

**IN THE
MISSOURI SUPREME COURT**

No. SC84212

**IN RE ANCILLARY ADVERSARY PROCEEDING QUESTIONS:
STATE TREASURER, NANCY FARMER,**

Appellant,

v.

**JACKIE BLACKWELL, RECEIVER,
DEBORAH CHESHIRE, CIRCUIT CLERK AND THE COUNTY OF
COLE,**

Respondents.

**SUPPLEMENT TO THE BRIEF OF
AMICI CURIAE LEGAL AID OF WESTERN MISSOURI,
LEGAL SERVICES OF EASTERN MISSOURI,
LEGAL SERVICES OF SOUTHERN MISSOURI, AND
MID-MISSOURI LEGAL SERVICES**

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II. INTRODUCTION

On May 21, 2002 Legal Aid of Western Missouri (“LAWMO”), Legal Services of Southern Missouri (“LSSM”) and Mid-Missouri Legal Services (“MMLS”) filed their brief of amici curiae in this matter. LAWMO, LSSM and MMLS are joined by Legal Services of Eastern Missouri (“LSEM”) in filing this Supplemental Brief (LAWMO, LSSM, MMLS and LSEM are referred to herein collectively as “Amici”).

Amici respectfully submit this supplemental brief to discuss the impact of the enactment of S.B. 1248 on this litigation. S.B. 1248 was enacted and became effective on June 19, 2002 approximately one month after Amici’s brief was filed. Among other things, S.B. 1248 amends the Judicial Escheats Act¹ and UDUP as they apply to this case.

As discussed in Amici’s initial brief, because the Judicial Escheats Act is narrowly tailored to deal with the precise circumstances raised by this case and because UDUP addresses the much broader issue of all abandoned property in public and private control in the state, the Judicial Escheats Act controls the disposition of this case. Brief of Amici at 10-13.

¹ All terms that were defined in the initial brief of Amici, unless otherwise defined herein, have the same definition in this supplemental brief as in the initial brief.

Under the Judicial Escheats Act, prior to the June 19, 2002 amendment, the Circuit Court of Cole County was entitled to retain the custody of residual proceeds from any utility overcharge and insurance company liquidation cases brought in that court until the Attorney General filed an action to have the funds transferred to the state treasury. Brief of Amici at 13-18. Even after the funds are transferred to the state treasury, the circuit court retained jurisdiction, under the Act, to order the funds released to private individuals for two years after the funds came into the possession of the state treasury. Brief of Amici at 15.

In accordance with the Act, the trial court in the underlying litigation held that Amici are appropriate, non-exclusive cy pres beneficiaries of the funds at issue in this case. The court's order has been stayed pending the outcome of this appeal.

The June 2002 amendment to the Act (the "Amendment") purports to amend the Judicial Escheats Act to require the courts to transfer residual proceeds of utility overcharge litigation and insurance company liquidation litigation to the Missouri state treasury automatically three years after the money is deposited with the court. The Amendment also eliminates the right of respondents Brown and Kinder, as circuit court judges, to order the disposition of funds covered by the Act during the first two years after such funds are transferred into the Treasurer's custody. A copy of S.B. 1248, as enacted, is attached hereto as an Appendix ("App."). See App. at 29.

S.B. 1248 was passed by the Missouri legislature three days before Amici's appellate brief was due and was not signed into law until well after the filing of Amici's brief. In that brief, Amici noted that there were possible questions about the constitutionality of S.B. 1248 and stated that, if S.B. 1248 were enacted, Amici would request leave to supplement their briefing in this matter. Brief at 18 n. 4. Amici file this Supplemental Brief to bring questions of the constitutionality of S.B. 1248 to the Court's attention.

III. STATEMENT OF FACTS

S.B. 1248 was introduced on February 28, 2002 and, according to its title was offered "for the sole purpose of establishing and funding the schools of the future fund." The bill amended 18 statutes to accomplish this end.

As originally submitted, S.B. 1248 made no reference to the Judicial Escheats Act or UDUP. The portions of S.B. 1248 which amend the Judicial Escheats Act and UDUP were added to the legislation in the House-Senate Conference Committee Substitute for S.B. 1248. The conference committee members were appointed on May 6, 2002 and the committee agreed to a revised version of S.B. 1248 some time after that date.² Both houses of the Missouri

² The legislative history of S.B. 1248 does not provide the date on which the conference committee substitute for the Amendment was circulated, but it had to have been after the conference committee members were named. In all likelihood,

Legislature passed S.B. 1248 on May 17, 2002—the last day of the legislative session.

The stated purpose of the version of S.B. 1248 that was passed was to enact “thirty-five new sections relating to certain funds for public elementary and secondary education.” Among other things, the act changed the procedure for surrendering property under UDUP and the Judicial Escheats Act.

