In the Missouri Court of Appeals
Eastern District

DIVISION TWO

THOMAS J. NEUNER, et al.,	)	No. ED105125
	)	
Appellants,	)	Appeal from the Circuit Court of
	)	The City of St. Louis
vs.	)	
	)	Honorable Joan L. Moriarty
CITY OF ST. LOUIS, et al.,	)	
	)	
Respondents.	)	Filed: September 19, 2017

Introduction

This case is about the constitutionality of three City of St. Louis ordinances: Ordinance 60737 imposes a payroll tax on employers in the City and Ordinances 68432 and 68642 authorized the City to sign "cooperation agreements" with two employers to reimburse their costs in redeveloping their City offices and relocating approximately 380 employees from outside of the City to those offices. Thomas J. Neuner and General Marine Services, Inc. (collectively "Appellants") filed a petition for declaratory judgment against the City and the City's Collector of Revenue (collectively the "City") challenging the constitutionality of the payroll tax and the ordinances authorizing reimbursement. The trial court found them constitutional.

On appeal, Appellants raise two points. In point I, Appellants contend the trial court erred in finding the City's payroll tax constitutional because the City may only assess taxes

authorized by the general assembly and the payroll tax is not authorized by the general assembly. In point II, Appellants assert the trial court erred in upholding the ordinances authorizing the "cooperation agreements" because: (1) the ordinances serve a private and not a public purpose in violation of Article X, Section 3 and Article VI, Section 25;[1] (2) the ordinances are "special laws" lacking open-ended classifications in violation of Article III, Section 40(30); (3) the ordinances are not uniform among all taxpayers in the class of "for-profit businesses" in violation of Article X, Section 3; and (4) the ordinances violate the prohibition on refunding tax receipts to taxpayers in violation of Article III, Section 40(7). We affirm.

Facts and Procedural History

In 1988, the City enacted Ordinance 60737, now codified in Title V, Chapter 5.23 of the St. Louis City Revised Code (the "Payroll Tax Ordinance"). The Payroll Tax Ordinance imposes a one-half of one percent tax on employers who perform work or render services in whole or in part within the City based on the employers' "payroll expense" which generally means the total compensation earned by the employers' employees. The payroll tax is separate from the one percent "earnings tax" the City imposes on the salaries, wages, commissions, and other compensation of people who live or work in the City and on the net profits of businesses conducted in the City or by City residents.

In 2009 and 2010, the City enacted Ordinances 68432 and 68642 that authorized the City to sign "cooperation agreements" with Wellpoint Companies, Inc. ("Wellpoint") and Polsinelli Shughart, PC ("Polsinelli"). Ordinance 68432 provided that Wellpoint would redevelop a commercial building at 1831 Chestnut which was substandard and obsolete, and would hurt the tax base in the City if left in its condition. Wellpoint agreed to spend between $2.7 and $4.5

[1] All references to the Missouri Constitution are to the Missouri Constitution of 1945 unless otherwise indicated.

million on improvements to 1831 Chestnut and on expenses associated with the relocation of approximately 300 employees from outside of the City to 1831 Chestnut. In return, the City agreed, subject to annual appropriation, to use certain tax revenues set forth in the cooperation agreement between the City and Wellpoint for implementing the project.

The cooperation agreement established an account for Wellpoint to be held by the City designated and named the "Earnings and Payroll Tax Reimbursement Account – 1831 Chestnut Development, St. Louis Missouri." The City agreed to deposit "an amount equal to fifty percent" of the "Incremental Increase" when received by the City. "Incremental Increase" was defined to mean the combined amount of Wellpoint's earnings and payroll tax for the tax year in excess of a combined base tax established by the payroll and earnings tax Wellpoint paid during the period October 1, 2008, through September 30, 2009.

The City agreed, subject to annual appropriation, to reimburse Wellpoint for its "project costs," which were defined to mean the costs and expenses incurred by Wellpoint in the renovation and rehabilitation of the project area and the improvements thereon, including but not limited to the costs of designing, improving, fixturing, equipping and otherwise readying the improvements in the project area for use and occupancy by Wellpoint and its affiliates and their respective employees, and moving and relocation expenses. The City is obligated to only make payments from funds budgeted and appropriated or otherwise legally available during each fiscal year. The agreement ends December 31, 2019, or when the project costs are reimbursed, whichever occurs first.

Similarly, Ordinance 68642 provided that Polsinelli would redevelop all or part of five floors of 100 South Fourth Street at a cost of between $3.2 and $3.6 million and Polsinelli would relocate approximately 80 employees to the City. The project area at 100 South Fourth Street

was found to be substandard and obsolete, and if left in its condition, to hurt the tax base in the City. The cooperation agreement established an account for Polsinelli to be held by the City designated and named the "Earnings and Payroll Tax Reimbursement Account – 100 South Fourth Street Development, St. Louis Missouri." The agreement provided that the City deposit "an amount equal to fifty percent" of the "Incremental Increase" when received by the City. "Incremental Increase" was defined to mean the combined amount of Polsinelli's earnings and payroll tax for the tax year over a combined adjusted base tax established by the payroll and earnings tax Polsinelli paid during the period January 1, 2009, through December 31, 2009. The City agreed, subject to annual appropriation, to reimburse Polsinelli for its "project costs," which were defined substantially similar to those in the Wellpoint agreement. Like with the Wellpoint agreement, the City is obligated to only make payments from funds budgeted and appropriated or otherwise legally available during each fiscal year. The agreement ends December 31, 2022, or when the project costs are reimbursed, whichever occurs first.

In 2016, Neuner, a resident of the City who operates a sole proprietorship in St. Louis County, and General Marine Services, Inc., a corporation in the City with five employees, filed a five-count petition against the City. The petition sought a declaratory judgment that the payroll tax and the ordinances authorizing reimbursement to Wellpoint and Polsinelli were unconstitutional and injunctive relief as to their enforcement. The City filed a counterclaim seeking a declaratory judgment finding the payroll tax and the reimbursement ordinances constitutional. On cross-motions for summary judgment, the trial court found the payroll tax and the ordinances authorizing reimbursement constitutional. This appeal follows.

