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JURISDICTIONAL STATEMENT

The Civil Service Commission of the City of St. Louis and its members (hereafter the “Commission”) filed suit against the Board of Aldermen of the City of St. Louis challenging the validity of Board Bill 110, Ordinance 64923, which enhanced retirement benefits for City of St. Louis firefighters. The Commission sought declaratory and injunctive relief, contending the board bill/ ordinance had not been recommended as required by the Article XVIII of the Charter of the City of St. Louis. The Firemen’s Retirement System of St. Louis, its trustees, St. Louis Firefighters Association Local 73, and four individual firefighters intervened as defendants. In addition, the City of St. Louis was added as a defendant.

Upon stipulations of facts, briefs of the parties, and additional evidence submitted with the briefs, on July 25, 2001, the trial court, Judge Robert H. Dierker, declared Ordinance 64923 invalid because the Commission had not recommended it. The Court enjoined implementation or enforcement of Ordinance 64923, but further decreed that the judgment should operate prospectively only, so as to prevent injustice to the firefighters who had retired after passage of the board bill/ ordinance or who were eligible to retire as of the date of the Court’s decision. The Court amended its memorandum, order, and judgment on July 26, 2001, making a non-substantive correction.

Defendant-intervenors St. Louis Firefighters Association Local 73, Keith Allen Hasty, Dennis Roerman, James W. Wolfslau, and Charles J. Zoeller (“the Firefighters”) appeal from the final judgment of the Circuit Court pursuant to Article V,

Section 3 of the Missouri Constitution to this Court because this case raises none of the matters within the exclusive jurisdiction of the Supreme Court of Missouri. Review of orders, judgments, and decrees in a declaratory judgment action are reviewed in the same manner as other orders, judgments and decrees. §527.070, RSMo. 2000; Mo. Sup. Ct. Rule 87.11. Because this case arises from a judgment of the Circuit Court of the City of St. Louis, this Court has territorial jurisdiction pursuant to §477.050, RSMo. 2000.

STATEMENT OF FACTS

Created pursuant to state statute and City ordinance, the Firemen's Retirement System of St. Louis (“the FRS”) has been in existence since 1949. (L.F., vol. 1, p 61, ¶ 6;¹ *Firemen's Retirement System of St. Louis v. City of St. Louis*, 789 S.W.2d 484, 486 (Mo. banc. 1990);² see §87.120, RSMo. 2000 (historical notes); St. Louis, Mo., Rev. Code §4.18.010 (prior ordinance history notes)).³ The FRS and its trustees administer the retirement system for firefighters employed in the City of St. Louis Fire Department. The FRS and its trustees operate in large part independently of the City of St. Louis. (*Firemen's Retirement System*, 789 S.W.2d at 486; see St. Louis, Mo., Rev. Code §§4.18.015, 4.18.020)

The Commission, created pursuant to Article XVIII of the Charter of the City of St. Louis, administers the civil service rules and regulations of the City of St. Louis. (L.F., vol. 1, p. 60, ¶ 1)

The laws and ordinances governing the FRS have been amended frequently. (*See* §§87.120 - 87.371, RSMo. 2000 (historical notes); St. Louis, Mo., Rev. Code §§4.18.010 - 4.18.386 (historical notes)) Specifically, in 1989 and 1995 ordinances were passed which provided for the use of sick leave hours in computing retirement benefits under the

¹ References to “L.F.” are to the legal file submitted in this case

² In *Firemen's Retirement System*, the Missouri Supreme Court discussed the creation and legal nature of the FRS. *Firemen's Retirement System*, 789 S.W.2d at 486.

³ The parties stipulated the trial court could take judicial notice of all applicable ordinances of the City of St. Louis and could consider the Charter of the City of St. Louis. (L.F., vol. 1, p. 64, ¶ 24)

FRS. (L.F., vol. 1, p. 120-126) There is no indication the Commission ever recommended ordinances pertaining to the FRS nor, prior to this case, asserted in litigation it has a right to recommend ordinances pertaining to the FRS. (L.F., vol. 1, p. 131-133)

The Missouri General Assembly amended §87.371, effective August 28, 1999, regarding the crediting of unused sick leave as a retirement benefit enhancement under the FRS. (L.F., vol. 1, p. 62, ¶ 12)

