SC89558

IN THE MISSOURI SUPREME COURT

SOUTH METROPOLITAN FIRE PROTECTION DISTRICT,

Respondent,

v.

CITY OF LEE'S SUMMIT, MISSOURI

Appellant.

Appeal from the Circuit Court of Jackson County, Missouri
Sixteenth Judicial Circuit, Division 16,
The Honorable Marco A. Roldan
Case No. 0716-CV31962

BRIEF OF AMICUS CURIAE

THE MISSOURI ASSOCIATION
OF FIRE PROTECTION DISTRICTS

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The Trial Court Properly Found that Sections 72.418.2 and 72.418.3 RSMo Control and are not Limited in Application to Boundary Commission Counties, but Instead Apply to all Cities with a Fire Department and to any Annexation of an Area within a Fire Protection District's Boundaries, in that Sections 72.418.2 and 72.418.3 RSMo are Plain and Unambiguous, thus Rendering Resort to Legislative History or other Principals of Statutory Construction Improper, and in that, the Specific and Comprehensive Manner in which these Sections Address the Issues Raised by Appellant, Requires their Application. 8

Even if the Trial Court Erred in Declaring that Sections 72.418.2 and 72.418.3 RSMo were Clear and Unambiguous, which it did not Err, the Trial Court's Judgment should Nevertheless be Affirmed, in that the General Assembly's Enactment of Sections 72.418.2, 72.418.3 RSMo and 321.300 RSMo on the Heels of this Court's Decision in O'Reilly v. City of Hazelwood Shows a Clear Legislative Intent to Address the Constitutional Defects Identified by this Court in O'Reilly v. City of Hazelwood, to Provide Greater Protection to the Jurisdiction of Fire Protection Districts to Continue to Provide Fire Protection and Emergency Medical Services Irrespective of Annexation, and to Provide Greater Protection to the Jurisdictional Boundaries of all Fire Protection Districts Irrespective of Annexation. 11

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INTEREST OF THE MISSOURI ASSOCIATION OF FIRE PROTECTION DISTRICTS

All parties to this appeal have given permission to the filing of suggestions by *Amicus Curiae*, the Missouri Association of Fire Protection Districts, as required by Supreme Court Rule 84.05(f)(2). The Missouri Association of Fire Protection Districts ("**MAFPD**") is a professional association of approximately one hundred (100) fire protection districts in the State of Missouri. The MAFPD works closely with fire chiefs, fire district managers, elected fire district board officials and fire district attorneys to advance the interests and address the needs of Missouri's fire protection districts.

The Trial Court Made Proper Conclusions in its Judgment and Properly Applied the Plain and Unambiguous Terms of Sections 72.418.2 and 72.418.3 RSMo.

The plain, unambiguous language of Sections 72.418.2 and 72.418.3 of the Missouri Revised Statutes provides that fire protection districts retain jurisdiction over the provision of fire protection and emergency medical services to areas located within a fire protection district which are annexed by a city that has its own fire department. Given the plain and unambiguous language of Sections 72.418.2 and 72.418.3, the trial court properly rejected Appellant's request to construe these sections as only applying to counties that have adopted boundary commissions. Because these statutory sections are plain and unambiguous, the inquiry and investigation ends there, and the trial court's judgment need simply be affirmed.

There Would Be a Profound Adverse Impact to Every Fire Protection District in the State of Missouri if this Court Were to Find Merit in any of Appellant's Points on Appeal.

Many of Appellant's arguments urge this Court to make findings and rulings that would fly in the face of good and sound public policy and would severely and adversely impact not only the South Metropolitan Fire Protection District, but would have the potential to adversely impact every fire protection across the entire State of Missouri. It is for this reason that the MAFPD urges this Court to affirm the trial court's decision. To not do so and to instead accept any of Appellant's arguments would have the potential to have a damaging and adverse impact on the ability and service provisions of fire protection districts state-wide and would likewise do damage to the welfare of the citizens that they serve.

SUGGESTIONS BY AMICUS CURIAE MAFPD

MAFPD fully supports and adopts the statement of facts and arguments set forth by Respondent South Metropolitan Fire Protection District. For the sake of brevity, MAFPD will not seek to repeat all of those arguments herein, but due to their import, MAFPD will highlight several points herein below.

