

**IN THE SUPREME COURT OF MISSOURI**

---

**APPEAL NO. SC 89139**

---

**BOARD OF EDUCATION OF  
THE CITY OF ST. LOUIS, et al.  
Appellants**

**v.**

**MISSOURI STATE BOARD OF EDUCATION, et al.  
Respondents**

---

**Appeal From Cole County Circuit Court, State of Missouri  
Honorable Richard G. Callahan, Case No.: 07AC-CC00488**

---

**INTERVENOR-RESPONDENT'S BRIEF**

---

**STINSON MORRISON HECKER LLP**

**John R. Munich, #29799**

**Jane Dueker, #43156**

**John R. Phillips, #55159**

**168 N. Meramec Avenue, Suite 400**

**St. Louis, Missouri 63102**

**(314) 863-0800; Fax (314) 863-9388**

**[jmunich@stinson.com](mailto:jmunich@stinson.com)**

**[jdueker@stinson.com](mailto:jdueker@stinson.com)**

**[jphillips@stinson.com](mailto:jphillips@stinson.com)**

**Charles W. Hatfield, #40363**

**230 West McCarty Street**

**Jefferson City, MO 65101**

**(573) 636-6263; Fax :(573) 636-6231**

**[chatfield@stinson.com](mailto:chatfield@stinson.com)**

*Attorneys for The Special Administrative Board  
of the Transitional School District of the City of  
St. Louis*

**TABLE OF CONTENTS**

	<b><u>PAGE(s)</u></b>
TABLE OF AUTHORITIES.....	ii
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF FACTS.....	2
ARGUMENT.....	6
VI. THE CIRCUIT COURT PROPERLY RULED THAT THE ONLY POWERS RETAINED BY THE CITY BOARD AFTER THE TRANSFER OF POWERS TO THE SAB, PURSUANT TO THE PLAIN LANGUAGE OF MO. REV. STAT. §§162.621 AND 162.1100, ARE THE JOINT POWERS OF AUDITING AND PUBLIC REPORTING.....	6
A. Mo. Rev. Stat. §162.1100.....	7
B. Mo. Rev. Stat. §162.621.....	8
C. The authority of the City Board to collect the Desegregation Sales Tax and collect and expend the Debt Service Levy are not powers retained by the City Board; they passed to the SAB, along with all powers except the jointly held powers of auditing and public reporting. ....	11

D. Assuming Appellants' construction of §162.1100.3 is correct (it is not), the Desegregation Sales Tax and the Debt Service Levy powers are not "new powers" after August 28, 1998, and therefore are not retained by the City Board. .... 14

CONCLUSION ..... 17

CERTIFICATE OF COMPLIANCE ..... 18

CERTIFICATE OF SERVICE..... 19

**TABLE OF AUTHORITIES**

**PAGE(s)**

**CASES**

*BCI Corp. v. Charlebois Construction Co.,*

673 S.W.2d 774 (Mo. banc 1984) ..... 12

*Brownstein v. Rhomberg-Haglin & Assoc., Inc.,*

824 S.W.2d 13 (Mo. banc 1992) ..... 12

*Hunt v. Dir. Of Revenue,*

10 S.W.3d 144 (Mo. App. E.D. 1999)..... 12

*Kerperien v. Lumberman's Mut. Cos. Co.,*

100 S.W.3d 778 (Mo. banc 2003) ..... 12

*State v. Wood,*

254 S.W.3d 871 (Mo. banc 2008) ..... 12

*State ex rel. Burns v. Whittington,*

219 S.W.3d 224 (Mo. banc 2007) ..... 12

**CONSTITUTIONAL PROVISIONS**

Art. V, §3 Mo. Const. .... 1

**STATUTES**

Mo. Rev. Stat. §1.120 ..... 15, 16

Mo. Rev. Stat. §162.621 ..... *passim*

Mo. Rev. Stat. §162.1100 ..... *passim*

Mo. Rev. Stat. §168.211 ..... 15

## **JURISDICTIONAL STATEMENT**

Because the Board of Education of the City of St. Louis challenges the facial validity of Mo. Rev. Stat. §162.1100, the Special Administrative Board of the Transitional School District of the City of St. Louis concurs that this Court has exclusive appellate jurisdiction pursuant to Art. V, §3 of the Missouri Constitution.

