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## **JURISDICTIONAL STATEMENT**

Respondent City of St. Louis concurs that jurisdiction of the instant appeal is proper in this Court pursuant to Mo. Const. Art. V, Section 3.

**STATEMENT OF FACTS**

Defendant-Respondent City of St. Louis accepts the Statement of Facts of  
Defendant-Appellant Firemen's Retirement System of St. Louis.

**POINTS RELIED ON**

**I.**

**THE TRIAL COURT DID NOT ERR IN RENDERING ITS JUDGEMENT AND DECREE THAT ST. LOUIS CITY ORDINANCE 64923 WAS INVALID AS HAVING BEEN ADOPTED IN VIOLATION OF ARTICLE XVIII, SECTION 7 OF THE CITY CHARTER INsofar AS THAT ORDINANCE PURPORTED TO PROVIDE FOR SICK LEAVE ACCRUAL OF UNIFORMED EMPLOYEES OF THE ST. LOUIS CITY FIRE DEPARTMENT BECAUSE SUCH SICK LEAVE ACCRUAL IS A MATTER OF SUCH EMPLOYEES= COMPENSATION WHICH CAN BE GRANTED OR CHANGED ONLY BY ORDINANCE RECOMMENDED BY THE CIVIL SERVICE COMMISSION UNDER ARTICLE XVIII, SECTION 7 OF THE CITY CHARTER.**

Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976)

## **ARGUMENT**

### **Standard of Review**

This Court's review of the trial court's decision is governed by the standard set forth in Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976), i.e., the reviewing court will sustain the judgment of the trial court unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.

**THE TRIAL COURT DID NOT ERR IN RENDERING ITS JUDGEMENT AND DECREE THAT ST. LOUIS CITY ORDINANCE 64923 WAS INVALID AS HAVING BEEN ADOPTED IN VIOLATION OF ARTICLE XVIII, SECTION 7 OF THE CITY CHARTER INsofar AS THAT ORDINANCE PURPORTED TO PROVIDE FOR SICK LEAVE ACCRUAL OF UNIFORMED EMPLOYEES OF THE ST. LOUIS CITY FIRE DEPARTMENT BECAUSE SUCH SICK LEAVE ACCRUAL IS A MATTER OF SUCH EMPLOYEES= COMPENSATION WHICH CAN BE GRANTED OR CHANGED ONLY BY ORDINANCE RECOMMENDED BY THE CIVIL SERVICE COMMISSION UNDER ARTICLE XVIII, SECTION 7 OF THE CITY CHARTER.**

The Civil Service Commission instituted this action challenging the validity of City ordinance 64923 as invalidly adopted by the City's Board of Aldermen because it was not recommended by the Civil Service Commission prior to its adoption. The Commission contends that under Article XVIII, Sections 4 and 7 of the City Charter, it must recommend any ordinance dealing with the compensation or pensioning of City employees. The Firemen's Retirement System contends that (1) the ordinance does not deal with compensation of employees and that (2) to the extent it deals with pensioning of firefighters, the Legislature had specifically authorized the Fireman's Retirement System to grant benefits as provided for in the Ordinance. The challenged

ordinance provides that accrued and unused sick leave shall be credited toward a retiree's creditable service and further provides that the sick leave accrual rate for firefighters shall not be reduced below the rate at which firefighters accrued sick leave as of June 1, 1999.

The Civil Service Commission relies upon two provisions of the Charter in support of its position that Ordinance 64923 must have been recommended by the Commission in order to have been validly enacted. First, the Commission relies upon Art. XVIII, ' 7, which provides in part that the Commission shall:

Arecommend 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 for 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;

The Commission also relies upon Article XVIII, ' 4 which provides in part that:

