, 13, 20, 21, 24
<i>Lane v. Lensmeyer</i> , 158 S.W.3d 218 (Mo. 2005).....	24
<i>McEuen v. Mo. State Bd. of Educ.</i> , 120 S.W.3d 207 (Mo. 2003).....	13
<i>Premium Standard Farms, Inc. v. Lincoln Township of Putnam County</i> , 946 S.W.2d 234 (Mo. 1997)	12
<i>Scholle v. Carrollton R-VII Sch. Dist.</i> , 771 S.W.2d 336 (Mo. 1989).....	18, 19, 20, 23
<i>St. Louis Univ. v. Masonic Temple Assoc. of St. Louis</i> , 220 S.W.3d 721 (Mo. 2007)	12, 13
<i>Tax Increment Fin. Comm’n of Kansas City v. J.E. Dunn Construction Co., Inc.</i> , 781 S.W.2d 70 (Mo. 1989)	16, 23
<i>Thompson v. Hunter</i>, 119 S.W.3d 95 (Mo. 2003)	20

Statutes

§ 137.073, RSMo.....	1, 5, 6, 13, 15, 21, 23, 24
----------------------	-----------------------------

§ 137.073.2, RSMo..... 1, 5, 11, 12, 21, 22, 23, 24, 25

§ 137.073.5(3), RSMo 16

§ 137.073.6, RSMo..... 9

§ 137.115.1, RSMo..... 7

15 C.S.R. 40-3.120 1, 5, 6, 11, 12, 13, 21, 22

Rules

Mo. R. Civ. P. 84.13(a)..... 8

Constitutional Provisions

15 C.S.R. § 40-3.120 21

Article X, Section 22(a)..... 1, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25

Mo. Const. art. V, Section 3 5

Mo. Const. art. X, § 17(3)..... 20

Introduction

The issue in this case is very narrow. Franklin County had a small increase in overall property valuation from 2005 to 2006 (not counting new construction and improvements) that resulted in a slight increase in revenue for the county. Does the Hancock Amendment require that tax rates be reduced so that county revenue, in actual dollars, remains unchanged from 2005 to 2006? As explained herein, the answer is no.

Jurisdictional Statement

This is an appeal from a judgment entered in the Circuit Court of Cole County in a declaratory judgment action brought by Plaintiff Robert Parks, the Prosecuting Attorney of Franklin County, at the relation of Franklin County, and taxpayer Jim Ming, against the Franklin County Commission and its Commissioners, Claire McCaskill and Jeremiah “Jay” Nixon. The Circuit Court granted motions to intervene as plaintiff by Jack L. Koehr and as defendant by East Central College. The Circuit Court entered summary judgment in favor of Defendants and Defendant-Intervenor, declaring that § 137.073.2 and 15 C.S.R. 40-3.120 are valid under the Missouri Constitution. Specifically, the Court found that the Defendants’ use of the inflationary assessment growth adjustment when setting the 2006 tax levy, as authorized by § 137.073.2, did not violate Article X, Section 22(a) of the Missouri Constitution.

Because this case involves the validity of a state statute, this Court has exclusive jurisdiction over this appeal pursuant to Article V, Section 3 of the Missouri Constitution.

Statement of Facts

Defendant/Respondent Franklin County Commission is the governing body of Franklin County, Missouri, and is responsible for setting the rate of levy for the county property taxes. L.F. 40, 103. Defendants/Respondents Edward Hillhouse, Terry O. Wilson, and Ann G.L. Schroeder, are the members of the Franklin County Commission. L.F. 40, 103.¹

This case deals with issues related to a basic formula of property taxation: Tax levy rate x assessed valuation = gross revenue. In 2006, the Franklin County Commission calculated the tax rate in accordance with the requirements of § 137.073 RSMo. and the instructions and forms promulgated by the State Auditor under 15 C.S.R. 40-3.120. L.F. 10, 15-17, 24. As a part of the process, the Franklin County Commission determined what is known as the “tax rate ceiling,” which, as a practical matter, is the maximum tax rate allowed without authorization from voters. L.F. 122, 125. The tax rate ceiling for both 2005 and 2006 was \$0.2816 per \$100 of assessed valuation for the General Revenue Fund, and \$0.2024 per \$100 of assessed valuation for the Road and

¹ Defendant-Intervenor/Respondent East Central College, whose official name is the Junior College District of East Central Missouri, levies an ad valorem tax within its boundaries, part of which includes Franklin County. S.L.F. 36. None of the Plaintiffs have made any allegations against or about East Central College. L.F. 8-14, 32-47.

