
**IN THE
SUPREME COURT OF MISSOURI**

No. SC90522

STEVE EHLMANN, *et. al.*

Appellants,

v.

HONORABLE JEREMIAH W. (JAY) NIXON, *et al.*

Respondents.

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Judge**

Brief of Respondents Shrader and the Missouri Sheriffs' Association

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Jurisdictional Statement

Appellants, Steve Ehlmann, Charles Gross, St. Charles County, Charlie Dooley, and St. Louis County, appeal from an October 26, 2009 judgment of the Circuit Court of Cole County, Missouri, the Honorable Richard G. Callahan, refusing to declare provisions of H.B. 2224 unconstitutional.

Because this appeal involves the validity of “a statute ... of this state,” it is within the exclusive jurisdiction of this Court. *See* Mo. Const. art. V, § 3 (1875), as amended.

Introduction

H.B. 2224 creates a special fund in the state treasury known as the “Deputy Sheriff Salary Supplementation Fund,” which is “used solely to supplement the salaries, and employee benefits resulting from such salary increases, of county deputy sheriffs.” § 57.278.1, RSMo. Fund moneys are derived from a new \$10 charge paid by users of the state court system to sheriffs “for service of any summons, writ, subpoena, or other order of the court” on top of the existing \$20 service charge in § 57.280.1. The new \$10 charge is initially “paid into the county treasury” but is remitted and “payable to the state treasurer,” who must “deposit such moneys” in the fund. § 57.280.4. As custodian of the fund, the State Treasurer “may approve disbursements” only pursuant to duly authorized warrants. § 57.278.1. By statute, fund moneys cannot revert to the credit of the State’s general revenue fund. § 57.278.2.

The counties claim that H.B. 2224 imposes an impermissible “tax” on the counties in violation of Article X, Section 10. Their claim lacks merit. Article X, Section 10 is not violated unless a law both (1) imposes a “tax” on a county or other entity listed in Article X, Section 10 and (2) the tax is *solely* for a “local” purpose, with no concomitant “state” purpose. As discussed *infra*, H.B. 2224 does not impose a tax at all, much less a tax for purely local purposes. The charges are paid by court users and do not bear the indicia of a tax. Even if H.B. 2224 imposed a county tax (which it does not), the law serves important state purposes. It provides a compensation mechanism for personnel on whom state courts rely to conduct their judicial business and who further the State’s important interests in

promoting public safety across the State.

Statement of Facts

A. Enactment of House Bill 2224

On May 16, 2008, the General Assembly enacted House Bill 2224 (H.B. 2224). It was signed by Governor Blunt on June 26, 2008, with an effective date of August 28, 2008. L.F. 3. H.B. 2224 creates “in the state treasury the ‘Deputy Sheriff Salary Supplementation Fund,’ which shall consist of money collected from charges for service received by county sheriffs under subsection 4 of section 57.280.” § 57.278.1. Specifically, subsection 4 of § 57.280 provides that sheriffs receive an additional \$10 “for service of any summons, writ, subpoena, or other order of the court” on top of the existing \$20 service charge imposed by § 57.280.1 prior to the H.B. 2224 amendment. The additional \$10 charge “shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer,” who must “deposit such moneys in the deputy sheriff salary supplementation fund created under section 57.278.” § 57.280.4.

Under § 57.278.1, as amended by H.B. 2224, the money in the Deputy Sheriff Salary Supplementation Fund (Fund) “shall be used solely to supplement the salaries, and employee benefits resulting from such salary increases, of county deputy sheriffs.” The State Treasurer is the “custodian of the fund and may approve disbursements” pursuant to duly authorized warrants. § 57.278.1. Under § 57.278.2, the moneys in the Fund cannot revert to the credit of the general revenue fund, and any interest earned on the fund “shall

be credited to the fund.” The Missouri Sheriff Methamphetamine Relief Taskforce (MoSMART), a group of five governor-appointed sheriffs who receive no compensation for their duties, is directed to administer the fund. § 650.350.8.

