



Table of Contents	2
Alphabetical Table of Authorities	3
JURISDICTIONAL STATEMENT	9
STATEMENT OF FACTS	10
POINTS RELIED ON	
POINT I	18
POINT II	18
ARGUMENT	
ARGUMENT I	20
ARGUMENT II	41
CONCLUSION	54

**TABLE OF AUTHORITIES**

Cases	Pages of Brief Where Cited
Allright Properties, Inc. v. Tax Increment Financing Com'n, 240 S.W.3d 777 (Mo.App. W.D. 2007)	24
American Fire Alarm Co. v. Board of Police Comm'r, 285 Mo. 581, 227 S.W. 114 (1920)	45-46
Arsenal Credit Union v. Giles, 715 S.W.2d 918 (Mo. banc 1986)	14
Bosworth v. Sewell, 918 S.W.2d 773 (Mo. banc 1996)	27
Briner Elec. Co. v. Sachs Elec. Co., 703 S.W.2d 90 (Mo. App. E.D. 1985)	12
Brownstein v. Rhomberg-Haglin and Associates, Inc., 824 S.W.2d 13 (Mo. banc 1992)	26
City of Ellisville v. Lohman, 972 S.W.2d 527 (Mo.App. E.D.1998)	26
City of Lexington v. Hager, 337 S.W.2d 27 (Ky. App. 1960)	50,51
Commerce Bank, N.A. v. Blasdel, 141 S.W.3d 434 (Mo.App. W.D. 2004)	20,21,42
Control Technology and Solutions v. Malden R-I Sch. Dist., 181 S.W.3d 80 (Mo. App. 2005)	25
Dyche v. city of New London, 288 S.W.2d 648 (Ky.App. 1956)	50
Farmer v. Kinder, 89 S.W.3d 447 (Mo. Banc 2002)	22
General American Life Ins. Co. v. Bates, 363 Mo. 143, 249 S.W.2d 458 (1952)	36,37
Greenbriar Hills Country Club v. Director of Revenue, 935 S.W.2d 36 (Mo. banc 1996)	27
H& B Masonry v. Davis, 32 S.W.3d 120 (Mo. App. E.D. 2000)	21,42

Kearney Special Rd. Dist. v. County of Clay, 863 S.W.2d 841 (Mo. banc 1993)	27, 30
Kelly v. Hanson, 959 S.W.2d 107 (Mo. Banc 1997)	23
Kerperien v. Lumberman's Mut. Cas. Co., 100 S.W.3d 778 (Mo. banc 2003)	20,42
Leggett v. Missouri State Life Ins co., 342 S.W.2d 833 (Mo. banc 1960)	51
Moore v. Brown, 165 S.W.2d 657 (Mo. banc 1942)	40
Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976)	20,21, 42
Parrett v. Integon Life Ins. Co., 590 S.W.2d 411 (Mo. App. S.D. 1979)	12
Rathjen v. Reorganized School District R-II of Shelby County, 284 S.W.2d 516 (Mo. banc 1955)	40
Reed v. City of Springfield, 841 S.W.2d 283 (Mo. App. S.D. 1992)	34
Romans v. Director of Revenue, 783 S.W.2d 894, 896 (Mo. banc 1990)	24
Schiles v. Gaertner, 659 S.W.2d 791 (Mo. App. E.D. 1983)	27
Siegel v. City of Branson, 952 S.W.2d 294 (Mo.App. S.D.1997)	49
Smith v. Shaw, 159 S.W.3d 830 (Mo. banc 2005)	21,41
St. Louis County v. Litzinger, 372 S.W.2d 880 (Mo. 1963)	31,32
State ex rel. Board of Control of St. Louis School and Museum of Fine Arts v. City of St. Louis, 115 S.W. 534 (Mo. banc 1908)	39
State ex rel. Carpenter v. City of St. Louis, 2 S.W.2d 713 (Mo. banc 1928)	46
State ex rel. Field v. Smith, 329 Mo. 1019, 49 S.W.2d 74 (1932)	46
State ex rel. Fort Zumwalt School Dist. v. Dickherber, 576 S.W.2d 532 (Mo. banc 1979)	24

State ex rel. Hawes v. Mason, 153 Mo. 23, 54 S.W.524 (Mo. 1899)	44,45,46,47
State ex rel. McNamee v. Stobie, 92 S.W. 191 (Mo. 1906)	44-45
State ex rel. May Dept Stores v. Weinstein, 395 S.W.2d 525 (Mo. App. 1965)	27,30
State ex rel. Missouri Portland Cement Co. v. Smith,90 S.W.2d 405 (1936)	37
State ex rel. O'Brien v. Roos, 397 S.W.2d 578 (Mo. 1965)	14
State ex rel. St. Louis Police Commssrs v. St. Louis County Court, 34 Mo. 546 (1864)	45
State ex rel. Priest v. Gunn, 326 S.W.2d 314 (Mo. banc 1959)	38
State ex rel. Riordan v. Dierker, 956 S.W.2d 258 (Mo. banc 1997)	26
State ex rel. Sayad v. Zych, 642 S.W.2d 907 (Mo.1982)	45
State ex rel. Shepley v. Gamble, 280 S.W.2d 656 (Mo. banc 1955)	15,48
State ex rel. Wyatt v. Ashbrook, 154 Mo. 375, 55 S.W. 627 (1900)	51
State v. Gales, 694 N.W.2d 124 (Nebr. 2005)	20-21, 41
State v. James, 109 P.3d 1171 (Kan. 2005)	21,41
State v. Knapp, 843 S.W.2d 345 (Mo. 1992)	28
State v. Stewart, 869 S.W.2d 86 (Mo. App. W.D. 1993)	40
Strother v. Kansas City, 223 S.W. 419, 421 (Mo. banc 1920)	47
Three Rivers Junior College District of Poplar Bluff v. Statler, 421 S.W.2d 235 (Mo. banc 1967)	38,53
Wells v. Missouri Property Ins. Placement Facility, 653 S.W.2d 207 (Mo. banc 1983)	27

Article X, §1 Mo. Constitution of 1875	39
Article X, §10 Mo. Constitution of 1875	39
Article X, §11 Mo. Constitution of 1875	46,47
Article X, §12 Mo. Constitution of 1875	47
Article IV §15 Mo. Constitution of 1945:	9,40
Article IV §22 Mo. Constitution of 1945:	9,40
Article VI §12 Mo. Constitution of 1945:	32
Article VI §13 Mo. Constitution of 1945:	10,13,33
Article VI §14 Mo. Constitution of 1945:	36
Article VI §18(a) Mo. Constitution of 1945:	14
Article VI, §18(b) Mo. Constitution of 1945:	48
Article VI, §31	44
Article X, §3	48,50
Article X, §10(a)	9,18,19,20,22,28,31,36,38,39,40,41,42,43,50,52,53
Article X §10(b)	40,53
§3.150	12
§50.330	15,43
§50.340	10,13,15,25,28,29,31,33,42,43,51
§50.350	13,16,25,33,42,43
§50.360	13,16,25,33,43
§50.370	13,16,25,33,42,43

§50.380		13,16,25,33,43
§50.390		13, 25,33,43
§50.400		25,43
§50.410		13,25,33,43
§50.420		25,43
§50.430		13,24,25,33,43
§50.480		42
§57.119		44
§57.201		15,44
§57.220		15,44
§57.221		44
§57.230 (2 <sup>nd</sup> class counties)		15
§57.250		15,44
§57.251 (3 <sup>rd</sup> and 4 <sup>th</sup> class counties)		15,44
§57.278		10,11,16,40,48,51,52
§57.280	10,11,12,13,15,16,24,25,26,27,28,29,31,32,33,35,36,40,42,43,48	
§57.290		12
§70.010-090		36
§70.210-70.325		36
§84.010 to 340		44
§§84.350 to 84.890		45

§488.010	12,13,27,32,34,51
§488.435	10,11,13,15,16,17,24,26,27,28,29,31,32,33,34,35,36,40,42,43,51
§488.445	35
§488.447	35
§650.350	10.11
H.B.2224	Passim
Article II §2.180 St. Louis County Charter:	13,15,31,33
Article IV, §4.060 St. Louis County Charter:	16,25,31
Art. II, § 2.505 St. Charles County Charter	15
Article II, §2.513 St. Charles County Charter:	13,16,25,32,33
Article IV §4.1301.3 St. Charles County Charter	13
17 Mo. Prac., Civil Rules Practice §77.01-01. Fn. 9	12
Black's Law Dictionary 791 (6th ed.1990)	24

### **JURISDICTIONAL STATEMENT**

This is an appeal from the Amended Judgment of the Circuit Court of Cole County, Missouri, the Honorable Richard G. Callahan, denying the Appellants' petition for declaratory relief which sought a declaration that H.B.2224 violated the Missouri Constitution Article X, Section 10, Article III, Section 1 and Article IV Sections 15 and 22. Steve Ehlmann, et al. v. The Honorable Jeremiah (Jay) Nixon, et al., Case No. 08AC-CC1020 (October 26, 2009). LF 418; App. A1-A8. H.B.2224's provisions establish an additional service of process fee due the sheriff of each county in civil cases. Existing statutory provisions establish that fees

collected by county officers are to be paid into the county treasury, and become county funds upon collection by the sheriff and payment into the county treasury. Read in pari material H.B.2224 and existing statutory provisions make H.B.2224's additional service fee "county funds." H.B.2224's provisions ordering the county to pay such county funds from the county treasury to the state treasurer for use to supplement the salaries and benefits of county employees serving as deputy sheriffs pursuant to a formula adopted by the MoSMART board constitutes a tax on the county for a county purpose in violation of Article X, Section 10(a) of the Constitution of Missouri. Appellants further contend that the trial court erred in denying Appellants' petition for declaratory relief in that H.B.2224 violates Article IV, Section 15 and Article IV, Section 22 in that these constitutional provisions provide that the Treasurer shall be the custodian of state funds and those received from the United States government and the funds herein placed in the Treasurer's charge are county funds pursuant to the terms of Article VI, Section 13 and Section 50.340 RSMo.

