

IN THE SUPREME COURT OF MISSOURI

No. SC97544

JAMES J. WILSON, ET AL., RESPONDENTS,
VS.
CITY OF ST. LOUIS, ET AL., RESPONDENTS,

TISHAURA O. JONES, APPELLANT.

CITY OF ST. LOUIS, RESPONDENT,

VS.

STATE OF MISSOURI, APPELLANT.

Appeal from the Circuit Court of the City of St. Louis
The Honorable Michael F. Stelzer, Judge

APPELLANT TISHAURA JONES'S BRIEF

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JURISDICTIONAL STATEMENT

This action involves the constitutionality of two state statutes—specifically whether sections 82.485 and 82.487 RSMo. (the “State Parking Statutes”), governing parking revenues in the City of St. Louis, violate Article VI, Section 22 of the Missouri Constitution, which prohibits laws fixing the powers and duties of municipal officers. Therefore, this Court has exclusive jurisdiction. Mo. Const. art. III, § 3.

After Plaintiffs (at various times) filed motions for summary judgment, the trial court entered separate judgments declaring the State Parking Statutes unconstitutional and enjoining the parties from implementing them. *See* D21; D56; D57.¹ The Court then entered a judgment certifying all prior judgments as final for the purposes of appeal. D80.

The trial court did not dispose of every claim raised by Wilson, Lane, and Boyd in their respective petitions.² But the trial court properly certified the judgment as final for “purposes of appeal,” expressly finding “no just reason for delay.” D80; *see* Rule 74.01(b). That certification was correct because the judgment disposes of the “distinct judicial unit” of the constitutionality of state statutes, while the other claims rely on different facts about certain city ordinances and city contracts. *Gibson v. Brewer*, 952 S.W.2d 239, 244 (Mo. banc 1997) (a judicial unit for appeal is “the final judgment on a claim, and not a ruling on some of several issues arising out of the same transaction or occurrence which does not dispute the claim”). Accordingly, there is a final judgment and the Court has jurisdiction over this appeal.

¹ Citations in the form of “D__:P__” refer to the electronic legal file, in which “D__” refers to the cited document number(s) and “P__” refers to particular pages thereof.

² The City of St. Louis petitioned only for declaratory judgment regarding the State Parking Statutes, therefore, the trial court has finally decided all of St. Louis City’s claims. *See* D78.

STATEMENT OF FACTS

A. Background

For more than forty years, the Treasurer of the City of St. Louis (the “Treasurer”) has served as the “supervisor of parking meters.” D37:P2. The State Parking Statutes grant this power to the Treasurer together with a broad range of responsibilities, including administering the parking meter fund and serving as chair of the Parking Commission. *See* §§ 82.485 and 82.487, RSMo. (The supervisor of parking meters also collects all parking revenues and deposits those revenues in the parking meter fund and installs, maintains, and repairs parking meters.) Since 2013, Tishaura O. Jones has served as the Treasurer of the City of St. Louis and carried out all of her responsibilities and duties as the “supervisor of parking meters.” D2:P4.

State law requires the Treasurer to chair the Parking Commission. § 82.485, RSMo. The same law requires the chairperson of the aldermanic traffic committee, the director of streets, and the comptroller to be members of the Commission. *Id.* In addition to the Treasurer herself, state law also requires another member (the director of parking operations) from the Office of the Treasurer to serve on the Parking Commission. D19:P14-15. The Parking Commission approves the “guidelines governing the administrative adjudication, disposition and collection of any parking violations or complaints issued by the city”; modification to the parking fund budget; and the acquisition, development, regulation, and operation of parking facilities overseen by the parking division. § 82.487, RSMo.

The City of St. Louis is both a city and a county. *See* Mo. Const. art. VI, § 31 and § 1.080, RSMo. Accordingly, it has both municipal and county officers. The Treasurer is one of its county officers. D37:P1-2. Plaintiffs, however, claim the Treasurer is in fact a municipal officer. D22:P4; D36:P7. Plaintiffs base this assertion on the Treasurer using the title Treasurer of the *City* of St. Louis on certain paperwork. D36:P7-8. The Treasurer disputes this assertion. D38:P4-5; D37:P1.

Like the General Assembly, the City endeavored to establish oversight over parking. The City of St. Louis enacted ordinances that regulate various aspects of parking in the

City. D37:P3. The St. Louis City Charter (the “Charter”) creates an almost identical parking commission to the Parking Commission established by the State Parking Statutes. D37:P2-3.

B. Procedural History

In January 2017, James Wilson and Charles Lane, two citizens of the City commenced this action. D1. Plaintiffs named the City of St. Louis, the State of Missouri, Carl Phillips (as Director of Parking Operations), Darlene Green (as Comptroller), Stephen J. Runde (as Director of Streets³), Freeman Bosley Sr. (as Chair of the Board of Alderman’s Traffic Committee⁴), and the Treasurer as defendants. *Id.* Wilson and Lane challenged the constitutionality of the State Parking Statutes. D1. To establish standing, they did not allege an expenditure of taxpayer funds, but rather alleged they operate motor vehicles licensed by the State of Missouri and have received parking tickets issued by the Parking Division of the Office of the Treasurer of the City of St. Louis. D2. The Treasurer filed a motion to dismiss Wilson and Lane’s claims for lack of standing, which the trial court denied. D67; D79.

