Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

IN THE
SUPREME COURT OF MISSOURI

No. SC92062

PAT DUJAKOVICH, et al.

Appellants,

v.

ROBIN CARNAHAN, et al.

Respondents.

Transferred from the Circuit Court of Cole County

RESPONDENTS' BRIEF

CHRIS KOSTER
Attorney General
JAMES R. LAYTON
Solicitor General
Mo. Bar Number 45631
JENNIFER REDEL-REED
Assistant Attorney General
Missouri Bar No. 61526
P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-4692
Facsimile: (573) 751-9456

ATTORNEYS FOR APPELLANT

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

TABLE OF CONTENTS

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

TABLE OF AUTHORITIES

Cases

Statutes, Rules, Regulations, and Other Authorities

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Argument

Defendants/Respondents, State of Missouri and Secretary of State Carnahan, concur in and incorporate by reference the standard of review and argument the Intervenors/Respondents make in their Respondents' Brief. In addition, the State Respondents submit the following:

I. It would be futile to remand this case. The trial court has already determined the merits of Appellants' claims.

Appellants assert that the trial court's dismissal of Counts II, III, and IV of their petition was improper because the court analyzed the merits of their claims when determining that the Counts failed to state a claim upon which relief could be granted. They argue the trial court should not have applied the law or made findings that reached the merits of their claims. Appellants seek to have the dismissal reversed and the case remanded back to the trial court for further proceedings.

To the extent that the trial court treated Respondents' Motions to Dismiss as Motions for Judgment on the Pleadings and determined that Respondents were entitled to judgment as a matter of law, such a determination was within the purview of the court. Appellants were not prejudiced as they had ample notice that the trial court was considering the merits of their claims and they fully argued their positions on the matters of law both in motions and oral argument.

It is not improper for a trial court to treat a Motion to Dismiss as a Motion for Judgment on the Pleadings. *In re Marriage of Busch*, 310 S.W. 3d 253, 259 (Mo. App. E.D. 2010). A judgment on the pleadings would have been appropriate in this case as the

facts had been sufficiently developed, the controversy was sufficiently concrete, there were no issues of material fact, and the questions before the court were strictly ones of law. *See, Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599 (Mo. banc 2007). The parties had fully briefed the dispute and the trial court had heard oral argument on these issues prior to entering its Order and Judgment. Appellants do not suggest that any of their legal arguments would have been different had the titles of the motions been different.

It would be futile to remand this case. If the case is remanded, Defendant/Respondent will file a motion for judgment on the pleadings and the trial court would likely uphold the validity of Initiative Petition 2010-077 for the same reasons outlined in the court's Judgment and Order. Respondents believe the same outcome probable because (1) the standards of review in both a motion to dismiss and a motion for judgment on the pleadings are substantially the same; (2) The parties briefed and argued the merits of Appellants' claims prior to the trial court's ruling; and (3) The questions before the court were strictly those of law.

The trial court's Order and Judgment dismissed Appellants' claims because the Initiative Petition terminated "the prior authority of the City of Kansas City (the "City") to continue to impose an earnings tax absent a vote of the citizens of the City." The court noted that the choice to hold such an election "does not constitute an appropriation by initiative." The trial court also noted in its Order that "the power to limit or deny powers to a constitutional charter city, …rests with the people and/or the legislature." Appellants do not suggest remanding to the trial court will create a different outcome.

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

In cases involving motions to dismiss in which remand would be futile because the trial court made clear how it would rule on the merits of the case, appellate courts have chosen to review the merits of the claims on appeal. *Clifford Hindman Real Estate, Inc. v. City of Jennings*, 283 S.W.3d 804 (Mo. App. E.D. 2009); *State ex rel. Am. Eagle Waste Industries v. St. Louis County*, 272 S.W.3d 336, 341 (Mo. App. E.D. 2008); *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 57-58 (Mo. App. W.D. 2005).

Nowhere have Appellants identified any issue of fact that would preclude a court entering judgment as a matter of law. Rule 84.14 provides that an appellate court shall dispose finally of the case unless justice otherwise requires. Here, the facts are undisputed and sufficiently developed to warrant a final judgment. This Court should review the merits of Appellants' challenge to the constitutionality of Initiative Petition 2010-077 and enter a judgment concluding as a matter of law that the petition did not violate the Missouri Constitution.