### **STATEMENT OF FACTS**

Appellants Amended Petition challenges the constitutionality of all provisions of H.B. 2224 which allow the state to tax the county treasury and thereby seize the additionally authorized fee for service of process in civil cases for the purpose of funding the obligation of counties to pay county employees, namely county deputy sheriffs.

### **HOUSE BILL 2224**

House Bill 2224 ("H.B.2224") was enacted during the 2008 legislative year and was

effective August 28, 2008. (LF78) H.B.2224 repealed §§57.280, 488.435, 590.050 and 650.350 and enacted five new sections, including §57.278. (LF 78) Section 57.278 creates in the state treasury the “Deputy Sheriff Salary Supplementation Fund” (the “Fund”)(LF 78), which is to consist of funds collected from a new charge on service of process in civil cases imposed by §§ 488.435.3 and 57.280.4 (LF 78,80-81), and is to be used only for the supplementation of salaries and the employee benefits resulting from such salary increases of county deputy sheriffs.<sup>1</sup> (LF 78) Pursuant to Section 57.278.1, the state treasurer shall be the custodian of the fund arising from the \$10 charges paid from the county treasurer to the state treasurer. (LF 78) § 57.278.1 The state treasurer may approve disbursements from the fund and is to invest moneys in the fund in the same manner as other funds are invested. (LF 78) §§ 57.278.1 and .2

H.B.2224 then re-enacts §57.280.1 through .3, including the provision in subsection .1 which states “All of such charges shall be received by the sheriff who is requested to perform the service.” LF 79. H.B.2224’s newly re-enacted §57.280 then adds a new subsection .4

---

<sup>1</sup>The county treasurer is required by H.B.2224 to surrender all funds collected pursuant to this new charge over to the State Treasurer, who in turn deposits them into the Fund. Sections 488.435.3 and 57.280.4. (LF 80-81)The State Treasurer is authorized to pay funds from the Fund to MoSMART, which entity is made up of five sitting sheriffs chosen from a list of twenty names provided by the Missouri Sheriff’s Association board of directors, of which five are then appointed by the Governor, pursuant to Section 650.350.1 (LF 81)

adding an additional \$10 fee due the sheriff (“the sheriff shall receive ten dollars . . .”)( LF 80) for service of process in civil cases in addition the fees set forth in 57.280.1. Sections 488.435.1 and .3 then parallel that language to authorize that the court cost be charged. LF 80-81.

Sections 57.280.4 and 488.435.3 RSMo., specifically require that the additional \$10 charge received by the sheriffs for service of any summons, writ, subpoena, or other order of court “shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer.” (LF at 80-81) §§ 57.280 and Section 488.435.

Section 650.350.8, RSMo, delegates the responsibility of administering the new Fund to the MoSMART Board. LF 83.

### **COURT COSTS**

H.B.2224 directs the imposition of additional court costs in the form of a charge imposed for a service provided by the Sheriff. Court costs did not exist at common law. Such costs are creatures of statute and cases such as Parrett v. Integon Life Ins. Co., 590 S.W.2d 411, 413 (Mo. App. S.D. 1979) note their status as such, as do treatises such as 17 Mo. Prac., Civil Rules Practice §77.01-01. Missouri courts strictly construe such statutes. Parrett v. Integon Life Ins. Co., at 413; Briner Elec. Co. v. Sachs Elec. Co., 703 S.W.2d 90 (Mo. App. E.D. 1985).

In 1996 the General Assembly enacted Senate Bill 869 (S.B. 869) as a comprehensive revision of the Missouri statutes providing for court costs. See Laws 1996: S.B. 869. The General Assembly directed the State Revisor of Statutes to collect and re-codify into a single

chapter the various statutes providing for court costs. Section 3.150 RSMo. Chapter 488 is the single chapter of the Missouri Revised Statutes reflecting all court costs. Part of Section 3.150 RSMo. directs the Revisor of Statutes as follows: “The revisor shall recodify those sections or portions of sections of existing law which impose such court costs, including, but not limited to sections . . . 57.280, 57.290 . . .” In 2000, the General Assembly again enacted a bill concerning re-codification into a single chapter. See 17 Mo. Prac., Civil Rules Practice §77.01-01. Fn. 9. (LF290-291)

Missouri’s court costs statutes establish what court costs are allowable [Section 488.010 RSMo.] and then identify what can be recovered as court costs. Section 488.010(1) defines “court costs” as “the total of fees, miscellaneous charges and surcharges, imposed in a particular case.” Section 488.010(2) defines “fees” as “the amount charged for services to be performed by the court.” Section 488.010(3) defines “miscellaneous charges” as “the amounts allowed by law for services provided by individuals or entities other than the court.” Finally, “surcharges” are defined as “additional charges allowed by law which are allowed for a specific purpose designated by law.” The charge for service of process (Section 488.435 reflecting 57.280 RSMo.) is thus one of the miscellaneous charges which are part of court costs and is a fee for service paid to an entity other than the Court. (LF291)

Article VI, §13 of the Missouri Constitution establishes that fees earned by county officers in civil cases may be retained by them as provided by law. In the case of civil fees the statutes of Missouri and the Charters of St. Louis and St. Charles counties require that the fees be accounted for and deposited with the county. See §§50.340, 50.350, 50.360, 50.370,

50.380, 50.390 50.410, and 50.430 RSMo.; St. Louis County Charter, Article II §2.180.4(LF at 168, left column); St. Charles County Charter Article II, §2.513 and Article IV §4.1301.3 (LF at 221). See also H.B.2224 §57.280.1 and .4 and §488.435.1 and .3.

Sections 57.280.4 and 488.435.3 as reenacted by H.B. 2224 require that the additional \$10 charge received by the sheriffs for service of any summons, writ, subpoena, or other order of court “shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer.”

### **THE PARTIES**

Appellants St. Charles County and St. Louis County (hereafter “the Counties”) are constitutional charter counties and political subdivisions of the State of Missouri pursuant to Article VI, §§ 18(a), et seq., of the Missouri Constitution. (LF 283)

Plaintiff Steve Ehlmann, a taxpayer, is a resident of St. Charles County, Missouri and is the duly elected and serving County Executive of that County. (LF 283) Plaintiff Charlie A. Dooley, a taxpayer, is a resident of St. Louis County, Missouri and is the duly elected and serving County Executive of that County. (LF 283) Plaintiff Charles R. Gross, a taxpayer, is a resident of St. Charles County, Missouri and is the duly appointed and serving Director of Administration of St. Charles County. (LF 283) Appellants have a pecuniary interest in the additional \$10 charges sufficient to confer standing. See State ex rel. O’Brien v. Roos, 397 S.W.2d 578, 579-580 (Mo. 1965). See also Arsenal Credit Union v. Giles, 715 S.W.2d 918

(Mo. banc 1986) (city officials have standing to contest constitutionality of tax exemption statute which would deny city opportunity to collect taxes on exempt properties).

After filing this matter, the trial court allowed the Missouri Deputy Sheriffs Association and James B. Schrader, a deputy sheriff in Audrain County who represented he was a beneficiary of the Supplementation Fund, to intervene. (LF 60)

### **COUNTY EMPLOYMENT**

The executive branch of the state of Missouri does not set deputy sheriff salaries. Setting deputy salaries is done pursuant to the charters and ordinances in charter counties, LF167, A39, LF188, A40 and by the county commission and sheriffs in other counties (with the input of the circuit judges as set forth in Chapter 57 of the Missouri Revised Statutes. The State of Missouri does not appropriate state general revenue for deputy sheriff salaries in any county jurisdiction. Appellants set forth in their uncontroverted facts in their motion for summary judgment that funding deputy sheriff salaries has been the responsibility of county governing bodies until H.B.2224, (LF 288), State ex rel. Shepley v. Gamble, 280 S.W.2d 656 (Mo. banc 1955); Charter of St. Louis County §2.180, LF 166-167; Charter of St. Charles County Art. II, § 2.505 LF 188. See also §50.330 RSMo., §57.250, §57.251 (3<sup>rd</sup> and 4<sup>th</sup> class counties), §57.220, §57.230 (2<sup>nd</sup> class counties), §57.201 (1<sup>st</sup> class nonchartered counties),

### **COUNTY FINANCE STRUCTURE**

Once such fees for service of process are received into the county treasury from the Sheriff, §57.280.1 and .4 and §488.435.1 and .3 direct the county treasurer to take funds from the county treasury and pay them over to the state treasurer. HB.2224, §57.280.1 and .4 at

LF 79-80; §488.435.1 and .3 at LF 80-81. However, Missouri law requires that all fees, fines, costs, commissions, penalties and charges imposed by law and collected by a county officer shall be paid into the county treasury and “become the property of the county”. §50.340 RSMo. (See also 50.350 and 50.360 (2<sup>nd</sup> class counties) and 50.370 (3<sup>rd</sup> and 4<sup>th</sup> class counties) and Charters of St. Louis County § 4.060 (LF 182) and St. Charles County Article II, §2.513 (LF 189). Section 50.380 RSMo. states “Any county officer required to make such report who shall fail or neglect to comply with any provision of sections 50.340 to 50.370 shall forfeit his salary for that month, and be deemed guilty of a misdemeanor, . . . and if he shall continue in default for three months, his office shall be deemed vacant . . .” The structure of county finance law is in place within the Charters and within state statute to enforce that fees are the property of the county and such fees form a basis of the county’s general revenue to support the services of the county to its citizens.

