IN THE MISSOURI SUPREME COURT

Henry G. Lane, William and Margie Anglen, Lloyd Haley, Curtis Braschler, Gordon L. Trumbo, Beulah F. Alverson, Ernest W. Greenup, and Ronald M. Lucas,	)	
Appellants,	)	
vs.	)	**NO. SC86116**
Patricia S. Lensmeyer, Boone County Collector, and the Columbia 93 School District,	)	
Respondents.	)	

APPEAL FROM THE CIRCUIT COURT OF BOONE COUNTY
THIRTEENTH JUDICIAL CIRCUIT
HONORABLE FRANK CONLEY, JUDGE

RESPONDENT PATRICIA S. LENSMEYER'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

Respondent Lensmeyer adopts by reference appellants' jurisdictional statement.

STATEMENT OF FACTS

Respondent Lensmeyer adopts by reference appellants' statement of facts except to note that plaintiffs' amended petition upon which this action was based contained a count for a declaratory judgment as well as a count for a tax refund under section 139.031, RSMo. (L.F. 50-51).

PREFACE TO RESPONDENT LENSMEYERS' POINTS AND ARGUMENT

The substantive aspects of appellants' appeal deal with the legality of the 2001 property tax rate established by the Columbia 93 School District in accordance with section 67.110, RSMo. Because the respondent Lensmeyer in her official capacity as Boone County Collector has no authority or duty to set the tax rates for taxing authorities within Boone County, Missouri, and because the Columbia 93 School District was joined as a party defendant to defend the tax rate levy it established for 2001, she has taken no position in this case concerning whether or not the 2001 tax rate for the Columbia 93 School District was appropriately established. Accordingly, her brief filed in this appeal deals with the issues raised by appellants which effect the performance of her duties in office, namely, whether the Columbia 93 School District was properly joined as a party defendant, and whether an refund action brought under section 139.031, RSMo, can be properly certified as a class action.

POINTS RELIED ON

I.

THE TRIAL COURT DID NOT ERR IN REFUSING TO CERTIFY APPELLANTS' ACTION UNDER §139.031 RSMO AS A CLASS ACTION IN ITS ORDER DENYING CLASS CERTIFICATION BECAUSE SUBSECTIONS 1 AND 2 OF SECTION 139.031, RSMO, PROVIDE THE EXCLUSIVE REMEDY FOR TAX PAYERS TO OBTAIN A REFUND FROM THE COUNTY COLLECTOR OF PROPERTY TAXES PAID UNDER PROTEST AND SUBSECTION 5 OF SECTION 139.031 DOES NOT ALLOW APPELLANTS' CASE TO PROCEED AS A CLASS ACTION FOR REFUND OF TAXES "MISTAKENLY OR ERRONEOUSLY" PAID BASED UPON A PURPORTEDLY ILLEGAL TAX RATE ABSENT EXPRESS STATUTORY AUTHORIZATION FOR A CLASS ACTION TO OBTAIN A REFUND AND A JURISDICTIONAL DEFECT IN IMPOSITION OF THE TAX.

Authorities:

State ex rel Ellsworth Freightlines, Inc. vs. State Tax Commission of Missouri, 651 S.W.2d 130 (Mo. Banc 1983)

Charles vs. Spradling, 524 S.W.2d 820 (Mo. Banc 1975)

State ex rel. Cass Medical Center vs. Mason, 796 S.W.2d 621,622 (Mo. Banc 1990)

Buck vs. Leggett, 813 S.W.2d 872 (Mo. 1991)

II.

THE TRIAL COURT DID NOT ERR IN SUSTAINING RESPONDENT COLLECTOR'S MOTION TO JOIN THE COLUMBIA 93 SCHOOL DISTRICT AS A NECESSARY AND INDISPENSABLE PARTY DEFENDANT TO APPELLANTS' TAX REFUND ACTION BROUGHT PURSUANT TO §139.031, RSMO, BECAUSE THE COUNTY COLLECTOR HAS NO LEGAL RESPONSIBILITY FOR ESTABLISHING OR DEFENDING THE TAX RATE LEVY CHALLENGED BY APPELLANTS AND ONLY THE COLUMBIA 93 SCHOOL DISTRICT HAS SUCH RESPONSIBILITY AND AUTHORITY AND THEREFORE IS A NECESSARY AND INDISPENSIBLE PARTY TO APPELLANTS' ACTION UNDER RULE 52.04.

