

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	5
JURISDICTIONAL STATEMENT.....	8
STATEMENT OF FACTS.....	9
STANDARD OF REVIEW.....	12
POINT RELIED ON.....	12

**The trial court erred in declaring void subsections 6 and 7 of § 162.601 as being unconstitutionally vague for:**

- (1) failing to specify which three of the seven subdistricts are to hold elections for school board seats;**
- (2) failing to specify how many members may be elected in a single subdistrict and who may vote for each candidate; and**
- (3) setting forth the seven subdistricts in one subsection while requiring the State Board of Education to establish the subdistricts in another subsection;**

**because subsections 6 and 7 are susceptible of reasonable and practical construction and thus must be held valid and given effect in that subsections 6 and 7:**

- (1) grant to the St. Louis Board of Education the duty of deciding**

**which three subdistricts shall hold elections;**

**(2) unambiguously require that only one candidate may be elected from each of the subdistricts and voters may only vote for candidates in the subdistricts in which they reside; and**

**(3) contain no contradictory or inconsistent provisions regarding the establishment of subdistricts as between the statute and the State Board of Education.**

ARGUMENT	13
BACKGROUND	15
LEGAL STANDARDS IN DECLARING A STATUTE VOID	17
1. Section 162.601, as amended, does not by failing to specify which three of the seven subdistricts are to hold elections for school board seats, impede the Board's duty to provide necessary election information.	19
2. Section 162.601, as amended, does not impede the Board's duty to provide necessary election information by failing to specify how many members may be elected from a single subdistrict and who may vote for each candidate.	24
3. Subsections 6 and 7 of § 162.601 do not contain contradictory language with respect to the establishment of the seven subdistricts, nor do these subsections	26

contain inconsistent language. The provisions establish a workable subdistricting plan.....

4. This Court should reverse the judgment of the circuit court and remand the case with 30  
a mandate to find that the April 3, 2001 election is void and to order a new election  
to be called by the St. Louis Board of  
Education.....

CONCLUSION..... 31

CERTIFICATE OF COMPLIANCE..... 33

## TABLE OF AUTHORITIES

### Cases

<i>Abrams v. Ohio Pacific Express</i> , 819 S.W.2d 338, 340 (Mo. banc 1991)	25
<i>AT&amp;T Information Systems, Inc. v. Wallemann</i> , 827 S.W.2d 217, 224 (Mo. App. 1992)	22
<i>City of St. Louis v. Brune</i> , 520 S.W.2d 12, 16-17 (Mo. 1975)	18
<i>City of Willow Springs v. Missouri State Librarian</i> , 596 S.W.2d 441 (Mo. banc 1980)	18
<i>Cocktail Fortune, Inc. v. Supervisor of Liquor Control</i> , 994 S.W.2d 955, 957 (Mo. 1999)	18, 23
<i>Hagan v. Director of Revenue</i> , 968 S.W.2d 704, 706 (Mo. banc 1998)	28
<i>Laws v. Secretary of State</i> , 895 S.W.2d 43, 46 (Mo. App., W.D. 1995)	25
<i>Missouri State Board of Registration for the Healing Arts v. Southworth</i> , 704 S.W.2d 219, 223 (Mo. 1986)	17
<i>Murphy v. Carron</i> , 536 S.W.2d 30 (Mo. banc 1976).	12
<i>Spitcaufsky v. Hatten</i> , 182 S.W.2d 86, 109 (Mo. 1944)	21
<i>Spradlin v. City of Fulton</i> , 982 S.W.2d 255, 262 (Mo. banc 1998)	24, 27

<i>Staley v. Missouri Director of Revenue</i> , 623 S.W.2d 246, 250 (Mo. banc 1981)	24
<i>State v. Duggar</i> , 806 S.W.2d 407, 408 (Mo. banc 1991)	18
<i>State ex rel. Ferguson v. Donnell</i> , 163 S.W.2d 940, 943 (Mo. banc 1942)	22
<i>State ex rel. McKittrick v. Wymore</i> , 132 S.W.2d 979, 987 (Mo. banc 1939)	22
<i>State ex rel. Metropolitan St. Louis Sewer District v. Sanders</i> , 807 S.W.2d 87, 88 (Mo. banc 1991)	18
<i>State ex rel. Stipp v. Colliver</i> , 243 S.W.2d 344, 352 (Mo. 1951)	30
<i>State v. Young</i> , 695 S.W.2d 882, 883. (Mo. banc 1985)	17
<i>St. Louis County v. City of Florissant, Missouri</i> , 406 S.W.2d 281, 287 (Mo. banc 1966)	230
<i>Wollard v. City of Kansas City, Mo.</i> , 831 S.W.2d 200 (Mo. banc 1992)	27