In the summer of 1999, Board Bill 110 was introduced in the Board of Aldermen, amending §4.18.386 of the City Code to mirror the amendment of §87.371. The Commission objected that Board Bill 110 had not been recommended by it by letters dated August 9, 1999 and March 22, 2000. Despite the Commission's objection, the Board of Aldermen approved Board Bill 110, overriding a veto by then Mayor Clarence Harmon. Board Bill 110 became effective on April 17, 2000, as Ordinance 64923. The Commission did not recommend Board Bill 110/ Ordinance 64923. (L.F., vol. 1, p. 62-63, 87-88, ¶¶ 12-22)

Section 87.371 and Ordinance 64923 permit retiring firefighters to put the value of their accumulated sick leave into their DROP (deferred retirement option plan -- *see* St. Louis, Mo., Rev. Code §§4.18.010(H), 4.18.131) accounts, money they can then use in their retirement. (§87.371, RSMo. 2000; L.F., vol. 1, p. 87-88) Actuaries estimated implementation of the ordinance would increase retirement system liability in excess of \$8 million and would cost the City of St. Louis over \$1 million annually. (L.F., vol. 1., p. 63-64, ¶ 23.

Between the effective date of Ordinance 64923 and the submission of briefs to the trial court, 15 firefighters retired and elected pursuant to Ordinance 64923 to have their accumulated sick leave placed in their DROP accounts with the FRS. The total value of the accumulated sick leave of these firefighters was \$764,442.88. Additionally, as of March 10, 2001, there were 132 firefighters eligible for service retirement benefits from FRS, with thousands of hours of accumulated sick leave, which could be applied to their DROP accounts if they retired and took advantage of Ordinance 64923. (L.F., vol. 1, p. 66-68, ¶ 1-2)

On October 19, 2000, over six months after the effective date of Ordinance 64923, the Commission filed a petition for declaratory judgment and injunctive relief, contending Ordinance 64923 was invalid under Article XVIII of the Charter of the City of St. Louis because the Commission had not recommended the ordinance. (L.F., vol. 1, p. 1-7) The FRS and its trustees intervened. (L.F., vol. 1, p. 8-16, 29). An amended petition was filed by the Commission on December 29, 2000, naming the City of St. Louis as a defendant. (L.F., vol. 1, p. 30-37) Subsequently, St. Louis Firefighters Association Local 73, the certified collective bargaining representative for the firefighters and captains in the fire department, and individual firefighters or captains Keith Allen Hasty, Dennis Roemerman, James W. Wolfslau, and Charles J. Zoeller (“the Firefighters”) intervened. (L.F., vol. 1, p. 62, 50-59) At no point in the litigation did the Commission seek a temporary restraining order, preliminary injunction, or any other interim relief. (L.F., vol. 1, p. iv-xi)

The parties submitted stipulations of facts, briefs, and affidavits and documents. (L.F., vols. 1-2, p. 60-266) The trial court issued its memorandum, order, and judgment on July 25, 2001, amending it on July 26, 2001 to correct a clerical error in the original document. (L.F., vol. 2, p. 267-279.) The FRS and the Firefighters filed timely notices of appeal. (L.F., vol. 2, p. 280-302)

POINTS RELIED ON

The Trial Court erred in declaring Ordinance 64923 invalid based on the failure of the Civil Service Commission to recommend it because the Commission does not have a mandatory right to recommend ordinances pertaining to the Firemen's Retirement System in that (A) Article XVIII, §§4(b) and 7(b) of the Charter of the City of St. Louis does not require the Commission's recommendation of such ordinances; and, (B) the decision of the Missouri Supreme Court in *Abernathy v. City of St. Louis*, 313 S.W.2d 717 (Mo. 1958), does not govern this dispute, and the trial court's reliance on this decision was misplaced.

St. Louis, Mo., Charter, Art. XVIII, §§ 4(b), 7(b).

Firemen's Retirement System of St. Louis v. City of St. Louis, 789 S.W.2d 484, 486 (Mo. banc. 1990).

ARGUMENT

I. Standard of review

The trial court decided this case on stipulated facts, plus affidavits and documents submitted by the parties. No issue of the sufficiency of the evidence has been raised, and the case revolves around issues of law. In these circumstances, the appellate court reviews the decision of the trial court independently and need not defer to the trial court's conclusions regarding the legal effect of its findings of fact. *Dial v. Lathrop R-II School District*, 871 S.W.2d 444, 446 (Mo. banc. 1994); *Strange v. SCI Business Products*, 17 S.W.3d 171, 173 (Mo. App. E.D. 2000); *Bremen Bank and Trust Company of St. Louis v. Muskopf*, 817 S.W.2d 602, 604 (Mo. App. E.D. 1991).

