

SC97544

IN THE SUPREME COURT OF MISSOURI

TISHAURA O. JONES, et al., Defendants/Appellees,

VS.

JAMES J. WILSON, et al., Plaintiffs/Respondents.

Appeal from the Circuit Court of the City of St. Louis, Missouri

The Honorable Michael F. Stelzer, Circuit Judge

AMENDED BRIEF OF RESPONDENT CITY OF ST. LOUIS

Respectfully Submitted,

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JURISDICTIONAL STATEMENT

The jurisdictional statement provided in the brief of Appellant Jones is accurate, except that the correct citation for the Court's exclusive jurisdiction is Mo.Const. Art. V, § 3.

STATEMENT OF FACTS

Except as noted herein, Respondent City of St. Louis ("City") accepts Appellants' statement of facts, but Respondent believes the statements are incomplete and therefore submits the following pursuant to Rule 84.04(f) of the Missouri Supreme Court Rules.

These consolidated appeals stem from two summary judgment orders declaring Missouri Revised Statutes §§ 82.485 and 82.487 ("Parking Statutes") unconstitutional and unenforceable. By their terms, the Parking Statutes apply only to "any city not within a county," which means that said statutes apply only to the City of St. Louis. The first summary judgment motion was asserted by Defendant City of St. Louis in its cross-claim against Defendant State of Missouri. D14-18. The second was asserted by the plaintiffs (Alderman Boyd, James Wilson and Charles Lane) against all defendants. D22-36.

In addition to the City and the State of Missouri, defendants were City Comptroller Darlene Green, Jamie Wilson, City director of streets, City Treasurer Tishaura Jones and Carl Edwards, director of parking operations.¹ D2, pp. 2-3; D9. Jones

¹ Alderman Freeman Bosley was named as a defendant in plaintiffs' original petition because at that time he was serving as chairman of the Streets, Traffic and Refuse Committee of the City's Board of Aldermen. Alderman Boyd succeeded Bosley as

and Edwards were referenced in the trial court as the “Treasurer Defendants.” D21, p. 4; State App. A-4.

Both summary judgment motions sought declaratory judgment pursuant to § 527.010 R.S.Mo., seeking a declaration that the Parking Statutes are unconstitutional and unenforceable because they exceed constitutional limitations established in Article VI, Section 22 of the Missouri Constitution. Those “home rule” provisions prohibit the general assembly from “creating or fixing the powers, duties or compensation of any municipal office or employment . . .” for any charter city.

The City requests that the Court take judicial notice of its Charter. Const. Art. IX, Sec. 21; *Kirby v. Nolte*, 164 S.W.2d 1, 3 (Mo. 1941).

The summary judgment record differed with respect to the two summary judgment motions. D15-17; D22-36. The trial court granted both motions. D21, 56.

City’s Summary Judgment Motion

The State of Missouri, joined by Defendant Jones, filed a legal memorandum in opposition to the City's Motion. D19. But they did not deny or otherwise respond to the statement of uncontroverted facts submitted by the City in support of its motion for summary judgment. D21, p. 2; State App, A-2. No additional statements of fact and no exhibits were offered in opposition to the City's summary judgment motion. The State of Missouri did not dispute the fact that its failure to respond to the uncontroverted facts

committee chairman and subsequently intervened as a plaintiff. Bosley was not formally dismissed as a defendant.

proffered by the City constituted an admission of the truth of those facts. Mo.R.Civ.P. 74.04(c)(2).

The City sought summary judgment declaring the Parking Statutes unconstitutional and unenforceable because the statutes (1) require officials of a charter city (the City's comptroller, an alderman and the City's director of streets) to serve on a State-created Parking Commission in violation of Article VI, Section 22 of the Missouri Constitution; and (2) create a municipal parking commission and municipal position of "supervisor of parking meters" in violation of the same constitutional limitations. The trial court granted the City's Motion based on the first contention, but did not make findings on the second. D21, p. 17.

In the trial court, both the State of Missouri and Treasurer Jones conceded that Article VI, Section 22 prohibits the general assembly from imposing duties additional duties on City officials: "The State Constitution does indeed prohibit the General Assembly from enacting statutes that impose duties upon municipal officers of a charter city such as the City of St. Louis." D19, p. 3.

The Parking Statutes create a five-person Parking Commission to collect and spend City of St. Louis parking revenue. The Parking Statutes require that three charter City officials - the City's comptroller (Green), director of streets (Jamie Wilson) and the alderman who chairs the Streets, Traffic and Refuse Committee of the Board of Aldermen (Boyd) – to serve on the Parking Commission. § 82.485.4 R.S.Mo. The Parking Statutes require the Parking Commission members to perform several duties and functions, including: (1) approve parking policy as necessary to control public parking;

(2) set rates and fees to ensure the successful operation of the parking division; and (3) produce a detailed accounting of parking division revenues. § 82.485.4 R.S.Mo. The Parking Commission members are also required to approve guidelines governing the adjudication, disposition and collection of any parking violations issued by the City; approve budget modifications of the parking fund; and approve the acquisition, development, regulation and operation of parking facilities or spaces. § 82.487.1 R.S.Mo.

