

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 REPLY BRIEF

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INTRODUCTION

The issue here is whether the legislature has the authority to establish a Parking Commission in the City of St. Louis and whether the legislature may involve the City's officials in the operation of the Commission. They have done so for decades, but Respondents now ask the judiciary to intervene in what is really a legislative question. They convinced the trial court, but this Court should not be persuaded.

Now that the issues have been briefed by each side, there are three decisions to be made. First, are the State Parking Statutes constitutional, or do they create or fix the powers or duties of any municipal office? Mo. Const. art. VI, § 22. The burden there is on the Respondents and they have failed to provide any convincing arguments why this Court should not defer to the legislature's judgment.

If this Court disagrees and affirms the trial court's decision that the Parking Statutes are unconstitutional, the Court must turn to the issue of severance. After finding the legislature improperly created or fixed municipal officer powers or duties, the trial court struck statutes that went beyond the powers and duties of the officials identified. Instead, this Court should make a different decision and find that the rest of the State Parking Statutes can stand without the involvement of the officials at issue. This would leave a Parking Commission of two members capable of carrying out any duties prescribed in the State Parking Statutes.

If this Court declines to follow Appellant's reasoning on the first two issues, the third decision is whether to sever the Parking Commission completely from the State Parking Statutes. Doing so means no Commission, but it leaves the Treasurer, as the supervisor of

parking meters, to carry out any duties and responsibilities assigned to her by the legislature and performed by her well before the Commission came into existence. The supervisor of parking meters does not depend on the Parking Commission to operate and perform her duties under the State Parking Statutes. Because the legislature made a clear separation between the duties of the Parking Commission and the supervisor of parking meters, and because the legislative history shows the Treasurer was assigned these duties independent of the Commission, the intent is clear that the General Assembly intended the “supervisor of parking meters” operate even if the Parking Commission could not. The trial court should be reversed.

ARGUMENT

1. Respondents do not have standing to challenge the constitutionality of the State Parking Statutes because there is no cognizable injury to any Respondent.

The Treasurer’s appeal raises the issue of standing. Standing is a question of law and this Court’s review is de novo. *Schweich v. Nixon*, 408 S.W.3d 769 (Mo. banc 2013). The analysis is slightly different for each respondent—two are simply interested citizens, one is an alderman, and the other is the political subdivision itself.

A. The taxpayers do not have standing.

The taxpayers (Wilson and Lane) did not establish taxpayer standing below and their briefing doesn’t change that. They failed to demonstrate a “direct expenditure of funds through taxation.” *See E. Laborers Dist. Council v. St. Louis Cty.*, 781 S.W.2d 43, 47 (Mo. banc 1989) (to establish taxpayer standing, a plaintiff 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”)

Their briefing more or less concedes the point, instead arguing they are within the “zone of interest” of the State Parking Statutes. They say they are licensed drivers, have received parking tickets, and are subject to ongoing regulation so they can challenge the validity of the State Parking Statutes. Individuals’ Resp. Br. 37.¹

But they have never pointed to any type of direct expenditure, as required by *Eastern Laborers*. D2:P3. Without it, they can’t cross the threshold required to establish taxpayer standing. *See Mid-Am. Georgian Gardens, Inc. v. Mo. Health Facilities Review Comm.*, 908 S.W.2d 715 (Mo. App. 1995) (general operating expenditures cannot confer taxpayer standing). Nor does the fact they received parking tickets confer standing. *See City of Slater v. State*, 494 S.W.3d 580, 590 (Mo. App. 2016) (plaintiff did not have standing because plaintiff’s claim of injury from having to pay a court surcharge “cannot be remedied by the relief he requests”). Like the plaintiff in *City of Slater*, these taxpayers do not have standing because invalidating the State Parking Statutes would give them no relief. The authority to issue parking tickets is not found in the State Parking Statutes. Parking officials will still issue them even if the State Parking Statutes are fully repealed or invalidated.

B. Boyd does not have standing.

Alderman Boyd also failed to establish taxpayer standing. Like Wilson and Lane, Boyd tried to rely on parking tickets. He is in the same boat as the taxpayers on this point.

¹ Brief of Respondents Wilson, Lane, and Boyd will be cited as Individuals’ Resp. Br., while Brief of Respondent City of St. Louis will be cited as City’s Resp. Br.