Bridge Fund. L.F. 122, 125. The actual 2006 rate of levy set by the Franklin County Commission for the General Revenue Fund was less than the ceiling, at \$0.1161 per \$100 of assessed valuation, while the actual rate for the Road and Bridge Fund was at the ceiling rate of \$0.2024 per \$100 of assessed valuation. L.F. 19.

The total assessed valuation of all existing property in the county (excluding new construction and improvements) increased from 2005 to 2006. L.F. 16, 10, 24. The actual 2006 rates allowed this assessment growth to be, in a sense, captured as an increase in revenue equal to the percentage increase in adjusted valuation of existing property. L.F. 16, 10, 24. In other words, the gross revenue received by the county increased because the property valuation increased. The amount of the increase in the assessed valuation was less than one percent, specifically 0.7117%. L.F. 16.

Consequently, gross revenue collections increased by 0.7117% in 2006 when compared to 2005. The rate of inflation for 2005, as measured by the consumer price index, was 3.5%, L.F. 16, so the increase in gross revenue was well below the rate of inflation.

The record does not specifically reflect why assessed value of property, excluding new construction and improvements, increased in 2006 over 2005. Reassessment of real property occurs only in odd-numbered years; assessors use those same assessed values in even-numbered years. *See* Mo. Rev. Stat. § 137.115.1.² The increase in assessed

² In his brief, Appellant-Intervenor Koehr suggests for the first time that Franklin County's 2006 valuations were improperly increased over 2005. Appellant-Intervenor Koehr's brief at 17-18. Appellant cannot raise a new issue on appeal, and

Footnote continued on next page

valuation of real property in Franklin County in 2006 involved the revaluing of rural electrical cooperatives in the county. There are a number of rural electrical cooperatives located partly in Franklin County and partly in other adjacent counties. According to State Tax Commission Guidelines, county assessors are required to revalue rural electrical cooperatives not just in odd-numbered years, but each year. *See* Appendix A1. Rural electrical cooperatives are often located in several counties and the assessed value of these cooperatives is split among these several counties based on the proportion of customers and transmission lines that are located within each county. In even-numbered years such as 2006, assessors do not change the overall assessed value of these cooperatives. However, the assessors will adjust how the value is split among the counties based on changes in the past year in the proportion of customers and transmission lines that are located within each county. In a fast-growing county like Franklin County, new customers are constantly being served through new transmission lines, while an adjacent rural county may not have significant growth in the number of customers or lines. The result is a relative increase in the percentage of each electrical cooperative's value that is assigned to Franklin County. The relative increase in the number of customers and transmission lines causes valuation growth in the county in even-numbered years.

there is no evidence in the record to support his claim. *See* Mo. R. Civ. P. 84.13(a); *see also* Section D.2 below.

The 2006 assessed valuation of real property in Franklin County increased by approximately \$10.8 million over 2005. This amounted to a 0.7117% increase in assessed value of property in Franklin County, which the parties identified in pleadings below as “inflationary assessment growth.” L.F. 10, 15, 16, 24, 33. While this term may not accurately capture the reason for the growth in valuation, both the name of the term and the reasons for its use are not relevant to a determination of the issue in the case. That issue is, where a small increase in valuation of property in the county produces a slight increase in revenue, does the Hancock Amendment require that tax rates be reduced so that county revenue, in actual dollars, remains unchanged from 2005 to 2006? Again, the answer is no.

