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**IN THE  
SUPREME COURT OF MISSOURI**

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**No. SC90522**

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**STEVE EHLMANN, et. al.**

**Appellants,**

**v.**

**HONORABLE JEREMIAH W. (JAY) NIXON, et al.**

**Respondents.**

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**Appeal from the Circuit Court of Cole County, Missouri  
The Honorable Richard G. Callahan, Judge**

**Respondents' Brief**

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## **Jurisdictional Statement**

Plaintiffs appeal from a declaratory judgment entered by the Circuit Court of Cole County. Plaintiffs' petition alleged that H.B. 2224 of the 94<sup>th</sup> General Assembly was unconstitutional for a variety of reasons. Plaintiffs dismissed two, of their six counts, relating to the Hancock Amendment in an amended petition. L.F. p. 365. The trial court entered judgment in respondents' favor on the remaining counts—on the merits of three of the counts and holding that the fourth count, alleging an unconstitutional delegation of legislative power, was not ripe for adjudication. L.F. p. 405.

The two points of plaintiffs' brief relate to their claim that H.B. 2224 violates Article X, § 10(a) of the Missouri Constitution. Although plaintiffs' Jurisdictional Statement states that they "further contend that the trial court erred" because H.B. 2224 violates Article IV, §§ 15 and 22 of the Constitution, these claims have been abandoned. But because the claim actually briefed relates to the constitutionality of an act of the General Assembly this appeal is within this Court's jurisdiction. Article V, § 3 of the Missouri Constitution.

## Statement of Facts

Plaintiffs filed a petition for declaratory judgment challenging the constitutionality of House Bill (H.B.) 2224 of the 94<sup>th</sup> General Assembly. Legal File (L.F.) p. 6. H.B. 2224 appears at pages 78-83 of the Legal File. For the Court's convenience respondents include a copy of the bill in their appendix to this brief. The copy of the bill in the appendix highlights precisely what H.B. 2224 enacted.

First, H.B. 2224 enacts a new section 57.278. Subsection 1 of this new section creates in the state treasury the "Deputy Sheriff Salary Supplementation Fund." This Fund is to consist of money collected by sheriffs under subsection 4 of § 57.280. Section 57.278 provides that this Fund be used to supplement the salaries and benefits of county deputy sheriffs. The State Treasurer is to be the custodian of the Fund and may approve disbursements in accordance with sections 30.170 and 30.180. (These sections are the normal requirements regarding withdrawal of money from the treasury pursuant to warrants against lawful appropriations.) Finally, subsection 1 provides that the Missouri sheriff methamphetamine relief taskforce (MoSMART), created by § 650.350, shall administer the Fund. Appendix p. 1.

Subsection 2 of § 57.278 states that notwithstanding the provisions of § 33.080, moneys in the Fund at the end of the biennium shall not revert to the General Revenue Fund. Further, the State Treasurer shall invest moneys in the Fund and any interest and money earned shall be credited to the Fund. Appendix p. 2.

Second, H.B. 2224 amends § 57.280 by adding subsection 4 thereto. Subsection 4

begins by stating that “notwithstanding the provisions of subsection 3 of this section to the contrary” sheriffs shall receive \$10 for service of summons, writs, subpoenas and court orders “in addition to the charge for such service that each sheriff receives under subsection 1 of this section.” The money received under the new subsection 4 “shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer” who shall deposit the moneys in the Fund created in § 57.278. Appendix p. 3.

Third, H.B. 2224 amends § 488.435 by adding a new subsection 3 which basically reiterates the new subsection 4 of § 57.280. Appendix p. 4.

Finally, H.B. amends provisions of § 590.050 regarding the new moneys and MoSMART. Appendix pp. 6-7.

Pursuant to H.B. 2224 the State Treasurer established the Deputy Sheriff Salary Supplementation Fund in the state treasury. L.F. p. 84.