The City of St. Louis answered Wilson and Lane’s petition with a cross-claim against the other defendants, which also challenged the constitutionality of the State Parking Statutes. The City then moved for summary judgment. D18. The trial court granted the City’s motion. D21. City Alderman Jeffrey Boyd intervened in the case. D9. Wilson, Lane, and Boyd subsequently filed a motion for summary judgment nearly identical to the one filed by the City. D35. The Treasurer moved to dismiss Boyd’s claims for lack of standing, a matter on which the trial court did not expressly rule. D77. The trial court subsequently granted Wilson, Lane, and Boyd’s motion for summary judgment. D56. At that time, the trial court also entered a Rule 74.01(b) order allowing this appeal to go forward. D57. Later, the trial court entered a judgment on certifying both summary judgments and its injunctive order as final for the purposes of appeal. D80.

³ Jamie Wilson is now the Director of Streets. D15.

⁴ Jeffrey Boyd, Intervenor in this matter, is now the Chair of the Board of Alderman’s Traffic Committee. D15.

C. The Trial Court's Judgments

All four Plaintiffs asked the trial court to invalidate the State Parking Statutes because they purportedly violate Article VI, section 22 of the Missouri Constitution. All four advanced virtually identical arguments: the State Parking Statutes unconstitutionally fix the duties or powers of municipal offices, and unconstitutionally create a municipal office or municipal commission. D14; D18; D36. The trial court relied on identical reasoning in granting both summary judgment motions.

Although several Plaintiffs claimed the Treasurer is actually a municipal (rather than county) officer, the trial court did not rule on that issue. D21; D56. The trial court ruled that the State Parking Statutes violate Article VI, section 22 because they “create and fix the duties and powers of individual municipal officers of the City of St. Louis, namely the Comptroller, the Director of Streets, and the Chairperson of the Aldermanic Traffic Committee.” D21; D56. The trial court did not address Plaintiff’s arguments that the State Parking Statutes impermissibly create a new municipal commission or office. After concluding the State Parking Statutes were unconstitutional, the trial court considered whether to sever the unconstitutional provisions. *Id.* It ruled that it could not remove references to the Comptroller, the Alderman, and the Director of Streets because the State Parking Statutes would not be complete and capable of constitutional enforcement without those members of the Parking Commission. *Id.* This appeal followed.

POINTS RELIED ON

I. The Trial Court Erred in Granting Summary Judgment to Plaintiffs Because Plaintiffs Lacked Standing in that Plaintiffs Did Not Allege Any Injury the Parking Commission's Existence Caused Them.

E. Laborers Dist. Council v. St. Louis Cty., 781 S.W.2d 43 (Mo. banc 1989)

Sommer v. City of St. Louis, 631 S.W.2d 676 (Mo. App. 1982)

Am. Econ. Ins. Co. v. Ledbetter, 903 S.W.2d 272 (Mo. App. 1995)

II. The Trial Court Erred In Granting Summary Judgment Declaring the State Parking Statutes Unconstitutional Because the State Parking Statutes Permissibly Fix the Powers of a County Officer and Pertain to County Matters in that They Prescribe the Duties of the Treasurer (a County office) and the Other Officers are Directed to Perform County Functions.

City of Springfield v. Goff, 918 S.W.2d 786 (Mo. banc 1996)

St. Louis City v. Doss, 807 S.W.2d 61 (Mo banc. 1991)

State ex rel. McClellan v. Godfrey, 519 S.W.2d 4 (Mo. banc 1975)

III. The Trial Court Erred in Declaring the Entirety of the State Parking Statutes Unconstitutional Rather Than Severing the Provisions Arguably Applying to Municipal Officials Because the Trial Court Failed to Preserve as Much of the Statute as Possible in that the Portions of the Statute Governing the Operation of the Parking Commission and the Treasurer's Involvement Can Stand without the Other Officials on the Parking Commission.

Dodson v. Ferrara, 491 S.W.3d 542 (Mo. banc 2016)

Akin v. Dir. of Revenue, 934 S.W.2d 295 (Mo. banc 1996)

State ex rel. Enright v. Connett, 475 S.W.2d 78 (Mo. banc 1972)

IV. The Trial Court Erred in Declaring the Entirety of the State Parking Statutes Unconstitutional Rather Than Severing the Parking Commission from the Statutes Because the Trial Court Failed to Preserve as Much of the Statute as Possible in that the Statutes Governing the Revenues and Budget of the Parking System in St. Louis Can Stand Without Having a Parking Commission at All.

Dodson v. Ferrara, 491 S.W.3d 542 (Mo. banc 2016)

Akin v. Dir. of Revenue, 934 S.W.2d 295 (Mo. banc 1996)

State ex rel. Enright v. Connett, 475 S.W.2d 78 (Mo. banc 1972)

STANDARD OF REVIEW

The threshold issue is Plaintiffs' standing to maintain this action. *See Schweich v. Nixon*, 408 S.W.3d 769 (Mo. banc 2013). "Prudential principles of justiciability . . . require that a party have standing to bring an action." *Id.* at 774 (internal quotations omitted). Standing is a question of law; therefore, the Court's review is de novo. *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 87 (Mo. banc 2008).