Since the effective date of the provision, moneys have been collected by the Missouri Department of Revenue and deposited into the Fund, but there have been no appropriations or expenditures from the Fund. L.F. 84, 86 & 90. The moneys in the Fund have been included in the Office of Administration’s calculation of Total State Revenues under the Hancock Amendment. L.F. 90.

B. The instant lawsuit

St. Charles County, St. Louis County, their county executives, and the Director of Administration of St. Charles County (collectively, the counties) filed the instant lawsuit on December 22, 2008 seeking declarations that the H.B. 2224 amendments were invalid. L.F. 6-27. The counties claimed that the H.B. 2224 amendments: (1) improperly imposed county tax collection duties on the State Treasurer in violation of Article IV, § 22 and Article IV, § 15 of the Missouri Constitution; (2) unconstitutionally delegated administration of the fund to the MoSMART sheriffs’ board without adequate standards; and (3) imposed a tax by the General Assembly on counties for a county purpose in violation of Article X, § 10(a).¹ *Id.*

¹ The counties initially included some claims that H.B. 2224 violated the Hancock Amendment by levying county taxes without proper voter approval. L.F. 21-25. But the

The counties named the Governor, the Department of Public Safety, and the Attorney General (collectively, the State respondents) as defendants. On April 27, 2009, the circuit court granted respondents James B. Shrader, a county deputy sheriff, and the Missouri Sheriffs' Association (collectively, the Missouri Sheriffs' Association) leave to intervene in support of the constitutionality of the provisions. L.F. 66.

The State respondents moved for summary judgment, and the Missouri Sheriffs' Association moved for judgment on the pleadings. L.F. 72, 105. The counties cross-moved for summary judgment. L.F. 333.

C. The circuit court's judgment upholding the constitutionality of H.B. 2224.

On September 16, 2009, following briefing and argument, the circuit court entered judgment in favor of the respondents on all counts. L.F. 385-391. Through an agreement reached between the parties, the circuit court allowed the counties to file an amended petition, with any new allegations denied by the State respondents and the Missouri Sheriffs' Association. The circuit court then entered an amended judgment on October 26, 2009, again finding in favor of the State respondents and the Missouri Sheriffs' Association on all counts. L.F. 405-412, A1-A8.

counties later voluntarily dropped those claims when they filed their amended petition. L.F. 365-384.

In the final judgment on review in this Court, the circuit court first assessed whether the new funds raised by H.B. 2224 were state funds or county funds, and concluded that they were the former. A4. The court reasoned that “[t]he plain language of H.B. 2224 demonstrates that the General Assembly intended this new charge to be state funds” because (1) the county treasurer held them “payable to the state treasurer,” (2) the moneys were deposited in the state treasury and subject to future appropriation by the General Assembly, and (3) they met the definition of state revenue for purposes of the Hancock Amendment, Article X, § 18 of the Missouri Constitution. A3.

The court rejected on the merits the counties’ constitutional claims that H.B. 2224 improperly imposed county tax collection duties on the State Treasurer and concluded that the counties’ non-delegation claim was not ripe because there had been no appropriation from the Fund. A6, citing *Fust v. Attorney General*, 947 S.W.2d 424, 430 (Mo. banc 1997).

As to the counties’ argument that H.B. 2224 was an improper county tax under Article X, Section 10(a), the court reasoned that the counties’ claim was “based on their argument that the new funds are county funds and that the movement of the funds from the county treasury constitutes a tax on the county.” A7. Since the court had concluded that the funds were state funds, it held that the counties’ Article X, Section 10(a) claim necessarily failed. *Id.* The court further held that inasmuch as the Missouri Constitution did not prohibit laws directing payment of state funds “as state aid for local purposes,” Article X, Section 10(b), the General Assembly was not prohibited from providing aid to

county sheriffs' departments, even assuming the operation of such a department was a county concern. *Id.*

D. The instant appeal.

The counties appealed. L.F. 413. Before this Court, they have abandoned all challenges to H.B. 2224 except the contention that it imposes a tax upon the counties in violation of Article X, Section 10(a) of the Missouri Constitution.

