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JURISDICTIONAL STATEMENT

This case requires this Court to determine whether a fire protection district maintains its jurisdiction over the provision of fire protection and emergency medical services in an area within the fire protection district's geographic boundaries, but annexed by a city with its own fire department. South Metropolitan Fire Protection District ("Respondent" or "South Metro") contends that R.S.Mo. §§ 72.418.2¹ and 72.418.3 unambiguously apply to all annexations by all cities with a fire department, and combine to direct that an area annexed by a city within a fire protection district's boundaries shall remain subject to the fire protection district's jurisdiction over the provision of fire protection and emergency medical services. The City of Lee's Summit ("Appellant" or "City") contends that Sections 72.418.2 and 72.418.3 only apply to cities in counties that have adopted boundary commissions. Appellant further contends that Section 321.320 permits a city with a fire department, and within the statute's specified population range, to summarily divest a fire protection district of its jurisdiction over the provision of fire protection and emergency medical services if the city annexes an area located within the fire protection district's boundaries. Finally, Appellant contends that Section 72.418.2 is unconstitutional, whether interpreted to apply to all cities and to all annexations as argued by Respondent, or interpreted to apply only to boundary commission counties as argued by Appellant. As a result, this case, though potentially

¹ All statutory references are to the Revised Statutes of Missouri (2000), unless otherwise stated.

determinable on an issue that could avoid the need to reach the question of Section 72.418.2's constitutionality, nonetheless involves the validity of a state statute affording the Missouri Supreme Court exclusive appellate jurisdiction pursuant to Mo.Const. art. V, § 3. *State ex rel. Highway Commission v. Wiggins*, 454 S.W.2d 899, 902 (Mo. banc 1970). Appellant originally filed this appeal in the Missouri Court of Appeals, Western District. On application of Respondent, the Missouri Court of Appeals transferred this appeal to the Missouri Supreme Court pursuant to Mo.Const. art. V, § 11.

STATEMENT OF FACTS

This case was tried to the court on a Stipulation of Facts [L.F. 76-84] and with Stipulated Exhibits. [L.F. 85-88; Exhibits 1-24] No other evidence or testimony was taken or tendered at trial. [L.F. 89] Appellant's Statement of Facts, though accurate, is not complete.

At the time the Annexed Property (as defined in Appellant's Statement of Facts) was voluntarily annexed by the City in January 2005, it was undeveloped. [L.F. 81] Construction of single family residences did not begin until late 2006 or early 2007. [L.F. 81] In late January 2007 or early February 2007, South Metro's Fire Marshall went to the Annexed Property to determine why the developer had not secured the approvals or permits from South Metro ordinarily required for construction activities within South Metro's boundaries. [L.F. 81] When the Fire Marshall ran a test "911" call from the Annexed Property, the call was routed to the City's Police Department, where it would be transferred to the City's Fire Department upon request for such services. [L.F. 81] South Metro did not direct or authorize the re-routing of calls for the Annexed Property from South Metro to the City. [L.F. 81] The City's website reflected in early February 2007 that the Annexed Property was located in the City's city limits, but not within the service area for the City's fire department. [L.F. 82]

Between February 2007 and June 2007, several written communications were exchanged between South Metro and the City in an unsuccessful effort to resolve the dispute over which had jurisdiction over the provision of fire protection and emergency

medical services to the Annexed Property. **[L.F. 82; Exhibits 20-24]** South Metro filed suit for declaratory judgment and preliminary and injunctive relief on October 12, 2007. **[L.F. 4-38]** The trial court entered its judgment on March 4, 2008, declaring that Sections 72.418.2 and 72.418.3 control disposition of the jurisdictional dispute between the parties. **[L.F. 89-110]** The trial court thus awarded a declaratory judgment and permanent injunctive relief in favor of South Metro. **[L.F. 108-110]** The trial court rejected the City's counterclaims, finding Section 72.418.2 is not unconstitutional. **[L.F. 110]**

POINTS RELIED ON

- I. The Trial Court Did Not Err in Entering Judgment for Respondent Concluding that Sections 72.418.2 and 72.418.3 Control Because these Sections are Not Limited in Their Application To Boundary Commission Counties Given The Language Used by the Legislature, and Apply By Their Terms To All Cities with a Fire Department, and To Any Annexation of An Area Within a Fire Protection District's Boundaries, In That the Legislature's Intent That Sections 72.418.2 and 72.418.3 Should Be Read To Apply Broadly To All Cities and To Any Annexation Can Be Ascertained from the Plain Language Used by the Legislature, Rendering Resort To Legislative History and To Other Principles of Statutory Construction Improper, and In That Other Recent Legislative Enactments, Including Section 321.322.4 and Section 320.310, Reflect a Legislative Trend Toward Protecting the Jurisdiction of Fire Protection Districts Whose Boundaries Are Encroached By Municipal Annexations.

(Responding to Point Relied On II)

United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy, 208 S.W.3d 907 (Mo. banc 2006)

Home Builders Association of Greater St. Louis, Inc. v. City of Wildwood, 107 S.W.3d 235 (Mo. banc 2003)

BHA Group Holding, Inc. v. Pendergast, 173 S.W.3d 373 (Mo.App. W.D. 2005)

Asbury v. Lombardi, 846 S.W.2d 196 (Mo. banc 1993)

Sections 72.418.2 and 72.418.3

II. The Trial Court Did Not Err in Entering Judgment for Respondent Concluding that Section 321.320 Does Not Control Because that Statute’s Reference to “Is Included” is Ambiguous, Requiring Resort to Principals of Statutory Construction to Ascertain the Intent of the Legislature, Including Examination of Section 321.320 At the Time it Was Enacted, When the Statute Employed the Phrase “Is Now or Hereafter Included” Instead of the Phrase “Is Included,” Suggesting a Legislative Intent to Limit the Temporal Reference of Section 321.320 to Only Those Cities Meeting the Statute’s Criteria at the Time of its Amendment in 1961 and in 1969, In That Changes Made to Existing Statutes By the Legislature are Not to Ignored, and Are to Be Afforded Meaning.

(Responding to Point Relied On I)

Reals v. Courson, 164 S.W.2d 306 (Mo. 1942)

United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy, 208 S.W.3d 907 (Mo. banc 2006)

Section 321.320

III. The Trial Court Did Not Err in Entering Judgment for Respondent Concluding that Sections 72.418.2 and 72.418.3 Control Over Section 321.320 in the Event Section 321.320 is Interpreted to Apply Prospectively Because Sections 72.418.2 and 72.418.3 Would Be in Irreconcilable Conflict With Section 321.320, as the Statutes Would Direct Inconsistent and Competing Outcomes With Respect to Their Subject Matter, and In Such a Circumstance, the Later Enacted and More

Specific Enactment Prevails, In That Sections 72.418.2 and 72.418.3, enacted in 1993 and 1995, Respectively, Are Later Enactments Than Section 321.320 Which Was Last Amended in 1969, and In That Sections 72.418.2 and 72.418.3 Address in a More Detailed and Specific Manner Than Section 321.320 the Subject Matter Of Annexations by Cities With Fire Departments.

(Responding to Point Relied On III)

State ex rel. City of Republic v. Smith, 139 S.W.2d 929 (Mo. banc 1940)

Wellston Fire Protection District of St. Louis County v. State Bank and Trust Company of Wellston, 282 S.W.2d 171 (Mo. App. 1955)

Moats v. Pulaski County Sewer District No. 1, 23 S.W.3d 868 (Mo.App. S.D. 2000)

State of Missouri ex rel. Fort Zumwalt School District v. Dickherber, 576 S.W.2d 532 (Mo. banc 1979)

Sections 72.418.2 and 72.418.3

Section 321.320

- IV. The Trial Court Did Not Err in Entering Judgment for Respondent Rejecting Appellant's Claim that Section 72.418.2 Violates Mo.Const. art. X, §§ 3 and 6, Because Section 72.418.2 Does Not Impose a Non-Uniform Tax on Real Property Within the Subclass of the Annexed Property, and it Does Not Exempt the Annexed Property From Taxation, In That Section 72.418.2 Creates a Permissible Subclass of Residents Who Reside Both Within Respondent's Boundaries and

Appellant's City Limits and Each Member of This Subclass is Taxed Uniformly and the Subclass is Rational and Not Arbitrary As It Protects the Members of the Subclass From Double Taxation, and In That Section 72.418.2 Does Not Exempt the Annexed Property from Taxation, as the Annexed Property Will Remain Subject to Respondent's Tax Levies for Bonded Indebtedness Existing Prior To the Annexation, and as the Annexed Property Will Remain Subject to the Appellant's Tax Levies.

(Responding to Point Relied On IV)

Barhorst v. City of St. Louis, 423 S.W.2d 843 (Mo. banc 1967)

508 Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823 (Mo. 1965)

St. Louis County Library District v. Hopkins, 375 S.W.2d 71 (Mo. 1964)

Mo.Const. art. X, §§ 3 and 6

- V. The Trial Court Did Not Err in Entering Judgment for Respondent Rejecting Appellant's Claim that Section 72.418.2 Violates Mo.Const. art. X, §1 Because Section 72.418.2 Requires Appellant to Pay Respondent for Respondent's Provision of Fire Protection and Emergency Medical Services to the Annexed Property the Amount Respondent Would Have Received From its Tax Levy on the Annexed Property, and Section 72.418.2 Thus Reflects a Legislative Determination that Fire Protection and Emergency Ambulance Services are a Municipal Purpose For Which Appellant's Tax Revenues Can Be Permissibly Used Whether the Services are Provided by Appellant or Respondent, In That

Mo.Const. art. X, § 1 Permits the Use of Tax Revenues for Services the Legislature Has Designated to be Municipal Purposes, and In That the Relative Cost of Those Services if Provided By Appellant Instead of Respondent is Not Relevant to Determining Whether the Tax Revenues are Being Used For a Municipal Purpose.