The Parking Statutes create an office known as the “supervisor of parking meters,” tasked with duties described in the statutes. §§ 82.485.1, 82.487.2, R.S.Mo. That position is assigned to the City’s Treasurer (Appellant Jones). § 82.487.2 R.S.Mo. The supervisor of parking meters “shall be subject to the oversight . . . by the parking commission.” *Id.* The supervisor of parking meters serves as chairperson of the Parking Commission. § 82.485.4 R.S.Mo.

Intervenor-Plaintiff Jeffrey Boyd is an alderman of the City of St. Louis and the chairperson of the aldermanic Streets, Traffic and Refuse Committee. D15, 17. Boyd’s powers and duties as alderman are established in the City’s charter. *Id.* Because he chairs the aldermanic Streets, Traffic and Refuse Committee, Boyd is required to assume additional powers and to perform additional duties as a result of the requirement that he must serve on the Parking Commission referenced in the Missouri statutes 82.485.4 and 82.487. D15, 17.

City Director of Streets Jamie Wilson’s powers, duties and responsibilities as Director of Streets are established in the City Charter of the City of St. Louis. D17, 16.

Because he is the City's director of streets, Wilson is required to assume additional powers and to perform additional duties as a result of the requirement that he must serve on the Parking Commission referenced in Missouri statutes 82.485.4 and 82.487. D15, 16.

Defendant Darlene Green, the City comptroller, is the City's chief fiscal officer. City Charter, Art. II, § 2; Art. XV, § 2. By their terms, the Parking Statutes require that she serve on the Parking Commission, and to assume additional powers and to perform additional duties described in section 82.487. City Charter, Art. II, § 2; Art. XV, § 2. D. 15.

Plaintiffs Charles Lane and James Wilson are City taxpayers who received and paid parking tickets in the City.² D2, p. 3.

The Argument section of the State of Missouri's brief to this Court contains fact assertions regarding the City Treasurer's operations that are inaccurate and which are not supported in the record. Without record attribution, the State represents that "the salaries of the employees of the Treasurer are paid for, not from the City tax revenues, but, rather from the money that the Treasurer's Office generates from parking meters, parking garages, and parking tickets." State's Brief, p. 8. The statement is false, and no basis exists in the record for those assertions. City general revenue and other non-parking revenue sources fund the Treasurer's Office. The City's departmental budgets and revenue sources for all of the City's offices, including the Treasurer's Office, are

² Plaintiff James Wilson is not related to Defendant Jamie Wilson, the City's director of streets.

available on line.³ A separate budget for the parking division must be recommended by the Parking Commission and approved by the City’s Board of Aldermen. § 84.485.4 R.S.Mo. The Treasurer's Office has a separate budget, staff, and functions which are funded by other City revenues.

Finally, the State of Missouri mischaracterizes the provisions of § 82.485.4 R.S.Mo., representing that the statute “expressly” states that the Parking Commission “shall be ‘supervised’ by the City Treasurer.” State’s Brief, p. 8. The opposite is true, as found by the trial court. D21, p. 17. The supervisor of parking meters is subject to the oversight by the parking commission. § 82.487.2 R.S.Mo. The Parking Commission’s oversight responsibilities cover all responsibilities of the supervisor of parking meters. *Id.* The Parking Commission also must authorize funding for the parking division. *Id.*

³ The Treasurer’s operating budget is found at www.stlouis-mo.gov/government/departments/budget/documents/fy19-annual-operating-plan.cfm. It is within this Court's authority to consult this type of public record. *City of St. Louis v. State of Missouri*, 382 S.W.3d 905, 915, n. 10 (Mo. 2012), citing *State ex rel. SLAH, LLC v. City of Woodson Terrace*, 378 S.W.3d 357, *1 at n.2 (Mo. banc 2012); *State ex rel. Mo. Pub. Defender Com'n v. Pratte*, 298 S.W.3d 870, 873 n.1 (Mo. banc 2009); *State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 399 n.2 (Mo. banc 2003).

Plaintiffs' Summary Judgment Motion

In their separate summary judgment motion, which was filed against all defendants including the City, plaintiffs incorporated the record established in the City's previous, above-referenced motion, supplemented with 10 additional exhibits. For purposes of the plaintiffs' summary judgment motion, all parties agreed to two stipulated facts and 12 stipulated exhibits, which included all of the exhibits filed in support of the two summary judgment motions. D55. The stipulated facts were that (i) all parties consented to allow the trial court to take judicial notice of the Charter of the City of St. Louis; and (ii) the Parking Commission and Parking Division expends public funds. D55.

The stipulated exhibits incorporated the City's summary judgment exhibits (numbered 1 and 2). D16-17. Exhibits 3 through 6 contain City Code provisions regarding the Parking Commission, including amendments contained in ordinances that are not yet reflected in the City Code. D25-28. Exhibits 8 through 12 are bond transaction documents executed by Treasurer Jones (or her predecessor), specifying that she was acting as a charter city official in making bond commitments on behalf of the City of St. Louis. D 30-34. Defendant Jones attests that she is acting in her capacity as a charter city official in her role as the City's supervisor of parking meters. D30, pp. 1, S-1; D32, p.12; D33, pp. 1, S-1; D34, p. A-1. Exhibit 7 is the ordinance adopted by the City's Board of Aldermen authorizing the execution of various bond documents by the Treasurer in her capacity as supervisor of parking meters. D29.

