IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. SC89114

FRANKLIN COUNTY, MISSOURI, ex rel.
ROBERT E. PARKS, and JIM MING

Appellants,

vs.

FRANKLIN COUNTY COMMISSION, et al.

Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Patricia S. Joyce

REPLY BRIEF OF INTERVENOR/APPELLANT JACK L. KOEHR

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ARGUMENT

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS BECAUSE (A) FRANKLIN COUNTY'S 2006 PROPERTY TAX LEVIES, (B) SECTION 137.073.2, RSMO, (C) 15 CSR 40-3.120, AND (D) THE STATE AUDITOR'S FORMS PROMULGATED UNDER SECTION 137.073.2 AND 15 CSR 40-3.120 VIOLATE THE HANCOCK AMENDMENT (ARTICLE X, SECTION 22 OF THE MISSOURI CONSTITUTION) BY PURPORTING TO ALLOW INCREASES IN LOCAL TAXES WITHOUT A VOTE OF THE PEOPLE BASED ON INFLATIONARY ASSESSMENT GROWTH IN THAT THE HANCOCK AMENDMENT PROHIBITS COUNTIES FROM RAISING TAXES WITHOUT A VOTE OF THE PEOPLE, AND FRANKLIN COUNTY RAISED ITS 2006 TAX LEVIES WITHOUT A VOTE OF THE PEOPLE AS PURPORTEDLY AUTHORIZED BY SECTION 137.073.2, 15 CSR 40-3.120, AND THE STATE AUDITOR'S FORMS.

The Brief of Respondents avoids the fundamental dispute in this case: Does Section 22(a) of the Hancock Amendment allow for inflationary increases in local tax levies without a vote of the people? The language of Article X, Section 22(a) is clear and unequivocal. It contains a rollback provision in the third sentence that provides for ***reductions*** in the current tax levies of the particular political subdivision. Contrary to Respondents' argument, there is no "roll up" provision in Section 22(a) to allow increases in tax levies without a vote of the people.

In passing the Hancock Amendment by initiative, if the people had desired to authorize political subdivisions of the state to increase their tax levies for inflation, they could have said so. They did not. Instead, they demonstrated their "basic distrust of the ability of representative government to keep its taxing and spending requirements in check. As an additional bulwark against local government abuse of its power to tax, the voters amended the constitution to ***guarantee themselves the right to approve increases in taxes*** proposed by political subdivisions of the state." *Beatty v. Metropolitan St. Louis Sewer Dist.*, 867 S.W.2d 217, 221 (Mo. banc 1993) (emphasis added). It is absurd to suggest that the people, having erected an explicit bar to tax increases without a vote, implicitly intended to allow tax ***increases*** through the provision of Section 22(a) that states that levies "***shall be reduced***" in some circumstances.

Moreover, if such an inflationary increase were somehow authorized by Section 22(a), according to Respondents' logic, it could only be authorized in a year in which the assessed valuation of property was "finally equalized." New assessed values are to be determined in odd-numbered years. § 137.115.1, RSMo. As this case involves an increase in Franklin County's tax levies for 2006, an even-numbered year, there could not have been an increase in the assessed valuation of real property in 2006, as such an increase would violate Section 137.115.1, RSMo. Respondents' attempt to bootstrap its increase based upon the rollback provisions set forth in Section 22(a) likewise violates the Hancock Amendment.

A. Franklin County's Increase Violates the Hancock Amendment.

Article 10, Section 22(a) contains three sentences. The first sentence states that counties or political subdivisions are specifically prohibited from increasing the current levy of an existing tax without the approval of the required majority of qualified voters of said subdivision. This sentence obviously does not provide for any inflationary growth factor to the tax levy imposed by the political subdivision and Respondents do not attempt to obtain any support for its position from this sentence.

The second sentence of Section 22(a) states that if the definition of the base of an existing tax is broadened, the maximum authorized levy on the new base is to be reduced to yield the same estimated gross revenue as on the prior base. Again, the second sentence provides a basis for a county or political subdivision to reduce a levy, but there is no language in this sentence providing for an increase in a levy due to inflation. Respondents likewise do not attempt to use this language to support Franklin County's inflationary increase.