Jurisdiction

In every case it is incumbent on the court to determine its jurisdiction before reaching the merits of an appeal. *Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907, 910 (Mo. banc 1997). Article V, Section 3 of the Missouri Constitution provides that the Missouri Supreme Court shall have exclusive jurisdiction in all cases involving the construction of the revenue laws of this State, and while the Payroll Tax Ordinance is a revenue law, it is not a revenue law of this State. Accordingly, the Missouri Supreme Court does not have exclusive appellate jurisdiction to hear this case. *Id.* at 911. Moreover, the claims that the ordinances authorizing reimbursement to Wellpoint and Polsinelli are unconstitutional are also not within the exclusive appellate jurisdiction of the Missouri Supreme Court. *Id.* at 912 ("Claims that municipal ordinances are constitutionally invalid are not within the exclusive appellate jurisdiction of this Court."). Thus, we have jurisdiction over this case. *Id.*

Standard of Review

The propriety of summary judgment is solely an issue of law. *City of DeSoto v. Nixon*, 476 S.W.3d 282, 286 (Mo. banc 2016). Appellate courts review a grant of summary judgment de novo. *Id.* We review the record in the light most favorable to the party against whom judgment was entered. *Id.* Summary judgment is appropriate where the moving party has demonstrated a right to judgment as a matter of law and there are no genuine issues of material fact.[2] *Levinson v. City of Kansas City*, 43 S.W.3d 312, 316 (Mo. App. W.D. 2001).

The constitutional validity of an ordinance is a question of law reviewed de novo. *City of Sullivan v. Sites*, 329 S.W.3d 691, 693 (Mo. banc 2010). Ordinances are presumed to be valid and lawful. *Coop. Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571, 578 (Mo. banc 2017)

[2] Appellants concede that no material facts are in dispute.

(citing *McCollum v. Dir. of Revenue*, 906 S.W.2d 368, 369 (Mo. banc 1995)). The party challenging the validity of the ordinance carries the burden of proving the municipality exceeded its constitutional or statutory authority. *Coop. Home Care, Inc.*, 514 S.W.3d at 578 (citing *Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp.*, 518 S.W.2d 11, 16 (Mo. 1974)). The words in the statute or ordinance should be given their plain and ordinary meaning and should be interpreted to avoid absurd results. *Coop. Home Care, Inc.*, 514 S.W.3d at 578 (citing *McCollum*, 906 S.W.2d at 369).

Discussion

I. The City's Payroll Tax is Constitutional.

In point I, Appellants contend the trial court erred in finding the City's Payroll Tax Ordinance constitutional because the City may only assess taxes authorized by the general assembly and the payroll tax is not authorized by the general assembly. Specifically, Appellants aver that the broad grant of authority given to charter cities, like the City, pursuant to Article VI, Section 19(a), is limited by Article X, Section 1, which sets forth that the taxing power may be exercised by political subdivisions "under power granted to them by the general assembly," and no such power has been granted to the City.[3] Respondents assert that the payroll tax is constitutional because Article VI, Section 19(a) gives the City the power to impose the payroll tax. Missouri's constitutional history and the City's unique treatment in that history is needed to consider this matter.

[3] We note that the Missouri Supreme Court declined to address the interplay between these two constitutional provisions in *Armco Steel v. City of Kansas City*, 883 S.W.2d 3, n.4 (Mo. banc 1994), deciding that case on other grounds. Similarly, in *Enright v. Kansas City*, 536 S.W.2d 17, 18 (Mo. banc 1976), the Court declined to decide whether Article VI, Section 19(a) gave cities authority to impose a particular tax, or form of tax, without express authorization from the general assembly.

A. The Constitution of 1875 and the Broad Powers of the City of St. Louis

Missouri's third constitution was adopted in 1875. The Constitution of 1875 added Article X, Section 1, related to the taxing power of the general assembly, counties, and other municipal corporations, and added Article IX, Sections 20 to 25, related to the City and its separation from St. Louis County and the City's adoption of a charter to govern itself.

In 1879, the Missouri Supreme Court in *City of St. Louis v. Sternberg*, 69 Mo. 289 (Mo. 1879), addressed how the taxing power provided in Article X, Section 1, applied to the City, given its unique status in the Constitution. Specifically, the plaintiff challenged a City ordinance that imposed a license tax on lawyers who practiced in the City. The plaintiff argued that because the taxing power of the State had never been delegated or conferred upon the City, the ordinance was void. The Court acknowledged that the general assembly had not delegated the power to tax to the City but found that the City derived the authority to tax from the constitution itself. *Id.* at 297. The Court noted that St. Louis had been singled out from all other cities and towns in the State and Article IX, Sections 20 through 25 related exclusively to the City. *Id.* The Court found that the general purpose of those sections was for the City to "have the power to enlarge its limits and separate itself in a governmental point of view from the county, and have the right as a municipality to govern itself, provided its government should be in subordination to and consistent with the constitution and laws of the State . . . ." *Id.*

The Court stated "that it was the intention of the framers of the constitution that the [C]ity of St. Louis might adopt as its organic law a charter containing any or all of the provisions then in its charter, and such other provisions as would not be inconsistent with the constitution and laws of the State"; that "the framers of the constitution had in their minds the fact that it was wholly impossible to conduct a city government in a city like St. Louis without the power of

taxation being vested in those charged with conducting such government"; and that "[t]he right to adopt a charter necessarily implied the right to put in it such provisions as would enable the city to maintain its government." *Id.* at 298-99.