II. The Trial Court erred in declaring Ordinance 64923 invalid based on the failure of the Civil Service Commission to recommend it because the Commission does not have a mandatory right to recommend ordinances pertaining to the Firemen’s Retirement System in that (A) Article XVIII, §§4(b) and 7(b) of the Charter of the City of St. Louis does not require the Commission’s recommendation of such ordinances; and, (B) the decision of the Missouri Supreme Court in *Abernathy v. City of St. Louis*, 313 S.W.2d 717 (Mo. 1958), does not govern this dispute, and the trial court’s reliance on this decision was misplaced.

The trial court granted judgment in favor of the Commission on the claims stated in the petition, declaring Ordinance 64923 invalid because it was adopted without the recommendation of the Commission, as required by the Charter of the City of St. Louis. The court enjoined implementation or enforcement of the ordinance, but did so prospectively only to protect firefighters who had retired or who were eligible to retire as of the date of the court’s order. (L.F., vol. 2, p. 276-277)

The Firefighters contend the court erred in declaring Ordinance 64923 invalid due to the failure of the Commission to recommend it. The Charter of the City of St. Louis does not give the Commission a power of veto over legislation regarding the FRS. Sections 4 and 7(b) of Article XVIII of the Charter of the City of St. Louis, read as a whole, separate pension and retirement matters from the matters encompassed by the mandatory recommendation power of the Commission. The reliance by the trial court

and the Commission upon the decision in *Abernathy v. City of St. Louis*, 313 S.W.2d 717 (Mo. 1958), is misplaced because *Abernathy* did not address retirement issues and cannot be read to encompass the significantly different situation of the FRS. Despite frequent amendments to the law governing the FRS over the last 50 years, and, in particular, two prior ordinances involving the use of sick leave as a retirement benefit enhancement, the Commission has never before recommended any ordinance involving the FRS. Under the proper interpretation of the pertinent provisions of the Charter, and under the circumstances, the Commission lacks and cannot exercise its alleged right to recommend ordinances pertaining to the FRS to the dramatic prejudice of firefighters who have retired and who are eligible to retire.

A. The Commission does not have a mandatory right to recommend ordinances pertaining to the Firemen's Retirement System under Article XVIII, §§4(b) and 7(b) of the Charter of the City of St. Louis.

The Charter is the organic law of the City of St. Louis; ordinances which conflict with a provision Charter cannot stand. *Hillig v. City of St. Louis*, 337 Mo. 291, 85 S.W.2d 91, 92-93 (Mo. banc 1935). In interpreting an ordinance and the Charter, the words used are given their plain and ordinary meaning, considering the entire act and its purposes, and by seeking to avoid unjust, absurd, unreasonable, confiscatory or oppressive results. *State ex rel. Jackson County v. Spradling*, 522 S.W.2d 788, 791 (Mo. banc 1975); *Firemen's Retirement System of St. Louis v. City of St. Louis*, 754 S.W.2d 21, 25 (Mo. App. E.D. 1988). A municipal ordinance is presumed valid and lawful and

should be upheld unless it is expressly inconsistent or unless it conflicts irreconcilably with the governing law. *McCollum v. Director of Revenue*, 906 S.W.2d 368, 369 (Mo. banc 1995).

In this dispute, Sections 4 and 7(b) of Article XVIII of the Charter of the City of St. Louis are pertinent.

Section 7(b) of Article XVIII of the Charter of the City of St. Louis sets forth the pertinent powers and duties of the Commission regarding ordinances:

(b) Ordinances. To recommend to the mayor and aldermen in accordance with this article, ordinances to provide for:

(1) a compensation plan providing properly related scales of pay for all grades of positions, and rules for its interpretation and application;

(2) a plan for a system of retirement of superannuated and otherwise incapacitated employees, if and when permissible under the Constitution and Laws of the State of Missouri;

(3) regulation of hours of duty, holidays, attendance and absence;

(4) such other matters within the scope of this article as require action by the mayor and aldermen;

(5) such changes in any such matters from time to time as may be deemed to be warranted.

St. Louis, Mo., Charter, Article XVIII, Section 7(b) (emphasis added).

Section 4 of Article XVIII provides that the mayor and aldermen of the City shall provide, by ordinance:

(a) Compensation plan. For adoption of a comprehensive compensation plan for the fixing of rates of pay of all employees in the classified services, and amendments thereto, on recommendation of the civil service commission, and for its application and interpretation. . . .;

(b) **Retirement system.** For a contributory retirement system on a sound actuarial basis, if and when permissible under the Constitution and Laws of the State of Missouri, to provide for retirement of employees in the classified service who have become unable to render satisfactory service by reason of physical or mental incapacity;

(c) **Hours of duty and holidays.** For regulating hours of duty, holidays, attendance, and absence, in the classified service;

...

