IN THE SUPREME COURT OF MISSOURI

Case No. SC89114

FRANKLIN COUNTY, MISSOURI, ex rel. ROBERT E. PARKS, et al.,

Appellants,

v.

FRANKLIN COUNTY COMMISSION, et al.,

Respondents.

Appeal from the Circuit Court of Cole County
Honorable Patricia Joyce, Circuit Judge
Case No. 06AC-CC01149

BRIEF OF APPELLANTS FRANKLIN COUNTY EX REL. ROBERT PARKS & JIM MING

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JURISDICTIONAL STATEMENT

This Court has exclusive jurisdiction over this appeal pursuant to Article V, Section 3, as a case involving the validity under the Missouri Constitution of a statute of the State. Appellants appeal from the Final Judgment of the Circuit Court of Cole County, Missouri, entered on January 29, 2008. That Judgment declared §137.073.2, RSMo., valid and not in violation of Article X, Section 22(a) of the Missouri Constitution. Appellant Robert Parks, the Prosecuting Attorney of Franklin County, Missouri, brought suit pursuant to §137.073.8, RSMo., at the relation of Franklin County, Missouri, challenging the 2006 revised rate of levy for general property taxes levied for the County. The action sought declaratory judgment challenging the validity of the rate adjustment provisions contained in §137.073.2 on the basis that the provisions in that statute allowed an inflationary assessment growth of the rate of levy without a corresponding approval by a vote of the residents of the county in violation of Article X, Section 22(a) of the Missouri Constitution. The parties filed cross-motions for summary judgment and the trial court entered judgment for the County Commission and other defendant intervenors, construing Article X, Section 22(a) to allow for an upward inflationary adjustment of the tax levy rate; declaring §137.073.2 to be consistent with Article X, Section 22(a); and authorizing the 2006 tax levy rate set by the County Commission. This appeal followed.

STATEMENT OF FACTS

In 2005, Franklin County had a finalized assessed valuation of $1,538,058,698. L.F. **95**, 123, 126, 146, 149-151,153-155; **Appendix A14.**[1] This was broken into a total of $1,199,686,604 for real property and $338,372,094 for personal property locally assessed and subject to the County's general property tax levy. L.F. **95**, 123, 126, 146, 149-151,153-155; **Appendix A14.** Assessed valuation of real and personal property for 2006 changed, as recorded on the assessment rolls of the Franklin County Assessor and reported to the Franklin County Commission on August 11, 2006. L.F. **89**, 123, 126, 146, 149-151,153-155**.** The aggregate total of locally assessed value for real and personal property in 2006 was $1,586,438,044. L.F. **95**, 123, 126, 146, 149-151,153-155; **Appendix A14.** This was broken into a total of $1,244,945,750 in real property and $341,492,294 in personal property. L.F. **95**, 123, 126, 146, 149-151,153-155; **Appendix A14.** Included in the assessed values for 2006 was the assessed valuation of new construction and improvements that had occurred in the county during 2005 but before the assessment date of January 1, 2006. The total amount of new construction and

[1] This case was decided on cross-motions for summary judgment. Citations to the record of the facts contained in the Statement of Facts are to the particular statement of uncontroverted material fact and/or exhibit and the admissions of the opposing parties to that uncontroverted material fact. For the convenience of the Court, the citation to the fact being asserted is shown in bold type, as is the citation to the same fact if it is included in the Appendix to this brief.

improvements for the county was $45,967,387 in assessed value, divided into $34,400,844 in real property assessed value and $11,566,543 in personal property assessed value. L.F. **95**, 123, 126, 146, 149-151,153-155; **Appendix A14.** In addition, there was $8,474,241 in state-assessed real and personal property in 2006 that had been locally assessed in 2005 ($27,898 in real property assessed value and $8,446,343 in personal property assessed value). L.F. **95**, 123, 126, 146, 149-151,153-155; **Appendix A14.**

In 2005, the County's tax rate (levy) ceiling was 0.2816 per $100 of assessed valuation. L.F. **96**, 124, 146, 149-151,153-155; **Appendix A15.** The County's adjusted revenue for the year was $4,307,310. L.F. **96**, 124, 146, 149-151,153-155; **Appendix A15.**