## Missouri Constitution

Article I, § 10.....	17
----------------------	----

## Missouri Statutes

§ 115.123.3.....	31
§ 115.123.4(3).....	31
§ 115.125.....	19, 20, 21, 30
§ 115.125.1.....	19, 20, 29
§ 115.127.....	20
§ 115.127.2.....	19, 20, 21
§ 162.601.....	20, 21, 22, 24, 30
§ 162.601.5.....	30
§ 162.601.6.....	26, 27, 28
§ 162.601.7.....	7, 23, 24, 28

## **JURISDICTIONAL STATEMENT**

This appeal involves the question of whether § 162.601, subsections 6 and 7, are vague and therefore unconstitutionally void under Missouri Constitution Article I, Section 10. Therefore, jurisdiction lies in the Missouri Supreme Court pursuant to Art. V., Section 3 of the Missouri Constitution.

## STATEMENT OF FACTS

Plaintiffs are the Board of Education of the City of St. Louis (the St. Louis Board) and its members, and three potential candidates for election to the Board. (L.F., p. 22). Defendants are the State of Missouri, Governor Bob Holden, the Missouri State Board of Education (the State Board), and the Board of Election Commissioners of the City of St. Louis (Election Commissioners) and its members. (L.F., p. 22).

The St. Louis Board is a body corporate, organized pursuant to § 162.571<sup>1</sup> for the purpose of supervising and governing public schools and public school property in the City of St. Louis. (L.F., p. 16). The Election Commissioners comprise the governing body of elections conducted in the City of St. Louis pursuant to § 115.017, and derive their authority to conduct elections pursuant to § 115.023. (L.F., p. 16)

During the 1997-98 legislative session, the Missouri Legislature enacted Senate Bill 781 that revised Sections 162.571, 162.581, and 162.601 governing the method of election for members of the St. Louis Board. (L.F., p. 17). Prior to 1998, the St. Louis Board consisted of twelve members elected for staggered six-year terms. (L.F., p. 17). Four members were elected in every odd-numbered year in at-large elections. (L.F., p. 17).

The next scheduled election for St. Louis Board members is April 3, 2001, at which three members are to be elected. (L.F., p. 17). Each Board member in office on August 28, 1998 holds

---

<sup>1</sup>All statutory references are to the Revised Statutes of Missouri (2000).



office only for the length of term for which they were elected. (L.F., p. 17). There are four current St. Louis Board members whose terms expire in April 2001. (L.F., p. 17).

Section 162.601 requires St. Louis Board members to be elected to represent seven subdistricts. (L.F., p. 17). No statute explicitly states whether the election is to be an at-large election, a subdistrict election or whether only one candidate from any subdistrict can be elected. (L.F., p. 17).

The St. Louis Board is required to provide the Election Commissioners with certain Notice of Election information for School Board member elections pursuant to § 115.125.1, including a certified copy of the legal notice indicating the date and time of the election, the name of the officer or agency calling the election and a sample ballot. (L.F., p. 17-18). This information is used by the Election Commissioners as a basis for the official ballot. (L.F., p. 18). For the April 3, 2001 election, the St. Louis Board must provide this Notice of Election information to the Election Commissioners no later than 5:00 P.M. on January 23, 2001. (L.F., p. 18). Section 162.601 does not state which subdistricts will be represented or from which subdistricts St. Louis Board members are to be elected in April 2001. (L.F., p. 18).

Section 162.601 requires that St. Louis Board members be residents of the subdistricts from which they are elected. (L.F., p. 18). Section 162.601 does not set forth from which subdistricts the three individuals to be elected in April, 2001 are to be elected or how many candidates may be elected from any one subdistrict. (L.F., p. 19). Candidates intending to run in the April 2001 St. Louis Board election must file a declaration of candidacy no later than January 18, 2001. (L.F., p. 19).

Plaintiffs McBryan, Mahoney and Bender meet all the qualifications to serve as members of the St. Louis Board prior to the amendments to § 162.601. (L.F., p. 18).