The plaintiff in *Sternberg* also argued that the City charter provision granting the City the power to license, tax, and regulate lawyers contradicted Article X, Section 1, which provided that "[t]he taxing power may be exercised by the [g]eneral [a]ssembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the [g]eneral [a]ssembly, for county and other corporate purposes," and Article X, Section 10, which declared that the general assembly may, by general laws, vest in the corporate authorities of any county, city, or town the power to assess and collect taxes for county, town, or municipal purposes. The plaintiff averred that "municipal corporations can only exercise the power of taxation when such power is conferred by the Legislature by general law, and inasmuch as no general law giving the power to St. Louis had been passed, . . . the charter is void." *Id.* at 300. The Court rejected this argument, stating:

> This argument, we think, is unsound in ignoring the fact that the constitution containing the provisions on which the argument is based also contains a provision which expressly designates a particular corporation, viz: the [C]ity of St. Louis, and declares that it may adopt a charter, an act of incorporation for its own government. We perceive no inconsistency between the section which authorizes St. Louis to make its own charter and by necessary implication also authorizes it by virtue of such charter to exercise the taxing power for municipal purposes and sections 1 and 10, *supra*. A constitutional provision delegating such power to a particular municipality, either expressly or by necessary implication, may well harmonize with another provision which requires the power to be delegated to all other municipalities in the State by general law. If the power to tax, as we have attempted to show, has been conferred on the city of St. Louis by the constitution no additional force could be given to it by an enactment of a general law giving it a power it already possessed.

Id. at 300-01. The Court summarized its reasoning:

> Under the constitution the imposition of a license tax on lawyers has been held, as we have shown, to be a legitimate exercise of the taxing power on the part of the State, and the charter provision does not, therefore, conflict with it, nor does the mere fact that the General Assembly has not exercised such power by passing a general law requiring all lawyers to pay a license tax, and imposing a fine on every one practicing as such without a license, create a conflict between the charter provision and the ordinance passed in virtue of it and any law of the State. If the General Assembly should pass a law declaring that no license should be required of lawyers by any municipal corporation in the State, then such conflict would exist between the charter provision and the law; and section 25, article 9, of the constitution would apply, and the argument of defendant that the charter provision, not being in harmony with the law of the State, was, therefore, obnoxious to that section, would have force.

Id. at 303-04.

While neither party cited to the *Sternberg* decision in their briefs, it squarely rejects Appellants' argument that the City may only assess taxes authorized by the general assembly. However, we must consider *Sternberg* it in its historical context and in conjunction with the changes that have occurred in the law since that time.

The early case law following *Sternberg* reaffirmed that Article X, Section 1 did not limit the City's ability to tax. In 1882, in *City of St. Louis v. Bircher*, 76 Mo. 431 (Mo. 1882), the Missouri Supreme Court again considered whether a City of St. Louis ordinance was void under Article X, Section 1 because no legislative authority had been given to pass it. In rejecting this argument, the Missouri Supreme said:

> Provision is made in the constitution for the separation of the city from the county of St. Louis, and it even contemplates that, by the charter which the city was authorized to frame, the legislative authority of the city might be invested with the power to levy taxes for the support of the city government. Section 23, which declares that: "Such charter and amendments shall always be in harmony with and subject to the constitution and laws of Missouri," expressly excepts, in that connection, provisions for the graduation of the rate of taxation for city purposes, in the portions which are added thereto by the proposed enlargement of its boundaries." This is a distinct recognition of the city to make provision in its charter for levying and collecting city taxes for the maintenance of the city

> government. Section 20 authorizes the city to separate from the county and to adopt a charter for its government. Section 23 requires it to take upon itself the entire park tax, and to assume the whole of the then existing county debt, and from the right to adopt a charter for its government, and the obligation to assume said pecuniary obligations, it is by no means a forced inference that the city was empowered to make provision in its charter for the levy of taxes by its municipal assembly, upon such subjects and in such manner as would not be in contravention of the constitution and the laws of the State.
>
> The municipal corporations mentioned in section 1, article 10, which derive their authority to levy taxes from legislative grant, are those which derive their existence from legislative enactment, and that embraces at present all municipal corporations in the State, except the city of St. Louis.

Id. at 433-34.

Further, in 1893, the United States Supreme Court described the powers given to the City by the Missouri Constitution of 1875 as follows:

> As the legislative power of a state is vested in the legislature, generally that body has the supreme control, and it delegates to municipal corporations such measure thereof as it deems best. The [C]ity of St. Louis occupies a unique position. It does not, like most cities, derive its powers by grant from the legislature, but it framed its own charter under express authority from the people of the state, given in the constitution. . . . In pursuance of these provisions of the constitution a charter was prepared and adopted, and is, therefore, the 'organic law' of the [C]ity of St. Lo[u]is, and the powers granted by it, so far as they are in harmony with the constitution and laws of the state, and have not been set aside by an act of the general assembly, are the powers vested in the [C]ity. And this charter is an organic act, so defined in the constitution, and is to be construed as organic acts are construed. The [C]ity is in a very just sense an 'imperium in imperio.' Its powers are self-appointed, and the reserved control existing in the general assembly does not take away this peculiar feature of its charter.

City of St. Louis v. W. Union Tel. Co., 149 U.S. 465, 467-68 (1893).

In 1932, the Missouri Supreme Court interpreted a provision of the City's charter that granted the City the power "to assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation," and said: "There can be no question [that] this language of the charter is sufficiently broad to authorize the city to levy any kind of tax which is not inhibited by some other provision of the charter or by some constitutional or statutory

provision." *State ex rel. People's Motorbus Co. of St. Louis v. Blaine*, 58 S.W.2d 975, 977 (Mo. banc 1932).

B. The Constitution of 1945 and Judicial Restriction of the City of St. Louis' Powers

In 1944, however, the Missouri Supreme Court, on motion for rehearing, overruled that statement in *Kansas City v. Frogge*, 176 S.W.2d 498, 504 (Mo. 1943) (per curiam) ("This statement considered as a basis for the result of that case, is overruled. We do not rule that the result of that case was wrong, however."). *Frogge* involved a Kansas City ordinance that imposed a "compensating use tax" on certain property purchased for use in the city upon which the State sales tax had not been paid. The Court held the ordinance was invalid because the legislature had not delegated the power to the city to impose such a tax. *Id.* at 503. The Court did not explain why it overruled the statement from *Blaine*, nor did it note any distinction between St. Louis' and Kansas City's constitutional status or their power to tax. Rather, the Court found that Kansas City's charter did not delegate "the power to assess, levy and collect taxes which have not been authorized by charter or statute." *Id.* The Court stated that "[t]he power of taxation, a sovereign power, should be strictly construed as against the taxing municipality." *Id.*

A year later, in 1945, the Constitution of 1875 was superseded by the Constitution of 1945. MO. CONST. art. XII, § 1. In substance, Article X, Section 1, remained the same: "The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted them by the general assembly for county, municipal and other corporate purposes." MO. CONST. art. X, § 1.[4]

[4] *See* MO. CONST. of 1875, art. X, § 1 (1875) ("The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.").