Regardless of the reason for the increase in assessed valuation in 2006, the 0.7117% increase was significantly less than the 3.5% increase in the consumer price index as certified by the State Tax Commission for 2006. L.F. 16. That 0.7117% increase in valuation resulted in \$30,655 in additional revenue for the General Revenue Fund, compared to overall revenue of \$4,337,965 for that fund. That 0.7117% increase in valuation resulted in additional revenue of \$22,033 for the Road and Bridge Fund, compared to overall revenue of \$3,117,912 for that fund. L.F. 16, 127. Pursuant to § 137.073.6 RSMo., the State Auditor examined these tax rates and determined that they were consistent with Missouri law. Thereafter, the Franklin County Commission issued an order levying a property tax rate of \$0.1161 per \$100 of assessed valuation for the General Revenue Fund and \$0.2024 per \$100 of assessed valuation for the Road and Bridge Fund for 2006 on property located in the County. L.F. 10, 24, 18, 19.

This lawsuit followed.³ The parties each filed motions for summary judgment. L.F. 87, 105 and 114. On January 29, 2008, the Circuit Court granted Defendants' motion for summary judgment and denied Plaintiffs' motions. L.F. 189.

³ In his Answer and Petition for Declaratory Judgment, Plaintiff-Intervenor Koehr sought certification for a class action. However, the trial court did not certify a class of plaintiffs, and Koehr has not challenged this issue on appeal.

Response to Plaintiffs' Points Relied On

The trial court properly entered summary judgment in favor of Defendants because the 2006 tax rates set by Franklin County did not violate the Hancock Amendment, and Section 137.073.2 RSMo. and 15 C.S.R. 40-3.120 are consistent with the requirements and purpose of Article X, Section 22(a) of the Missouri Constitution, and therefore, are not unconstitutional.

Argument

A. Introduction

Plaintiffs/Appellants sought a declaratory judgment that § 137.073.2 RSMo., and the tax rate forms issued by the State Auditor pursuant to 15 C.S.R. 40-3.120, violate Article X, Section 22(a) of the Missouri Constitution. In addition, Plaintiffs/Appellants asked the trial court to invalidate Defendant Franklin County's General Revenue and Road and Bridge tax rates for 2006. The trial court refused and entered summary judgment for Defendants and against Plaintiffs, holding that § 137.073.2 and the Auditor's tax rate forms are constitutional and that the County's tax rates are valid. The decision of the trial court should be upheld.

B. Standard of Review

Appellate review of an order granting summary judgment is de novo. *St. Louis Univ. v. Masonic Temple Assoc. of St. Louis*, 220 S.W.3d 721, 725 (Mo. 2007).

Summary judgment is appropriate when there are no genuine issues of material fact, and the moving party has demonstrated a right to judgment as a matter of law. *Id.* The record on appeal from summary judgment is reviewed in the light most favorable to the party against whom judgment was entered. *Id.*; *Premium Standard Farms, Inc. v. Lincoln Township of Putnam County*, 946 S.W.2d 234, 237 (Mo. 1997). In the instant matter, the parties agreed that there are no genuine issues as to the material facts. Additionally, an appellate court may affirm the judgment of the trial court for any reason supported by the

record. *Koehr v. Emmons*, 55 S.W.3d 859, 863 (Mo. App. E.D. 2001) (citing *Arthur v. Jablonow*, 665 S.W.2d 364, 365 (Mo. App. E.D. 1984)).

When a statute is challenged as unconstitutional, the Court is guided by several well-established standards. *McEuen v. Mo. State Bd. of Educ.*, 120 S.W.3d 207, 209 (Mo. 2003). “First, statutes are presumed to be constitutional, and this Court is to construe any doubts regarding a statute in favor of its constitutionality. In addition, statutes will be upheld unless they ‘clearly and undoubtedly’ violate constitutional limitations. Finally, the party raising the challenge bears the burden of demonstrating that the statute is unconstitutional.” *Id.* (citations omitted); *see also St. Louis Univ.*, 220 S.W.3d at 725; *Farmers’ Electric Cooperative, Inc. v. State Environmental Improvement Authority*, 518 S.W.2d 68, 72 (Mo. 1975) (holding that “the burden is upon the relator to demonstrate that the legislative enactments, now challenged, run afoul of some constitutional prohibition”). Appellants have not met that burden, and thus, the judgment of the trial court should be affirmed.