## **STANDARD OF REVIEW**

The case below was tried to the court on the pleadings, stipulations of fact, and memoranda of law. The judgment in a court-tried case will be sustained unless it is unsupported by substantial evidence, against the weight of the evidence, or erroneously declares or erroneously applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976).

## **POINT RELIED ON**

**The trial court erred in declaring void subsections 6 and 7 of § 162.601 as being unconstitutionally vague for:**

- (1) failing to specify which three of the seven subdistricts are to hold elections for school board seats;**
  - (2) failing to specify how many members may be elected in a single subdistrict and who may vote for each candidate; and**
  - (3) setting forth the seven subdistricts in one subsection while requiring the State Board of Education to establish the subdistricts in another subsection;**
- because subsections 6 and 7 are susceptible of reasonable and practical construction and thus must be held valid and given effect in that subsections 6 and 7:**

- (1) grant to the St. Louis Board of Education the duty of deciding which three subdistricts shall hold elections;**
- (2) unambiguously require that only one candidate may be elected from each of the subdistricts and voters may only vote for candidates in the subdistricts in which they reside; and**
- (3) contain no contradictory or inconsistent provisions regarding the establishment of subdistricts as between the statute and the State Board of Education.**

### **Principal Missouri Cases:**

*Missouri State Board of Registration for the Healing Arts v. Southworth*, 704 S.W.2d 219 (Mo. 1986)

*Spitcaufsky v. Hatten*, 182 S.W.2d 86 (Mo. 1944)

*State ex rel. Ferguson v. Donnell*, 163 S.W.2d 940 (Mo. banc 1942)

*St. Louis County v. City of Florissant, Missouri*, 406 S.W.2d 281 (Mo. banc 1966)

### **Missouri Constitution**

Article I, § 10

### **Missouri Statutes**

§ 115.125

§ 115.125.1

§ 115.127

§ 115.127.2

§ 162.601

§ 162.601.5

§ 162.601.6

§ 162.601.7

## **ARGUMENT**

**The trial court erred in declaring void subsections 6 and 7 of § 162.601 as being unconstitutionally vague for:**

- (1) failing to specify which three of the seven subdistricts are to hold elections for school board seats;**
  - (2) failing to specify how many members may be elected in a single subdistrict and who may vote for each candidate; and**
  - (3) setting forth the seven subdistricts in one subsection while requiring the State Board of Education to establish the subdistricts in another subsection;**
- because subsections 6 and 7 are susceptible of reasonable and practical construction and thus must be held valid and given effect in that subsections 6 and 7:**

- (1) grant to the St. Louis Board of Education the duty of deciding which three subdistricts shall hold elections;**
- (2) unambiguously require that only one candidate may be elected from each of the subdistricts and voters may only vote for candidates in the subdistricts in which they reside; and**
- (3) contain no contradictory or inconsistent provisions regarding the establishment of subdistricts as between the statute and the State Board of Education.**

## **BACKGROUND**

Among the statutory provisions for electing members to the Board of Education of the City of St. Louis (St. Louis Board) are sections revised by the General Assembly in the 1998-1999 legislative session that reduce the number of members on the Board and change the manner of election of those members. Also among these provisions are directives to the St. Louis Board to provide information about the elections to the Board of Elections Commissioners of the City of St. Louis (Election Commissioners) so that an election can be held. Respondents, Plaintiffs below, are the St. Louis Board, individual members of the Board, and three prospective candidates for election to the Board. They commenced a declaratory judgment action to declare the 1999 changes invalid.

The St. Louis Board now consists of twelve members who served staggered six-year terms. Section 162.601<sup>2</sup> provided a phased reduction of the number of seats on the Board to seven and changed the manner of electing those members from at-large elections to subdistrict elections.

The trial court held § 162.601 to be unconstitutionally vague because subsections 6 and 7 fail to provide certain details about who may vote in the elections and who will qualify as a candidate. The trial court further held that in reducing the Board seats from twelve to seven and requiring subdistrict elections, the General Assembly enacted fatally contradictory subsections by providing that the Missouri

---

<sup>2</sup>Unless otherwise specified, all statutory references shall be to the Revised Statutes of Missouri (2000).

State Board of Education (State Board) establish the seven subdistricts, but then setting forth the seven subdistricts in the statute itself.