The Missouri Department of Revenue has received moneys from counties resulting from the new charge under H.B. 2224 and deposited them in the Fund. L.F. pp. 84 & 86. As plaintiffs note, H.B. 2224 does not establish a time frame within which counties are to remit these funds—but the Department of Revenue established a monthly schedule. L.F. pp. 88-89. Plaintiffs state that the Department of Revenue “established” that the new charge imposed by H.B. 2224 was a fee for service. Appellants’ brief p. 16. However, the nature of the new charge is a legal conclusion, not a matter of fact.

There has been no appropriation or expenditure from the Fund. L.F. 84 & 90. However, the moneys in the Fund have been included in the Office of Administration’s

calculation of Total State Revenues under the Hancock Amendment. L.F. 90.

## Argument

**H.B. 2224 does not violate Article X, § 10(a) of the Missouri Constitution because (1) it does not impose a tax on counties and (2) the revenue it generates is for a State purpose. (In response to appellants' points I and II.)**

## Introduction

Plaintiffs often mention legislative intent in their brief. But in actuality these references amount to nothing more than a pedantic exercise because the plaintiffs' ultimate aim is to frustrate the goal of the General Assembly. Plaintiffs fail to heed this Court's admonition that in applying rules of statutory construction "the purpose and object of the legislation should not be lost sight of." *Edwards v. St. Louis County*, 429 S.W.2d 718, 722 (Mo. banc 1968).

The legislative objective of H.B. 2224 is not in doubt. The General Assembly intended to create a new revenue source to be deposited in a newly created fund in the State Treasury, the purpose of which would be to supplement salaries and benefits for deputy sheriffs. As this Court has often held, the primary rule of statutory construction is to determine the intent of the legislature and to effectuate it, if possible. *State v. McLaughlin*, 265 S.W.3d 257, 267 (Mo. banc 2008). Contrary to plaintiffs' claim, the intent in this case needs no construction—it is obvious from the plain language of the statute.

After determining intent, the next step is considering whether that intent can be effectuated. Plaintiffs argue that it cannot, not because the goal is improper per se, but because their view of the General Assembly's alleged intent on the handling of the H.B.

2224 revenue would render the statute unconstitutional. In doing this, plaintiffs ignore another cardinal principle enunciated by this Court: When a statute is susceptible of more than one interpretation, it is presumed that the legislature intended the interpretation that is consistent with the Constitution. *Blaske v. Smith & Entzeroth*, 821 S.W.2d 822, 828 & 838 (Mo. banc 1991). And the strong presumption of constitutionality of a statute requires a court to resolve “all doubt” in favor of the validity of H.B. 2224. *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984).

The trial court correctly applied the basic rules of statutory construction in furtherance of the General Assembly’s objective. Its judgment in favor of defendants and against plaintiffs should be affirmed.

Article X, § 10(a) of the Missouri Constitution prohibits the General Assembly from imposing taxes on counties for county purposes. Plaintiffs argue that H.B. 2224 imposes a tax on counties because the additional revenue generated by the act is “county funds” despite that fact that the act provides that the new moneys raised are “payable to the state treasurer.” And plaintiffs claim that supplementing deputy sheriff salaries and benefits is a purely county purpose.

Plaintiffs are wrong on both points. The revenue is “state funds” because it is directed to be placed in the state treasury and is subject to appropriation by the General Assembly. It is, therefore, not a tax upon counties. And supplementing deputy sheriff salaries promotes the State purpose of adequate law enforcement.

**A. The new revenue from H.B. 2224 is not a tax on counties.**

### **1. The goal of H.B. 2224 is clear.**

The plain language of H.B. 2224 is unambiguous. It creates a new fund in the state treasury. It provides that the fund is to consist of moneys derived from a new charge received by sheriffs when serving summons, writs, orders, etc. in addition to the charges previously authorized. The new moneys are to be turned over to county treasurers who are to hold them payable to the State Treasurer. The State Treasurer is to deposit the moneys into the fund and may disburse them pursuant to lawful appropriations. The General Assembly established that the purpose of the fund is to supplement salaries and benefits for deputy sheriffs. Appendix p.1. Because the language is “clear, unambiguous, and admits of only one meaning, there is no room for construction.” *Corvera Abatement Technologies v. Air Conservation Commission*, 973 S.W.2d 851, 858 (Mo. banc 1998).