(Responding to Point Relied On V)

Burks v. City of Licking, 980 S.W.2d 109 (Mo.App. S.D. 1998)

Associated Electric Co-Op, Inc. v. City of Springfield, 793 S.W.2d 517 (Mo.App. S.D. 1990)

Mo.Const. art. X, § 1

INTRODUCTION

This case necessitates interpretation of Sections 72.418.2 and 72.418.3, and Section 321.320. Respondent contends that Sections 72.418.2 and 72.418.3 are clear and unambiguous, and that the legislature’s intent can be discerned from the plain language of the statutes. This is, of course, the starting point for statutory interpretation as “the primary object of statutory interpretation is to ascertain the intent of the legislature from the language used.” *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 909 (Mo. banc 2006), *cited with approval in, Hudson v. Director of Revenue*, 216 S.W.3d 216, 221 (Mo.App. W.D. 2007). Applying this precept, Sections 72.418.2 and 72.418.3 clearly and unambiguously state that fire protection districts retain jurisdiction over the provision of services to areas within the district annexed by a municipality with its own fire department. **(Respondent’s Point Relied on I, responding to Appellant’s Point Relied on II)** Respondent contends that Section 321.320, as plainly written, does not mention, and thus has no application to annexations. Respondent also contends that Section 321.320 has no application to municipal expansions into a fire protection district’s territorial boundaries occurring after the statute’s last amendment in 1969, a conclusion bolstered by comparing the temporal reference “is included” used by the legislature when it amended Section 321.320 in 1961 and again in 1969, to the temporal reference “is now or hereafter included” which was used by the legislature when Section 321.320 was first enacted in 1949. **(Respondent’s Point Relied on II, responding to Appellant’s Point Relied on I)** In the alternative, should Section 321.320 be interpreted as urged by Appellant to apply to municipal

expansions which occur subsequent to 1969, than Section 321.320 is in irreconcilable conflict with Sections 72.418.2 and 72.418.3. That conflict must be resolved in favor of Sections 72.418.2 and 72.418.3, which are the more recent and specific enactments. *Smith v. Missouri Local Government Employees Retirement System*, 235 S.W.3d 578, 581-582 (Mo.App. W.D. 2007). **(Respondent's Point Relied on III, responding to Appellant's Point Relied on III)** As Sections 72.418.2 and 72.418.3 control the disposition of the matters before this Court, the constitutionality of Section 72.418.2, which is challenged by Appellant pursuant to Mo.Const. art. X, §§ 1, 3, and 6, must be determined. Section 72.418.2 does not violate these Constitutional provisions as it does not create unlawful taxation subclasses, does not unlawfully exempt property from taxation, and does not unlawfully require the City to use tax revenues for a non-municipal purpose. **(Respondent's Points Relied on IV and V, responding to Appellant's Points Relied on IV and V)**

ARGUMENT

I. The Trial Court Did Not Err in Entering Judgment for Respondent Concluding that Sections 72.418.2 and 72.418.3 Control Because these Sections are Not Limited in Their Application To Boundary Commission Counties Given The Language Used by the Legislature, and Apply By Their Terms To All Cities with a Fire Department, and To Any Annexation of An Area Within a Fire Protection District's Boundaries, In That the Legislature's Intent That Sections 72.418.2 and 72.418.3 Should Be Read To Apply Broadly To All Cities and To Any Annexation Can Be Ascertained from the Plain Language Used by the Legislature, Rendering Resort To Legislative History and To Other Principles of Statutory Construction Improper, and In That Other Recent Legislative Enactments, Including Section 321.322.4 and Section 320.310, Reflect a Legislative Trend Toward Protecting the Jurisdiction of Fire Protection Districts Whose Boundaries Are Encroached By Municipal Annexations.

(Responding to Point Relied On II)

A. Standard of Review.

This case involves the interpretation of Sections 72.418.2 and 72.418.3, and thus questions of law that are reviewable by this Court *de novo*. *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 355 (Mo. banc 1995).

B. The Legislature’s Intent Can Be Ascertained From the Plain Meaning to Be Afforded the Words Used By the Legislature In Sections 72.418.2 and 72.418.3.

The trial court concluded that Sections 72.418.2 and 72.418.3 clearly and unambiguously mandate that South Metro retains jurisdiction over the provision of fire protection and emergency medical services to the Annexed Property. In so concluding, the trial court ascertained the intent of the legislature by affording the words used in these Sections their plain and ordinary meaning. *United Pharmacal Co.*, 208 S.W.3d at 910, *cited with approval in, Hudson v. Director of Revenue*, 216 S.W.3d at 221. Though elementary, reminder of this starting point for statutory interpretation is crucial. Appellant never addresses whether the legislature’s intent can be determined from the plain meaning of the language employed in Sections 72.418.2 and 72.418.3. Thus, this Court must begin with what Appellant has omitted -- a review of the language used by the legislature in Sections 72.418.2 and 72.418.3.

Section 72.418 provides:

1. Notwithstanding any other provision of law to the contrary, no new city created pursuant to sections 72.400 to 72.423 shall establish a municipal fire department to provide fire protection services, including emergency medical services, if such city formerly consisted of unincorporated areas in the county or municipalities in the county, or both, which are provided fire protection services and emergency medical services by one or more fire protection districts.

Such fire protection districts shall continue to provide services to the area comprising the new city and may levy and collect taxes the same as such districts had prior to the creation of such new city.

2. *Fire protection districts serving the area included within any annexation by a city having a fire department, including simplified boundary changes, shall continue to provide fire protection services, including emergency medical services to such area.* The annexing city shall pay annually to the fire protection district an amount equal to that which the fire protection district would have levied on all taxable property within the annexed area. Such annexed area shall not be subject to taxation for any purpose thereafter by the fire protection district except for bonded indebtedness by the fire protection district which existed prior to the annexation. The amount to be paid annually by the municipality to the fire protection district pursuant hereto shall be a sum equal to the annual assessed value multiplied by the annual tax rate as certified by the fire protection district to the municipality, including any portion of the tax created for emergency medical service provided by the district, per one hundred dollars of assessed value in such area. The tax rate so computed shall include any tax on bonded indebtedness incurred subsequent to such annexation, but shall not

include any portion of the tax rate for bonded indebtedness incurred prior to such annexation. Notwithstanding any other provision of law to the contrary, the residents of an area annexed on or after May 26, 1994, may vote in all fire protection district elections and may be elected to the fire protection district board of directors.

3. *The fire protection district may approve or reject any proposal for the provision of fire protection and emergency medical services by a city.*

[Emphasis Added] The highlighted portions of Sections 72.418.2 and 72.418.3 employ plain language. That is not contested by Appellant. The terms “a city,” “fire protection district,” and “any annexation” are plain and common terms. None of these terms is defined by the legislature in Section 72.400 et seq., the act in which Sections 72.418.2 and 72.418.3 appear.

“Fire protection district” is, however, defined by the legislature at Section 321.010 as:

“. . . a political subdivision which is organized and empowered to supply protection by any available means to persons and property against injuries and damage from fire and from hazards which do or may cause fire, and which is also empowered to render first aid for the purpose of saving lives, and to give assistance in the event of an accident or emergency of any kind.”

“When the legislature enacts a statute referring to terms which have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action.” *Citizens Elec. Corp. v. Director of Dept. of Revenue*, 766 S.W.2d 450, 452 (Mo. banc 1989), *citing Hudson v. School Dist. Of Kansas City*, 578 S.W.2d 301, 311 (Mo.App. W.D. 1979). It must be presumed, therefore, that the term “fire protection district” used in Sections 72.418.2 and 72.418.3 has the meaning ascribed the term by the legislature in Chapter 321. Appellant stipulates that South Metro is a fire protection district formed pursuant to Chapter 321. **[L.F. 76]** Thus, South Metro is a fire protection district covered by the plain meaning of the term “fire protection district” used by the legislature in Sections 72.418.2 and 72.418.3.

“City” and “annexation” are not uniformly defined by the legislature, though they are terms referenced innumerable throughout Missouri statutes. It can be fairly presumed, therefore, as these terms are commonly employed by the legislature, though not specifically or uniformly ascribed a legislative definition, that the terms are to be afforded their plain and ordinary meaning. “[U]ndefined words are given their plain and ordinary meaning as found in the dictionary in order to ascertain the intent of lawmakers.” *Asbury v. Lombardi*, 846 S.W.2d 196, 201 (Mo. banc 1993). “Annexation” is defined in BLACK’S LAW DICTIONARY, as “the acquisition of territory or land by a nation, state or municipality” BLACK’S LAW DICTIONARY, Fifth Ed. It can be presumed, therefore, that the legislature intended this plain and ordinary meaning to be ascribed to the term “annexation” as that term is used in Sections 72.418.2 and 72.418.3. Appellant stipulates that it annexed, consistent with the common meaning of the term, the

Annexed Property. [L.F. 80] Thus, the City’s annexation of the Annexed Property is covered by the plain meaning of the term “annexation” used by the legislature in Sections 72.418.2 and 72.418.3.

“City” is defined in BLACK’S LAW DICTIONARY as “a municipal corporation . . . a political entity or subdivision for local governmental purposes.” BLACK’S LAW DICTIONARY, Fifth Ed. Again, it can be presumed that the legislature intended this plain and ordinary meaning to be ascribed the term “city” as used in Sections 72.418.2 and 72.418.3. Appellant and Respondent have stipulated that the City is a “city.” [L.F. 76] Thus, the City is covered by the plain meaning of the term “city” used by the legislature in Sections 72.418.2 and 72.418.3.

Affording the common and ordinary terms and phrases used by the legislature in Sections 72.418.2 and 72.418.3 their plain meanings, the intent of the legislature can thus be ascertained. Sections 72.418.2 and 72.418.3 combine to require: (i) that any area served by a fire protection district which is included within any annexation by a city having a fire department shall continue to have fire protection and emergency medical services provided to such area by the fire protection district, and (ii) that a fire protection district may approve or reject any proposal for the provision of fire protection and emergency medical services by a city. As applied to this case, Sections 72.418.2 and 72.418.3 combine to lead to the inescapable conclusion that South Metro retains the Annexed Property within its geographic boundaries, and retains jurisdiction over the provision of fire protection and emergency medical services to the Annexed Property.

Appellant contends that the phrase “including simplified boundary changes,” which follows the phrase “any annexation by a city having a fire department” in Section 72.418.2, suggests that the legislature intended its reference to “any annexations” to be limited to boundary commission counties, since “simplified boundary changes” can only occur in boundary commission counties. In fact, such an interpretation would place an absurd constraint on the plain language used by the legislature. The legislature had available to it a simple tool to limit the reach of Section 72.418.2 to boundary commission counties, had that been the legislature’s intent. “Boundary change” is defined by the legislature in Section 72.400 as: “any annexation, consolidation, incorporation, transfer or jurisdiction between municipalities or between a municipality and the county, or combination thereof, which, if approved, would result in a municipality composed of contiguous territory.” All of the definitions set forth in Section 72.400, including the definition of “boundary change,” are expressly limited in their application to Sections 72.400 to 72.423. The term “boundary change” is thus defined by the legislature to cover all means by which cities in boundary commission counties can annex, consolidate, or otherwise transfer jurisdiction, including “simplified boundary changes,” a specific type of annexation that can be undertaken in boundary commission counties by following the procedures described in Section 72.405.6. As defined by the legislature, the term “boundary change” thus necessarily excludes annexations that occur outside boundary commission counties and pursuant to statutory provisions not encompassed within Sections 72.400 to 72.423.