For all of the Act’s provisions, other than those relating to UDUP and the Judicial Escheats Act, all of the funds generated by S.B. 1248 in fiscal year 2003 (“FY2003”) were to be used to create the “Schools of the Future Fund.” Interest and principal from the Schools of the Future Fund, however, are not to be used for any special educational initiative. They are simply to be used for general funding of public schools, pursuant to R.S.Mo. § 163.031. See Section 1 at p. 23 of the Act (App. at 23).

Five percent of funds generated by UDUP and the Judicial Escheats Act are to be deposited into the “public school fund.” R.S.Mo. §§ 470.270.1; 470.020.5. App. at 17, 12.³ The remainder of those funds is to be deposited in the state’s

the conference committee substitute, which included the Amendment, was not circulated until the last day of the legislative session.

³ Funds transferred to the state under the revised Act “shall be deemed unclaimed property under [UDUP] and shall be treated in the same manner as all other unclaimed property under such act.” R.S.Mo. § 470.270.1. Under UDUP, as

general revenue fund. S.B. 1248 does not define the “public school fund”, as referred to in R.S.Mo. § 470.020.5.

Governor Holden signed S.B. 1248 into law on June 19, 2002 and it became effective on that date.

IV. SUPPLEMENTAL POINT RELIED ON

I.

The Trial Court’s Decision That The Respondents Are The Proper Holders Of The Funds At Issue Is Correct, Because The State Has Not Complied With The Requirements Of The Judicial Escheats Act, In That The Judicial Escheats Act Governs The Escheat Of Residual Proceeds From Rate Refund Cases To The State And The State’s Efforts To Amend The Judicial Escheats Act Violate Article III, Section 23 Of The Missouri Constitution.

V. ARGUMENT

Article III, Section 23 of the Missouri Constitution provides: “No bill shall contain more than one subject which shall be clearly expressed in its title.” The portions of S.B. 1248 that amend the Judicial Escheats Act and UDUP violate the clear title requirements of Section 23.

The purpose of the clear title provision of Section 23 is "to prevent fraudulent, misleading, and improper legislation, by providing that the title should

amended, five percent of funds that come under the state’s control pursuant to UDUP are to be transferred to the “public schools fund.” R.S.Mo. § 470.020.5.

indicate in a general way the kind of legislation that [is] being enacted." Fust v. Attorney General for the State of Missouri, 947 S.W.2d 424, 429 (Mo. banc 1997).

As the Court recently held in Home Builders Association of Greater St. Louis v. State of Missouri, 75 S.W.3d 267 (Mo. banc 2002): "Requiring bill titles to be clear is [] a way of keeping 'individual members of the legislature and the public fairly apprised of the subject matter of pending laws.'" Id. at 269-70 (quoting St. Louis Health Care Network v. State, 968 S.W.2d 145, 147 (Mo. banc 1998)).

An act of the legislature carries a strong presumption of constitutionality. Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. banc.1994). Furthermore, the Court must resolve all doubts in favor of the procedural and substantive validity of legislative acts. Id. Nonetheless, the Court must invalidate legislation if, after resolving all doubts in favor of the enactment, the bill clearly violates the requirements of Section 23. Home Builders Association of Greater St. Louis v. State of Missouri, 75 S.W.3d at 269.

In Home Builders the Court examined legislation that had the stated purpose of amending numerous existing statutes "relating to property ownership." The Court held that the legislation violated Section 23 because that title "'obscured the contents of the act' rendering the 'clear title' mandate meaningless." Id. at 272 (quoting Corvera Abatement Techs., Inc., 973 S.W.2d 851, 861 (Mo. banc 1998)).

The parallels between this case and Home Builders are strong. In Home

Builders the legislation at issue started as an amendment to 13 sections of one chapter and ended as 70 amendments to 15 chapters. Id. at 268. Here, S.B. 1248 started as 13 amendments to nine chapters and grew to 35 amendments to three chapters. Only one of the original proposed amendments in S.B. 1248 was included in the version of the legislation that was finally passed.

Furthermore, as in Home Builders, S.B. 1248's title is so broad as to obscure the contents of the act and render the clear title mandate meaningless. As enacted, S.B. 1248 dealt with a wide variety of issues ranging from the calculation of interest rates on tax refunds, App. at 1-4, to the claim period for lottery winnings, App. at 8. Among other things, it also set license fees for retail pharmacies. App. at 8-12.

The only connection between these otherwise unrelated pieces of legislation is that they all, according to S.B. 1248's title, are "relating to certain funds for public elementary and secondary education."

The money delivered to the "Schools of the Future Fund" pursuant to S.B. 1248, however, does not fund any new or targeted educational program. The money simply goes into the state's general education fund. App. at 23, Section 1. Furthermore, there is no timetable provided in the act for appropriating the assets of the "Schools of the Future Fund." Id. Thus, the funds may sit unused indefinitely.

Remarkably, the fund does not even require a net increase in state educational spending. Accordingly, the legislature may use money in the

“Schools of the Future Fund” to replace educational funding that would otherwise come from the state’s general revenue fund.

