

J. Kent Lowry
klowry@armstrongteasdale.com


ARMSTRONG TEASDALE LLP

MISSOURI

KANSAS

ILLINOIS

NEVADA

WASHINGTON, DC

SHANGHAI

ATTORNEYS AT LAW

December 1, 2009

Mr. Thomas F Simon, Clerk
Missouri Supreme Court
Supreme Court Building
P.O. Box 150
Jefferson City, MO 65102-0150

VIA HAND DELIVERY

FILED
DEC X 1 2009
Thomas F. Simon
CLERK, SUPREME COURT

Re: Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System v. Barton County, et al., Case No: SC89896

Dear Mr. Simon:

In response to the Court's order of October 7, 2009, the Attorney General filed an amicus brief on the proper construction of the term "compensation of county officers" in Article VI, Section 11, of the Missouri Constitution. PACARS is fully in agreement with the Attorney General's analysis, which is consistent with the arguments advanced in the briefs filed by PACARS. The term "compensation" includes the retirement funds at issue in this case, and the Hancock Amendment does not prevent Barton County's duty to make the required payments.

In its response to the amicus brief, Barton County relies on *State ex rel. Heaven v. Ziegenhein*, 45 S.W. 1099 (Mo. 1898), a century-old case in which the Court found that, under the Missouri Constitution as it then existed, a city could not grant public money to a retired employee. At that time, the public policy of the state, as expressed in the constitution, prohibited retirement benefits for municipal workers. Barton County fails to note that in 1971 -- long before the enactment of the Hancock Amendment and Article VI, Section 11 -- the Court encountered a case in which Kansas City balked at making retirement payments for its municipal judges. *See Kansas City v. Brouse*, 468 S.W.2d 15 (Mo. banc 1971). The Court there rejected arguments similar to the ones made in *Ziegenhein*, noting:

The city also contends the retirement is invalid under Art. III, Sec. 39(3), which prohibits the granting of extra compensation to a public officer after service has been rendered, and under Art. VI, Sec. 25, forbidding any city from granting public money to any individual. It is true that before there was any authorization in the state constitution for pensions or retirement, this court struck down the Police

SCANNED



Pension Law of 1895 as violative of provisions in the 1875 Constitution similar to those cited above, *State ex rel. Heaven v. Ziegenhein*, 144 Mo. 283, 45 S.W. 1099. At that time the public policy of the state, as expressed in the constitution, prohibited any retirement benefits for municipal officers or employees. Now, however, Art. VI, Sec. 25, dealing with local government, as amended by the exception adopted January 14, 1966, is an expression of public policy clearly favoring retirement for municipal officers, and we, therefore, are of the opinion that the charter provisions and ordinances before us are not violative of Art. III, Sec. 39(3) or the portion mentioned above of Art. VI, Sec. 25.

Id. at 18.

In the *Kansas City* case, the Court noted that the retirement benefits at issue were part of the municipal judges' compensation:

“The matter of what Kansas City chooses to pay its municipal judges is a matter of local concern Kansas City elects the municipal judges under a non-partisan ballot and requires that they devote full time to the office. To get well-qualified lawyers to fill the office, the city must compete with what lawyers can make elsewhere. To do this, the voters considered it necessary to have a retirement system and their decision to approve retirement and the amount to be paid thereunder is a local affair, within the powers specified in the charter. The municipal judge occupies a sensitive position in the city government and the city logically and reasonably should be able to decide what shall be the benefits of the office.”

Id. at 17 (emphasis added).

Just as the retirement benefits in the *Kansas City* case were part of “what Kansas City chooses to pay its municipal judges,” the retirement funds at issue in this case are part of the compensation of prosecutors, in Barton County and the other counties of the State.

