

Summary of SC95337, *Missouri Municipal League, City of Springfield and Richard Sheets v. State of Missouri*

Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted April 26, 2016; opinion issued May 24, 2016

Attorneys: The municipal league, city and Sheets were represented by Michael G. Berry and Marshall V. Wilson of Berry Wilson LLC in Jefferson City, (573) 638-7272; Marianne Landers Banks of the city attorney's office in Springfield, (417) 864-1645; and B. Allen Garner of Allen Garner Law LLC in Independence, (816) 478-3848. The state was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321.

CTIA – The Wireless Association, which filed a brief as a friend of the Court, was represented by Harvey M. Tettlebaum, Lowell D. Pearson and R. Ryan Harding of Husch Blackwell LLP in Jefferson City, (573) 635-9118.

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: A city, an association of member cities and a citizen (collectively, plaintiffs) challenging legislation passed in 2014 appeal the circuit court's judgment dismissing their claims that the legislation violated various provisions of the state constitution. In a decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. All seven judges agree that the state was entitled to judgment on the pleadings on the plaintiffs' claim that the 2014 legislation improperly revived the language of prior legislation that a circuit court had ruled invalid. The 2014 legislation did not "clearly and undoubtedly" violate the state constitution by showing the text of the 2013 legislation to be the then-existing law because the validity of the 2013 legislation still was pending in this Court at the time the 2014 legislation passed. All seven judges also agree the state was entitled to dismissal of the plaintiffs' claims that the 2014 legislation was an unconstitutional special law and unfunded mandate. Six judges further agree the state was entitled to dismissal of the plaintiffs' claim that the 2014 legislation was an unconstitutional retrospective law. This prohibition is intended to protect citizens, not the state, and so the legislature constitutionally may waive its own rights and waive or impair the vested rights of its political subdivisions, such as cities.

Judge Richard B. Teitelman concurs in part and dissents in part. He dissents only to the extent the principal opinion hold the city and association lack standing (legal ability) to assert a claim that the legislation was unconstitutionally retrospective.

Facts: During its 2013 session, the legislature passed House Bill Nos. 331 and 345, dealing with local government control over telecommunications infrastructure permitting and public right-of-way. Later that year, a circuit court ruled these bills were enacted in violation of procedural requirements of the state constitution. The state appealed the circuit court's judgment to this Court. While that appeal was pending, the legislature during its 2014 session passed Senate Bill Nos. 649 and 650, which dealt with some of the same statutory sections as HBs 331 and 345. In doing so, the text of HBs 649 and 650 set forth the text of HBs 331 and 345 as the then-existing

law for the relevant sections with the proposed 2014 changes noted. Two days before SBs 649 and 650 became effective – and two days before this Court dismissed the state’s appeal in the case involving the 2013 bills – the Missouri Municipal League (which describes itself as a membership association of Missouri municipalities, including cities, towns and villages), the city of Springfield and Richard Sheets (collectively, the plaintiffs) filed suit challenging the constitutional validity of SBs 649 and 650. The circuit court sustained the state’s motions to dismiss the claims. The plaintiffs appeal.

AFFIRMED.

Court en banc holds: (1) The state was entitled to dismissal of the plaintiffs’ claims that the 2014 legislation was a retrospective law, a special law and an unfunded mandate.

(a) The plaintiffs failed to state a permissible claim by a municipality pursuant to article I, section 13, which prohibits laws retrospective in operation. Because this prohibition is intended to apply to protect citizens and not the state, the legislature constitutionally may pass retrospective laws that waive the state’s rights. By extension, the legislature also may waive or impair the vested rights of its political subdivisions, such as cities, without violating the constitution.

(b) The plaintiffs failed to state a claim pursuant to article III, section 40(28), which prohibits the legislature from passing any special law giving any corporation, association or individual any special or exclusive right, privilege or immunity. A special law includes fewer than all who are similarly situated. A law based on open-ended characteristics is not facially special and is presumed to be constitutional. The plaintiffs made a mere conclusory allegation that a particular statute enacted by SB 649 is a special law. Their petition offered no supporting facts of how the statute includes fewer than all who are similarly situated or is not based on open-ended characteristics.

(c) The plaintiffs failed to establish that Sheets had standing to bring a claim pursuant to article X, section 21, which gives any taxpayer standing to bring suit to enforce the provisions of sections 16 through 22 of the same article. Although the petition alleged Sheets was a taxpayer in Cole County, it did not allege that any provisions enacted in the 2014 legislation imposed an unfunded mandate on Cole County, and Sheets did not claim to be a taxpayer of any of the affected political subdivisions.

(2) The state was entitled to judgment on the pleadings on the plaintiffs’ claim that the 2014 legislation improperly revived the language of the 2013 legislation after a circuit court had ruled the 2013 legislation invalid. At the time the legislature passed SBs 649 and 650 in early 2014, however, the 2013 provisions did not need to be “revived” because a determination of their validity still was pending in this Court. Set forth as they were, SBs 649 and 650 did not “clearly and undoubtedly” violate article III, section 28 in showing the text of the 2013 legislation to be the then-existing law.

Opinion concurring in part and dissenting in part by Judge Teitelman: The author dissents only to the extent the principal opinion hold the city and association lack standing to assert a

claim that the legislation was unconstitutionally retrospective. The plain meaning of the plain language of article I, section 13 provides that the legislature is barred, without exception, from enacting any retrospective laws. Although there is a line of cases holding otherwise, these cases are inconsistent with the plain language of the constitution and are wrongly decided.