Standard of Review

“This Court reviews *de novo* whether a statute is unconstitutional.” *Jackson County v. State*, 207 S.W.3d 608, 611 (Mo. banc 2006). “[T]he legislative power of Missouri’s General Assembly ... is plenary” unless expressly limited. *Bd. of Educ. v. City of St. Louis*, 879 S.W.2d 530, 533 (Mo. banc 1994). Legislative acts by the Missouri General Assembly carry a strong presumption of constitutionality. *Farmer v. Kinder*, 89 S.W.3d 447, 452 (Mo. banc 2002). If one interpretation of a statute results in the statute being constitutional while a different interpretation could possibly lead to it being unconstitutional, the Court must accept the constitutional interpretation. *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838-39 (Mo. banc 1991). A statute should not be invalidated “unless it clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied in the constitution.” *Farmer*, 89 S.W.3d at 452.

Argument

H.B. 2224 DOES NOT VIOLATE ARTICLE X, SECTION 10 OF THE MISSOURI CONSTITUTION. (addresses Appellants’ Points I & II)

Before this Court, the counties claim solely that H.B. 2224 imposes a tax upon counties for a county purpose in violation of Article X, Section 10(a) of the Missouri Constitution. They also suggest that this case presents an issue of “first impression.” Br. 22. While the Court has not considered a statute identical to H.B. 2224, it has addressed several analogous cases under Article X, Section 10. The principles set forth in those cases

compel the conclusion that H.B. 2224 is valid and that the judgment below should be affirmed.

I. Article X, Section 10's requirements

Article X, Section 10(a) of the Missouri Constitution states that “Except as provided in this constitution, the general assembly shall not impose taxes upon counties or other political subdivisions or upon the inhabitants or property thereof for municipal, county or other corporate purposes.” Mo. Const. art. X, § 10(a). Article X, Section 10(b) further provides that: “Nothing in this constitution shall prevent the enactment of general laws directing the payment of funds collected for state purposes to counties or other political subdivisions as state aid for local purposes.”

A. Early Article X, Section 10 case law established that the provision bars only certain “taxes” levied solely for “local” purposes.

Article X, Section 10 has origins in the State's 1875 constitution.² It was originally adopted as part of a set of provisions aimed at ameliorating a problem of “excessive indebtedness incurred by counties and other municipalities under authority of

² Article X, § 10 of the 1875 constitution read as follows: “The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.”

the legislature.” *State ex rel. Faxon v. Owsley*, 26 S.W. 659, 660 (Mo. 1894).

But its reach is limited. As discussed *infra*, Article X, Section 10 is not violated unless a law both (1) imposes a “tax” on a county or other entity listed in Article X, Section 10 and (2) the tax is *solely* for a “local” purpose, with no concomitant “state” purpose.

One of the first cases to address Article X, Section 10 was *State ex rel. Aull v. Field*, 24 S.W. 752 (Mo. banc 1894). *Field* considered an Article X, Section 10 challenge to a law that required the city of Higginsville to pay for the “expense of renting and keeping” of a county courthouse. The law’s opponents claimed an Article X, Section 10 violation because the law “attempt[ed] to authorize municipal funds, raised by municipal taxation for municipal purposes, to be misapplied to the renting of a courthouse and clerk’s office for the use of the judicial department of the state government.” *Id.* at 756.

The Court rejected the argument, concluding that the charges, to the extent they might be a tax (an issue left open by the decision), were “not a municipal tax,” but were “levied ... for a state purpose,” *i.e.*, to provide for state courts. *Id.* It did not matter that there was also some local benefit. Under Article X, Section 10, the Court held, it was “within the power of the legislature to impose a tax upon a particular subdivision or municipality of the state when, in its judgment, it is for the benefit of that locality as well as the state at large.” *Id.* at 757. The Court further held that the legislature “may lawfully use the agency of the city government to collect [any] tax” levied for a state purpose. *Id.* at 756-57.