Authorities:

Mo. Rev. Stat. §139.031 (2000)

Supreme Court Rule 52.04

Ste. Genevieve School District R-11 vs. Board of Alderman of the City of Ste. Genevieve, 66 S.W.3d 6, 10-11 (Mo. Banc 2002)

State ex rel. School District of City of Independence vs. Jones, 653 S.W.2d 178, 189 (Mo. Banc 1983)

Bunker R-III School District vs. Hodge, 666 S.W.2d 20 (Mo. App. 1984)

Missouri National Education Association vs. Missouri State Board of Education, 34 S.W.3d 266, 276-277 (Mo. App. 2000)

ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN REFUSING TO CERTIFY APPELLANTS' ACTION UNDER §139.031 RSMO AS A CLASS ACTION IN ITS ORDER DENYING CLASS CERTIFICATION BECAUSE SUBSECTIONS 1 AND 2 OF SECTION 139.031, RSMO, PROVIDE THE EXCLUSIVE REMEDY FOR TAX PAYERS TO OBTAIN A REFUND FROM THE COUNTY COLLECTOR OF PROPERTY TAXES PAID UNDER PROTEST AND SUBSECTION 5 OF SECTION 139.031 DOES NOT ALLOW APPELLANTS' CASE TO PROCEED AS A CLASS ACTION FOR REFUND OF TAXES "MISTAKENLY OR ERRONEOUSLY" PAID BASED UPON A PURPORTEDLY ILLEGAL TAX RATE ABSENT EXPRESS STATUTORY AUTHORIZATION FOR A CLASS ACTION TO OBTAIN A REFUND AND A JURISDICTIONAL DEFECT IN IMPOSITION OF THE TAX.

Standard of Review

In a case tried without a jury, "[a]ppellate review is [ ] undertaken pursuant to Rule 84.13(d). The judgment will be affirmed unless there is no evidence to support it, the judgment is against the weight of the evidence, or the judgment erroneously declares or applies the law. [cite omitted]. Fact issues on which no specific findings are made shall be considered as having been found in accordance with the result reached. ***Id***.; Rule 73.01(c)." ***Kleeman vs. Kingsley, et al***., 88 S.W.3d 521, 522 (Mo. App. S.D. 2002).

However, "[i]f the evidence is uncontroverted or admitted, so that the real issue is legal in nature, this court need not defer to the trial court's judgment." ***Burleson vs. Director of Revenue, State of Missouri***, 92 S.W.3d 218, 220 (Mo. App. S.D. 2002).

Argument In Response to Appellants' Point Relied Upon III

The appellants in this action asked the trial court to certify this case as a class action under rule 52.08. (L. F. 93). Appellants argue in substance that the common law doctrine of virtual representation, section 507.070, RSMo, Article X, Section 3 of the Missouri Constitution, and cases permitting class action status in Hancock Amendment challenges are supportive of their theory that class actions should be permitted under the auspices of subsection 5 of section 139.031, RSMo (Appellants' Substitute Brief, 53-64). However, notwithstanding appellants' extended argument on the issue of whether their refund action should have been certified as a class action, they recite no statute which specifically authorizes certification of their refund case as a class action. (L.F. 98-113).

As a general rule of law and absent a specific statutory authorization for use of class action procedures, a case involving a request for refund of taxes or governmental fees may not be maintained as a class action where another specific statutory procedure is prescribed for obtaining a refund. ***State ex rel Ellsworth Freightlines, Inc. vs. State Tax Commission of Missouri,*** 651 S.W.2d 130 (Mo. Banc 1983); ***Charles vs. Spradling***, 524 S.W.2d 820 (Mo. Banc 1975). As succinctly stated in ***Sprint Communications Company, L.P. vs. Director of Revenue***, 64 S.W.3d 832, 834 (Mo. Banc 2002):

> As a general rule the sovereign need not refund taxes voluntarily paid even if illegally collected. (citation omitted) *** Statutory provisions waiving sovereign

> immunity are strictly construed, and when the state consents to be sued, it may prescribe the manner, extent, procedure to be followed, and any other "terms and conditions as it sees fit." (citation omitted).

