

**IN THE SUPREME COURT OF MISSOURI**

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**Case No. SC94269**

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**AIRPORT TECH PARTNERS, LLP, and STENTOR COMPANY, LLP,**

**Appellants,**

**v.**

**STATE OF MISSOURI and CITY OF KANSAS CITY, MISSOURI**

**Respondents.**

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**Appeal from the Circuit Court of Cole County  
Honorable Jon Beetem, Circuit Judge  
Case No. 12AC-CC00223**

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**BRIEF OF RESPONDENT  
CITY OF KANSAS CITY, MISSOURI**

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## STATEMENT OF FACTS

The following statements set out in the Statement of Facts of the “Brief of Appellants Airport Tech Partners, LLP, and Stentor Company, LLP” (hereinafter “Appellants’ Brief”) are inaccurate:

1. “This action has its basis in the application of a provision of Section 137.115.1 to the assessment of real property located in Platte County, Missouri” [p.3, lines 3 – 4, Appellants’ Brief]

Appellants do not cite to the Legal File or the Appendix to Appellants’ Brief in support of this statement. In their Amended Petition for Declaratory Judgment (hereinafter “Amended Petition”), Appellants certainly allege that Platte County applied the provisions of Section 137.115.1, RSMo., to certain leasehold interests. [L.F. 10, paragraphs 9 and 10 of Amended Petition] But, Platte County did not do so. [Supp. L.F. 7; App. A19-A21, para. 16 – 18 of Affidavit of Brian T. Everly]

2. “. . . the effect of the application of the of the provision to the TCC property and other properties that benefit from the provision of the challenged language is that the total assessed value of property in the county is understated and, by simple operation of the tax laws, the tax levy rate applied to the two properties of Airport Tech and Stentor in Platte County increases, as does their ultimate tax burden. [L.F. 110.]” [last line p. 9 & lines 1-5, p. 10, Appellants’ Brief]

This is argument; not a statement of fact.

3. Similarly, the last paragraph of the Statement of Facts in Appellants' Brief is argument; not a statement (or series of statements) of fact. [p.10, Appellants' Brief] This last paragraph expands upon the argument Appellants begin in the sentence describe in the paragraph above.

Appellant City of Kansas City, Missouri (hereinafter "City") adopts the Statement of Facts set out in the "Brief of Respondent State of Missouri" ("hereinafter "State's Brief").

## ARGUMENT

**Point I: The trial court did not err in ruling that the facts established by the State showed no injury in fact by Airport Tech and Stentor and granting summary judgment on the issue of lack of standing in favor of the State and City of Kansas City because there was no genuine issue as to any material fact on the dispositive issue for which judgment was entered in that the State's affidavit from one employee of the Platte County Assessor's Office purporting to show that the fourth sentence of Section 137.115.1 was not applied to the property which is the subject of this action is not directly contradicted by the affidavit of another employee of that same office that it was applied to the subject property submitted by Airport Tech and Stentor.**

The City agrees with the standard of review set out in the Appellants' Brief as to all points argued on appeal.

In their Amended Petition for Declaratory Judgment, Appellants question the constitutionality of a certain provision of Section 137.115, RSMo. [L.F. 9-12] added in 2008.

The Missouri General Assembly amended Section 137.115, RSMo, in 2008 to add what became the fourth sentence in Section 137.115.1, RSMo. It is that fourth sentence which is the subject of the State's summary judgment which the

trial court granted finding that Appellants lacked standing. That sentence states:

The true value in money of any possessory interest in real property in subclass (3), where such real property is on or lies within the ultimate airport boundary as shown by a federal airport layout plan, as defined by 14 CFR 151.5, of a commercial airport having a FAR Part 139 certification and owned by a political subdivision, shall be the otherwise applicable true value in money of any such possessory interest in real property, less the total dollar amount of costs paid by a party, other than the political subdivision, towards any new construction or improvements on such real property completed after January 1, 2008, and which are included in the above-mentioned possessory interest, regardless of the year in which such costs were incurred or whether such costs were considered in any prior year.

This fourth sentence of Section 137.115.1, RSMo, merely sets forth a valuation method of determining or assessing the true value in money of certain property. This provision subjects to taxation possessory interests, or leaseholds, in new construction or improvements on commercial and industrial real property located within federally qualifying airports owned by municipalities, paid for by the possessor or lessee and not the municipality who is the lessor.