The trial court held that the remaining subsections of the statute could stand with subsections 6 and 7 severed, and issued an order accordingly. It is apparently undisputed that among the purposes of the legislature in enacting its amendments in 1998 was the intent to reduce the number of St. Louis Board seats to seven. It also appears undisputed that legislature intended to change the manner of election of members of the St. Louis Board.

The actual controversies here are the claims that because the statute is so vague, the St. Louis Board is unable to perform a statutory duty to provide certain election information to the Election Commissioners, and individual potential candidates are thereby unable to determine if they are qualified to seek candidacy for any open seat.

### **LEGAL STANDARDS IN DECLARING A STATUTE VOID**

A statute is presumed constitutional unless it is clearly contrary to a constitutional provision. *Missouri State Board of Registration for the Healing Arts v. Southworth*, 704 S.W.2d 219, 223 (Mo. 1986) (citing *State v. Young*, 695 S.W.2d 882, 883 (Mo. banc 1985)). The relevant Missouri constitutional provision under which a law might be considered void for vagueness is Article I, § 10 which insures due process of law. This “void for vagueness” doctrine protects against arbitrary enforcement of laws. *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. 1999).

In determining whether a law is impermissibly vague, neither absolute certainty nor impossible standards of specificity are required. *State v. Duggar*, 806 S.W.2d 407, 408 (Mo. banc 1991).

Generally, “if the law is susceptible of any reasonable and practical construction which will support it, it will be held valid, and . . . the courts must endeavor, by every rule of construction, to give it effect.” *Cocktail Fortune*, 994 S.W.2d at 957 (quoting from *City of St. Louis v. Brune*, 520 S.W.2d 12, 16-17 (Mo. 1975)).

These strict protections of legislative enactments find further application in the general rules of statutory construction. It is well established that when construing a statute, the words used must be considered in their plain and ordinary meaning. *State ex rel. Metropolitan St. Louis Sewer District v. Sanders*, 807 S.W.2d 87, 88 (Mo. banc 1991). And of particular relevance in the case at bar, the provisions of a legislative act must be considered together. *City of Willow Springs v. Missouri State Librarian*, 596 S.W.2d 441, 446 (Mo. banc 1980). All such provisions must be harmonized and every clause given some meaning. *Id.*

For the following reasons, neither of these claims present a true controversy, nor does the wording of § 162.601 force the drastic remedy of judicially erasing a statute:



5. Section 162.601, as amended, does not by failing to specify which three of the seven subdistricts are to hold elections for school board seats, impede the Board's duty to provide necessary election information.

Subsections 1 through 5 of § 162.601 are the provisions for the transition from a twelve-member board to a seven-member board. Subsection 1 establishes that those in office are to fill out their terms, and subsection 2 provides that there shall be no election in the following odd-numbered year after August 28, 1998. Subsection 3 provides for an election of three members in the second odd-numbered year, followed by subsection 4 that provides for the election that fills the remaining four seats.

With respect to the first election for three board seats, the statute does not specify which subdistricts are to elect members.

Chapter 151 requires the St. Louis Board to provide the Election Commissioners with certain information for elections for seats on the St. Louis Board. This includes a certified copy of the legal notice showing the date and time of the election, the name of the officer or agency calling the election and information for a sample ballot. §§ 115.125.1 and 115.127.2. Simply put, these sections require the St. Louis Board to assemble the information necessary for the Election Commissioners to conduct the election.

By implication, the trial court held that the information to be provided to the Election Commissioners does not, by statute, include identification of the subdistricts that are to elect members. This holding is error.

None of the provision of §§ 162.601 or 115.125 prohibit the St. Louis Board from identifying the subdistricts that are to be up for election.

Section 162.601 establishes the subdistrict requirement but is silent on the information to be provided to the Election Commissioners in this regard. Sections 115.125 and 115.127.2 are the statutory provisions that address information that the Board must provide to the Election Commissioners. In pertinent part, and with emphasis supplied, these provisions are as follows:

Not later than 5:00 p.m. on the tenth Tuesday prior to any election, ... **the officer or agency calling the election shall notify the election authorities responsible for conducting the election. The notice shall be in writing, shall specify the name of the officer or agency calling the election and shall include a certified copy of the legal notice to be published pursuant to subsection 2 of section 115.127.**

§ 115.125.1 The information for the legal notice referenced above is specified as follows:

Each such legal **notice shall include the date and time** of the election, the **name of the officer or agency** calling the election and a **sample ballot**[.]