The basic reasoning for this rule is that the state and its political subdivisions enjoy sovereign immunity except to the extent that such immunity is specifically waived by statute. ***See, State ex rel. Cass Medical Center vs. Mason***, 796 S.W.2d 621,622 (Mo. Banc 1990). "In addition, on grounds of public policy, the law discourages suits for the purpose of recovering taxes alleged to have been illegally levied and collected; and it is for this reason of policy that the remedy of a refund, including time in which it must be filed, is the exclusive remedy." ***Charles vs. Spradling***, 524 S.W.2d at 823. Where statutory procedure exists for obtaining a refund of taxes erroneously or illegally paid, that procedure must be followed and a class action is not appropriate in lieu of or in addition to such statutory procedure. "Rule 52.08 is procedural rather than substantive; and despite the desirability of actions under the rule in certain circumstances, e.g., annexation cases under the Sawyers Act, it may not be interpreted to permit a procedure for suing the state not provided within the limited waiver of sovereign immunity…" ***Charles vs. Spradling***, 524 S.W.2d at 823. When the state consents to be sued, it may only be sued in the manner and to the extent provided by statute and the state by statute may prescribe the procedure to be followed. ***State ex rel Lohman vs. Brown***, 936 S.W.2d 607 (Mo. App. 1997) (class action procedure may not be used to obtain refund of illegal use taxes where there exists a statutory procedure for individual taxpayers to claim refunds). ***See also, H.S. Construction vs. Lohman***, 950 S.W.2d 331, (Mo. App. 1997).

The named plaintiffs in the underlying case sought a refund of taxes under §139.031from the county collector based upon an alleged violation of §67.110 RSMo Section 67.110 itself does not prescribe any remedy for violation of that section. Section 139.031 generally applies to any case in which the taxpayer desires to obtain a refund of property taxes from a county collector and is the only property tax refund statute which is applicable to monies held by the county collector. Specifically, this statute requires the taxpayer to file a written protest of his or her taxes with the collector as the condition precedent to obtaining a refund. Unless the taxpayer follows procedure outlined in that statute, no refund is available. ***Pac-One, Inc., vs. Daly***, 37 S.W.3d 278 (Mo. App. 2000). The named plaintiffs in the underlying case are the only persons to invoke the statutory refund procedure specified in §139.031 with respect to the issues raised in this case. Appellants may not circumvent the specific refund procedures outlined in §139.031 by seeking to obtain class action status. Neither the common law doctrine of virtual representation established under ***Brown vs. Bibb,*** 201 S.W.2d 370 (Mo. Banc 1947), nor §507.070, RSMo, provide an independent basis to permit a class action in this case considering the law established by this court concerning the interpretation of statutes governing tax refunds.

Likewise, the fact that class actions may be maintained for violations of Article X, §22 of the Missouri Constitution pursuant to Article X, §23 does not lend support to appellants' argument that class action status should have been granted in this case. As this court explained in ***City of Hazelwood vs. Peterson***, 48 S.W.3d 36 (Mo. Banc 2001):

> Unlike a statutory remedy, however, the remedy in article X, section 23 is not a typical waiver of the state's sovereign immunity. To the contrary, the constitutional amendment carves out specific state actions for which the state has no sovereign immunity to waive. The people of Missouri have reserved to themselves the constitutional right to enforce the Hancock Amendment, which operates as a wholly independent mechanism for the refund of unconstitutional taxes. In a suit brought under article X, section 23 of our constitution, the "plaintiffs are not precluded from bringing a Rule 52.08 class action if such a class action is appropriate under the specific facts of the case." (citation omitted). ***Id*** at 41.

In addition, §137.073 (8) RSMo does not aid appellants in their argument for class certification in this action. This statute deals only with purported violations of §137.073 dealing with changes in levy due to reassessment and has no application to the pending action which deals with a purported violation of §67.110 RSMo. As stated above, in order for appellants to obtain class action certification in accordance with rule 52.08, appellants must be able to point to a statute which specifically authorizes a class action to obtain a refund of taxes determined to be illegally paid under the provisions of §67.110, RSMo. No such statute exists and therefore the remedy of class action is not authorized.