Barton County's assertion that the pension system for prosecuting attorneys under Chapter 56 is an optional gratuity is simply wrong. As this Court has recently made



clear, statutes requiring local governments to fund pension systems are mandatory and enforceable. *See Neske v. City of St. Louis*, 218 S.W.3d 417, 425 (Mo. banc 2007). Barton County's reliance on the 1968 edition of Black's Law Dictionary is telling as it sheds no light on the meaning of "compensation" when Article VI, Section 11, was enacted nearly twenty years later in 1986.

The contention that a ruling in favor of PACARS would render unconstitutional any pensions for "all elected state officials, members of the general assembly and judges" is nonsense. Contrary to Barton County's assertion, Article XIII, Section 3, of the Missouri Constitution does not declare that the term compensation is "limited to salary rates and mileage and per diem allowances." Rather, Article XIII, Section 3, spells out the matters that are within the purview of the citizens' commission on compensation for elected officials. It provides, "The term 'compensation' includes the salary rate established by law, mileage allowances, per diem expense allowances." Mo. Const. art. XIII, § 3.1. The definition lists a few items that are *included* in compensation, but does not purport to *exclude* retirement benefits. Further, the provision does not purport to define "compensation" in any other context. *See Executive Bd. of Mo. Baptist Convention v. Windermere Baptist Conference Ctr.*, 280 S.W.3d 678, 689 (Mo. App. 2009) (definition not presumed to extend beyond its context).

A provision of Article XIII, Section 3, that Barton County fails to note is subsection 12: "Beginning January 1, 2007, any public official subject to this provision who is convicted in any court of a felony which occurred while in office or who has been removed from office for misconduct or following impeachment shall be disqualified from receiving any *pension from the state of Missouri*." Mo. Const. art. XIII, § 3.12 (emphasis added). Thus, the very provision on compensation on which Barton County relies includes state pensions. The contention that the pensions of all state officials are in danger is wholly unsupported by Article XIII, Section 3.

Barton County's arguments for why it should not be required to follow the law should be rejected. The Court should order the appeal should be taken as submitted, and the cause should be remanded for issuance of a writ of mandamus directing Barton County to make payments to PACARS consistent with the requirements of section 56.807.

Mr. Thomas F Simon
December 1, 2009
Page 4



ARMSTRONG TEASDALE LLP

Very truly yours,
Armstrong Teasdale LLP

A handwritten signature in black ink, appearing to read "J. Kent Lowry". The signature is fluid and cursive, with a large loop at the end.

J. Kent Lowry

JKL/mjs

cc: Thomas W. Rynard
James R. Layton

IN THE SUPREME COURT OF MISSOURI

MISSOURI PROSECUTING)
ATTORNEYS AND CIRCUIT)
ATTORNEYS RETIREMENT)
SYSTEM,)
)
Appellant,)
)
vs.)
)
BARTON COUNTY, et al.,)
)
Respondents.)

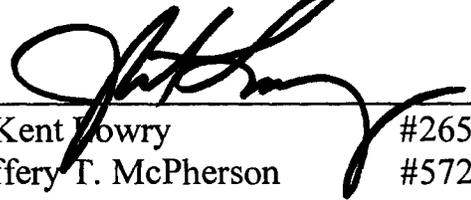
Case No: SC89896

FILED
DEC X 1 2009
Thomas F. Simon
CLERK, SUPREME COURT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Letter Brief of Appellant was sent via U.S. Mail, postage prepaid, to Marc Ellinger and Thomas Rynard, 308 E. High Street, Suite 301, Jefferson City, MO 65101 and James R. Layton, Solicitor General, Office of Attorney General, P.O. Box 899, Jefferson City, MO 65102, on this 1st day of December 2009.

ARMSTRONG TEASDALE LLP

BY: 
J. Kent Lowry #26564
Jeffery T. McPherson #57206
3405 West Truman Boulevard, Suite 210
Jefferson City, Missouri 65109-5713
(573) 636-8394
(573) 636-8457 (facsimile)
klowry@armstrongteasdale.com
jmcpfers@armstrongteasdale.com

SCANNED