§ 115.127.2.

In this instance, the St. Louis Board is the “agency calling the election.” Thus the St. Louis Board is required by statute to provide the necessary information for conducting the election to the Election Commissioners. Nowhere in Chapter 115 is there a provision that prohibits the St. Louis Board from supplying any particular information required for the Election Commission to publish the notice.

Respondents’ complaint that insufficient statutory information has been provided for them to discharge their duties has no statutory basis whatsoever. Section 162.601 sets out in part how elections

for new board members should be conducted. Sections 115.125 and 115.127 add some detail. But the omission of other details is no more fatal here than it is in other election contests. As always, details not included in the statute are left for implementation by the agency calling the election (the St. Louis Board). The St. Louis Board already had the duty to provide the Election Commissioners with information about the St. Louis Board elections. That did not change in 1999. The choice of which subdistricts will elect new board members in 2001 is an administrative decision that the St. Louis Board must make.

Like all administrative agencies, the St. Louis Board has the interpretive power to fill in the details of a statute when the legislature has not specified all the details. *Spitcaufsky v. Hatten*, 182 S.W.2d 86, 109 (Mo. 1944) (overruled on other grounds). Deciding which subdistricts will be electing members is an essential step within the election-call.

That it is implied rather than express is irrelevant. The Missouri Supreme Court has held that the implied part of a statute is as much a part of the statute as that which is expressed. *State ex rel. Ferguson v. Donnell*, 163 S.W.2d 940, 943 (Mo. banc 1942). Further, when a power is conferred by statute to an agency, “everything necessary to carry out the power and make it effectual and complete will be implied.” *Id.* The powers and duties of an agency include not only those expressly given by statute, but also “those essential to the accomplishment of the main purpose for which the office was created, and those which serve to promote the accomplishment of the principal purposes.” *AT&T Information Systems, Inc. v. Wallemann*, 827 S.W.2d 217, 224 (Mo. App. 1992) (quoting *State ex rel. McKittrick v. Wymore*, 132 S.W.2d 979, 987 (Mo. banc 1939).

In the present case, the trial court has suggested a preference that such decisions are made by the legislature. But that is a policy choice, not a choice for the trial court. Here, in fact, the legislature has indicated its preference for agencies to make such decisions. *See* § 162.601 (requires the State Board of Education to revise the subdistricts after each decennial census: “The subdistricts shall be revised by the state board after each decennial census and at any other time the state board determines that the district’s demographics have changed sufficiently to warrant redistricting.”).

The circuit court points to no law prohibiting the St. Louis Board from deciding which three of the seven subdistricts should hold elections. In the absence of such a law, the general rules of implied authority are enough. The provision requiring the St. Louis Board to set the election is “reasonable and practical construction” and therefore should, “by every rule of construction” be given effect. *Cocktail Fortune*, 994 S.W.2d at 957.

2. Section 162.601, as amended, does not impede the Board’s duty to provide necessary election information by failing to specify how many members may be elected from a single subdistrict and who may vote for each candidate.

The trial court also concluded that the language of § 162.601 is unconstitutionally vague because it does not state whether the election is limited to voters of a particular district, nor does it state how many members may be elected from a particular district. The court demanded a level of specificity that Missouri law and practice do not require.

The very first sentence of subsection 7 requires that “[a] member shall reside in and be elected in the subdistrict which the member is elected to represent. ...” § 162.601.7. This sentence has three parts:

- (1) A member is elected to represent a subdistrict;
- (2) A member is required to be a resident of the subdistrict that member represents; and
- (3) A member is required to be elected in the subdistrict that member represents.

The trial court ignored the words, “and be elected in[.]” To do so is plainly improper. The well established rules of statutory construction require that all words be given meaning. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998). *See also Staley v. Missouri Director of Revenue*, 623 S.W.2d 246, 250 (Mo. banc 1981) (“All provisions of a statute must be harmonized and every word, clause, sentence, and section thereof must be given some meaning”).