Thus, had the legislature intended to limit the scope of Sections 72.418.2 and 72.418.3 to boundary commission counties, it could easily have done so by using the defined term “boundary change” instead of the phrase “any annexation” in those Sections. If the term “boundary change” had been used, the subsequent reference in Section 72.418.2 to “including simplified boundary changes” would have been unnecessary and superfluous, as Section 72.405.6 “simplified boundary changes” are already included within the Section 72.400 definition of “boundary change.” Of course, the legislature did not use the term “boundary change.” Instead, it used the phrase “any annexation,” suggesting a purposeful intent to expand the reach of Sections 72.418.2 and 72.418.3 beyond boundary commission counties to cover all cities and any annexation, precisely as the Sections state. The legislature’s reference to “including simplified boundary changes” following reference to the broader class of “any annexation,” does not limit the meaning of “any annexation” to only those annexations occurring in boundary commission counties. The use of the word “including” is, in fact, a word of enlargement, and not limitation. *St. Louis County v. State Highway Commission*, 409 S.W. 2d 149, 152-153 (Mo. 1966) (“The meaning of the word ‘include’ may vary according to its context. Ordinarily, it is not a word of limitation, but rather of enlargement.”); *See also, Keiffer v. Keiffer*, 590 S.W.2d 915, 918 (Mo. banc 1979). When the word “including” is used along with mention of specific objects or examples, it implies there are others not mentioned, but meant to be covered by the statute’s scope. *St. Louis County v. State Highway Commission*, 409 S.W.2d at 153; *In re S.J.S.*, 134 S.W.3d 673, 677 (Mo.App. E.D. 2004). Thus, the legislature’s reference to “any annexations” includes not only

“annexations” pursued via means outlined by other, more commonly employed statutory procedures,² but also the “simplified boundary change” procedure described in Section 72.405.6, available only in boundary commission counties.

Though not necessary to do so, as the legislature’s intent in using the term “including” in Section 72.418.2 can be ascertained from the plain meaning of the term, this Court can take comfort in knowing that it is correctly ascribing the intended meaning to the phrase “*any annexation by a city having a fire department, including simplified boundary changes*” by reviewing the version of Section 72.418 in effect immediately before the statute was amended in 1993. Prior to the 1993 amendment, Section 72.418 read as follows:

Notwithstanding any other provision of law to the contrary, *no new city created pursuant to sections 72.400 to 72.418 shall establish a municipal fire department to provide fire protection services including emergency medical services* if the city formerly consisted of unincorporated areas in the county or municipalities in the county, or both, which are provided fire protection services or emergency medical services by one or more fire protection districts. *Fire protection districts serving the area of any boundary change, including simplified boundary changes, shall continue to provide services for the new municipality or municipalities* in the same area and shall levy and collect taxes as such districts had prior to such

² See, e.g. Sections 71.012, 71.014, 71.016, 71.860, 71.920 and 79.020.

boundary change. Residents affected by the boundary change shall pay only fire district taxes assessed by the fire protection district in which they reside. In the event of a voluntary dissolution of a fire district, the municipality annexing the whole or part of such area included in the fire district shall levy and collect taxes applicable to such municipality.

[Emphasis Added] This version of Section 72.418 only applied, by its terms, to “new cities” created “pursuant to Sections 72.400 to 72.418.” The protection afforded a fire protection district over its territory by this version of Section 72.418 was expressly available to only those fire protection districts serving the area of “any boundary change” effecting the “new municipality or municipalities.”³ In the 1993 amendment, Section 72.418 was divided into subsections. Section 72.418.1 retained most of the Statute’s original discussion of “new cities” created pursuant to what was then Section 72.400 to 72.418, and of the effect creation of “new cities” had on fire protection districts. Section

³ At the time this version of Section 72.418 was in effect, Section 72.400 separately defined “simplified boundary changes” from the term “boundary change,” thus necessitating the lesser included reference to “including simplified boundary changes,” following reference to “boundary changes.” In the 1993 amendment to Section 72.418, the legislature deleted the separate definition of “simplified boundary changes” in Section 72.400, and moved the description of the procedure to be followed for this type of “boundary change” to Section 72.405.6, thus including within the definition of “boundary change” “simplified boundary changes.”

72.418.2 was added as an entirely new subsection. In drafting Section 72.418.2, and in defining the circumstances wherein a fire protection district's jurisdiction would remain unaffected by municipal expansion, the legislature notably avoided the use of any of the following limiting references: (i) "new cities," a limiting reference used in the earlier version of Section 72.418, and in the 1993 amendment as a part of Section 72.418.1; (ii) activities "created pursuant to Sections 72.400 to 72.418," a limiting reference used in the earlier version of Section 72.418, and in similar form in the 1993 amendment to Section 72.418.1; and (iii) the defined term "boundary changes," the limiting reference used in the earlier version of Section 72.418. Instead, in the 1993 amendment which created Section 72.418.2, the legislature broadly referenced all "fire protection districts" serving "the area included within any annexation" by "a city having a fire department." The legislature's use of the phrase "any annexation" instead of the defined term "boundary change" was thus not a mistake, but a purposeful choice. *Jantz v. Brewer*, 30 S.W.3d 915, 918 (Mo.App. S.D. 2000) (legislature is presumed to have acted "intentionally when it includes language in one section of statute but omits it from another. [citations omitted] A disparate inclusion or exclusion of particular language in another section of the same act is 'powerful evidence' of legislative intent." [citations omitted]). This Court should not, therefore, artificially constrain the meaning of the term "any annexation" to have the term apply only to boundary commission counties merely because the legislature mentioned an intent to include "simplified boundary changes" within the meaning of the term, as to do so would require this Court to imply qualifications on the Section's applicability not included by the legislature. *BHA Group Holding, Inc. v. Pendergast*,

173 S.W.3d 373, 379 (Mo.App. W.D. 2005) (“ . . . courts avoid interpreting statutes to include qualifiers where ‘[s]uch an interpretation impermissibly adds language to the statute.’”), citing *Kincade v. Treasurer of State of Mo.*, 92 S.W.3d 310, 312 (Mo.App. E.D. 2002); *Martinez v. State*, 24 S.W.3d 10, 16-17 (Mo.App. E.D. 2000)(“ . . . reviewing court may not add words by implication where the statute is clear and unambiguous.”).

The legislature’s subsequent amendment of Section 72.418 in 1995 to add Section 72.418.3 is further evidence that the legislature intended Section 72.418.2 to apply, as written, to “any annexation” by “any city with a fire department.” Once again, the language in Section 72.418.3 includes no limiting reference to “boundary changes” or to an express intent that the Section is meant to apply only to Sections 72.400 to 72.423. Rather, the plain and clear terms of Section 72.418.3 provide that a fire protection district has complete control over whether it desires to approve or reject a proposal for the provision of fire protection and emergency medical services by “a city” -- a broad reference which includes “new cities” as discussed in Section 72.418.1, and “any city with a fire department” as discussed in Section 72.418.2.

Appellant next argues that even though Sections 72.418.2 and 72.418.3 may be unambiguous read in isolation, they must be read as a part of the entire act of which they are a part in order to ascertain their meaning. It is generally true that “[a] provision in a statute must be read in harmony with the entire section.” *PDQ Tower Servs., Inc. v. Adams*, 213 S.W.3d 697, 698 (Mo.App. W.D. 2007). However, this principal of statutory construction is an “aid in ascertaining legislative intent. . . .” *Eminence R-1 School Dist. v. Hodge*, 635 S.W.2d 10, 13 (Mo. 1982). Though an “entire act must be construed

together and all provisions must be harmonized,” *id.*, this presumes the need to do so. Resort to this principal of statutory construction is only necessary when “two statutory provisions covering the same subject matter are unambiguous standing separately, but are in conflict when examined together” *City of Clinton v. Terra Foundation, Inc.*, 139 S.W.3d 186, 189 (Mo.App. W.D. 2004). That is not the case here. Sections 72.418.2 and 72.418.3 don’t become ambiguous when read *in pari materia* with Section 72.418.1 or with the balance of Sections 72.400 to 72.423. The mere fact that the legislature wrote certain subsections of Section 72.418 with the intent that the subsections should apply broadly, and beyond the limited scope of other subsections, and beyond the limited scope of the balance of the act embodied within Sections 72.400 to 72.423, is not indicative of an ambiguity. This is especially true when, as here, the 1993 amendment to Section 72.418 generated both Section 72.418.1 and Section 72.418.2. Section 72.418.1 was drafted using limiting terms and phrases consistent with an intent to limit its scope to boundary commission counties, while such limiting provisions were conspicuously omitted from Section 72.418.2. Thus, Appellant’s contention that merely because most of Section 72.400, et seq. deals with boundary commission counties, it must be that the legislature intended Sections 72.418.2 and 72.418.3 to be similarly limited in their application, despite the clear and contrary plain language used by the legislature in those Sections, is without merit. *State ex rel. City of Springfield v. Smith*, 125 S.W.2d 883, 885 (Mo. banc. 1939) (though section of statute immediately followed initiative and referendum provisions applicable to cities of second class, its operation was not confined to those subjects, but applied broadly to all bond elections where the language used by

the legislature was sufficiently comprehensive by its express terms to embrace the broader subject matter).

