

IN THE SUPREME COURT OF MISSOURI

No. SC87302

STOPAQUILA.ORG, et al.,

Appellants,

v.

CITY OF PECULIAR, MISSOURI

Respondent.

On Appeal from the Circuit Court of Cass County
At Harrisonville, Missouri, Honorable Joseph P. Dandurand

BRIEF OF AMICI CURIAE THE CITIES OF CAPE GIRARDEAU, FENTON,
HANNIBAL, INDEPENDENCE, JEFFERSON CITY, KANSAS CITY,
SPRINGFIELD AND ST. JOSEPH, AND CAPE GIRARDEAU COUNTY, MISSOURI,
IN SUPPORT OF RESPONDENT THE CITY OF PECULIAR

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JURISDICTIONAL STATEMENT

Amici Curiae adopt the Jurisdictional Statement submitted by Respondent the City of Peculiar.

STATEMENT OF FACTS

Amici Curiae adopt the Statement of Facts submitted by Respondent City of Peculiar.

POINTS AND AUTHORITIES RELIED ON

POINT I

THE CIRCUIT COURT PROPERLY RULED THAT ARTICLE VI, SECTION 27(b) OF THE MISSOURI CONSTITUTION AUTHORIZES THE CITY OF PECULIAR TO ISSUE REVENUE BONDS WITHOUT A VOTE OF THE QUALIFIED ELECTORS OF THE CITY, BECAUSE THE REVENUE BONDS WERE ISSUED TO FINANCE PRIVATE DEVELOPMENT AND THE PROJECT PRESENTED NO PUBLIC OWNERSHIP, DEBT, OR LIABILITY.

Ashcroft v. City of Fulton, 642 S.W.2d 617 (Mo. banc 1982).

Wring v. City of Jefferson, 413 S.W.2d 292 (Mo. banc 1967).

Missouri Constitution, Article VI, § 27.

Missouri Constitution, Article VI, § 27(a).

Missouri Constitution, Article VI, § 27(b).

STATEMENT OF INTEREST

The Cities of Cape Girardeau, Fenton, Hannibal, Independence, Jefferson City, Kansas City, Springfield, and St. Joseph, and Cape Girardeau County, Missouri (collectively the “Governments”) each have an interest in the outcome of this case because the dispute presents a legal issue that is critical to the future use of revenue bonds for all cities and counties throughout Missouri. This case could impact billions of dollars of revenue bonds previously issued by the Governments and other Missouri cities and counties. And this case will decide how revenue bonds may be used to finance private manufacturing, commercial, warehousing, and industrial development facilities throughout the state.

The Governments or their related organizations (such as local industrial development authorities and land clearance redevelopment authorities) have lawfully issued revenue bonds without a prior public vote to finance private business development projects. The Governments are also currently considering, and will consider in the future, the issuance of revenue bonds without a prior public vote to finance additional private business development projects. The Governments seek to ensure that revenue bonds remain a primary tool for financing private business development throughout the state, allowing Missouri to retain businesses and encourage business relocation from other states. Avoiding the time and expense of holding a public vote that is not constitutionally required allows cities and counties to respond quickly to development opportunities and encourage new private development in Missouri.

ARGUMENT

POINT I

THE CIRCUIT COURT PROPERLY RULED THAT ARTICLE VI, SECTION 27(b) OF THE MISSOURI CONSTITUTION AUTHORIZES THE CITY OF PECULIAR TO ISSUE REVENUE BONDS WITHOUT A VOTE OF THE QUALIFIED ELECTORS OF THE CITY, BECAUSE THE REVENUE BONDS WERE ISSUED TO FINANCE PRIVATE DEVELOPMENT AND THE PROJECT PRESENTED NO PUBLIC OWNERSHIP, DEBT, OR LIABILITY.

The framework of Article VI, Sections 27, 27(a), and 27(b) of the Missouri Constitution provides that revenue bonds may be issued by a local government without a prior public vote when the revenue bonds are used to finance private commercial development. The Missouri Constitution requires a public vote only when a local government will have exclusive ownership of a project, will incur an obligation or indebtedness to fund a project, or will incur liabilities for a project. A public vote is not required when there is no financial risk to the local government. For this reason, the revenue bonds issued by the City of Peculiar to finance the private commercial electric distribution facilities did not require a prior public vote. Similar transactions throughout the state, by which local governments finance private development, also do not require a prior public vote under the Missouri Constitution.