“Be elected in” has an obvious meaning in Missouri practice: The first sentence in subsection 7 is neither unclear nor ambiguous. Although this provision does not explicitly use the words, “the election

is limited to voters in the particular districts,” there is no other rational meaning that the included language can have. Moreover, that reading is the only one consistent with the legislature’s intent. The court’s primary responsibility is to ascertain the intent of the General Assembly from the language used, and to give effect to that intent.” *Laws v. Secretary of State*, 895 S.W.2d 43, 46 (Mo. App., W.D. 1995). When that intent can be discerned from the language used, there is no need to analyze the matter further. *Abrams v. Ohio Pacific Express*, 819 S.W.2d 338, 340 (Mo. banc 1991). Here, it is the legislature’s intent to change the voting structure for the St. Louis Board from an at-large election to one of subdistricts and to limit the vote to each subdistrict. By clear implication, only one member may be elected from each subdistrict.

3. Subsections 6 and 7 of § 162.601 do not contain contradictory language with respect to the establishment of the seven subdistricts, nor do these subsections contain inconsistent language.

The provisions establish a workable subdistricting plan.

Finally, the trial court held that the two subsections in question contained contradictory language with respect to the establishment of the seven subdistricts. This holding, too, violates the requirements that all parts of a statute be given meaning, and that they be harmonized when possible.

In pertinent part, subsection 6 provides as follows:

The subdistricts **shall be established** by the state board of education to be **compact, contiguous and as nearly equal** in population as practicable. The subdistricts **shall be revised** by the state board of education **after each decennial census and at any other time** the state board determines that the district's demographics have changed sufficiently to warrant redistricting.

§ 162.601.6 (emphasis supplied). The following subsection simply sets out which wards will comprise each subdistrict.

The trial court found this to be a contradiction:

The Statute contains expressly contradictory subparts. Subsection 6 of Section 162.601 states that the subdistricts shall be established by the State Board, but then in direct contrast, subsection 7 establishes the subdistricts.

(L.F., p. 56, paragraph 10).

In construing statutes, words are accorded their plain and ordinary meaning. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 258 (Mo. banc 1998). The entire legislative act must be considered together and all provisions must be harmonized if possible. *Wollard v. City of Kansas City, Mo.*, 831 S.W.2d 200 (Mo. banc 1992).

Subsection 6 directs the State Board with respect to how the subdistricts are to be established (“compact, contiguous...”). It then goes on to specify at what points in time this is to be done (“after each decennial census and at any other time”). The fact that the legislature went on in the next section to make the initial establishment of the subdistricts is neither contradictory nor inconsistent.

The trial court apparently read the clause, “[t]he subdistricts shall be established by the state board of education” as a complete sentence or an independent clause. And if that, indeed, was the intent of the legislature, harmonizing this directive with the next subsection that establishes the subdistricts might present some difficulties.

But this task is unnecessary. As a whole, subsection 6 is a direction to the State Board about how to form the subdistricts. The legislature directs the state board to establish the subdistricts **“to be”** a certain way. It then goes on to specify when this duty is to be performed. Obviously, if the word “and” had appeared in place of “to be,” the entire sentence would be rendered somewhat ambiguous. As written, though, it is not ambiguous and none of the words are vague.

Reading the first sentence of subsection 6 as above suggested, it is readily apparent that subsection 7 simply establishes the initial subdistricts. There is no language in either section directing the state board to generally establish the St. Louis subdistricts.



This reading of subsections 6 and 7 is also in harmony with the tasks required of the state board.

Subsection 6 orders the state board to revise the subdistricts after each decennial census such that the subdistricts are “compact, contiguous and as nearly equal in population as practicable.”

162.601.6. This duty continues indefinitely as the district’s population changes over time. *Id.* But the legislature chose to defer that task until the State Board had new census information to work with. Setting forth the initial subdistricts in the following section further supports the proposition that subsections 6 and 7 lay out a workable subdistricting plan.

It was the trial court’s conclusion that the legislature intended the State Board to establish the initial districts that created the contradiction and made the amendments ineffective. This is plainly contrary to the rule that amendments must be deemed to have some effect. *Hagan v. Director of Revenue*, 968 S.W.2d 704, 706 (Mo. banc 1998).

Again, to give every portion effect, the court must reject the circuit court’s reading and hold that the legislature has established the initial districts and set the foundation for the first election under the new plan (April 3, 2001). The St. Louis Board of Education was thus immediately authorized to assemble the required election information, including the identification of the subdistricts that are to elect members. Neither the St. Louis Board nor candidates were thus required to wait for the State Board to act.