A few months after *Field* was decided, the Court considered another Article X, Section 10 challenge, this time to a state law that required counties and cities jointly to pay, out of their respective treasuries, the costs and expenses of voter registration and elections. In *State ex rel. Faxon v. Owsley*, 26 S.W. 659 (Mo. 1894), the challengers claimed that the law amounted to a tax for local purposes in violation of Article X, Section 10. The Court disagreed. It held that the law did “not impose a tax, or directly authorize a municipality to impose a tax,” but rather “require[d] that the expenses [be paid] out of taxes levied and collected, by the municipal authorities, under a general law of the assembly authorizing them to levy and collect such taxes for local purposes.” *Id.* at 661.

The Court further held that the General Assembly could require counties and cities to use local tax moneys for election expenses in light of the State’s history of similar actions. *Id.* at 661 (noting long history of local tax monies being used for “the support of many other public burdens, [such as] maintaining public schools, making and keeping in repair the public roads and bridges, ... providing courthouses in which the courts of the state may be held, and providing for much of the expense of holding such courts, and of the administration of the general laws of the state”). Accord *State ex rel. Lynn v. Bd. of Educ. of City of St. Louis*, 41 S.W. 924 (Mo. banc 1897) (affirming similar election expense law as consistent with Article X, Section 10).

B. The Court’s subsequent decisions confirm Article X, Section 10’s limited reach.

Since *Field* and *Owsley*, the Court has addressed several Article X, Section 10 challenges and continued to view Article X, Section 10 as limited to proscribing (1) “taxes” on counties or other entities listed in Article X, Section 10 that (2) were imposed solely for “local” purposes.

In *State ex rel. Hawes v. Mason*, 54 S.W. 524 (Mo. banc 1899), for example, the Court considered an 1899 enactment that required the city of St. Louis to pay out of city revenues the salaries of police officers working for a state-created metropolitan police system. *Id.* at 527. The Court disagreed that the law constituted an impermissible local tax, holding that “preservation of the peace and protection of life and property is a state, and not a municipal, function.” *Id.* at 531.

In *State ex rel. Board of Control of St. Louis School and Museum of Fine Arts v. City of St. Louis*, 115 S.W. 534 (Mo. banc 1908), the Court struck down a law that created an “Art Museum” tax that required the City of St. Louis to include an annual tax on its inhabitants that would be turned over to the Board of Control of the St. Louis School of Fine Arts, a private corporation within Washington University. Most of the opinion is devoted to discussing other constitutional provisions violated by this scheme, but the Court also mentioned Article X, Section 10 as yet another provision indicative of the people’s desire to ensure in the 1875 constitution that “taxes should only be levied for public purposes.” *Id.* at 546.

In *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 19 S.W.2d 746 (Mo. banc 1929) and *State ex rel. Thompson v. Jones*, 41 S.W.2d 393 (Mo. banc 1931), the Court rejected several challenges to provisions relating to the State Tax Commission, finding it “plain” that Article X, Section 10’s “main objective is to prohibit the General Assembly from imposing upon the several political subdivisions of the state, their inhabitants, or their property, taxes for purely local purposes.” *Brinkerhoff-Faris Trust*, 19 S.W. 2d at 751; *Thompson*, 41 S.W.2d at 397.

In 1981, the Court considered another case involving the State Tax Commission.³ In *State ex rel. Commissioners of the State Tax Commission v. Davis*, 621 S.W.2d 511 (Mo. banc 1981), it held that the General Assembly could require the withholding of a percentage of tax monies that had been levied and collected for school districts. The withheld money was to be used to reimburse counties for reassessments ordered by the State Tax Commission to ensure uniformity of property taxation throughout the State. The school districts argued that the withholding constituted a tax on the school districts solely for “county or other corporate purposes.” *Id.* at 514. The Court disagreed and upheld the