St. Louis, Mo., Charter, Article XVIII, Section 4 (emphasis added).

Initially, it is significant both Sections 4 and 7 of Article XVIII separate retirement from compensation and the other matters listed. This distinction between "compensation plan" and "retirement system" is made consistently throughout Article XVIII. *See* St. Louis, Mo., Charter, Art. XVIII, §§3(b), 3(r), 4(a), 4(b), 7(b)(1), 7(b)(2) . Thus, retirement is a distinct matter, separate from compensation for purposes of these sections of the Charter. Otherwise, Sections 4(b) and 7(b)(2) would be rendered superfluous, a result not to be reached unless no other conclusion is possible. *Estate of Williams v. Williams*, 12 S.W.3d 302, 306 n. 3 (Mo. banc 2000); *Staley v. Missouri Director of Revenue*, 623 S.W.2d 246, 250 (Mo. banc 1981).

Section 4 contains the key distinction between the provisions regarding compensation plans and retirement systems. Section 4(a) specifically states the mayor and aldermen shall provide by ordinance for a compensation plan “on recommendation of the civil service commission.” This language creates a mandatory recommendation prerequisite for matters encompassed by Section 4(a). *Kirby v. Nolte*, 351 Mo. 525, 173 S.W.2d 391, 392 (Mo. banc 1943). Critically, this language is not present in Section 4(b)

regarding retirement systems, and, the obvious conclusion to be drawn, employing the well-established principle of construction,⁴ is that the mandatory recommendation requirement does not apply to retirement systems.

Further, Sections 4(b) and 7(b)(2) both include the language "when permissible under the Constitution and Laws of the State of Missouri," qualifying the enactment of law regarding retirement systems. This language undoubtedly acknowledges the prohibition on charter cities granting public money to individuals, associations, or corporations of Article VI, Section 25 of the Missouri Constitution. However, this clause also specifically conditions the authority of the Commission and of the Mayor and Board of Aldermen regarding a retirement system on the strictures of state law. *See Trantina v. Board of Trustees of the Firemen's Retirement System*, 503 S.W.2d 148, 152 (Mo. App. St.L. 1973).

The FRS fits squarely within this condition in Sections 4(b) and 7(b)(2) of Article XVIII of the Charter – the state law system governing the FRS does not authorize the mandatory recommendation power sought by the Commission. State law, not local law, sets up and enables the separate retirement system specifically for firefighters of the City of St. Louis. See §87.120, et seq., RSMo. 2000. State law authorizes the City to provide by ordinance for a pension system for firefighters, "subject to the provisions of" the state

⁴ Where particular language is used in one section of a statute omitted in another section of the same statute, it is generally presumed that the legislature acts intentionally and purposely in the disparate inclusion or exclusion. *U.S. v. Juvenile Male J.A.J.*, 134 F.3d 905, 908 (8th Cir. 1998); *see State ex rel. Winkley v. Welsh*, 131 S.W.2d 364, 365 (Mo. App. 1939) (the maxim "expressio unius est exclusio alterius" applies to construction of a municipal ordinance).

statute. §87.125, RSMo. 2000. As authorized by state law, the City enacted ordinances creating the FRS, vesting the FRS and its trustees with the independence in the operation of the retirement system required by state law, and providing retirement benefits to firefighters who serve the City and its residents. Changes to the FRS occur when the Missouri Legislature and the Governor act to enable such changes and when the Board of Aldermen passes ordinances to implement such changes. Changes made by ordinance which are inconsistent with state law are invalid. *Trantina*, 503 S.W.2d at 152. Neither the state law nor the provisions Revised Code of the City of St. Louis regarding the FRS make any mention of the Commission or the civil service system. *See* §87.120, et seq., RSMo. 2000; St. Louis, Mo., Rev. Code §4.18.010, et seq.; *Firemen's Retirement System*, 789 S.W.2d at 486. Under this detailed scheme, the Commission has no role, and the clear implication of the law, viewed as a whole, is the Commission has no right to recommend or refuse to recommend ordinances regarding the FRS.

