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ARGUMENT IN REPLY

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.

Respondents argue that H.B. 2224 does not violate Missouri Constitution Article X, Section 10(a), prohibiting the state from imposing taxes on county property for county purposes because: (1) H.B. 2224 does not impose a tax on counties; and (2) the revenue which H.B. 2224 generates is for a state, not county, purpose.

Respondents' Brief 10. Appellants counter that H.B. 2224 violates both prongs of Article X, Section 10(a) by taxing the fees in their entirety from the county treasury, for the county purpose of paying deputy sheriff salaries and benefits.

Accepting many of the Respondents' arguments concerning the intent of the General Assembly, the trial court in its Amended Judgment determined that "[t]he plain language of H.B. 2224 demonstrates that the General Assembly intended the 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.'" Appendix A3. The trial court in its Amended Judgment accepted Respondents' argument that the \$10 charge is imposed by the General Assembly through H.B. 2224 on litigants, not the counties, see Respondents' Brief 14, and also accepted Respondents' contention that the revenue generated by H.B. 2224 is "state funds" because the revenue is directed to be placed in the state treasury and is subject to appropriation by the General Assembly. Appendix A3-4; Respondents' Brief 11, 20. The trial court held that while H.B. 2224 requires the revenue to be placed into the county treasury, the county treasurer is simply the "custodian" of these state funds. Respondents' Brief 14. See Appendix A3-4.

But the trial court erred in entering its Amended Judgment because the court ignored the effect of the inclusion in H.B. 2224 of that requirement that the monies collected "shall be paid into the county treasury" at the time of collection by the

sheriff from the litigants, prior to payment to the state treasurer. See §§ 57.280.4 and 488.435.3, RSMo. Likewise ignored is the provision of Section 50.340, RSMo, that all fees collected by county officers “become the property of the county” upon payment into the county treasury. § 50.340, RSMo.; Appellants’ Brief 22-23. See §§ 50.330 – 50.480, RSMo.; Appellants’ Brief 15-16, 32-36. The trial court erred in so doing as “[t]he words in a statute are presumed to have meaning, and any interpretation rendering statutory language superfluous is not favored.” Schoemehl v. Treasurer, 217 S.W.3d 900, 902 (Mo. banc 2007) (abrogated on other grounds by legislative enactment). An entire clause of the statute should not be relegated to the status of excess verbiage. Id. Yet this is precisely what the trial court did, and the Respondents advocate, by arguing to disregard the legal effect under Section 50.340 of depositing the revenue in the county treasury as required by Sections 57.280.4 and 488.435.3 as enacted by H.B. 2224: the revenue becomes county property.

Respondents essentially argue that Section 50.340 should not be considered at all in the context of H.B. 2224 because H.B. 2224 in plain and unambiguous language makes the collected revenue state funds. See Respondents’ Brief 10, 16-17. Thus, Respondents point out that “[p]ari materia ... is not to be applied where there is no ambiguity.” Id. 16. But Respondents’ position excises the phrase “paid into the county treasury” and its legal meaning and effect right out of Sections 57.280.4 and

488.435.3, begging the question: “Why then did the General Assembly include the phrase?”

Appellants argue that the language of H.B. 2224 plainly and unambiguously requires the collected fees “be paid into the county treasury”, Appellants’ Brief 22-23, at which point the fees become county property pursuant to Section 50.340. See Plaintiffs’ Uncontroverted Facts and Suggestions in Support of Motion for Summary Judgment, Legal File 296. Use of the phrase “shall be paid into the county treasury” evinces the legislative intent, however inadvertent within or ultimately repugnant to the funding scheme of H.B. 2224, that the fees become county property as required by Section 50.340. Appellants’ Brief 26. An ambiguity arises because the trial court ignored the legal effect of the inclusion of the phrase “shall be paid into the county treasury” in order to find that the General Assembly intended that the fees be, and that they therefore are, state funds. Appendix A3-4. Assuming arguendo the General Assembly may have intended that the new charge collected from litigants be state funds, however, the General Assembly likewise clearly intended the funds were county funds first by its use of the phrase “shall be paid into the county treasury” which by operation of law makes the new charge county property prior to remittance to the state treasurer.

The Respondents contend that Appellants “inexplicably argue that earlier

statutes regarding the handling of moneys received by county officers, such as § 50.340, are the more specific statutes and that H.B. 2224 is the general statute.” Respondents’ Brief 20-21. Respondents maintain that H.B. 2224 is the more specific relative to Section 50.340 because H.B. 2224 concerns a particular charge and official, a sheriff, while Section 50.340 concerns all county officials with certain exceptions and all fees, fines, costs, etc. Id. 21. In the narrow sense of a critical issue of this case, however, Respondents are in error: Section 50.340 is the specific statute making moneys collected by the sheriff, a county officer, and paid into the county treasury the property of the county. In contrast nothing in H.B. 2224 addresses explicitly the property interests in the collected \$10 fees, nor does anything in H.B. 2224 counter the duties incumbent on a county officer upon collection of fees as set forth in Chapter 50.

