

Summary of SC89896, *Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System an agency of the State of Missouri v. Barton County, Gerry Miller, John Stockdale, and Dennis Wilson*

Appeal from the Barton County circuit court, Judge Kevin L. Selby

Argued and submitted Sept. 2, 2009; after further briefing, resubmitted on briefs Dec. 7, 2009; opinion issued March 23, 2010

Attorneys: PACARS was represented by J. Kent Lowry, Jeffery T. McPherson and Kim S. Burton of Armstrong Teasdale LLP in Jefferson City, (573) 636-8394, and the county was represented by Marc Ellinger and Thomas Rynard of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System (PACARS) appeals the trial court’s judgment holding that the portion of the statutory section requiring Missouri counties to make pension contributions for prosecuting and circuit attorneys is an unconstitutional mandate under the Hancock Amendment to the Missouri Constitution. In an 4-3 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the trial court’s decision and remands (sends back) the case for further action. While the Hancock Amendment generally bars the state from mandating that counties pay for a new activity or service or for an increased level of activity or service without a state appropriation to pay for that new or increased mandate, the Missouri Constitution also provides that increases in the “compensation of county officers” does not constitute a new or increased level of a service or activity. The Court finds that the pension contributions in question are a form of “compensation of county officers” and so fall within the exception to the Hancock Amendment.

In a concurring opinion, Judge Michael A. Wolff argues the state should not continue to rely on counties to pay prosecutors, who represent the state of Missouri and are part of the state’s criminal justice system, which is a state necessity. In a dissenting opinion, Judge Richard B. Teitelman would hold that the context and language of the Missouri Constitution show that the phrase “compensation of county officers” as used in article VI, section 11 of the constitution does not include the PACARS pension contributions required by section 56.807, RSMo, which, therefore, violates the Hancock Amendment.

Facts: In 1989, the legislature enacted the PACARS statutes authorizing the creation of a retirement fund for prosecutors and circuit attorneys. The 1989 statute provided that the state would reimburse counties for the cost of contributions to the fund. In 1995, the legislature amended the statute to remove the necessity for the state to reimburse counties. Barton County nonetheless continued to receive incentive payments until January 2002, when the state discontinued making incentive payments. As a result, the Barton County commission voted to discontinue participation in the retirement fund. In November 2006, PACARS filed a petition for writ of mandamus against Barton County and its commissioners, requesting that the court compel Barton County to make the pension contributions. The trial court found that section

56.807, RSMo, violates the Hancock Amendment. It rejected PACARS' argument that the pension contributions fell within an exception to the Hancock Amendment set out in article VI, section 11 of the Missouri Constitution for "increases in the compensation of county officers." PACARS appeals.

REVERSED AND REMANDED.

Court en banc holds: The trial court erred in concluding that section 56.807 violates the Hancock Amendment and in refusing to require Barton County to make the pension contributions mandated by that section. While in 1982 this Court held that the Hancock Amendment generally prohibits the state from increasing a county's financial obligations to county employees without state reimbursement, *Boone County v. State*, 631 S.W.2d 321, 326 (Mo. banc 1982), article VI, section 11 was amended in 1986 to provide that "compensation of county officers" does not constitute a new or increased level of a service or activity under the Hancock Amendment. The question is whether pension contributions, and not just salary and incidentals, are included within the meaning of the term "compensation of county officers." The meaning of the word "compensation" varies depending on its context. This Court previously has recognized that, when used in its broad or generic sense, "compensation" can include all remuneration for services rendered. Further, Missouri's dissolution cases recognize pension benefits as a form of deferred compensation that are earned as a person works rather than a bonus earned only at the time of payment. Looking at the intent of the legislature as reflected in these statutes, the Court concludes that the word "compensation of county officers" as used in article VI, section 11 of Missouri's constitution includes pension contributions.

Concurring opinion by Judge Wolff: The author concurs that the Court's decision is what the law allows but notes that it allows the state to continue to rely on a patchwork of locally funded county-by-county prosecution offices for the administration of justice. He further notes the burden of paying the prosecutors who represent the "state of Missouri" on the counties, many of which struggle financially to meet their other obligations. He argues that spending money for criminal justice is a necessity, not an optional luxury or obligation that can be funded by some other government.

Dissenting opinion by Judge Teitelman: The author would hold that the phrase "compensation of county officers" as used in article VI, section 11 of the Missouri Constitution does not include the PACARS contributions required by section 56.807, RSMo, and, therefore, that constitutional provision does not exempt PACARS contributions from the Hancock Amendment. It is the constitution itself – not the statutes governing classification and distribution of marital property in a dissolution action or generic definitions and synonyms – that provides the context for understanding the meaning of this phrase. This context demonstrates that the phrase "compensation of county officers" does not refer to pension contributions or benefits. To the extent that article VI, section 11 was intended to overrule *Boone County v. State*, 631 S.W.2d 321, 326 (Mo. banc 1982) (holding that a salary increase violated the Hancock Amendment), the contextual interpretation of "compensation of county officers" supports nothing more than the conclusion that it refers to salary. The history and current structure of the Missouri Constitution establish that, at no point past or present, has the constitution equated pensions and compensation. If public employee pensions were just another form of compensation, there would

have been no need for the specific authorization of pensions in article VI, section 25 of the Missouri Constitution. This section is not a redundancy; rather, it was required because the term “compensation” as used in the constitution does not include public employee pensions. Further, the plain, unequivocal language of article VI, section 13 of the Missouri Constitution establishes that the compensation of prosecutors does not include pension contributions made on their behalf. The author also notes he concurs in the spirit of Judge Wolff’s concurring opinion.