

**SC96731**

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**IN THE MISSOURI SUPREME COURT**

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**CASS COUNTY, MISSOURI**  
**Appellant**

**v.**

**DIRECTOR OF REVENUE**  
**Respondent,**

**CITY OF LEE'S SUMMIT, MISSOURI**  
**Intervenor.**

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**INTERVENOR'S BRIEF**

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## ARGUMENT

### Introduction

Over a 3-year period, Appellant erroneously received almost one million dollars of sales tax revenue collected from residents of the City of Lee's Summit, who were residing in Jackson County. Appellant has had use of that money interest-free for 7 years or more, and Intervenor would appreciate it being returned. The Director of Revenue (Director) has proposed a fair and reasonable solution to that erroneous distribution, but Cass County has vigorously opposed the implementation of that solution. The Administrative Hearing Commission (AHC) held that the Director has the authority to withhold sales tax revenue from Cass County and redistribute it to the City, and that Decision should be affirmed.

### Response to Point Relied On

Appellant's Point Relied On raises two issues, both of which are based on fundamentally flawed premises. First, Appellant suggests that the Director has no authority to redistribute county sales tax revenue to the City under § 67.525, RSMo.<sup>1</sup> However, the sales tax collected by KCP&L was not a county sales tax, as defined and provided for by §§ 67.500 to 67.545. It was a local sales tax on domestic utilities, as allowed by §144.032. There is no evidence in the record that any part of that revenue is "deposited with the state treasurer in a county sales tax trust fund", or that the Director proposed depositing money into such a fund and then authorizing the treasurer to redistribute it to the City. Hence, § 67.525 is wholly inapplicable to this case.

Second, Appellant contends that the redistribution is really a refund, and that it is impermissible because KCP&L has not filed a claim for refund pursuant to § 144.190. The Decision succinctly disposed of this argument at pages 17-18. LF 31-32. The tax revenue at issue was not erroneously or illegally collected or computed, KCP&L paid the correct amount and there exists no balance for the Director to refund. Moreover, KCP&L has no standing to request a refund from Cass County. This is simply not a refund proceeding.

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri (2016).

After six years of litigation, it seems a bit odd that an appeal to this Court can be refuted in two short paragraphs. Yet this Court is only obliged to determine those questions stated in points relied on, and any other issues that may have been raised in the argument portion of Appellant's Brief have not been preserved for review. *McMillan v. Wells*, 924 S.W.2d (Mo. App. 1996). The foregoing argument addresses both questions raised by Appellant. Neither § 67.525 nor § 144.190 is relevant here, so the point should fail. This Court need not go any further to affirm the Decision.

### Other Issues

In the event that this Court feels compelled to consider other issues in determining whether the Decision was authorized by law, Intervenor will briefly discuss some of them.

The City has no position on the argument made by the Director that the AHC lacked jurisdiction. The Missouri Court of Appeals held that a final decision of the Director is appealable to the AHC in *State ex rel. Cass County, Missouri v. Mollenkamp*, 481 S.W. 3d 26 (Mo. App. 2015). This case proceeded accordingly, and the Director will presumably not raise the issue before this Court.

The Decision contains an apparent contradiction. It properly holds that the Director has the legal authority to withhold and redistribute sales tax revenue to correct the error. LF 33. In a system as complex as that involving the collection, reporting and distribution of sales tax revenue, mistakes will inevitably be made. The ability to correct errors is a necessary and implicit part of performing "all functions incident to the administration, collection, enforcement, and operation" of local sales taxes, as contemplated by § 32.087.6.<sup>2</sup> That would be consistent with the reasonable expectations of the General Assembly.

However, in discussing the jurisdictional issue, the Administrative Law Judge undertakes a tortured analysis of power vs. duty and concludes that § 32.087.6 does not "constitute a conveyance of unreviewable power." LF 27. Intervenor agrees that the actions of the Director are reviewable, but the notion that § 32.087.6 does not grant the authority to perform the duties it imposes is hard to fathom.

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<sup>2</sup>The language in §§ 6 of the 2013 version of the statute is identical.

If this Court considers the issue, then Intervenor submits that *President Casino v. Director of Revenue*, 219 S.W.3d 235 (Mo. 2007) does not support the ALJ's conclusion that the Director has the duty but not the power to perform certain functions. In that case, President Casino argued that the use of the "all functions incident..." language in a different statute incorporated the exemptions and exclusions of the sales tax law. There was no merit whatsoever in President's argument, much like those of Appellant in this appeal. But the case has nothing to do with the authority or duties of the Director under § 32.087.6.

Appellant notes that Intervenor filed a civil action in the Circuit Court of Cass County, Case No. 16CA-CC00186. It asserts claims against Cass County for money had and received, and unjust enrichment, as well as a negligence claim against KCP&L. The action was filed to avoid any potential problems with the statute of limitations, and the parties have agreed that it be stayed pending the outcome of the present case. As this Court reasoned in *Investors Title Company, Inc. v. Hammonds*, 217 S.W.3d 288 (Mo. banc 2007), since the County obtained money to which it was not entitled, the law compels its return. But if this Court holds that the Director does not have authority to correct errors administratively, then other parties will be forced to litigate similar lawsuits in the future.

The Decision also discusses the constitutionality of § 94.550, RSMo. LF 28-31. If that statute is unconstitutional because it directs that nonstate funds be deposited into an account under the control of the state treasurer, then § 67.525 suffers from the same infirmity. No party has challenged the constitutionality of those statutes in this case, so this is another issue that is unnecessary for this Court to decide. And regardless of the language in the statutes, the Director has not been acting in a manner that violates Article IV, Section 15, Mo. Const. To the extent that this part of the Decision can be viewed as an invitation to this Court to clarify the law, Intervenor agrees that § 1.140 can be applied to preserve those statutes.

### Conclusion

Appellant's arguments are without merit and the Decision is authorized by law. Cass County has no legal or equitable right to keep the tax revenue that was erroneously distributed to it. The residents of Lee's Summit who paid those taxes

have received no benefits therefrom. Consequently, Intervenor respectfully requests this Court to affirm the Decision.

Respectfully submitted,



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Certificate of Compliance

I hereby certify that this brief complies with Rule 84.06(b) and contains 1139 words, excluding the cover, certificate of service, certificate of compliance, signature block and appendix, and that the brief contains words in 14 point Times New Roman.

/s/ Zachary T. Cartwright

Certificate of Service

I hereby certify that true copies of the foregoing brief were served via the Case.net E-service system on this 6th day of February, 2018.

/s/ Zachary T. Cartwright