Even plaintiffs do not dispute the General Assembly’s purpose. But plaintiffs’ discussion of legislative intent ignores this. They treat intent as simply a word game rather than an analyzing the purposes and goals of the legislators who enacted H.B. 2224. But intent cannot be divorced from purpose.

Statutes must be given “a reasonable construction in light of the legislative objective.” *BCI Corp. v. Charlebois Construction Co.*, 673 S.W.2d 774, 780 (Mo. banc 1984). The objectives of an act are to be considered in determining legislative intent. *State ex rel. Rhodes v. Crouch*, 621 S.W.2d 47, 49 (Mo. banc 1981). In applying rules of statutory construction to determine legislative intent “the purpose and object of the legislation should not be lost sight of.” *Edwards*, 429 S.W.2d at 722. Statutory language must be given their

plain and ordinary meaning “with a view to promoting the apparent objective of the Legislature by their use.” *St. Louis Southwestern Railway Co. v. State Tax Commission*, 319 S.W.2d 559, 562 (Mo. 1959). When the General Assembly’s purpose—to ensure adequate pay for sheriffs’ deputies—is kept in mind, the meaning of H.B. 2224’s terms is clear and unambiguous.

## **2. The revenue from H.B. 2224 meets the definition of State revenue.**

State revenue consists of moneys in the State Treasury that are subject to appropriation by the General Assembly. *Kelly v. Hanson*, 959 S.W.2d 107, 111 (Mo. banc 1997). Moneys in the fund created by H.B. 2224 satisfy this definition. And this definition is consistent with and furthers the General Assembly’s ultimate objective—to appropriate the moneys to “supplement” deputy sheriffs’ salaries and benefits.

Plaintiffs argue that in some intermediate step regarding the handling of the funds, the General Assembly made, or at least “intended” to make, these new moneys to be “county funds.” But this would frustrate the goal of the General Assembly. “Courts are without authority to read into a statute a legislative intent contrary to the intent made evident by the plain language.” *Kearney Special Road District v. County of Clay*, 863 S.W.2d 841, 842 (Mo. banc 1993). Moreover, a step by step analysis of H.B. 2224 belies plaintiffs’ conclusion.

First, the \$10 charge is imposed by the General Assembly on litigants—not the counties. And the General Assembly did so separately from the normal charge for service by a sheriff. The General Assembly did not simply amend § 57.280.1 to allow for a \$30

charge rather than the current \$20 or \$20 for the current \$10. The General Assembly treated the new \$10 charge separately from and differently than the existing charges. The direction that county sheriffs place these moneys in the county treasury specifies that the county treasurer is to make this money “payable to the state treasurer.” The county treasurer is, therefore, simply the custodian of these moneys on behalf of the State. This is not unique. County collectors have for decades collected state funds in the form of the state property tax for transmittal to the Department of Revenue. § 136.010.1 RSMo.

Second, § 57.278.1 RSMo, as enacted by H.B. 2224, directs that these moneys are to be deposited in a newly created fund in the State Treasury. The creation of specific funds within the State Treasury is an exercise of the authority of the General Assembly. § 33.543 RSMo; *Fust v. Attorney General*, 947 S.W.2d 424, 430 (Mo. banc 1997); *Missouri Assoc. of Counties v. Wilson*, 3 S.W.3d 772, 775 (Mo. banc 1999).

Third, § 57.278.1 RSMo, as enacted by H.B. 2224, authorizes the State Treasurer—not county treasurers—to approve disbursements from the fund pursuant to §§ 30.170 & 30.180 RSMo. These sections are the procedure (warrants based upon appropriation) for making normal payments from the State Treasury.

Fourth, § 57.278.2 RSMo, as enacted by H.B. 2224, provides that contrary to § 33.080 RSMo, the moneys in the fund shall not revert to the General Revenue Fund within the State Treasury. Again, the control of the General Revenue Fund is a power of the General Assembly. § 33.543 RSMo.