Defendant Jones executed a Certificate Concerning Trust Indenture in 2015 on behalf of the City of St. Louis in her capacity as supervisor of parking meters. D34, p. 1. The Certificate attested that the attached, original Trust Indenture executed by her predecessor remained in full force and effect. *Id.* The Trust Indenture specified that the City of St. Louis, "a constitutional charter city . . . acting through the Treasurer of the City of St. Louis in his capacity as Supervisor of Parking Meters," and refers to the parking division as a division of the City of St. Louis. D34, p. 7 (Recital 2). The indenture was also signed by the mayor, countersigned by the comptroller, approved as to form by the city counselor, and deposited with the City register. D34, p. 103 (identified in the document as p. S-1). Supplemental Trust Indenture No. 4 was executed in the same manner. D33, pp. 1, 19 (identified in the document as p. S-1). This was also true for a Tax Compliance Agreement (D30, pp. 1, 24), Continuing Disclosure Agreement (D31, p. 14), and Bond Purchase Contract (D32, p. 13), all executed in 2015. All were executed on behalf of the City by the Treasurer acting in her capacity of supervisor of parking meters.

With respect to the trial court's permanent injunction order, the trial court noted that it was undisputed that the Treasurer/supervisor of parking meters intended to continue operating pursuant to the Parking Statutes despite the previous summary judgment orders declaring the Parking Statutes invalid. D57, p. 7. The trial court granted plaintiffs' motion for summary judgment on its declaratory judgment claim and enjoined defendants operating pursuant to the terms of the Parking Statutes. D56, 57.

STANDARD ON REVIEW

Summary judgment shall be entered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Mo.R.Civ.P.* 74.04(c)(3); *Adams Ford Belton v. Missouri Motor Vehicle Comm'n*, 946 S.W.2d 199, 202 (Mo. 1997). There were no disputed issues of fact here. Review of the grant of summary judgment and a challenge to the constitutional validity of a state statute are each subject to *de novo* review. *ITT Commercial Finance v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993)(summary judgment). *Hill v. Boyer*, 480 S.W.3d 311, 313 (Mo. banc 2016)(declaratory judgment). A statute is presumed constitutional and will not be held unconstitutional unless it clearly contravenes a constitutional provision. *Cooperative Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571, 578 (Mo. 2017).

ARGUMENT

I. IN RESPONSE TO THE STATE'S POINT I AND JONES' POINT II, THE UNAMBIGUOUS TERMS OF THE PARKING STATUTES REQUIRE THREE CHARTER CITY OFFICIALS TO ASSUME ADDITIONAL POWERS AND DUTIES IN VIOLATION OF ARTICLE VI, SECTION 22 OF THE MISSOURI CONSTITUTION.

The plain, undisputed fact is that, in adopting the Parking Statutes legislation, the general assembly enacted a law creating and fixing new powers and duties for three charter city officials. Article VI, Section 22 provides:

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, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents.

Mo. Const., Art. VI, Section 22.

The Parking Statutes direct City parking revenues to a State-created Parking Commission and require the City's chief fiscal officer, its director of Streets and an alderman to serve on the Commission. These State-imposed duties are in addition to their respective municipal duties as comptroller, director of streets and alderman of a charter city. D15, 16, 17. The State of Missouri does not dispute any of these facts. The Parking Statutes thus clearly and unambiguously contravene the provisions of Article VI, Section 22.

The Article VI, Section 22 language is clear and "straightforward." *City of St. Louis v. State of Missouri*, 382 S.W.3d 905, 910 (Mo. 2012). Where the language is unambiguous and clear, courts should give effect to the language as written and not engage in statutory construction. *Theerman v. Frontenac Bank*, 308 S.W.3d 756, 764 (Mo.App. 2010). Where the language of a constitutional provision is plain and unambiguous, there is no room for reaching outside the provision to find other definitions. *Rathjen v. Reorganized School District R-II*, 284 S.W.2d 516, 523 (Mo. banc 1955).

The straightforward meaning of Article VI, Section 22 is clear and unambiguous in stating that statutes purporting to impose additional duties upon charter city officials are unconstitutional and void. *State ex rel. Sprague v. St. Joseph*, 549 S.W.2d 873, 879 (Mo. 1977). "[T]he General Assembly may not tell the officers of a charter city what they must do." *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. 1996).

Even if statutory construction is appropriate, the first rule of construction of a constitutional provision is to give effect to its intent and purpose. *Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo banc 1983), *citing City of Willow Springs v. Missouri State Librarian*, 596 S.W.2d 441, 445 (Mo. banc 1980); *State at the Information of Danforth v. Cason*, 507 S.W.2d 405, 408 (Mo. banc 1973). Due regard is given to the primary objectives of the provision in issue as viewed in harmony with all related provisions, considered as a whole. *State at the Information of Martin v. City of Independence*, 518 S.W.2d 63, 65 (Mo. 1974).