In short, the plain language employed by the legislature in Sections 72.418.2 and 72.418.3 is not ambiguous, and the legislature's intent can be easily ascertained from the language used. Appellant nonetheless urges this Court to ignore the plain language of these Sections, and to resort to the rule of statutory construction which permits examination of the legislative history of a statute in order to ascertain the legislature's intent. However, "[w]here a provision's language is clear, courts must give effect to its plain meaning and refrain from applying rules of construction unless there is some ambiguity." *Home Builders Association of Greater St. Louis, Inc. v. City of Wildwood*, 107 S.W.3d 235, 239 (Mo. banc 2003), citing *State ex rel. Baumruk v. Belt*, 964 S.W.2d 443, 446 (Mo. banc 1998). Only when the words of a statute are ambiguous is it "proper to consider the history of the legislation, the surrounding circumstances, and the ends to be accomplished." *State ex rel. Zoological Park Subdistrict of City and County of St. Louis v. Jordan*, 521 S.W.2d 369, 372 (Mo. 1975). Here, the language of Sections 72.418.2 and 72.418.3 is unambiguous. "The inquiry ends with the statute's plain language." *Home Builders Association*, 107 S.W.3d at 239. "This Court must be guided by what the legislature said . . ." and not by what the Court or a party thinks it meant to say. *Missouri Public Service Co. v. Platte-Clay Electric Cooperative, Inc.*, 407 S.W.2d 883, 891 (Mo. 1996). Appellant offers no alternative and equally plausible meaning for the phrases "a city," "fire protection district," and "any annexation" as used in Sections 72.418.2 and 72.418.3, and thus never overcomes the hurdle of demonstrating that these

Sections are ambiguous as to permit resort to rules of statutory construction. There is simply no room for construction of a statute when its language is clear and unambiguous. *Wolff Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988).

Though there is no reason for this Court to explore the legislative history of Sections 72.418.2 and 72.418.3 as the Sections are not ambiguous, and their meanings can be easily discerned from the plain language employed by the legislature, it is important to observe that Appellant's offered construction of Sections 72.418.2 and 72.418.3 in light of their legislative history is flawed.

In *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96 (Mo. banc 1993), this Court declared the Boundary Commission Act (Sections 72.400 to 72.418) unconstitutional. It did so concluding that the Act, as written, could only apply to St. Louis County. Following the decision in *O'Reilly*, the General Assembly enacted Senate Bill 256. The Senate Bill 256 became law in 1993. As noted, the Bill retained a portion of what had been the preceding version of Section 72.418, renumbering that language as Section 72.418.1. The Bill added Section 72.418.2 as an entirely new subsection. This Court can reasonably assume that the legislature's 1993 amendment to Section 72.418 to add Section 72.418.2, and its amendment in 1995 to add Section 72.418.3, were motivated not only by a desire to provide greater protection to the jurisdictional boundaries of fire protection districts, but also to insure that the Boundary Commission Act (Section 72.400, et seq.) would never again be subject to potential constitutional attack because the Act could only apply to St. Louis County, the constitutional infirmity identified in

O'Reilly. Scruggs v. Scruggs, 161 S.W.3d 383, 391 (Mo.App. W.D. 2005) (“The legislature is presumed to know the existing case law when it enacts a statute.”).

Moreover, Appellant’s suggestion that Senate Bill 256 only addresses the subject matter of boundary commission counties, and thus must reflect a legislative intent to limit the amendment to Section 72.418 therein described to boundary commission counties, is erroneous. Senate Bill 256 [**Appellant’s Appendix, A-34 through A-36**] not only amended Section 72.418, but also amended Section 321.300—a statute that is a part of Chapter 321 relating to all fire protection districts. The amendment to Section 321.300 clarified the specific procedures which must be followed (via a petitioning process) for the boundaries of any fire protection district to be changed. The amendment to Section 321.300 is not limited to fire protection districts in boundary commission counties, but applies to all fire protection districts. Quite consistent, therefore, with the legislature’s amendment of Section 72.418 to add Section 72.418.2, the amendment to Section 321.300 reflected in Senate Bill 256 protects the boundaries and/or jurisdiction over the provision of services for all fire protection districts, and not just fire protection districts in boundary commission counties. Further, the Emergency Clause in Senate Bill 256 refers not only to the need for immediate action because of pending proposals before boundary commissions, but also “because there is a dispute as to fire protection and emergency medical services jurisdiction between municipal fire departments and fire protection districts,” a phrase that clearly applies to all such disputes, and not just to disputes within boundary commission counties. Thus, the legislative history on which Appellant relies to attempt to artificially narrow the plain language of Sections 72.418.2 and 72.418.3, in

actuality supports interpreting those Sections as written, such that they apply broadly to any annexation by a city with a fire department of territory within any fire protection district.

C. The 2005 Amendment to Section 321.322 to add Section 321.322.4 is consistent with Respondent's urged interpretation of Section 72.418.2.

Appellant argues that a 2005 amendment to Section 321.322 supports its contention that Section 72.418.2 is limited in scope to counties which have adopted boundary commissions. In fact, the reverse is true. The 2005 amendment to Section 321.322 verifies the legislature's movement toward enactment of statutory provisions which protect a fire protection district's jurisdiction over the provision of fire protection and emergency medical services within its boundaries.

Section 321.322 generally provides that if a municipality with a population of at least two thousand five hundred but not more than sixty-five thousand annexes property within a fire protection district's boundaries, the annexed property is then excluded from the fire protection district's boundaries, provided the annexing city has its own fire department, and provided the annexing city makes statutorily prescribed payments to the affected fire protection district in a lump sum or over a five year period.

The 2005 amendment to Section 321.322 added subsection 4, which reads as follows:

The provisions of this section shall not apply where the annexing city or town operates a city fire department and was on January 1, 2005, a city of the fourth classification with more than eight thousand nine hundred but

fewer than nine thousand inhabitants and entirely surrounded by a single fire district. **In such cases, the provision of fire protection and emergency medical services following annexation shall be governed by subsections 2 and 3 of section 72.418, RSMo.**

[Emphasis added] The City of Harrisonville, Missouri was, as of January 1, 2005, the only city meeting the criteria of this amendment, and thus will be the only city to which this amendment will ever apply. **[Transcript, p.76-77 (16:25; 1-2)]** Appellant argues that this amendment would have been unnecessary if Section 72.418.2 had already been intended by the legislature to apply generally to all cities annexing territory within a fire protection district. Respondent disagrees.

There is another equally plausible explanation for the legislature's amendment to Section 321.322 in 2005. Sections 72.418.2 and 72.418.3, as plainly written by the legislature, are in irreconcilable conflict with Section 321.322, as they direct inconsistent and competing outcomes in the face of annexation of land within a fire protection district's boundaries by a city with its own fire department. This irreconcilable conflict need not be resolved in this case, as Section 321.322 does not apply to the City, which had a population of seventy thousand at the time it annexed the Annexed Property. Nonetheless, it is plausible that the legislature's 2005 amendment to add Section 321.322.4 reflected the first time the legislature was asked to squarely address the conflict between Sections 72.418.2 and 72.418.3 and Section 321.322. The legislature resolved the conflict in favor of Sections 72.418.2 and 72.418.3. Importantly, the legislature was able to state its preference that Sections 72.418.2 and 72.418.3 should

control by simple reference to those Sections in Section 321.322.4, since the plain language used in Sections 72.418.2 and 72.418.3 already covers any annexation by a city with a fire department of any area within an existing fire protection district.

Though the legislature has not formally repealed Section 321.322, nonetheless, when given the specific opportunity to do so, the legislature evidenced its intent that the irreconcilable conflict between Section 321.322 and Sections 72.418.2 and 72.41.8.3 should be resolved in favor of Sections 72.418.2 and 72.418.3. Section 321.322.4 thus reflects a legislative trend toward protecting the sanctity of a fire protection district's boundaries and its jurisdiction over the provision of fire protection and emergency medical services, despite the overlap of city limits into fire protection district boundaries as a result of annexations.

D. Section 320.310 also Evidences the Legislative Trend Toward Protecting the Jurisdiction of Fire Protection Districts.

The trial court properly concluded that Section 320.310 also reflects a legislative trend toward protection of the jurisdiction of fire protection district's over the provision of fire protection and emergency medical services within the district's boundaries. Appellant complains that the trial court's conclusion is erroneous. In support of its contention, Appellant claims that Section 320.310.5 provides that the section shall not supersede Chapter 321. Appellant also contends that Section 320.300 expressly states that the provisions of Section 320.300 to 320.310 shall apply only to volunteer fire protection associations. Appellant's contentions are without merit, and, in any event, miss the point.

The relevant provisions of Section 320.310 provide, in pertinent part, as follows:

“2. Except as provided in section 320.090 and section 44.090, RSMo, and except for state agencies that engage in fire suppression and related activities, those fire protection districts, municipal fire departments, and volunteer fire protection associations, as defined in section 320.300, ***shall be the sole provider of fire suppression and related activities.*** For the purpose of this subsection, the term “related activities” shall mean only fire prevention, rescue, hazardous material response, or special operation within their legally defined boundaries.

3. ***Only upon approval by the governing body of a municipal fire department, fire protection district, or volunteer fire association registered with the office of the state fire marshal, as required by section 320.271, shall any other association, organization, group, or political subdivision be authorized to provide the fire suppression response and related activities referenced in subsection 2 of this section within the legally defined boundaries of any municipal fire department, fire protection district, or volunteer fire association.***

...

5. Notwithstanding the provisions of subsections 2 and 3 of this section, ambulance services and districts which are or will be licensed, formed, or operated under Chapter 190, RSMo, may provide emergency

medical services and nonemergency medical transport within the geographic boundaries of a fire department. Nothing in this section shall supersede the provisions set forth in section 67.300, RSMo, chapter 190, RSMo, or chapter 321, RSMo.”

[Emphasis added] A simple review of this language reveals that Appellant’s contention that Section 320.310 applies only to volunteer fire protection associations is erroneous. If that were true, there would have been no reason for the legislature to separately mention in Sections 320.310.2 and 320.310.3 “volunteer fire protection associations” and “fire protection districts.” Appellant’s contention is, in fact, the result of Appellant’s gross misreading of Section 320.300. That Section is titled “Volunteer Fire Protection Association, Definition,” and states, in the first sentence (a sentence not mentioned by Appellant in its brief), that “as used in Sections 320.300 to 320.310, the phrase “volunteer fire protection association” means “any fire department, including a municipal fire department, which is staffed by volunteers and organized for the purposes of combating fires in a specified area.” In short, Section 320.300 does not limit the application of Sections 320.300 to 320.310 to volunteer fire protection associations as Appellant mistakenly represents, but simply provides a definition for the term “volunteer fire protection association” when it is used throughout those Sections.