Thus, moneys resulting from the additional charge imposed by H.B. 2224 have all of the indicia of state funds—not county funds. That explains why the Office of Administration is including the moneys deposited in the Deputy Sheriff Salary Supplementation Fund in its calculation of “Total State Revenue” pursuant to Article X, §§ 16-24 of the Missouri Constitution (Hancock Amendment). Because the moneys are state funds there is no tax upon the county and plaintiffs fail to establish the first element of a violation of Article X, § 10(a).

**3. Plaintiffs’ interpretation of legislative intent is inconsistent with principles of statutory construction.**

As explained above, no actual construction of H.B. 2224 is necessary to determine the General Assembly’s intent. Plaintiffs’ unnecessary effort to determine legislative intent pursuant to principles of statutory construction, incorrectly applies those principles.

**a. Rule of *pari materia***

Plaintiffs argue that when H.B. 2224 is read in *pari materia* with earlier statutes, such as § 50.340 RSMo, the legislature intended the new \$10 charge to be county funds. Section 50.340 provides that county officers are generally to be compensated by salaries only and that all “fees, fines, costs, commissions, penalties and charges imposed by law and collected by such officer shall be paid into the county treasury and become the

property of the county.”<sup>1</sup> Thus, they argue, when H.B. 2224 provides that the sheriff collect the new \$10 charge and deposit it in the county treasury, the money became county funds. But this argument is logically flawed in several respects.

*Pari materia*, like other rules of construction, is not to be applied when there is no ambiguity. *MC Development Co. v. Central R-3 School District of St. Francois County*, 299 S.W.3d 600, 604 (Mo. banc 2009). And even when applied, the goal of reading separate statutes in *pari materia* is to harmonize them—giving effect to both and upholding the validity of both. *Baldwin v. Director of Revenue*, 38 S.W.3d 401, 405 (Mo. banc 2001); *Kidde America, Inc. v. Director of Revenue*, 242 S.W.3d 709, 712 (Mo. banc 2008).

However, this is not plaintiffs’ purpose. They claim that “each clause and provision of H.B. 2224 can be given effect.” Appellants’ Brief p. 27. This is disingenuous at best because on the very next page they assert that “the General Assembly’s stricture that the funds should be paid from the County treasury to the state treasury is also plain,

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<sup>1</sup> Plaintiffs fail to mention that the moneys received by sheriffs are treated differently by virtue of § 57.280.3, which pre-existed H.B. 2224. Section 57.280.3 provides that the first \$50,000 received by a sheriff from charges of that section shall go to a special fund maintained by the county treasurer for procuring services and equipment for the sheriff’s office. Moneys in excess of \$50,000 “shall be placed to the credit of the general revenue fund of the county.”

and just as plainly violates Article X, § 10(a).” Appellants’ Brief p. 28. As a result, they evidently believe all of H.B. 2224 can be given effect, except that part that they claim is unconstitutional. This is hardly harmonization of the statutes.

But H.B. 2224 and other statutes relied on by plaintiffs can be harmonized because there is no conflict. H.B. 2224 amended § 57.280 by adding subsection 4. Subsection 4 provides that “notwithstanding” the provisions of subsection 3, when the sheriff deposits the new charge in the county treasury, the county treasurer shall hold the money “payable to the state treasurer.” Subsection 3 required the sheriff to deposit all charges received pursuant to subsection 1 of § 57.280 in the county treasury—the first \$50,000 to the special fund noted above and the remainder to the county’s general revenue fund. At least as to the excess, this invokes the provisions of § 50.340 declaring it to be county property. The “notwithstanding” language in H.B. 2224 eliminates conflict with these pre-existing statutes because such language indicates that the new subsection 4 “overrides” provisions that would otherwise apply. *Kidde America, Inc.*, 242 S.W.3d at 711-712.

Even without the “notwithstanding” clause there would be no conflict. The new subsection 4 of § 57.280 imposes a new charge separate from the normal charge for service in subsection 1. And it provides that the new money is to be treated differently—payable to the State Treasurer and deposited into a new fund in the State Treasury. While this and the previous sections may be similar, they are not in conflict because they are merely “overlapping.” *Kidde America, Inc.*, 242 S.W.3d at 712. Both are collected by

sheriffs and deposited in the county treasury, but thereafter subject to different statutory directives.