THE TRIAL COURT PROPERLY FOUND THAT SECTIONS 72.418.2 AND 72.418.3 RSMO CONTROL AND ARE NOT LIMITED IN APPLICATION TO BOUNDARY COMMISSION COUNTIES, BUT INSTEAD APPLY TO ALL CITIES WITH A FIRE DEPARTMENT AND TO ANY ANNEXATION OF AN AREA WITHIN A FIRE PROTECTION DISTRICT'S BOUNDARIES, IN THAT SECTIONS 72.418.2 AND 72.418.3 ARE PLAIN AND UNAMBIGUOUS, THUS RENDERING RESORT TO LEGISLATIVE HISTORY OR OTHER PRINCIPALS OF STATUTORY CONSTRUCTION IMPROPER, AND IN THAT, THE SPECIFIC AND COMPREHENSIVE MANNER IN WHICH THESE SECTIONS ADDRESS THE ISSUES RAISED BY APPELLANT, REQUIRES THEIR APPLICATION.

The trial court properly held that the plain, unambiguous language of Sections 72.418.2 and 72.418.3 of the Missouri Revised Statutes provides that fire protection districts retain jurisdiction over the provision of fire protection and emergency medical services to areas located within a fire protection district which are annexed by a city that has its own fire department. [LF 89-110] Given the plain and unambiguous language of Sections 72.418.2 and 72.418.3, the trial court properly rejected Appellant's request to construe these sections as only applying to counties that have adopted boundary commissions. [LF 92]

As noted in Respondent's brief, Appellant does not dispute that Sections 72.418.2 and 72.418.3 are clear and unambiguous. Consequently, Appellant has not and, respectfully, cannot demonstrate why this Court should ignore the plain, unambiguous

language of Sections 72.418.2 and 72.418.3, or why those sections should not control and necessarily determine that a fire protection district does have continuing jurisdiction to provide emergency services to an area annexed by a city having a fire department. Appellant's request for this Court to consider legislative history so as to construe these sections in contravention of their plain meaning flies in the face of this Court's established precedent.

"Courts may not 'read into a statute a legislative intent contrary to the intent made evident by the plain language.'" Home Builders Ass'n. of Greater St. Louis, Inc. v. City of Wildwood, 107 S.W.3d 235, 239 (Mo. banc 2003) (*quoting*) Keeney v. Hereford Concrete Prods., Inc., 911 S.W.2d 622 (Mo. *banc* 1995). "Where 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 Ass'n. of Greater St. Louis, Inc., 107 S.W.3d at 239 (*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, as here, it is 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). Consequently, "[t]his Court must be guided by what the legislature said…" and not by what Appellant of MML thinks it meant to say. Missouri Public Service Co. v. Platte-Clay Electrical Cooperative, Inc., 407 S.W.2d 883, 891 (Mo. 1996).

Moreover, as also noted in Respondent's brief, not only are Sections 72.418.2 and 72.418.3 clear and unambiguous, but more importantly, they specifically address: (i) the

continuing jurisdiction of a fire protection district to provide services following an annexation of a portion of its area by a city with a fire department, and (ii) the effect that such annexations have on a fire protection district's boundaries. This is the subject matter that is at the very heart of the issues raised by Appellant in the within appeal.

Section 72.418.2 clearly and unambiguously provides that (i) fire protection districts "shall continue to provide fire protection services" to areas included "within any annexation by a city having a fire department," (ii) the annexing city has a statutory obligation to compensate a fire protection district for the district's provision of fire protection and emergency medical services to citizens in the annexed area, and (iii) as a result, the fire protection district's power to levy taxes on an annexed area post-annexation is limited to servicing the bonded indebtedness which existed prior to the annexation (emphasis so applied). See **Mo. Rev. Stat. § 72.418.2**

Section 72.418.3 clearly and unambiguously provides that "[t]he fire protection district may approve or reject any proposal for the provision of fire protection and emergency medical services by a city." See **Mo. Rev. Stat. § 72.418.2**.