The Missouri constitution contains multiple provisions granting home rule authority to Missouri's charter cities and counties. Mo. Const. Art. VI, §§ 19-22. The intent of these constitutional provisions was to grant "broad authority to tailor a form of government that its citizens believe will best serve their interests." *State ex rel. St. Louis Fire Fighters Ass'n Local No. 73, AFL-CIO v. Stemmler*, 479 S.W.2d 456, 458-59 (Mo. banc 1972). Rules applicable to constitutional construction are the same as those applied to statutory construction, except that constitutional provisions are given a broader construction due to their more permanent character. *State at the Information of Martin v. City of Independence*, 518 S.W.2d at 65. Giving Article VI, Section 22 a broad construction and taking the intent of the constitution's home rule provisions into account, the Parking Statutes conflict with the constitution.

The Parking Statutes exceed the Article VI, Section 22 limitation on the State's power and are therefore invalid as a matter of law.

The State of Missouri (and Appellant Jones) seek to evade the constitutional constraints by asserting (i) that because the Treasurer is a county official, it necessarily follows that the "supervisor of parking meters" is a county official and the Parking Commission is a county entity; and (ii) the City's comptroller, director of streets and an alderman were effectively converted from charter city officials to "county" officials by virtue of the enactment of the Parking Statutes.

- (i) The Treasurer's status as a county official is irrelevant in determining whether other charter city officials were assigned additional powers and duties by the Parking Statutes.**

Throughout its Point I, the State of Missouri attempts to misdirect the Court's attention to whether Article VI, Section 22 applies to the City Treasurer as a so-called "county" official. State's Brief (Points I-A and 1-D), pp. 7-10, 13-21. The City did not base its summary judgment motion upon duties assigned to the Treasurer. Rather, the City based its Motion on the fact that the Parking Statutes undeniably require three other charter city officials – the City's comptroller, director of streets and a specific alderman – to serve on the State-created Parking Commission. There is no dispute that the Parking Statutes create additional duties and powers for each of those three officials. D15-17. That fact is also apparent on the face of the Parking Statutes.

Comptroller Green is an elected official and the City's chief fiscal officer. City Charter, Art. II, § 2; Art. XV, § 2. Alderman Boyd is also an elected official. City Charter, Art. II, § 3. Director of Streets Wilson is a mayoral appointee (City Charter, Art. VIII, § 1) and oversees the repair, cleaning and maintenance of all City roadways and bridges. City Charter, Art. XIII, § 13. The State did not dispute the fact that the powers and duties of Alderman Boyd and Director Wilson are governed by the City Charter and the City Code. D16 (Wilson); D17 (Boyd).

The State's assertion that Treasurer Jones is a county official is meaningless in this context. Article VI, Section 22 does not contain an exception for legislation that creates or fixes the powers or duties of charter city officials if similar burdens are also imposed

on a different, county official. "The home rule law is quite straightforward. It gives charter cities authority to set the powers, duties and compensation of their employees." *City of St. Louis v. State of Missouri*, 382 S.W.3d at 910. And the essence of Article VI, Section 22 of the Missouri Constitution is that "the General Assembly may not tell the officers of a charter city what they must do." *City of Springfield v. Goff*, 918 S.W.2d at 789.

Moreover, the State over-simplifies the source of the Treasurer's authority, which depends upon what role she is performing. As the State notes, the City Treasurer has duties and responsibilities stemming from state statutes. But the constitution provides that the City's charter may also provide for the exercise of powers and duties of county officers. Mo. Const., Art. VI, § 31. The City has, in fact, adopted charter provisions pertaining to the Treasurer. *See e.g.*, City Charter, Article XV, Section 24. The Charter makes the Treasurer a member of the City's Department of Finance. Charter Art. XV, Section 1. The City's comptroller is the head of the department of finance and exercises "a general supervision over its divisions," including the Treasurer. Charter Art. XV, Section 2. State law also requires the Treasurer to perform such duties as required by City ordinances. § 82.515 R.S.Mo. Therefore, the Treasurer derives authority from state statutes, the City Charter or City ordinances, depending on the topic. State statutes are not the sole source of the Treasurer's authority, as the State seems to suggest.

The State argues that because the Parking Commission was created by statute, and because the "supervisor of parking meters" duties were assigned to a county official (the Treasurer), the Parking Commission must therefore be considered a county entity and the

Parking Commission members must be county officials. Therefore, according to the State, the Article VI, Section 22 home rule provisions are not applicable. This argument is contrived, contradicted by the undisputed facts, and contrary to the terms of the Parking Statutes.

First, even if the Treasurer is generally considered a county official, it does not necessarily follow that the position of “supervisor of parking meters” is also a county official. In fact, when the Treasurer performs her responsibilities as “supervisor of parking meters,” she describes herself as charter city official, not a county official. The determination of whether an office is classified as a county or municipal office depends on the functions it performs. *State ex rel. McKittrick v. Dwyer*, 343 Mo. 973 (Mo. banc 1938). This Court has noted that “the treasurer of the city performs official duties relating to the city as a political subdivision and also performs official duties relating to the city in its corporate capacity.” *Id.* at 979. Thus, even if the Treasurer is generally a county office, and even if the Treasurer serves on the Parking Commission (it is actually the “supervisor of parking meters” who is assigned that role), it would not resolve whether her duties as supervisor of parking meters are duties “relating to the city as a political subdivision [or are] official duties relating to the city in its corporate capacity.” *Id.*