Appellant’s additional attempt to limit the potential applicability of Section 320.310 by suggesting that the entirety of the Section is not to be read to supersede Chapter 321 is also a gross misrepresentation. The sentence on which Appellant relies, which provides “nothing in this section shall supersede the provisions set forth in Section

67.300, RSMo, Chapter 190, RSMo, or Chapter 321, RSMo,” appears as the final sentence of Section 320.310.5, a Section which relates to the provision of emergency medical services. Given its placement as the last sentence in Section 320.310.5, it is apparent the sentence is intended to apply only to Section 320.310.5, and not to the entirety of Section 320.310.

In any event, Appellant’s arguments about the scope of Section 320.310 are immaterial. Respondent does not contend that Section 320.310 controls the disposition of this case. Even if its subject matter related to the circumstances before this Court, which it does not, Section 320.310 could not control the disposition of this case because its effective date, August 28, 2008 post dates the circumstances giving rise to this case. The relevance of Section 320.310 is in the fact that the Section once again evidences a legislative intent that is consistent with Sections 72.418.2 and 72.418.3—the protection of the boundaries and of the jurisdiction of fire protection districts from intrusion by other political subdivisions. “In determining the meaning of a particular statute, resort may be had to the established policy of the legislature as disclosed by a general course of legislation. With this purpose in view it is proper to consider, not only acts passed at the same session of the legislature, . . . but also acts passed at prior legislative sessions and likewise, acts passed at subsequent legislative sessions. . . .” *State ex rel. Jackson County v. Spradling*, 522 S.W.2d 788, 791 (Mo. banc 1975), *citing* 82 C.J.S. Statutes § 366. Appellant does not contest or even address this observation.

E. Conclusion.

The trial court properly concluded that Sections 72.418.2 and 72.418.3 control the disposition of the jurisdictional dispute between Appellant and Respondent with respect to which has the authority to provide fire protection and emergency medical services to the Annexed Property, and correctly concluded that Respondent retains jurisdiction over the Annexed Property. This Court should affirm the judgment of the trial court.

II. The Trial Court Did Not Err in Entering Judgment for Respondent Concluding that Section 321.320 Does Not Control Because that Statute's Reference to "Is Included" is Ambiguous, Requiring Resort to Principals of Statutory Construction to Ascertain the Intent of the Legislature, Including Examination of Section 321.320 At the Time it Was Enacted, When That Statute Employed the Phrase "Is Now or Hereafter Included" Instead of the Phrase "Is Included," Suggesting a Legislative Intent to Limit the Temporal Reference of Section 321.320 to Only Those Cities Meeting the Statute's Criteria at the Time of its Amendment in 1961 and in 1969, In That Changes Made to Existing Statutes By the Legislature are Not to Ignored, and Are to Be Afforded Meaning.

(Responding to Point Relied On I)

A. Standard of Review.

This case involves the interpretation of Section 321.320, and thus questions of law that are reviewable by this Court *de novo*. *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 355 (Mo. banc 1995).

B. Section 321.320 is not controlling.

Despite the clear and unambiguous language employed by the legislature in Sections 72.418.2 and 72.418.3, Appellant insists that Section 321.320 controls the disposition of this case. Appellant argues that Section 321.320 operates to automatically remove from the boundaries of a fire protection district any property which is annexed by a city meeting the population and other criteria of that statute. Appellant thus argues that the Annexed Property was automatically removed from South Metro's geographic boundaries in January, 2005, and that the City is entitled to assume jurisdiction over fire protection and emergency medical services to the Annexed Property. In contrast, Respondent argues that Section 321.320 is limited in its application to those cities which met its criteria as of the date the Section was last amended in 1969. As a result, Respondent argues that Section 321.320 has no application to this case.

This Court thus must first determine whether the meaning of Section 321.320 can be ascertained from the language used by the legislature. *United Pharmacal Co.*, 208 S.W.3d at 909. Section 321.320, which was last amended by the legislature in 1969, provides:

“If any property, located within the boundaries of a fire protection district, *is included* in a city having a population of forty thousand inhabitants or

more, which city is not wholly within the fire protection district, and which city maintains a city fire department, the property is excluded from the fire protection district.”

[Emphasis added] The competing interpretations of Section 321.320 offered by the City and South Metro center on a dispute over meaning of the phrase “*is included*.” Though Section 321.320 does not use the word “annexation,” and does not use words which expressly reference its applicability to future inclusions of property in a city otherwise meeting the Section’s criteria, Appellant nonetheless contends the phrase “*is included*” should be interpreted to include annexations occurring after the statute was last amended in 1969. Respondent contends the legislature used the present tense temporal phrase “*is included*” when Section 321.320 was first amended in 1961, and repeated use of this temporal phrase when Section 321.320 was last amended in 1969, because the legislature intended Section 321.320 to have limited application to only those cities which met the statute’s criteria as of the time of its amendment.

Appellant acknowledges that the term “*is included*” is in the present tense, and that “is” is the third person, singular, present tense form of the verb “to be,” and that “included” is an adjective describing the state of the property within the city. THE NEW OXFORD AMERICAN DICTIONARY 854 (2d ed. 2005) **[Appellant’s Brief at p. 19]** Notwithstanding, Appellant argues that despite the legislature’s present tense drafting, this Court should not narrow the application of Section 321.320 to cities meeting the statute’s criteria as of the date of the statute’s amendment.

It is true that “unless expressly so stated, a statute does not refer only to a factual situation as of the time of enactment. . .” *City of Kirkwood v. Allen*, 399 S.W.2d 30, 36 (Mo. banc 1966). It is also true, however, that Section 321.320 “does not say it is applicable to a certain class . . . ‘hereafter having’ or ‘containing’ a certain population -- which is not conclusive, but indicative that the act is to apply to future districts coming within the class.” *Reals v. Courson*, 164 S.W.2d 306, 308 (Mo. 1942), *citing Rose v. Smiley*, 296 S.W. 815, 816-817 (Mo. banc 1927). This Court is thus left to determine the intended meaning of a phrase that is susceptible to inconsistent but equally plausible interpretations, requiring this court to resort to rules of statutory construction to ascertain the legislature’s intent. *Hudson v. Director of Revenue*, 216 S.W.3d at 221, *citing Polston v. Aetna Life Ins. Co.*, 932 S.W.2d 786, 788 (Mo.App. E.D. 1996).

When legislative intent cannot be discerned from the plain language of a statute, recognized principals of statutory construction permit review of earlier versions of the statute for clues. *United Pharmacal Co.*, 208 S.W.3d at 911. Examination of earlier versions of Section 321.320 reveals that the legislature must have intended Section 321.320 in its present form to have limited temporal application. When Section 321.320 was first adopted by the legislature in 1949, it provided:

“If any property, located within the boundaries of a fire protection district in a county of the first class now or hereafter having a population of 450,000 inhabitants or more, *is now or hereafter included* with a city not wholly within such district, such property is excluded from the district.”

[**Emphasis added**] Thus, the legislature initially used words clearly expressing an intent that Section 321.320 apply not only to property meeting its criteria as of the time of its enactment, but also to property “*now or hereafter included*” within a city meeting the criteria of the statute. *See Reals v. Courson*, 164 S.W.2d at 308. Section 321.320 was amended in 1961 to provide:

“If any property, located within the boundaries of a fire protection district in a county of the first class, except those having a charter form of government, *is included* within a city having a population of forth thousand inhabitants or more, which city is not wholly within the fire protection district, and which city maintains a city fire department, the property is excluded from the fire protection district.”

[**Emphasis added**] The basic subject matter of Section 321.320 was not changed by the 1961 amendment. The Section continued to deal with the exclusion of certain property from the boundaries of a fire protection district, if certain criteria were met. However, the temporal reference in Section 321.320 was changed. The phrase “*is now or hereafter included*” was changed by the legislature to “*is included*,” a change that can not be ignored. *State v. Sweeney*, 701 S.W.2d 420, 423 (Mo. banc 1985)(“When the legislature has altered an existing statute . . . such change is deemed to have an intended effect. . . .”) The legislature’s change in Section 321.320’s temporal reference must be given effect. The only intended effect that can be reasonably ascribed to the change in Section 321.320’s temporal reference is that the legislature intended the Section to apply only to property which met the statute’s criteria as of the effective date of the 1961 amendment.

When Section 321.320 was again amended in 1969, the legislature adjusted the criteria for determining a property's eligibility for exclusion from a fire protection district's boundaries. However, the legislature left unchanged the temporal reference "*is included*," and thus left unchanged its intent that Section 321.320 should have limited application to only that property meeting the statute's criteria as of the effective date of the 1969 amendment.

Notwithstanding the legislative intent revealed by examining earlier versions of Section 321.320, and by affording meaning to the change made by the legislature in Section 321.320's temporal reference, Appellant argues that this Court has already determined that Section 321.320 has prospective application. In so arguing, Appellant affords far greater weight to this Court's passing reference to Section 321.320 in *Battlefield Fire Protection District v. City of Springfield*, 941 S.W.2d 491, 492 (Mo. banc 1997) than is warranted.

A limited issue was presented to this Court in *Battlefield*. In that case, this Court faced a challenge to the validity of a municipal annexation. *Id.* at 491. The challenge was raised by a fire protection district. *Id.* The issue the Court faced was whether a fire protection district had standing to assert a declaratory judgment action questioning whether a city followed proper annexation procedures. *Id.* at 491. The Court determined the fire protection district did not have standing, noting with virtually no discussion that Section 321.320 leaves a fire protection district no longer obligated to provide services to an area annexed by a city with over 40,000 inhabitants, thus reducing the district's costs to provide services. *Id.* This passing reference to Section 321.320 in the context of

addressing a standing issue can hardly be characterized as a reasoned analysis of the issues before this Court today, of the legislature’s intent in using the temporal phrase “*is included*” in Section 321.320, or of Section 321.320’s interplay with Sections 72.418.2 and 72.418.3, as these issues were not before the Court in *Battlefield*. The Court in *Battlefield* cannot be faulted for failing to analyze or address issues not raised by the parties. Similarly, *Battlefield* can not be read to have disposed the issues of first impression now squarely placed before this Court for determination. *Battlefield* is not controlling.

C. Conclusion.

The trial court properly concluded that Section 321.320 has no application to this case. This Court should affirm the judgment of the trial court.