The specific and comprehensive manner in which Sections 72.418.2 and 72.418.3 address the very issues raised by Appellant herein requires this Court under its own precedent to find as a matter of law that these sections control and determine the issues on appeal. See e.g. State of Missouri ex rel. Fort Zumwalt School District v. Dickherber, 576 S.W.2d 532 (Mo. banc 1979).

EVEN IF THE TRIAL COURT ERRED IN DECLARING THAT SECTIONS 72.418.2 AND 72.418.3 RSMO WERE CLEAR AND UNAMBIGUOUS, WHICH IT DID NOT ERR, THE TRIAL COURT'S JUDGMENT SHOULD NEVERTHELESS BE AFFIRMED, IN THAT THE GENERAL ASSEMBLY'S ENACTMENT OF SECTIONS 72.418.2, 72.418.3 AND 321.300 RSMO ON THE HEELS OF THIS COURT'S DECISION IN O'REILLY v. CITY OF HAZELWOOD SHOWS A CLEAR LEGISLATIVE INTENT TO ADDRESS THE CONSTITUTIONAL DEFECTS IDENTIFIED BY THIS COURT IN O'REILLY v. CITY OF HAZELWOOD, TO PROVIDE GREATER PROTECTION TO THE JURISDICTION OF FIRE PROTECTION DISTRICTS TO CONTINUE TO PROVIDE FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES IRRESPECTIVE OF ANNEXATION, AND TO PROVIDE GREATER PROTECTION TO THE JURISDICTIONAL BOUNDARIES OF ALL FIRE PROTECTION DISTRICTS IRRESPECTIVE OF ANNEXATION.

Even if Sections 72.418.2 and 72.418.3 RSMo are ambiguous, which they are not, Appellant erroneously ignores the fact that on the heels of this Court's decision in O'Reilly v. City of Hazelwood, 850 S.W.2d 96 (Mo. banc 1993), the General Assembly specifically enacted Section 72.418.2 and Section 72.418.3.

In O'Reilly, this Court declared the Boundary Commission Act unconstitutional because it could only be construed as applying to St. Louis County. By adding Section 72.418.2 and Section 72.418.3, the General Assembly clearly intended to address the constitutional defect identified by this Court in O'Reilly, and to provide greater

protection to the jurisdiction of fire protection districts by ensuring their continuing jurisdiction to provide fire protection and emergency medical services to areas annexed by cities with fire departments.

Furthermore, the General Assembly also amended Section 321.300 after O'Reilly so as to clarify the process for changing boundaries of any fire protection district. Significantly, the amendment to Section 321.300 is not limited to fire protection districts in boundary commission counties but applies to all fire protection districts. Thus, the subject of all fire protection districts was very much the concern of the General Assembly at the time these sections were enacted.

The proper application of Sections 72.418.2 and 72.418.3 to determine the issues raised by Appellant is only further buttressed by other case precedent which acknowledges that "as 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 Gov't Employees Retirement System, 235 S.W.3d 578, 581-582 (Mo. App. W.D. 2007) (citing) Moats v. Pulaski County Sewer District No. 1, 23 S.W.3d 868, 872 (Mo. App. S.D. 2000).

Appellant's reliance upon Section 321.320, which was last amended in 1969, is misplaced. Not only do Sections 72.418.2 and 72.418.3 specifically address the issues on appeal, but they were added by the General Assembly in 1993 and 1995, more than twenty-four (24) years after the General Assembly last considered Section 321.320 for

amendment. Thus, under Smith and Moats, there is an additional basis for holding that Sections 72.418.2 and 72.418.3 control.

ALLOWING A CITY TO ANNEX AREA LOCATED WITHIN A FIRE PROTECTION DISTRICT AND TO UNILATERALLY REPLACE THE FIRE PROTECTION DISTRICT AS THE PROVIDER OF FIRE PROTECTION SERVICES AND EMERGENCY MEDICAL SERVICES TO THAT ANNEXED AREA WOULD NECESSARILY IMPAIR AND IMPEDE THE ABILITY OF FIRE PROTECTION DISTRICTS TO CONTINUE PROVIDING THESE SERVICES TO THOSE REMAINING IN UN-ANNEXED PORTIONS OF THE DISTRICT.