C. The Trial Court properly rejected Plaintiffs/Appellants’ Hancock Amendment challenge because the provisions of Article X, Section 22(a) of the Missouri constitution do not apply to the tax rate levies set by Franklin County in 2006.

Plaintiffs and Plaintiff-Intervenor claim that the 2006 tax rate levies set by Franklin County for the General Revenue Fund and the Road and Bridge Fund violated the Hancock Amendment. Specifically, Plaintiffs and Plaintiff-Intervenor claim that the method for calculating the levy under § 137.073 and 15 C.S.R. 40-3.120 allows for a tax

rate increase through application of an upward inflationary adjustment without a vote of the people in violation of Article X, Section 22(a) of the Missouri Constitution. Section 22(a) provides as follows:

Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in

the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

Mo. Const. art. X, § 22(a).

1. The 2006 tax rate levies set by Franklin County were not increased in excess of the authorized tax rate ceiling established by the Hancock Amendment.

The tax rate ceiling for Hancock purposes is the tax rate in effect at the time the Hancock Amendment was adopted (i.e., November 4, 1980) or any higher tax rate approved by voters. *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278, 281 (Mo. 2000). Raising rates above the 1980 level, or those approved by voters, would have violated the first sentence of Article X, Section 22(a). It is undisputed that this did not occur.

The 2006 tax rate levies set by Franklin County for the General Revenue and Road and Bridge Funds did not require voter approval because they did not exceed the maximum authorized levies under the Hancock Amendment. There is no dispute that the authorized tax rate ceiling for the General Revenue Fund, calculated in accordance with Section 137.073 RSMo. and the Hancock Amendment was \$0.2816 per \$100 of assessed valuation. L.F. 97. There is also no dispute that the actual 2006 General Revenue Fund tax rate levy was \$0.1161 per \$100 of assessed valuation.. *Id.* Similarly, is undisputed that the authorized tax rate ceiling for the Road and Bridge was \$0.2024, and that the actual tax rate levy was \$0.2024 per \$100 of assessed valuation. L.F. 51. Thus, both tax rate levies set by Franklin County were at or below the applicable tax rate ceilings.

Section 137.073.5(3) specifically provides that “the governing body of any political subdivision may levy a tax rate lower than its tax rate ceiling and may increase that lowered tax rate to a level not exceeding the tax rate ceiling without voter approval.” Mo. Rev. Stat. § 137.073.5(3). Such an action is entirely consistent with Article X, Section 22(a) of the Missouri Constitution, which prohibits any increase in the tax rate above the amount in effect at the time the section was adopted, or the highest amount approved by the voters since that date. *Green*, 13 S.W.3d at 281; Mo. Const. Art. X, § 22(a). Plaintiffs and Plaintiff-Intervenor do not challenge the validity of the tax rate ceilings. Because the tax rate ceilings were not exceeded in 2006, the first sentence of Article X, Section 22(a) is not applicable to this case, and there is no constitutional violation.

Moreover, as cited in Plaintiffs/Appellants Parks’ and Ming’s own brief, when there is no increase in the tax rate, there is no violation of the Hancock Amendment, even when a particular taxpayer’s liability is increased. Parks and Ming Brief at 17-18; *City of Bridgeton v. Northwest Chrysler-Plymouth, Inc.*, 37 S.W.3d 867, 871 (Mo. App. E.D. 2001) (citing *Tax Increment Fin. Comm’n of Kansas City v. J.E. Dunn Construction Co., Inc.*, 781 S.W.2d 70 (Mo. 1989)). There is no evidence that any taxpayer had greater liability, but even if a taxpayer liability increased, that could not be the basis for a violation because there is no evidence that the tax rates increased from 2005 to 2006.