But Boyd is a little different because he is an Alderman and the chairman of the Board of Alderman's Traffic Committee, a position mentioned in the State Parking Statutes. § 82.485, RSMo; D15:P1.

The Treasurer's brief pointed out that invalidating the State Parking Statutes doesn't actually change Alderman Boyd's responsibilities. But he argues there are differences between the State Parking Statutes and the City Parking Ordinances, and that gives him standing. Boyd claims that because he is subject to additional duties imposed by the State Parking Statutes, he can challenge their constitutionality.

He's just wrong. Regardless of the existence of the State Parking Statutes, the City ordinance (not at issue in this appeal) requires Boyd to sit on the Parking Commission. Appendix to App. Jones Br. at A44. The City's parking commission and the State established Parking Commission have similar and overlapping functions. *Compare* § 82.485, RSMo² (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, RSMo (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")

² All citations are to current statutes unless otherwise noted.

and shall approve and oversee actions by the Treasurer with respect to controlling public parking). Appendix to App. Jones Br. at A45. The minor differences pointed to by Boyd do not overcome the reality that Boyd is required to perform duties relating to a Parking Commission. Therefore, Boyd cannot show a cognizable injury because he fails to identify any responsibility or duty resulting from the State Parking Statutes. Even if the State Parking Commission were to vanish, Boyd would still be required to sit on the parking commission and carry out duties required of him.

C. The City does not have standing.

For that last reason, the City also lacks standing. Even if this Court finds the State Parking Statutes invalid, there will still be a parking commission doing the same things the Statutes now require. The City will get no relief.

The City's argument is basically that it's the principle of the thing. The City says it must defend its home rule authority from encroachment. City's Resp. Br., 37. However, it cites no case law. *Id.* While "the principle of the thing" may be an argument any charter city could make about any legislative enactment no matter how inconsequential—the Court should decline to adopt this newly announced standard for standing. The General Assembly has the ability to make laws relating to county functions of St. Louis City. *See State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. banc 1975). The mere fact the legislature has done it here doesn't mean the City has been injured—they must prove more.

The City also claims it is injured by the existence of the State Parking Statutes because it can amend its ordinances, but cannot amend State statute. *Id.* It's an axiomatic point. But this suit does not challenge the legislature's constitutional authority to pass laws

governing the whole state. Nor does that constitutional authority erase the traditional injury analysis. This Court should not give the City license to challenge any statute it deems less than satisfactory on the grounds that the legislature—not the city—enacted it unless there is an actual conflict between them.

2. The State Parking Statutes are constitutional.

It is also axiomatic that unless the State Parking Statutes “clearly contravene a constitutional provision” they are valid. *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012). This presumption of validity 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.*

And there is a way. Here, the General Assembly appointed the Treasurer of the City of St. Louis as “supervisor of parking meters” and the chair of the Parking Commission. The first issue is whether that action created or fixed the powers of a “municipal officer,” Mo. Const. art III, § 22. The Court may—and should—interpret those statutes as addressing a county office – not a “municipal” office – for two reasons. First, the General Assembly enacted a statute naming a county officer – the Treasurer—as “supervisor of parking meters.” That practice has been blessed before. *See State ex inf. McKittrick v. Dwyer*, 124 S.W. 2d 1173 (Mo. banc 1938); *see also State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854 (Mo. banc 1943). Next, even were it not already true that the Treasurer is a county office, the legislature can create county offices. *See State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 9 (Mo. banc 1975). Faced with a choice of whether the chair of the Parking Commission is a municipal office or a county office, this Court should interpret the Statutes to create a county office if it is all possible to do so. We assume the legislature

enacts constitutional legislation. *See id.* In addition to involving the Treasurer, the legislature also appointed three municipal officers to serve on the Parking Commission. The General Assembly can appoint municipal officers to the Parking Commission because the General Assembly may assign county functions to municipal offices. *Id.*

Wilson, Lane, Boyd, and the City’s arguments do not push the State Parking Statues over the proverbial line into unconstitutional territory. Because the State Parking Statutes do not clearly violate the Constitution, this Court should defer to the judgment of the legislature and allow them to stand.

A. Treasurer Jones—in her roles as Treasurer and supervisor of parking meters—functions as a county official and the Parking Commission is a county office, therefore, Article VI, Section 22 is inapplicable.