Those property interests are only treated by H.B. 2224 in a general manner by implication: as county funds through payment into the county treasury and, ultimately, state funds through payment by the county treasurer to the state treasurer. The more specific statute regarding the classification of the charges as county property is Section 50.340, which expressly states that sheriff-collected fees “become property of the county” upon collection and payment into the county treasury. While both Sections 57.280.4 and 488.435.3 require payment of the \$10 charges into the county

treasury; neither Section 57.280.4 nor Section 488.435.3 addresses in any manner the ownership of the \$10 charges at any stage of their handling from the sheriffs through the county treasury to the state treasurer.

Respondents analogize the H.B. 2224 funds to the State tangible property tax collected by county collectors for transmittal to the state Department of Revenue under Section 136.010.1, RSMo. Respondents' Brief 14. Tellingly, Section 136.010.1 contains no provision that county collectors pay the state tangible property tax receipts into county treasuries; rather, the collectors shall transmit the funds "promptly to the division of taxation and collection." § 136.010.1, RSMo. Also inapposite to Respondents' argument is that the state's tangible property tax receipts are not fees that by operation of law belong to the county at the time of their payment by those charged the fees.

Respondents attempt an argument that moneys received by sheriffs "are treated differently by virtue of § 57.280.3," i.e., that the first \$50,000 received by sheriffs pursuant to that section are not county funds, but the moneys in excess of \$50,000 are county funds due to their placement in the county general revenue fund. Respondents' Brief 16 at n. 1. This argument is flawed. Section 57.280.3 merely designates funds which must be appropriated for the sheriff's use. All the moneys mentioned in Section 57.280.3 are county property pursuant to Section 50.340, regardless of their

particular depository fund in the county treasury.

Respondents also argue that the use of the phrase “[n]otwithstanding the provisions of subsection 3 of this section to the contrary” in the first sentence of Section 57.280.4, before “the sheriff shall receive ten dollars for service of any summons, writ, subpoena, or other order of court included under subsection 1 of this section, in addition to the charge for service that each sheriff receives under subsection 1 of this section”, eliminates any conflict with the previous statutes concerning collection of the fees and their becoming county property. See Respondents’ Brief 17-18. But that “notwithstanding” phrase only differentiates the receipt of the fees under subsection 4 from how the fees would be handled under subsection 3, i.e., placed in dedicated funds in the county treasury either for the discretionary use of the sheriff or in the county’s general revenue fund. See § 57.280.4, RSMo. To achieve the result urged by Respondent for the “notwithstanding” clause and differentiate the subsection 4 fees as state funds from the moment of their collection from the treatment of the fees in subsection 3 as county funds, the General Assembly would have placed the excepting clause before the second sentence in Section 57.280.4 thusly: “Notwithstanding the provisions of subsection 3 of this section to the contrary, [t]he money received by the sheriff under this subsection shall be paid into the county treasury and the county treasurer shall

make such money payable to the state treasurer.” This the General Assembly did not do. In fact the General Assembly imposed the requirement of payment into the county treasury in this very paragraph and thus by its plain meaning the funds raised by H.B. 2224 become county funds by operation of law.

Respondents also challenge Appellants’ characterization of the \$10 fees as “miscellaneous charges,” urging that the fees are more aptly defined as “surcharges.” See Respondents’ Brief 18-20. Appellants characterized the \$10 fees as “miscellaneous charges” to indicate how the fees fall within the framework of existing state statutes which make such fees for service county property. See Appellants’ Brief 31-36. As Appellants addressed their characterizations fully in their Brief, see id., they do not do so here other than to note to the Court that the plain language of H.B. 2224 calls these charges, not “surcharges.” If the General Assembly had intended this was a surcharge it would have so stated.

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).

H.B. 2224 expressly states that the collected moneys “shall be used solely to supplement the salaries, and employee benefits resulting from such salary increases, of county deputy sheriffs.” § 57.278.1, RSMo. Appellants contend that payment of county deputy sheriff salaries and benefits is a county, not a state, purpose. Appellants’ Brief 43. The Respondents counter that the purpose of H.B. 2224 is the broader, generalized state purpose of adequate law enforcement through supplementation of deputy sheriff salaries, Respondents’ Brief 12, and promoting public safety. Respondents’ Brief 22-23. Respondents-Intervenors also point to dual state purposes: promoting public safety and benefiting the state’s judicial system. Respondents-Intervenors’ Brief 21-22. All Respondents emphasize the concern of the General Assembly that some counties “lack sufficient financial resources to attract or

retain qualified deputies.” Respondents’ Brief 23. See Respondents-Intervenors’ Brief 22 and n. 7 (referring to a Missouri Sheriffs’ Association survey not in the record).