³ The counties’ brief mentions *Three Rivers Junior College District of Poplar Bluff v. Statler*, 421 S.W.2d 235 (Mo. banc 1967), as an Article X, Section 10 case. Br. 38, 52-53. But *Three Rivers* addresses Article X, Section 10 only briefly, in a single paragraph, and only for the purpose of pointing out that it applies to taxes imposed by the General Assembly, not taxes imposed by a junior college. 421 S.W.2d at 241.

law, concluding that the challenged law's purpose of "equalizing assessments" was "both a state and a county purpose." *Id.* The Court noted that valid "assessment schemes in the counties of the state benefit the state at large as well as the locality," because state aid to school districts is dependent on assessed valuation and because the State imposed an annual tax on all taxable property to provide a fund for pension payments to the blind. *Id.* at 514 & n.3.

The next, and most recent, significant Article X, Section 10 case was decided in 1993. In *City of Jefferson v. Missouri Department of Natural Resources*, 863 S.W.2d 844, 850 (Mo. banc 1993), the Court considered an Article X, Section 10 challenge to a statute requiring landfill operators to collect a \$1.50/ton charge for solid waste. The monies, less collection costs, were not retained by the operators who accepted the waste, but were paid to the Department of Natural Resources (DNR) for deposit into a solid waste management fund for distribution for special purposes authorized in § 260.335, RSMo., such as for grants to solid waste management districts and for DNR operating expenses. The Court rejected the Article X, Section 10 challenge to the charge, concluding that it was not a tax, but rather a fee. *Id.* (charge not a tax because it was "collected for the privilege of disposing of solid waste," monies did not go into the State's general revenue, and were not used to defray general governmental expenditures because the fee went into a specific fund for specific purposes). Because the charge was not deemed a "tax," the Court did not address whether it was assessed for local or state purposes.

II. H.B. 2224 does not impose an impermissible “tax,” much less a tax solely for “local” purposes.

A large portion of the counties’ appellate brief is devoted to statutory construction arguments. *See* Br. 22-31. The Missouri Sheriffs’ Association agrees with the State respondents that these statutory interpretation arguments are inconsistent with settled principles, and in fact turn those principles on their heads. Rather than repeating the State respondents’ well-reasoned statutory interpretation points, the Missouri Sheriffs’ Association focuses its brief on the application of this Court’s Article X, Section 10 case law to the counties’ claim.

The counties’ Article X, Section 10 claim is based on the following chain of reasoning: H.B. 2224 imposes a \$10 “fee” to compensate sheriffs for service of summons duties. This fee belongs to the county because a sheriff is a county officer whose salary is paid by the county. Br. 31-35. H.B. 2224 then, in the counties’ view, requires the State to “tax” the county for an amount equal to the \$10 fee by requiring the county treasurer to remit the H.B. 2224 monies to the State for deposit in the Deputy Salary Supplementation Fund. Br. 36, 38. And because the Deputy Sheriff Salary Supplementation Fund is to be used for supplementing the salaries of deputy sheriffs, who are themselves county employees, H.B. 2224’s “tax” on the counties is for a county purpose and therefore violates Article X, Section 10. *Id.* at 38.

Under the principles discussed above, however, the counties’ Article X, Section 10 challenge must be rejected. H.B. 2224 does not impose a tax on counties at all, much less a

tax for purely local purposes.

A. H.B. 2224’s additional \$10 charge, which is paid by users of the State’s court system, is not a tax on counties.

The first issue to be addressed is whether H.B. 2224 imposes a “tax” on counties. As discussed most recently in *City of Jefferson v. Missouri Department of Natural Resources*, 863 S.W.2d 844 (Mo. banc 1993), the counties cannot succeed in their Article X, Section 10 claim unless they show that the charges collected under H.B. 2224 are “a tax” on the counties, and “not a fee.” *Id.* at 850. The counties’ position is that H.B. 2224 imposes a tax on counties because the H.B. 2224 charges are “fees” collected by sheriffs for service of summons duties and, as such, they properly belong to the county since sheriffs are county officers whose salaries are paid by the counties. Br. 31-35.

