
IN THE SUPREME COURT OF MISSOURI

MACON COUNTY EMERGENCY SERVICES BOARD, James Wilson, in his official capacity as an MCESB member; Jeff Roberts, in his official capacity as an MCESB member; Jeff Bixenman, in his official capacity as an MCESB member; Margie Voss, in her official capacity as an MCESB member; Stan East, Jr., in his official capacity as an MCESB member; Gene Wood, in his official capacity as an MCESB member; and Chuck Spencer in his official capacity as an MCESB member,

Plaintiffs-Appellants,

v.

MACON COUNTY COMMISSION, Alan Wyatt, in his official capacity as a Macon County Commissioner; Drew Belt, in his official capacity as a Macon County Commissioner; and Jon Dwiggins, in his official capacity as a Macon County Commissioner

Defendants-Respondents.

Appeal from the 41st Circuit Court of Missouri
The Honorable Frederick Tucker

BRIEF OF THE MISSOURI ASSOCIATION OF COUNTIES
IN SUPPORT OF DEFENDANTS-RESPONDENTS, AS AMICUS CURIAE

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
CONSENT OF THE PARTIES.....	1
STATEMENT OF INTEREST OF AMICUS CURIAE.....	1
JURISDICTIONAL STATEMENT	3
STATEMENT OF FACTS	3
POINT RELIED ON	4
ARGUMENT.....	4
CONCLUSION	11
CERTIFICATE OF SERVICE.....	13
CERTIFICATE OF COMPLIANCE	14

TABLE OF AUTHORITIES

Cases

<i>Akins v. Director of Revenue</i> , 303 S.W.3d 563 (Mo. banc 2010)	4
<i>Associated Industries of Missouri v. Lohman</i> , 511 U.S. 641(1994).....	10
<i>BHA Grp. Holding v. Pendergast</i> ,	
173 S.W.3d 373 (Mo. App. W.D. 2005)	7
<i>Kirkwood Glass Co., Inc. v. Director of Revenue</i> ,	
166 S.W.3d 583 (Mo. 2005).....	9, 10
<i>Page v. Scavuzzo</i> , 412 S.W.3d 263 (Mo. App. W.D. 2013).....	7, 10
<i>Ryder Student Transp. Servs., Inc. v. Dir. of Revenue, State of Mo.</i> ,	
896 S.W.2d 633 (Mo. banc 1995)	7
<i>State ex rel. SGI Hotels, L.L.C. v. City of Clayton</i> ,	
326 S.W.3d 484 (Mo. App. E.D. 2010).....	4
<i>State ex rel. Zoological Park Subdistrict of City & Cnty. Of St. Louis v.</i>	
<i>Jordan</i> , 521 S.W.2d 369 (Mo. 1975)	7
<i>Woods v. QC Financial Services, Inc.</i> ,	
280 S.W.3d 90 (Mo. App. E.D. 2008).....	4

Statutes

RSMo. § 48.020.....	5
RSMo. § 144.600 – 144.745.....	6
RSMo. § 144.757 – 144.761.....	1, 2, 6, 7, 8, 9, 11

RSMo. § 144.759.....	7
RSMo. § 190.335.....	4, 5, 9
RSMo. § 190.339.....	4, 5, 9
<u>Other Authorities</u>	
Mo. Const. Art. 6, § 7	5

CONSENT OF PARTIES

All parties to this appeal have consented to the filing of suggestions by *Amicus Curiae*, the Missouri Association of Counties, as required by Missouri Court Rule 84.05(f)(2).

STATEMENT OF INTEREST OF AMICUS CURIAE

The Missouri Association of Counties (“MAC”) is a nonprofit organization established to provide assistance to its member counties in matters pertaining to local, state, and federal government activities. There are 114 counties in the state of Missouri.

MAC and its member counties are interested in this case because the Court’s decision could dramatically and negatively impact the allocation of the local use tax for Missouri’s counties by diverting counties’ local use tax to other political subdivisions. Currently, sixty (60) counties in the state of Missouri have enacted a local use tax.