III. The Trial Court Did Not Err in Entering Judgment for Respondent Concluding that Sections 72.418.2 and 72.418.3 Control Over Section 321.320 in the Event Section 321.320 is Interpreted to Apply Prospectively Because Sections 72.418.2 and 72.418.3 Would Be in Irreconcilable Conflict With Section 321.320, as the Statutes Would Direct Inconsistent and Competing Outcomes With Respect to Their Subject Matter, and In Such a Circumstance, the Later Enacted and More Specific Enactment Prevails, In That Sections 72.418.2 and 72.418.3, enacted in 1993 and 1995, Respectively, Are Later Enactments Than Section 321.320 Which Was Last Amended in 1969, and In That Sections 72.418.2 and 72.418.3 Address in a More Detailed

and Specific Manner Than Section 321.320 the Subject Matter Of Annexations by Cities With Fire Departments.

(Responding to Point Relied On III)

A. Standard of Review.

This case involves the interpretation of Sections 72.418.2 and 72.418.3, and Section 321.320 and thus questions of law that are reviewable by this Court *de novo*. *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 355 (Mo. banc 1995).

B. If Section 321.320 Applies Prospectively, Then Sections 72.418.2 and 72.418.3 are in Irreconcilable Conflict with Section 321.320, and Sections 72.418.2 and 72.418.3 Control as the Later and More Specific Enactments.

If Section 321.320 is interpreted to have prospective application as argued by Appellant, then Section 321.320 is in direct conflict with Sections 72.418.2 and 72.418.3. Under Sections 72.418.2 and 72.418.3, the Annexed Property would remain a part of South Metro's geographic boundaries, and South Metro would continue to have jurisdiction over the provision of fire protection and emergency medical services to the Annexed Property. Under Section 321.320, the Annexed Property would be deemed automatically removed from South Metro's boundaries and the City would assume jurisdiction over the provision of fire protection and emergency medical services to the Annexed Property. This conflict is irreconcilable.

“[W]here there are two acts on one subject, the rule is to give effect to both if possible, but if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as to repeal the first”

State ex rel. City of Republic v. Smith, 139 S.W.2d 929, 934 (Mo. banc 1940), cited with approval in *City of Kirkwood v. Allen*, 399 S.W.2d at 34; *Bullington v. State*, 459 S.W.2d 334, 339 (Mo. 1970) (“ . . . if the legislature enacts two laws on the same subject that are irreconcilably repugnant to each other, the latter act will, in law, have the effect of repealing the former.”); 82 C.J.S. Statutes § 291; 50 Am. Jur. Statutes § 543. That is the precise circumstance presented here. Both Sections 72.418.2 and 72.418.3, and Section 321.320, relate to the subject of whether a fire protection district or a city has authority to provide services to an area within the fire protection district’s boundaries that has been annexed by the city. The Sections are repugnant, as they direct competing and inconsistent outcomes. This repugnancy cannot be resolved to give both statutes effect. Thus, Sections 72.418.2 and 72.418.3, as the later enacted provisions, operate to the extent of the repugnancy to repeal Section 321.320, despite the absence of a formal repealing clause.

This is not the first time this principal of statutory construction has been applied to resolve a jurisdictional dispute between a municipality and a fire protection district. In *Wellston Fire Protection District of St. Louis County v. State Bank and Trust Company of Wellston*, 282 S.W.2d 171 (Mo. App. 1955), the court was faced with a dispute over whether the City of Wellston or the Wellston Fire Protection District had jurisdiction over regulating and controlling “the construction of buildings and other structures in the city for fire protection purposes.” *Wellston*, 282 S.W.2d at 174. In analyzing two competing statutes posited by the parties as controlling, the court concluded that Chapter 321, which provides for the establishment of fire protection districts, and which thus

includes Section 321.220, a provision permitting fire protection districts to regulate all construction of structures and buildings within the district for fire protection issues, was intended by the legislature, as the later enactment, to prescribe the law with respect to the same subject covered by Section 77.550, a statute which permitted the City of Wellston to regulate the construction of buildings and structures within the city limits for all purposes. *Id.* at 176. In reaching this conclusion, the court first determined that the legislature did not intend that both the city and the district would possess the same power -- in other words, that the statutes could not be harmonized as to permit both to apply. *Id.* at 175. The court further noted that fire protection comes properly within the police powers of the state. *Id.* at 174, citing *State ex rel. Fire District of Lemay v. Smith*, 184 S.W.2d 593, 595 (Mo. banc 1945); *Kalbfell v. City of St. Louis*, 211 S.W.2d 911, 916 (Mo. 1948). “That the state may confer the exercise of police powers upon a municipal corporation is so well settled and elementary as to render unnecessary the citation of authorities in support of that principle. It seems to be equally well settled . . . that the state may withdraw municipal police powers, engage in the exercise thereof itself, or provide that another agency such as a political subdivision may be created and have power and authority to exercise such police power.” *Wellston*, 282 S.W.2d at 174-175.

Wellston is thus instructive and controlling. Section 72.418.2 and Section 72.418.3 (last amended in 1993 and in 1995, respectively) were intended by the legislature, as the later enactments, to prescribe the law with respect to the same subject covered by Section 321.320 (last amended in 1969). Section 72.418.2 and 72.418.3 also represent the proper exercise of legislative authority to reverse the effect of Section

321.320 by transferring the police power to provide fire protection from a city to a fire protection district when the city has annexed property in the fire protection district.

Appellant questions the application of *Wellston*, claiming it is not instructive as it involved two statutes of equal specificity, thus leaving the court with no choice but to treat the later enacted act as controlling. Appellant contends this Court must instead look at the relative specificity of Sections 72.418.2 and 72.418.3 and Section 321.320. Respondent does not disagree. However, Appellant's assertion that Section 321.320 is the more specific statute is grossly misplaced. Sections 72.418.2 and 72.418.3 are not only the later enacted acts, they are also the more specific acts.

“[A]s a general rule, a chronologically later statute, *which functions in a particular way* will prevail over an earlier statute of a more general nature, and the latter statute will be regarded as an exception to or qualification of the earlier general statute.” *Smith v. Missouri Local Government Employees Retirement System*, 235 S.W.3d at 581-582, *citing with approval*, *Moats v. Pulaski County Sewer District No. 1*, 23 S.W.3d 868, 872 (Mo.App. S.D. 2000). **[Emphasis added]** “If the conflict [between statutes] is irreconcilable, ‘the general statute must yield to the statute that is more specific.’” *Smith*, 235 S.W.3d at 581 (Mo.App. W.D. 2007), *citing with approval* *City of Clinton v. Terra Foundation, Inc.*, 139 S.W.3d at 189. Applying these principles, this Court must disregard Section 321.320, as Sections 72.418.2 and 72.418.3 function in a particular way and are more specific than Section 321.320 with respect to the subject matter addressed.

Sections 72.418.2 and 72.418.3 are more specific and comprehensive than Section 321.320 in addressing the subject matter of a fire protection district's jurisdiction

following annexation of a portion of the district's area by a city with a fire department. Section 72.418.2 expressly mentions annexations. Section 321.320 does not use the word annexations. Section 72.418.2 expressly and in a detailed manner addresses the effect of annexations upon a fire protection district's continuing jurisdiction over the provision of services to the annexed area. Section 321.320 does not. Section 72.418.2 expressly addresses a fire protection district's loss of authority to levy additional taxes on an annexed area other than for existing bonded indebtedness. Section 321.320 is silent on this subject. Section 72.418.2 expressly requires a city which has annexed property within a fire protection district's boundaries to compensate the fire protection district for the provision of fire protection and emergency medical services to the city's newly annexed citizens. Section 321.320 makes no reference to, nor provision for, compensation of a fire protection jurisdiction for the loss of a portion of its tax base despite its continuing obligation to service bonded indebtedness, or for the value of any structures owned by the fire protection district and located within the annexed area. Section 72.418.3 expressly empowers a fire protection district to accept or reject any proposal from a city which would permit the city to assume responsibility for the provision of fire protection and emergency medical services. Section 321.320 is silent on this subject. It is thus apparent that Sections 72.418.2 and 72.418.3 function in a particular and more specific way than Section 321.320 in addressing the subject of annexations and the effect of same on fire protection districts.

Instead of focusing on the subject matter of Section 72.418.2 and 72.418.3 and Section 321.320, Appellant asks this Court to focus on the number of cities each covers.

Appellant contends that Section 321.320 is more specific because it only applies to cities with a population of more than forty thousand, while Sections 72.418.2 and 72.418.3 are more general as they apply to “all cities.” Yet, Appellant concedes that “there are two ways to measure the specificity of a statute: what is its subject matter and to whom does it apply.” [Appellant’s Brief at p. 41] Appellant cites no authority for the proposition that the number of cities to which two competing statutes apply is the proper method for determining which of the two statutes is more specific, when the statutes are not otherwise of equivalent specificity as to subject matter. In fact, it is the relative specificity with which the subject matter of competing statutes is treated that must first be examined to determine which is more specific. See *Moats v. Pulaski*, 23 S.W.3d at 872 (“ . . . later statute, which *functions in a particular way*, will prevail over an earlier statute of a more general nature. . . .”); *Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating, L.L.C.*, 248 S.W.3d 101, 107-108 (Mo.App. W.D. 2008). In *State of Missouri ex rel. Fort Zumwalt School District v. Dickherber*, 576 S.W.2d 532 (Mo. banc 1979), a case relied on by Appellant, this Court noted “[w]here one statute deals *with a subject in general terms* and another deals *with the same subject in a more minute way*, the two should be harmonized if possible, but to the extent of any repugnancy between them *the definite prevails* over the general.” *Id.* at 536-537. [Emphasis added] The number of cities to which Sections 72.418.2 and 72.418.3 and Section 321.320 might apply is not the subject matter of the statutes. The subject matter of the statutes is the effect of annexations on a fire protection district’s boundaries and on the fire protection district’s continuing jurisdiction to provide services. There is no question that the

comprehensive manner in which Sections 72.418.2 and 72.418.3 address this subject matter is far more definite and specific than Section 321.320. Sections 72.418.2 and 72.418.3 are, therefore, controlling.

C. Conclusion.

The trial court correctly concluded that to the extent that Sections 321.320 and Sections 72.418.2 and 72.418.3 are in irreconcilable conflict, Sections 72.418.2 and 72.418.3, as the later and more specific enactments, control. The trial court also correctly recognized that the legislature has the authority to divest cities of the police power to provide fire protection and emergency medical services in favor of fire protection districts—the precise effect of Sections 72.418.2 and 72.418.3. This Court should affirm the trial court’s judgment.