It is no secret that cities tend to annex real property that either has existing improvements on it or has the prime potential for commercial or industrial development because that kind of property typically generates more lucrative tax revenue to annexing cities than undeveloped or primarily rural or agricultural real estate. It has thus unfortunately become a very common practice for cities, for example, to annex real estate fronting on major highways so as to acquire real estate that has prime potential for commercial and industrial development, but to exclude adjoining properties beyond such frontage areas from the annexation. These un-annexed areas continue therefore to have to be serviced by fire protection districts.

As cities continue to “cherry pick” prime real estate for annexation, fire protection districts lose their authority to tax the annexed areas, and thus, fire protection districts

necessarily lose a significant amount of revenue that they would have otherwise collected from the taxes levied on these annexed areas.

In light of the shrinking tax base and loss of revenue stream naturally flowing from municipal annexations in this regard, how can fire protection districts continue to afford to provide fire protection and emergency medical services to areas and constituents who are not annexed by a city? Appellant does not address this question, but this is the crux of the problem that fire protection districts must daily address because fire protection districts remain responsible for continuing to provide fire and emergency medical services to these un-annexed areas despite the loss of revenue stream resulting from a municipal annexation.

Not only does the loss of revenue impair the ability of fire protection districts from meeting the existing needs of the un-annexed properties, but it also impedes their ability to invest in future development and improvements in the provision of services in those un-annexed areas.

ALLOWING A CITY TO ANNEX AREA LOCATED WITHIN A FIRE PROTECTION DISTRICT AND TO UNILATERALLY REPLACE THE FIRE PROTECTION DISTRICT AS THE PROVIDER OF FIRE PROTECTION SERVICES AND EMERGENCY MEDICAL SERVICES IMPEDES THE ABILITY OF THE FIRE PROTECTION DISTRICT TO PLAN AND BUDGET FOR ITS PROVISION OF SERVICES WITH ANY DEGREE OF REASONABLE CERTAINTY.

How can fire protection districts budget for the future with any reasonable degree of certainty if a city having its own fire department can swoop in at any time to cherry pick real estate within the district's boundaries for annexation and also unilaterally replace the fire protection district in the provision of services to the annexed area? Again, Appellant does not address this question, but the short answer is that fire protection districts cannot reasonably budget or plan for such a contingency, a fact which the legislature no doubt took into account when it enacted Sections 72.418.2 and 72.418.3 RSMo and specifically gave discretion to the fire protection districts to "approve or reject" any proposal a city might make to provide fire protection and emergency medical services.

Simply stated, fire protection districts cannot budget with any reasonable degree of certainty or plan for the future if Sections 72.418.2 and 72.418.3 are declared to be unconstitutional, as Appellant urges, or if these sections, when construed with Chapters 320 and 321 RSMo, otherwise permit cities having a fire department to unilaterally replace fire protection districts at will and co-opt the district's tax base, as Appellant asserts in the alternative.

Consequently, if Sections 72.418.2 and 72.418.3 are determined not to apply to all fire protection districts, as Appellants insist, then fire protection districts will inevitably experience ever increasing significant budget shortfalls, necessitating layoffs, and, ultimately, there will be a serious diminution in the fire protection and emergency medical services they can reasonably provide to un-annexed areas within the district.

ALLOWING A CITY TO ANNEX AREA LOCATED WITHIN A FIRE PROTECTION DISTRICT AND TO UNILATERALLY REPLACE THE FIRE PROTECTION DISTRICT AS THE PROVIDER OF FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES WOULD NECESSARILY CAUSE REDUNDANCY AND INEFFICIENCY IN THE PROVISION OF THESE SERVICES, THREATEN PUBLIC SAFETY, AND CREATE A GREATER RISK OF HARM TO THOSE CONSTITUENTS REMAINING IN UN-ANNEXED PORTIONS OF THE DISTRICT.

The public interest is not served if fire protection districts are expected to and do invest public tax revenue to build fire stations, acquire expensive fire protection equipment and hire qualified professionals and staff to provide fire protection and emergency medical services, if, as Appellant urges, a city can annex the most lucrative areas located within a fire protection district at any time without notice and then unilaterally replace the fire protection district as the provider of those services to the annexed area. The public interest is not served if cities are allowed to levy additional taxes and invest additional public tax revenue to build additional, duplicative fire stations and to acquire additional, duplicative equipment and personnel to service those annexed areas.