### **MISSOURI TREASURER**

Sections 57.278 and 488.435 lack a deadline by which any jurisdiction must pay to the Treasurer of Missouri the additional fees authorized by §57.278.4 and §488.435.3.

A letter dated “July 2008” from David J. Zanone, Manager of Sales/Use Tax was sent to each County Treasurer. (LF 323) The letter states “The Missouri Department of Revenue, County Tax Section, will assume responsibility for collecting the fees to credit the Deputy Sheriff Salary Supplementation Fund with the Missouri State Treasurer. (LF 323) According to the legislation, the fee will be remitted to the Missouri Treasurer by the County Treasurers.” (LF 329-330) Attached to that letter was a form entitled “County

Treasurer's Form" containing "General Instructions" stating "Please report the additional ten dollar fee for service of any summons, writ, subpoena or other order of the court included under subsection 1 of Section 57.280 imposed by House Bill No. 2224, effective August 28, 2008." (LF 324) The Department of Revenue, County Tax Section, has established that the ten dollars authorized by §57.278.4 and §488.435.3 are fees for service. (LF 323-324)

### **PROCEDURAL HISTORY**

After Appellants filed their Declaratory Judgment action on December 22, 2008 against Governor Blunt<sup>1</sup>, et al., in Cole County. Respondent-Intervenors James Schrader and the Missouri Sheriffs Association were granted leave to intervene by the Circuit Court on April 27, 2009. (LF 3,66) Respondents filed a Motion for Summary Judgment (LF 72 ) and the Respondent-Intervenors filed a Motion for Judgment on the Pleadings (LF 105). Appellants filed their Joint Response to the Respondents' motions (LF 122) and filed their joint Motion for Summary Judgment. (LF 333) All matters were heard by the Court on August 31, 2009. Pursuant to verbal permission of the Court at the hearing on August 31, 2009, Appellants filed their First Amended Petition. (LF 365) The trial court issued its Judgment on September 16, 2009. (LF 385) Appellants then filed a Motion for New Trial or

---

<sup>1</sup> In January of 2009 Governor Jeremiah "Jay" Nixon succeeded Governor Blunt as Governor of Missouri and was substituted as a party defendant for former Governor Blunt.

in the Alternative to Amend Judgment pursuant to Rule 78.01 (LF 392) and the trial court issued an Amended Judgment on October 26, 2009. (LF 405, Appendix, A1-A8).

## **POINTS RELIED ON**

### **I**

**THE TRIAL COURT ERRED IN DENYING DECLARATORY RELIEF ON THE GROUNDS THAT THE LEGISLATURE INTENDED THE FUNDS RECEIVED BY THE STATE TREASURER TO BE STATE FUNDS, BECAUSE THE PLAIN LANGUAGE OF H.B.2224 FIRST DIRECTS THE FEES FOR SERVICE OF PROCESS COLLECTED BY THE SHERIFF TO BE DEPOSITED IN THE COUNTY TREASURY AND THUS H.B.2224 VIOLATES ARTICLE X, §10(A) OF THE MISSOURI CONSTITUTION, IN THAT FEES FOR SERVICE BECOME COUNTY FUNDS ONCE THEY ARE COLLECTED BY A COUNTY OFFICIAL AND PAID INTO THE COUNTY TREASURY AND THOSE COUNTY FUNDS ARE UNCONSTITUTIONALLY TAXED WHEN THEY ARE COMPELLED TO PAY THEM OVER TO THE STATE TREASURER.**

### **II**

**THE TRIAL COURT ERRED IN DENYING DECLARATORY RELIEF UNDER COUNT IV OF APPELLANTS' AMENDED PETITION BY FAILING TO FIND THAT 1) FEES COLLECTED BY A COUNTY OFFICIAL AND PAID INTO THE COUNTY TREASURY ARE COUNTY FUNDS AND PROHIBITED FROM BEING TAXED BY THE STATE AND 2) PAYMENT OF COUNTY EMPLOYEES IS A COUNTY PURPOSE, BECAUSE H.B.2224 VIOLATES ARTICLE X, SECTION 10(A) OF THE CONSTITUTION OF MISSOURI'S PROHIBITION ON IMPOSING TAXES ON COUNTIES FOR COUNTY PURPOSES, IN THAT SUCH EXACTION OF FUNDS THAT ARE COUNTY PROPERTY AMOUNTS TO A STATE TAX AND THE PURPOSE OF PAYMENT OF COUNTY DEPUTY SHERIFFS IS A LOCAL PURPOSE, WHICH TAX AND PURPOSE IS PROHIBITED BY ARTICLE X, SECTION 10(A).**

## ARGUMENT I

**THE TRIAL COURT ERRED IN DENYING DECLARATORY RELIEF ON THE GROUNDS THAT THE LEGISLATURE INTENDED THE FUNDS RECEIVED BY THE STATE TREASURER TO BE STATE FUNDS, BECAUSE THE PLAIN LANGUAGE OF H.B.2224 FIRST DIRECTS THE FEES FOR SERVICE OF PROCESS COLLECTED BY THE SHERIFF TO BE DEPOSITED IN THE COUNTY TREASURY AND THUS H.B.2224 VIOLATES ARTICLE X, §10(A) OF THE MISSOURI CONSTITUTION, IN THAT FEES FOR SERVICE BECOME COUNTY FUNDS ONCE THEY ARE COLLECTED BY A COUNTY OFFICIAL AND PAID INTO THE COUNTY TREASURY AND THOSE COUNTY FUNDS ARE UNCONSTITUTIONALLY TAXED WHEN THEY ARE COMPELLED TO PAY THEM OVER TO THE STATE TREASURER.**

**STANDARD OF REVIEW:** The standard of review in a declaratory judgment case is the same as in any other court-tried case. “This Court will affirm the decision of the trial court ‘unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.’ ”

Commerce Bank, N.A. v. Blasdel, 141 S.W.3d 434, 442 (Mo.App. W.D. 2004) (quoting Kerperien v. Lumberman's Mut. Cas. Co., 100 S.W.3d 778, 780 (Mo. banc 2003) (quoting Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976)). The constitutionality of a statute is generally a question of law. See, e.g., State v. James, 109 P.3d 1171, 1174 (Kan. 2005); State v. Gales, 694 N.W.2d 124, 149 (Nebr. 2005). Further, interpretation of a statute is a question of law. Smith v. Shaw, 159 S.W.3d 830, 833 (Mo. banc 2005). “Questions of law are matters reserved for de novo review by the appellate court, and we therefore give no deference to the trial court's judgment in such matters.” Commerce Bank, N.A., 141 S.W.3d at 442 (quoting H & B Masonry Co., Inc. v. Davis, 32 S.W.3d 120, 124 (Mo.App. E.D. 2000)). However, the Court is bound to “exercise the power to set aside a decree or judgment on the ground that it is ‘against the weight of the evidence’ with caution and with a firm belief that the decree or judgment is wrong.” Murphy, 536 S.W.2d at 32.

An act of the legislature carries a strong presumption of constitutionality and Appellants are aware this Court will not invalidate a statute unless it clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied in the constitution. But, if all or part of a statute does conflict with a constitutional provision or provisions, this Court must hold the conflicting portions invalid. In H.B.2224 the Missouri General Assembly enacted an additional fee for service charged as a court cost for Sheriffs serving civil process. In establishing such additional fee for service the General Assembly studiously employed the requirements for a fee for service: it required the county officer

(Sheriff) receiving the fee to turn it over to his county treasury. But then the General Assembly converted this additional fee to an exaction on the county by the state by requiring the fee to be paid out of the county treasury to the state Treasurer.