Should the Court conclude Plaintiffs have standing, it must then review the grant of summary judgment. That review is also de novo, with no deference due to the trial court's judgment. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Specifically, this Court must decide whether the State Parking Statutes are constitutional. "Challenges to the constitutional validity of a state statute are subject to de novo review." *Hill v. Boyer*, 480 S.W.3d 311, 313 (Mo. banc 2016).

Finally, if the Court finds that summary judgment was properly granted, and the statutes are unconstitutional, it must determine whether the offending portions can be severed from the remainder of the statute. § 1.140, RSMo. This, too, is a legal issue that is reviewed de novo. *See Akin v. Dir. of Revenue*, 934 S.W.2d 295 (Mo. banc 1996).

INTRODUCTION

If the trial court properly ruled that Plaintiffs below had standing – Appellant believes they did not – the ultimate issue presented here is whether the General Assembly may lawfully enact statutes governing the parking revenues and budget of the City of St. Louis. Although the General Assembly has done so for decades, Plaintiffs do not like the status quo—they would prefer city officials solely control parking revenues. They relied on a constitutional provision that limits the General Assembly’s ability to fix the powers and duties of municipal officers and convinced the trial court that the State Parking Statutes violate this provision.

But the City of St. Louis is a strange creation. The constitution declares and this Court has long held that the City is also a County and that the General Assembly has the authority to regulate the county functions – even though we all call it a City. The legislature properly exercised that authority, just as it could with any other county, and outlined the responsibilities of the county Treasurer (now Appellant Jones), thereby clarifying that parking is a county function. The legislature intentionally did this in order to ensure that State law, rather than the City-as-county, initially directs the expenditure of parking revenues and eliminate incentives for the City-as-county to abuse its power to raise revenues through parking enforcement.

Plaintiffs have come to the wrong window. If they wish to change the laws governing parking revenues in the City of St. Louis, they should convince the legislature. The Constitution does not prohibit these laws and this Court should so hold.

ARGUMENT

I. The Trial Court Erred in Granting Summary Judgment to Plaintiffs Because Plaintiffs Lacked Standing in that Plaintiffs Did Not Allege Any Injury the Parking Commission's Existence Caused Them.

The trial court should never have entered summary judgment here because none of the parties requesting summary judgment had standing. “If a party is without standing to bring a particular claim, a court shall dismiss the claim because the court lacks the authority to decide the merits of the claim.” *Weber v. St. Louis Cty.*, 342 S.W.3d 318, 323 (Mo. banc 2011). Therefore, this Court should reverse the judgment below and dismiss Plaintiffs’ claims for lack of standing. *See* Rule 84.14.

No Plaintiff has standing because they neither alleged nor established a cognizable interest in the outcome. To establish standing, a party must have a “legally protectable interest in the litigation so as to be directly and adversely affected by its outcome.” *Mo. State Med. Ass’n*, 256 S.W.3d at 87. “[P]laintiff must show a personal stake in the outcome of the controversy and allege some threatened or actual injury resulting from the putatively illegal action.” *City of Slater v. State*, 494 S.W.3d 580, 586 (Mo. App. 2016). “A party who lacks standing may not seek a declaratory judgment action.” *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 132 (Mo. banc. 2000). The Parking Commission’s existence does not adversely affect any Plaintiff. Indeed, even if the Parking Commission was severed from the State Parking Statutes, none of Plaintiffs’ supposed injuries would be redressed.

Each Plaintiff unsuccessfully attempts to rely on various theories to establish standing. Wilson, Lane, and Boyd claim standing as taxpayers. However, they do not allege any specific facts to establish they even meet this lesser standing burden. Boyd additionally claims his status as an alderman somehow confers standing. But this is not a basis for establishing standing. The City asserts it has a legally protectable interest but fails to elaborate as to what that protectable interest is. These barebones allegations are insufficient and the trial court should have dismissed Plaintiffs’ claims before ever reaching the motions for summary judgment.

A. Wilson and Lane Do Not Have Standing to Challenge the Constitutionality of the State Parking Statutes.

Missouri allows an individual to establish standing as a “taxpayer” under a lenient standard. But Wilson and Lane do not meet even this lesser than normal burden. To establish taxpayer standing, an individual must “demonstrate a direct expenditure of funds through taxation, or an increased levy in taxes, or a pecuniary loss attributable to the challenged transaction of a municipality.” *E. Laborers Dist. Council v. St. Louis Cty.*, 781 S.W.2d 43, 47 (Mo. banc 1989).

“A direct expenditure of funds generated through taxation is a sum paid out, without any intervening agency or step, of money, or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities.” *Manzara v. State*, 343 S.W.3d 656, 660 (Mo. banc 2011). This expenditure, however, cannot be a general operating expenditure. *See Mid-Am. Georgian Gardens, Inc. v. Mo. Health Facilities Review Comm.*, 908 S.W.2d 715 (Mo. App. 1995) (general operating expenditures that would have been incurred regardless of a particular decision do not qualify as “direct expenditures through taxation” that confer taxpayer standing).

Here, Wilson and Lane do not allege *any* expenditure, let alone a “direct expenditure through taxation.” Wilson and Lane make various vague references to “unlawful expenditures,” but this is not enough to confer taxpayer standing. D2:P7(¶16). Because Wilson and Lane provide no description of the “unlawful expenditure,” it is impossible to know if an expenditure has been made, or if that expenditure is something more than a general expenditure. *Id.* It is Plaintiffs’ burden to establish that their “taxes went or will go to public funds that have or will be expended due to the challenged action.” *City of Slater*, 494 S.W.3d at 587 (internal quotations omitted). Wilson and Lane utterly fail to identify any expenditure of their tax dollars resulting from the State Parking Statutes. They must be more specific in tying their interest to a particular expenditure in order to establish taxpayer standing.