For purposes of setting the levy for the 2006 tax year, the State Tax Commission certified that the Consumer Price Index increased by 3.5%. L.F. **96**, 124, 146, 149-151,153-155; **Appendix A15.** In addition, based on the adjusted valuations between the assessed values for 2005 and 2006, the County determined that there was a percentage increase in the adjusted assessed valuation of existing property in 2006 of 0.7117% over the adjusted assessed valuation of property in 2005. L.F. **95**, 123, 146, 149-151,153-155; **Appendix A14.** This 0.7117% figure was also what the County determined was its permitted reassessment revenue growth for 2006. L.F. **96**, 124, 146, 149-151,153-155; **Appendix A15.** In revenue dollars, this permitted reassessment revenue growth equated to $30,655, when the 0.7117% figure was applied to the adjusted revenue from 2005 (i.e., .007117 x $4,307,310). L.F. **96**, 124, 146, 149-151,153-155; **Appendix A15.** Based on

these calculations, the County determined that its total permitted revenue for 2006 was $4,337,965, that amount comprised of the adjusted revenue for 2005 and the permitted additional inflationary growth revenue for 2006 ($4,307,310 + $30,655). L.F. **96**, 124, 146, 149-151,153-155; **Appendix A15.** Dividing the total permitted revenue for 2006 ($4,337,965) by the 2006 adjusted assessed valuation ($1,540,470,657), the County determined it could assess a levy of 0.2816 per $100 of assessed value as the maximum levy allowed by Article X, Section 22 of the Missouri Constitution. L.F. **96**, 124, 146, 149-151,153-155; **Appendix A15.** Because the County also levied a sales tax and received revenue from this source, it reduced the maximum property tax levy further as required by law. L.F. **97**, 125, 146, 149-151,153-155; **Appendix A16.** The property tax levy was reduced by 0.1655 per $100 of assessed value to derive a final rate to be levied of 0.1161 per $100 of assessed value. L.F. **97**, 125, 146, 149-151,153-155; **Appendix A16.**

In setting its rate, the County followed the methodology set out on forms issued by the State Auditor's Office. L.F. **95-97**, 123-125, 145-147, 149-151,153-155; **Appendix A14-A16.** The calculations were simply pro forma calculations, the County entering the relevant numbers for the tax years in question and following the formulas and instructions set out in the forms. L.F. **95-97**, 123-125, 145-147, 149-151,153-155; **Appendix A14-A16.** The form the County used was a designated form for the calculation and revision of the tax rate under the Auditor's regulations related to that topic. L.F. **95-97**, 123-125, 145-147, 149-151,153-155; **Appendix A14-A16**; 15 CSR 40-3.120, **Appendix A13**. Prior to the rate being finally adopted by the County, it was

reviewed and approved by the Auditor as complying with Section 137.073. L.F. **98**, 126, 148, 149-151,153-155; **Appendix A17.**

The 0.1161 amount was levied by the County by Commission Order. L.F. 99, 124, 149-151,153-155; **Appendix A18.** Neither prior to adopting its order setting the levy nor afterwards has the County Commission referred the amount of the levy to voter approval in the County. At no time have the voters of the County approved the rate set by the County for 2006 at an election held to consider that matter.[2] If the inflationary growth revenue for 2006 ($30,655) is not added to the adjusted revenue for 2005 ($4,307,310) a tax rate of 0.1141 per $100 of assessed value would generate a revenue of $4,307,310, after adjustments for the required sales tax reductions are made.

[2] These last two facts are undisputed and clearly implicit in the filing of the underlying action and the positions taken by the parties; however, no specific reference is made to these facts in the summary judgment record. Such an absence does not, however, affect the Court's consideration of the matter.