A use tax is imposed on the storage, use or consumption of tangible personal property in the state. The state use tax rate is 4.225%. Counties and municipalities may impose an additional local use tax under §144.757, RSMo. The amount of use tax due on a transaction depends on the combined (state and local) use tax rate in effect at the Missouri location where the tangible personal property is stored, used or consumed.

Unlike sales tax, which requires a sale at retail in Missouri, use tax is imposed directly upon the person that stores, uses or consumes tangible personal property in Missouri. Use tax does not apply if the purchase is from a Missouri retailer and subject to Missouri sales tax.

Because §144.757 only authorizes “[a]ny county or municipality” to impose a local use tax, but does not direct that the local use tax should or should not be disbursed in the same manner as a sales tax or provide ballot language or instruction for the distribution of use tax revenues for third class counties, the Macon County Emergency Services Board should not be entitled to a proportional share of the Macon County local use tax.

JURISDICTIONAL STATEMENT AND STATEMENT OF FACTS

Amicus curiae adopts and incorporates by reference the jurisdictional statement and statement of facts set forth in Respondents' brief.

POINT RELIED ON

Amicus curiae adopts and incorporates by reference the Point Relied On in Respondents' brief.

ARGUMENT

1. Standard of Review

When reviewing a declaratory judgment, an appellate court's standard of review is the same as in any other court-tried case. *State ex rel. SGI Hotels, L.L.C. v. City of Clayton*, 326 S.W.3d 484, 488 (Mo. App. E.D. 2010) (citing *Woods v. QC Financial Services, Inc.*, 280 S.W.3d 90, 94 (Mo. App. E.D. 2008)). That is, the trial court's decision should be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, it erroneously declares the law, or it erroneously applies the law. *Id.*

Legal questions of statutory interpretation are reviewed *de novo*. *Akins v. Director of Revenue*, 303 S.W.3d 563, 564 (Mo. banc 2010).

2. The Trial Court Correctly Decided That The EMS Board Is Not Entitled To A Proportionate Share Of The Macon County Local Use Tax.

Appellant, Macon County Emergency Services Board ("EMS Board") is a body corporate and a political subdivision of the state under § 190.339.2, RSMo. (LF 39-40, 62).¹ Under that section, the EMS Board's powers and duties include "[r]eceiving money from any county sales tax authorized to be levied pursuant to section 190.335 and authorizing disbursements from such moneys collected." § 190.339.1(3). Subsection 3

¹ "LF ____" shall refer to the Legal File and appropriate page of the Legal File.

vests administrative control and management of the moneys from any county sales tax authorized to be levied pursuant to section 190.335. § 190.339.2, RSMo.

Respondent, Macon County Commission and its Commissioners (“Macon County”) are the governing body of Macon County. (LF 40, 63). Mo. Const. Art. 6, § 7 (1945). Macon County is a county of the third classification. (LF 82). § 48.020.1, RSMo.

The Macon County Commission voted to submit a local use tax ballot proposal to the voters on the November 6, 2012 ballot. (LF 43, 64). The ballot language submitted to the voters on the local use tax provided:

“Shall the County of Macon impose a local use tax on out of state purchases at the same rate as the local sales tax rate, currently 1.000%, provided that if the local sales tax rate is reduced or raised by voter approval, the local use tax rate shall also be reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out of state vendors do not in total exceed two thousand dollars in any calendar year. The purpose of the proposal is to reflect the new interpretation of sales tax on motor vehicles by the Missouri Supreme Court. This proposal will also eliminate the current sales tax advantage that Non-Missouri vendors have over Missouri vendors.”

(LF 60). The total Macon County sales tax rate at the time of the local use tax ballot question was 1.375%. (LF 83). Of that, the EMS Board received a sales tax rate of 0.375%. (LF 83).

After the local use tax was approved by the voters, the Director of Revenue began collecting the local use tax and forwarded the local use tax moneys to the Commission. (LF 45, 46, 65). The EMS Board requested a proportional share of the local use tax moneys and the Commission refused. (LF 46-47, 65).