For example, in a supplemental trust indenture executed in connection with the issuance of \$6.4 million in parking revenue bonds (D33), the Treasurer signed on behalf

of the City of St. Louis in her capacity as supervisor of parking meters. D33, p. 19.⁴ The City is party to the trust indenture not as a county, but as a “constitutional charter city.” D33, p. 4. The indenture was also signed by the City’s mayor and approved as to form by the city counselor. D33, p. 19. The comptroller’s countersignature and city counselor’s approval as to form are unique City Charter requirements for City contracts. City Charter, Art. X, Section 2 (city counselor), Art. XXV, Section 9 (comptroller). Appellant Jones and the other City officials all signed under the heading “The City of St. Louis, acting through the Supervisor of Parking Meters.” D33, p. 19. The same bond issue was authorized by ordinance approved by the City’s Board of Aldermen. D29; D33, p. 4. The ordinance expressly stated that the City was acting through the Treasurer in her capacity as supervisor of parking meters. D29, p. 1. The City was the issuer of the bonds (D29, p. 3), and the ordinance authorized City officials to execute the various bond documents. D29, pp. 4-6. The party obligated to pay principal and interest on the bonds is the “City of St. Louis, a constitutional charter city.” D33, p. 22 (labeled p. A-1 in the document).

While the City recognizes that the Court’s constitutional analysis is not governed by the content of City bond documents or ordinances, the fact remains that the Treasurer, in her capacity as supervisor of parking meters, has acted on behalf of the City and

⁴ The bond documents were not part of the record for the City’s summary judgment Motion directed against the State of Missouri. Plaintiffs included the documents as of the record for their summary judgment motion. D8-12.

entered financial obligations on behalf of the City as a charter city and not as a county official.⁵

Second, the terms of the Parking Statutes are inconsistent with the State's argument. Unlike the statutes at issue in *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 9 (Mo. 1975), which expressly applied to counties, none of the terms in the Parking Statutes indicate that lawmakers intended the supervisor of parking meters to be a county official. The statutes make multiple references to the fact that the Parking Commission is intended to be a municipal entity: "The parking commission . . . **shall be the city's authority** for overseeing public parking." § 82.487.1 R.S.Mo. (emphasis added). The Parking Commission acts "**[o]n behalf of the city**" in approving multiple aspects of the parking division's operations (*id.*),⁶ and "parking revenues collected by the **city**."

⁵ Treasurer Jones executed a Certificate Concerning Trust Indenture in 2015 on behalf of the City of St. Louis in her capacity as supervisor of parking meters. D34. The Certificate attested that the original Trust Indenture executed by her predecessor remained in full force and effect. *Id.* The attached Trust Indenture specified that the City of St. Louis was a party as "a constitutional charter city . . . acting through the Treasurer of the City of St. Louis in his capacity as Supervisor of Parking Meters," and refers to the parking division as a division of the City of St. Louis. D34, p. 7 (Recital 2). The indenture was also signed by the mayor, countersigned by the comptroller, approved as to form by the city counselor, and deposited with the City register. D34, p. 103.

⁶ Section 82.487.1 provides:

On behalf of the city, the parking commission shall approve:

§§ 82.487.2(5), 82.487.2(6)(emphasis added). The City's Board of Aldermen must approve the parking division's annual budget (§ 82.485.4) and all or part of the net change in the parking meter fund's balance is transferred to the City's general fund. § 82.485.4 R.S.Mo. The statutes refer to the supervisor of parking meters as “the supervisor of parking meters of such city.” § 82.485.3 R.S.Mo.

Given the fact that the Parking Statutes purport to direct all City parking revenues to the Parking Commission, it is logical that the Parking Commission be a City entity. In any event, the Treasurer's role in this context arises because she is designated to serve in the capacity of "supervisor of parking meters." These duties are separate and apart from her duties as City Treasurer.

The Parking Statutes improperly tell the City's chief fiscal officer, an alderman and its director of streets that they must perform duties as members of the State-created Parking Commission. It makes no difference if the statutes also assign powers and duties to a county official. The trial court's judgment granting summary judgment on the City's cross claim for summary judgment should be affirmed.

(1) Guidelines governing the administrative adjudication, disposition and collection of any parking violations or complaints issued by the city;

(2) Budget modifications for the parking fund, also known as the “parking meter fund”; and

(3) The acquisition, development, regulation and operation of such parking facilities or spaces owned in whole or in part, leased or managed by the parking division.

(Emphasis added).

(ii) The home rule provisions of the constitution do not allow the State to convert the City's comptroller, director of streets and an alderman from charter city officials to "county" officials by enacting the Parking Statutes.

The State argues that the Article VI, Section 22 limitations do not apply in this instance because the Parking Statutes effectively converted the City's comptroller, director of streets and an alderman into county officials.

The flaw in this argument is readily apparent. Using this logic, the State's general assembly could create the position of county dog catcher and then require the City's mayor to assume all of the powers and duties of county dog catcher. The home rule limitation against legislation "creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter" would be rendered meaningless.