Upon release of the new census data, the state board would be required to assess the subdistricts according to the specified criteria, and then to revise those subdistricts if the state board determined that revision was required. That the legislature could not have intended for the State Board

to complete such a task in the short space of time between the release of the census data and the April 3, 2001 election is evident from the timing of the election. The U.S. Census Bureau does not release the necessary data until March, 2001. The St. Louis Board was required to provide the details of the April 3, 2001 election to the election authority by January 23, 2001. § 115.125.1.

From the plain language of these two subsections, it is the intent of the legislature to establish workable subdistricts and then to have the state board ensure that the subdistricts remain compact, contiguous and nearly equal in population. The establishment of initial subdistricts permits the legislature's plan for the changes it has mandated with respect to the St. Louis Public School District to be implemented immediately.

4. This Court should reverse the judgment of the circuit court and remand the case with a mandate to find that the April 3, 2001 election is void and to order a new election to be called by the St. Louis Board of Education.

As the meaning of § 162.601 is entirely ascertainable from the language used by the legislature, failure to comply with its provisions in holding an election renders that election void. The statute provides the authority for the election. *State ex rel. Stipp v. Colliver*, 243 S.W.2d 344, 352 (Mo. 1951). *See, e.g., St. Louis County v. City of Florissant, Missouri*, 406 S.W.2d 281, 287 (Mo. banc 1966) (Annexation case in which city failed to comply with statutory provisions regarding annexation and election renders both void).

The Board is the body responsible for calling an election. § 115.125. An election for three board seats is mandated by statute as well. § 162.601.5 (“Three board members shall be elected at the second municipal election in an odd-numbered year next following August 28, 1998, to serve four-year terms.”) The Board, then, must call for an election, follow the dictates of § 162.601 with respect to selection of the three subdistricts that are to elect members and provide all required information to the Board of Election Commissioners for the City of St. Louis.

The Board may call for an election at the next available public election for municipalities or school districts. By statute, this would be on Tuesday after the first Monday in August, 2001. § 115.123.3. Additionally, a special election may be called to fill vacancies, and if indeed the April 3, 2001 election is declared void, there will be three vacancies to be filled. § 115.123.4(3).

From the foregoing, this Court should reverse and remand the instant case to the trial court for issuance of appropriate orders to declare the April 3, 2001 election for St. Louis Board of Education

members null and void, and to require the St. Louis Board of Education to call an election pursuant to their statutory duties under § under § 162.601, 115.125 and 115.127.

## **CONCLUSION**

Well-established rules protect acts of the General Assembly from change by judicial decision. Rules that require an act to be given effect if **any** reasonable construction can be made is a very high hurdle to clear for a party seeking to declare a statute void for lack of clarity.

In the case at bar, whether it would have been arguably more convenient or even more wise for the legislature to have identified the three subdistricts that are to elect Board members, this Court is required to give effect to what the legislature has in fact done. The intent to reduce the number of Board members to seven and to change the election structure to a subdistrict election is clear and not disputed.

The St. Louis Board of Education is an administrative body that is capable of deciding which among the established subdistricts must hold an election, and the delegation by the legislature of that power by implication is neither novel nor prohibited.

This Court should reverse the trial court's judgment and remand the case for appropriate orders requiring the St. Louis Board of Education to identify its electing subdistricts and to follow its mandate in §§ 162.601 and 115.125. Further, this Court should declare any election for St. Louis Board of Education members at the April 3, 2001 election to be null and void as contrary to statute.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON  
Attorney General

JOEL E. ANDERSON #40962  
Assistant Attorney General

P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-3321

ATTORNEYS FOR APPELLANTS STATE OF  
MISSOURI, GOVERNOR BOB HOLDEN,  
MISSOURI STATE BOARD OF EDUCATION

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. The foregoing brief complies with the limitations contained in Special Rule 1(b) of this Court in that it contains 5400 words, excluding the cover and this certification as determined by WordPerfect 9.0 software; and

2. That the floppy disk filed with this brief has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid on March 13, 2001 to:

Mr. Keith C. Brostron  
Lashly & Baer, P.C.  
714 Locust Street  
St. Louis, MO 63101

Mr. Ira Young  
509 Olive Street  
St. Louis, MO 63101

---

Joel E. Anderson, #40962  
Assistant Attorney General