Under the principles set forth in *City of Jefferson*, the H.B. 2224 charges are more like “fees” than “taxes” for purposes of the Article X, Section 10 analysis. First, the charges are collected from *users of the state court system*, for the privilege of filing a lawsuit and having summons served on a defendant. They are not proportional contributions imposed by the State upon the counties themselves or their inhabitants for the support of government. *Jefferson*, 863 S.W.2d at 850. Second, the “amount collected [under H.B. 2224] does not go into the State’s general revenue nor it is used to defray customary, *i.e.*, general, governmental expenditures.” *Id.* Rather, it “goes into a specific fund for specific purposes” – here the Deputy Sheriff Salary Supplementation Fund, for the uses prescribed by H.B. 2224. *Id.*

The counties' argument that the H.B. 2224 charges are somehow transformed from a permissible fee into a county tax depends on the premises that (1) "fees" under Article X, Section 10 can only be fees-for-services and (2) all fees-for-services must belong to the entity that performed the service (here, the sheriffs), or his or her employer (here, the counties).⁴ But if "fees" for purposes of Article X, Section 10 had to belong to the provider of the service for which they were collected, the Court could not have concluded in *City of Jefferson* that the solid waste charge was a "fee," rather than a tax. As noted above, the charge at issue in *City of Jefferson* was not retained by the landfill operators who performed the "service" for which the "fee" was imposed. Instead, the moneys went to DNR for deposit into a solid waste management fund for subsequent distribution for the special purposes authorized in § 260.335, RSMo., including for grants to solid waste management districts and for DNR operating expenses. *Id.* at 850.

St. Louis County v. Litzinger, 372 S.W.2d 880 (Mo. 1963), which is cited by the counties on pages 31 and 32 of their brief, is no authority for the proposition that the H.B. 2224 charges belong to the county. *Litzinger* held that a county constable had a ministerial duty to deposit overpayments from service of summons duties into the county treasury, from which it could be returned to its rightful owners. It was agreed in *Litzinger* that the money at issue did "not ... belong to the County" even though the Court held that it should

⁴ That the counties are characterizing the H.B. 2224 charges in the first instance as "fees," and not "taxes," should, in and of itself, defeat their Article X, Section 10 claim.

be deposited there, rather than remaining in Litzinger’s personal bank account. *Id.* at 881. The case did not purport to pass on the General Assembly’s ability to direct where state-imposed charges should be deposited or how they could be used.

The counties also strain to argue that the H.B. 2224 charges belong to the counties because they are “miscellaneous charges.” Br. 33-35. They cite Article VI, Section 13 of the Missouri Constitution for the proposition that “that fees earned by county officers in civil cases may be retained by them as provided by law.” Br. 33. But the key phrase in Article VI, Section 13 is that the fees “may be retained *as provided by law.*” Here, H.B. 2224 does *not* provide for the officers to retain the charges, and so Article VI, Section 13 in fact supports the respondents’ position that the H.B. 2224 charges do not belong to the sheriffs or to their employer counties.⁵

⁵ At various points in their brief, the counties refer to their charter provisions. Charter counties do not occupy any different position than other counties for purposes of the issues raised by this case. The Missouri Constitution’s charter county provisions in Article VI place few limitations on the General Assembly’s power to legislate *vis-à-vis* charter counties. The limitations appear in Section 18(e) (entitled “Laws affecting charter counties: limitations”) and prohibit only those laws that “provide for any ... office or employee of the county [other than judicial officers] or fix the salary of any of [the county’s] officers or employees.” Mo. Const. art. VI, § 18(e). Moreover, Article VI, Section 18(b) expressly contemplates that charter county officers will be subject to state