IV. The Trial Court Did Not Err in Entering Judgment for Respondent Rejecting Appellant’s Claim that Section 72.418.2 Violates Mo.Const. art. X, §§ 3 and 6, Because Section 72.418.2 Does Not Impose a Non-Uniform Tax on Real Property Within the Subclass of the Annexed Property, and it Does Not Exempt the Annexed Property From Taxation, In That Section 72.418.2 Creates a Permissible Subclass of Residents Who Reside Both Within Respondent’s Boundaries and Appellant’s City Limits and Each Member of This Subclass is Taxed Uniformly and the Subclass is Rational and Not Arbitrary As It Protects the Members of the Subclass From Double Taxation, and In That Section 72.418.2 Does Not Exempt the Annexed Property from

Taxation, as the Annexed Property Will Remain Subject to Respondent’s Tax Levies for Bonded Indebtedness Existing Prior To the Annexation, and as the Annexed Property Will Remain Subject to the Appellant’s Tax Levies.

(Responding to Point Relied On IV)

A. Standard of Review.

Appellant challenges the constitutionality of Section 72.418.2. Constitutional challenges to statutes are reviewed *de novo*. *Hodges v. City of St. Louis*, 217 S.W.3d 278, 279 (Mo. banc 2007).

B. Section 72.418.2 does not violate Mo.Const. art. X, §§ 3 and 6.

The trial court correctly ruled in Respondent’s favor and rejected Appellant’s counterclaim which sought a declaration that Section 72.418.2 is unconstitutional under Mo.Const. art. X, §§ 3 and 6.

Mo.Const. art. X, § 3 provides in pertinent part as follows:

“Taxes . . . shall be uniform upon the same class **or subclass** of subjects within the territorial limits of the authority levying the tax.” **[Emphasis Added]**

Section 72.418.2 provides that an annexing city must pay the applicable fire protection district an annual amount equal to that which the fire protection district would have levied on the annexed area, and that the annexed area will no longer be subject to taxation by the fire protection district except for bonded indebtedness pre-existing the annexation. Appellant argues that because Section 72.418.2 divests South Metro of authority to levy taxes against property in the Annexed Property, South Metro’s taxes are no longer

uniformly assessed upon all subjects within South Metro’s territorial boundaries in violation of Mo.Const. art. X, § 3. The trial court properly rejected this argument.

It is settled that “the legislature may arrange and divide the various subjects of taxation into distinct classes and impose different rates on the several classes, or tax one class to the exclusion of others, without violating the requirement of equality and uniformity, and it may exercise wide discretion in selecting and classifying the subjects of taxation, provided the tax is uniform on all members of the same class, and provided the classification of the subjects of taxation is reasonable and provided the classification of the subjects of the taxation, as has been held, is not arbitrary.” *Barhorst v. City of St. Louis*, 423 S.W.2d 843, 846 (Mo. banc 1967), *quoting* 84 CJS Taxation § 36, *and citing with approval, State ex rel. Transport Manufacturing & Equipment Co. v. Bates*, 224 S.W.2d 996, 1000 (Mo. banc 1949). The inquiry is not, therefore, whether every subject within South Metro’s fire protection district boundaries is uniformly taxed by South Metro, but whether the classification of subjects within South Metro’s jurisdictional boundaries that has been created by Section 72.418.2 is reasonable and not arbitrary, and whether the subjects within that subclass are taxed uniformly. “The only constitutional . . . requirement is that ‘the taxation of subjects which fall in the same class or category be uniform.’ . . . Uniformity of taxation does not require that all subjects of taxation be taxed, and does not mean universality.” *508 Chestnut, Inc. v. City of St. Louis*, 389 S.W.2d 823, 830 (Mo. 1965), *citing State ex rel. Jones v. Nolte*, 165 S.W.2d 632, 636 (Mo. banc 1942).

“The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.” *Madden v. Kentucky*, 309 U.S. 83, 88, 60 S.Ct. 406, 408, 84 L.Ed. 590 (1940). Appellant, as the party attacking the classification scheme outlined by the legislature in Section 72.418.2, has the burden to prove that said scheme lacks any conceivable basis which might support it. Appellant does not meet this burden. The subclass of subjects within South Metro’s jurisdictional boundaries created by Section 72.418.2 is comprised of those residents who reside in the Annexed Property, and thus to those residents who are within both South Metro’s boundaries and the City’s city limits. Every subject within that subclass is treated uniformly. None of the subjects within that subclass will be exposed to the levies otherwise imposed by South Metro, except for South Metro’s levies for bonded indebtedness in place prior to the City’s annexation. All of the subjects within that subclass will be subject to the City’s tax levies. There is uniformity, therefore, in the treatment of the subjects of the subclass created by Section 72.418.2.

Moreover, the subclass is reasonable and is not arbitrary. The classification scheme in Section 72.418.2 avoids double taxation by both a city and a fire protection district who would, but for the provisions of Section 72.418.2, have dual authority to tax the subjects in the Annexed Property for the same services, though only one would be providing the services. Classifications to avoid double taxation have been recognized as constitutionally sound. *Barhorst*, 423 S.W.2d at 846. The classification scheme could also be justified by a desire to encourage pro-active resource planning by fire protection districts, who now may, as a result of Section 72.418.2, plan for future growth within

their boundaries, by building structures, hiring personnel and otherwise serving the public safety needs of their constituents without fear that the district's territory will be shriveled by annexations over which fire protection district's have no control. "It is not necessary that the court perceive the precise legislative reason for the classification and the legislature is not required to preamble or label its classification for tax purposes, or disclose the principals on which they are made. It is sufficient if the court, on review, may find them supported by justifiable reasoning." *Id.* In any case, it is not Respondent's burden to prove that the basis for Section 72.418.2's classification is reasonable and not arbitrary, though the possible reasons for the classification noted above would certainly satisfy that standard. It is Appellant's burden to prove the classification is unreasonable and arbitrary. Appellant does not even discuss whether the classification created by Section 72.418.2 is reasonable and not arbitrary, and thus fails to sustain its burden in attacking the constitutionality of the statute.

Appellant does contend that no classification with respect to the payment of real estate taxes that is narrower than the boundaries of a taxing authority can ever be constitutional under Mo.Const. art. X, § 3, a sweeping assertion that is devoid of any support. Appellant relies heavily on *State v. Metro St. Louis Sewer District*, 275 S.W.2d 225 (Mo. banc 1955) as claimed support for this proposition. However, Appellant's reliance is misplaced. In *Metro St. Louis Sewer District*, this Court found:

"While classification may be made in tax legislation, *it must be a reasonable classification and there can be no discrimination between taxable subjects which properly belong to the same class.* [citations

omitted] Certainly *whether property, of the same value and in this same District is located in the City or the County is not a reasonable basis for classification* for taxation for the general purposes and general obligations of the entire District, especially since the part of the County in the District is essentially urban, much of it in incorporated cities. *To make this the sole basis for a different amount of tax on the same valuation for the same purpose would be palpably arbitrary and unreasonable.* As the above cited authorities show, a levy based on such arbitrary action would be invalid at least to the extent of the unequal result obtained.” *Id.* at 234.

[Emphasis added] Thus, though the Supreme Court concluded in *Metro St. Louis Sewer District* that the application of a levy by a sewer district, such that residents of the district who lived in the city were taxed at a different rate than residents of the district who lived in the county, was unconstitutional, the Court did so *because the classification was arbitrary and unreasonable* under the facts of that case. *Metro St. Louis Sewer District* simply does not stand for the proposition offered by Appellant that no classification with respect to the payment of real estate taxes which is narrower than the boundaries of the taxing authority can be constitutional under Mo.Const. art. X, § 3.

The instant case stands in stark contrast to *Metro St. Louis Sewer District*. With Section 72.418.2, the legislature created a classification of subjects who reside within South Metro’s boundaries and within the City’s city limits, and a classification of subjects who reside only within South Metro’s boundaries. The first class of subjects pays South Metro’s levies for bonded indebtedness and all of the City’s levies. The

second class of subjects pays all of South Metro's levies. This classification of subjects bears a fair and rational relationship to the legislature's desire to prevent subjects in the second class from paying levies to both the City and South Metro. In other words, the legislature created a classification that prevents subjects from paying two different taxing authorities for the same services when only one taxing authority will be providing the service. This can hardly be characterized as arbitrary or unreasonable. In fact, the power to avoid double taxation under similar circumstances is a power this Court has expressly noted is bestowed in the legislature. (See discussion of *St. Louis County Library District v. Hopkins*, 375 S.W.2d 71 (Mo. 1964), at pg. 69-70, *infra*.) In short, Appellant's contention that Mo.Const. art. X, § 3, permits classifications, but only for taxes on all property other than real estate, is not supported by a single citation, and would require reading into Mo.Const. art. X, § 3 a limitation that does not exist. *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991) ("Rules employed in construction of constitutional provisions are the same as those employed in construction of statutes.").

Appellant next attempts to bootstrap its argument that any classification for real estate taxes that is narrower than the boundaries of the taxing authority is unconstitutional under Mo.Const. art. X, § 3 by reference to Mo.Const. art. X, §§ 4(a) and 4(b). These provisions describe the permissible "classifications" of property, including real property, into classifications such as residential, agricultural and the like for purposes of calculating the assessed value of the property. These provisions also prohibit further classification of real property beyond the categories therein described in a manner that would effect the calculation of the property's assessed value. Appellant contends that the

subclass of subjects created by Section 72.418.2 is unconstitutional under Mo.Const. art. X, § 3 because it is an unconstitutional “reclassification” of real property in violation of Mo.Const. art. X, §§ 4(a) and 4(b). Appellant thus necessarily argues that Section 72.418.2 is unconstitutional pursuant to Mo.Const. art. X, §§ 4(a) and 4(b).

Appellant has not, however, timely asserted a claim that Section 72.418.2 is unconstitutional under Mo.Const. art. X, §§ 4(a) and 4(b). The claim that Section 72.418.2 is unconstitutional under Mo.Const. art. X, §§ 4(a) and 4(b) was not raised in Appellant’s answer and counterclaims. **[L.F. 49-61]** The claim that Section 72.418.2 is unconstitutional under Mo.Const. art. X, §§ 4(a) and 4(b) was not addressed in the trial court’s Judgment because it was not an issue raised by Appellant for consideration at trial. **[L.F. 89-110; Transcript]** Appellant’s first mention of a claim that Section 72.418.2 is unconstitutional under Mo.Const. art. X, §§ 4(a) and 4(b) appears in Appellant’s brief. Even then, the claim has been surreptitiously urged, as a companion to, and in alleged support of, the claim of unconstitutionality under Mo.Const. art. X § 3. Having failed to raise this constitutional challenge at the earliest opportunity, Appellant has failed to preserve this issue for appellate review. *Adams v. Children’s Mercy Hospital*, 832 S.W.2d 898, 908 (Mo. banc 1992).