II. The Hancock Amendment is not a restriction on the power of the people. (In response to Appellants' point V.)

The Hancock Amendment acts as a restriction on the power of the Legislature to enact legislation, not on the power of the people to do so through the initiative. The purpose of the Hancock Amendment is to prohibit the Legislature from increasing the cost to tax payers in the absence of a vote of the people. Here, it was a vote of the people that resulted in the statutory amendments Appellants now complain of.

In *Payne v. Kirkpatrick*, 685 S.W.2d 891, 903-04 (Mo. Ct. App. 1984), the court considered whether constitutional limitations on the power of the General Assembly also

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

limited the ability of the people in their exercise of the right of initiative granted under Article III. Because the limitation in *Payne* was prefaced by the language, "The general assembly shall not have power," the court interpreted this as a limitation solely on the power of the general assembly. *Id.* The court noted the limitation did not apply to initiative petitions enacted under Article III, Section 49, because "Section 49 specifically distinguishes the reserved power of the people by initiative independent of the power of the Missouri General Assembly." *Id.*

The Hancock Amendment's unfunded mandate provision in Article X, Section 21, states,

> A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Mo. Const. Art. X, § 21. The language "shall not be required by the general assembly" is no different in substance, effect, or intent than the language "[t]he general assembly shall not have power" under consideration in *Payne*. The unfunded mandate limitation in the Hancock Amendment, like the limitations in Article III, Section 49, are intended to act as a limitation only on the General Assembly.

If it were assumed for sake of argument that Initiative Petition 2010-077 involved an activity or service that was mandated of constitutional charter cities, the Hancock

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Amendment does not apply and does not restrict the use of the initiative to such a measure. Under Article III, Section 49, the people have specifically reserved the right to enact legislation and, as *Payne* points out, they did not fetter that right with the same types of limitations that they placed on the General Assembly.

III. Initiative Petition 2010-077 did not violate the Hancock Amendment. (In response to Appellants' points III, IV, and VI.)

a. The City's decision whether to hold elections on retention of the tax was discretionary.

Even if this Court determines that Initiative Petition 2010-077 must be analyzed under the Hancock Amendment, the petition was proper because it does not mandate any activity by the city. The petition involves instead an option for voluntary action by a constitutional charter city. The enacted measures do not require a city to impose an earnings tax. The language of the measures is "may continue to impose or levy an earnings tax." §§92.111.1 & 92.115.1, RSMo. Not only is the discretionary term "may" used but other language in the enacted measures clearly indicate that the elections at issue are the result of a voluntary decision, legislative in character, on the part of the city. Section 92.125 provides, "If no election is held pursuant to section 92.115, or if an election held to continue to impose or levy the earnings tax…" §92.125, RSMo. This language explains that a city has the option of including the earnings tax among its sources of revenue, or not. As noted above, there is nothing in the enacted measures that mandates the city exercise its discretion in the first instance or what the decision will be if it does.

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Under the unfunded mandate provision of the Hancock Amendment, there is no mandate where a statute is permissive in allowing cities the option to engage in an activity or to forego it. *City of Jefferson v. Missouri Department of Natural Resources*, 863 S.W.2d 844, 848 (Mo. banc 1993). If there is no mandate, there is no Hancock Amendment violation. *Id. See, also, School District of Kansas City v.* State, 317 S.W.3d 599, 611 (Mo. banc 2010) (no mandate because statute did not require school districts to establish charter schools, it merely authorized them to do so).

Here, there was no requirement that the City of Kansas City opt to have an earnings tax after December 31, 2011. The initiative petition gave it the option to allow the existing earnings tax to lapse or to continue it for a five year period; but this was a voluntary choice for the City to make.

Appellants contend it is the election that constitutes the violation of the unfunded mandate provision of the Hancock Amendment. However, an election is not automatically required. No election would be had absent a decision by the City. The costs of an election may be a consideration weighed by the City Council in making its discretionary decision, but the necessity for an election only comes into existence after the voluntary decision to impose an earnings tax is made. There is nothing in the plain language of the Hancock Amendment or the cases applying it that would allow a local government to use its discretion to exercise a power but then avoid any statutorily-imposed pre-condition for exercising that power. The initiative petition does not run afoul of the Hancock Amendment.