Finally, the third sentence relates to the rollback of taxes in years when assessed valuations are equalized. Despite acknowledging that "the third sentence of Article X, Section 22(a) is inapplicable to the case at bar," Respondents' Brief at 17, Respondents nonetheless attempt to employ this sentence in asserting that, because the Franklin County Respondents did not exceed their authorized tax rate ceilings, they were authorized to increase their levies because of an increase in assessed valuation.

Respondents go on to state that the only way they could have avoided an increase in revenue in 2006 would have been to reduce the tax rates in question. Exactly! That is

the basis of Intervenor/Appellant's argument on appeal. Assuming Franklin County had the authority to increase assessments in 2006, which it did not, the Franklin County Respondents were required to reduce their tax rates in order to achieve "the same gross revenue."

Respondents essentially make three arguments in support of their position that their increased tax levies in 2006 were permissible. First, they assert in their Statement of Facts that the total assessed valuation of existing property increased from 2005 to 2006, because the assessed valuation of Franklin County increased due to the revaluation of rural electric cooperatives in the County. Respondents' Brief at 7-8. There is absolutely no evidence in the record before this Court that the assessed valuation of property in Franklin County increased for this reason. In fact, there is no evidence in this record why the assessed valuation of the County increased at all in 2006. Respondents' unsubstantiated attempt to now justify such increase should be ignored.

All we know is that somehow there was an adjustment to the prior year assessed valuation as set forth in the State Auditor's Form. LF 15. This Form, purportedly promulgated under the authority of 15 CSR 40-3.120 and Section 137.073.2, is at the very heart of this controversy. The Franklin County Respondents may not subvert the purpose of the Hancock Amendment by relying on a Form, regulation and/or statute that purports to allow them to increase their tax levies without a vote of the people. A statute that violates the Missouri Constitution is void. *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991). A statute may not thwart the purpose of the Hancock Amendment which has long been held to prohibit tax increases without a vote of the

people. *See Missouri Mun. League v. State*, 932 S.W.2d 400, 403 (Mo. banc 1996); *Beatty v. Metropolitan St. Louis Sewer Dist.*, 867 S.W.2d 217, 221 (Mo. banc 1993). Provisions that are enacted under the authority of an unconstitutional statute are void. *Nixon v. City of Oregon*, 77 S.W.3d 107, 109 (Mo. App. 2002).

The second argument asserted by Respondents to legitimize their actions in increasing their 2006 tax levies without a vote of the people is that this Court's holding in *Scholle v. Carrollton R-VII School Dist.*, 771 S.W.2d 336 (Mo. banc 1989), provides authority for increasing revenues when assessed valuations increase. Respondents' reliance on the *Scholle* decision is misplaced. In *Scholle*, the property owners challenged the constitutionality of subsection 4 of Section 137.073, which allows political subdivisions to recoup losses resulting from subsequent corrective reductions in assessments. The property owners argued that the actions of the school district in attempting to recoup such losses constituted a violation of Article 10, Section 22(a).

This Court, in holding that Section 137.073.4 was constitutional, stated that the intention of Article 10, Section 22(a) is to require a property tax levy after reassessment which yields the same gross revenue for the political subdivision as it received prior to reassessment. *Scholle*, 771 S.W.2d at 338-339. As a result, the Court held that Section 137.073.4 does no more than permit the taxing authority to recoup revenue lost as a result of subsequent adjustments in the assessed valuation of property as finally equalized so that the gross revenue of the political subdivision will remain the same. *Scholle*, 771 S.W.2d at 339.

Intervenor/Appellant's position in this case is entirely consistent with this Court's decision in *Scholle*. Because the intention of the Hancock Amendment is for the taxing authority to impose property tax levies which yield the same gross revenue from year to year, a political subdivision clearly has the ability, consistent with the intention of the Hancock Amendment, to recoup revenues lost as a result of adjustments in assessments to maintain the same gross revenue. This same provision must necessarily be read to prohibit a taxing authority from increasing the gross revenue on the basis of an increase in assessed valuation due to inflation without the necessary voter approval. As this Court stated clearly in *Scholle*, "***the Constitution intends no windfall for either the taxing authority or the taxpayer.***" *Id.* at 339 (emphasis added). The school district received no windfall in *Scholle*; nor does the taxpayer receive a windfall in this case if the Franklin County Respondents are denied their unlawful attempt to obtain inflationary revenue growth.