Appellants also argue that subsection 5 of §139.031, RSMo, can be read to allow a class action since the taxes in issue were “mistakenly or erroneously paid” and there is no requirement for individuals to pay their taxes under protest to obtain a refund. (Appellants’ Substitute Brief, p.p. 61-64). However, to qualify for refund for a mistaken

or erroneous tax payment, the tax and imposition of the must be illegal and not merely a purported mistake in judgment in applying the law. ***See, Buck vs. Leggett***, 813 S.W.2d 872 (Mo. 1991). "An erroneous or illegal tax is one levied without statutory authority. **Black's Law Dictionary**, 486, (5th ed. 1979)." ***Community Federal Savings & Loan Association vs. Director of Revenue***, 752 S.W.2d 794, 798 (Mo. Banc 1988). Appellants' argument that ***Community Federal Savings & Loan Association vs. Director of Revenue, supra***, supports their position is misplaced because there is a difference between a jurisdictional defect and an alleged error in calculation. In the present case, the Columbia 93 School District had jurisdiction to impose the rate of levy under §67.110, RSMo; the issue is whether rate of tax was set in conformity with §67.110, RSMo, not a jurisdictional defect rendering the taxes collected void or invalid. In addition, §139.031.5 provides that, "…upon written application a taxpayer…" the collector may refund of taxes mistakenly or erroneously paid. By its plain language, subsection 5 contains no provision for refunds of property taxes to be claimed by or on behalf of a class of taxpayers. Therefore, strictly construing the statute demonstrates no legislative intent to waive sovereign immunity to the extent of permitting such a procedure. See***, Charles vs. Spradling,*** 524 S.W.2d at 823**.**

Thus, based upon the foregoing cases, subsection 5 of §139.031 has no application to this case and does not stand as a basis for the trial court to certify appellants' case as a class action.

II.

THE TRIAL COURT DID NOT ERR IN SUSTAINING RESPONDENT COLLECTOR'S MOTION TO JOIN THE COLUMBIA 93 SCHOOL DISTRICT AS A NECESSARY AND INDISPENSABLE PARTY DEFENDANT TO APPELLANTS' TAX REFUND ACTION BROUGHT PURSUANT TO §139.031, RSMO, BECAUSE THE COUNTY COLLECTOR HAS NO LEGAL RESPONSIBILITY FOR ESTABLISHING OR DEFENDING THE TAX RATE LEVY CHALLENGED BY APPELLANTS AND ONLY THE COLUMBIA 93 SCHOOL DISTRICT HAS SUCH RESPONSIBILITY AND AUTHORITY AND IS THEREFORE A NECESSARY AND INDISPENSIBLE PARTY TO APPELLANTS' ACTION UNDER RULE 52.04.

Standard of Review

In Missouri, the Court of Appeals reviews a trial court's joinder of a party pursuant to Rule 52.04 under an abuse of discretion standard. ***Feinstein vs. Feinstein***, 778 S.W.2d 253, 257 (Mo. App. E.D. 1989). "In reviewing an alleged abuse of discretion, we review the trial court's ruling to determine whether it was supported by substantial evidence, was against the weight of the evidence, or was the result of a misapplication of the law. ***Boatmen's First Nat'l Bank vs. Krider***, 844 S.W.2d 10, 11 (Mo. App. W.D.1992)." ***Fuller vs. Ross*** 68 S.W.3d 497, 500 (Mo. App. W.D. 2001).

Argument In Response to Appellants' Point Relied Upon IV

Appellants' Amended Petition is in two counts: Count I is for a declaratory judgment that the 2001 Columbia 93 School District tax rate was unlawful; Count II is

for a refund of the amount of the unlawful tax collected pursuant to §139.031 RSMo. (L.F. 45-55). Appellants argue that the refund statute contemplates the taxpayers and the collector as being the sole parties to a §139.031 RSMo refund action and refer to ***Bartlett vs. Ross***, 891 S.W.2d 114, 116-117 (Mo. Banc 1995) as authority for this proposition; appellants say the refund statute does not contemplate the taxing authorities being parties. However, appellants ignore the fact that they sought a declaratory judgment as well as a refund under §139.031, RSMo. Appellants further ignore differences in the fundamental statutory duties of the collector and school district which give rise to the need for the Columbia 93 School District to be joined as a party in this proceeding.

First, because appellants sought a declaratory judgment under Count I of their amended petition (L.F. 50-51), the Columbia 93 School District was properly joined as a party defendant because a potential adverse financial consequence to a taxing entity as a result of a declaratory judgment itself gives the taxing entity standing to be a party to the proceeding. ***See, Ste. Genevieve School District R-11 vs. Board of Alderman of the City of Ste. Genevieve***, 66 S.W.3d 6, 10-11 (Mo. Banc 2002); ***See also, State ex rel. School District of City of Independence vs. Jones,*** 653 S.W.2d 178, 189 (Mo. Banc 1983).