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

b. The power of taxation is not an activity or service.

The unfunded mandate provisions of the Missouri Constitution are found in Article X, Sections 16 and 21 of the Missouri Constitution. Section 16 states, "The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing or from shifting the tax burden to counties and other political subdivisions." Mo. Const. Art. X, §16. Section 21 provides,

> A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Mo. Const. Art. X, §21.

The unfunded mandate provisions only apply to new or expanded activities and services. Initiative Petition 2010-077 does not involve either an activity or a service as contemplated by Sections 16 and 21. Instead, this Initiative Petition provided for an amendment to the statute that granted the power of taxation to the charter cities. A city has no inherent power to tax. *Whipple v. City of Kansas City*, 779 S.W.2d 610, 613 (Mo. Ct. App. 1989) "Cities and like municipal corporations have no inherent power to levy and collect taxes, but derive their powers in that respect from lawmaking power." *Holland Furnace Co. v. City of Chaffee*, 279 S.W.2d 63, 69 (Mo. App. 1955). That the statutory amendment changing the nature of the charter's city ability to collect a tax also contained a condition necessary to retain the ability to collect the tax does not implicate

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

the Hancock Amendment. Nothing in the unfunded mandate provisions of the Missouri Constitution purports to act as a restriction on the power of the State to set conditions on the exercise of powers by local governments.

The power to tax is authority permissively granted to a city. *Berry v. State*, 908 S.W.2d 682, 685 (Mo. 1995). It has also long been recognized that the permissive grant of authority may be withdrawn by the State at its discretion. *Id.*, *citing Whipple v. City of Kansas City*, 779 S.W.2d 610, 613-14 (Mo. App. 1989). It is undisputed that the State could withdraw its grant of authority to the city of Kansas City to collect an earnings tax. Initiative Petition 2010-077 permitted the city an option for retaining the power, which it could exercise at its discretion.

c. Funding elections was not a new activity or service.

Even if this Court determines that the discretionary elections for the continuation of the earnings tax must be analyzed under the Hancock Amendment, putting the issue of the earnings tax before the voters is not an additional activity or service required of the City of Kansas City as contemplated in the Hancock Amendment. "Where there is no mandate that the City take on a new responsibility, but only a continued responsibility for it to fund an existing activity…, there is no Hancock violation." *Neske v. City of St. Louis*, 218 S.W.3d 417, 423 (Mo. banc 2007) (citing *State ex rel. Pub. Defender Comm'n v. County Court of Greene County,* 667 S.W.2d 409, 414 (Mo. banc 1984) (finding there was no new or increased activity in violation of Hancock where the county's existing statutory obligation was not changed by the challenged action)).

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Kansas City is already required by its Charter to hold both regular and special municipal elections. Kansas City Charter Article VI, Sections 601, 604.

Section 601(b) provides in relevant part, **"**The City may call special elections for any lawful purpose as provided by state law." Missouri statute designates that all general expenses related to these elections are to be paid from the general revenue of the City of Kansas City and the general revenue of those counties in which the city is located. §115.071 RSMo.

Nothing in Initiative Petition 2010-077 altered how municipal elections were funded in Kansas City. Kansas City's statutory and charter obligations to hold and pay for municipal elections were not altered by Initiative Petition 2010-077 and, therefore, it did not violate Missouri's Hancock Amendment

IV. Initiative Petition 2010-077 did not violate Article III, § 51 of the Missouri Constitution. (In response to Appellants' points I and II.)

Under Count II of their second amended petition, Appellants claimed Initiative Petition 2010-077 violated the prohibition against appropriating money by the initiative found in Article III, Section 51 of the Missouri Constitution. Article III, Section 51 states, in pertinent part, "The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby[.]" Mo. Const. Art. III, §51. An appropriation act involves setting apart or designating a certain amount of public monies from a public fund to be used for the purpose identified in the appropriations legislation. *State ex rel. McKinley Pub. Co. v. Hackman*, 282 S.W. 1007, 1010-1011 (Mo. banc 1926).