As amended in 1978, Article VI, Section 27 of the Missouri Constitution applies when two or more cities, towns, or villages contract to cooperate, or form a joint board or commission, to issue revenue bonds for a project. In *Ashcroft v. City of Fulton*, 642

S.W.2d 617, 621 (Mo. banc 1982), this Court held there is no irreconcilable conflict between the 1978 amendments replacing Section 27 with new Sections 27, 27(a), 27(b), and 27(c), and all were therefore part of the constitution. In reaching this conclusion, the Court noted Section 27 appeared to include all the powers granted by 27(a), 27(b), and 27(c), but it “allows officers, established by contract between municipalities or political subdivisions, to issue revenue bonds...when authorized by voters.” *Ashcroft*, 642 S.W.2d at 620. Section 27 requires a public vote because a city may pledge city funds and assume liabilities by contract with other cities.

Section 27(a) applies when a county, city, town, or village acts alone to issue revenue bonds where the project is owned exclusively by the local government and the bonds are payable solely from revenues derived from operation of the project by the local government. In this situation, facilities are part of the basic governmental service provided by the municipality.

Section 27(b) removes the private vote requirement when a local government issues revenue bonds to sponsor private development. Section 27(b) applies when a county, city, town, or village acts alone to issue revenue bonds; the manufacturing, commercial, warehousing, or industrial development project will be leased or disposed to a private corporation; and the bonds are payable solely from the revenues derived from the lease or disposal of the project. Section 27(c) specifically provides that the revenue bonds issued pursuant to Section 27(b) are not an indebtedness or obligation of the issuing local government.

Since the 1978 amendments to Section 27, and in reliance on *Ashcroft v. City of Fulton*, which interpreted those amendments, cities and counties throughout Missouri, including the Governments, have issued revenue bonds under Section 27(b) to sponsor private business development projects without a public vote. Section 27(b) does not require a public vote because (1) the local government will not own the project in the sense of having an asset for financial reporting purposes, (2) the revenue bonds are not an indebtedness or obligation of the local government, (3) the bonds are repaid solely from the revenues derived by the private business and not general tax revenues of the local government, and (4) the local government will not incur liability for the project because it will not be responsible to maintain and operate the project, and it will have no financial liability if the private business fails. A local government may hold bare legal title to the project (a concept specifically contemplated in Section 27(b) because a local government could not lease a project without having ownership), but all incidents of ownership and all liabilities associated with ownership and operation are assumed by the private corporation through lease or disposal of the project and the local government will not use the project in its traditional governmental functions.

Revenue bonds authorized by Section 27(b) are similar to the revenue bonds discussed in *Wring v. City of Jefferson*, 413 S.W.2d 292, 293 (Mo. banc 1967), which was decided pursuant to the then-current version of Section 27. In *Wring*, this Court held that a city could grant a private corporation the option to purchase a project pursuant to the 1967 version of Section 27 and the then-applicable statutory scheme allowing for such sale (Sections 71.790 to 71.850, RSMo, enacted in 1961). The *Wring* court also

held that competitive bidding was not required for the project because, under the “special fund doctrine,” the city assumed no obligation or indebtedness for the project. This Court explained:

All the constitutional and statutory provisions meticulously guard against the municipalities incurring any personal liability or obligation with respect to projects financed by revenue bonds. Section 27 of Art. 6 [1967 version] provides that the principal and interest of the bonds shall be payable 'solely from the revenues derived by the municipality' which in this case are rental and other payments provided by the lease of the facility. All of the statutes likewise undertake to prevent the municipality from incurring a general obligation.

413 S.W.2d at 299. The language from the 1967 version of Section 27, allowing lease and disposal of the project and payment of the revenue bonds solely from revenues derived by the local government from the lease or disposal, now appears only in the current version of Section 27(b). Today, only Section 27(b) allows a local government, acting alone and without a public vote, to lease or dispose of a project and pay the revenue bonds solely from revenues derived by such lease or disposal. Sections 27 and 27(a) impose on the issuing local government an exclusive ownership obligation, governmental indebtedness, or personal liability, and they therefore require a public vote prior to assuming these risks.