Moreover, in setting up this funding source, the General Assembly embarked on a new revenue stream to fund a local purpose of counties (paying county employees serving as deputy sheriffs), and to the best of Appellants' research, created this matter of first impression. Further, the General Assembly entrusted the administration of these funds and identification of all standards for their use and requirements for handing them out to a third party, the MoSMART board. In so taxing the funds from the county and employing them for county purposes the General Assembly violated Article X, Section 10(a). Farmer v. Kinder, 89 S.W.3d 447, 452 (Mo. banc 2002)

**The trial court looked only at H.B.2224's depository for the funds,  
the state treasurer, but the constitutional spotlight must be  
upon the character of the funds at the time they are raised**

The trial court avoided the unconstitutionality of H.B.2224 by finding that the legislature intended this new charge to be state funds. (LF420-421, A3-A4). But the trial court reached its conclusion by focusing on the fact that the language of H.B.2224 provides that the county treasurer shall make such money payable to the state treasurer, LF 80 -81, while failing to give any import to the first part of that sentence which states "The money received by the sheriff under this subsection shall be paid into the county treasury and . . ." Appellants' contention is that the plain and unambiguous language of H.B.2224 establishes

the additional \$10 charge for service of process authorized by H.B.2224 is a fee for service paid to a county officer and properly paid into the county treasury and constitutes county funds.

The trial judge determined that the intent of the legislature should be determined from H.B.2224 and only H.B.2224. *“But the General Assembly’s intent in prior statutes is not controlling on the question of the General Assembly’s intent regarding the moneys raised by H.B.2224. The intent of the legislature should be determined from the language used in H.B.2224 . . .”* from Amended Judgment, LF 420, A3.<sup>2</sup> Appellants urge this Court the trial court erroneously determined that the intent of the legislature should only be ascertained from H.B.2224 itself.

---

<sup>2</sup> *“The intent of the legislature should be determined from the language used in H.B. 2224, considering the words in their plain and ordinary meaning. State v. McLaughlin, 265 S.W.3d 257, 267 (Mo. Banc 2008). The plain language of H.B. 2224 demonstrates that the General Assembly intended this new charge to be state funds – this Court thus finds that the county treasurer is to hold these new funds “payable to the state treasurer.” The moneys are to be deposited into the state treasury where they are subject to future appropriation by the General Assembly. This meets the definition of state revenue for purposes of Article X §18 of the Missouri Constitution (Hancock Amendment). Kelly v. Hanson, 959 S.W.2d 107, 111 (Mo. banc1997). The Defendants provided evidence that the Office of Administration is including these new funds in its calculation of “total state revenues.” LF 420-421, A3-A4*

When interpreting a statute, the judiciary’s task is to ascertain the General Assembly’s intent by reading the statute’s language according to its plain and ordinary meaning, and to consider statutes relating to the same subject matter *in pari materia*, even though the case may involve statutes from separate chapters of the Revised Statutes. Allright Properties, Inc. v. Tax Increment Financing Com’n, 240 S.W.3d 777, 779 (Mo.App. W.D. 2007).

“*In pari materia*” means “upon the same matter or subject.” Black’s Law Dictionary 791 (6th ed.1990). The doctrine requires that statutes relating to the same subject matter be construed together even though the statutes are found in different chapters and were enacted at different times. Romans v. Director of Revenue, 783 S.W.2d 894, 896 (Mo. banc 1990). However, “[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.* (quoting State ex rel. Fort Zumwalt School Dist. v. Dickherber, 576 S.W.2d 532, 536-37 (Mo. banc 1979)). The statutory sections at issue deal with the same general subject, and they are in fact not repugnant. They are harmonious in that §§57.280.4 and 488.435.3 instruct the county officer receiving the fees to do exactly what the very specific provisions of Chapter 50 of the Revised Statutes instruct county officers to do: account for and deposit their fees to the county treasury. Nothing in §§57.280.4 and 488.435.3 even vaguely infers that the legislature intended to amend Chapter 50’s provisions relating to the manner in which county officials are to deposit their fees to the county treasuries, or the provision of §50.340 establishing unequivocally that such fees are the property of the county. Even hypothetically

if H.B. 2224 inferred repugnancy with the provisions of Chapter 50 (a position Appellants strenuously argue did not occur), §50.340 and the other fee provisions of Chapter 50 prevail because they are the more definite provisions related to the question at hand – the nature of the fees once they are received by the county’s officer and paid into the county treasury. Thus §50.340 and the other fee provisions of Chapter 50 must prevail over a reading that the general statutory provisions in §§57.280.4 and 488.435.3 make these fees “state funds.”.

Further, the trial court’s determination that H.B. 2224 is a qualification of, or exception to, the earlier statutes regarding treatment of fees received by sheriffs that H.B.2224 and falls within the established principles of statutory construction that a “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 statute”, Control Technology and Solutions v. Malden R-I Sch. Dist., 181 S.W.3d 80, 82-83 (Mo. App. 2005), erroneously identifies §50.340 RSMo.,<sup>3</sup> as the more general statute, but in fact it is the more specific. Sections 50.340, 50.350, 50.360, 50.370, 50.380, 50.390, 50.400, 50.410, 50.420, 50.430, St. Louis County Charter provision Article IV §4.060 (LF129.182) and St. Charles County Charter provision Article II §2.513 (LF129, 189) all provide in detail the duties of county officers with regard to fees, fines, costs, commissions,

---

<sup>3</sup> Section 50.340 RSMO. applies to first class counties, its companion provisions refer to second, third and fourth class counties and to sheriffs (§50.350, 2<sup>nd</sup> class counties; §50.370, third and fourth class counties; §§50.380-50.430.

penalties and charges which are taxes or due them or their offices, and provide for the treatment of those funds. Sections 57.280.4 and 488.435.3 provide no such specificity. In fact those sections merely reference that the fees received by the sheriff “shall be paid into the county treasury.” See §57.280.4 and §488.435.3.

The plain language of H.B. 2224 indicates that the General Assembly intended that these funds be county funds, and even being county funds, intended that the counties be ordered to pay such funds over to the State Treasurer. The trial court’s Amended Judgment of October 26, 2009 avoids this plain language of the statute and thus avoids the resulting unconstitutionality of H.B. 2224.

In reaching its interpretation the trial court ignored relevant statutory construction principles. In interpreting statutes a court is required to give meaning to all the terms used. City of Ellisville v. Lohman, 972 S.W.2d 527, 534 (Mo.App. E.D.1998). Where statutory language is unambiguous there is no room afforded for construction. Brownstein v. Rhomberg-Haglin and Associates, Inc., 824 S.W.2d 13 (Mo. banc 1992). In interpreting statutes, the court’s purpose is to ascertain the intent of the legislature. State ex rel. Riordan v. Dierker, 956 S.W.2d 258, 260 (Mo. banc 1997). But in fulfilling its purpose the court must look to the language used, giving it its plain and ordinary meaning. Id. The courts are without authority to read into a statute a legislative intent which is contrary to the intent made evident by giving the language employed in the statute its plain and ordinary meaning. Kearney Special Rd. Dist. v. County of Clay, 863 S.W.2d 841, 842 (Mo. banc 1993). When the legislative intent cannot be ascertained from the language of the statute, by giving it its

plain and ordinary meaning, the statute is considered ambiguous and only then can the rules of statutory construction be applied. Bosworth v. Sewell, 918 S.W.2d 773, 777 (Mo. banc 1996). Where two statutes concerning the same subject matter, when read individually, are unambiguous, but conflict when read together, the court will attempt to reconcile them and give effect to both. Wells v. Missouri Property Ins. Placement Facility, 653 S.W.2d 207, 213 (Mo. banc 1983). However, if they cannot be reconciled, the more specific will control over the more general. Greenbriar Hills Country Club v. Director of Revenue, 935 S.W.2d 36, 38 (Mo. banc 1996). Unless the statute is incongruous or unintelligible a court cannot delete words for the court cannot presume that the General Assembly intended to use superfluous or meaningless words. State ex rel. May Dept Stores v. Weinstein, 395 S.W.2d 525, 527 (Mo. App. E.D. 1965).

A reading alone of §57.280.4 and §488.435.3, or any other part of H.B. 2224, does not disclose any ambiguity. The legislative intent is clear from the language used, giving it its plain and ordinary meaning. Each clause and provision of H.B. 2224 can be given effect, as can the provisions from Chapter 50 of the Revised Statutes set forth above and the provisions of the county charters, and can be harmonized when read together. Courts, in interpreting a particular statute, properly consider statutes involving related statutes which shed light on the subject matter. Schiles v. Gaertner, 659 S.W.2d 791 (Mo. App. E.D. 1983).

Further, each clause and provision of H.B. 2224 can be given effect in harmony with the court costs chapter, Chapter 488, and Section 488.010 particularly. The result, however, leads to the conclusion that the General Assembly intended that the additional fee for service

of process was a miscellaneous charge (fees for service to an entity other than the court) under Chapter 488. It is apparent the General Assembly also intended that the fees collected by the Sheriff as a county officer and payable to the county treasury. H.B. 2224 (§§57.280 and 488.435) Thus the fees are county funds pursuant to § 50.340 and its parallel provisions set forth in Chapter 50 for other classes of counties.<sup>4</sup> The General Assembly's stricture that the funds should be paid from the County treasury to the state treasury is also plain, and just as plainly violates Article X, § 10(a).

Even if this Court agrees with the trial court and concludes that there is ambiguity in H.B. 2224, Appellants would emphasize to this Court that the rule provides that the more specific statute prevails over the general statute and thus clearly on the issue of the character of the funds that §§57.280.4 and 488.435.3 order be paid into the County treasury, the comprehensive treatment of fees, charges, etc. paid to county officers as contained in §50.340, et seq. are the more specific statutes and must prevail. Just as clearly, the provisions of Chapter 50 and §§57.280 and 488.435 establish that these funds are first county funds.