If a city annexes into a fire protection district and is allowed to unilaterally replace the fire protection district as the provider of fire protection and emergency medical services to annexed areas, then the strategic placement of the fire protection district's improvements (i.e. fire stations and equipment) would be significantly diminished. If an

annexing city is allowed to essentially move in wherever and whenever it desires and "take over," then inevitably, the strategic placement of the fire protection district's improvements are compromised and cease being "strategically located" for all practical purposes, thus forcing the fire protection district to build additional improvements like fire stations in different geographical areas located further away from the ever-changing annexing city's municipal limits in order to re-gain strategic location. As fire protection districts re-build and relocate their improvements further and further away in order to re-gain strategic placement within the shrinking borders of the fire protection district, it is foreseeable that an annexing city will in turn build additional and similar improvements as well to gain strategic placement.

The inevitable phenomena of this "urban sprawl" and the duplicative and redundant building of improvements by both fire protection districts and annexing cities to maintain strategic placement of fire protection improvements within ever changing boundaries will inevitably result if Appellants' points on appeal are sustained.

The taxpayers, whether they are being taxed by an annexing city or a fire protection district, are essentially being overtaxed to the extent that they are required to pay for the redundancy and inefficiency in the provision of fire protection and emergency medical services, which inefficiency and redundancy will inevitably result if an annexing city with a fire department is permitted to unilaterally replace an existing fire protection district in the provision of those services at any time and any where the city so desires.

Notably, fire protection districts cannot afford to replicate their investments and build additional improvements, especially in light of their shrinking tax revenue base, all

of which is an immediate, direct and inevitable result of municipal annexation as discussed herein. Consequently, the financial and practical ability of fire protection districts to continue to provide fire protection and emergency medical services to areas within the district that are not annexed by a city will be significantly impaired, if not outright impeded, thus placing the taxpayers and constituents in those areas at greater risk for harm and depriving them of a reasonable expectation of commensurate fire protection services, even though they may be paying the same or more in taxes for these services than taxpayers in the areas annexed by a city.

CONCLUSION

The MAFPD respectfully requests the Court to carefully consider the significant and immediate threats to public safety and efficiency in the provision of fire protection and emergency medical services which would result if cities can annex the most lucrative areas located within a fire protection district at any time without notice and then unilaterally replace the fire protection district as the provider of fire protection and emergency medical services to the annexed area. Sections 72.418.2 and 72.418.3 RSMo clearly and plainly spell out the legislature's intent to prohibit cities from doing just that. Sections 72.418.2 and 72.418.3 clearly and plainly spell out the legislature's intent to settle a jurisdictional dispute between municipal fire departments and fire protection districts by providing that (i) "fire protection districts serving the area included within <u>any</u> annexation by a city having a fire department, including simplified boundary changes, shall continue to provide fire protection services, including medical services, to such area," and (ii) the fire protection district has unfettered discretion to approve or

reject any proposal for the provision of fire protection and emergency medical services by a city. As noted above, the MAFPD fully supports the arguments set forth in the brief of Respondent South Metropolitan Fire Protection District, and respectfully requests this Court to affirm the trial court's judgment.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

(1) Pursuant to Rule 84.06(c) the original and all copies of the Brief of The Missouri Association of Fire Protection Districts include the information required by Rule 55.03, including the signature of an attorney of record for The Missouri Association of Fire Protection Districts on the original brief; that the brief complies with the limitations contained in Rule 84.06(b); and that the Brief contains 3,878 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 The Missouri Association of Fire Protection Districts filed with the Court and served on opposing counsel has been scanned for viruses and is virus free.

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CERTIFICATE OF SERVICE

Pursuant to the Missouri Supreme Court Rules 84.05 through 84.07, the undersigned hereby certifies that on this 12th day of September, 2008, the original and nine (9) copies of the Brief of The Missouri Association of Fire Protection Districts, 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 The Missouri Association of Fire Protection Districts, and a floppy disk containing the Brief were mailed, postage paid, to all counsel of record to the addresses shown below:

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