

IN THE SUPREME COURT OF MISSOURI

MISSOURI PROSECUTING	)	
ATTORNEYS AND CIRCUIT	)	
ATTORNEYS RETIREMENT SYSTEM,	)	
	)	
Plaintiff/Appellant,	)	
	)	No. SC89896
vs.	)	
	)	
BARTON COUNTY, et al.	)	
	)	
Defendants/Respondents.	)	

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Brief of Appellant

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Appeal from the Circuit Court of Barton County  
The Honorable Kevin L. Selby

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## JURISDICTIONAL STATEMENT

On November 9, 2006, Plaintiff/Appellant Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System (PACARS) filed a petition for mandamus in the Circuit Court of Barton County, seeking a writ to direct Barton County and its three commissioners to make pension payments required by section 56.807, RSMo. On October 20, 2008, the circuit court entered an Order and Final Judgment holding that section 56.807 was unconstitutional for violating the Hancock Amendment (Article X, Section 21 of the Missouri Constitution). On November 26, 2008, PACARS filed a timely notice of appeal to this Court.

Exclusive jurisdiction over this appeal is vested in this Court by Article V, Section 3 of the Missouri Constitution because this case involves the validity of a statute of this state.

## STATEMENT OF FACTS

On November 9, 2006, Plaintiff/Appellant Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System (PACARS) filed a petition for mandamus in the Circuit Court of Barton County. Legal File (“L.F.”) at 5. The defendants were Barton County and the county commissioners (Gerry Miller, John Stockdale, and Dennis Wilson). L.F. at 6. The petition alleged that section 56.807.5, RSMo, required the County to make payments to PACARS, but that as of September of 2006, the County had refused to make payments totaling \$14,419. L.F. at 6-7. The petition prayed for a writ of mandamus to compel payment, as well as costs and other relief. L.F. at 7. Bonda Rawlings intervened in the action as a taxpayer. L.F. at 8, 14.

The case was tried to the court upon a joint stipulation of facts. The stipulated facts were as follows:

1. The Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System (PACARS) is a body corporate authorized by section 56.800, RSMo. PACARS may sue and be sued in its own name. L.F. at 47.
2. PACARS is a fund for the purpose of paying retirement annuities and other benefits as provided under Sections 56.800-.840, RSMo, for eligible prosecuting attorneys and circuit attorneys in Missouri. L.F. at 47.
3. Barton County is a county of the third class and is for all intents and purposes a political subdivision of the State. Barton County does not have a charter form of government. L.F. at 47.

4. Gerry Miller, John Stockdale and Dennis Wilson were the duly elected and acting County Commissioners of Barton County, Missouri, on the date of the filing of this action. Mike Davis is the present Presiding Commissioner of Barton County replacing Gerry Miller. L.F. at 47.

5. Bonda Rawlings is a citizen, resident, and taxpayer of the state of Missouri and of Barton County, Missouri. L.F. at 47.

6. Barton County has an elected part-time County Prosecutor. L.F. at 47.

7. PACARS was created pursuant to Senate Bill No. 30, adopted by the 85th General Assembly, now codified at Sections 56.800-.840, RSMo, and commenced its operations on August 28, 1989. L.F. at 48. A true and correct copy of Senate Bill No. 30 is attached as Exhibit 1. L.F. at 52.

8. Barton County participated in PACARS beginning in 1989. L.F. at 48.

9. In 1995, the 88th General Assembly enacted House Bills Nos. 416, 474, 544 and 587, which amended Section 56.807.1, RSMo, by removing language entitling counties to incentive payments from the Missouri Department of Social Services for use as reimbursement for county contributions to PACARS. L.F. at 48. Copies of House Bills Nos. 416, 474, 544 and 587 are attached as Exhibit 2. L.F. at 64.

10. In August of 1995, Barton County's Treasurer was provided with written notice that as a result of House Bills 416, 474 544 and 587, incentive payments no longer dictated the amount to be paid to PACARS. L.F. at 48. A true and correct copy of the letter sent to the Barton County Treasurer is attached as Exhibit 3. L.F. at 101.

11. From 1989 until January 2002, Barton County received incentive payments from the Department of Social Services, which it specifically credited as contributions payments and forwarded to PACARS. In 1998, Barton County received approximately \$6,065.80 in incentive payments. In 1999, Barton County received approximately \$8,767.77 in incentive payments. In 2000, Barton County received approximately \$13,643.08 in incentive payments. In 2001, Barton County received approximately \$1,486.06 in incentive payments. In 2002, Barton County received approximately \$0.49 in incentive payments. L.F. at 48. A true and correct copy of Barton County's incentive payment receipts is attached hereto as Exhibit 4. L.F. at 116.