---

<sup>4</sup> In State v. Knapp, 843 S.W.2d 345 (Mo. 1992) the Supreme Court reaffirmed the principle of statutory construction that in determining the General Assembly's intent in a statute, the court should take statutes involving similar or related matter into account when those statutes shed light on the meaning of the statute being construed.

The Court's Amended Judgment of October 26, 2009 saves the constitutionality of H.B.2224's §57.280.4 and §488.435.3 only by ignoring the full wording of those statutes. Both §57.280 and §488.435 are harmonious with §50.340 RSMo – the General Assembly makes these funds county funds and then takes them. Sections 57.280 and 488.435 provide that the money paid to the county sheriff as a fee for service of process by county employees “shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer.” §57.280.4 and §488.435.3. Clearly it was the intent of the General Assembly that the funds were to be paid into the County treasury by this county official, the Sheriff. Thus, pursuant to §50.340 RSMo., a section which is not amended in H.B. 2224, the funds are fees paid to a county officer which Section 50.340 requires be paid into the county treasury and which become county funds. Pursuant to their charters the Appellants are subject to §50.340. The two statutes are in complete harmony, both require that the Sheriff pay into the county treasury the fees for service which derives from this court cost paid for the service of process. Section 50.340 is more specific however. It specifies the relationship between the fees received by county officers and their nature and disposition.

Respondents' arguments, which the Court adopted in its Amended Judgment of October 26, 2009, avoid the legal journey that H.B. 2224 creates to put these new funds into the state treasury and jumps to the final resting place of the funds. But that view merely ignores that H.B. 2224 clearly creates a fee for service collected by a county officer (the Sheriff) and directed by the language of H.B. 2224 itself to be paid into the county treasury. There is nothing in H.B. 2224 that hints that the General Assembly considered this anything

more than a regular court cost categorized as a miscellaneous charge, which the General Assembly itself established in its earlier legislation on court fees as a fee paid to a non-court entity. Further, there is nothing in H.B. 2224 that indicates that the General Assembly exempted these funds from being handled in the manner directed by Chapter 50 of the Revised Statutes which requires county officers to pay their fees, commissions, etc into the county treasury and that the funds so paid become county funds. To read the statute as though the General Assembly did not provide for the charge as a fee for service allowed as a court cost, and to ignore that the General Assembly clearly mandated that the funds are to be placed into the county treasury violates the principle of State ex rel. May Dept Stores, that unless the statute is incongruous or unintelligible a court cannot delete words, for the court cannot presume that the General Assembly intended to use superfluous or meaningless words. State ex rel. May Dept Stores at 527. Further the court is without authority to read into H.B.2224 an intent by the General Assembly which is contrary to the intent made evident by giving the language employed in the statute its plain and ordinary meaning. Kearney Special Road Dist. at 842.

If the plain language of H.B. 2224 is not a violation of Article X, § 10(a) then it is not possible to violate that section of the Missouri Constitution. If this Court upholds the trial court's ruling this Court nullifies the prohibition of Article X §10(a).

**The mandate of H.B.2224 that the funds  
are to be paid into the county treasury  
is integral to the authority by which the funds are raised**

The entire authority for raising this additional charge for service of process is that these funds are a fee for service payable to the county officer performing a service. Everything else in H.B.2224 and related statutory provisions falls into place because these are the nature of the funds. Because of character of the funds at the time they are authorized by the General Assembly to be raised numerous statutes direct that, upon collection by the sheriff, the funds are to be paid into the county treasury. See Section 57.280.1 and Section 488.435.1 [All of such charges shall be received by the sheriff who is requested to perform the service.]; Section 57.280.4 The money received by the sheriff under this subsection shall be paid into the county treasury . . .]; Section 488.435.3 [The money received by the sheriff under subsection 4 of section 57.280 RSMo. shall be paid into the county treasury . . .” ; § 50.340, RSMo [All such fees, fines, costs, commissions, penalties and charges imposed by law and collected by such officer shall be paid into the treasury and become the property of the county.]; See §§50.340 et seq.; St. Louis County v. Litzinger, 372 S.W.2d 880 (Mo. 1963). See also St. Louis County, Mo., Charter, Article II, § 2.180.4 (LF 166-167) and Article IV, §4.060.1 (LF182); St. Charles County, Mo., Charter, Article II, § 2.513(LF 189). The trial court never directly addressed the requirement of §§488.435.3 and 57.280.4 of payment over to the state Treasurer of the \$10 additional service of process court cost charge is made from funds H.B.2224 itself requires be paid into the county treasury.

The principle that fees and charges received by county officers are county funds is reinforced by St. Louis County v. Litzinger which held that all fees received by the St. Louis County constable are required to be paid into the county treasury, since St. Louis County

pays the constable a fixed salary. Like the constable in Litzinger, sheriffs and deputies are paid a fixed salary by the Counties.<sup>5</sup> As in Litzinger, the fees received by county sheriffs and deputies here are county funds.

The test applied to determine the nature of the funds cannot be the length of time that the funds rest in the county treasury. While H.B.2224 curiously lacks any time frame under which the county is obliged to pay the funds over to the state Treasurer, the identity of the funds arises solely from their authorization. But H.B.2224 imposes a court cost charge under the provisions of §488.435.1 and 3. As set forth in the Statement of Facts, Section 488.010(1) defines “court costs” as “the total of fees, miscellaneous charges and surcharges, imposed in a particular case.” While the fees are the amount charged for services to be performed by the court, §488.010(2), charges are the amounts allowed by law for services provided by individuals or entities other than the court. §488.010(3) The additional charge for service of process in civil cases authorized as a court cost in §488.435, and authorized to be charged by the Sheriff as set forth in §57.280 RSMo., is thus one of the miscellaneous charges defined by §488.010(3) which are part of court costs and is a fee for service paid to an entity other than the Court.

Article VI, §13 of the Missouri Constitution establishes that fees earned by county officers in civil cases may be retained by them as provided by law. In the case of civil fees payable to county officers paid by salary the statutes of Missouri and the Charters of St.

---

<sup>5</sup> Mo. Const. Art. 6, § 12 mandates that all county officers in counties having 100,000 or more inhabitants shall be compensated for their services by salary only.

Louis and St. Charles counties require that the fees be accounted for and deposited with the county. See §§50.340, 50.350, 50.360, 50.370, 50.380, 50.390, 50.410, and 50.430 RSMo., St. Louis County Charter, Article II §2.180.4(LF at 168, left column); St. Charles County Charter Article II, §2.513, Article IV §4.1303.3 (LF at 221). See also H.B.2224 §57.280.1 and .4 and 488.435.1 and .3.

Nor do fees for service of process collected pursuant to § 57.280.4 possess the indicia of state funds because the \$10 charge is not imposed by the Counties. The other court charges for service of process in civil cases were not imposed by the Counties either – they were imposed by the General Assembly in subsections 1 and 2 of §57.280 RSMo. and in §488.435.1 RSMo. and paid into the county treasury pursuant to §57.280.3 and §488.435.1 RSMo. Those fees, like the fees at issue, are county funds because they are fees received by county officers for ensuring the official performance of duties entrusted to them as county officers, and their status as county funds is established by the nature of the payment being made: payment for a service by a county officer. The fact that the \$10 charge is not imposed by the Counties is not an indicia that it is a state fund. See Reed v. City of Springfield, 841 S.W.2d 283 (Mo. S.D. 1992) (citing “Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges” for the provision that “miscellaneous charges” are “Amounts assessed that ultimately compensate individuals or non-court entities for services relating to the process of litigation. These amounts often vary from case to case based on the services provided.”)

In fact §488.010 defines charges such as that in §488.435 as “Miscellaneous charges”

which are amounts allowed by law for services provided by individuals or entities other than the court. §488.010 RSMo. Section 488.435 begins “Sheriffs shall receive a charge, . . .” to reflect this category of cost established in §488.010 RSMo. State statute defines “Court costs” as the total of fees, miscellaneous charges and surcharges, imposed in a particular case. §488.010(1) RSMo. Surcharges are “additional charges allowed by law for specific purposes designated by law”. §488.010(4) RSMo. Sections 488.010 through 488.020 then establish the administration of court costs. Sections 488.024 through 488.5026 set forth fees, charges and surcharges.

Each authorization for fees and charges set forth above has one thing in common, the money is directed into a fund for the entity authorized to collect the fee or charge. Surcharges on the other hand, are directed to the purpose, e.g., the surcharge for the crime laboratory is payable to the Director of Revenue for the state forensic laboratory account, §488.029, RSMo.; the surcharge for shelters in civil cases is paid to treasuries from counties adopting the fee, payable only to provide financial assistance to shelters for victims of domestic violence, §488.445 RSMo.; §488.447 has a surcharge for courthouse restoration fund in any city not within a county.

Charges allowed to an entity fulfilling a service are by their very nature the authorization of funds to be collected by the jurisdiction as a fee for service - a fee to defray the cost of the service to the treasury of the entity. Section 57.280.4 and § 488.435.3 establish charges for services, i.e., fees, and then direct the payment of those fees into the county treasuries of the county officers and employees providing the service. The funds are,

by both their authorization and by their receipt, county funds. H.B.2224 is consistent with the requirements of Chapter 50 of the Revised Statutes.