A review of other constitutional provisions, not directly at issue in this case, supports the position that a public vote is required only when there is *financial risk* to the local government:

Section 23(a) requires a public vote for a local government to become indebted to purchase, construct, extend, or improve plants for manufacturing, warehousing, or industrial development purposes;

Section 26(b) requires a public vote when local government indebtedness will exceed annual income, up to a limit of an additional 5% of the value of taxable tangible property within the jurisdiction;

Section 26(c) requires a public vote to authorize additional indebtedness for general local government purposes in the amount of an additional 5% of the value of the taxable tangible property within the jurisdiction;

Section 26(d) requires a public vote to authorize additional indebtedness for the purpose of acquiring rights-of-way or constructing sanitary or storm sewer systems, up to a limit of an additional 10% of the value of the taxable personal property within a city; and

Section 26(e) requires a public vote to authorize additional indebtedness for the purposes of purchasing or constructing waterworks or electric or other light plants to be owned exclusively by the city, in the amount of an additional 10% of the value of the taxable tangible property within the city.

All of these constitutional provisions require a public vote because the local government will have exclusive ownership of the project and incur an obligation or indebtedness for the bonds, or will incur liability for the project.

The revenue bonds issued by Peculiar are governed by Section 27(b) because Peculiar acted alone to issue the revenue bonds, the commercial project is leased to a private company, the private company bears financial responsibility and liability for the project, and the bonds are payable solely from the revenues that are generated from the private company through the lease. The lease payments equal the debt service on the revenue bonds, and other financial risks are eliminated because the private company must maintain, insure, and operate the project. In this arrangement, there is no financial risk to Peculiar, and a public vote was therefore not required.

Appellants' interpretation of the constitution renders Section 27(b) meaningless. Appellants argue that Section 27 applies to the revenue bonds issued by Peculiar because Section 27 references "power plants." This is an overly simplistic reading of the constitution, and ignores that the project at issue is privately owned, maintained, and operated, that the revenue bonds are not an indebtedness of Peculiar (as set forth in Section 27(c)), that private lease payments rather than tax revenues are pledged for repayments of the bonds, and that the private company bears all financial responsibility and liability for the project.

Under Appellants' interpretation of the constitution, a local government would also be required to hold a public vote for all manufacturing and industrial development projects because Section 27 references "plants . . . for manufacturing and industrial

development purposes,” even though Section 27(b) expressly authorizes revenue bonds for private manufacturing and industrial development without a public vote. Appellants would read a conflict into Section 27 and 27(b) where no conflict exists, and this Court has already held that Sections 27, 27(a) and 27(b) present no irreconcilable conflict. *Ashcroft*, 642 S.W.2d at 620.

Section 27(b) provides the method by which a local government may act alone to sponsor private manufacturing, commercial, warehousing, and industrial development without a public vote. The ownership and financial arrangements of the project, as well as the nature of the facilities, are critical to determining which constitutional provision applies. Appellants primarily object to the particular land use at issue, and ignore all aspects of the project except that it involves a “power plant.” Appellants’ land-use and nuisance concerns with a power plant cannot serve as the basis to misinterpret broad constitutional provisions governing revenue bonds. Appellants’ interpretation ignores completely the ownership, indebtedness, and liability arrangements of revenue bonds that are issued to sponsor private development, and it would render Section 27(b) meaningless and useless for local governments.

CONCLUSION

The voters added Article VI, Section 27(b) to the Missouri Constitution in 1978 to eliminate the private vote requirement when a local government issues revenue bonds to sponsor private development. A public vote is not required when revenue bonds are issued by a single local government to finance private manufacturing, commercial, warehousing, or industrial development because the local government has no ownership

for purposes of financial reporting, the revenue bonds are not an indebtedness of the local government, no tax revenues are pledged for repayment of the bonds, and the local government will incur no liabilities for the project. Section 27(b) gives Missouri a competitive advantage over other states by allowing local governments to sponsor private economic development efficiently through the issuance of revenue bonds without an unnecessary public vote. The Governments ask this Court to affirm the decision of the circuit court.

Respectfully submitted,

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CERTIFICATE PURSUANT TO RULE 84.06

I hereby certify as follows:

1. This brief includes the information required by Rule 55.03;
2. This brief complies with the limitations contained in Rule 84.06(b);
3. This brief contains 2,349 words; and,
4. The disk filed herewith containing a copy of this brief has been

scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that the original plus nine copies of the foregoing Amici Curiae Brief together with a diskette was delivered to the Missouri Supreme Court, and that two copies of the brief with a diskette thereof were mailed or hand-delivered on the _____ day of April, 2006, to:

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