

Summary of SC92932, *Blue Springs R-IV School District, et al., Mark Cromwell and James Bradshaw, Ronald Hammons, Misty Rigdon, Jacque Gragg, Spencer D. Fields, and Phillip Holloway v. School District of Kansas City, Missouri, State of Missouri, Attorney General Chris Koster, and Missouri State Board of Education*

Appeal from the Jackson County circuit court, Judge W. Brent Powell

Argued and submitted October 2, 2013; opinion issued December 10, 2013

Attorneys: The state, attorney general and state board of education were represented by J. Andrew Hirth and Thomas D. Smith of the attorney general's office in Jefferson City, (573) 751-3321. The taxpayers were represented by lawyers from Guin Martin Mundorf LLC: Duane A. Martin in Columbia, (573) 777-9645; and Rachel B. England in Kansas City, (816) 333-1700.

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: Taxpayers from school districts adjoining the unaccredited Kansas City public school district and the state of Missouri cross-appeal the trial court's judgment that section 167.131, RSMo, violates the Hancock amendment to the Missouri Constitution in requiring accredited districts to accept transfer students from adjoining unaccredited districts. They allege that the statute requires them to undertake new or an increased level of activities in educating the transfer students and that additional, uncompensated costs will result from the transfers. In a unanimous opinion written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the judgment to the extent it holds that section 167.131 constitutes a state mandate requiring districts to incur additional costs. The effect of the statute is merely to shift activities and costs among districts, not to mandate new or increased levels of activities or increased costs.

Facts: Kansas City public schools lost their state accreditation effective January 1, 2012. Section 167.131, RSMo, requires that students residing in an unaccredited school district be permitted to transfer to accredited schools in the same county or adjoining counties and that their tuition and transportation costs be paid by the unaccredited district. Taxpayers in five accredited school districts adjoining the Kansas City district (Blue Springs, Independence, Lee's Summit, North Kansas City and Raytown) challenged the statute as an unfunded mandate in violation of the Hancock amendment to the Missouri Constitution. A Hancock violation will be found when the state requires a locality to engage in new or an increased level of activities without funding the new or increased level of activities. The trial court held that the transfer requirement of section 167.131 does constitute a new activity but that only the Independence, Lee's Summit and North Kansas City districts had shown they would not be compensated fully by tuition payments. Because the court found these districts showed increased costs, the court also awarded them attorney's fees pursuant to the Hancock amendment. Taxpayers from the Blue Springs and Raytown districts appeal, arguing that they also showed increased uncompensated costs to their districts. The state cross-appeals, arguing the transfers do not constitute new or an increased level of activities in violation of the Hancock amendment and do not result in increased costs, and that attorney's fees should not have been awarded.

AFFIRMED IN PART AND REVERSED IN PART.

Court en banc holds: (1) The Court's recent holding in *Breitenfeld v. School District of Clayton*, issued while this case was pending on appeal, is determinative. Presented with very similar facts involving the then-unaccredited St. Louis public schools, *Breitenfeld* held that section 167.131 does not mandate a new or increased level of activity but merely reallocates educational responsibilities among school districts. The Court held in *Breitenfeld* that the Hancock amendment does not bar such shifting of responsibility among local political entities. The Court reaffirms *Breitenfeld* here and finds that, because the statute does not impose a new or increased level of activity on the transferee school districts, there is no Hancock violation.

(2) The taxpayers' argument that the state stipulated (agreed) at trial that the statute requires a new or increased level of activity and, therefore, should be barred from arguing otherwise on appeal is without merit. The state stipulated that the transfer requirements were created by 1993 amendments to section 167.131, but this stipulation does not address whether those transfers require a new or increased level of activity. Even had it done so, the issue of whether a statute mandates a new or increased level of activity is a matter of law, and parties cannot stipulate to matters of law, nor can courts be bound by such stipulations.

(3) Because the trial court's award of attorney's fees to the Independence, Lee's Summit and North Kansas City taxpayers was contingent on their successful Hancock amendment challenge, and because this Court rejects their Hancock argument, the attorney's fee award is reversed.