

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MISSOURI MUNICIPAL LEAGUE,
ET AL.**

APPELLANTS,

**v.
ROBIN CARNAHAN, ET AL.**

RESPONDENTS.

DOCKET NUMBER WD73911

DATE: September 6, 2011

Appeal From:

Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Robert L. Hess II and R. Ryan Harding, Jefferson City, MO, for appellants.

Jeremiah Morgan and Kevin R. Hall, Jefferson City, MO, for respondent Robin Carnahan;
Darrell L. Moore, Jefferson City, MO for respondent Thomas A. Schweich; and
Ronald J. Calzone, Respondent Pro Se.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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No. WD73911

Cole County

Before Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Missouri Municipal League ("MML") appeals the circuit court's rejection of their challenge to certain summary statements, fiscal notes, and fiscal note summaries prepared by the Missouri Secretary of State and the Missouri Auditor for initiative petitions proposing changes to the Missouri Constitution regarding eminent domain.

AFFIRMED

Division Two holds:

Almost identical initiative petitions were filed in 2009. Almost identical challenges were brought by the same parties at that time. This Court issued its opinion regarding those challenges in the case of *Missouri Municipal League v. Carnahan*, 303 S.W.3d 573, 579-80 (Mo. App. W.D. 2010) ("*MML I*"). The Secretary of State prepared summary statements and the State Auditor prepared fiscal notes, and fiscal note summaries for initiative petitions proposing changes to two sections of the Missouri Constitution. The proposed changes were to Article I, Sections Twenty-Six, Twenty-Seven, and Twenty-Eight ("Article I Petitions") which concern eminent domain and the taking of private property. The second proposed change was to Article VI, Section Twenty-One ("Article VI Petition") which concerns local governments' ability to reclaim blighted areas.

In Point One, MML argues the circuit court erred in upholding the summary statement for the Article I Petitions because its reference to "just compensation" in the statement is unfair and will prejudice the public in favor of the proposal. The summary statement is not unfair or prejudicial. The summary statement's reference to "just compensation" was not merely stating what is already a constitutional requirement, but made clear to the voters that the initiative proposed a separate change and the Missouri Constitution would still require the provision of just compensation for a public taking. Point One is denied.

In Point Two, MML argues the circuit court erred in holding that the fiscal notes and fiscal note summaries prepared by the Auditor were lawful because the Auditor was required to

formally promulgate his policies and procedures as rules pursuant to the notice and comment procedures of Chapter 536. We disagree. Section 116.175.1 grants the Auditor substantial discretion to determine how to assess the fiscal impact of proposed measures. MML cannot show the policies and procedures followed by the Auditor are such that it is necessary for rulemaking procedures to be followed or that he is statutorily required to do so. Point Two is denied.

In Point Three, MML argues the circuit court erred in upholding the fiscal note summaries for the Article I and Article VI Petitions because they are insufficient and unfair. We disagree. The statement specified that some submissions received by the Auditor predicted substantial costs. The mere fact that the note did not contain specific amounts as to estimated costs, under the facts of this case, does not make the summaries unfair or insufficient. Point Three is denied.

In Point Six, MML argues the circuit court erred in upholding the fiscal note summaries for the Article I and Article VI Petitions because the Auditor failed to assess the fiscal impact of the proposed measures independently. This point has been previously addressed and has failed in *MML I*. Section 116.175.1 does not mandate that the Auditor adopt a method of independently assessing costs or savings of proposals. The Auditor's process of collecting submissions and reviewing them for reasonableness and completeness is sufficient. Point Six is denied.

In Point Four, MML argues the circuit court erred in upholding the summary statements for the Article I Petitions because they are unfair and insufficient and will prejudice the public in favor of the proposal because the proposal suggests that it will amend the Constitution to prohibit condemnation for a private use and to require that the intended public use be declared at the time of taking when those restrictions are already embraced in the Constitution and that the summary statements fail to identify the central purposes of the proposal. These identical claims have already been addressed by this court in *MML I* and were rejected. We adopt the analysis of the Court in that previous litigation. Point Four is denied.

In Point Five, MML argues the circuit court erred in upholding the summary statements for the Article VI Petition, because the summary statement is unfair and insufficient and will prejudice the public in favor of the proposal because the summary statement incorrectly states that it is granting powers to "allow" the General Assembly and constitutionally chartered cities and counties to abate public nuisances when the effect of the proposal is to limit that power and the summary statement incorrectly states only that the proposal will prohibit the use of eminent domain to acquire and resell blighted, substandard, or unsanitary property for redevelopment purposes when it will also deprive the General Assembly, cities, and counties of the power to authorize other actions to further that goal. These identical claims have already been addressed by this court in *MML I* and were rejected. We adopt the analysis of the Court in that previous litigation. Point Five is denied.

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