Wilson and Lane did allege they have received parking tickets. D2:P3. But that won’t do. In *City of Slater v. State*, one of the plaintiffs challenged the payment of a court

surcharge and attempted to establish taxpayer standing by stating the requirement to pay the surcharge was an injury. The court determined that the plaintiff did not have standing to request declaratory or prospective injunctive relief regarding the surcharge because, the Court stated, “the injury claimed cannot be remedied by the relief he requests.” *Id.* at 590.

Similarly, the mysterious parking tickets relied on by Wilson and Lane cannot confer standing. Wilson and Lane did not point to any specific parking tickets. Without some level of specificity, there can be no relief.

More fundamentally, invalidation of the State Parking Statutes would not redress Wilson and Lane’s supposed injury (receiving the parking tickets). A judgment declaring the State Parking Statutes unconstitutional will not make their parking tickets disappear. Nor would invalidation of those statutes even affect parking tickets in the City of St. Louis. Parking tickets are a creature of City’s municipal code – not state law. Thus, even without the State Parking Statutes, Wilson and Lane will still have to pay their ordinance-imposed parking tickets. They have no injury this Court can address, though they could certainly make their case to the St. Louis City Board of Aldermen or the General Assembly.

B. Boyd’s Status as an Alderman Does Not Confer Standing, Nor Does he Sufficiently Establish Taxpayer Standing.

Like Wilson and Lane, Boyd claimed taxpayer standing. And, like Wilson and Lane, he failed to allege or establish it. For the reasons discussed above, Boyd’s supposed parking tickets do not give him standing to challenge the State Parking Statutes. *See* D9.

Serving as an alderman also does not give him standing. In *Sommer v. City of St. Louis*, an alderman claimed to have standing to challenge the constitutionality of a city ordinance. The Court found “no authority conferring standing to sue on an elected official.” 631 S.W.2d 676, 679 (Mo. App. 1982). The Plaintiff was clearly asking for an advisory opinion, “which is not the function of the courts of this state to provide.” *Id.*

Boyd similarly claims standing by virtue of his position as an alderman. The precedent is clear that without a “judicially protectable interest” Boyd’s serving as an elected official does not automatically confer standing. While Boyd does allege that he is required to serve on the Parking Commission – and the trial court found that he was – that

would be the case even with void State Parking Statutes, and therefore does not grant him standing. D56:P5-6.

Even without the statutes, City ordinances establish a parking commission. A44-46.⁵ The two commissions (statutory and ordinance) have similar responsibilities and duties. Therefore, the reality for individuals sitting on the Parking Commission implemented by the State Parking Statutes (like Boyd) will not change if the State Parking Statutes are invalidated or even if this Court severs the Parking Commission from the State Parking Statutes. Boyd, as the chair of the Streets, Traffic and Refuse Committee of the Board of Alderman is required by City ordinance to sit on the City's parking commission. A44.

The similarities between the State Parking Statutes and relevant City ordinances are striking. *Compare* § 82.485 RSMo (Parking Commission “shall approve parking policy as necessary to control public parking, shall set rates and fees to ensure the successful operation of the parking division, and require a detailed accounting of parking division revenues from any agent or agency, public or private, involved in the collection of parking revenues”) and § 82.487 (Parking Commission shall approve and oversee recommendations by the Treasurer with respect to controlling public parking), *with* St. Louis City Code § 17.62.050 (“Parking Commission shall have authority to install parking meters, institute parking permit programs and special parking zones . . . as necessary to effectively control public parking” and shall approve and oversee actions by the Treasurer with respect to controlling public parking).

The State Parking Statutes do not require individuals on the Parking Commission to do anything not required under City ordinance. *See* A44-46. Therefore, Boyd lacks standing to bring this suit because he is not injured by the existence of the Parking Commission created by the State Parking Statutes.

⁵ Citations in the form of “A” refer to the appendix.

C. The City of St. Louis Does Not Establish Standing for the Purpose of a Declaratory Judgment Action.

Nor does the City have a legally protectable interest in this case because invalidation of the State Parking Statutes will not provide any relief to the City. The activities of the Parking Commission do not cause the City any injury. Nor would the outcome of this case change the fact that a parking commission will continue to operate in the City. The St. Louis City ordinances that relate to their parking commission impose the same duties and responsibilities on city officials as the State Parking Statutes. Regardless of whether the State Parking Statutes are constitutional or not, there will still be a parking commission with similar individuals constituting the commission. The Court's declaration would change nothing for the City and it has no right to a declaration absent an injury.

II. The Trial Court Erred In Granting Summary Judgment Declaring the State Parking Statutes Unconstitutional Because the State Parking Statutes Permissibly Fix the Powers of a County Officer and Pertain to County Matters in that They Prescribe the Duties of the Treasurer (a County office) and the Other Officers are Directed to Perform County Functions.