Plaintiffs also argue that H.B. 2224 should be read in *pari materia* with provisions of Ch. 488 RSMo regarding court costs. H.B. 2224 amends § 488.435 by adding a new subsection 3. The previous subsection 1 of § 488.435 had tracked with the previous § 57.280 regarding charges received by sheriffs for service of summons, writs, orders, etc. The inclusion of these charges in § 488.435 indicates that they're part of court costs. The new subsection 4 of § 488.435 tracks the new subsection 4 of § 57.280 that imposes the new \$10 charge. And, like subsection 4, it explicitly requires that the new moneys are "payable to the state treasurer" and that the "state treasurer shall deposit such moneys in the deputy sheriff salary supplementation fund." By this inclusion in chapter 488, H.B. 2224 indicates that this new charge is also part of court costs.

Court costs are simply "the total taxable assessments in a case." *Reed v. City of Springfield*, 841 S.W.2d 283, 285 (Mo. App. 1992). They are paid by the litigants and under § 514.060 RSMo the prevailing litigant can recover his costs. But plaintiffs go further and argue that the new \$10 charge is not just a court cost. They argue it is specifically a "miscellaneous charge," as opposed to "fees" and "surcharges." "Miscellaneous charges" are defined as "amounts allowed by law for services provided by individuals or entities other than the court." § 488.010(3). Plaintiffs claim, as a result, that the new \$10 charge is "a fee for service" by the sheriff. Appellants' brief p. 30. And plaintiffs inexplicably claim that "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.” Appellants’ brief p. 30.

But as explained above, H.B. 2224 commands that the new moneys raised by the \$10 charge be treated separately from and differently than other charges received by sheriffs or other county officials. H.B. 2224 does not use the term “fee” and does not indicate that the \$10 charge is for purpose of compensation of the sheriff. It is simply that the service of a summons, writ, order, etc. is the event that triggers the \$10 charge, to be collected by sheriffs. It is not declared to be county funds per § 50.340. It is not directed to be deposited in the general revenue fund of the county treasury per § 57.280.3. Instead, the county treasurer is to hold these moneys “payable to the state treasurer” and the “state treasurer shall deposit such moneys in the deputy sheriff salary supplementation fund created under section 57.278.” Appendix pp. 3-4. Thus, if it is necessary to define what type of court cost the new \$10 charge is, the definition of “surcharge” is more apt— “additional charges allowed by law which are allowed for specific purposes designated by law.” § 488.010(4). This harmonizes the statutes and gives effect to the intent of H.B. 2224.

#### **b. Specific statutes control over general statutes**

Of course, statutes cannot always be harmonized. But when there is an irreconcilable conflict the general rule of construction is 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, 82-3 (Mo. App. 2005). Thus, the General Assembly’s intent in prior statutes that some other moneys are county funds is not controlling on the question of the General Assembly’s intent regarding the moneys raised by H.B. 2224. The plain language of H.B. 2224 demonstrates that the General Assembly intended the proceeds from this new charge to be state funds—the county treasurer is to hold these new funds “payable to the state treasurer.” If any reconciliation between H.B. 2224 and earlier laws is required, then H.B. 2224 should be viewed as a qualification of or exception to the earlier statutes.

But plaintiffs 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. Plaintiffs’ brief p. 25. This turns the concepts of generality and specificity upside down. The statutes plaintiffs claim are specific relate to all types of moneys received by virtually all county officers. For example, § 50.340 applies to “all county officers, excepting public administrators and notaries public” and to all “fees, fines, costs, commissions, penalties and charges imposed by law and collected by such officer.” While this is comprehensive, it is hardly more specific than H.B. 2224 which relates to a particular charge and a particular official, a county sheriff.