While not controlling, the construction of Sections 4 and 7(b) of Article XVIII of the Charter by the parties interested in and charged with enforcement of these provisions is entitled to great weight. *City of Joplin v. Joplin Water Works Company*, 386 S.W.2d 369, 375 (Mo. 1965); *see Firemen's Retirement System*, 789 S.W.2d at 487.

History demonstrates the correctness of the Firefighters' position in this case. The FRS has been in existence for half a century. The Missouri General Assembly and the Board of Aldermen of the City of St. Louis have made numerous amendments to the law governing the FRS. No evidence shows the Commission ever previously recommended or refused to recommend any ordinance pertaining to the FRS. Prior to the present

dispute, the Commission has never attempted to stop such legislation. While the Commission argued to the trial court Ordinance 64923 concerned sick leave, not retirement benefits, it is particularly telling the Commission completely failed to act regarding two prior ordinances incorporating sick leave into the retirement calculus used by the FRS in determining the retirement benefits due firefighters. *See St. Louis, Mo., Ords. 61414 and 63591, L.F., vol. 1, p. 120-126.* In 1961 the City Counselor of the City of St. Louis opined the Commission did not have a mandatory recommendation power over an ordinance pertaining to the FRS. *L.F., vol. 1, p. 127-128.* This interpretation remained undisturbed until the recent, April 10, 1999 opinion issued by the City Counselor, immediately prior to the present dispute. Finally, aside from their opposition in the present action, the FRS and its trustees clearly believed, as shown by their consistently action in administering the retirement system without the recommendation of the Commission over the last 50 years, the Commission had no power to recommend ordinances regarding the FRS. *See L.F., vol. 1, p. 131-133.* Thus, the evidence clearly demonstrates the parties concerned believed for approximately 50 years that the Commission had no mandatory right to recommend ordinances regarding FRS.

The interpretation espoused by appellants is consistent with the scheme of the law and does no injury to the Commission or the civil service system. Since 1949, the FRS has acted independently, in accord with state law and ordinances, to provide retirement benefits to the firefighters who protect the citizens of the City of St. Louis and their property. The Commission has never seen fit to interfere in the legislative process regarding the FRS prior to this dispute. This does not minimize the importance or wide-

sweeping duties of the Commission, which administers the civil service system of the City of St. Louis. However, the broad responsibilities and powers of the Commission should not be stretched to encompass this matter, carved out by law from these responsibilities and powers. The absence of the Commission from the process of legislating changes to the law governing the FRS creates (and created) no void in the structure of the law. Any amendments to the FRS must be passed as state law by the Missouri General Assembly and the Governor and then as ordinance by the Board of Aldermen and the Mayor. There simply is no place, need, or justification for another check or control on this system, which has long functioned, prior to this dispute, without the input of the Commission. Regardless of the motivation of the Commission in the present dispute, good or bad, it simply has no proper role in legislation regarding the FRS. If the Commission has a mandatory recommendation power over ordinances pertaining to the FRS, then firefighters, unlike any other City employees, must go through three separate processes to enact improvements to their retirement system. *See* §86.010, *et seq.*, RSMo. 2000 (police retirement system, which is governed by state law); St. Louis, Mo., Rev. Code §4.16.010, *et seq.* (City employees retirement system, which is governed by ordinance). This absurd result is not mandated by the Charter and should not be implied by the Court.

B. The *Abernathy* decision of the Missouri Supreme Court does not govern this dispute, and the trial court’s reliance on it was misplaced.

In reaching its decision, the trial court stated absent the decision of the Missouri Supreme Court in *Abernathy v. City of St. Louis*, 313 S.W.2d 717 (Mo. 1958), it would agree with the position of appellants on the reach of the Commission’s mandatory recommendation power. L.F., vol. 2, p. 271-273. However, the *Abernathy* decision does not govern this case.

Due to the trial court’s reliance on *Abernathy*, a detailed analysis of the case is warranted. In the case, plaintiffs Edna Abernathy and other employees of the City of St. Louis brought suit to collect wages due for overtime work performed by them in the course of their employment. The plaintiffs relied on Ordinance 47744, which provided that all hours worked by employees in excess of 40 hours shall be considered overtime. The defendants contended Ordinance 47744 was void because it had not been recommended by the Commission. *Abernathy*, 313 S.W.2d at 717-718.