Sections 488.435.3 and 57.280.4 are the only Missouri statutes Appellants have been able to locate that require a county treasurer to surrender to the state monies that were paid into the county treasury for services performed by a county employee.

The trial court's analysis simply skipped a part of the process that the General Assembly mandated when the trial court determined that the plain and ordinary meaning was that the funds were state funds because the county treasurer is to hold these new funds payable to the state treasurer and the state treasurer is to deposit them into the state treasury where they are to be subject to future appropriation. LF 420, A3. Before the legislature expresses that intent it states "The money received by the sheriff under this subsection shall be paid into the County treasury and the county treasurer shall . . ." The trial court's ruling ignores the plain and ordinary language and meaning of the statute in order to reach its conclusion. The money, which is a fee received by the sheriff, is to be paid into the county treasury. Section 57.280.4, 488.435.3.

It is only by jumping over the plain instruction of the General Assembly that these fees for service are a fee to be collected by this County officer and paid into his county treasury that the court is able to reach the conclusion that the funds are state funds.

Having paid a court cost "miscellaneous charge" into the treasury of the entity which earned that fee for service, the state cannot take the funds out of the county treasury. That exaction is a tax upon the county in violation of Article X, §10(a). Clearly

the exaction of the funds from the treasury of the county has no constitutional authority upon which it can stand. The county has no authority to assist in paying the salaries of other counties' officers. Article X, §10(a). There is no Chapter 70 agreement among the counties to share this common function, so there is no basis to claim it is a voluntary contribution. Article VI, §§ 14 and 16, Chapter 70 RSMo.: §§70.010-70.090, §§70.210-70.325. Not being a fee, or a voluntary contribution, the exaction of the funds from the county treasury are a tax on the county by the state.

This Court has recognized three classes of taxes: capitation or poll taxes, taxes on property, and excises.” General American Life Ins. Co. v. Bates, 363 Mo. 143, 249 S.W.2d 458, 462 (1952). Excises include “ ‘every form of taxation which is not a burden laid directly upon persons or property; in other words, excises include every form of charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation.’ ” Id. at 462 (quoting State ex rel. Missouri Portland Cement Co. v. Smith, 338 Mo. 409, 413, 90 S.W.2d 405, 407 (1936)).

Denominating the \$10 charge as a fee for service of various court papers is only a masquerade to hide the true purpose of H.B. 2224: the state imposition of a supposed user “fee” to be collected by county officers which “fee” is then taken in its entirety by the state, not for its alleged purpose of compensating county officers for services rendered, but for the actual purpose of raising revenue to pay into the state treasury to redistribute as salary supplements to deputy sheriffs throughout the state without regard to the rendering of any services concerning court papers. As such this \$10 charge falls squarely within the definition

of a tax masquerading as a fee or charge as propounded by the Missouri Supreme Court:

Fees or charges prescribed by law to be paid by certain individuals to public officers for services rendered in connection with a specific purpose **ordinarily are not taxes ... unless the object of the requirement is to raise revenue to be paid into the general fund of the government** to defray customary governmental expenditures ... rather than compensation of public officers for particular services rendered.

Craig v. City of Macon, 543 S.W.2d 772, 774 (Mo. banc 1976) (emphasis supplied).

In taking the funds from the County treasury to accomplish a purpose of salary supplementation in various counties the State is imposing a tax, a tax for county purposes - the payment of deputy sheriff salaries. Whether the money goes to a county the money is taken from, or for the deputies in some other county, the payment of deputy salaries and benefits related thereto is equally a county purpose. In either event, it is a violation of Article X, §10(a).

The essential problem of H.B. 2224 is that it attempts to use a fee mechanism to cover a tax on the counties. Such tax for county purposes, whether it is a tax on the county or county inhabitants, violates Article X, § 10(a). In Three Rivers Junior College District of Poplar Bluff v. Statler, 421 S.W.2d 235 (Mo. banc 1967), this Court, in reviewing whether Article X, §10(a) prevented the legislature from giving the junior college district the power to tax, stated that Article X, §10(a) refers to and prohibits the matter of a tax by the state for the performance of local functions. The Court found that the tax was not imposed on the

inhabitants or the junior college district because the tax was imposed by the Junior College District pursuant to enabling legislation. “Respondent also contends that the limitation contained in Section 10(a), Article X of the 1945 constitution prevents the junior college district tax. But this section refers to and prohibits the matter of a tax by the state for the performance of local functions, State ex rel. Priest v. Gunn, (Mo.Sup. banc) 326 S.W.2d 314, 326, which is not what we have involved here. The proposed tax by the junior college district is not being imposed by the general assembly upon the inhabitants or property of the junior college district.” Three Rivers at 241. In the matter pending here however, the tax is on the county treasury, and is for the performance of local functions-the duty of a county to pay its employees for their county services.

In State ex rel. Board of Control of St. Louis School and Museum of Fine Arts v. City of St. Louis, 216 Mo. 47, 115 S.W. 534 (Mo. banc 1908), the Missouri supreme court held violative of article X, section 10 as well as other Missouri constitutional sections, an act of the General Assembly which mandated that the City of St. Louis turn over tax revenues authorized to be collected for the purpose of funding a public art museum to a private board to be used in operating its privately owned art museum. In so holding the court stated that article X, sections 1 and 10 “indicate that it was [the framers’] purpose that taxes should only be levied for public purposes, and when collected should be administered and disbursed only by public officers elected or appointed according to law ... and that municipal corporations were only authorized to levy and collect taxes for municipal purposes, and municipal enterprises should be conducted and controlled in fact by such municipalities by and through

their proper officers, and were not authorized to exact taxes and turn them over to any private individual or board of any private corporation to disburse at their discretion.” Board of Control, 115 S.W. at 546.

Board of Control is relevant to the case at hand despite the fact that it relies on the constitution of 1875 for Article X § 10 of that constitution contained the same prohibition as Article X §10(a) of the constitution of 1945. The adoption in a later constitution of words and context of another constitutional provision which has been construed by a court of last resort is not merely of interest, but is presumed, in the absence of a contrary intention, to have been done to give the adopted words their adjudicated meaning. Rathjen v. Reorganized School District R-II of Shelby County, 284 S.W.2d 516 (Mo. banc 1955). See also State v. Stewart, 869 S.W.2d 86 (Mo. App. W.D. 1993). Moreover, the Missouri Supreme Court has held that the Constitutional Convention, at the time it redrafts a constitutional provision, is presumed to have known the construction given by the courts to a provision it reinserts into the newly proposed constitution. Moore v. Brown, 165 S.W.2d 657 (Mo. banc 1942).

Because the monies paid into the county treasury for services performed by county employees belong to the counties, the county treasurers do not hold the funds on behalf of the state. In fact, the State Treasurer is not constitutionally empowered to administer these funds. Article IV, §15. Taxes collected by the state are to be collected by the Department of Revenue. Article IV §22.

Appellants therefore pray this court overturn the Amended Judgment of the trial court and declare the provisions of H.B.2224, specifically, 488.435.3 and 57.280.4 and 57.278,

unconstitutional pursuant to Article X, §10(a) of the Constitution of Missouri to the extent that they require the county pay over to the state any of the court costs received into the county treasury.<sup>2</sup>

## II

**THE TRIAL COURT ERRED IN DENYING DECLARATORY RELIEF UNDER COUNT IV OF APPELLANTS' AMENDED PETITION BY FAILING TO FIND THAT 1) FEES COLLECTED BY A COUNTY OFFICIAL AND PAID INTO THE COUNTY TREASURY ARE COUNTY FUNDS AND PROHIBITED FROM BEING TAXED BY THE STATE AND 2) PAYMENT OF COUNTY EMPLOYEES IS A COUNTY PURPOSE, BECAUSE H.B.2224 VIOLATES ARTICLE X, SECTION 10(A) OF THE CONSTITUTION OF MISSOURI'S PROHIBITION ON IMPOSING TAXES ON COUNTIES FOR COUNTY PURPOSES, IN THAT SUCH EXACTION OF FUNDS THAT ARE COUNTY PROPERTY AMOUNTS TO A STATE TAX AND THE PURPOSE OF PAYMENT OF COUNTY DEPUTY SHERIFFS IS A LOCAL PURPOSE, WHICH TAX AND PURPOSE IS PROHIBITED BY ARTICLE X, SECTION 10(A).**

**STANDARD OF REVIEW:** The standard of review in a declaratory judgment case is the same as in any other court-tried case. "This Court will affirm the decision of the trial court

---

<sup>2</sup>Further, there is no authority to pay these funds collected pursuant to §§ 488.435 and 57.280 RSMo pursuant to Article X, §10(b) since these are not funds collected for state purposes.