## STATEMENT OF FACTS

Appellants challenged the validity of Mo. Rev. Stat. §162.1100, a statute that was enacted as a part of a resolution to the St. Louis Public School District desegregation litigation. SB781, the bill which created §162.1100, also amended several other statutes, including §162.621, all in an effort to provide a clear line of authority from the Board of Education of the City of St. Louis ("City Board") to a Special Administrative Board ("SAB") in the event that the St. Louis Public School District ("SLPS") lost its accreditation. In addition, §162.1100 created a Transitional School District ("TSD"), which had certain responsibilities related to resolving the desegregation litigation, including obtaining approval by the voters for the Desegregation Sales Tax. The Board of Education of the City of St. Louis was involved in the passage of SB781 and was a necessary party to the resolution of the desegregation litigation. Nevertheless, Appellants herein challenge the constitutionality of that statute, or in the alternative, advance an interpretation of that statute under which they retain significant financial control over the SLPS.

At the February 15, 2007 State Board of Education ("State Board") meeting, acting on the recommendation of Commissioner of Education Kent King and an advisory committee, the State Board voted to re-establish the TSD pursuant to Section 162.1100. Herschend Test. p. 196-97 (10/2/07); Ex. 270. Appellants have not challenged the State Board's decision to re-establish the TSD. Pursuant to that section, the reestablishment of the TSD was effective thirty (30) days later, on March 17, 2007. Herschend Test. p. 196-97. Five days later, on March 22, 2007, the State Board voted to declare the SLPS

unaccredited, effective June 15, 2007, as permitted under Mo. Rev. Stat. §162.1100.2(2). The State Board made the effective date June 15, 2007, to allow the then-current school year to come to a close without disruption while preserving the maximum amount of time for the TSD before the start of the next school year. Herschend Test. at 197-99 (10/2/07); Ex. 271. Shortly thereafter, the State Board nominated Rick Sullivan to be the CEO of the SAB, and the Governor announced his intention to appoint Mr. Sullivan as CEO of the SAB effective June 15, 2007. Herschend Test. at 198 (10/2/07); Ex. 271.

The City Board pursued an administrative appeal of the State Board's decision, requesting a hearing before the Commissioner of Education. Subsequently, the City Board withdrew its request and decided to submit its appeal without a hearing and did so on May 29, 2007. Ex. 24. Before the Commissioner's final decision, on June 4, 2007, the City Board filed suit in Cole County Circuit Court seeking review of the State Board's decision and a declaratory judgment. Among the arguments advanced by the City Board was that it retained its powers even after the June 15, 2007 loss of accreditation. L.F. 761-825. The City Board filed for a temporary restraining order and for a preliminary injunction in the trial court on or about June 7, 2007 seeking to prevent, among other things, the SAB's appointment. L.F. 14-36. The trial court heard arguments on the TRO motion on June 13 and 14, 2007. On June 14, 2007, the trial court denied the City Board's Motion for Temporary Restraining Order. L.F. 40-41.

The "governing board" of the TSD is composed of three members: one appointed by the mayor of St. Louis, one appointed by the president of the board of aldermen of St. Louis, and one appointed by the City Board, with the City Board's member to be replaced

by a "CEO" via gubernatorial appointment if the SLPS loses its accreditation. In that event, the governing board of the TSD thereby becomes the SAB. Mo. Rev. Stat. §162.1100.2(1) and (3). The mayor of St. Louis and the president of the board of aldermen in St. Louis had announced their appointments (Melanie Adams and Richard Gaines, respectively) to that governing board on June 14, 2007. The Governor made his appointment of Rick Sullivan as CEO official at 12:01 a.m. on June 15, 2007. Herschend Test. at p. 200 (10/2/07).