State statute and this Court declare the Treasurer to be a county – not a municipal – official. *See* §§ 82.510 and 82.520, RSMo; *see also* *McKittrick*, 124 S.W.2d 1173; *Nolte*, 172 S.W.2d 854. Inhabiting her statutorily created role as “supervisor of parking meters” and chair of the statutorily created State Parking Commission does not change that. Indeed, because the legislature chose to make the Treasurer the “supervisor of parking meters,” it necessarily considered that office and the Parking Commission itself to be county offices. That choice was proper.

The Respondents all rely on the argument that an office is classified as a city or a county office based solely on office’s function. Individuals’ Resp. Br. 14-21; City’s Resp. Br. 22-23. Wilson, Lane, and Boyd do an excellent job of reciting this Court’s jurisprudence regarding the distinction between city and county offices in the City of St. Louis. Their application of this precedent, however, is just wrong.

To determine if an office is of a city or county nature, this Court looks to more than just the functions performed by the office. For instance, in *City of St. Louis v. Doss*, this Court looked at which election the License Collector is elected. 807 S.W.2d 61, 62 (Mo. banc 1991) (concluding the License Collector is a county officer because “so long as that office is elected in the state elections as are other county offices, it remains a county office and subject to county control.”). Because the License Collector is elected at an election with other county officers, the License Collector is a county officer. *Id.* Like the License Collector, the St. Louis City Treasurer is at state elections, she is a County officer.³

Not only is the Treasurer elected at the time other county officers are elected, the post was actually created by state statute, not municipal action. *See* § 82.520, RSMo (fixing salary of Treasurer of City of St. Louis). And this Court has been clear that the Treasurer is not a municipal officer. *See McKittrick*, 124 S.W.2d at 1174-76 (holding City Treasurer is county officer, not municipal officer); *Nolte*, 172 S.W.2d at 855-856 (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).

So, here, the General Assembly assigned the Treasurer (a county officer) an additional duty of “supervisor of parking meters,” as the General Assembly is entitled to do. Wilson, Lane, and Boyd argue that because the “supervisor of parking meters” performs a “municipal function,” then the Treasurer in her role as “supervisor of parking meters” is a municipal officer. Individuals’ Resp. Br. 19-22. But even if supervising

³ This has been true even before the decision in *McKittrick*. However, there is no statute to this effect currently in law.

parking meters were a municipal function—and there is no reason it must be—their argument directly contradicts settled precedent relating to the Treasurer’s status as a county officer. The Constitution does not prohibit assigning additional duties to county officers or even giving them “municipal” duties. Instead, it prohibits assigning duties to municipal offices. Mo. Const. art. III, § 22. The General Assembly chose to make a county officer the “supervisor of parking meters” and nothing in the Constitution prohibits that.

Undeterred, Wilson, Lane, and Boyd argue that the Treasurer acting as the “supervisor of parking meters” and the Parking Commission must be a municipal office because parking is solely a municipal function. Individuals’ Resp. Br. 19. Even if that mattered, it is not the case simply because they say so. Indeed the statute they cite – section 71.360, RSMo – specifically grants the power to “finance and pay for the planning, designing, acquisition, construction, equipment and improvement of property for parking motor vehicles” to charter counties. § 71.360, RSMo.

Because charter counties also exercise powers related to parking it cannot be that parking is exclusively a municipal function. That isn’t changed by Wilson, Lane, and Boyd’s discussion of *Wilhoit v. City of Springfield*, 171 S.W.2d 95 (Mo. App. 1943). This case states that municipalities have the authority to regulate parking. Sure they do. But that doesn’t support the argument that parking is exclusively a municipal function. Regardless, in this instance, the legislature was clear in its intent that parking be a county function for St. Louis City.

Next, all the Respondents point to a trust indenture document signed by the Treasurer as evidence that she is a city official when she is acting as the “supervisor of

parking meters.” Individuals’ Resp. Br. 20-21; City’s Resp. Br. 22-23. But signing documents that call St. Louis a constitutional charter city does not change the Treasurer’s legal status. Of course St. Louis City is a charter city, just as the Treasurer is a county officer. The political subdivision at issue has the word “city” in its name, but that doesn’t change the dual nature of the City as county. While the document required city officials to sign it, that does not mean the treasurer’s signature makes her any less of a county official. It just means both city and county officials’ signatures were necessary. Respondents even admit that this document is not dispositive of the Treasurer’s status. *Id.* The Treasurer, no matter what a piece of paper says, is a county officer.