Many courts applying this rule do not explicitly address what is specific as opposed to general. Most often it is self-evident, as it is in this case. But the court in *Control Technology* did explain that one venue statute was more specific because it dealt with a particular claim (contract) and a particular party (municipal corporation). These

are the same two characteristics that H.B. 2224 possesses—application to a specific thing and a specific officer. Similarly, it has been held that a statute relating to compensation for a public administrator was more specific than a statute relating to compensation for all county officers. *Cantwell v. Douglas County Clerk*, 988 S.W.2d 51, 56 (Mo. App. 1999). Contrary to plaintiffs’ argument, statutes addressing all moneys received by all county officers are the general statutes. H.B. 2224 is the more specific statute because it creates a new charge to be received by a specific county officer and requires that it be treated in “a particular way.” It must be viewed as an exception to or qualification of the earlier statutes. *Control Technology*, 181 S.W.3d at 82-3.

Moreover, plaintiffs do not explain how the intent of earlier statutes can be employed to frustrate the legislative intent expressed in H.B. 2224. “Courts are without authority to read into a statute a legislative intent contrary to the intent made evident by the plain language.” *Kearney Special Road District*, 863 S.W.2d at 842. And giving controlling effect to earlier statutes would render much of H.B. 2224 either superfluous or invalid. But either possibility violates strong presumptions governing statutory construction. The General Assembly is presumed to have “intended that every word, clause, sentence and provision of a statute have effect.” *Hyde Park Housing Partnership v. Director of Revenue*, 850 S.W.2d 82, 84 (Mo. banc 1993). And since plaintiffs’ argument leads only to the unconstitutionality of H.B. 2224, it is contrary to the presumption that the General Assembly intends an interpretation that is constitutional. *Blaske*, 821 S.W.2d at 828 & 838.

The only constitutional conclusion is that H.B. 2224 does not impose a tax on counties. The moneys raised by H.B. 2224 are state funds.

**B. H.B. 2224 serves the State purpose of promoting public safety.**

The second prong of plaintiffs' Article X, § 10(a) argument addresses whether H.B. 2224 is for a State purpose. Plaintiffs argue that payment of deputy sheriffs' salaries is purely a county function. But plaintiffs' position is an overly restrictive view of the State's interests. Sheriffs, by statute, are to preserve the peace and protect the lives and property of the people. § 57.100 RSMo. The State has an interest in seeing that sheriffs, as well as law enforcement officers in general, are able to accomplish that. Article I, § 2 of the Missouri Constitution provides that it is the "principal office of government" to give security to the rights of the people, including life, liberty and the pursuit of happiness. H.B. 2224's purpose of supplementing deputy sheriff salaries implies that the General Assembly was concerned that some areas of the State lack sufficient financial resources to attract or retain qualified deputies. Remediating such a situation is undeniably a State purpose.

This Court decided a similar issue arising under the 1875 Constitution's predecessor to Article X, § 10(a) in *State ex rel. Hawes v. Mason*, 54 S.W. 524 (Mo. 1899). *Hawes* dealt with the St. Louis metropolitan police department and it was alleged that a state statute requiring the city to fund the police department was a state tax imposed on the municipality for a municipal purpose. This Court held that the statute did not violate the Constitution because the police department was not simply a municipal

purpose. Preserving the peace and protecting life and property was “strictly a state purpose” *Id.* at 531.<sup>2</sup>

“Laws like these, and those of other states, providing a metropolitan police system for large cities, are based upon the elementary proposition that the protection of life, liberty and property, and the preservation of the public peace and order, in every part, division, and subdivision of the state, is a governmental duty, which devolves upon the state, and not upon its municipalities, any further than the state, in its sovereignty, may see fit to impose upon or delegate it to the municipalities. The right to establish the peace and order of society is an inherent attribute of government, whatever its form, and is co-extensive with the geographical limits thereof, and touching every part of its territory.” 54 S.W. at 529. This Court noted that the General Assembly could impose a tax on a political subdivision “when in its judgment it is for the benefit of that locality as well as for the state at large.” *Id.* at 531.