12. Exhibit 5 is a true and correct copy of the PACARS Payment Reconciliation Worksheet for Barton County for the period December 2001 through March 2007. L.F. at 49, 130. Barton County had made all statutorily required contribution payments to PACARS through December 2001 and had a zero balance with PACARS as of that date. L.F. at 49.

13. Barton County's last payment to PACARS was in December 2001. L.F. at 49.

14. Barton County has made no payment to PACARS from January 2002 until the present time. L.F. at 49.

15. In its 2002 budget, Barton County budgeted both for the incentive payments from the State for the contribution payments to PACARS and for payment to PACARS of the contribution payments. L.F. at 49.

16. Following approval of the 2002 budget in January 2002, Barton County became aware that the Department of Social Services incentive payments for credited payments to PACARS was no longer being provided by the State. L.F. at 49.

17. Following the realization that the budgeted revenue from the State earmarked for PACARS contribution payments was no longer being provided by the State, the Barton County Commission determined that it would not participate in PACARS absent the state funding and the Commission directed the County Clerk to discontinue making the contribution payments to PACARS. L.F. at 49.

18. For budgets approved for years subsequent to fiscal year 2002, Barton County has not budgeted for the receipt of State funds ear-marked for PACARS contribution payments nor has it budgeted for payment of contribution payments to PACARS for those years. L.F. at 49.

19. Barton County has not received any state funding ear-marked for the contribution payments to PACARS from March 2002 to the present. L.F. at 49.

20. On August 26, 2002, PACARS made a demand of Barton County for the contribution payments from January 2002 to the time of the letter. L.F. at 50. A true and correct copy of that correspondence is attached as Exhibit 6. L.F. at 131.

21. Barton County responded to the PACARS demand by letter dated September 23, 2002, advising PACARS that continued payment in the absence of state funding was a violation of the Hancock Amendment and that the County had no source of funding in the budget to cover the contribution payments. L.F. at 50. A true and correct copy of that correspondence is attached as Exhibit 7. L.F. at 132.

22. If Barton County is subject to the contribution payments provided for under Section 56.807, from January 2002 to the present, the amount payable under that section is \$375.00 per month from January 2002 to August 27, 2003, and \$187.00 per month from August 27, 2003, to the present. L.F. at 50.

On October 20, 2008, the trial court entered a judgment holding that section 56.807 was unconstitutional for violating the Hancock Amendment (Article X, Section 21 of the Missouri Constitution). L.F. at 180. On November 26, 2008, PACARS filed a timely notice of appeal to this Court. L.F. at 182.

POINT RELIED ON

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN ENTERING JUDGMENT IN FAVOR OF THE DEFENDANTS BECAUSE THE STIPULATED FACTS SHOW THAT PACARS IS ENTITLED TO RECEIVE THE REQUESTED PAYMENTS FROM BARTON COUNTY IN THAT (A) THE PLAIN LANGUAGE OF SECTION 56.807, RSMO, MANDATES THE PAYMENTS AND (B) SECTION 56.807, RSMO, IS ENFORCEABLE AND DOES NOT VIOLATE ARTICLE X, SECTION 21 OF THE MISSOURI CONSTITUTION BECAUSE THE REQUIRED PAYMENTS ARE AUTHORIZED BY ARTICLE VI, SECTION 11, OF THE MISSOURI CONSTITUTION, PROVIDING THAT A LAW WHICH WOULD AUTHORIZE AN INCREASE IN THE COMPENSATION OF COUNTY OFFICERS SHALL NOT BE CONSTRUED AS REQUIRING A NEW ACTIVITY OR SERVICE OR AN INCREASE IN THE LEVEL OF ANY ACTIVITY OR SERVICE WITHIN THE MEANING OF THE MISSOURI CONSTITUTION.

§ 56.807, RSMo.

Mo. Const. Art. VI, § 11

## ARGUMENT

The judgment of the trial court should be reversed because the stipulated facts show that the County is required to make the payments to PACARS mandated by section 56.807, RSMo. These payments are for compensation of a county officer and thus squarely within the scope of Article VI, Section 11 of the state constitution, so that there could be no Hancock Amendment violation. The Court should reverse the judgment of the circuit court and remand for issuance of a writ of mandamus.