STANDARD OF REVIEW

A declaratory judgment action is reviewed under the same standards as apply to any court-tried case, i.e., the court affirms the judgment unless it is unsupported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Building Owners & Managers Association v. City of Kansas City*, 231 S.W.2d 208, 211 (Mo. Ct. App. 2007). When the matter comes to the Court on grant of a summary judgment, the Court's review is essentially *de novo*. *Dierkes v. Blue Cross and Blue Shield of Missouri*, 991 S.W.2d 662, 666 (Mo. banc 1999). Whether summary judgment was properly granted is purely a question of law and because the trial court's judgment is based on the record submitted to it, there are no factual determinations by the trial court which need be given deference on appellate review. *Id.* In determining the propriety of the judgment entered, the Court reviews the factual record in a light most favorable to the party which has prevailed below. *Id.* As with consideration of the issue in the trial court, the Court "looks to the entire record to determine if there is any issue of material fact and whether the moving party was entitled to judgment as a matter of law." *Dial v. Lathrop R-II School District*, 871 S.W.2d 444, 446 (Mo. banc 1994).

Where, as here, the challenge is to the validity of a statute under the provisions of the state constitution, the statute is presumed valid and the party challenging the validity of the statute must clearly and convincingly show otherwise. On the other hand, in testing the validity of the statute against the language of the Missouri Constitution, the provision in the Constitution is to be construed by ascertaining the intent of the voters from the language adopted by them and doubts as to the meaning resolved in favor of that

intent. *Beatty v. Metropolitan St. Louis Sewer District*, 867 S.W.2d 217, 221 (Mo. banc 1993). Article X, Section 22 of the Missouri Constitution exhibits "the voters' basic distrust of the ability of representative government to keep its taxing and spending requirements in check" and is to be construed liberally to guarantee the right the voters reserved to themselves of approving increases in taxes and revenues by political subdivisions of the State. *Id.*

POINT RELIED ON

I.

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT FOR DEFENDANTS DECLARING SECTION 137.073, RSMO., AND 15 CSR 40-3.120 VALID AND ENFORCEABLE AND UPHOLDING THE 2006 PROPERTY TAX LEVY FOR FRANKLIN COUNTY AND IN NOT ENTERING SUMMARY JUDGMENT FOR PLAINTIFF TO THE OPPOSITE EFFECT BECAUSE THE RATE OF LEVY WAS BASED ON THE METHOD FOR CALCULATING THE LEVY UNDER SECTION 137.073, RSMO., AND 15 CSR 40-3.120, AND BOTH PROVISIONS ARE INVALID UNDER MISSOURI CONSTITUTION ART. X, SECTION 22(a), IN THAT THEY ALLOW FOR A TAX RATE INCREASE THROUGH APPLICATION OF AN UPWARD INFLATIONARY ADJUSTMENT WITHOUT A VOTE OF THE RESIDENTS OF THE TAXING AUTHORITY.

Mo. Const. Art. X, § 22(a)

McKay Buick, Inc. v. Spradling, 529 S.W.2d 394 (Mo. banc 1975)

City of Bridgeton v. Northwest Chrysler-Plymouth, Inc., 37 S.W.3d 867 (Mo. Ct. App. 2001)

Beatty v. Metropolitan St. Louis Sewer District, 867 S.W.2d 217 (Mo. banc 1993)

ARGUMENT

I.

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT FOR DEFENDANTS DECLARING SECTION 137.073, RSMO., AND 15 CSR 40-3.120 VALID AND ENFORCEABLE AND UPHOLDING THE 2006 PROPERTY TAX LEVY FOR FRANKLIN COUNTY AND IN NOT ENTERING SUMMARY JUDGMENT FOR PLAINTIFF TO THE OPPOSITE EFFECT BECAUSE THE RATE OF LEVY WAS BASED ON THE METHOD FOR CALCULATING THE LEVY UNDER SECTION 137.073, RSMO., AND 15 CSR 40-3.120, AND BOTH PROVISIONS ARE INVALID UNDER MISSOURI CONSTITUTION ART. X, SECTION 22(a), IN THAT THEY ALLOW FOR A TAX RATE INCREASE THROUGH APPLICATION OF AN UPWARD INFLATIONARY ADJUSTMENT WITHOUT A VOTE OF THE RESIDENTS OF THE TAXING AUTHORITY.

A.