Even if Wilson, Lane, Boyd, or the City were injured, they cannot climb the steep hill the law has built for them. The State Parking Statutes are presumed valid unless they “clearly contravene a constitutional provision.” *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012). This presumption may not be overcome unless there is no way for the Court to interpret and apply the State Parking Statutes in a constitutional manner. *Id.*

Here, the presumption of validity cannot be overcome. The trial court relied on Article VI, Section 22 of the Constitution: “No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution.” There is no dispute that the City of St. Louis adopted its own charter. But the trial court failed to correctly analyze whether the statutes fix the duties of municipal office.

This Court has long held that this provision does not stop the General Assembly from fixing the powers and duties of county officials and offices. Because the Treasurer and the Parking Commission are creatures of the City-as-county, the General Assembly properly established and regulated the Parking Commission.

A. Article VI, Section 22 Does Not Apply Because the Treasurer is a County Officer.

The trial court found the statutes unconstitutional because, among other reasons, they impose duties on municipal officers. But Article VI, Section 22 is inapplicable because the Treasurer is a county officer and the Parking Commission is a county office. The Constitution prohibits the legislature from “creating or fixing the powers, duties or compensation” of officers in charter cities. Mo. Const. art. VI, § 22. “[B]y its plain language, section 22 is limited to prohibiting the General Assembly from enacting state laws prescribing the individual offices of a charter city and the duties and compensation of

the officers holding those offices.” *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. banc 1996). This prohibition, however, ***affects only municipal officers performing municipal functions***. *See Id.* This Court has said the applicability of Section 22’s prohibition turns solely on the classification of the office or officer. “The key to the applicability of Article 6, s 22 is the distinction between municipal and county offices. This constitutional provision covers only municipal offices . . . for any city.” *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 9 (Mo. banc 1975) (internal quotations omitted).

The Office of the Treasurer of St. Louis is not a municipal office. It is a County office which exists by virtue of state statutes. *See* § 82.520, RSMo. (fixing salary of Treasurer of City of St. Louis). Consistent with the statute, this Court has consistently held that the Treasurer of the City of St. Louis is a county officer. *See State ex inf. McKittrick v. Dwyer*, 124 S.W.2d 1173, 1174-76 (Mo. banc 1938) (holding City Treasurer is county officer, not municipal officer); *see also State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854, 855-56 (Mo. 1943) (invalidating city ordinance fixing salary of City Treasurer, relying on *McKittrick*’s holding that Treasurer is a county officer and not subject to City Charter). Thus, the Treasurer’s office is a county—not a municipal—office and is not subject to the City’s charter. *Nolte*, 172 S.W.2d at 855-56.

Wilson and Lane claimed the Treasurer is a city official. D35; D36. Just as St. Louis is called a City when it is legally a County, the Treasurer may be called the “city treasurer,” but she is a county officer, as this Court has confirmed. This has to do with the dual nature of St. Louis as a city and a county. While St. Louis is titled as a city, constitutionally and statutorily it is treated as both a city and a county. *See* Mo. Const. art. VI, § 31; § 1.080, RSMo. Therefore, St. Louis City has both city and county officers. The Treasurer is one of the county officers regardless of what title is used. The trial court did not specifically address whether the Treasurer is a county or municipal officer when it struck the state statutes. By holding or implying that the General Assembly cannot proscribe the duties of the Treasurer, a county officer, the trial court directly contradicted this Court’s prior precedent.

But the General Assembly’s authority goes beyond the Treasurer herself. The General Assembly may set the powers and duties of other officers in the City of St. Louis when they perform county functions. In *St. Louis City v. Doss*, the constitutionality of statutes creating the Office of City License Collector were at issue. 807 S.W.2d 61 (Mo banc. 1991). Those challenging the statutes claimed they imposed certain duties and restrictions on the Office of License Collector in violation of Article VI, Section 22 because the Office of License Collector was a municipal office. *Id.* The Court rejected the challenge, applying the interpretation of Article VI, Section 22 from *State ex rel. McClellan v. Godfrey*: “The constitutional provision covers only municipal office . . . for any city.” *Id.* at 63. This Court also rejected the challenge because “[t]he constitution contains no prohibition against the legislature assigning a state or county official the responsibility to issue licenses and collect license taxes for a municipality.” *Id.*

So it is here. Like in *Doss*, Wilson, Lane, Boyd, and the City attempt to invalidate statutes that ascribe duties and powers to a county official. The State Parking Statutes should be upheld like the statues at issue in *Doss* because the State Parking Statutes create powers and duties for county offices—the Treasurer and the Parking Commission. Because the Treasurer and the Parking Commission are clearly part of the county government, *Doss* controls and the constitutional prohibition in Article VI, Section 22 is inapplicable.

There can be no doubt that the Treasurer and the Parking Commission member from the Treasurer's Office are county officials. *Doss* provides a test for determining when an official is acting as a county officer. As long as the officer “performs functions which are those identified with a county office, and so long as that office is elected in the state election as are other county offices, it remains a county office and subject to legislative control.” *Id.* Thus, even if this Court had not previously held that the Treasurer is a county officer, the *Doss* test would dictate the same result since the Treasurer carries out similar functions to treasurers of other counties, such as taking in monies and issuing receipts. *See* § 54.102, RSMo. Additionally, the election for Treasurer is in November, during the state election,

rather than April, the St. Louis City municipal election. Therefore, under *Doss*, the Treasurer is a county officer.