### **I. Standard of review.**

This case was submitted on stipulated facts. The only question before the Court is whether the trial court reached the proper legal conclusions from the stipulated facts. *Schroeder v. Horack*, 592 S.W.2d 742, 744 (Mo. banc 1979). Because the parties stipulated to the facts, the trial court's decision was not based on a factual determination, but rather the interpretation of section 56.807 and the Missouri Constitution. *Goodwin v. Carroll County*, 250 S.W.3d 427, 428 (Mo. App. 2008). Statutory interpretation is a question of law reviewed de novo. *Id.*

On the substantive issue before the Court, all statutes are presumed to be constitutional and will not be held unconstitutional unless they clearly and undoubtedly contravene the constitution. *Missouri Prosecuting Attorneys & Circuit Attorneys Retirement System v. Pemiscot County*, 256 S.W.3d 98, 102 (Mo. banc 2008). A statute will be enforced unless it plainly and palpably affronts fundamental law embodied in the constitution. *Id.* Doubts must be resolved in favor of the constitutionality of the statute. *Id.*

## **II. Section 56.807 requires County payments to PACARS.**

Today and since its enactment, section 56.807 has required the County to make payments to PACARS for the benefit of county prosecutors.

### **A. The 1989 enactment.**

Section 56.800 through 56.840 were enacted in 1989. This statute created the Prosecuting Attorneys and Circuit Attorneys' Retirement Fund, established the board of directors of the fund, and specified the benefits available to members. §§ 56.800-.840, RSMo 1990. (For the Court's convenience, this initial version of the statute as set forth in RSMo 1990 is included in the appendix to this brief.)

Section 56.807 provided that for performing services relating to child-support enforcement, county prosecuting attorneys would receive additional funds. § 56.807.2, RSMo 1990. For third and fourth class counties, each prosecuting attorney was to receive an additional \$4500. *Id.* Counties were to pay these sums to PACARS for the prosecutors' retirement fund:

The additional annual funds for prosecuting attorneys and circuit attorneys provided for in this subsection shall be paid from county or city funds, and reimbursed by incentive payments. On or before January fifteenth of each year, the department of social services shall calculate the amount to be paid each county or city as incentive payments for the preceding year. If the incentive payments in any county are insufficient to pay for the additional funds provided for in this subsection, the actual incentive payment will be the sole amount paid and no county shall be required to make payments of

any funds for prosecuting attorneys and circuit attorneys provided for in this subsection in excess of the amount actually received by the county as such incentive payments for the previous year.

*Id.*

The statute provides that the county treasurer “shall at least monthly transmit the total amount” in the prosecuting attorneys fund to PACARS. § 56.807.3, RSMo 1990. From the outset, the statute was clear that payments to PACARS “shall be paid from county or city funds.” § 56.807.2, RSMo 1990. The statute was just as clear on the state’s role: “No state moneys shall be used to fund . . . sections 56.800 to 56.840 unless provided for by law.” § 56.807.5, RSMo 1990.

**B. The 1993 amendment.**

In 1993, section 56.807 was amended. The substance of the provisions noted above was retained, except that the provision calling for additional payments of \$4500 per year for prosecutors in third class counties was amended to \$375 per month (which totals \$4500 per year) and stated as follows: “Beginning thirty days after the establishment of this system and monthly thereafter, each county treasurer shall pay to the system the following amounts to be drawn from the general revenues of the county.” § 56.807.2, RSMo 1993. (For the Court’s convenience, the version of the statute as set forth in RSMo 1993 is included in the appendix to this brief.)

**C. The 1995 amendment.**

In 1995, section 56.807 was amended to omit the provision about counties’ contributions being reimbursed by incentive payments. As amended, the section stated

simply: “The funds for prosecuting attorneys and circuit attorneys provided for in subsection 2 of this section shall be paid from county or city funds.” § 56.807.1, RSMo 1997. (For the Court’s convenience, this version of the statute as set forth in RSMo 1997 is included in the appendix to this brief.)

**D. The 2003 amendment.**

In 2003, the statute was amended to its current form to provide that, beginning August 28, 2003, a surcharge for prosecuting attorneys and circuit attorneys would be collected. § 56.807.7(1), RSMo 2008. (For the Court’s convenience, the version of the statute as set forth in RSMo 2008 is included in the appendix to this brief.) A surcharge of four dollars per criminal case “shall be payable to the prosecuting attorneys and circuit attorneys’ retirement fund.” § 56.807.7(2), RSMo 2008. Under the amended section 56.807.4, “Beginning August 28, 2003, the funds for prosecuting attorneys and circuit attorneys provided for in this section shall be paid from county or city funds and the surcharge established in this section.” § 56.807.4, RSMo 2008. For third class counties, the amount of the required monthly payment was reduced from \$375 to \$187. § 56.807.5, RSMo 2008.