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

While Appellants have pointed to no language in the petition that appropriates money or attempts to do so, they claim the Initiative Petition was "a *de facto* appropriation by voters statewide of Kansas City funds 'for the purpose of holding an election on the continuance of the Kansas City earnings tax." L.F.92-93. The trial court dismissed Count II for failure to state a claim upon which relief could be granted.

The order of the trial court on Count II reads as follows:

Initiative Petition 2010-077 proposed by and adopted by the people terminates the prior authority of the City of Kansas City (the "City") to continue to impose an earnings tax absent a vote of the citizens of the City. Should the City choose not to have an earnings tax in the future, they must now have an election. This is a choice to be made by the City and as such, does not constitute an appropriation by the initiative. Accordingly, Count II fails to state a claim upon which relief may be granted and is dismissed with prejudice.

L.F. 203.

a. Article III, § 51 does not apply to legislation in which the State is exercising its retained power to limit or deny the powers of a charter city.

The Missouri Constitution specifically permits the enactment of statutes that limit or deny the exercise of a charter power. Article VI, Section 19(a). As discussed more fully above in section III.b., cities do not have an inherent power to collect taxes. The trial court correctly recognized that Initiative Petition 2010-077 rescinded the power of the cities to collect an earnings tax after December 31, 2011. That the language of the

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Initiative Petition also gave the cities the option of holding an election to preserve a State-granted power did not violate Article III, § 51 of the Missouri Constitution as a *de facto* appropriation.

b. Kansas City's decision whether to hold elections was discretionary.

The trial court's ruling was correct. The one element that is necessary for application of Article III, Section 51, is missing from Initiative Petition 2010-077, as the initiative did not mandate any expenditure of funds by the City of Kansas City and therefore it could not have violated the No Appropriations Clause.

In the context of Article III, §51 and the initiative, the courts have recognized that initiative legislation does not always observe, in effect, the distinction between enabling act and appropriations act. An appropriation act involves setting apart or designating a certain amount of public monies from a public fund to be used for the purpose identified in the appropriations legislation. *State ex rel. McKinley Pub. Co. v. Hackman*, 282 S.W. 1007, 1010-1011 (Mo. banc 1926). Enabling acts provide the underlying statutory authority for the purposes and functions for which the public funds are expended. *Id.* When an enabling act does not directly appropriate money but leaves no discretion to a city manager or the city council about whether to expend funds, it requires the budget official to include the specified compensation in the budget, and it requires the city council to approve it, regardless of any other financial considerations, the enabling act in effect becomes an appropriation measure. *State ex rel. Card v. Kaufman*, 517 S.W.2d 78, 80 (Mo. 1974).

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Other cases addressing the clause similarly make clear that the central consideration for determining whether initiative legislation is an appropriation is whether there is any discretion in the governmental entity with respect to the action which involves an expenditure of funds. *See, Kansas City v. McGee*, 269 S.W.2d 662, 666 (Mo. 1954) (noting the initiative legislation "does not leave any discretion to the City Council."); *See also State ex rel. Sessions v. Bartle*, 359 S.W.2d 716, 719 (Mo. 1962).

Section 92.111.1, as amended through Initiative Petition 2010-077 states:

> After December 31, 2011, no city, including any constitutional charter city, shall impose or levy an earnings tax, except, a constitutional charter city that imposed or levied an earnings tax on the effective date of this section may continue to impose the earnings tax if it submits to the voters of such city pursuant to section 92.115, the question whether to continue such earnings tax for a period of five years and a majority of such qualified voters voting thereon approve such question[.]

Section 92.111(1) RSMo.

The key language in the initiative petition was that the charter cities <u>may</u> opt to continue the tax by submitting the issue of continuance to their voters.

Thus, whether to seek voter approval or to allow the repealed statutory authorization for the tax to lapse is purely discretionary. The submission of the issue to local voters is not mandatory. It is left to the city's discretion whether to take this action to continue the tax.

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Kansas City was not required to hold any elections under the provisions of Initiative Petition 2010-077. That it chose to do so was solely a matter of discretion. The initiative measure does not require the City to impose an earnings tax. The governing body of the City must determine whether it wants to continue to impose such a tax. If the City decides an earnings tax should be among the repertoire of taxes it collects, as a condition of the exercise of that power, it must submit the measure to its voters.

c. Any costs associated with the elections could be paid out of the tax generated.