Article IX, Sections 20 to 25, of the Constitution of 1875, which related explicitly to the City and its ability to form a charter and separate from St. Louis County, however, were not included in the Constitution of 1945, presumably because the City had exercised those powers by separating from St. Louis County and forming its charter. The City continued to be singled out and set apart from other cities in the Constitution of 1945, however, and several new provisions related to the City were included in the Constitution of 1945.[5] Of note, Article 6, Section 31, recognized the City both as a city and a county. That section provided that "[a]s a city it shall continue for city purposes with its present charter, subject to changes and amendments provided by the constitution or by law, and with the powers, organization rights and privileges permitted by this constitution or by law." MO. CONST. art. XII, § 1.

The case law following *Frogge* and the adoption of the Missouri Constitution of 1945, held that Article X, Section 1 conditioned municipal taxation on an express grant of specific authority. *See Hopkins v. City of Kansas City*, 894 S.W.2d 156, 158 (Mo. banc 1995) (citing *State ex rel. Agard v. Riederer*, 448 S.W.2d 577 (Mo. banc 1969); *Carter Carbueretor Corp. v. City of St. Louis*, 203 S.W.2d 438 (Mo. 1947); *Frogge*, 176 S.W.2d 498). Article X, Section 1 was held to apply specifically to the City of St. Louis in *Carter Carbueretor Corp.* which held that the ordinance imposing an earnings tax was invalid because the general assembly had not granted that power to the City. 203 S.W.2d at 443-45.

It is clear that the broad grant of the authority to tax—so long as it did not conflict with the Constitution, a city charter, or a statute—conferred to the City of St. Louis by the Missouri Supreme Court's decisions in *Sternberg* and *Blaine* conflicted with its decisions in *Frogge* and *Carter Carbueretor Corp.*, which required an express grant of authority from the general

[5] *See* MO. CONST. art. VI, §§ 31-33.

assembly before a municipality had the power to tax. So the general assembly responded in 1948, a year after *Carter Carbueretor Corp.*, when it enacted enabling legislation for the City to impose an earnings tax. *See Walters v. City of St. Louis*, 259 S.W.2d 377, 381 (Mo. banc 1953). Numerous constitutional challenges to the City's authority to impose an earnings tax under the enabling legislation were made in *Walters*, and were ultimately upheld. *Id.* at 381-87. The case was affirmed on appeal to the United States Supreme Court. *Walters v. City of St. Louis, Mo.*, 347 U.S. 231 (1954). Thus, the law became settled that absent authority from an enabling statute, the City lacked the power to tax. *See Lawyers' Ass'n of St. Louis v. City of St. Louis*, 294 S.W.2d 676, 683 (Mo. App. 1956).

C. Article VI, Section 19(a) and Restoration of the City of St. Louis' Powers

On October 5, 1971, Article VI, Section 19(a) was adopted at a special election and the law in Missouri changed, and, at least as it applies to the City, went back to the way it was before *Frogge* and *Carter Carbueretor Corp.* Article VI, Section 19(a) gives charter cities all powers which the general assembly has authority to confer upon any city, provided such powers are consistent with the Constitution and are not limited or denied by the city's charter or by statute. MO. CONST. art. VI, § 19(a). "Such a city shall, in addition to its home rule powers, have all powers conferred by law." *Id.*

Article VI, Section 19(a), established a new test for a charter city: whether an ordinance conflicts with the constitution, the city charter, or a statute. *Hopkins*, 894 S.W.2d at 158 (citing *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986)). Section 19(a) grants to a charter city all the power which the legislature *could* grant, not has granted. *Cape Motor Lodge, Inc.*, 706 S.W.2d at 210 (emphasis added). The principal crafter of Section 19(a) described the change brought from its enactment as follows:

> [M]unicipal powers now come directly to the city from the constitution unless the charter rejects the power or limits them in some way. In the past, powers came to the city through both the constitution and the charter. In order to cause the power to flow from the constitution, it was necessary for the city to claim the power by mentioning it in the charter. Thus in the past the charter could be thought of as a receptacle designed to catch and hold powers; after amendment the charter is best thought of as a shield designed to hold back powers that otherwise would automatically vest in the city[.]

State ex inf. Hannah ex rel. Christ v. City of St. Charles, 676 S.W.2d 508, 512 (Mo. banc 1984) (quoting Westbrook, *Charter Drafting Under the New Municipal Home Rule Provisions*, Missouri Municipal Review, p. 18, March, 1973).

The emphasis is not on whether the charter city has the authority to exercise the power, but rather on whether exercises of that power conflict with the Missouri Constitution, state statutes, or the charter itself. *Cape Motor Lodge, Inc.*, 706 S.W.2d at 211; *see* § 71.010. Thus, the issue is whether an ordinance is consistent with the constitution and not limited or denied by the constitution, by statute, or by the charter itself. *Cape Motor Lodge, Inc.*, 706 S.W.2d at 210.

Here, it is undisputed that the general assembly has never expressly delegated the power to impose a payroll tax to the City. Appellants concede that the general assembly *could* pass a statute allowing the payroll tax, but contend the City's payroll tax contradicts Article X, Section 1 because the general assembly has not passed a statute authorizing it. At the outset, we find Appellants' concession defeats Appellants' claim because Section 19(a) grants the City all the power the legislature *could* grant, not that it has granted. *See Cape Motor Lodge, Inc.*, 706 S.W.2d at 210. So if the legislature could grant the authority for a payroll tax then the City had

that power.[6] Since Appellants concede the general assembly could grant the City the authority for the payroll tax, the City had that power under Section 19(a).