2. The assessed valuation of property did not increase by a greater percentage than the increase in the general price level.

Additionally, the third sentence of Article X, Section 22(a) is inapplicable to the case at bar. The third sentence of Article X, Section 22(a) is commonly known as the “rollback provision,” and it prescribes what a political subdivision must do when “the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year.” Mo. Const. Art. X, § 22(a). This is not what occurred in Franklin County in 2006. Instead, the assessed valuation of property in Franklin County increased by 0.7117%., while the general price level, as defined by the Consumer Price Index, increased by 3.5%. L.F. 49, 50, 52, 53. The assessed valuation of property did not increase by a larger percentage than the increase in the general price level in 2006, so the rollback provision of the Hancock Amendment did not apply.

Plaintiffs and Plaintiff-Intervenor claim that Franklin County violated the Hancock Amendment because the tax rate levies set by the County for 2006 allowed for an increase in revenue based on the increase in assessed valuation without a vote of the people. Although Franklin County did not exceed the authorized tax rate ceiling and did not increase the actual tax rate levies between 2005 and 2006, Franklin County did realize a 0.7117% increase in revenue from 2005 to 2006. This increase in revenue was not the result of an increase in the tax rates, but was the result of an increase in assessed valuation. The only way for the County to have avoided an increase in revenue in 2006 would have been to reduce the tax rates in question. Therefore, what Plaintiffs argue is

that the County was required to reduce its tax rate levies in order to produce the same amount of revenue as was produced in the prior year.

However, a tax rate reduction is not what is required by the Hancock Amendment. *See Scholle v. Carrollton R-VII Sch. Dist.*, 771 S.W.2d 336, 338 (Mo. 1989) (noting that Mo. Const. Art. X §22(a) does not require a reduction in taxation). Article X, Section 22(a) requires a rollback only when the increases in assessed valuation exceed the increase in the general price level. This did not happen here. The increase in assessed valuation was less than one percent, which was well below the 3.5% increase in the Consumer Price Index.

The slight increase in revenue obtained by Franklin County was actually contemplated by the framers of the Hancock Amendment. In drafting Article X, Section 22(a), the framers specifically allowed for an increase in revenue based on “changes in the general price level.” Mo. Const. Art. X, §22(a). Such increases in revenue are necessary to enable public entities to keep up with the general increases in prices, allowing entities to purchase the same quantity of goods and services as before. An increase in revenue that is less than the increase in the general price level, as was the increase in this case, is not a windfall to the taxing entity. *Scholle*, 771 S.W.2d at 338 (noting that the purpose of Section 22(a) is to eliminate windfall to the government).

Plaintiffs focus on the reduction or “rollback” nature of this provision, and attempt to ignore the phrase “adjusted for changes in the general price level.” When construing a constitutional provision, “every word in a constitutional provision is assumed to have effect and meaning; their use is not surplusage.” *Ensor v. Director of Revenue*, 998

S.W.2d 782, 785 (Mo. 1999). In *Scholle*, the Court specifically noted that the purpose of Section 22(a) is to “eliminate a revenue windfall to government resulting from reassessment and to assure that the property tax levy will ‘yield the same gross revenue [after reassessment] from existing property. . . as could have been collected at the existing authorized levy on the prior assessed value.’” *Scholle*, 771 S.W.2d at 338. However, Article X, Section 22(a) specifically provides for adjustments based on “changes in the general price level.” Mo. Const. Art. X, § 22(a). This phrase must be given effect. Thus, accurately stated, the purpose of Section 22(a) is to assure that the property tax levy will yield the same gross revenue [after reassessment] from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

The fact that the phrase “adjusted for changes in the general price level” was included in Section 22(a) demonstrates that the framers of the Hancock Amendment wanted taxing entities to be able to increase revenues in order to keep up with the general increase in prices, so long as those increased revenues came from increased valuation rather than increased levy rates. Allowing for such adjustments is consistent with the purposes of Section 22(a) because allowing taxing entities enough additional revenue to make up for a general increase in prices simply is not a windfall. Instead, it allows the entity to purchase the same quantity of goods and services as before.⁴ Therefore, Section

⁴ Even Plaintiffs Ming and Parks admit in their brief that the County Defendants received no windfall in this case. Parks and Ming brief at 17.