"Read as a whole, the Hancock Amendment, Mo. Const. art. X, §§16-24, aspires to erect a comprehensive, constitutionally-rooted shield erected to protect taxpayers from government's ability to increase the tax burden above that borne by the taxpayers on November 4, 1980." *Fort Zumwalt School District v. State*, 896 S.W.2d 918, 921 (Mo. banc 1995). As this Court recognized by this language, the fundamental purpose of the Hancock Amendment is to rein in the ability of the State and its local governments from increasing the tax burden. Article X, § 22 is but one part of the mechanism created by the

Hancock Amendment to accomplish this end. *Id.* That provision relates to political subdivisions and provides, in pertinent part to this appeal:

> Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. . . . If the assessed valuation as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

Mo. Const. Art. X, §22(a).

This provision recognizes that curbing the tax burden being borne by taxpayers is not simply a matter of controlling the tax levy. The tax levy is really a product of the level of governmental services provided (or desired to be provided), the tax base available to generate public funds, and the amount of funds that can be raised by applying any given tax levy to the tax base. *See, e.g., ASARCO, Inc. v. McHenry*, 679 S.W.2d 863, 864 n.1 (Mo. banc 1984). It is, in essence, a three-legged stool which is required to be in

balance and that balance achieved through the relationship of the three legs to each other – the available tax base, the estimated revenue needs, and the tax rate to be levied against the tax base.

In adopting the Hancock Amendment, the voters referred to limitations on "taxation and spending." Mo. Const. Art. X, §16. The Hancock Amendment recognizes that the fiscal evil to be avoided is two-headed: when allowed to without restraint: (i) governments will increase tax rates to be able to fund increased levels of public services; and (ii) governments will expand public services to the level of public funds available at existing tax rates. *See, e.g., Beatty v. Metropolitan St. Louis Sewer District*, 867 S.W.2d 217, 221 (Mo. banc 1993)("Reduced to its essence, the Hancock Amendment reveals the voters' basic distrust of the ability of representative government to keep its taxing and spending requirements in check"). The Hancock Amendment does not dictate levels of taxation or levels of public services *per se*. Rather it imposes a participation requirement – increases in tax burdens, whether the result of increases in the tax levy or the level of revenue generated, will only be accomplished through direct participation of the voters of the taxing district.

In dealing with the twin evils of government taxing and spending, the Hancock Amendment includes a tax rate adjustment mechanism: "If the assessed valuation as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property,

adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value." Mo. Const. Art. X, §22(a). The clear language of this provision mandates what is known as a "rollback." When assessed value in the county for one year increases over the assessed value for the previous year by an amount greater than inflation, the taxing entity is required to reduce its tax rate so that the revenue being generated by the tax base in the second year is no greater than the revenue generated by that same tax base in the first year. (As noted in the language of Section 22(a), the comparison is made between identical tax bases – the tax base in the first year. The assessed valuation of new construction and improvements is not factored into the equation.)

The concept of a rollback dates back to 1955 and had its genesis in the original Section 137.073. *See Missouri Pacific Railroad Co. v. Campbell*, 502 S.W.2d 354, 357-58 (Mo. 1973). The impetus for the statutory rollback was a state-wide reassessment of assessed values by the State Tax Commission that was anticipated to substantially increase assessed values and, thereby, the financial burden on taxpayers if tax rates were not adjusted accordingly. *Id.* The rollback is designed to prevent a "windfall": "the basic evil to be corrected by the statute . . . was to prevent tax windfalls to the school districts beyond the stated needs of the districts merely because the assessed valuation of the real property in a county was substantially increased." *Id.* at 358.

The rollback is uniquely and well-suited to addressing the windfall problem but it can have its limitations as evidenced by *ASARCO, Inc. v. McHenry*. One way to prevent a windfall is simply to increase the estimate of need for the political subdivision by

expanding the public services to be provided. 679 S.W.2d 863 (Mo. banc 1984). As the Court said in *ASARCO*, "The rollback statute only prevents windfalls to taxing authorities. A windfall occurs when a taxing authority collects more money than it needs. This can be easily tested." *Id.* at 865-66. So long as the revenue produced by the tax rate imposed equaled the amount of revenue for the government's operation, there was no windfall and no requirement for a rollback. *Id.* The lesson taken from *ASARCO*, as seen by subsequent amendments to Section 137.073 and Article X, Section 22(a) is that is as necessary to curb government spending as it is to require adjustment of the tax rate.