‘unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.’ ” Commerce Bank, N.A. v. Blasdel, 141 S.W.3d 434, 442 (Mo.App. W.D. 2004) (quoting Kerperien v. Lumberman's Mut. Cas. Co., 100 S.W.3d 778, 780 (Mo. banc 2003) (quoting Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976)). The constitutionality of a statute is generally a question of law. See, e.g., State v. James, 109 P.3d 1171, 1174 (Kan. 2005); State v. Gales, 694 N.W.2d 124, 149 (Nebr. 2005). Further, interpretation of a statute is a question of law. Smith v. Shaw, 159 S.W.3d 830, 833 (Mo. banc 2005). “Questions of law are matters reserved for de novo review by the appellate court, and we therefore give no deference to the trial court's judgment in such matters.” Commerce Bank, N.A., 141 S.W.3d at 442 (quoting H & B Masonry Co., Inc. v. Davis, 32 S.W.3d 120, 124 (Mo.App. E.D. 2000)). However, the Court is bound to “exercise the power to set aside a decree or judgment on the ground that it is ‘against the weight of the evidence’ with caution and with a firm belief that the decree or judgment is wrong.” Murphy, 536 S.W.2d at 32.

The source of Appellants’ dispute with the constitutionality of H.B.2224 lies in the sections which amended §488.435 and §57.280 to allow the state to tax the county in the amount of the additional court cost charge authorized to be collected by the Sheriffs for service of process of certain civil papers. Those sections provide that the County, having received into its treasury the fees paid its county officer for service of process as required by law (§§50.340, 50.350, 50.370 and 50.480), is now required to remit funds from the county treasury in a like amount to the state. The law further provides that the funds which must be

paid over from the County treasury to the state are to be remitted to the Deputy Sheriff Supplementation Fund in order to pay county employees, specifically deputy sheriffs, in yet to be determined counties. Such payment of salaries of county employees is a county, not a state, purpose.

Appellants' claim in Count IV of their Amended Petition is that H.B.2224 violates Article X, §§ 10(a) of the Missouri Constitution. See LF 365 – 384. Appellants' argument is based upon two premises: (1) that the fees are county funds collected by a county officer for work being done by county employees and the requirement they be paid over to the state are a tax on the county; (2) the state's tax on counties to pay for salary and benefits of county employees violates the constitutional prohibition in Article X, §10(a). The trial court found that the funds the counties were being ordered to pay from county treasuries were state funds. (LF 420-421, A3-A4). By so finding the trial court avoided addressing the issue of whether the payment of the county employees serving as deputy sheriffs is a local purpose.

In this second point Appellants also address the issue that H.B.2224's provisions are taxation of the county treasury and then address the unconstitutionality of the payment of county salaries for deputy sheriffs as a county purpose. Article X, §10(a).

As set forth in Appellants' first point it is in this unequivocal language of H.B.2224 that the fee for service is to be collected by the Sheriff for service of process in civil cases and paid by him into the County treasury that the identity of these county funds is found. §§ 57.280.4, 488.435.3, 50.340 – 50.430 RSMo. If this Court agrees that the funds so collected

are county funds, then the next question is whether the payment of county deputy sheriff salaries is a county obligation and purpose.

Section 50.330 provides that any salary provided for a county officer, deputy or assistant shall be paid by warrants drawn on the county treasury and unless otherwise provided by law shall be approved by the governing body of the county. Section 50.330 RSMo. See also §§57.119, 57.201, 57.220, 57.221, 57.250, and 57.251, all of which indicate that the county shall pay the deputy sheriff in the employ of the county. Salaries are a part of the cost of the operation of the sheriff's department and are an obligation of the county to be paid from county funds.

The only references Appellants have identified relating to state purpose arise in the context of the St. Louis and Kansas City police departments. The state purpose noted in case law concerning the state controlled police departments in St. Louis and Kansas City is not inapposite to the proposition that the obligation to pay county employees, in this case sheriff's deputies, is a county purpose to be paid from county funds. State ex rel. Hawes v. Mason, 153 Mo. 23, 54 S.W.524 (Mo. 1899) , involving the City of St. Louis [ recognized at Article VI, §31 of the Missouri Constitution] and the police system of that city which is the subject of state legislation (see Chapter 84 of the Revised Statutes of the State of Missouri). The General Assembly created the police system of the City of St. Louis and the City of Kansas City and then defined the powers and duties of its officers. State ex rel. McNamee v. Stobie, 92 S.W. 191 (Mo. 1906). There are no precedential cases nor statutory enactments in

over 100 years extending this “state purpose” to the general sheriff’s departments in the counties.

As set forth in State ex rel. Sayad v. Zych, 642 S.W.2d 907 (Mo.1982) the present statutes governing the Police Board of St. Louis, sections 84.010 to 84.340, RSMo require that the Police Board be composed of the Mayor of St. Louis (or one who may be officially acting in that capacity) and four gubernatorial appointees; the powers and duties of the Police Board are prescribed; the Police Board is made responsible for the establishment and control of the St. Louis police force; the City of St. Louis is prohibited from interfering with the powers, or the exercise of the powers, of the Police Board. In addition, the statutes require that the Police Board estimate its annual expenses and that the City appropriate that amount. The Missouri Supreme Court, in State ex rel. St. Louis Police Commissioners v. St. Louis County Court, 34 Mo. 546, 571 (1864), declared “the Police Commissioners are an agency of the State Government, and required to perform within a specified locality some of the most important duties of the government.”

This declaration was reiterated in State ex rel. Hawes v. Mason, 153 Mo. 23, 51, 54 S.W. 524, 531 (1899). The General Assembly created a Kansas City Police Board similar to the St. Louis Police Board. The legislation creating the Kansas City Police Board contains provisions similar to the original and present-day St. Louis Police Board statutes. §§ 84.350 to 84.890 RSMo 1978 and Supp. In American Fire Alarm Co. v. Board of Police Comm'r, 285 Mo. 581, 227 S.W. 114 (1920), the Supreme Court declared the Kansas City Police Board was also a state agency. Id. 285 Mo. at 589-92, 227 S.W. at 116-17; see also State ex

rel. Field v. Smith, 329 Mo. 1019, 1026, 49 S.W.2d 74, 76 (1932) (where the Court accepted the proposition that the Kansas City Police Board was “a state agency, a department of the state government....”)

But none of these decisions are indicative of the funding for the police departments being a state purpose.

“As the police department of Kansas City is a state institution, and an integral part of the general system of means used by the state to preserve peace and security within its domain, and is not merely a municipal system established for a local purpose, it would seem that its cost would fall naturally and according to the intention of the present Constitution upon the revenues of the state. Const. art. 10, § 11. However, it has been settled by repeated decisions that the Legislature may lay the burden of supporting a police department on the annual revenues of the city where the department is established without infringing the Constitution, and that question cannot be reopened. State ex rel. v. Mason, and State ex rel. v. Jost, supra.

... However that may be, it is certain the Legislature had no intention either to levy or empower the city to levy the tax in question as a state tax laid to meet an item of expense incurred by the state government; otherwise the expense would not have been imposed on the next annual revenues of Kansas City.”

Strother v. Kansas City, 223 S.W. 419, 421 (Mo. banc 1920).

In commenting on Strother a few years later in State ex rel. Carpenter v. City of St. Louis, 318 Mo. 870, 2 S.W.2d 713 (Mo. banc 1928) the Supreme Court characterized the

Strother case as follows:

“Strother v. Kansas City, 283 Mo. 283, 223 S. W. 419, is where a tax for the support and maintenance of the police department of Kansas City was under consideration. The city had levied taxes up to the constitutional limit for municipal purposes and then levied in addition a two-mill tax for the support of the police department. The plaintiff tendered all except that two-mill tax and brought suit to enjoin its collection, on the ground that it was unconstitutional and in excess of the highest rate of taxation authorized by the charter of Kansas City and by the state Constitution, ss 11, 12, art. 10. It was admitted in the answer that this two-mill tax was in addition to the Constitutional limit for municipal purposes, **but the city asserted the right to make such levy because it was for a state tax for a state purpose. It was held that the tax could not be levied as a state tax, but it was within the power of the General Assembly to create a police system for the city and to lay upon the property of the city the burden of defraying the expense of the system**, that a special tax for the purpose could not be levied and such expense must be paid out of the revenue of the city within the constitutional rate limit, citing State ex rel. v. Mason, and State ex rel. v. Jost, supra. The judgment of the trial court in sustaining the injunction was affirmed.” (emphasis not in original)

Thus this Court has already rejected any argument that paying for the cost of even a police department declared to be a state agency by its enabling legislation is a state purpose. Clearly paying for the system, including the payment of salaries and benefits related thereto,

is a local purpose. Further, surveying the provisions of Chapter 57 RSMo. no parallel can be drawn to the statutory schemes establishing the special role of the police departments in the City of St. Louis and Kansas City. Without question, the payment of county employees, even deputy sheriffs, is exclusively a county purpose.