The plain reading of the State Parking Statutes demonstrates that the Parking Commission is itself a county office. This Court should look first to the plain and ordinary meaning of words to determine legislative intent before utilizing canons of statutory construction. *Mary S. Reithman Trust v. Dir. of Revenue*, 62 S.W.3d 46, 48 (Mo. banc 2001) (“Following the plain and ordinary meaning of a statute is the primary way this court ascertains the intent of the legislature in adopting a statute and gives effect to it.”). “When examining statutory language, the plain and ordinary meaning of the specific words must be followed.” *Id.*

Here, the words of the statute are clear. It names the Treasurer the chairperson of the Parking Commission. A chairperson is the person in charge. *See Webster’s II New College Dictionary* (defining chairperson as “A person who presides over an assembly, meeting, *committee*, academic department or board.” (emphasis added)). Even if the entire Parking Commission must approve certain activities, it does not diminish the power of the chairperson to preside over the Parking Commission nor does it indicate that the chairperson does not have additional authority as the head of the Parking Commission. The plain language indicates the legislature intended the Parking Commission be under the purview of the Treasurer. Because a county officer (the Treasurer) chairs the Parking Commission, the Parking Commission is itself a county office.

B. The General Assembly May Direct Municipal Officers to Perform County Functions.

Admittedly, the statutes at issue address more than just the County Treasurer and officials within that office. They require others outside of the Treasurer’s office to participate in the Parking Commission. Municipal officers, however, can be required to participate in activities that are a purely county function. In *Godfrey*, plaintiffs challenged the statutory requirement that the Mayor of St. Louis call an election for county medical examiner. The Court ruled that this did not violate Article VI, Section 22 because this act involved St. Louis City as a county, not a city. “The activity of the mayor, called for by

the Act, creates no constitutional violation because such activity does not involve the City of St. Louis in its capacity as a city but as a county. In that capacity the mayor is subject to the general laws of the state.” *Godfrey*, 519 S.W.2d at 9.

Here, the individuals appointed to the Parking Commission serve on a county commission and oversee a county function. The General Assembly deemed parking to be a county function by placing a county official, the Treasurer, in charge of it. Thus, as in *Godfrey*, individuals serving on the Parking Commission do not perform additional municipal duties; rather, they perform a county function incident to their municipal duties. Accordingly, these individuals are subject to the general laws of the state—the State Parking Statutes.

In contrast to *Godfrey*, the analysis in *State ex rel. Sprague v. City of St. Joseph* is not applicable because the City of St. Joseph does not have dual status as a city and county, and has only municipal officers performing purely municipal functions. In *Sprague*, this Court invalidated the application of a statute to charter cities like St. Joseph that required the establishment of a Board of Plumbing Examiners. In reaching its decision, the Court expressly contrasted the City of St. Louis to St. Joseph, noting: “[T]he only offices St. Joseph can have are municipal offices, it being a constitutional charter city.” *State ex rel. Sprague v. City of St. Joseph*, 549 S.W.2d 873, 877 (Mo. banc 1977). St. Louis City, by contrast, is both a city and a county, with both city and county officers. As such, *Sprague*’s reasoning is inapplicable.

The matter at hand is also distinguishable from *State ex rel. Burke v. Cervantes* because that case clearly dealt with a city function—firefighters. 423 S.W.2d 791 (Mo. banc 1968). In *Burke*, the challenged statute directed the mayor of St. Louis to appoint an arbitration board to resolve disputes between the mayor and city firefighters. In *Cervantes*, the mayor was a city officer dealing with a municipal function. In *Godfrey*, this Court similarly distinguished *Cervantes*: “[*Cervantes*], relied on heavily by respondent, is clearly distinguishable in that it dealt with city policemen and firemen in connection with city affairs.” *Godfrey*, 519 S.W.2d at 9. Here, by contrast, the State Parking Statutes do not

require a municipal officer to establish a municipal board or commission. Rather, they appoint a county officer as the head of a county office to be in charge of a county function.

St. Louis City-as-county is no doubt unique. This Court's prior jurisprudence has properly acknowledged that the entity must perform dual functions. The Parking Commission is a county office and the General Assembly has the authority to impose requirements on the Commission even if – as did the law in *Godfrey* – those requirements impact officeholders who also have city-as-city duties.

III. The Trial Court Erred in Declaring the Entirety of the State Parking Statutes Unconstitutional Rather Than Severing the Provisions Arguably Applying to Municipal Officials Because the Trial Court Failed to Preserve as Much of the Statute as Possible in that the Portions of the Statute Governing the Operation of the Parking Commission and the Treasurer’s Involvement Can Stand without the Other Officials on the Parking Commission.

Even if the trial court got it right as regards standing and the substantive constitutional issues, its severance analysis was wrong. The trial court’s refusal to sever any potentially unconstitutional provisions in the State Parking Statutes is against the weight of judicial precedent. Courts must presume “the legislature intended to give effect to the other parts of the statute that are not invalidated.” *Dodson v. Ferrara*, 491 S.W.3d 542, 558 (Mo. banc 2016). A statute is presumed valid and will not be held unconstitutional unless it “clearly contravene[s] a constitutional provision.” *Legends Bank*, 361 S.W.3d at 386.