22(a) expressly requires governmental entities to reduce their tax levies only when the assessed property valuations increase by a larger percentage than the increase in the general price level from the prior year. Mo. Const. Art. X, § 22(a). Nothing in Section 22(a) requires a downward adjustment in the tax rate when the increase in assessed valuation is less than the increase in the general price level because there is no windfall to the governmental entity in that circumstance. *See Scholle*, 771 S.W.2d at 338.

Plaintiff-Intervenor Koehr attempts to argue that the trial court’s judgment, finding that Section 22(a) does not prohibit revenue increases based on changes in assessed valuation, ignores the undisputed meaning of “general price level” as defined in the Hancock Amendment. Koehr brief at 17. This argument is without merit. The “general price level” is the Consumer Price Index for All Urban Consumers for the United States. Mo. Const. art. X, § 17(3). This is simply a measurement of inflation. *See Thompson v. Hunter*, 119 S.W.3d 95, 99-100 (Mo. 2003) (stating that “Section 22(a) requires that the valuation of the district’s property be calculated against the norm of the rate of inflation, as measured by the general price level.”). While Section 22(a) does not use the term “inflationary growth,” the words that were used recognize that property values continually increase as the result of inflation and other adjustments to assessed valuation.

Koehr’s arguments that the County’s tax rate was not finally equalized in the 2006 tax year, or that the Franklin County Defendants willfully violated the Hancock Amendment, are without merit. Koehr did not advance this theory at the trial court level, and there are no facts in the record to support his claim. Rather, the parties all agreed that the Franklin County Defendants relied on and complied with the instructions and forms

promulgated by the State Auditor under 15 C.S.R. § 40-3.120, and the State Auditor certified the Franklin County Defendants' 2006 tax rate levy as complying with Missouri laws. L.F. 10-11, 15-18, 24. Koehr cannot now claim that the County's tax rate was somehow not finally equalized, or that the Franklin County Defendants somehow acted willfully or in bad faith. There is no evidence in the record to support his claim, and the argument fails as a matter of law.

Finally, the terms "levy" and "gross revenue" are not interchangeable terms and have a clear and distinct meaning as used in Section 22(a). The term "levy" is used in the sense meaning the rate of a tax. The drafters of Section 22(a) plainly distinguish between the "levy" and "gross revenue." In making their arguments, Plaintiffs confuse the "levy" with "gross revenue." For example, Koehr claims that the "County Defendants raised the rate of levy." Koehr Brief at 12. Factually, this is inaccurate. Although the change in valuation resulted in a slight increase in gross revenue, there is no evidence in the record that the County raised the levy rate. Plaintiffs Parks and Ming have not interchanged the terms "levy" and "gross revenue" as freely as Koehr, but have still implied that "levy" must mean something broader than the rate of taxes. Indeed, this is the only way they could argue that Section 22(a) requires a rollback of tax rates under these facts. However, the terms "levy" and "gross revenue" are not interchangeable and the drafters clearly establish distinct meanings for the terms within Section 22(a).

D. The Trial Court properly held that section 137.073.2 RSMo. and the tax rate forms issued by the Auditor pursuant to 15 C.S.R. 40-3.120 are entirely consistent with Article X, Section 22(a) because the statute and tax

forms limit increases in gross revenue even more than the Hancock Amendment.

The challenged provision of Section 137.073.2 RSMo. states that a political subdivision may revise its tax levy to allow for inflationary assessment growth “as provided in section 22 of article X of the constitution.” § 137.073.2, RSMo. The statute further provides that “the inflationary growth factor for any such subclass of real property or personal property shall be limited to the actual assessment growth in such subclass or class, exclusive of new construction and improvements . . . but not to exceed the consumer price index or five percent, whichever is lower.” § 137.073.2, RSMo. The forms issued by the State Auditor pursuant to 15 C.S.R. 40-3.120 implement the requirements of § 137.073.2, RSMo.