Respondents seem to assume the Parking Commission is itself a municipal office. But that is contradicted by the fact that a county officer is its chair. The language of the statute makes that clear. This Court should look first to the plain and ordinary meaning of words to determine legislative intent before turning to any other rules of statutory construction. *Mary S. Reithman Trust v. Dir. of Revenue*, 62 S.W.3d 46, 48 (Mo. banc 2001).

The City argues that because the State Parking Statutes direct money to the City, the Parking Commission is a municipal office. But nothing prohibits a county office from giving money to a city, the prohibition has to do with the character of the office itself. Wilson, Lane, and Boyd argue that because the Parking Commission serves a municipal function (parking) it is a municipal office. Both arguments ignore the legislative intent. The legislature expressed its intent regarding the Parking Commission’s classification through naming the supervisor of parking meters as the chair of the commission. Because the

supervisor of parking meters is a title embodied by the Treasurer (a county office), the Commission the supervisor of parking meters chairs is a county office. A person who is the chair of a commission is the person in charge of the commission. *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)). Thus, the Parking Commission is a county office. Additionally, since parking can be both a county and municipal function, in this instance, it is a county function. The legislature intended a county office oversee parking.

And the Constitution allows the General Assembly to assign duties and functions to a county officer. *See State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. banc 1975). Respondents ignore this to argue that the Parking Commission cannot possibly be a county office. Their argument assumes the legislature blatantly disregarded the Constitution in order to enact a law that establishes a municipal office. It did not; it simply added functions to a county office.

B. The General Assembly may direct officials of a charter city to serve a county function because *State ex rel. McClellan v. Godfrey* is controlling.

But it is not only the Treasurer (and another employee of that office) who serve on the Parking Commission. Alderman Boyd is on the Commission by virtue of his chairmanship. That, too, is allowed because even municipal officers can be required to serve on the Parking Commission. Sometimes city officials are assigned duties that look like county duties. This is one of those times. This does not violate Article VI, Section 22 because there is no prohibition on assigning St. Louis City officers county functions.

Respondents all argue that it is unconstitutional to require the City officers to perform county functions in spite of prior rulings from this Court. They argue that *State ex rel. McClellan v. Godfrey* is inapplicable. But *Godfrey* is similar to the situation at hand. There, the statute authorized the mayor of the City of St. Louis to participate in a county function of calling an election for county coroner. “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.” *Godfrey*, 519 S.W.2d at 9. The mayor, as a city official, is subject to the general laws of the state. *Id.* Like *Godfrey*, here the General Assembly appointed three St. Louis City officials to serve the City of St. Louis in its capacity as a county. These officials are subject to the general laws of the State with regard to how the legislature oversees the county functions of St. Louis City. Just like the mayor, they were not County offices, but they may still be assigned county duties given the unique nature of St. Louis City.

Respondents rely on *State ex rel. Sprague*, 549 S.W.2d 873 (Mo. banc 1977), but it is as different from this case as St. Louis City is from Boone County or the City of St. Charles. *Sprague* was not a City of St. Louis case. The Court in *Sprague* made it clear that the reasoning was inapplicable to St. Louis City because unlike St. Joseph (where the issue arose), St. Louis City is both a city and a county. The Court makes clear that all of the cases cited that pertain to St. Louis City prohibit the legislature from enacting powers and duties for constitutional charter cities in their municipal capacity. The Court does not extend that prohibition to the County function of St. Louis City. *Id.* at 877. *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791 (Mo. banc 1968), is likewise distinguishable from the case at

hand. That case dealt with the municipal function of overseeing firefighters' salaries. Because firefighters are undoubtedly a municipal function, while parking may be construed to be a county function, *Burke* is distinguishable.

3. If this Court determines that the State Parking Statutes are unconstitutional, severance, not invalidation should be the remedy.

Not only was the trial court wrong about the constitutionality of the State Parking Statutes, it also missed on the severability analysis. Severance, rather than invalidation, is the appropriate remedy if this Court determines the State Parking Statutes are unconstitutional. 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). 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. If this Court finds the State Parking Statutes unconstitutional, the offending provisions can be severed to preserve the legislative intent of naming the Treasurer of the City of St. Louis as the supervisor of parking meters.

A. Severing the municipal officials from the State Parking Statutes preserves the intent of the legislature that a Parking Commission oversee parking in the City of St. Louis.