The issue on appeal is whether §§ 144.757 to 144.761, RSMo. require Macon County to distribute a proportionate share of the local use tax moneys to the EMS Board.

Section 144.757.1, RSMo. authorizes “any county or municipality” to impose a local use tax at a rate equal to the rate of the local sales tax in effect upon “a majority vote of its governing body” if the proposal authorizing the governing body of the county or municipality to impose a local use tax is submitted to a vote of the people and approved. Subsection 3 of § 144.757, RSMo. provides:

“The local use tax may be imposed at the same rate as the local sales tax then currently in effect in the county or municipality upon all transactions which are subject to the taxes imposed pursuant to sections 144.600 to 144.745 within the county or municipality adopting such tax; provided, however, that if any local sales tax is repealed or the rate thereof is reduced or raised by voter approval, the local use tax rate shall also be deemed to be repealed, reduced or raised

by the same action repealing, reducing or raising the local sales tax.”

§ 144.757.3, RSMo. (emphasis added).

In the event a ballot question authorizing the local use tax is approved by the voters, the Director of Revenue collects the local use tax moneys and deposits them with the State Treasurer in a local use tax trust fund. § 144.759.1, RSMo. The Director of Revenue distributes all moneys deposited in the trust fund to the “county or municipality treasurer.” § 144.759.1, RSMo.

The court’s role in statutory construction is to ascertain the legislature’s intent from the plain and ordinary meaning of the words it used. *Page v. Scavuzzo*, 412 S.W.3d 263, 266 (Mo. App. W.D. 2013) (citing *State ex rel. Zoological Park Subdistrict of City & Cnty. Of St. Louis v. Jordan*, 521 S.W.2d 369, 372 (Mo. 1975)). Each word, phrase and sentence are given significance and effect. *Id.* (citing *BHA Grp. Holding v. Pendergast*, 173 S.W.3d 373, 377 (Mo. App. W.D. 2005)). “Where the language of a statute is clear and unambiguous, there is no room for construction.” *Id.* (citing *Ryder Student Transp. Servs., Inc. v. Dir. of Revenue, State of Mo.*, 896 S.W.2d 633, 635 (Mo. banc 1995)).

The plain language of § 144.757.1, RSMo. states: (1) “Any county or municipality . . . may;” (2) “by a majority vote of its governing body;” (3) “impose a local use tax;” (4) “if a local sales tax is imposed as defined in section 32.085;” (5) “at a rate equal to the rate of the local sales tax in effect in such county or municipality;” (6) “provided, however, that no ordinance or order . . . shall be effective unless the governing body of

the county or municipality submits to the voters . . . a proposal to authority the governing body of the county or municipality to impose a local use tax pursuant to §§ 144.757 to 144.761.”

Based on these provisions, the trial court determined that because the statute did not require the ballot question to instruct the voters as to the disbursement of local use tax revenues, and because there is no guidance in the statute as to the disbursement of local use tax revenues, it was within the discretion of the Commissioners to manage those revenues. As a result, the trial court held that simply because the EMS Board had a sales tax in effect, did not automatically entitle it to a proportionate share of the local use tax passed by Macon County.

Furthermore, the trial court noted the provisions in subsection 2 of § 144.757, RSMo. that apply to charter forms of government specifically provide instructions for ballot language and the distribution of use tax revenues. In comparison, the provision in subsection 1 regarding non-charter forms of county government does not direct through the statutory language or ballot language that the use tax shall be distributed in the same manner as other sales tax revenues or any other manner, as it does with respect to charter forms of government.