In its decision, the Court cited portions of Sections 4 and 7 of Article XVIII of the Charter, notably emphasizing the phrase “on recommendation of the civil service commission” in Section 4(a). *Id.* at 718. The critical portion of the Court’s opinion follows:

Note that Section 7, *supra*, places upon the commission the duty to recommend to the Mayor and Aldermen ordinances to provide for “(3) regulation of hours of duty, holidays, attendance and absence;” and for “(5) such changes in any such matters from time to time as may be warranted.” Then, notice the wording of Section 4 of Article XVIII wherein it is provided that “The mayor and aldermen shall provide, by ordinance * * * on recommendation of the civil service commission, * * * (c) * * * For regulating hours of duty, holidays, attendance and

absence, in the classified service.” We, therefore, conclude that Ordinance No. 47744, upon which plaintiffs based their claim, is void for the reason that it had not been, before its passage, recommended by the Civil Service Commission. This court en banc so ruled in the case of Kirby v. Nolte, 351 Mo. 525, 173, S.W.2d 391.

Id. at 719.

Initially, the Firefighters submit *Abernathy* is distinguishable on its facts. In *Abernathy* the plaintiffs claimed overtime wages, not retirement benefits. The *Abernathy* Court, naturally, did not quote or refer to Sections 4(b) or 7(b)(2) because the case did not concern a retirement system issue, and, therefore, the Court did not comment on the significance of phrase in Sections 4(b) and 7(b)(2), “if and when permissible under the Constitution and Laws of the State of Missouri,” on the separate state law scheme governing the FRS, or on the historical interpretation given these sections of the Charter by the Commission.

While opacity in the opinion in *Abernathy* leaves open the interpretation of the trial court and the Commission, a discerning analysis of the decision and the circumstances present in the present case show the error of applying the decision here. Aside from a rather imprecise use of ellipses, it is clear the Court in *Abernathy* bases its decision on the critical phrase in Section 4(a), “on recommendation of the civil service commission,” the same phrase the Court previously emphasized in quoting Section 4(a). The citation of the Court to the *Kirby* decision reinforces this reading the *Abernathy* opinion because *Kirby* explicitly held Section 4(a) limited the ability of the Board of Aldermen to fix salaries without the recommendation of the Commission. *Kirby*, 173

S.W.2d at 392. Given the nature of the claim for overtime wages, a matter easily encompassed with the terms “compensation” and “compensation plan,” the Court’s opinion does no undue violence to the construction of Section 4.

However, interpreting *Abernathy* to imply that the Commission’s mandatory recommendation power encompass all the matters enumerated in Sections 4 and 7(b), including “retirement system” in Sections 4(b) and 7(b)(2) clearly does irreconcilable harm to Sections 4(b) and 7(b)(2) and the separate scheme of law governing the FRS, as discussed above. The *Abernathy* decision simply does not, because it did not need to, take into account a greater scope of law which must be taken into account regarding the FRS and ordinances amending the law governing the FRS. Section 4(a) expressly submits matters of compensation to the recommendatory power of the Commission. As noted, matters involving hours, absences, and holidays fall easily within the scope of compensation and the general scope of the civil service system which are the domain of the Commission. Matters involving the FRS do not. Unlike compensation and hours, the retirement system for firefighters, the FRS, is governed by a separate, detailed scheme of state law and ordinances enabled by that state law, in which the Commission has no role. In these circumstances, *Abernathy* cannot be read fairly to encompass and govern this dispute.

This case presents squarely a dispute the *Abernathy* decision did not reach and does not address. The facts here make *Abernathy* distinguishable, and a careful reading of the opinion reveals it does not stretch as far as the Commission and the trial court

supposed. Therefore, the trial court's initial, qualified agreement with the interpretation of appellants was the proper conclusion, and *Abernathy* should be limited to its facts.

CONCLUSION

The trial court erred in granting judgment for plaintiffs in this matter. The provisions of the Charter of the City of St. Louis do not provide the Civil Service Commission with a mandatory power to recommend, or veto by failing to recommend, ordinances regarding the FRS. This correct interpretation of the provisions of the Charter is supported by the language of Sections 4(b) and 7(b)(1) of Article XVIII of the Charter, by the comprehensive scheme of state law and local governing the Firemen's Retirement System of St. Louis and the absence of the Commission from that scheme, and by the Commission's own interpretation of its right in this area, as demonstrated clearly by its 50 years of failing to recommend or otherwise act regarding ordinances amending the law governing the FRS. Further, the decision of the Missouri Supreme Court in *Abernathy* does not govern this issue and is factually distinguishable, and, therefore, the trial court's reliance on it was misplaced.

The Firefighters request that the decision of the trial court be reversed in its entirety and that plaintiffs' complaint and the relief sought therein be denied in all respects.

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