**III. The Missouri Constitution permits statutes that increase compensation of county officers.**

Article X, Section 21 of the Missouri Constitution is part of the Hancock Amendment. Section 21 prohibits the state “from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or

service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.” (For the Court’s convenience, a copy of Section 21 is included in the appendix to this brief.)

In *Boone County Court v. State*, 631 S.W.2d 321 (Mo. banc 1982), this Court addressed Section 21 in the context of a statute requiring counties to increase the pay of county clerks. The Court held that the state could not impose on counties the obligation to pay for the increase.

On August 5, 1986, the citizens of Missouri adopted a constitutional amendment effectively reversing the *Boone County* decision. *Associated General Contractors v. Department of Labor & Indus. Relations*, 898 S.W.2d 587, 594 n.6 (Mo. App. 1995). As amended by the people in 1986, Article VI, Section 11 of the Missouri Constitution provides that a statute authorizing an increase in the compensation of county officers “shall not be construed as requiring a new activity or service or an increase in the level of any activity or service within the meaning of this constitution.” (For the Court’s convenience, a copy of Section 11 is included in the appendix to this brief.)

Thus, as of 1986 (three years before the passage of section 56.807), a statute increasing the compensation of county officers (like county prosecutors) could not run afoul of the Hancock Amendment’s limitation on new activities or services. Pension and retirement plans are indisputably a form of compensation. *See Sihnhold v. Missouri State*

*Employees' Retirement Sys.*, 248 S.W.3d 596 (Mo. banc 2008); *Kuchta v. Kuchta*, 636 S.W.2d 663, 665 (Mo. banc 1982); *Lynch v. Lynch*, 665 S.W.2d 20, 24 (Mo. App. 1983).

#### **IV. The judgment of the trial court should be reversed.**

The trial court's judgment recognized Article VI, Section 11, but nevertheless held that section 56.807 violated the Hancock Amendment: "This Court hereby determines that the provisions of Sections 56.800-56.840, RSMo, mandate payment by Barton County for a new and expanded activity in violation of Article X, Section 21 of the Missouri Constitution and that Article VI, Section 11 offers no protection against this violation." L.F. at 180 (¶ 10). The Court should reverse this judgment because it is inconsistent with the constitution.

The trial court seems to have determined that, in initially passing section 56.807, the General Assembly silently made a legislative finding that the statute would violate Section 21 of the Hancock Amendment if the statute lacked a source of state funding: "The Court finds that the system as originally established, with the funding stream, complied with Article X, Section 21 of the Missouri Constitution, which prohibits state-mandated activities upon local governments without state funding for such activities. The Court further finds the enactment of the Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System (PASCAR), along with the concurrent funding system, was a demonstration of legislative intent that such system was a mandate falling under the import of the Hancock Amendment and that a funding stream was required." L.F. at 179 (¶ 5).

This analysis should be rejected. The legislature never made any finding about the Hancock Amendment in connection with section 56.807. All iterations of the section included the provision that payments to PACARS were required to come from county funds. See Appendix at A6, A11, A16, A18. All iterations of the section included the provision that no state moneys were to be used. See Appendix at A7, A11, A16, A20. The trial court's finding (that the legislature determined that Section 21 would be violated if funding were not included) is unsupported by the plain language of section 56.807 at all relevant times.

The trial court's determination, without any citation to case law, would render Article VI, Section 11 meaningless. The obvious purpose of the 1986 amendment of Article VI, Section 11 was to reverse the holding in the *Boone County* case. See *Associated General Contractors*, 898 S.W.2d at 594 n.6. By the plain terms of Section 11, a state statute may properly call upon counties to increase the compensation of county officers without causing a Hancock violation. Mo. Const. art. VI, § 11. The judgment seems to hold that including a source of state funds signals that the legislature was a finding that a state source of funds was *required*. This hidden inference, if it existed, would be contrary to the language of the constitution as amended by the people.

CONCLUSION

For the foregoing reasons, the judgment of the trial court should be reversed. The cause should be remanded for issuance of a writ of mandamus directing Barton County to make payments to PACARS consistent with the requirements of section 56.807.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of this brief and a disc containing a copy of this brief were mailed, first-class postage prepaid, April 27, 2009, to:

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## CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 3,383, exclusive of the cover, signature block, appendix, and certificates of service and compliance.

The undersigned further certifies that the discs filed with the brief and served on the other parties were scanned for viruses and found virus-free through the Norton anti-virus program.

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