Respondents' position on Count II is further undermined by the holding of *Committee For A Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503 (Mo. banc 2006). *Healthy Future* involved an initiative which authorized a tax on tobacco products, the revenue from which was to be used to fund smoking cessation programs. The court held that an initiative's failure to provide funding for the administrative costs incurred as a result of new programs required by the initiative was not an unconstitutional appropriation. *Id.* at 510 ("[T]here is no prohibition on using the moneys raised to pay for the administrative costs necessary to provide additional funds for the specified purposes."). The court reasoned that the administrative costs required by the programs at issue could be funded out of the tax which the initiative authorized. The court noted its obligation to "attempt to harmonize all provisions of the initiative's proposal with the constitution." *Id.* (citing *Consol. Sch. Dist. No. 1 of Jackson Co. v. Jackson Co.*, 936 S.W.2d 102, 103-04 (Mo. 1996) (en banc)).

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Here, just as in *Healthy Future*, there is no prohibition on using the money raised by the authorized tax to pay for the administrative costs associated with implementing the initiative. Even if the voters of Kansas City choose not to continue the earnings tax, the tax will be phased out over a period of years and earnings tax funds would continue to be available to pay for that final election.

Therefore, even if this Court determines that putting the earnings tax issue before the voters was a requirement of Initiative Petition 2010-077, and that the holding of municipal elections is an action requiring the appropriation of City funds, Count II still fails because those additional costs could be paid for out of the money generated by the earnings tax the initiative authorized.

V. Initiative Petition 2010-077 was not an impermissible amendment to the charter of Kansas City. (In response to Appellants' point VII.)

The measure enacted by Initiative Petition 2010-077 was the enactment of a statute, not an amendment to the city's charter. Article III, Section 49 reserves to the people the power "to propose and enact or reject laws...by initiative." Mo. Const. Article III, § 49 (emphasis added). The earnings tax initiative here clearly states that it is only repealing existing statutes dealing with the authority to impose an earnings tax and replacing them with amended statutes limiting the conditions under which the city could impose an earnings tax. The Kansas City Charter itself, in Article I, Section 102, makes clear that the Charter recognizes that its powers are subject to statutory limitations. The Charter provides the following:

> The City shall have all powers which the General Assembly of the State of Missouri has authority to confer upon any City, provided such powers are consistent with the Constitution of this State and are not limited or denied either by this Charter or by statute.

Kansas City Charter, Article I, Sect. 102 (emphasis added).

The Missouri Constitution specifically permits the enactment of statutes that limit or deny the exercise of a charter power in Article VI, Section 19(a). Article VI, Section 19(a), establishes a hierarchy under which constitutional charter cities may operate:

> Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute.

Mo. Const. Art. VI, §19(a) (emphasis added).

Under this hierarchy, "the emphasis is whether the exercise of that [the home rule] power conflicts with the Missouri Constitution, state statutes or the charter itself. . . .Once a determination of conflict between a constitutional or statutory provision and a charter or ordinance provision is made, the state law provision controls." *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986). *See also State ex inf. Hannah v. City of St. Charles*, 676 S.W.2d 508, 513 (Mo. banc 1984) ("Under §19(a), a constitutional charter city is prohibited from exercising its home rule power in a manner that is inconsistent with a state statute").

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

There is nothing in Article VI, Section 20 which elevates charter powers above the legislative power to enact statutes or which has the effect of allowing charter cities to pre-empt or exclude the enactment of statutes related to municipal powers through the adoption of charter provisions. There is also no language in Article VI, Section 20, the constitutional provision dealing with the procedures for amending a city charter, which purports to limit the power of the people under Article III, Section 49 to enact statutes through the initiative.