Further, we find that any historical conflict between the *Sternberg* and *Carter Carbueretor Corp.* cases as to the question of the City's power to tax deriving from the Constitution are resolved in light of Section 19(a). Section 19(a) granted the City all the powers the general assembly has to confer, provided such powers are consistent with the Constitution and not limited or denied by charter or by statute. *See City of St. Charles*, 676 S.W.2d at 512; *see also Smith v. City of St. Louis*, 409 S.W.3d 404, 426 (Mo. App. E.D. 2013) ("In addition to the authority granted to City to enact traffic-related ordinances under its police power, City also possesses the authority to enact ordinances without express enabling legislation," relying on Section 19(a)).

As Alexander Hamilton explained in The Federalist No. 78, the Constitution is "fundamental law" as an expression of "the intention of the people." THE FEDERALIST NO. 78 (Alexander Hamilton). He said the Constitution is "superior" to a statute which is the "intention" of the "representatives of the people." *Id.* Because Article VI, Section 19(a) is the expressed will of the people in Missouri regarding the power of charter cities there is no need for the representatives of the people to authorize the power to tax pursuant to Article X, Section 1.[7] This does not render Article X, Section 1 moot or meaningless however. The general assembly

[6] *See also* MO. CONST. art. X, § 11(f) ("Nothing in this constitution shall prevent the enactment of any general law permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes.").

[7] We note, however, that Article VI, Section 19(a) was proposed by the general assembly and adopted by the qualified voters with a vote of 351,350 for and 167,360 against at a special election on October 5, 1971. H.J. Res. 24, 76th Leg., 1st Sess. (Mo. 1971); *see* MO. CONST. art. XII, §§ 2(a)-2(b) (setting forth procedure for constitutional amendment by general assembly). In that sense, the general assembly did give the taxing power—a power the general assembly no doubt possesses—to political subdivisions; the general assembly just did it by proposing a constitutional amendment that was approved by the people rather than by enacting statutory law.

must still grant the power to tax to all non-charter cities in Missouri. *See City of Arnold v. Tourkakis*, 249 S.W.3d 202, 205 (Mo. banc 2008) (distinguishing charter and non-charter cities by explaining that a charter city derives its power from Article VI, Section 19(a) while a non-charter city derives its power from the legislature's enactment of laws).

We hold the City's exercise of taxing power pursuant to Article VI, Section 19(a) is consistent with the general assembly granting the taxing power to the City under Article X, Section 1. Appellants have failed to meet their burden of proving the City exceeded its constitutional authority in enacting the Payroll Tax Ordinance and have not shown that the ordinance is inconsistent with Constitution or limited or denied by the Constitution, by statute, or by the City's charter. Point I is denied.

II. The City's Reimbursement Ordinances are Constitutional.

In point II,[8] Appellants assert that the trial court erred in upholding the ordinances authorizing the respective cooperation agreements between the City and Wellpoint and the City and Polsinelli because: (1) the ordinances serve a private and not a public purpose in violation of Article X, Section 3 and Article VI, Section 25; (2) the ordinances are "special laws" lacking open-ended classifications in violation of Article III, Section 40; (3) the ordinances are not uniform among all taxpayers in the class of "for-profit businesses" in violation of Article X, Section 3; and (4) the ordinances violate the prohibition on refunding tax receipts to taxpayers in violation of Article III, Section 40(7). Respondents contend the ordinances serve a public purpose, are not "special laws," do not affect the uniform assessment and collection of taxes, and violate no prohibition on refunding taxes. We consider each argument in turn.

[8] Appellants' point II is multifarious and is four points, not one. Multifarious points are not compliant with Rule 84.04(d) and preserve nothing for review. *Peters v. Johns*, 489 S.W.3d 262, 268 n.8 (Mo. banc 2016). Nevertheless, we gratuitously exercise our discretion and review the defective points on the merits.

A. The Reimbursement Ordinances Serve a Public Purpose.

Appellants assert that the trial court erred in upholding the redevelopment ordinances authorizing the respective agreements between the City and Wellpoint and the City and Polsinelli because the ordinances serve a private and not a public purpose in violation of Article X, Section 3 and Article VI, Section 25. We disagree.

The redevelopment ordinances were authorized under the authority of Article VI, Section 21. Article VI, Section 21 was added to the Constitution of 1945. That section provides that "[l]aws may be enacted, and any city or county operating under a constitutional charter city may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment, and rehabilitation of blighted, substandard, or insanitary areas, and for recreational and other facilities incidental thereto . . . ." MO. CONST. art. VI, § 21. "The conjunctive provision 'and any city or county operating under a constitutional charter may enact ordinances' permits political subdivisions operating under a constitutional charter to use their inherent authority to enact ordinances and condemn property without the necessity of statutory authorization." *Tourkakis*, 249 S.W.3d at 205-06.

In the context of Article VI, Section 21, "'substandard' speaks to a power given certain political subdivisions to prevent, as well as eliminate, incipient conditions of blight." *Tax Increment Fin. Comm'n of Kansas City v. J.E. Dunn Constr. Co.*, 781 S.W.2d 70, 78 (Mo. banc 1989). "Substandard," as it relates to structures, is commonly understood to mean "'deficient in amenities (as sanitary accommodations, living space, safety facilities, or maintenance) in respect to a standard set by legal or other authoritative sources.'" *J.E. Dunn Constr. Co.*, 781 S.W.2d at 78 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2279-80 (1965)).

Here, the Board of Alderman enacted ordinances finding the commercial buildings at 1831 Chestnut and 100 South Fourth Street were "substandard and obsolete" and that the properties would hurt the tax base in the City if left in their condition. The Board determined that it would be in the best interest of the City to enter into cooperation agreements with Wellpoint and Polsinelli to redevelop the commercial buildings and relocate approximately 380 employees (300 from Wellpoint and 80 from Polsinelli) to the City. The Board concluded that completion of the redevelopment projects would provide:

> for the promotion of the general welfare through physical, economic, and social development of the City in numerous ways, including, but not limited to, amelioration of existing undeveloped and obsolete conditions in the Project Area, improvement of property value in the Project Area and areas surrounding the Project Area, creation of sustainable jobs in a targeted industry, and provision of additional tax revenue to the City.