The third argument raised by Respondents is that, because the revenue growth is so small, there is no basis for finding a Hancock Amendment violation. For this unfounded proposition, Respondents cite *Koehr v. Emmons*, 55 S.W.3d 859, 864 (Mo. App. 2001). This Court has never held that a minimum amount of unlawful revenue must be received before finding a Hancock Amendment violation. This Court has held, as cited in *Koehr*, that the purpose of the Hancock Amendment is not thwarted "if the calculation of the revenue limit is not accurate to the mill." *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 107 (Mo. banc 1997). This is not such a case. In fact, based on Respondents' logic, they could have increased revenues by up to 3.5%

in 2006, without a vote of the people as this was the increase in the Consumer Price Index identified on the State Auditor's Form. LF at 16. Such a ludicrous position should not be approved by this Court.

B. Respondents Cannot Rely on the Rollback Provision in Section 22(a).

In their Brief, Respondents initially assert that the third sentence of Article 10, Section 22(a) is inapplicable to the case at bar. Respondents' Brief at 17. Plaintiff/Intervenor agrees with this statement. Respondents then go to great lengths to describe how the third sentence of Article 10, Section 22(a) is applicable to this case in supporting their view that, because the assessed valuation of property in Franklin County increased by an amount less than the Consumer Price Index, such an increase is somehow validated by this sentence.

Interestingly, notwithstanding their blatant attempt to inject evidence beyond the record concerning the valuation of rural electric cooperatives in Franklin County into their Brief, Respondents falsely assert that Intervenor/Appellant waived his argument that the County failed to equalize taxes in 2006, by not advancing this argument in the circuit court. This is nonsense. The record shows that Intervenor/Appellant made this allegation from the very outset of the case in paragraphs 9-11 of its Petition of Intervenor for Declaratory Judgment and Refund, LF at 41, and at paragraph 2 of its Motion for Summary Judgment, SLF at 45. Respondents responded to this argument on the merits in their response to the Motions for Summary Judgment of Plaintiffs and Intervenor Koehr. LF at 138. There is no basis for Respondents to argue that the issue was not raised.

Respondents also attempt to bar this issue on the basis that there is no evidence to support this claim. Respondents' Brief at 7-8, footnote 2. This is totally disingenuous as Respondents, relying on Section 137.115.1, RSMo, admit in their own Brief that the reassessment of real property occurs only in odd-numbered years and, as a result, assessors use those same assessed values in even-numbered years. Respondents' Brief at 7. Respondents produced no evidence that they equalized taxes in 2006. The law did not allow them to do so. The fact is that they did not equalize taxes in 2006, and, as a result, any effort by Franklin County to somehow utilize the third sentence in its twisted logic to roll up as opposed to roll back its tax levies is clearly misplaced.

Respondents' Brief does not address the argument, posed by Appellants and Intervenor/Appellant, that the third sentence of Section 22(a) provides for reductions in the tax levies, but does not provide for increases in tax levies. Respondents merely discuss the language concerning the general price level and criticize Appellants and Intervenor/Appellant for failing to give meaning to such language. In fact, it is Respondents who have ignored this admonition by inserting language allowing for increases in tax levies where none exists.

Respondents' arguments fail to support their actions, and Section 137.073.2, RSMo, 15 CSR 40-3.120, and the State Auditor's Forms promulgated thereunder are inconsistent with the Hancock Amendment. Because the resulting Franklin County tax increases were not approved by the required majority of qualified voters of Franklin County, such increases, and the purported statutory and regulatory bases for such increases, should be rejected by this Court as unconstitutional.

CONCLUSION

The undisputed facts in this case show that the Franklin County Respondents' increased tax levies in 2006 were passed without a vote of the people. As a result, these levies are invalid and void in that they violate the Hancock Amendment. Further, section 137.073.2, 15 CSR 40-3.120, and the tax rate forms issued thereunder by the Auditor are invalid for purporting to authorize these unconstitutional tax increases.

Accordingly, the judgment of the circuit court should be reversed, and the Court should remand this case to the circuit court for an entry of judgment in favor of the Appellants and Intervenor/Appellant.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Reply Brief of Intervenor/Appellant includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 2,391, exclusive of the cover, signature block, and certificates of service and compliance.

The undersigned further certifies that the disks filed with the Reply Brief of Intervenor/Appellant and served on all parties of record were scanned for viruses and found virus-free through the Symantec anti-virus program.

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