If a court does find a portion of the statute invalid, it should sever the unconstitutional portion unless it finds the valid provision cannot stand on its own. *See* § 1.140, RSMo. Courts have developed a test to implement this directive. “The test of the right to uphold a law, some portions of which may be invalid, is whether or not in so doing, after separating that which is invalid, a law in all respects complete and susceptible of constitutional enforcement is left, which the legislature would have enacted if it had known that the excised portions were invalid.” *Akin*, 934 S.W.2d at 300 (internal quotations omitted). Here, if the references to the chairperson of the aldermanic traffic committee, the director of streets, and the comptroller are unconstitutional, they may be stricken from subsection 4 of Section 82.485 and the State Parking Statutes are still capable of constitutional enforcement.

In addition to specifying the members of the Parking Commission, Section 82.485 provides the responsibilities of the supervisor of parking meters, including oversight of the parking meter fund. These duties are separate and apart from the members of the Parking Commission. The Treasurer is the only person with these duties and does not rely on the

other officials on the Parking Commission – whom the trial court found were municipal officers – to carry out these duties. Section 82.485 also provides the membership for the Parking Commission, which includes the comptroller, director of streets, and chair of the aldermanic traffic committee. But even if the Court finds that those latter officials may not be assigned duties as part of the county function, removing these individuals from the Parking Commission leaves a committee of two individuals that can still carry out any required statutory duties. Doing so would preserve the General Assembly’s intent to have the Treasurer oversee parking operations in the City of St. Louis. The trial court had no basis to strike the statute in its entirety when the offensive portions – having to do with Commission membership – could have been extracted from the scheme.

Courts have long held that unconstitutional component parts should be severed in order to preserve the constitutional portion of the statute. *See State ex rel. Enright v. Connett*, 475 S.W.2d 78 (Mo. banc 1972). In *Enright*, the United States Supreme Court invalidated a provision of a statute setting up community college districts and elections for trustees. Upon remand, this Court severed the unconstitutional provision and left the remaining provisions intact. “We hold that after eliminating the alternative system for electing trustees from component districts under certain circumstances, enough remains which is good to clearly show the legislative intent, and to furnish sufficient details of a working plan by which that intention may be made effectual.” 475 S.W.2d at 82 (internal quotations omitted).

Here, Section 82.485 establishes the “treasurer of any city not within a county” as the supervisor of parking meters. This section outlines the duties of the Treasurer when acting as the supervisor of parking meters, including enforcing “any statute or ordinances now or hereafter established pertaining to the parking of motor vehicles” and making “all disbursements on any parking contracts, including employment, consulting, legal services, capital improvement, and purchase of equipment and real property.” As in *Enright*, there is enough left after removing the “municipal” officials from the State Parking Statutes to show the legislative intent and “furnish sufficient details of a working plan.” Removing the “municipal” officers from the Parking Commission will still leave a complete, enforceable

statute. The legislature intended to task the Treasurer with the duties of “supervisor of parking meters.” These duties are not dependent on a five-person Parking Commission as provided in the statute, nor do they even rely on the existence of the Parking Commission at all.

The trial court committed error of even greater magnitude when it struck Section 82.487 because that section may stand alone even if some officials are removed from the Parking Commission. Section 82.487 has nothing to do with the membership of the Commission, it simply describes the duties and responsibilities of the Parking Commission. None of these responsibilities or duties (such as “budget modifications for the parking fund” and the “acquisition, development, regulation, and operation of such parking facilities or spaces owned . . . leased or managed by the parking division”) rely on a five-person Parking Commission. § 82.487, RSMo. A Parking Commission constituted of the supervisor of parking meters and the director of parking operations (both of whom are drawn from the office of the County Treasurer) can still carry out all of the prescribed duties.

Plaintiffs attacked only the constitutionality of a small piece of the State Parking Statutes. While they argued – and the trial court (incorrectly) concluded – that municipal officials are unconstitutionally required to sit on the Parking Commission, they make no mention of the majority of the statutes granting the Treasurer the authority to act as supervisor of parking meters and oversee the parking meter fund. Removal of the city officials from the State Parking Statutes would not affect the overall scheme implemented to regulate parking and parking revenues in the City of St. Louis. Plaintiffs’ arguments all but concede that the Treasurer should continue to act in her capacity as supervisor of parking meters and control the budget.

IV. The Trial Court Erred in Declaring the Entirety of the State Parking Statutes Unconstitutional Rather Than Severing the Parking Commission from the Statutes Because the Trial Court Failed to Preserve as Much of the Statute as Possible in that the Statutes Governing the Revenues and Budget of the Parking System in St. Louis Can Stand Without Having a Parking Commission at All.

Finally, even if it is not possible to sever the city officers from the Parking Commission (it is), it was nonetheless error for the trial court to strike the remainder of the statutes rather than simply eliminating the Parking Commission. Even if there were no Parking Commission, it is clear that the General Assembly intended to regulate parking revenues in the City of St. Louis and to have the Treasurer involved. The trial court should have severed the unconstitutional portion of the statutes (the Parking Commission) and left the remaining provisions. Without the Parking Commission, the legislative intent of the State Parking Statutes—namely, ensuring parking revenues and the parking budget are under the purview of the Treasurer—remains intact and capable of enforcement. *See Dodson*, 491 S.W.3d at 558; *see also* § 1.140, RSMo.