The Board determined it necessary and desirable for the City to enter into the cooperation agreements with Wellpoint and Polsinelli and agreed, subject to annual appropriation, to use certain tax revenues for implementing the redevelopment project. Specifically, the cooperation agreements set forth a formula for determining how much money would be set aside in separate accounts to reimburse Wellpoint and Polsinelli for their redevelopment costs, which included moving and relocation expenses. Wellpoint and Polsinelli were eligible to be reimbursed their redevelopment costs in an amount up to fifty percent from the annual increased earnings and payroll tax generated from the project area. Appellants contend that these ordinances serve a private and not a public purpose in violation of Article X, Section 3 and Article VI, Section 25.

Article X, Section 3 provides that "[t]axes may be levied and collected for public purposes only." MO. CONST. art. X, § 3. Article VI, Section 25 prohibits a city from lending its credit or granting public money to any private individual, association, or corporation, subject to certain exceptions not applicable here. MO. CONST. art. VI, § 25.

Article X, Section 3's restriction on taxes being "levied and collected for public purposes only" is not violated if the expenditure of public funds is for a public purpose. *State ex rel. Wagner v. St. Louis County Port Auth.*, 604 S.W.2d 592, 598 (Mo. banc 1980). Similarly, Article VI, Section 25 is not infringed upon if the primary object of a public expenditure is to subserve a public municipal purpose. *St. Louis County v. River Bend Estates Homeowners' Ass'n*, 408 S.W.3d 116, 138 (Mo. banc. 2013) (citing *Curchin v. Mo. Indus. Dev. Bd.*, 722 S.W.2d 930, 934 (Mo. banc 1987)). Article VI, Section 25 is not violated simply because incidental benefits may accrue to private interests. *Brawley v. McNary*, 811 S.W.2d 362, 367 (Mo. banc 1991).

While the final determination on whether a law's purpose is public is with the courts, a legislative finding that an area is "substandard" will be accepted by the courts as conclusive evidence that the contemplated use is public, unless it further appears by allegation and clear proof that the legislative finding was arbitrary or was induced by fraud, collusion, or bad faith. *J.E. Dunn Constr. Co., Inc.*, 781 S.W.2d at 79 (citing *State ex inf. Dalton v. Land Clearance for Redevelopment Auth.*, 270 S.W.2d 44, 52 (Mo. banc 1954)). "[T]he presumption is that the Legislature will levy a tax only for a 'public purpose,' and the courts are not justified in interfering except when it clearly appears that the Constitution will be violated by the enforcement of the legislative purpose." *Jennings v. City of St. Louis*, 58 S.W.2d 979, 980 (Mo. banc 1933).

What constitutes a public purpose is primarily for the legislature and will not be overturned unless found to be arbitrary and unreasonable. *State ex rel. Wagner*, 604 S.W.2d at 596. The burden is on the party making the claim to show the purpose is arbitrary and unreasonable. *Id.* at 596-97.

"'The consensus of modern legislative and judicial thinking is to broaden the scope of activities which may be classified as involving public purpose.'" *Menorah Med. Ctr. v. Health & Educ. Facilities Auth.*, 584 S.W.2d 73, 79 (Mo. banc 1979) (quoting *State ex rel. Jardon v. Indus. Dev. Auth. of Jasper County*, 570 S.W.2d 666, 675 (Mo. banc 1978)). No hard and fast rules exist to determine whether purposes are public or private. *Cape Motor Lodge, Inc.*, 706 S.W.2d at 213. For an expenditure to have a public purpose it must be for the support of the government or recognized objects of government, or to promote the welfare of the community. *State ex rel. Wagner*, 604 S.W.2d at 597.

"The concept of urban redevelopment has gone far beyond 'slum clearance,' and the concept of economic underutilization is a valid one." *Tierney v. Planned Indus. Expansion Auth. of Kansas City*, 742 S.W.2d 146, 151 (Mo. banc 1987). Redevelopment of "substandard" areas is a public purpose. *Id.* at 150 (citing MO. CONST. art. I, § 21). "[I]mproved employment and stimulation of the economy serve essential public purposes." *State ex rel. Jardon*, 570 S.W.2d at 675. To be for a public purpose, the taxes must be levied for a purpose in which the community that pays it has an interest. *Cape Motor Lodge, Inc.*, 706 S.W.2d at 213 (citing *Enright*, 536 S.W.2d at 19). "It is not necessary that the whole community should actually use or be benefited by a contemplated improvement." *Cape Motor Lodge, Inc.*, 706 S.W.2d at 213. "Nor is a public improvement deprived of its public character because its advantage inures to a particular individual or group of individuals." *Id.* (citing *Bowman v. Kansas City*, 233 S.W.2d 26, 33 (Mo. banc 1950)).

"The law does not require us to determine whether the public or private citizens benefit 'more' by reason of the legislation." *State ex rel. Atkinson v. Planned Indus. Expansion Auth. of St. Louis*, 517 S.W.2d 36, 45 (Mo. banc 1975). "Rather, the rule is that if the primary purpose of

the act is public, the fact that special benefits may accrue to some private persons does not deprive the government action of its public character, such benefits being incidental to the primary public purpose." *Id.*

Here, the Board of Alderman found that the commercial buildings at issue were "substandard." We are bound by that finding unless it was arbitrary or inducted by fraud, collusion, or bad faith. *J.E. Dunn Constr. Co., Inc.*, 781 S.W.2d at 79; *see also Schweig v. Md. Plaza Redevelopment Corp.*, 676 S.W.2d 249, 253 (Mo. App. E.D. 1984). Appellants have neither alleged nor proven that the Board of Alderman's finding was arbitrary or the product of fraud, collusion, or bad faith. The City's finding is therefore conclusive that the contemplated use is public. *See J.E. Dunn Constr. Co., Inc.*, 781 S.W.2d at 79.