The current action does not involve a rollback, however, but a "roll-up." The applicable Consumer Price Index as certified by the State Tax Commission was 3.5%. L.F. **96**, 124, 146, 149-151,153-155; **Appendix A14**. The percentage increase in valuation of existing property from 2005 to 2006 was 0.7117% (in other words, approximately one seventh of one percent), L.F. **96**, 124, 146, 149-151,153-155; **Appendix A14**, an amount that was less than the increase in the Consumer Price Index. Thus, Franklin County was not required to roll back its tax levy. However, the County did not stop there. Instead it sought to "grow" its revenue by 0.7117% to account for the inflationary growth in assessed value and adjusted its tax rate to produce an additional $30,655 in revenue. L.F. **96**, 124, 146, 149-151,153-155; **Appendix A14**. The County seeks to roll up the amount of revenue it will collect for 2006 from its property tax by setting a tax rate that will produce this inflationary adjusted level of revenue.

Such an action is neither warranted nor permitted by the Hancock Amendment. In contrast to the language in Article 10, Section 22(a) which mandates the rollback when

the designated conditions exist, the constitutional provision does not include language which addresses, or more importantly, which authorizes a roll-up without the approval of the voters of the taxing entity. The Hancock Amendment is structured such that voter approval of increases in the tax rate and public revenues is the rule and only those exceptions as are clearly stated in its provisions eliminate the requirement for voter approval of increases.

In terms of the three-legged stool analogy, the Hancock Amendment dictates the specifications for the stool on which a political subdivision's budget will rest. It does so by mandating that the length of the leg for estimated revenue needs, requiring that leg to be no longer than the revenue generated by the political subdivision in the previous year. It is only if the voters of the taxing authority approve a greater amount of public revenue to be generated that the political subdivision may construct a stool that deviates from the Hancock Amendment's specification for the length of this particular support.

The trial court and the County focused on the concept of a windfall and on *Scholle v. Carrollton R-VII School District*, 771 S.W.2d 336 (Mo. banc 1989). It can be conceded that there is no windfall to the County here since its tax rate merely reflects inflationary growth and nothing more. The underlying premise of an inflationary growth factor is that the cost of public services in one year will increase by the rate of inflation for the same public services provided in the following year.

Windfall, however, is not the determining factor under Article X, Section 22(a) when a roll-up is concerned. "The constitution's prohibition is measured against the tax levy." *City of Bridgeton v. Northwest Chrysler-Plymouth, Inc.*, 37 S.W.3d 867, 871 (Mo.

Ct. App. 2001). If the levy is not increased, there is no violation of the Hancock Amendment, *Id.*, but by implication as well, if the levy is increased and done so without voter approval, a violation does exist. There is no leeway granted in the Hancock Amendment for an increase in the tax rate without voter approval, even when the increase merely reflects inflationary growth.

The trial court's reliance on *Scholle v. Carrollton R-VII School District* is also misplaced. *Scholle* is a recoupment case under Section 137.073.4(3). It involved neither a rollback nor a roll-up. A recoupment is the means for recovering lost revenues which occurs when the aggregate assessed value for a taxing district is reduced by action of the State Tax Commission after the tax rate is set. Recoupment deals with shortfalls in revenue and recognizes that estimates of revenue needs and the tax rates necessary to meet those needs are not made in a perfect world in which the tax base becomes immutable at the time the rate is set. 771 S.W.2d at 339 (recoupment provision "does no more than permit the taxing authority to recoup revenue lost as a result of subsequent adjustments in the assessed valuation of property as finally equalized").

Scholle has to be read and applied in this context. *Scholle* states, "This definition [of 'assessed valuation of property as finally equalized'] is consistent with the purpose of the tax and spending limit which seeks, among other things, to prevent *increases* in the effective rates of taxation, as measured by revenue generated, without voter approval." 771 S.W.2d at 338 (emphasis in original). As first blush, this language would seem to support the County's action. The rate set by the County does not increase the effective rate of taxation if "effective rate" is understood to mean a rate adjusted for inflation. The

quoted language has to be read in the context of a recoupment, however. In the perfect world where the extent of the tax base is known at the time the tax rates are set and the tax base is not subject to subsequent reduction, the original tax rate would have included the incremental adjustment made later to accomplish the recoupment. Over time, the taxpayer is effectively levied a tax that is no more than would have been paid if the tax base was fully known and unchangeable at the time the original tax rate was set. This is all that was meant by the Court's reference to "effective rates of taxation."