In their first point on appeal, Appellants argue that the trial court erred

because there was a genuine issue of material fact as to whether Platte County had actually applied this valuation method set out in the fourth sentence of Section 137.115.1. Appellants assert that certain statements made in the two affidavits of employees of the Platte County Assessor's Office that were before the trial court conflict on this material fact of whether the Platte County Assessor's Office had actually applied the new valuation method to the leasehold interest in question. One of those affidavits was that of Eldon Kottwitz, which was proffered to the trial court by the Appellants. [App. A17-A18] The other affidavit was that of Brian Everly, which was proffered to the trial court by the City [Supp. L.F. 7-11; App. A19-A22]. But, there really is no contradiction between what these two affiants statements as to this material fact.

The affidavit of Eldon Kottwitz is short and conclusory. For the Platte County Assessor's Office to have actually applied the valuation method at issue, its staff would need documents or other information such as the lease or lease terms and the costs of construction paid by the lessee. The Kottwitz affidavit contained no such information or even a suggestion that such information had been available or used.

The relevant portions of the Kottwitz affidavit are paragraph Nos. 6 and 7. Paragraph No. 6 [App. A17] states: "In our opinion, applying the provisions of the fourth sentence of Section 137.115.1 to the leasehold interests reduced their

assessments reduced their assessments to zero”. Taken alone, there is nothing in this statement of Mr. Kottwitz that even infers that Mr. Kottwitz, or any other employee of the Platte County Assessor’s Office, gathered the information and performed the analysis and computation that would have been required if this valuation method had actually been applied. The lack of doing so is clearly indicated by the prefatory phrase “[In] our opinion . . . .” One does not have to guess if one has actually done it.

Paragraph No. 7 [App. A18] states: “Because we estimated the assessed value to be zero, we did not individually value the leasehold interests in the fee”. The Platte County Assessor’s Office did not apply the valuation method at issue, if they “**estimated** the assessed value” (emphasis added). Again, actual application of the valuation method requires the gathering of information and performing the necessary analysis and computation. In this paragraph, Mr. Kottwitz then goes on to say that “we did not individual value the leasehold interests in the fee”. That is a clear statement by Mr. Kottwitz that the Platte County Assessor’s Office did not apply the valuation method at issue.

The affidavit of Brian Everly reflects that he actually reviewed and considered the records in the Platte County Assessor’s Office, sets out specific information and is not as conclusory as the Kottwitz affidavit. [Supp. L.F. 7-11; App. A19-A22] The relevant portions of the Everly affidavit include paragraph

Nos. 4, and 16 - 18. In these paragraphs of his Affidavit, Everly clearly states that he reviewed the records of the Platte County Assessor's Office and there was no record that contained the information that would have been needed to apply the valuation method at issue.

So, these affidavits that were before the trial court were not contradictory; either read separately or together. They did not create a genuine issue of material fact that the trial court overlooked. Nor do these affidavits create a genuine issue of material fact for this Court in its de novo review of the State's summary judgment motion.

**Point II: The trial court did not err in granting summary judgment in favor of the State and City of Kansas City on the basis that Airport Tech and Stentor lacked standing to maintain this action because as taxpayers they have standing to challenge Section 137.115.1 under this Court's decisions in *Lebeau v. Commissioners of Franklin County* and *State ex rel. Kansas City Power & Light Co. v. McBeth* in that a challenge to the lawful discharge of the tax laws of the State of Missouri and the enforcement of constitutional provisions creates standing in taxpayers.**

To add a bit of context for the consideration of Appellants second point of this appeal, in their Amended Petition, Appellants contended that this amendment to Sec. 137.115.11 violates both the uniformity clause of Article X, Section 3 of

the Missouri Constitution and the exemption provision of Article X, Section 6 of the Missouri Constitution. Although these questions of constitutional validity are not now before this Court, the City has argued that this provision does not affirmatively exempt such property from taxation in violation of Mo. Const. Art. X, Sec. 6.1. “Affirmative exemption” is the standard recognized in *Arsenal Credit Union v. Giles*, 715 S.W.2d 918, 923 (Mo. banc 1986), citing *Kansas City v. Mercantile Mutual Building and Loan Ass’n*, 145 Mo.50, 53, 46 S.W. 624 (1898). And the Missouri Constitution authorizes the legislature to determine the method of assessment of such property. Mo. Const. art. X, sec 3 states: “Except as otherwise provided in this constitution, the methods of determining the value of property for taxation shall be fixed by law”); *Consolidated Sch. Dist. No. 1 of Jackson County v. Jackson County*, 936 S.W.2d 102 (Mo. banc 1996).