Moreover, the Board of Alderman also found that the ordinances promote the general welfare of the community through improved employment and stimulation of the economy. Promoting the welfare of the community in this manner serves a public purpose. *State ex rel. Wagner*, 604 S.W.2d at 597; *State ex rel. Jardon*, 570 S.W.2d at 675. The ordinances no doubt benefit Wellpoint and Polsinelli but that does not deprive them of their primary public purpose: to promote the welfare of the community through a public and private partnership. *State ex rel. Atkinson*, 517 S.W.2d at 45. The fact the community does not use these buildings does not negate that the community is improved by these ordinances. *Cape Motor Lodge, Inc.*, 706 S.W.2d at 213; *State ex rel. Wagner*, 604 S.W.2d at 598 ("We find that the nature of this Act in no way deprives it of a public purpose, and that improved economic conditions resulting from the development of the port will directly benefit the public.").

Indeed, the purposes of the ordinances—to promote the general welfare through an improved economy—are comparable to other legislation which has been held to have a public

purpose. *See State ex rel. Wagner*, 604 S.W.2d at 597; *Moschenross v. St. Louis County*, 188 S.W.3d 13, 22 (Mo. App. E.D. 2006) (finding primary purpose of legislation authorizing public funding of St. Louis Cardinals' ballpark development was to increase convention and sports activity in St. Louis city and county, thereby bringing economic benefits to the public and serving a public purpose); *Rice v. Ashcroft*, 831 S.W.2d 206, 210 (Mo. App. W.D. 1991) (finding primary purpose of legislation authorizing public funding of football stadium was to increase convention and sports activity in the St. Louis city and county and was therefore a public purpose).[9] That these ordinances having nothing to do with convention and sports activity does not negate the economic benefits these ordinances have brought the City.

B. The Reimbursement Ordinances Do Not Violate Article III, Section 40(30).

Appellants assert that the trial court erred in upholding the ordinances authorizing the respective agreements between the City and Wellpoint and the City and Polsinelli because the ordinances are "special laws" lacking open-ended classifications in violation of Article III, Section 40(30). Specifically, Appellants contend that the ordinances are invalid because they have no classification system. Relying on *State ex rel. S.S. Kresge Co. v. Howard*, 357 Mo. 302 (Mo. banc 1947) and *Crestwood Commons Redevelopment Corp. v. 66 Drive-In, Inc.*, 812 S.W.2d 903 (Mo. App. E.D. 1991), Respondents contend that because a general law could not be made applicable, Article III, Section 40(30) is not violated.

Since 1865, the Missouri Constitution has prohibited special laws. *City of Normandy v. Greitens*, 518 S.W.3d 183, 191 (Mo. banc 2017). The prohibition against special laws extends to

[9] Policy debates as to the efficacy of such tax policies are best left to the legislative arena. *See Walters*, 259 S.W.2d at 386 (recognizing "the large area of discretion which is needed by a legislature in formulating sound tax policies"); *Budding v. SSM Healthcare Sys.*, 19 S.W.3d 678, 682 (Mo. banc 2000) (noting that when the legislature has spoken on a subject, courts must defer to its determinations of public policy, despite appealing public policy arguments on both sides).

city ordinances. *City of Sullivan*, 329 S.W.3d at 693 (citing *McKaig v. Kansas City*, 256 S.W.2d 815, 816 (Mo. banc 1953)). Article III, Section 40(30) prohibits the general assembly from passing any local or special law where a general law can be made applicable. MO. CONST. art. III § 40; *School Dist. of Riverview Gardens v. St. Louis County*, 816 S.W.2d 219, 220 (Mo. banc 1991). That section further provides that whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject. MO. CONST. art. III § 40(30).

The first question we must address is whether a general law could be made applicable to address the individual agreements made between the City and Wellpoint and the City and Polsinelli. We find that a general law would not be applicable here.

In *Howard,* a corporation paid $1710 in taxes that the Missouri Supreme Court subsequently held it was not required to pay. Thereafter, the general assembly passed legislation appropriating $1710 to the corporation for the overpayment, but the comptroller refused to pay it, so the corporation sued. On appeal to the Missouri Supreme Court, the State argued the appropriation offended several constitutional provisions, including Article III, Section 40's prohibition of passing a special law where a general law could be made applicable. The Court succinctly rejected this argument, finding th at "[a] general law would not be applicable here." *Howard*, 357 Mo. at 308. The Court reasoned that "[a]n appropriation to pay a particular obligation to a particular obligee is not a proper subject for a general law. Such an appropriation is not comprehended as a special law under this section." *Id.*

In *66 Drive-In, Inc.*, the board of alderman for the City of Crestwood blighted a drive-in movie theatre property so it could be redeveloped as a grocery store. The owner of the drive-in property sued challenging the board of alderman's blight determination. On appeal, this court

considered, among other issues, whether the ordinance was a special law that violated Article III, Section 40(30). In finding no constitutional violation, the court stated the following:

> This case is limited to the redevelopment of a single piece of property. It is unrealistic that the framers of our constitution intended that a Board of Alderman would have to enact a redevelopment ordinance for the whole city in order to redevelop a single parcel. Thus, the trial court's finding that the Board of Alderman's redevelopment ordinance which governed the redevelopment of a single piece of property violated Section 40(30) of the Missouri Constitution, is in error.

66 Drive-In, Inc., 812 S.W.2d at 912.

We find that a general law would not be applicable here. The ordinances here authorized the City to enter into specific agreements with Wellpoint and Polsinelli based on the unique circumstances of each situation. Like in *Howard*, we find the ordinances authorizing the City to enter into agreements contemplating the reimbursement of certain redevelopment costs from the increase in tax base brought because of those agreements is not a proper subject for a general law. *Howard*, 357 Mo. at 308. Moreover, like in *66 Drive-In Inc.*, these ordinances refer to the redevelopment of single pieces of property, which further supports that a general law would not be applicable. *66 Drive-In, Inc.*, 812 S.W.2d at 912.