Taken together, these three appointed individuals constituted the SAB, as dictated by Mo. Rev. Stat. §162.1100. The SAB held its first meeting at 9:00 a.m. on June 15, 2007 and the SAB retained counsel to intervene in this case. L.F. 42-44. The trial court granted the SAB's motion to intervene on June 25, 2007. L.F. 4. On July 3, 2007, the City Board filed a First Amended Petition for Review and for Declaratory Judgment. L.F. 4; 45-111. The First Amended Petition sought a reversal of the declaration of loss of accreditation of the SLPS and a declaration that most, if not all, of the powers of the City Board remained vested with that body, even after June 15, 2007. L.F. 45-111.

Specifically, Count IV (No appointment of CEO), Count VI (Statutory Limitations), Count XXIII (Desegregation Agreement prohibits TSD from exercising certain power), and Count XXV (Desegregation Agreement requires that the Desegregation Sales Tax proceeds be paid to the City Board) of the First Amended Petition, all relate to the City Board's contention that it retains essentially plenary power, notwithstanding the existence of the SAB. In fact, Count VI listed thirty-four powers the City Board claimed it retained despite the existence of the SAB. L.F. 66-68. On appeal,

the City Board has abandoned its argument that it retains thirty-two of those powers; instead it now argues that it retains only those powers related to the Desegregation Sales Tax and the Debt Service Levy. Appellants' Brief at pp. 135-142.

After a two-day hearing on September 25 and October 2, 2007, the Circuit Court of Cole County issued its final order and judgment on January 23, 2007, accompanied by extensive findings of fact and conclusions of law. L.F. 904-965. The trial court found in favor of the Respondents and the SAB. *Id.* Specifically, the trial court held that "the challenged actions of the [State Board] were fully lawful and effective and that the June 15, 2007, transfer of control over the operation of the District from the City Board to the TSD as required by Sections 162.1100 and 162.621 was complete, constitutional, and is in full effect, reserving to the City Board only the concurrent power of auditing and public reporting." L.F. 965. The City Board appealed that judgment on February 26, 2008. Appellants filed their Brief on July 21, 2008. Intervenor-Respondents were granted leave to file their Brief on or before September 23, 2008.

## ARGUMENT

The SAB incorporates by reference Respondents' Brief as to Appellants' Points Relied On numbers I-V and takes no separate position on these points.

**VI. THE CIRCUIT COURT PROPERLY RULED THAT THE ONLY POWERS RETAINED BY THE CITY BOARD AFTER THE TRANSFER OF POWERS TO THE SAB, PURSUANT TO THE PLAIN LANGUAGE OF MO. REV. STAT. §§162.621 AND 162.1100, ARE THE JOINT POWERS OF AUDITING AND PUBLIC REPORTING.**

Based on a tortured reading of Mo. Rev. Stat. §162.1100.3, Appellants' First Amended Petition argued that the City Board retained all powers granted to the City Board after August 28, 1998 irrespective of the loss of accreditation. On appeal, the City Board still maintains that it retained powers related to the Desegregation Sales Tax and the Debt Service Levy after the loss of accreditation because those two powers were granted to the City Board after August 28, 1998. The plain language of the relevant statutes could not be clearer that Appellants retain only the jointly held powers of auditing and public reporting, and that the August 28, 1998 date does nothing to affect the transfer of powers from the City Board to the SAB after a loss of accreditation by the

SLPS. Appellants' selective use of inapplicable principles of statutory construction in this case in an attempt to justify their strained interpretation is meritless.<sup>1</sup>

**A. Mo. Rev. Stat. §162.1100**

Pursuant to Mo. Rev. Stat. §162.1100.12, the Missouri State Board of Education may reestablish the TSD effective thirty (30) days following the decision to do so. As noted above, the State Board so decided, on February 15, 2007, with an effective date of March 17, 2007. *Herschend Test.* at pp. 195-96 (10/2/07); Ex. 270. The "governing board" of the TSD consists of three members: one appointed by the mayor of St. Louis, one appointed by the President of the Board of Aldermen of St. Louis, and one appointed by the City Board. Mo. Rev. Stat. §162.1100.2(1). The TSD has specific enumerated powers under Mo. Rev. Stat. §162.1100.1, which relate primarily to implementing the federal desegregation settlement.