Though not timely raised, Appellant’s contention that Section 72.418.2 violates Mo.Const. art. X, §§ 4(a) and 4(b) is nonetheless misplaced and erroneous. The concept of “classification of real property” discussed in Mo.Const. art. X, § 4(b) refers to the classification of real property into categories then employed to assess the real property’s value. The concept of “classification of subjects of taxation” discussed in Mo.Const. art.

X, § 3 refers to the taxation of classes or subclass of “subjects” and the requirement that “subjects” within a class or subclass be taxed uniformly. Appellant confuses these concepts. Section 72.418.2 does not “reclassify” real property in a manner which effects the calculation of its assessed value. Section 72.418.2 classifies the subjects of taxation—the residents of the Annexed Property—a classification having no impact on the assessed value of the real property located within the Annexed Property. Section 72.418.2 does not violate Mo.Const. art. X, §§ 4(a) and 4(b).

Appellant next argues that Section 72.418.2 violates Mo.Const. art. X, § 6. The trial court properly rejected this argument. Mo.Const. art. X, § 6 notes in subsection 1 that:

“All laws exempting from taxation property other than the property enumerated in this Article shall be void.”

Appellant argues that since Section 72.418.2 exempts the Annexed Property from South Metro’s authority to levy taxes, Section 72.418.2 is unconstitutional. The fallacy in Appellant’s argument is obvious. Section 72.418.2 does not exempt the Annexed Property from taxation. The Annexed Property clearly remains subject to taxation by Appellant, and it remains subject to taxation by South Metro for bonded indebtedness which preceded the annexation. Section 72.418.2 constitutes a legislative determination regarding which of two taxing authorities will be permitted to collect its tax. Mo.Const. art. X, § 6 does not undermine or impair this legislative power.

In *St. Louis County Library District v. Hopkins*, 375 S.W.2d 71 (Mo. 1964), property within the boundaries of a county library district was annexed into the

boundaries of an adjacent municipality. The Court was required to determine whether the county library district could continue to levy and collect taxes on the annexed property.

The Court concluded:

“The taxing powers and the boundary limits of these two public corporations were fixed and established by general laws. These powers and limits can be changed only by a general law on the subject, or by following a statutory procedure prescribed by a general law. They were not changed by operation of law as a result of the extension of the city limits. The annexation resulted in overlapping jurisdiction over the same territory by two public corporations, but did not automatically cut down, reduce or effect any change in the taxing power or the boundary limits of the District. The powers of this public corporation in the field of taxation for library purposes continued unabated and in full force and effect after the annexation. The District’s taxing power would be affected *only if there were a specific statute so providing, or general statutes from which such a result necessarily would be implied.*”

Id. at 74. **[Emphasis added]** Section 72.418.2 is an example of the very situation envisioned by this Court in *Hopkins*. With Section 72.418.2, the legislature has simply exercised its recognized authority to avoid double taxation. Section 72.418.2 does not exempt the Annexed Property from taxation. Rather, it directs, as between overlapping taxing authorities, which shall continue to have the authority to tax.

C. Conclusion.

The trial court correctly determined that Section 72.418.2 is not unconstitutional under Mo.Const. art. X, §§ 3 or 6. This Court should affirm the trial court's judgment. This Court should also reject Appellant's argument that Section 72.418.2 is unconstitutional under Mo.Const. art. X, §§ 4(a) and 4(b) as untimely and unfounded.

V. The Trial Court Did Not Err in Entering Judgment for Respondent Rejecting Appellant's Claim that Section 72.418.2 Violates Mo.Const. art. X, §1 Because Section 72.418.2 Requires Appellant to Pay Respondent for Respondent's Provision of Fire Protection and Emergency Medical Services to the Annexed Property the Amount Respondent Would Have Received From its Tax Levy on the Annexed Property, and Section 72.418.2 Thus Reflects a Legislative Determination that Fire Protection and Emergency Ambulance Services are a Municipal Purpose For Which Appellant's Tax Revenues Can Be Permissibly Used Whether the Services are Provided by Appellant or Respondent, In That Mo.Const. art. X, § 1 Permits the Use of Tax Revenues for Services the Legislature Has Designated to be Municipal Purposes, and In That the Relative Cost of Those Services if Provided By Appellant Instead of Respondent is Not Relevant to Determining Whether the Tax Revenues are Being Used For a Municipal Purpose.

(Responding to Point Relied On V)

A. Standard of Review.

Appellant challenges the constitutionality of Section 72.418.2. Constitutional challenges to statutes are reviewed *de novo*. *Hodges v. City of St. Louis*, 217 S.W.3d 278, 279 (Mo. banc 2007).

B. Section 72.418.2 does not violate Mo.Const. art. X, § 1.

The City takes the position that since Section 72.418.2 requires the City to use revenues it has raised through taxation to remit payment to South Metro for its continued provision of fire protection and emergency ambulance services, Section 72.418.2 violates Mo.Const. art. X, § 1. The trial court properly rejected this argument.

Mo.Const. art. X, § 1 provides as follows:

“The taxing power may be exercised by the General Assembly for State purposes, and by counties and other political subdivisions under power granted to them by the General Assembly for county, municipal and other corporate purposes.”

Mo.Const. art. X, § 1 thus permits a political subdivision to use revenues generated via its taxing powers to further a “municipal or other corporate purpose.” “Municipal purpose” is defined by BLACK’S LAW DICTIONARY as “public or governmental purposes as distinguished from private purposes. It may comprehend all activities essential to the health, morals, protection, and welfare of the municipality.” BLACK’S LAW DICTIONARY, Fifth Ed. Certainly, fire protection and emergency medical services constitute a “municipal purpose” under this definition. Appellant does not contend otherwise. Rather, Appellant adopts a constrained interpretation of “municipal purpose,”

and argues that Mo.Const. art. X, § 1 only permits the use of tax revenues to pay for municipal purposes if they are provided by the taxing authority. There is no support for this proposition. Services are no less a “municipal purpose” if provided directly by the political subdivision, or if paid for by the political subdivision and provided by some other entity or political subdivision. In either case, the political subdivision is using its tax revenues to provide for the protection of residents, and thus in furtherance of a municipal purpose.

Mo.Const. art. X, § 1 states that political subdivisions may tax *as empowered by the legislature for purposes designated by the legislature*. The legislature has, on several occasions, authorized one political subdivision to pay another political subdivision for the provision of fire protection services.⁴ In the case of Section 72.418.2, the legislature is requiring one political subdivision to pay another political subdivision for the provision of fire protection services. The legislature’s declaration that a political subdivision may permissibly use its tax revenues to pay for a service provided to its constituents by another political subdivision is consistent with Mo.Const. art. X, § 1, which envisions that it is the legislature which may designate what are constitutionally permissible “municipal purposes.” *See Burks v. City of Licking*, 980 S.W.2d 109, 112 (Mo.App. S.D. 1998), *citing Associated Electric Co-Op, Inc. v. City of Springfield*, 793 S.W.2d 517, 523 (Mo.App. S.D. 1990) (“what constitutes a public purpose is primarily a

⁴ See, e.g. Sections 71.370, 72.390, 321.220(16) and 67.250.

legislative decision which will not be overturned by the courts unless arbitrary and unreasonable.”).

Appellant next argues that because of Section 72.418.2, the City is forced to pay more to subsidize South Metro’s property tax revenues from the Annexed Property than the City itself would receive from its own property tax revenues from the Annexed Property. This conclusion is not supported by the Stipulation of Facts, and is, in any event, immaterial to disposition of the constitutional issue raised by appellant. The cost of municipal services is not described in Mo.Const. art. X, § 1 as a standard by which the constitutionality of a political subdivision’s use of tax revenues is determined. Though a “cost to provide services” analysis may influence whether a city determines to annex an area, such an analysis is not relevant in determining what is or is not a “municipal purpose.”

C. Conclusion.

The trial court properly concluded that Section 72.418.2 is not unconstitutional under Mo.Const. art. X, § 1. This Court should affirm the trial court’s judgment.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the judgment and order of the trial court. This Court should declare that Sections 72.418.2 and 72.418.3 apply as written to this case, and thus that South Metro retains the Annexed Property within its boundaries, and retains jurisdiction over the provision of fire protection and emergency medical services to the Annexed Property. This Court should declare that Section

321.320 does not apply to this case, as its temporal limitation is to those properties meeting the statute's criteria as of the effective date of the statute's last amendment in 1969. Should this Court conclude that Section 321.320 has prospective application, then this Court should declare that Section 321.320 and Sections 72.418.2 and 72.418.3 are in irreconcilable conflict. This Court should then declare that Sections 72.418.2 and 72.418.3 control to resolve the conflict as the later and more specific enactments.

Finally, this Court should declare that Section 72.418.2 is not unconstitutional under Mo.Const. art. X, §§ 1, 3, and 6, as Section 72.418.2 does not impose a non-uniform tax on an impermissible subclass of subjects, does not impermissibly exempt property from taxation, and does not require the use of tax revenues for a non-municipal purpose.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Missouri Supreme Court Rules 84.05 through 84.07, the undersigned hereby certifies that on this ____ day of September, 2008, the original and ten (10) copies of the Brief of South Metropolitan Fire Protection District, and a floppy disk containing the Brief, were federal expressed to the Missouri Supreme Court for filing, and that on the same date, one (1) copy of the Brief of South Metropolitan Fire Protection District, and a floppy disk containing the Brief were mailed, postage prepaid, to all counsel of record to the addresses shown below:

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The undersigned further certifies that:

(1) Pursuant to Rule 84.06(c) the original and all copies of the Brief of South Metropolitan Fire Protection District include the information required by Rule 55.03, including the signature of an attorney of record for South Metropolitan Fire Protection District on the original brief; that the brief complies with the limitations contained in Rule 84.06(b); and that the Brief contains 20,346 words, as reflected in the word count of the Microsoft Office Word 2003 word processing system used to prepare the Brief.

(2) Pursuant to Rule 84.06(g), the undersigned further certifies that the floppy disk containing the Brief of South Metropolitan Fire Protection District filed with the Court and served on opposing counsel has been scanned for viruses and is virus free.

Cindy Reams Martin