Nevertheless, even if a general law could be made applicable and these ordinances were special laws, we would not find them to be unconstitutional. A general law relates to persons or things as a class, whereas a special law relates to particular persons or things of a class. *Bldg. Owners & Managers Ass'n of Metro. St. Louis, Inc. v. City of St. Louis*, 341 S.W.3d 143, 150 (Mo. App. E.D. 2011). A "local law" has traditionally referred to a law "which relates or operates over a particular locality instead of over the whole territory of the state." *Nixon*, 476 S.W.3d at 286 (quoting BLACK'S LAW DICTIONARY 939 (6th ed. 1990)). Whereas, a "special law" or "private law" is a law relating to a particular individual, association, or

corporation, rather than a particular locale. *Nixon*, 476 S.W.3d at 286 (quoting BLACK'S LAW DICTIONARY 1398, 1196 (6th ed. 1990)).

"Facially special laws are presumed unconstitutional." *Bd. of Educ. of City of St. Louis v. Mo. State Bd. of Educ.*, 271 S.W.3d 1, 10 (Mo. banc 2008). When a special law is passed, the State can preserve the law from constitutional infirmity by offering evidence of substantial justification for the law. *Greitens*, 518 S.W.3d at 190.

Even if the ordinances are facially special, we find that the City met its burden of providing a substantial justification for the special treatment and therefore the ordinances are not unconstitutional. As we previously noted, the Board of Alderman specifically found the ordinances were necessary to promote the general welfare of the City through an improved economy through the increased tax base derived from the increased property values and the larger tax base from the added employees. We find these reasons provide substantial justification for the ordinances. *See Bd. of Educ. of City of St. Louis*, 271 S.W.3d at 10; *Union Elec. Co. v. Mex. Plastic Co.*, 973 S.W.2d 170, 174 (Mo. App. E.D. 1998) (finding substantial justification for "the ordinance granting exemptions from the business license tax was both to encourage manufacturers to locate in City and to generally benefit the community at large.").

C. Wellpoint and Polsinelli are Uniformly Taxed.

Appellants assert that the trial court erred in upholding the ordinances authorizing the respective agreements between the City and Wellpoint and the City and Polsinelli because the ordinances are not uniform among all taxpayers in the class of "for-profit businesses" in violation of Article X, Section 3. Specifically, Appellants contend that because Wellpoint and Polsinelli are ultimately reimbursed their project costs from a portion of the earnings and payroll tax they pay, there is no uniformity of taxation. We disagree.

Article X, Section 3 states that taxes "shall be uniform upon the same class or subclass of subjects within the territorial limits of the authority levying the tax." "Uniform" means the measure, gauge, or rate of the tax. *508 Chestnut, Inc. v. City of St. Louis*, 389 S.W.2d 823, 830 (Mo. 1965).

Here, it is undisputed that the same measure, gauge, or rate of tax (one percent earnings tax and one-half of one percent payroll tax) is applied to Appellants' proposed class of "for-profit businesses." Appellants' complaint stems from the fact that Wellpoint and Polsinelli may ultimately get reimbursed some of those tax dollars. But even if this is true, Wellpoint and Polsinelli, and all "for-profit businesses," are still subject to the same tax levy. It is not until Wellpoint and Polsinelli increase the tax dollars they bring to the City through new or higher compensated employees and take additional steps by incurring project costs that they become eligible for reimbursement, subject to annual appropriation. Thus, the tax levy is uniform. *See J.E. Dunn Constr. Co., Inc.*, 781 S.W.2d at 74 ("It is the application of the existing tax levy to the improvements that creates the tax increment used to fund repayment of the bonds. The levy is therefore, uniform.").

D. The City is Not Refunding Money in Prohibition of Article III, Section 40(7).

Appellants contend that the ordinances violate the prohibition on refunding tax receipts to taxpayers. Specifically, Appellants aver that the ordinances violate Article III, Section 40(7) which provides that "[t]he general assembly shall not pass any local or special law: . . . refunding money legally paid into the treasury."

Respondents again direct us to *Howard* in support of their argument that the ordinances are not special laws. In *Howard*, the Missouri Supreme Court considered the applicability of Article III, Section 40(7) to the appropriation made by the general assembly for the overpayment

of taxes. In finding that section to be inapplicable the Court found that the refund was "not by 'special' law," and that the provision did not forbid refunding money paid into the treasurer through illegal exaction. 357 Mo. at 308.

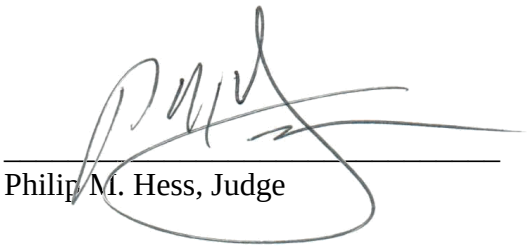
Here, we need not rely on *Howard*, because we find that we are not dealing with a "refund" of tax dollars legally paid into the treasury. Contrary to Appellants' assertion, Wellpoint and Polsinelli are not being refunded their taxes, they are being reimbursed their project costs.[10] That the maximum amount they are eligible to be annually reimbursed for their project costs is calculated based on "an amount equal to fifty percent" of the increased annual earnings and payroll taxes they bring to the City does not equal a reimbursement of Wellpoint and Polsinelli's tax dollars. Wellpoint and Polsinelli have no right to a refund of any taxes; they only have the right to be reimbursed their project costs subject to those funds being available "from funds budgeted and appropriated or otherwise legally available." There is no mandate that the City fund the reimbursement account with Wellpoint or Polsinelli's tax money. Further the City has no obligation to repay the project costs at all until it has verified the increased tax revenue generated for the City, subject to annual appropriations. Basing the reimbursement of the project costs on verified increased tax revenue annually allows the City of St. Louis to obtain the benefit of its bargain for the public. This is not a tax refund prohibited by Article III, Section 40(7).

Point II is denied.

[10] Appellants' argument that Wellpoint and Polsinelli are being refunded *their* taxes levied only applies to the earnings and payroll taxes owed by Wellpoint and Polsinelli, not on the earnings tax owed by their employees, even if withheld by Wellpoint and Polsinelli.

Conclusion

For the reasons stated above, the trial court's judgment is affirmed.



Philip M. Hess, Judge

Lisa P. Page, P.J. and
Roy L. Richter, J. concur.