The State Board of Education declared the SLPS "unaccredited" on March 22, 2007, but its decision was not effective until June 15, 2007. *Herschend Test.* at pp. 196-97 (10/2/07), Ex. 271. Pursuant to Mo. Rev. Stat. §162.1100.2(3), on June 15, 2007, the member of the governing board of the TSD appointed by the City Board was replaced by Mr. Richard Sullivan, who was nominated by the State Board, appointed by the Governor and confirmed by the Missouri Senate. *Id.* Mr. Sullivan became the CEO of the SAB, and was vested with "all other powers and duties of any other general superintendent of schools, including appointment of staff." Mo. Rev. Stat. §162.1100.2. Moreover, once

---

<sup>1</sup> The SAB agrees with Appellants as to the standard of review on this point.

the CEO was appointed, §162.1100.3 describes the manner in which powers vested with the SAB: "any powers granted to any existing school board in a city not within a county [i.e., St. Louis City] on or before August 28, 1998, shall be vested with the special administrative board of the transitional school district containing [St. Louis City schools]...except as otherwise provided in section 162.621." Mo. Rev. Stat. §162.1100.3.

In addition, pursuant to Mo. Rev. Stat. §162.1100.4, the SAB was empowered, among other things, to:

- (1) create an academic accountability plan, take corrective action in underperforming schools, and seek relief from state-mandated programs;
- (2) explore alternative forms of governance for the district;
- (3) contract with nonprofit corporations to provide for the operation of schools;
- (4) oversee facility planning, construction, improvement, repair, maintenance, and rehabilitation;
- (5) establish school site councils to facilitate site-based school management and improve the responsiveness of the schools to the needs of the local geographic attendance region of the school; and
- (6) submit a proposal to the district voters regarding establishment of neighborhood schools.

**B. Mo. Rev. Stat. §162.621**

Mo. Rev. Stat. §162.621, which was amended at the same time as §162.1100 in SB781, states that "except as otherwise provided in this subsection, the powers granted in

subsection 1 of this section shall be vested, in the manner provided in section 162.1100, in the special administrative board of the transitional school district containing the city not within a county if the school district loses its accreditation from the state board of education." Mo. Rev. Stat. §162.621.2. Following the loss of accreditation, the only authority retained by the City Board is "auditing and public reporting powers." *Id.* Indeed, Mo. Rev. Stat. §162.621.1 specifically lists the powers of the City Board that are assigned to the SAB if the St. Louis Schools become unaccredited:

The board of education shall have general and supervising control, government and management of the public schools and public school property of the district in the city and shall exercise generally all powers in the administration of the public school system therein. The board of education has all the powers of other school district under the laws of this state except as herein provided and shall perform all duties required by general laws of school districts so far as they are applicable to the public school affairs of the city and are consistent with this law. It shall appoint the officers, agents, and employees it deems necessary and proper and fix their compensation. The board of education may:

(1) Make, amend and repeal rules and bylaws for its meetings and proceedings, for the government, regulation, and management of the public schools and school property in the city, for the transaction of its business, and the examination, qualification and employment of

teachers, which rules and bylaws are binding on the board of education and all parties dealing with it until formally repealed;

(2) Fix the time of its meetings;

(3) Provide for special and standing committees;

(4) Levy taxes authorized by law for school purposes;

(5) Invest the funds of the district;

(6) Purchase and hold all property, real and personal, deemed by it necessary for the purposes of public education;

(7) Build and construct improvements for such purposes, and sell the same;

(8) Provide for the gratuitous transportation of pupils to and from schools in cases where by reason of special circumstances pupils are required to attend schools at unusual distances from their residences.