Yet as pointed out by Appellants, Missouri statutory law provides that county deputy salaries are approved by the governing body of the county and paid by warrants drawn on the county treasury. See § 50.330, RSMo; Appellants’ Brief 43-44. See also §§ 57.119, 57.201, 57.220, 57.221, 57.250 and 57.251, RSMo (all providing for county payment of deputy salaries). Furthermore, sheriffs and their deputy subordinates are county officers and employees pursuant to Missouri case law, and their duties are co-extensive with the boundaries of the county, not with the boundaries of the state as are state officers. See State ex rel. Shepley v. Gamble, 365 Mo. 215, 224, 280 S.W.2d 656, 660 (Banc 1955). Quite simply, sheriffs and their deputies are not state officers for purposes of their duties and functions, State ex rel. McKittrick v. Williams, 346 Mo. 1003, 1012, 144 S.W.2d 98, 103 (Banc 1940), nor are they state officers for the purpose of payment of their salaries and benefits.

Respondents’ analogy to the Cybercrime fund at Section 650.120, RSMo, see Respondents’ Brief 25, actually runs counter to the reason that Respondents cite this provision. While Respondents want to assert that this statute furthers their argument that this is state purpose, in fact this section falls clearly within Article X, §10(b)

which states: “Nothing in this constitution shall prevent the enactment of general laws directing the payment of funds collected for state purposes to counties or other political subdivisions as state aid for local purposes.” Mo. Const. art. X, § 10(b). The Cybercrime fund is appropriated from state general revenue. It fits within the Constitution as state aid to local purpose. H.B. 2224 is not analogous to Section 650.120 in that H.B. 2224 confiscates a duly collected fee paid to a county officer, a fee that officer is obliged to pay to the county treasury by the very terms of H.B. 2224, and having been so paid by operation of law it is a county fund and the property of the county. See §§ 50.340 et seq., RSMo. There is nothing in Section 650.120 and the Cybercrime section that establish that law enforcement within a county by the deputies of a Sheriff is a state purpose.

Respondents-Intervenors cite State ex rel. Aull v Field, 119 Mo. 593, 24 S.W. 752 (Banc 1894), State ex rel. Faxon v. Owsley, 122 Mo. 68, 26 S.W. 659 (1894), and State ex rel. Hawes v. Mason, 153 Mo. 23, 54 S.W. 524 (Mo. banc 1899), for the proposition that the state may tax municipalities for a local purpose mixed with a concomitant state purpose. See Respondents-Intervenors’ Brief 9-13. Respondents also cite State ex rel. Hawes v. Mason for the proposition that providing for a large city’s metropolitan police department in order to preserve the public peace and order of the state at large is a state purpose. See Respondents’ Brief 23-24. Respondents

and Respondents-Intervenors, however, miss the mark with their arguments. None of the three decisions involved a state tax levied upon municipal properties. Rather, all three cases concerned the state requiring the affected municipalities to pay the expenses of maintaining a county courthouse (State ex rel. Aull v Field), an office of a recorder of voters (State ex rel. Faxon v. Owsley), and a municipal police department (State ex rel. Hawes v. Mason), out of municipal revenues.

Respondents also contend that Appellants do not establish as severable that portion of H.B. 2224 requiring counties to pay over to the state treasury the court costs received into the county treasury. See Respondents' Brief 26-27. Appellants conceded before the trial court that their severance request had little precedential support and that the entire law must be struck down. See Transcript 43 at lines 3-17.

CONCLUSION

As Appellants noted at the outset of their first brief, this is a case of first impression. Respondents argue to ignore certain wording of H.B. 2224 in order to reach their result. Further, they argue for a definition of "state purpose" that is contrary to current law. Wherefore, Appellants, for the reasons set forth in their Briefs, pray this Court overturn the decision of the trial court and find that H.B.2224 violates Article X, §10(a) as stated herein.

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RULE 84.06(b) CERTIFICATE

I certify that this brief complies with Rule 84.06(b), as effective July 1, 2008, and that this brief contains [2,722] words according to the word processing system used to prepare it, exclusive of the cover, Table of Contents, Table of Authorities, signature block, this certificate page, and the following certificate page. Further, I certify that the floppy disk served with the brief has been scanned for viruses using Computer Associates eTrust InoculateIT and, according to that software, is virus free.

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CERTIFICATE OF SERVICE

A copy of the above and foregoing Appellants' Reply Brief was filed and served by United States Mail, postage prepaid, this 1st day of June, 2010, upon:

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