The County's position would also seem supported by the statement, "By its unambiguous language, the intention of art. X, §22(a) is to require a property tax levy which yields the same gross revenue for the political subdivision as it received prior to reassessment." 771 S.W.2d at 338-339. Again, this would be true if the Hancock Amendment authorized a gross revenue that is adjusted for inflation. However, *Scholle* is a recoupment case and the Court was not concerned with inflationary adjustments. In the recoupment context, the Court is only saying that Article X, Section 22(a) entitled the political subdivision to the entire amount of gross revenue it estimated was required (and would be produced) when it set its original rate. In other words, it is revenue which is unchangeable, not the tax rate.

While some may question the wisdom of not allowing public revenues for government services to grow to keep pace with inflation without first going to the voters for approval, the language of Article X, Section 22(a) and its intended effect are clear: revenue levels as expressed in a tax rate may be adjusted for inflation only when a rollback is required. In the absence of a rollback situation, a political subdivision may

only make an upward inflationary adjustment to revenues after approval of the voters of the taxing authority. The validity of Section 137.073 and 15 CSR 40-3.120 must be measured against this principle.

B.

The County justifies its action by saying it followed and complied with the requirements of Section 137.073, RSMo., and 15 CSR 40-3.120. Section 137.073 is both substantive and procedural with respect to revising a prior tax levy by a political subdivision. Analysis of the statute relative to this case begins with the definition of "tax rate ceiling" which is "a tax rate as revised by the taxing authority to comply with the provisions of this section or when a court has determined the tax rate[.]" §137.073.1(3), RSMo. The tax rate ceiling is the maximum tax rate that can be levied except when the voters of the taxing district have approved a higher rate. *Id. See, also,* §137.073.5(1), RSMo. Section 137.073 makes clear that the tax rate ceiling derived from following its requirements is a ceiling and not a floor: "The governing body of any political subdivision may levy a tax rate lower than its tax rate ceiling and may <u>increase</u> that lowered tax rate to a level not exceeding the tax rate ceiling without voter approval." §137.073.5(3)(emphasis added).

Procedurally, the process begins when aggregate changes in assessed values, exclusive of new construction and improvements, are entered in the assessor's books from the aggregate assessed values of the prior tax year. When such changes are entered, whether they are increases or decreases in those aggregate values, "[a]ll political subdivisions shall immediately revise the applicable rates of levy for each purpose for

each subclass of real property, individually, and personal property, in the aggregate, for which taxes are levied to the extent necessary to produce from all taxable property, exclusive of new construction and improvements, the same amount of tax revenue as was produced in the previous year . . . except that the rate may not exceed the greater of the rate in effect in the 1984 tax year or the most recent voter-approved rate." §137.073.2, RSMo. This is not the end of the process for computing the rate under the statute. The subsection goes on to provide for the adjustment of the tax rate ceiling by an inflationary growth factor tied to the consumer price index but subject to an annual growth cap of five percent. §137.073.2, RSMo. This inflationary growth adjustment is made without consideration of whether an upward adjustment of the rate and the revenue it generates is accompanied by a vote of the electorate approving the increase. *Id.* Section 137.073.2 attributes the inflationary growth mechanism to the Hancock Amendment, stating "As provided in section 22 of Article X of the constitution, a political subdivision may also revise each levy to allow for inflationary assessment growth occurring within the political subdivision." §137.073.2, RSMo. However, as noted in the preceding section, Article X, Section 22(a) only allows consideration of inflationary growth when a reduction in rates is mandated by the constitutional provision. It does not permit an increase in the tax rate tied to inflationary growth absent a vote of approval on the increase.