Article X, Section 22(a) provides, in part, as follows:

If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

Mo. Const. Art. X, § 22(a). As noted above, Section 22(a) requires no tax rate adjustments in years, such as 2006, when assessed value of property increases by a

smaller percentage than the increase in the general price level. In this circumstance, the only tax rate adjustments are those imposed statutorily by Section 137.073.2. That statute requires the lowering of tax levy rates when there are increases in the value of property, but those tax rate revisions can be adjusted to allow for inflationary assessment growth, “limited to the actual assessment growth . . .but not to exceed the consumer price index or five percent, whichever is lower.” Mo. Rev. Stat. § 137.073.2.

Unless a statute clearly and undoubtedly contravenes some constitutional provision, it will not be declared unconstitutional. *Farmers’ Electric Cooperative, Inc.*, 518 S.W.2d at 72. As described above, there is nothing in the language of Section 22(a) that mandates a downward adjustment in the tax rate when the increase in the assessed valuation is smaller than the increase in the general price level. *See Scholle*, 771 S.W.2d at 338. Therefore, the provision of Section 137.073.2 authorizing a levy revision allowing for inflationary assessment growth, not to exceed the consumer price index or five percent, does not “clearly and undoubtedly” violate Section 22(a). This Court itself has stated that “Section 137.073 serves the purposes of Art. X, § 22(a).” *Scholle*, 771 S.W.2d at 339. Additionally, this Court has recognized that an increase in revenue resulting from an increase in assessed valuation, which is what happened in this case, does not by itself constitute a violation of the Hancock Amendment. *See Tax Increment Fin. Comm’n of Kansas City*, 781 S.W.2d at 74-75 (rejecting argument that PILOTS that were the product of the application of the current levy to increased assessed valuations violated Mo. Const. Art. X, § 22(a)). Accordingly, Appellants cannot meet their burden in establishing that Section 137.073.2 RSMo. “clearly and undoubtedly” violates Section

22(a), and their constitutional challenge fails as a matter of law. In fact, Section 137.073.2 RSMo. actually provides a greater limitation than the Hancock Amendment on the amount of growth that a taxing entity can realize, by stating that the increase in revenue is limited to the actual assessment growth, the consumer price index, or five percent, whichever is lower. Mo. Rev. Stat. § 137.073.2.

E. The amount of the increase in revenue obtained by Franklin County in 2006 is too insignificant to support a violation of the Hancock Amendment.

Finally, it is important to note that even if an increase in revenue based on an increase in the assessed valuation of property that is less than the increase in the general price level could be construed as a violation of the Hancock Amendment, the amount of the increase in the instant matter is too insignificant to support a violation. *See Koehr*, 55 S.W.3d at 864 (finding that the insubstantial sum about which plaintiffs complained was not a proper foundation for finding a Hancock Amendment violation). Section 137.073.2 requires political subdivisions to revise their rates of levy to achieve “substantially the same amount of tax revenue that was produced in the previous year.” A less than one percent increase in revenue clearly qualifies as substantially the same amount of tax revenue. *See Lane v. Lensmeyer*, 158 S.W.3d 218, 232 (Mo. 2005) (1.88 percent increase in revenue was substantially the same amount of revenue and did not constitute a windfall to the taxing entity). Moreover, it is too insignificant of a sum to support a Hancock Amendment violation. *Koehr*, 55 S.W.3d at 864.

Conclusion

Plaintiffs have failed to demonstrate that 137.073.2 RSMo. and the Auditor's tax rate forms clearly and undoubtedly violate Article X, Section 22(a) of the Missouri Constitution. Therefore, the judgment of the trial court should be upheld in its entirety.

Respectfully Submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 5,325 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

Appendix

Index of Appendix

Rural Electric Cooperatives, State Tax Commission of Missouri Assessor Manual.....A1