Statutory limitations on the home rule power of a city act at a wholly different level – a higher level – than the charter and represent the retained power of the State to enact statutes (by the Legislature or through the initiative) which limit or deny powers to the charter city. Whatever requirements Article VI, Section 20 impose relative to the amendment of city charters, they do not operate on the retained power of Article VI, Section 19(a) to enact statutes limiting or denying powers to charter cities. When a statute denies a power to a charter city or limits a power of the charter city, it abrogates or supersedes the power by higher authority. *See, e.g., City of St. Louis v. Doss*, 807 S.W.2d 61, 63 (Mo. banc 1991) (later enacted statute which conflicts with city provision supersedes the provision and renders the provision unlawful).[1]

[1] The Supreme Court in *City of St. Louis v. Doss* specifically identified Article VI, Section 19(a) as the basis of its holding that statutes trump local provisions. *Id.*

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Here, the people through their initiative petition have limited the powers of charter cities to impose an earnings tax.[2] The Missouri Constitution expressly provides for this action, as the Constitution provides that the powers of cities may be limited or denied by statute. The earnings tax initiative was an exercise of specific power and authority granted under Article VI, Section 19(a) of the Missouri Constitution and the enactment of statutes pursuant to it are not restricted by the process for amending charter provisions under Article VI, Section 20.

The Missouri Supreme Court has a long history of determining that it is well within the authority of the state to pass statutes which may implicitly or directly change provisions of city charters. One hundred and twenty years ago, the Missouri Supreme Court in *Ewing v. Hoblitzelle*, 85 Mo. 64, 1884 WL 9598 (Mo. 1887), addressed a similar argument that adoption of a charter by the City of St. Louis made the city *imperium in imperio* and emancipated it from any further control through state enactments. *Id.* at *5. The Court rejected this argument out of hand and stated:

> ...the idea that it [the charter] was thereby intended to create a sovereignty, and deny to the state the right of control, is, we think, completely overthrown by the following limitations or conditions imposed by section 23, article IX, viz: "Such charter and amendments shall also be

[2] The original grant of authority to the cities of the power to impose an earnings tax was given by the General Assembly. The earnings tax initiative sought to amend that statutory grant of authority.

in harmony with and subject to the constitution and laws of the State of Missouri."

Id. The city charter, the Court concluded "'shall always be in harmony with and subject to the Constitution and laws of the state.'" *Id* at *6. *See also, City of St. Louis v. Dorr*, 41 S.W.1094 (Mo. 1897), and *City of St. Louis v. Doss*, 807 S.W.2d 61 (Mo. banc 1991).

Accordingly, the law of the State of Missouri is clear that the state, whether by statutory initiative or by statutory enactments by the legislature, may adopt laws which affect powers contained in city charters and such city charters cannot stand before such laws.

CONCLUSION

The trial court correctly dismissed Appellants' petition for failure to state a claim for relief. The judgment of the trial court should be affirmed either for the reasons given by the trial court or for the alternate grounds justifying dismissal of the Appellants' petition discussed in this brief.

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ *James R. Layton*
JAMES R. LAYTON
Solicitor General
Mo. Bar Number 45631
James.Layton@ago.mo.gov

P.O. Box 899
Jefferson City, MO 65102
(573) 751-1800
(573) 751-0774 (facsimile)

/s/ Jennifer Redel-Reed
JENNIFER REDEL-REED
Assistant Attorney General
Mo. Bar No. 61526

P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-9456

ATTORNEYS FOR DEFENDANTS

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

CERTIFICATE OF ATTORNEY

I hereby certify that the foregoing Respondent's Brief complies with the provisions of Rule 55.03 and complies with the limitations contained in Rule 84.06(b) and that:

(A) It contains 5,450, as calculated by counsel's word processing program;

(B) It was prepared using Microsoft Word 13 point Times New Roman font; and that

(C) It was electronically filed through the Missouri eFiling System of the Missouri Courts and served on the parties shown as eFiling participants in the records of the case.

/s/ Jennifer Redel-Reed
JENNIFER REDEL-REED

Electronically Filed - Supreme Court - March 05, 2012 - 05:58 PM CST

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was served electronically, this 5th day of March, 2012, to:

Galen P. Beaufort
Stephen Walsh
Sarah Baxter
City Attorney's Office
2800 City Hall
414 East 12th Street
Kansas City, MO 64106
Attorney for Plaintiffs

Marc H. Ellinger
James B. Deutsch
Thomas W. Rynard
Stephanie Bell, #61855
308 East High Street, Suite 301
Jefferson City, MO 65101
Attorneys for Travis Brown, Scott Charton,
and Let Voters Decide, Intervenors/Defendants

/s/ Jennifer Redel-Reed
JENNIFER REDEL-REED