The counties also cite *Reed v. City of Springfield*, 841 S.W.2d 283 (Mo. App. S.D. 1992), as support for their entitlement to the H.B. 2224 charges. Br. 34. *Reed* quoted a publication adopted in the 1980s by the Conference of State Court Administrators and the Conference of Chief Justices that generally defined court costs that could be assessed in a case. The counties quote the publication’s definition of “Miscellaneous Charges” as “Amounts assessed that ultimately compensate individuals or non-court entities for services relating to the process of litigation.” *Reed*, 841 S.W.2d at 285. As the court in *Reed* noted, however, its quotation of the publication was “not an indication that Missouri provides for particular categories of expenses that are identified in the examples.” *Id.* at 285 n.4. In other words, the publication was not meant to be taken as a controlling rule, but rather as indicative of the types of charges that could be taxable as court costs in a case. In short, the case has no bearing on the Article X, Section 10 issue before this Court.

laws that affect their “powers and duties” because Section 18(b) states that charters adopted by counties must contain a provision “for the exercise of all *powers and duties* of ... *county officers* prescribed by the constitution and *laws* of the *state*.” (emphasis added). As the Court recently held, this “constitutional provision clearly envisions the laws of the state prescribing the powers and duties of charter county officers.” *Jackson County v. State*, 207 S.W.3d 608, 612 (Mo. banc 2006). Accordingly, the General Assembly has control over how moneys are handled within those counties. *See id.* (upholding competitive bidding requirement for charter counties).

Here, the counties’ argument essentially boils down to the contention that because the H.B. 2224 charges are temporarily held in county treasuries before being remitted to the State Treasurer, the charges are transformed from what would otherwise be a permissible charge paid by users of the court system into an impermissible “tax” on the counties. There is no merit to this argument. Under H.B. 2224, the county treasurers simply act as bailees for the H.B. 2224 charges, which are payable solely to the State Treasurer and are “state funds” for the reasons set forth on pages 14 through 15 of the State respondents’ brief. The fact that the county treasurers temporarily hold such state moneys does not give the counties a legal right to the funds.

Furthermore, since at least 1894, the Court has recognized that it is permissible for the State to “use the agency of [local government] to collect” moneys levied for a state purpose. *Field*, 24 S.W. at 756-57. Consistent with this case law, counties have performed, and continue to perform, a role in collecting state funds ultimately remittable to the State, such as for state property tax that is transmitted to the Department of Revenue. *See, e.g.*, § 136.010.1, RSMo. (providing that the “division of taxation and collection shall collect all taxes ..., except that county collectors and collector-treasurers shall collect the state tax on tangible property, which shall be transmitted promptly to the division of taxation and collection”).

H.B. 2224 fits comfortably within these longstanding and well-established principles. It does not levy a tax on counties or their inhabitants. It imposes a \$10 charge on litigants that is triggered by the service of summons, writ, or order. That charge is

payable to the State Treasurer for distribution in accordance with the specific provisions governing the Deputy Sheriff Salary Supplementation Fund, and the counties only temporarily hold the funds for remittal to the State. Because H.B. 2224 does not impose a tax on the counties, it cannot violate Article X, Section 10 of the Missouri Constitution.

B. H.B. 2224 serves the state purposes of benefiting the State’s judicial system and promoting the State’s interest in public safety.

Even if the State’s collection of H.B. 2224 charges constituted a tax on the counties (which it does not), the counties’ Article X, Section 10 claim would nonetheless fail because H.B. 2224 serves at least two important state purposes – benefiting the State’s judicial system and furthering the State’s interest in public safety.

First, H.B. 2224 promotes the State’s interest in the functioning and support of the State’s judicial system by providing a compensation mechanism for personnel on whom state courts rely to conduct their judicial business. Sheriffs and their deputies⁶ provide important services to the courts and litigants using the court system when they serve summonses, writs, and other process, and Missouri law tasks sheriffs with many other important court-related duties. Sheriffs and their deputies have, among other things, a duty to attend state court as directed by the circuit court, § 57.090; to apprehend and jail felons, § 57.100; to file reports with circuit courts on county jail conditions; § 57.102, § 57.407; to

⁶ Pursuant to § 57.270, RSMo., deputy sheriffs may perform any duties imposed on sheriffs.

cause state offenders to appear in state court, § 57.110; to deliver state prisoners to state court for trial as directed by the circuit courts, § 221.240; to transport and deliver prisoners convicted of state crimes to state correctional centers, § 217.305; to transport prisoners between the place of confinement and court, § 217.470; to investigate circuit court job applicants as directed by circuit judges, § 57.125; and to aid and assist jury commissioners in certain counties by conducting investigations into the identities of prospective jurors, along with other juror-related duties, § 57.355, § 57.395.