Not only are the Commissioners the ultimate arbiters of the manner in which the proceeds from the local use tax are spent, but the Macon County Commission is the

political subdivision vested with the statutory authority to impose a local use tax,² and it is within their discretion whether to vote to submit the proposal to the voters. § 144.757.1, RSMo. (“any county . . . may, by a majority vote of its governing body, impose a local use tax . . . provided, however, that no ordinance . . . shall be effective unless the governing body of the county . . . submit to the voters . . . a proposal to authorize the governing body of the county . . . to impose a local use tax. . . .”). Notably, an emergency services board under § 190.339, RSMo. is not one of the political subdivisions authorized by statute to impose a local use tax. *See* § 144.757, RSMo. In fact, under § 190.335, RSMo. it is the county commission that is statutorily authorized to impose a county sales tax for the provision of central dispatching of emergency services, not the emergency services board itself.

In addition, it is within the discretion of the Commission the local use tax rate that is submitted to the voters for approval or rejection. § 144.757.3, RSMo. (“The local use tax may be imposed at the same rate as the local sales tax then currently in effect. . . .”). Thus, the statute provides that the local use tax cannot be greater than the local sales tax imposed in the particular locality involved. *See Kirkwood Glass Co., Inc. v. Director of Revenue*, 166 S.W.3d 583, 586 (Mo. 2005).

Essentially, this means that in a jurisdiction that has elected to impose a local use tax, the local use tax may be collected in an amount equal to or less than the local sales

² Of course, a municipality is the other political subdivision identified in § 144.757.1, RSMo. that may vote to submit a local use tax ballot question to the voters.

tax. *Id.* Where the governing body votes to submit a local use tax ballot question to the voters that proposes a local use tax at a rate less than the local sales tax, it does not implicate the concerns of an improper burden on interstate commerce raised by *Associated Industries of Missouri v. Lohman*, 511 U.S. 641, 647 (1994). See *Kirkwood Glass Co., Inc. v. Director of Revenue*, 166 S.W.3d 583, 585 (Mo.2005) (“a statute permitting imposition of a local use tax does not unconstitutionally burden interstate commerce where, as here, the statute requires such local use taxes to be less than or equal to the sales tax imposed on goods purchased in the locality to which the out-of-state item is delivered”). Here, the proposed local use tax was at a rate less than the local sales tax then currently in effect.

The case of *Page v. Scavuzzo*, 412 S.W.3d 263 (Mo. App. W.D. 2013) is instructive, although it dealt with a sales tax issue. In *Page*, supporters of the zoo brought a declaratory judgment action seeking to require the county commissioners to place a petition question on the ballot relating to whether a sales tax should be levied and collected for the benefit of a zoological district. *Id.* at 265. The trial court granted summary judgment in favor of the commission and the supporters appealed. *Id.* at 264. On appeal, the Western District affirmed, holding that the statutory provision in question that allowed the governing body of an eligible county to impose a sales tax on retail sales for the purpose of funding a zoological district did not create a mandatory duty in the county commissioners to submit a ballot question to the voters. *Id.* at 267.

Here, the Commission had the discretion as to whether to submit the question of a local use tax to the voters, as well as the discretion about the manner in which revenue

from the local use tax were allocated. Sections 144.757 through 144.761, RSMo. do not impose any mandatory duty on the Commission through the statutory language or ballot language regarding the distribution of the local use tax, nor does it require local use tax to be distributed in the same manner as other sales tax revenues.

In the case at bar and under the facts presented, the trial court's Judgment was correct, and consistent with the statutory provisions governing the local use tax. Because §§144.757 – 144.761, RSMo. do not dictate the disbursement of local use tax revenues, and there is no statutory guidance for such distribution, it was entirely within the discretion and judgment of the Macon County Commission about the manner in which the proceeds of the local use tax are allocated. As a result, the EMS Board should not be entitled to a proportionate share of the local use tax from Macon County.

CONCLUSION

For these reasons, MAC urges this Court to affirm the trial court's decision on the facts presented in this matter.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 16, 2015, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief of *Amicus Curiae* includes the information required by Rule 55.03, and complies with the requirements contained in Rule 84.06.

Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in the Brief of *Amicus Curiae* is 2,665, exclusive of the cover, signature block, and certificates of service and compliance.

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