For purposes of this argument, the State primarily relies upon *City of St. Louis v. Doss*, 807 S.W.2d 61 (Mo. banc 1991) and *State ex rel. McClellan v. Godfrey*, 519 S.W.2d at 9, neither of which is apposite. *Doss* held that the State's creation of the county office of license collector was valid and outside the scope of Article VI, Section 22. Unlike here, no charter city official in *Doss* was compelled to serve as license collector. The trial court correctly found *Doss* inapplicable. D21, pp. 11-12.

Godfrey addressed a permissive statute that allowed the City's mayor to call an election for a county medical examiner to replace a county coroner. The pertinent statute provided that "[t]he governing body of the county may make an order presenting the proposition for the establishment of a county medical examiner at a special election or at

any primary or general election." *Godfrey*, 519 S.W.2d at 6 (emphasis added). The subject statute (§ 58.760 R.S.Mo.) therefore allowed, but did not require, the City's mayor to call an election. The *Godfrey* petitioners alleged that merely allowing the mayor to call an election, appoint a medical examiner and to fix the examiner's compensation violated Article VI, Section 22. *Id.* at 9. This Court held that it did not.⁷

The statute at issue in *Godfrey* also was applicable statewide and specified that the statutory term "governing body of the county" referred to the mayor. *Id.* at 6. Because the pertinent statutes were expressly directed to the City in its capacity as a county, the Court held that the subject statutes did not exceed the limitations in Article VI, Section 22.⁸ Here, the Parking Statutes apply only to the City of St. Louis and make no reference to the City as a county. The State mistakenly asserts that in enacting the Parking Statutes, "the General Assembly exercised its police power in a general state-wide application to manage parking." State's Brief, p. 21. There is no "state-wide application." The Parking Statutes apply only to "any city not within a county." §§ 82.485.1, 82.487.1 R.S.Mo.

⁷ The primary issue in *Godfrey* was whether the subject statutes were intended to include the City as a county when they were made applicable to all first class counties. 519 S.W.2d at 8-9.

⁸ Neither the City nor the mayor objected to the statutory provisions. The dispute was initiated by the incumbent coroner whose job would be in jeopardy with an election for medical examiner. 519 S.W.2d at 5.

Therefore, the statutes apply only to the City of St. Louis. Mo. Const., Art. VI, § 31; *Treadway v. State*, 988 S.W.2d 508, 511 n. 2 (Mo. 1999).

Finally, as noted in *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791 (Mo. 1968), Article VI, Section 22 could possibly leave room for legislation that imposes *de minimus* requirements on charter city officials: "there may be some doubt as to whether or not the "powers, duties or compensation" specified and protected [Article VI, Section 22] would include a mere isolated act of appointment" *Id.* at 794 (concurring opinion). *Godfrey* involved such isolated acts. In contrast, the Parking Statutes require the three charter city officials to serve on the Parking Commission and perform several duties for as long as they hold their respective charter city positions.

Appellant Jones argues that the analysis in *Sprague* is inapplicable because *Sprague* notes that the City of St. Joseph is not both a city and a county. Jones' Brief, p. 18, citing *Sprague*, 549 S.W.2d at 877. Jones takes that reference out of context. Unlike the trial court here, *Sprague* held that the offending statutes violated Article VI, Section 22 in two ways: (i) they assigned powers and duties to a charter city official; and (ii) they created a municipal office and board. 549 S.W.2d at 879. The trial court here declined to rule on the second point. D21, p. 17.

The city-verses-county distinction had nothing to do with *Sprague's* determination that its offending statutes improperly assigned powers and duties to a charter city official, which was the basis for the trial court's decision here. Rather, *Sprague's* reference to the City's dual status as a county came in the context of the second claim – the improper creation of a municipal office or board. 549 S.W.2d at 877. *Sprague* referenced the

Court's previous decision in *Preisler v. Hayden*, 309 S.W.2d 645 (Mo. 1958), which addressed the question of whether the establishment of the office of License Collector of the City of St. Louis was proper. *Id.* *Sprague* took note of *Preisler's* holding that establishing the office of license collector did not violate Article VI, Section 22 because the City has dual status as a city and a county. *Id.*

This context is important because the trial court here expressly declined to decide whether the Parking Statutes impermissibly created a municipal board or municipal position in a charter city. D21, p. 17. That is the context in which the city-county topic was addressed in *Sprague*. The city-verses-county distinction had nothing to do with *Sprague's* determination regarding the imposition of additional powers and duties were to a charter city official. *Sprague* is directly on point in the context of whether the general assembly may assign additional powers and duties to charter city officials, including City of St. Louis officials.

The trial court was correct in granting summary judgment to the City on its cross claim against the State of Missouri.

II. IN RESPONSE TO THE STATE'S POINT I, THE LIMITATIONS ON THE GENERAL ASSEMBLY'S AUTHORITY OVER CHARTER CITIES IN ARTICLE VI, § 22 DO NOT CONFLICT WITH ARTICLE VI, § 19(A).

Portions of the State's first point on appeal (subparts B and C) refer to perceived "conflicts" in law. In Section B of its first point, the State appears to suggest that Article VI, Section 19(a) of the Missouri Constitution trumps the protections afforded to charter cities in Article VI, Section 22. The State argues that Article VI, Section 22 occupies a

lower spot in a supposed constitutional "hierarchy" than Article VI, Section 19(a). State's Brief, p. 10. After the inexplicable "hierarchy" statements, the State pivots to an irrelevant argument that State law trumps city charters and ordinances in the event of a conflict (State's Brief, pp. 11-12):

Nothing in Article VI, Section 22 of the Missouri Constitution elevates the charter powers of the City of St. Louis above the General Assembly's power to enact statutes or has the effect of allowing the City to pre-empt or exclude the enactment of statutes related to municipal powers.