Further, Missouri Supreme Court Rule 52.04 provides that a person shall be joined in an action if that person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence, may, as a practical matter, impair or impede the person's ability to protect that interest. Rule 52.04(a)(2)(i). Such a person is referred to as a "necessary party." A "necessary party" is one who is so vitally interested in the subject matter of controversy that a valid judgment cannot be

effectively rendered without the person's presence. ***Missouri National Education Association vs. Missouri State Board of Education***, 34 S.W.3d 266, 276-277 (Mo. App. 2000). ***In re Estate of Remmele***, 853 S.W.2d 476, 481 (Mo. App. 1993). An interest in the subject of an action does not include a mere, consequential, remote, or conjectural possibility of being affected by the result of the action in some manner. ***Id.*** Rather, the interest must be such a direct claim upon the subject matter of the litigation that the person will either gain or lose by direct operation of the judgment. ***Id.***

If the "necessary party" cannot be joined, then a court must determine whether the action should proceed in the absence of the nonjoined person or whether the action should be dismissed with prejudice. If the court determines that the action should be dismissed, the absent person is regarded as an "indispensable party." Rule 52.04(b). When deciding whether an action should be dismissed, Rule 52.04(b) requires a court to consider: (i) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; (ii) the extent to which by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (iii) whether a judgment rendered in the person's absence will be adequate; and (iv) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

In the instant case, the School District has a claim upon the subject matter of the litigation which will be directly affected by the outcome of this litigation. Appellants are seeking a partial refund of the taxes they paid to the School District. Consequently, it is the School District's conduct in setting the tax rate that is challenged and it is the School

District rather than the Collector which will suffer harm if judgment had been issued in appellants' favor. The Collector will not suffer any detriment. The Collector is only holding the School District's tax money. She does not have any stake in the money. Furthermore, the underlying issues of this case concern the School District's tax rate and the School District's budget. Appellants have challenged the legality of the property tax rate or rate of levy set by the Columbia 93 School District under section 67.110, RSMo. However, the county collector has no statutory authority to set or to defend the rate of levy established by the Columbia 93 School District, or for that matter, any other political subdivision. Although section 139.031 requires a suit for property tax refund to be brought against the county collector in cases which are outside the jurisdiction of the local Board of Equalization and State Tax Commission, the statute by its plain language does not require the collector to defend the actions of other taxing authorities in the fulfillment of their statutory duties of setting annual tax rates to fund their governmental operations. Because the county collector is receptacle for payment of property taxes pending distribution to the taxing authorities, the collector of necessity must be a party to any circuit court proceeding for the refund of property taxes; however, nowhere in the Missouri statutes is there an obligation or authority on the part of the county collector to provide a legal defense for the conduct of other taxing authorities in setting annual tax rates.[1]

[1] It is noteworthy that neither county prosecutors nor county counselors are authorized or required to provide a legal defense for taxing authorities other than the county and its

In ***Bunker R-III School District vs. Hodge***, 666 S.W.2d 20 (Mo. App. 1984), the Missouri Court of Appeals found that a school district was a necessary party in a factual situation similar to the instant one. The case involved the apportionment of "national forest reserve funds" among several school districts. Federal law provides that a portion of the money received by the United States government from each national forest shall be paid to the counties where such national forest is situated and that the counties shall distribute a portion of the funds to the public schools within the county. In ***Bunker R-III School District***, the Shannon County Court adopted a national forest reserve fund distribution plan whereby all school districts in Shannon County, including Eminence, would receive a portion of the funds. The three other school districts in Shannon County brought suit against the Shannon County Court, the County Treasurer, and the County Clerk, but not the Eminence School District, seeking an order from the Circuit Court striking down the County Court's distribution plan. The Court of Appeals, *sua sponte*, held:

> The subject of this action is, of course, $187,610 in forest funds, and Eminence presumably claims an interest therein (the $48,678 apportioned to it in the order of August 12, 1982). A final judgment vacating the order of August 12, 1982, would obviously impair, indeed destroy, Eminence's

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officials. Sections 56.293 and 56.640, RSMo, only permit the defense of the county and its various constituent personnel.