Section 137.073.6(2) also tasked the State Auditor with the promulgation of regulations creating forms and formulas for the calculation of a political subdivision's tax rate ceiling and tax rate levy consistent with Section 137.073. The Auditor's regulation was published at 15 CSR 40-3.120 and required that certain forms be utilized in

computing a political subdivision's tax rate ceiling. 15 CSR 40-3.120. The regulation recited that the forms were designed to "compute and substantiate the annual tax rate ceiling(s) pursuant to the requirements of the *Missouri Constitution* Article X, Section 22 and section 137.073, RSMo." 15 CSR 40-3.120(1)(emphasis in original). Finally, as part of the procedure for setting the tax rate for a political subdivision, the political subdivision was required to submit the applicable forms required by 15 CSR 40-3.120 to the Auditor's Office for review and certification of the tax rate ceiling with the requirements of Section 137.073. §137.073.6(2).

There is no dispute that the County set its rate in accordance with Section 137.073. There is no dispute that the County properly completed the Auditor's forms without error and that it derived both its tax rate ceiling and its tax rate according to the formulas contained in those regulatory forms. There is no dispute that the Auditor reviewed the County's forms and calculations and certified that the County's tax rate ceiling and proposed tax rate were consistent with the requirements of Section 137.073. The County followed Section 137.073 and 15 CSR 40-3.120 to the letter and without any deviation whatever from the substantive and procedural requirements of those provisions. Its tax rate is valid under those statutory and regulatory provisions.

If compliance with the statute and regulation was the only consideration to be made, there would be no dispute over the tax rate the County imposed for 2006. However, a statute which violates the state constitution is invalid and cannot be enforced. *See, e.g., McKay Buick, Inc. v. Spradling*, 529 S.W.2d 394, 401 (Mo. banc 1975)(tax statute contrary to constitutional provisions is invalid). As the discussion under this point

shows, Section 137.073 and 15 CSR 40-3.120 allow what the Hancock Amendment prohibits. Section 137.073 and 15 CSR 40-3.120, when faithfully adhered to as was done by the County in this case, permit the "roll-up" of a tax rate and an increase in public revenues above the same amount generated in the previous year without the approval of the County's voters. In contrast, the Hancock Amendment, Article X, Sections 16 and 22, require voter approval of any roll-up even when the roll-up simply reflects the increase in the general price level from the previous year and not a penny more.

Certainly, the County was under an obligation to follow Section 137.073 and 15 CSR 40-3.120 in determining its tax rate ceiling and setting its tax rate. To the extent there is a problem with the rate set by the County, the problem rests squarely with the Legislature in adopting a statutory method for calculating the tax rate ceiling and tax rate which violated the State's constitution. However, neither the County's good faith nor the ultimate blame for the invalid procedure followed by the County justifies its tax rate levy. Section 137.073 and 15 CSR 40-3.120, which was promulgated pursuant to it, are invalid as contrary to Article X, Section 22(a) of the Missouri Constitution. Any tax rate established under those invalid provisions are similarly invalid. The trial court erred in upholding the County's tax rate.

CONCLUSION

In following the dictates of Section 137.073.2 and 15 CSR 40-3.120, the County has set a tax rate for 2006 that violates the Hancock Amendment, specifically Article X, Section 22(a) of the Missouri Constitution. The trial court erred in declaring Section 137.073.2 and 15 CSR 40-3.120 to be valid and in upholding the 2006 tax rate. This Court should reverse the judgment of the trial court and enter a judgment in favor of Appellant Robert E. Parks that declares (i) Section 137.073.2 and 15 CSR 40-3.120 invalid as contrary to Article X, Section 22(a) of the Missouri Constitution, (ii) declares the correct general property tax rate for the County at 0.1141 per $100 of assessed value, and (iii) directs the County to issue an order setting its tax rate at this level.

Respectfully submitted,

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CERTIFICATE OF ATTORNEY

I hereby certify that the foregoing Brief of Appellants Franklin County, Missouri ex rel. Robert Parks, et al., complies with the provisions of Rule 55.03 and complies with the limitations contained in Rule 84.06(b) and that:

(A) It contains 5,781 words, as calculated by counsel's word processing program;

(B) A copy of this Brief is on the attached CD; and that

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing Brief of Appellants were sent by U.S. Mail, postage prepaid, this 12th day of May, 2008, to:

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