State's Brief, p. 12.

The City has not made any claim that would require preemption analysis. The conflict here is between the home rule provisions of Article VI, Section 22 of the Missouri Constitution and the Parking Statutes legislation adopted by the State's general assembly. There is no contention that any charter or ordinance provision conflicts with State law. There is no issue of a conflict between the constitution and the City's home rule power, as suggested by the State. State's Brief, p. 10. The preemption authorities cited in this section of the State's Brief simply have no application to the issues in this appeal.

Since Article VI, Section 22 was enacted, Missouri courts have repeatedly affirmed that it acts as a limitation on the power of the Missouri legislature with respect to constitutional charter cities. *Sprague*, 549 S.W.2d at 876. Rather than address this issue, subparts B and C of the State's Point I attempt to misdirect the analysis to an inapplicable preemption debate. There is no tug of war between State and City laws and

no preemption issue. The City's Motion did not seek to "elevate" any provision of its charter or ordinances above a statute. The constitution expressly limits the State's authority to interfere in the affairs of a charter city. The issue is whether the Parking Statutes run afoul of that constitutional limitation.

The trial court's grant of summary judgment on its cross claim against the State of Missouri should be affirmed.

III. IN RESPONSE TO THE STATE'S POINT II AND JONES' POINTS III AND IV, THE COURT SHOULD DECLARE § 82.485 AND § 82.487 UNCONSTITUTIONAL AND INVALID IN THEIR ENTIRETY.

In its Point II, the State requests, should this Court hold that the Parking Statutes unconstitutionally impose duties on City officers and employees, that that the Court sever the offending portions of the statutes and leave the remainder intact. Treasurer Jones makes the same request in her brief, Points III and IV..

Severing those portions of the Parking Statutes would have the effect of gutting the Parking Commission, leaving the Treasurer and her employee to "oversee" themselves in the administration of millions of dollars in annual revenue. The fox would be in charge of the hen house.

Unconstitutional provisions of a statute may not be severed from the remaining provisions of the statute if the valid provisions of the statute "are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or

unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." § 1.140. R.S.Mo.

The creation of a governing board such as the Parking Commission is essentially and inseparably connected with, and dependent upon, the duties assigned to that board. This Court considered similar circumstances in *Sprague* upon finding that statutes creating a local regulatory scheme for plumbers exceeded the limitations in Article VI, Section 22. *Sprague*, 549 S.W.2d at 880. This Court held the entire regulatory scheme unenforceable as to charter cities, not just the provisions requiring charter city officials to serve on a board. *Id.* Specifically, eight separate statutes - sections 341.010 through 341.080 - were held unenforceable as to charter cities even though only one of the statutes (§ 341.040) required that a city official serve on a board of examiners for plumbers. 549 S.W.2d at 880.

The offending scheme in *Sprague* required that one of three plumbing board members be the chairman of a city's board of health. § 341.040 R.S.Mo. The rest of the board members were plumbers. *Id.* Had it employed the reasoning advocated here by the State and Treasurer, *Sprague* would have severed the offending statutory terms, leaving only plumbers on the board to regulate plumbers. But instead this Court declared the entire regulatory scheme (all eight statutes) unenforceable as to charter cities due to the Article VI, Section 22 limitation. See also, *State ex rel. Burke v. Cervantes*, 423 S.W.2d at 792 (former state statute 290.360 requiring mayor to appoint members to a local fireman's labor arbitration board to render recommendation violated Article VI, Section

22, leading Court to also declare a separate statute establishing the board's duties also invalid [290.350]).

The trial court's decisions here are consistent with *Sprague* and *Cervantes* in that laws creating a governing board and assigning it oversight authority are inseparably connected. If the oversight body is eliminated, the oversight function cannot be properly carried out. Lawmakers realized the need for oversight in the administration of the City's significant parking revenues, and the establishment of the Parking Commission went hand-in-hand with its oversight function.

Pursuant to the terms of the Parking Statutes, the supervisor of parking meters (the Treasurer) reports to the five-member Parking Commission, a majority of which are City officials. § 82.485.4 R.S.Mo. The Parking Statutes place authority over City parking policies, revenues, budget decisions, property acquisition and development, enforcement and other parking-related functions with the Parking Commission. Although the Treasurer is designated the "supervisor of parking meters" (§ 82.485.1), the statutory provisions express the legislative intent that the Treasurer be "subject to the oversight" of a Parking Commission consisting of mostly City officials in order to oversee the City's parking affairs. The clear legislative intent was to provide the City with the ability to control its own parking revenues and policies. It cannot be presumed that State

lawmakers "would have enacted the valid provisions without the void one." § 1.140 R.S.Mo.⁹

Sections 82.485 and 82.487 are interdependent. If the Section 82.485.4 provisions governing the composition of the Parking Commission are unconstitutional and invalid, it disables the Parking Commission from performing its obligations and duties under both § 82.485 and § 82.487. For example, § 82.487.2 provides that the Treasurer, in the capacity of supervisor of parking meters, is subject to oversight by the Parking Commission. In the absence of a properly constituted Parking Commission, that oversight function cannot be performed. The same result occurs with respect to § 82.487.1, which establishes the Parking Commission as the City's authority for all parking issues. Those provisions are meaningless if the statutes establishing the Parking Commission's composition are unconstitutional.