H.B. 2224 furthers the State's interest in the judicial system by providing a means for supplementing the salaries of deputy sheriffs, many of whom currently receive extremely modest pay.⁷ By supplementing the deputies' salaries, the General Assembly is helping sheriffs attract and retain better qualified employees who can better assist sheriffs in performing their varied and important duties in service of the State's courts. Under this Court's case law, this state purpose – and state benefit – of H.B. 2224 prevents the law from being struck down under Article X, Section 10. *See, e.g., Davis*, 621 S.W.2d at 514

⁷ In 2007, the Missouri Sheriffs' Association conducted a statewide survey of deputy sheriff salaries and benefits and provided that information to members of the General Assembly. It showed that the starting salaries for deputy sheriffs in several counties were under \$20,000 per year and that for all but 10 of the counties, starting salaries were less than \$28,000 per year. In nearly a third of the counties, deputy sheriffs had applied for and/or received public assistance due to their low incomes.

(local tax serving both a state and local purpose valid under Article X, Section 10); *Field*, 24 S.W. at 757 (same); cf. *Middlesex County Ethics Committee v. Garden State Bar Assoc.*, 457 U.S. 423, 432 (1982) (noting that proceedings “for the functioning of the state judicial system” evidence a “state’s substantial interest”).

Second, as the State respondents argue on pages 22 through 26 of their brief, H.B. 2224 serves the state purpose of promoting public safety. Sheriffs and their deputies perform other important duties related to preserving the peace and protecting the lives and property of the people of the State in addition to the court-related functions outlined above. By statute, they have, among other things, a duty to “quell and suppress assaults and batteries, riots, routs, affrays and insurrections,” § 57.100; to patrol certain highways and roads, § 57.113, § 57.115; to enforce state law and keep the peace, § 57.110; to assign identification numbers for Missouri’s statewide personal property identification system, §57.488; to assist the highway patrol in the execution of search warrants issued at the request of the state highway patrol, § 43.200.3; to render assistance to sheriffs in adjoining counties, § 57.111; to receive in jail all persons apprehended for state offenses, § 221.040; to house and care for such persons, § 221.060, § 221.120; and to deliver them to state court for trial, § 221.240.

As discussed in *Hawes*, it is an:

elementary proposition that the protection of life, liberty and property, and the preservation of the public peace and order, in every part, division, and subdivision of the state, is a governmental duty, which devolves upon the state, and not upon its

municipalities, any further than the state, in its sovereignty, may see fit to impose upon or delegate it to the municipalities. The right to establish the peace and order of society is an inherent attribute of government, whatever its form, and is co-extensive with the geographical limits thereof, and touching every part of its territory.

54 S.W. at 529.⁸

Because H.B. 2224 benefits the State's judicial system and furthers the State's interest in ensuring public safety, it does not serve a purely local purpose and does not violate Article X, Section 10.⁹

⁸ The counties' suggestion that *Hawes* is no longer good law on this point is well addressed on pages 24 through 26 of the State respondents' brief and is adopted by reference here.

⁹ The circuit court's judgment can also be upheld on the alternate ground stated in its amended judgment, which is that pursuant to Article X, Section 10(b) of the Missouri Constitution, the General Assembly is not prohibited from providing state funds to aid to county sheriffs' departments, even assuming the operation of such a department is solely a county concern (which it is not, for the reasons stated in the text above).

Conclusion

For the foregoing reasons, the circuit court's judgment should be affirmed.

Respectfully submitted,

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Certificate of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 14th day of May, 2010, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned certifies that the foregoing brief complies with the limitation contained in Rule 84.06(b), and that the brief contains 5,966 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

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