The State Parking Statutes are capable of constitutional enforcement without the Parking Commission. Section 82.485 assigns certain duties and responsibilities to the Treasurer as the supervisor of parking meters, including establishing a parking meter fund. *See* § 82.485, RSMo. The Treasurer can establish and maintain a parking meter fund regardless of the existence of a Parking Commission. The Treasurer as supervisor of parking meters is also required to submit an operating budget reviewed by the Parking Commission prior to submission to the St. Louis City Board of Alderman. The intent behind this requirement was to ensure a second level of approval of the operating budget. If the Treasurer simply submits a budget for approval to the Board of Alderman, that second level of approval remains. It does not matter whether the entire Parking Commission creates the budget or just the supervisor of parking meters. The Treasurer can write the budget, and seek approval from the St. Louis City Board of Alderman. The intent of the

legislature, that the Treasurer creates the budget and oversees its implementation, remains even without a Parking Commission.

The same is true of Section 82.487. The Treasurer as supervisor of parking meters has certain responsibilities under this provision. For instance, the supervisor of parking meters is required to oversee parking facilities or spaces owned, leased, or managed by the parking division. §82.487, RSMo. Although the Parking Commission provides additional oversight of the Treasurer in the performance of these duties, the Treasurer alone could still carry out this statutory responsibility. And more important, the intent of the legislature to charge the Treasurer with these duties remains.

The underlying intent behind the State Parking Statutes is the legislature's desire that power over parking revenues and the parking budget not rest solely with the City's municipal government. This intent is evident from the legislature vesting this power in the Treasurer, a county officer rather than leaving it to reside with the municipal government. The legislature is within its constitutional charge to do this because the legislature may utilize its police powers to limit the powers of charter cities.

Because a charter city cannot exercise authority in contravention to state statute, the State may utilize its police powers to limit the power of charter cities. *See Petition of City of St. Louis*, 266 S.W.2d 753 (Mo. 1954). "The City of St. Louis is governed by its special charter. That Charter, however, does not restrict the State Legislature under its police powers in matters pertaining to the general public interest." *Id.* at 755. Police powers are appropriately "lodged with the legislative branch," which has the prerogative to "determine . . . what measures are appropriate . . . for the protection of the public morals, the public health, or the public safety." *State ex rel. Kansas City v. Pub. Serv. Comm'n*, 524 S.W.2d 855, 862 (Mo. banc 1975).

Here, the legislature utilized its police powers to enact legislation "pertaining to the general public interest" by establishing a scheme to regulate parking and parking funds. It determined that parking in the state's largest City-as-county was a matter of public safety and necessitated the legislature stepping in to provide a basic framework for oversight. Parking in the City of St. Louis is a matter pertaining to the general public interest because

it affects the ability of the public at large to safely work in, visit, and enjoy the amenities of the City.

In *Goff*, the Court determined a statute establishing requirements for zoning protest petitions did not violate Article VI, Section 22. The Court held that the General Assembly while not being able to direct what officers of charter cities must do, can “limit the powers a charter city may exercise through its officers.” 918 S.W.2d at 789. “The constitution does not prohibit the legislature from establishing procedures by which charter cities may make substantive determinations regarding the use of private property through zoning regulation.” *Id.*

Here, the General Assembly, through the Treasurer and Parking Commission limited the power of St. Louis City vis-à-vis parking and parking revenues. The General Assembly, like with the zoning protest petition requirement in *Goff*, established the protocol for distributing St. Louis City’s parking revenues. Much like zoning requirements, parking is an issue that affects the general welfare. The ability to conduct business, enjoy St. Louis City and public safety all hinge, in some ways, on available and orderly parking and parking enforcement. If Respondents want “relief” from having to follow a valid, enforceable state statute, they can lobby the General Assembly to make a change to the State Parking Statutes. Otherwise, this Court should sever the Parking Commission and allow the remaining portions of the valid State Parking Statutes to be enforced for the public good.

The legislature, since the enactment of the original State Parking Statute in 1951 (section 82.487 was not enacted until 1994), has entrusted the control of the parking revenues and initial budget to the Treasurer. This has not changed through multiple iterations of the State Parking statutes. These statutes did not even include a Parking Commission, as currently constituted. *See* House Bill No. 1716, Gen. Assem., 2nd Reg. Sess. (1990). Rather, 82.485 enabled a "parking meter commission" without defined membership. This statute, however, always included the supervisor of parking meter's duty to submit a budget for approval to the Board of Alderman. In other words, what remained

constant, is the intent to ensure that the City cannot utilize power over parking revenues unjustly and unfairly.

CONCLUSION

The State Parking Statutes are constitutional under Article VI, Section 22. The General Assembly has been clear in its intent to regulate Parking in the City of St. Louis and has done so for decades by placing parking under the County Office of Treasurer and requiring other officials to participate in that county function. Precedent requires this Court to acknowledge that authority. But even if the General Assembly went too far here, so did the trial court when it conducted an incorrect severability analysis. Therefore, Appellant respectfully requests this Court reverse the decision of the Trial Court. However, if this Court finds that some portions of the State Parking Statutes are unconstitutional, Appellant respectfully requests this Court sever only those provisions necessary to cure the invalidity and enter the Judgment that the trial court should have.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned counsel certifies that a copy of this document was served on counsel of record through the Court's electronic notice system on February 20, 2019 and by United States Postal Service to:

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This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 8,709, excluding the cover, signature block, appendix, and this certificate. The font is Times New Roman 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

/s/ Charles W. Hatfield