Severing the statutory provisions requiring City representation on the Parking Commission would defeat that legislative intent, leaving only the Treasurer and her employee (the Treasurer Defendants) to establish City parking policies and to control City parking revenues. The State and Treasurer cannot reasonably assert that the general assembly intended to vest complete control of City parking revenues and policies to non-City officials. As in *Sprague*, it is apparent that the statutory provisions governing authority over City parking policies and revenues are "essentially and inseparably

⁹ In the trial court, for purposes of the summary judgment motion and analysis of the application of § 1.140 R.S.Mo. in this limited context, the City assumed, without conceding, that all other provisions of §§ 82.485 and 82.487 R.S.Mo. are valid.

connected with, and so dependent upon," the provisions governing the composition of the Parking Commission. § 1.140. R.S.Mo. The Court should decline the suggestion that it, by judicial caveat, create a Parking Commission consisting of two people who oversee themselves.

In addition, if this Court issues an order merely voiding the requirement that three City officials serve on the Parking Commission, the commission that will remain will be comprised of only two members, the supervisor of parking meters and the director of parking operations. A Parking Commission reduced to two members, where the legislature contemplated there be five, cannot form a quorum, and therefore it cannot lawfully transact business. See *Reynolds County Tel. Co. v. Piedmont*, 133 S.W. 141, 366-37 (Mo. App. 1911) (finding that meeting of board of alderman was not legal, and therefore no business transacted was binding on the city, where at the time there were four members of the board but only two members of the board were present at the meeting when the resolution was passed); *Jackson v. Board of Dirs. of the Sch. Dist.*, 9 S.W.3d 68, 74 (Mo. App. 2000) (finding that school board used improper procedure where a three-member committee was appointed to conduct hearing that did not constitute a quorum of the nine-member board).

IV. IN RESPONSE TO JONES' POINT I, THE CITY AND ALDERMAN BOYD EACH HAVE STANDING TO SEEK DECLARATORY JUDGMENT REGARDING THE CONSTITUTIONALITY OF THE PARKING STATUTES.

Appellant Jones' brief argues that the City, Alderman Boyd and the taxpayer plaintiffs do not have standing to challenge the constitutionality of the Parking Statutes. Neither State nor Jones made this assertion in responding to the City's summary judgment motion in the trial court, nor does the State make a standing argument in this Court.

Although it seems self-evident that Alderman Boyd has standing to challenge the constitutionality of statutes that require him to serve on the Parking Commission, the City will defer to the plaintiffs-respondents regarding their standing.

Charter cities have attacked the validity of State statutes based upon Article VI, Section 22 on many occasions, without a standing issue. *City of St. Louis v. State of Missouri*, supra, 382 S.W.3d 905; *City of Springfield v. Goff*, supra, 918 S.W.2d 786; *State ex rel. Sprague v. St. Joseph*, supra, 549 S.W.2d 873; , 879 (Mo. 1977); *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W.2d 65 (Mo. 1974); *City of Joplin v. Industrial Commission of Missouri*, 329 S.W.2d 687 (Mo. banc 1959). Charter cities have an inherent interest in protecting their constitutional home rule authority and

enforcing the constitutional limits against improper encroachments by the general assembly.¹⁰

Regarding the City, Appellant Jones argues that the activities of the Parking Commission do not cause the City any injury because City ordinances contain similar provisions. Jones Brief, p. 13.¹¹ As the trial court noted, this assertion ignores the fact that the City can amend or repeal its own ordinances, but not a State statute. This is central to the constitutional home rule concept. The City is injured when its constitutional home rule authority is violated.

In any event, an "injury" is not required for a declaratory judgment claim. The City certainly possesses standing to obtain a declaration of its rights, status or other legal relations with respect to the Parking Statutes pursuant to § 527.010 R.S.Mo. The City has a legally protectable interest in preserving its home rule authority and obtaining a declaration of its rights as a charter city.

CONCLUSION

The Parking Statutes violate the Missouri Constitution by purporting to assign additional powers and duties to officials of the City of St. Louis. This Court should affirm the trial court judgments declaring the City Parking Statutes unconstitutional and

¹⁰ The City is a defendant in the case below. Its cross claim against co-defendant State of Missouri is part of the City's response and defense.

¹¹ The City's ordinances were not part of the summary judgment record for the City's summary judgment motion in its cross claim against the State. Plaintiffs included them with their summary judgment motion. D25-28.

void. Pursuant to this Court's holdings in *Sprague* and *Cervantes*, the proper remedy is a declaration that the subject statutes are unconstitutional and void.

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned counsel certifies that a true and correct copy of the foregoing was served on counsel of record through the Court's electronic notice system on April 2, 2019, and by United States Postal Service to:

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St. Louis, MO 63103

The undersigned certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that he brief contains 7,116 words.

/s/ Michael A. Garvin