Further, the Sheriffs in charter counties are county officers who must look to the County charter for how their powers and duties proscribed by the constitution and laws are to be carried out. Article VI, § 18 (b), Gamble. There is no support in the charters of either of the Appellant charter counties that salaries and benefits of deputies are a state purpose.<sup>6</sup>

---

<sup>6</sup> While Appellants do not concede the argument is relevant to the issue of whether this matter is a county or state purpose, in the Respondents' Motion for Summary Judgment, considered by the court simultaneously with Appellants' Motion for Summary Judgment, the Respondents contended that the general purpose of this law is not to set or pay salaries, but to promote adequate funding for Sheriff's departments around the state, However, the words of Section 57.278 in H.B.2224 belie the Respondents' argument: "There is hereby created in the state treasury the "Deputy Sheriff Salary Supplementation Fund", which shall consist of money collected from charges for services received by county sheriffs under subsection 4 of section 57.280. **The money in the fund shall be used solely to supplement the salaries, and employee benefits resulting from such salary increases, of county deputy sheriffs. . . .**" [Emphasis not in original] The purpose of the money seized from counties clearly has a single purpose, whatever county it is

Nor is “state purpose” the equivalent of the term “public purpose”, which Respondents appeared to imply in the trial court. Article X, § 3 states “Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class or subclass of subjects within the territorial limits of the authority levying the tax. . . .” Public purpose analysis merely goes to the question of whether the use is public or private, not the question of state or local purpose. The issues are apples and oranges.

In Siegel v. City of Branson, 952 S.W.2d 294, 298 (Mo.App. S.D.,1997) the court of appeals reviewed public purpose cases:

A variety of uses have been held to be for a public purpose. See Cape Motor Lodge, Inc., 706 S.W.2d at 214 (“multi-use center”); J.C. Nichols Co., 639 S.W.2d at 891-92 (lease of city-owned historic building to a private lessee); Bowman, 233 S.W.2d at 35 (off-street parking stations); Aquamsi Land Co., 142 S.W.2d at 335-36 (athletic fields, an arena, and a horse racing track); Vrooman, 88 S.W.2d at 193-94 (contribution of city funds to a national park [the Gateway Arch] ); in other jurisdictions: Huron-Clinton Metropolitan Authority v. Attorney General, 146 Mich.App. 79, 379 N.W.2d 474 (1985) (water slide); Behrens v. City of Spearfish, 84 S.D. 615, 175 N.W.2d 52 (1970) and State ex rel. Minner Co. v. Dodge City, 123 Kan. 316, 255 P. 387 (1927) (tourist camps); Summit County Historical Society v. City of Akron, 115 Ohio App.

---

spent in, to pay the salaries of county employees who serve counties in the role of deputy sheriff and that payment of a county employee is a county purpose.

555, 183 N.E.2d 634 (1961) (ice skating rink); Starlight Corp. v. City of Miami Beach, 57 So.2d 6 (Fla.1952) (auditorium). *See also* McQuillan on Municipal Corporations § 28.52.10.

Siegel at 298.

In City of Lexington v. Hager, 337 S.W.2d 27 (Ky. App. 1960) the Kentucky Court of Appeals construed language in the Kentucky constitution virtually identical to Missouri's Article X, § 3. Kentucky Constitution Section 171 states “. . . Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; . . .” [Mo. Constitution Article X, §3 states “taxes may be levied and collected for public purposes only, and shall be uniform upon the same class or subclass of subjects within the territorial limits of the authority levying the tax. . .” In construing Section 171 of the Kentucky constitution the Court of Appeals held

“The plain meaning of the foregoing clause is that taxes may be levied and collected only for a public purpose of **the particular tax levying unit**. See Dyche v. City of London, Ky., 288 S.W.2d 648. Clearly, Fayette County could not use its tax money to help pay for a courthouse in Knox County, nor could the city of Lexington spend city funds to supplement the salary of the mayor of Paducah, because these purposes would not be public purposes of Fayette County or the City of Lexington.”

Hager at 28. [**Emphasis is in the original**]

In this matter it is clear that the payment of county employees is a county purpose and

not a state purpose. The imposition of a tax upon the county treasury by the state is a tax of the county for county purposes and is an unconstitutional violation of Article X, §10(a).

The fees are county property and a statutory direction to turn them over to the state to for the purpose of paying the salaries and related benefits thereto of deputy sheriffs in the various counties can be nothing more than a tax on the county for a county purpose. The Missouri courts have long recognized that what is labeled a fee may in fact be a tax, based on its “real object, purpose and result.” *See State ex rel. Wyatt v. Ashbrook*, 154 Mo. 375, 55 S.W. 627, 628-29 (1900). In deciding if this is a fee or a tax this Court must look to decide the issue by applying the long-established distinction between a tax and a fee:

“Taxes are proportional contributions imposed by the state upon individuals for the support of government and for all public needs....Taxes are not payments for a special privilege or a special service rendered....Fees or charges prescribed by law to be paid by certain individuals to public officers for services rendered in connection with a specific purpose ordinarily are not taxes, ... unless the object of the requirement is to raise revenue to be paid into the general fund of the government to defray customary governmental expenditures ... rather than compensation of public officers for particular services rendered.” *Leggett v. Missouri State Life Ins. Co.*, 342 S.W.2d 833, 875 (Mo. banc 1960).

In enacting H.B.2224 the General Assembly amended neither §57.278.1 or 3 nor §488.435.1. H.B.2224’s own provisions state “all of such charges shall be received by the sheriff who is requested to perform the service.” §57.278.1, §488.435.1. Section 57.278.3 states “[t]he sheriff upon the receipt of the charge herein provided for shall pay into the

treasury of the county any and all charges received pursuant to the provisions of this section; . . . Any such funds in excess of fifty thousand dollars, . . . shall be placed to the credit of the general revenue fund of the county.” Section 57.278.3 RSMo. Pursuant to Section 488.010 RSMo. the charges of the sheriff are fees for his services. Section 57.278.1 and Section 488.435.1 require all of such charges to be received by the Sheriff and Section 50.340 and the charters of St. Louis and St. Charles Counties require the charges, fees, etc to be paid into the county treasury. Even Section 57.278.4 sets out that the Sheriff shall collect the fee and pay it into the County treasury. The fees thus become the property of the county.

In taking the funds from the County treasury to accomplish a purpose not within the scope of the county, a purpose for which there is no county appropriation or warrant the State is imposing a tax, a tax for county purposes - the payment of deputy sheriff salaries in either the county the money is taken from, or for the deputies in some other county, equally a county purpose. In either event, a violation of Article X, §10(a) occurs.

The essential problem of H.B. 2224 is that it attempts to use a fee mechanism to cover a tax on the counties. Such tax, for county purposes, violates Article X, § 10(a) and to the extent it is a tax on county inhabitants, it further violates Article X, § 10(a) . In Three Rivers Junior College District of Poplar Bluff v. Statler, 421 S.W.2d 235 (Mo. banc 1967), the Missouri Supreme Court, in reviewing whether Article X, §10(a) prevented the legislature from giving the junior college district the power to tax, stated that Article X, §10(a) refers to and prohibits the matter of a tax by the state for the performance of local functions. The Court found that the tax was not imposed on the inhabitants or the junior college district. In

the current case, the tax is on the county treasury, and is for the performance of local functions-the duty of a county to pay its employees for their county services.

Appellants urge this Court to look closely at this case of first impression. For the first time the legislature has reached into the fees collected by county officers and paid into their county treasuries and decided to use those funds to redistribute the wealth of counties. Even more egregiously, it is done in the context of court costs allowed the county official – the Sheriff – for serving process in civil cases. To tax funds from the county treasury to pay for the costs of county operations elsewhere is a slippery slope, easily leading to the seizure of county funds in other instances to divert to popular purposes.

Further, the Respondents argument that they have the authority of Article X, §10(b) fails since these are not funds collected for state purposes.

### CONCLUSION

As Appellants noted at the outset of this brief, this is a case of first impression. There are no situations in which charges for services authorized as court costs are ordered seized, from the county treasury to which they have been lawfully paid, and taken for county purposes in the various counties. Such a system is a slippery slope on two fronts, first, easily leaving the path of establishing a court cost open as a revenue source rather than a justifiable fee, and second, easily leading to the seizure of funds from the jurisdiction lawfully entitled to the funds to defray costs in jurisdictions not shouldering their own burden of funding or to pay for popular purposes. Wherefore, Appellants pray

this Court overturn the decision of the trial court and enter its judgment that H.B.2224 violates Article X, §10(a) as stated herein.

Respectfully submitted,

---

Joann Leykam, #29075

---

Robert E. Hoeynck, #39435  
St. Charles County Counselor's Office  
100 North Third Street, Room 216  
St. Charles, Missouri 63301  
Tel: 636/949-7540  
Fax: 636/949-7541  
ATTORNEYS FOR APPELLANTS  
EHLMANN, GROSS AND ST. CHARLES  
COUNTY

PATRICIA REDINGTON  
COUNTY COUNSELOR

---

Patricia Redington #33143

---

Cynthia Hoemann #28245  
Associate County Counselor  
41 South Central Avenue  
Clayton, Missouri 63105  
(314) 615-7042  
Fax: (314) 615-3732  
ATTORNEYS FOR APPELLANTS DOOLEY  
AND ST. LOUIS COUNTY

CERTIFICATE OF SERVICE

A copy of the above and foregoing Appellants' Brief was filed and served by United States Mail, postage prepaid, this 5th day of April, 2010, upon:

Robert Presson, Assistant Attorney General  
P.O. Box 899  
Jefferson City, MO 65102

Heidi D. Vollet, Esquire  
Dale C. Doerhoff, Esquire  
Cook, Vetter, Doerhoff & Landwehr, P.C.  
231 Madison Street  
Jefferson City, MO 65101

---