Mo. Rev. Stat. §162.621 (emphasis added).

These were the same powers vested with the City Board as of August 28, 1998 and they are the same powers from which all of the City Board's powers, policies, and regulations derived, and are the very cited source of that body's adopted bylaws, not merely a short list of powers as suggested by the City Board. In other words, the plain language of subsections 1 and 2 of Mo. Rev. Stat. §162.621 grants to the SAB all of the powers of the City Board—§162.621.2 transfers all powers of the City Board to the SAB, including "general and supervising control" of the district, while §162.1100 imparts the

specific powers of the SAB and describes the manner of the vesting of the §162.621 powers.

Thus, there can be little doubt that the SAB has all of the powers and duties, indeed more powers and duties, than the City Board had prior to the effective date of the State Board's decision to revoke the SLPS' accreditation.

**C. The authority of the City Board to collect the Desegregation Sales Tax and collect and expend the Debt Service Levy are not powers retained by the City Board; they passed to the SAB, along with all powers except the jointly held powers of auditing and public reporting.**

In Count VI of its First Amended Petition, the City Board claimed that "[b]y the express terms of §162.1100, only those powers granted to the Board of Education on or before August 28, 1998 become vested in the TSD upon the appointment and confirmation of the TSD CEO." L.F. 65-66. The City Board then proceeded to list thirty-four powers allegedly retained by virtue of it having been granted those powers after August 28, 1998. L.F. 66-68. Before this Court however, the City Board has abandoned the vast majority of this argument; instead it retrenches by claiming only that the authority to collect the Desegregation Sales Tax and collect and expend the Debt Service Levy ("Desegregation Sales Tax and Debt Service Levy powers") are its retained powers because those "powers" were passed by voters on February 2, 1999 (Desegregation Sales Tax) and November 7, 2000 (Issuance of bonds). This argument remains specious, even in its more limited form.

"The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute." *State v. Wood*, 254 S.W.3d 871, 872-73 (Mo. banc 2008)(citing *State ex rel. Burns v. Whittington*, 219 S.W.3d 224, 225 (Mo. banc 2007)). When the language of the statute is unambiguous, "a court must give effect to the legislature's chosen language." *Id.* at 873 (citing *Kerperien v. Lumberman's Mut. Cos. Co.*, 100 S.W.3d 778, 781 (Mo. banc 2003)). Where language of a statute is clear and unambiguous, there is no room for construction, and courts must give effect to the language as written. *Hunt v. Dir. Of Revenue*, 10 S.W.3d 144, 149 (Mo. App. E.D. 1999); see also *Brownstein v. Rhomberg-Haglin & Assoc., Inc.*, 824 S.W.2d 13, 15 (Mo. banc 1992)(cited at p. 137 of Appellants' Brief).<sup>2</sup>

At the outset, Mo. Rev. Stat. §162.1100 states "[i]n the event that the school district loses its accreditation, upon appointment of a chief executive officer, any powers granted to any existing school board in a city not within a county [City of St. Louis] on or before August 28, 1998, shall be vested with the special administrative board of the transitional school district containing such school district so long as the transitional school district exists, ***except as otherwise provided in section 162.621.***" (emphasis added). Thus, §162.1100 is specifically subject to the terms of §162.621, which was

---

<sup>2</sup> In addition, "when clearly necessary the strict letter of the act must yield to the manifest intent of the legislature." *Brownstein*, 824 S.W.2d at 16 (citing *BCI Corp. v. Charlebois Construction Co.*, 673 S.W.2d 774, 780 (Mo. banc 1984)).

amended as part of the same piece of legislation—S.B. 781.<sup>3</sup> As noted above, §162.621 sets forth the plenary powers formerly vested in the City Board and states, in subsection 2, that those powers "shall be vested...in the special administrative board of the transitional school district containing the city not within a county [City of St. Louis] if the school district loses its accreditation from the state board of education."<sup>4</sup> According to §162.621, §162.1100 describes the manner of the transfer of powers while §162.621 describes the powers transferred.