A[t]he mayor and aldermen 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

service, 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;@

While Article XVIII, ' 7 makes it the duty of the Commission to recommend various types of ordinances, including compensation and retirement ordinances, to the mayor and board of aldermen, that section does not address the status of legislation that becomes law without receiving such recommendation. Indeed, nothing in Article XVIII, ' 7, purports to make recommendation by the Civil Service Commission a requirement for a validly enacted ordinance. Compare, for example, Art. IV, ' 25, providing that A[n]o ordinance making, changing or transferring an appropriation or contemplating or involving the payment of any money shall be adopted unless the board of estimate and apportionment shall have recommended or joined in recommending the same.@ Turning then to the second Charter provision relied on by the Commission, we find similar language in Art. XVIII, ' 4(a) with respect to

compensation plans: **A...for adoption of a comprehensive compensation plan ... on recommendation of the civil service commission ...**@(emphasis added). However, this type of language imposing a requirement of civil service commission recommendation is conspicuously absent from Art. XVIII, ' 4(b). Had it been the intent of the drafters of the Charter that the Commission must join in recommending any ordinance dealing with employee retirement, they could have easily done so by mirroring the language of Art. XVIII, ' 4(a) or included language such as that found in Art. IV, ' 25. But they did not. This Court should not infer such a requirement.

Turning to the ordinance at issue before the Court, the provision of Ordinance 64923 that provides that all of a firefighter's accrued and unused sick leave may be credited toward his or her creditable service is not part of the compensation of employees, it is part of the criteria prescribed for eligibility for benefits under the firemen's retirement system.

The second aspect of the ordinance is trickier. At first blush, it would seem that a firefighter's sick leave accrual rate is a matter of compensation rather than a retirement system matter. Under the challenged ordinance, a firefighter's sick leave accrual must be calculated according to the manner in which it was calculated as of June 1, 1999 (e.g., 5 hours biweekly). The Civil Service Commission contends that it should be calculated in the manner provided in the City's existing pay plan (e.g., 3 hours biweekly). But it is not really an either/or proposition as the other parties before

the Court would assume. The two competing views can be reconciled thus avoiding the necessity of invalidating either one.

The City suggests that, although it may entail some additional record-keeping, it is possible to honor both the Civil Service Commission's role as a necessary player in the compensation area while upholding the validity of the sick leave accrual provision of Ordinance 64923. This may be accomplished by simply calculating a firefighter's biweekly sick leave accrual balance differently for civil service purposes than for pension accrual purposes. Hence, an employee may for civil service purposes, i.e., for purposes of receiving pay for periods of illness, be entitled to accrue and use sick leave at the rate of 3 hours biweekly, for example. However for pension purposes, that same employee may accrue sick leave for purposes of calculating eligibility for a pension at the rate of 5 hours biweekly, for example. Thus, both the Civil Service Commission and the Firemen's Retirement System are partially correct in the positions they have taken in this case. The trial court properly determined that Ordinance 64923 was invalid insofar as it purports to set the sick leave accrual rate of firefighters for civil service purposes, i.e., for non-pension calculation purposes. However, the trial court may have extended its ruling too far by holding that the remainder of the ordinance's provisions could not be upheld.

## **CONCLUSION**

This Court should affirm the judgment below as to its holding that Ordinance 64923 is invalid as not having been recommended by the City's Civil Service Commission insofar as the ordinance attempts to regulate the sick leave accrual of uniformed firefighters employed by the City of St. Louis.

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**CERTIFICATE OF COMPLIANCE WITH RULE 84.06(C)**

The undersigned counsel of record hereby certifies that:

1. Counsel for respondent City of St. Louis is Edward J. Hanlon, MBE #26405, 314 City Hall, St. Louis, Mo. 63103, (314) 622-3361.
2. The Brief to which this certificate is attached complies with the limitations contained in Rule 84.06(b) and Local Rule 360.
3. The Brief contains 1590 words in Wordperfect 8.0 format.

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was deposited in the U.S. Mail, postage prepaid this \_\_\_\_ day of January, 2002, addressed to James Hetlage, Attorney for Plaintiff, 714 Locust Street, St. Louis, Mo. 63101 and Daniel G. Tobben, Attorney for Intervenor Firemen's Retirement System, Magna Place, Suite 550, 1401 S. Brentwood, St. Louis, Mo. 63144 and Richard P. Perkins, Attorney for Intervenors Local 73, et. al., 7730 Carondelet, Suite 200, St. Louis, Mo. 63105.

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