Essentially, this means that any legislation that in any way increased the amount of funds raised by the state or in any way decreased or delayed any of the state’s financial obligations would fit within the Act’s title—so long as any portion of the financial gain was designated to be paid into the “School of the Future Fund” (even though that fund may have no net effect on educational spending).

Thus, S.B. 1248’s violation of Section 23 is even more egregious than that in Home Builders because S.B. 1248’s title not only obscures the content of the legislation, it is affirmatively misleading.

The effect of S.B. 1248’s title was exacerbated by the timing of the amendments to S.B. 1248. In particular, the amendments to the Judicial Escheats Act and UDUP that were contained in S.B. 1248 were never heard in any legislative committee. There is no record of them ever being debated in either chamber or by any committee. They were not contained in the version of S.B. 1248 that was originally passed by either the House or the Senate. Instead, they were inserted in S.B. 1248 in the last few days of the session by the conference committee whose duty it was to harmonize the House and Senate versions of the bill. Indeed, the version of S.B. 1248 that was finally passed was the Conference Committee Substitute for the House Substitute for the House Committee Substitute for the Senate Substitute for the legislation that was originally proposed. S.B. 1248 at p. 1; App. at 1.

Given that the amendments to the Judicial Escheats Act and UDUP had never before been seen by either house, legislators and their constituents who, on the last day of the session, were faced for the first time with the myriad statutory amendments contained in S.B. 1248 (not to mention the hundreds of other pieces of legislation that were vying for passage before the end of the session) may well have supported the amendments to the Act because they believed the amendments would fund a “Schools of the Future” initiative for public education.

The true effect of the Amendment, on the other hand, would be to allow the legislature in future years to use the fund to accomplish a net increase in the state’s general revenue, while possibly leaving funding for public education unchanged or even decreasing educational funding.⁴

⁴ In 2002, Missouri’s elementary and secondary education budget was roughly \$4.24 billion. Assume that the net financial effect of all of S.B. 1248’s provisions is to raise a total of \$40 million in the 2003 fiscal year (which is significantly more than the estimate of the Missouri Department of Revenue, which estimated the Act would raise a total of \$33 million in FY2003). *See* <http://www.moga.state.mo.us/Oversight/OVER02/fishtm/4939-2IT.ORG.htm> at 1. The legislature, next year could decrease the amount of educational funding coming from general revenue to \$4.20 billion and use the \$40 million from the “Schools of the Future” fund to complete educational funding-- thereby leaving educational spending at last year’s level. Indeed, the legislature could decide to

Indeed, the Missouri Department of Revenue (the “DOR”) has recognized this effect, reporting that “[N]ew funds deposited in the schools of the future fund would appear to lessen the call on general revenue funds to fully fund state aid to public schools.” *Id.* See Committee on Legislative Research, Oversight Division, Fiscal Note, L.R. No. 4939-21 [for S.B. 1248], June 6, 2002 (reported at <http://www.moga.state.mo.us/Oversight/OVER02/fishtm/4939-2IT.ORG.htm>) at 3. In the same report, the DOR admitted the Department of Elementary and Secondary Education could not project any positive financial impact of the Amendment on educational funding. *Id.*

Thus, S.B. 1248’s title “obscure[d] the actual subject of the legislation” Home Builders Association of Greater St. Louis v. State of Missouri, 75 S.W.3d at 270 (citing Drury v. City of Cape Girardeau, 66 S.W.3d 733, 739 (Mo. banc 2002)) and “fail[ed] to give notice of the actual content or subject of the bill.” *Id.* at 271. The bill’s title could be used to encompass virtually any legislation that would have any effect on state revenue or state expense. Thus, the scope of the legislation is so broad that its title, for all practical purposes, is meaningless.

appropriate \$4.0 billion in educational spending or less from general revenue. Then, even if the entire balance of the “Schools of the Future” fund were to be spent on education next year, there would be a net decrease in educational funding.

Accordingly, S.B. 1248 should be held to violate Section 23 and should be held to be invalid by the Court.

VI. CONCLUSION

Given that S.B. 1248 is invalid, the Circuit Court of Cole County remains the proper holder of the funds at issue in this case. Accordingly, the Court should affirm the decision below.

Respectfully submitted,

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**VIII. CERTIFICATE OF SERVICE AND COMPLIANCE WITH
SUPREME COURT RULES**

I hereby certify that two true and accurate copies of the foregoing were mailed,
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The undersigned certifies that the foregoing supplemental brief complies
with the limitation contained in Rule 84.06(b) and that Amici's initial brief and the
supplemental brief contain a total of 7,935 words. The undersigned further
certifies that the labeled disk, simultaneously filed with the hard copies of this
brief has been scanned for viruses and is virus-free.

_____/s/_____
Gregg Lombardi

⁵ A true and accurate copy of the foregoing was also sent to James R.
McAdams, via facsimile, on August 19, 2002.