*Moreover, there is absolutely no date restriction in §162.621.* Section 162.621 therefore precludes any argument that the legislature envisioned the kind of divided authority argued for by the City Board or the confusion that would necessarily result. Indeed, it is strained logic to argue that the state legislature intended to return nearly plenary (or even significant financial) powers to an entity that performed poorly enough

---

<sup>3</sup> August 28, 1998 is the effective date for these sections of SB718, which explains why this date is in §162.1100.

<sup>4</sup> In a rare instance of agreement, the SAB and the City Board agree that the City Board maintains the right to audit and publicly report on the St. Louis public school district after June 15, 2007. L.F. 68. The SAB does not agree that the City Board has those limited powers to the exclusion of the SAB. Indeed, the SAB, pursuant to the above reference statutes, has those powers, but concedes that the City Board shares those duties even after June 15, 2007.

to have warranted its loss of accreditation. Obviously, that is not the case even if Appellants' remarkable interpretation is credited.

Further, as is plain, §162.1100.3 never intended, and does not say, that only such City Board powers as described in that section would be transferred to the SAB in the event of an accreditation loss. Instead, it only details the manner in which certain powers are transferred to the SAB, without precluding other powers from being transferred in other sections or statutes. Section 162.621, the City Board's source of plenary powers, including "general and supervising control...", specifically acts to transfer "all powers" to the SAB upon the SLPS's loss of accreditation, leaving only the powers of "auditing and public reporting." Mo. Rev. Stat. §162.621.1 and 2.

**D. Assuming Appellants' construction of §162.1100.3 is correct (it is not), the Desegregation Sales Tax and the Debt Service Levy powers are not "new powers" after August 28, 1998, and therefore are not retained by the City Board.**

Finally, assuming for a moment that Appellants' tortured construction of §162.1100.3 was correct, the list of thirty-four powers (or the two powers preserved for appeal) could not possibly have been retained by the City Board because none of them were "new powers." Instead, Appellants' list of powers, including the limited Desegregation Sales Tax and Debt Service Levy powers, are powers that pre-existed the August 28, 1998 date, and were only slightly amended thereafter. As such, under the law, these powers are not "new powers" after August 28, 1998.

For example, Appellants claimed in their First Amended Petition that the City

Board would retain the power "to appoint the superintendent of schools" because the statute granting that authority was amended after August 28, 1998. However, Mo. Rev. Stat. §168.211, which provides the City Board with that power, was first enacted in 1963. The provision was amended in both 2004 and 2005. Some of these changes related to the term of the superintendent's contract. But, it is nonetheless clear that the City Board had the power to appoint a superintendent as of August 28, 1998.

"The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment." Mo. Rev. Stat. §1.120. Thus, simply because a power was modified after August 28, 1998, that power is not considered a "new power" such that Appellants' argument could be valid. While it is true that the Desegregation Sales Tax was not passed until February 2, 1999, and the Debt Service Levy was not passed until November 7, 2000, it is also true that the City Board had the pre-existing powers to "levy taxes authorized by law for school purposes" and to "[i]nvest the funds of the District." Mo. Rev. Stat. §162.621.1(4) and (5) (as of August 28, 1998). Moreover, per Appellants' own argument, the obligation to collect taxes sufficient to service the debt levy also existed prior to August 28, 1998, even if these specific bonds were not passed until November 7, 2000. *See* Appellants' Brief at pp. 140-141.

The power of the City Board to submit the issuance of bonds existed on or before August 28, 1998. *See* Appellants' Brief at pp. 140-141. Simply because voters approved them after that date, does not mean that this power is reserved for the City Board irrespective of the loss of accreditation. Such a conclusion is prohibited by Mo.

Rev. Stat. §1.120 (reenacted or amended provision is continuation of law to the extent it remains the same), common sense, the plain language of the relevant statutes, and the manifest intent of the state legislature.