> ability to protect its interest in the allocation granted by that order. It thus appears that Eminence is a necessary party.
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> * * *
>
> The defendants [the County Court, Treasurer and Clerk] have no interest in the funds, but only the duty to distribute them in compliance with the law. The entities interested in the distribution are the eligible school districts. If this litigation results in the order of August 12, 1982, being set aside, it is Eminence, not defendants, what will feel the financial effect. Consequently, we hold that Eminence is a necessary party as defined by Rule 52.04(a).

Id*.** at 24 (language in brackets added.) ***See also*, *School District No. 24 of St. Louis County vs. Neaf, 148 S.W.2d 554 (Mo. 1941) (in suit to challenge a statute which allowed water company pipes to be taxed where the pipes were located, the county officials charged with the duty of assessing and collecting the taxes were not the only necessary parties. The school districts and towns where the pipes were located were necessary parties); ***School District No. 4 vs. Smith***, 90 Mo. App. 215 (1901) (suit by school district against a county clerk to declare illegal and void a proceeding whereby the clerk changed the boundaries between two school districts. The other school district was a necessary party because the county clerk had no interest in the outcome of the litigation and the other school district could lose part of its tax base if the proceeding was struck down).

Accordingly, both case law and Rule 52.04 dictate that when the underlying issue before a court is whether a school district is entitled to certain tax moneys, the school district must be made a party to the action. Because the instant case is one in which this Court must decide whether the School District is entitled to certain tax money, the School District must be a party.

Appellants rely heavily upon ***Bartlett vs. Ross***, 891 S.W.2d 114, 116-117 (Mo. Banc 1995), in which the Missouri Supreme Court held that a School District that had been permitted to intervene in circuit court could not appeal the result. However, that case did not deal with the same facts or legal issues present in the pending case. In ***Ross*** the Court read §139.031.4 to preclude a school district from appealing a circuit court decision, but did not hold that a school district could not be joined in a refund proceeding directly involving the process in which the school district set a tax rate or rate of levy, a matter with which the county collector was not involved. In those cases cited by appellants which involve school districts being denied intervention in §139.031 RSMo tax refund cases, the matters in issue involved the county assessor and his performance in carrying out statutory duties of office such as the classification or valuation or assessment of property for tax purposes, not the setting of a tax levy which is outside the scope of statutory duties prescribed for the assessor or collector. ***See, e.g.***, ***State ex rel Brentwood School District vs. State Tax Commission***, 589 S.W.2d 613 (Mo. 1979) (no school district intervention in tax assessment cases before the State Tax Commission); ***Alexian Brothers Sherbrooke Village vs. St. Louis County***, 884 S.W.2d 727 (Mo. App. E.D. 1994) (no school district intervention to determine the applicability of a tax

exemption which is the responsibility of the assessor); ***Maplewood-Richmond Heights School District vs. Leachman***, 735 S.W.2d 32 (Mo. App. E.D. 1987) (no tax payer intervention in a disbursement proceeding §139.031.8, RSMo, between school district and the collector because tax payer has no statutory rights or duties regarding issues of disbursement). The common theme of these cases is that only governmental entities or officials which perform some statutory duty that is in issue may participate as a party in a refund proceeding. The pending case involves the substantive question of whether the Columbia 93 School District complied with the requirements of §67.110, RSMo, and does not involve any question concerning the county collector or assessor in the performance of their statutory duties. Common sense and reason therefore dictate that the Columbia 93 School District should be permitted to defend its actions as a party to this proceeding.

CONCLUSION

For the foregoing reasons, respondent Lensmeyer respectfully requests that the judgment of the trial court be affirmed with respect to the issues briefed herein which affect the respondent Lensmeyer's performance of her official duties as county collector and for such other relief as the court deems just and proper.

Respectfully Submitted

_____

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CERTIFICATION

The undersigned hereby certifies the following:

1. An original and ten copies of the foregoing brief along with a virus free electronic copy of the brief in Word 2002 format on an approved diskette was mailed postage prepaid to the court at its address of record, and

2. A true copy of the foregoing brief was mailed postage prepaid to all counsel of record at counsels' addresses and that an electronic version of said brief was sent to them on a virus free diskette or by email as an attachment, and

3. The foregoing brief complies with rules 55.03, and 84.06 and that the brief contains 5,189 words, and

4. The foregoing transmission of documents occurred on the ___ day of _____, 2004.

_____

John L. Patton

APPENDIX