Plaintiffs express concern that H.B. 2224 moneys collected from St. Louis County and St. Charles County may benefit other counties. Plaintiffs’ brief p. 51. But the fact that

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<sup>2</sup> Defendants did not suggest, as plaintiffs imply, that “state purpose” is the equivalent of “public purpose.” Defendants merely opined that the judicial deference that has been applied to legislative determinations of “public purpose” should also be applied to the General Assembly’s determination of what constitutes a “state purpose.”

the new revenue may benefit areas other than plaintiff counties simply confirms that the benefit is for the “state at large.” *Id.*

Plaintiffs seek to distinguish *Hawes*, noting that it relates to funding the metropolitan police department in St. Louis and that there is no similar statutory scheme for sheriffs. But nothing limits the State to only one method of promoting its interest in preserving the peace and protecting life and property. How the State chooses to further that purpose will vary from one situation to another. In the case of the police departments in St. Louis and Kansas City it has selected one method. In the case of the Highway Patrol it has selected another. And in the case of county sheriffs and police in other municipalities it has selected other systems. But the State’s general interest in promoting law enforcement remains the same.

A recent example of another method is the creation of the Cyber Crime Investigation Fund. § 650.120 RSMo. 2008 Supp. The panel awarding grants under this program includes both sheriffs and police chiefs. § 650.120.3(2) & (3) RSMo 2008 Supp. The grants are to multijurisdictional task forces and are to be used to pay the salaries of detectives and computer forensic personnel. § 650.120.2 RSMo 2008 Supp. While the Cyber Fund does not have a specifically denominated revenue source, it is beyond question that this program furthers the State purpose of adequate law enforcement, even if some of the money does go to paying the salaries of local law enforcement personnel. Like the Cyber Crime Investigation Fund, the general purpose of H.B. 2224 is not to set or pay salaries of deputy sheriffs, but to promote funding for sheriffs’ offices around the

state sufficient to preserve the peace and protect life and property—certainly a state purpose. *Hawes*, 54 S.W. at 531.<sup>3</sup>

Plaintiffs also claim, erroneously, that this Court has subsequently rejected *Hawes* and its conclusion that funding the police department is a state purpose. Plaintiffs’ brief p. 47. In *Strother v. Kansas City*, 223 S.W. 419 (Mo. banc 1920) this Court did not disagree that the Kansas City police department served a state purpose. This Court only held that the city council did not have the authority to impose an additional tax for that purpose that was not authorized by the General Assembly. And in *State ex rel. Carpenter v. City of St. Louis*, 2 S.W.2d 713 (Mo. banc 1928) this Court did not deal with police departments or law enforcement. It dealt with a library tax.

Thus, it has been established for over a century that law enforcement in the State of Missouri and adequate support thereof is a State purpose.

**C. Plaintiffs do not establish that H.B. 2224 is severable.**

Plaintiffs are circumspect in expressing the precise ruling they are asking this Court to enter. Their Conclusion states only that they seek a ruling that H.B. 2224 violates Article X, § 10(a) “as stated herein.” This evidently refers to page 40 of their

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<sup>3</sup> Even if law enforcement were viewed as a combined State and local purpose, this would not render it invalid under Article X, § 10(a). *State ex rel. State Tax Commission v. Davis*, 621 S.W.2d 511, 514 (Mo. banc 1981)(equalizing property tax assessment is both a state and county purpose).

brief where they ask that H.B. 2224 be declared unconstitutional “to the extent that [its new sections] require the county pay over to the state any of the court costs received into the county treasury.” In other words, to the extent that the new sections provide for the new \$10 charge, plaintiffs want it to be constitutional. Plaintiffs want to retain the new revenue with the discretion to spend it as they see fit.

. But, the General Assembly intended these moneys for a particular purpose. If there is a constitutional defect in effectuating that purpose, there is no indication that the General Assembly would have imposed the charge and let the counties use the resulting revenue for their own purposes. Hence, the sections are not severable. *Weinschenk v. State*, 203 S.W.3d 201,219 (Mo. banc 2006). Plaintiffs do they have any right to retain these moneys for their own use.

### **Conclusion**

The judgment of the trial court should be affirmed because (1) H.B. 2224 does not impose a tax on counties and (2) H.B. 2224’s revenue is for a State purpose.

Respectfully submitted,

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**Certificate of Service and of Compliance with Rule 84.06(b) and (c)**

The undersigned hereby certifies that on this 5th day of May, 2010, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

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Robert Presson

**Appendix**

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