In addition, the very statute at issue authorized the TSD to submit the Desegregation Sales Tax to the voters. Notably, Mo. Rev. Stat. 162.1100.5(3) provides that "[n]o operating levy or increase in the operating levy or sales tax established pursuant to this section shall be collected for a transitional school district unless prior approval is obtained from a simple majority of the district's voters. The board of the transitional district shall place the matter before the voters prior to March 15, 1999." The TSD did that precise thing, putting the question to the voters on February 2, 1999. Ex. 200. It would be a bizarre result indeed if the General Assembly granted the power for the TSD to submit the Desegregation Sales Tax to the voters, but then, by operation of the very same statute and passage of time, intended for the proceeds of the Desegregation Sales Tax to be controlled by the City Board even after the SLPS lost its accreditation. Either the SAB retains this power because it was the TSD's under §162.1100, or because of §162.621, which transfers all the powers that the City Board had.

All powers, except the powers of auditing and public reporting which are jointly held by both the SAB and the City Board, are powers that clearly were held by the City Board on or before August 28, 1998, or, in any event, were transferred to the SAB by operation of §162.621. Simply put, the August 28, 1998 date does not alter the plain language of §§162.1100 and 162.621, which describe the manner of transfer of the City

Board's powers to the SAB and those powers retained by the SAB after its members were appointed on June 15, 2007. The SAB retains all powers the City Board had as of the SLPS' loss of accreditation, and the City Board retains only the concurrently held powers of auditing and public reporting.

### **CONCLUSION**

For the foregoing reasons, the SAB respectfully requests that this Court uphold the trial court's decision and rule that all powers of the City Board passed to the SAB, with the exception of the joint powers of auditing and public reporting.

Respectfully submitted,

STINSON MORRISON HECKER LLP

By: \_\_\_\_\_

John R. Munich, #29799  
Jane Dueker, #43156  
John R. Phillips, #55159  
168 N. Meramec Avenue, Suite 400  
St. Louis, Missouri 63102  
(314) 863-0800  
Fax (314) 863-9388  
jmunich@stinson.com  
jdueker@stinson.com  
jphillips@stinson.com

Charles W. Hatfield, #40363  
230 West McCarty Street  
Jefferson City, MO 65101  
(573) 636-6263  
Fax (573) 636-6231  
chatfield@stinson.com

*Attorneys for The Special Administrative  
Board of the Transitional School District  
of the City of St. Louis*

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies that pursuant to Mo. S. Ct. Rule 84.06(c), this brief: (1) contains the information required by Mo. S. Ct. Rule 55.03; (2) complies with the limitations in Mo. S. Ct. Rule 84.06(b) and Local Rule 360; and (3) contains 3,911 words, exclusive of the sections exempted by Mo. S. Ct. Rule 84.06(b) and Local Rule 360(c), determined using the word count program in Microsoft Word 2003. The undersigned counsel further certifies that the accompanying floppy disk has been scanned and was found to be free of viruses.

---

*Attorney for Intervenor-Respondent*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two copies of the foregoing Brief and a disk in compliance with Rule 84.06(g) were mailed on this 22nd day of September, 2008 by first-class mail, postage pre-paid, to:

Kenneth Brostron  
Lashly & Baer, P.C.  
714 Locust Street  
St. Louis, MO 63101  
(314) 621-6844 (fax)

and

Johnny K. Richardson  
Brydon, Swearngen & England, P.C.  
312 East Capitol Ave.  
P.O. Box 4566  
Jefferson City, MO 65102  
(573) 635-3847 (fax)

*Attorneys for Plaintiff Board of Education of the City of St. Louis*

Paul Wilson  
Missouri Attorney General's Office  
Supreme Court Building, 1<sup>st</sup> Floor  
207 W. High Street  
Jefferson City, MO 65101  
(573) 751-7094 (fax)

*Attorney for Kent King, Commissioner of Education, The Missouri State Board of Education, and The Missouri Department of Elementary and Secondary Education*

---