To have standing to seek a declaratory judgment about the constitutionality of the fourth sentence of Section 137.115.1, Appellants must have a legally protectable interest; that is, they must be “directly and adversely affected by the action in question.” *State ex rel. Kansas City Power & Light Co. v. McBeth*, 322 S.W.3d 525, 530 (Mo. banc 2010). Without proper standing, the trial court could not entertain the Appellants’ Amended Petition for Declaratory Judgment. *East Mo. Laborers District Council v. St. Louis County*, 781 S.W.2d, 43, 45-46 (Mo. banc 1989). Standing is an antecedent to the Appellants’ right to relief. *Comm.*

*For Educ. Equality v. State*, 878 S.W.2d 446, 450 n.3 (Mo. banc 1994).

To have standing as a taxpayer, Appellants “. . . must establish that one of three conditions exist: (1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality.” *East Mo. Laborers District Council v. St. Louis County*, 781 S.W.2d at 47. Appellants do not claim that their standing is grounded in either the first or the third of these conditions. Appellants claim standing under the second condition; i.e., an increased levy in taxes.

In their Amended Petition, Appellants asserted that they “. . . have been harmed by Platte County’s application of the statutes by virtue of the resulting increase in levy rates applied to their property in 2012” [L.F. 10, Para. No. 10]. However, there are no facts asserted that there actually was an increase in levy rates or that any such increase occurred because of the manner in which this leasehold was valued and assessed. Such an increase is actually counterintuitive.

Appellants’ contention is based upon the assumption that the use of the method of valuation set forth in Section 137.115.1 if applied to TCC KCI Logistics I’s leasehold will result in less property tax revenues being collected by a taxing jurisdiction than in a year prior to the use of that method of valuation. But, that contention is flawed. The land is owned by the City of Kansas City, Missouri and was unimproved prior to the leasehold at issue. [App. A19, Para. Nos. 3 and 5] So,

that unimproved land was never subject to property tax assessment by Platte County, the City of Kansas City, Missouri or any other taxing jurisdiction situated within Platte County and it created no property tax revenues. [App. A19, Para. No.

6] Regardless of the valuation method used, if and when TCC KCI Logistics I's leasehold becomes subject to property tax assessment, it could never reduce the total amount of property tax revenues received by any tax jurisdiction for property or possessory interests located within its jurisdictional boundaries.

Even assuming, however, that the method of valuation set forth in Section 137.115.1 has been applied to TCC KCI Logistics I's leasehold, an increase in the levy rate would apply to TCC KCI Logistic I, as well. An increased levy would apply to all, not all other, taxpayers. If there were an actual tax levy increase that resulted, Appellants would not be adversely affected any differently than ATC KCI Logistics I would be by an increased levy.

Appellants cite *LeBeau v. Commissioners of Franklin County, Mo.*, 422 S.W.3d 284 (Mo. banc 2014) as applying to them and holding that they have standing. But, *LeBeau* is factually very different than this case.

In *LeBeau*, the plaintiffs were asserting standing as taxpayers. But, they were asserting claims that Franklin County's creation, and staffing, of a municipal court constituted an unlawful expenditure of tax revenues because the recently enacted enabling statute violated the Missouri Constitution's original purpose and

single subject provisions. Appellants here are not seeking to stop what they believe to be an unlawful expenditure of tax revenues.

**Incorporation of Arguments presented by Respondent State of Missouri**

The City hereby incorporates by reference, as if fully set forth herein, the arguments set out in the Brief of Respondent State of Missouri.

**CONCLUSION**

For the reasons and based upon the authority stated above, the trial court did not err in concluding that Appellants lacked standing and in granting summary judgment in favor of the State of Missouri and the City of Kansas City, Missouri. The judgment of the trial court should be sustained.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I, Galen P. Beaufort, the undersigned counsel for Appellant City of Kansas City, Missouri, do hereby certify as required by Rule 84.04(c), Mo.R.Civ.P., that this Brief of Respondent City of Kansas City, Missouri:

- (1) was signed by me;
- (2) contains the information required by Rule 55.03, Mo.R.Civ.P.;
- (3) complies with each of the applicable limitations prescribed by Rule 84.06(b), Mo.R.Civ.P., and contains 2,534 words, determined using the word count program in Microsoft Office Word 2010 (which is less than the 27,900 word limit) exclusive of cover, signature block, and certificates ; and
- (4) the Microsoft Office Word 2010 version emailed to the parties has been scanned for viruses and is virus-free.

  
Senior Associate City Attorney

**CERTIFICATE OF SERVICE**

I, Galen P. Beaufort, the undersigned counsel for Appellant City of Kansas City, Missouri, do hereby certify that on September 25, 2014, I electronically filed the Brief of Respondent City of Kansas City, Missouri with this Court via Missouri Case.net and also served the undersigned counsel by electronic mail message and by regular U.S. Mail, postage prepaid, at the addresses below:

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