If it is improper to require St. Louis City officials to perform county functions, the Court should sever the provisions that requires it and preserve the remainder of the State Parking Statutes. The Parking Commission will continue to exist (albeit with fewer members) and the legislature's decision to name the Treasurer as the "supervisor of parking meters" is preserved.

Respondents don't want severance. They argue that the duties of the Parking Commission are inseparable from the membership of the Parking Commission. But they misread statutes as saying that the Treasurer is subservient to the Parking Commission and therefore, without full membership, the Parking Commission could not perform its oversight function. Individuals' Resp. Br. 30; City's Resp. Br. 33. That's wrong.

Even without the municipal officials, the Parking Commission could continue to fulfill the duties assigned by the legislature. The legislature did not expressly tie the duties of the Parking Commission to the Parking Commission members. Nor did the legislature consider it crucial that the Parking Commission have exactly five members. The statute never references the Commission as a five-member commission, nor does it require that five members partake in any particular decision making with regard to the duties under the statutes.

History is also helpful. The legislature originally passed Section 82.485 in 1951. App. at A1-A2. At the time, the law simply established the Treasurer of the City of St. Louis as the supervisor of parking meters and listed her duties, including "collect all parking meter fees, supervise the expenditures for repairs and maintenance, and to make all disbursements on any parking meter contracts." *Id.* It was not until 1990 that Section 82.485 was amended to add a parking meter commission. At that time, the legislature did not name specific individuals to sit on the parking meter commission. App. at A3. This makes the legislature's intent clear—the parking meter commission (a precursor to the Parking Commission) was not required to be tied to specific individuals or number of individuals—the legislature just wanted one. Therefore, the legislature's intent can be

preserved by severing the later-added specific municipal members from the Parking Commission. Further, the version of Section 82.485 from 1990 can serve as a guide for severing the municipal officials. This Court can look to that version of the statute for how to remove the municipal officials, while maintaining fidelity to the legislature's intent.

The trial court should have (effectively) done this:

82.485.4. The supervisor of the parking meters shall each year submit for approval to the board of aldermen, having first been reviewed by the parking commission, an operating budget projecting revenues and expenses for the fiscal year beginning July 1, 1990, and for each fiscal year thereafter. The parking commission, which shall consist of the supervisor of parking meters as chairperson, ~~the chairperson of the aldermanic traffic committee, the director of streets, the comptroller~~ and the director of the parking operations, shall approve parking policy as necessary to control public parking

And there was no good reason for the trial court to invalidate Section 82.487 either.

Section 82.487 doesn't even mention the non-county officials, nor does it reference back to the previous statute. Section 82.487 provides the duties of the Parking Commission. For example, it requires the Parking Commission to approve "[g]uidelines governing the administrative adjudication, disposition and collection of any parking violations or complaints issued by the city." § 82.487, RSMo. No duty listed is explicitly tied to a certain number of individuals sitting on the Parking Commission or particular individuals sitting on the Parking Commission. A two-member Parking Commission could easily carry out this responsibility. No words or phrases would even need to be severed from Section 82.487 in order to meet constitutional muster.

Respondents also argue that a two-member committee cannot establish a quorum. Individuals' Resp. Br. 33; City's Resp. Br. 35. But they provide this Court with no legal

reason two cannot be a quorum. The State Parking Statutes do not require a particular number of Parking Commission members to be present to establish a quorum. And the Missouri case law relied on by Respondents cites situations where the statutes or other governing documents provide what constitutes a quorum. Respondents also attempt to rely on an opinion from the Attorney General of Kansas, but that has no weight here. Individuals' Resp. Br. 33. Because the State Parking Statutes do not establish the number for a quorum, the legislature's intent is that the Parking Commission does not require five members. If the legislature intended the Parking Commission to be five members, the legislature would have included that number and a quorum number in the statute. *See, e.g.*, § 23.070, RSMo (establishing a quorum for the Committee on Legislative Research); § 105.955, RSMo (establishing a quorum for the Missouri Ethics Commission).

B. Severing the Parking Commission from the State Parking Statutes preserves the legislative intent of appointing the Treasurer the “supervisor of parking meters.”

Severing the Parking Commission from the rest of the State Parking Statutes also preserves the legislative intent of appointing the Treasurer the supervisor of parking meters. The supervisor of parking meters can carry out her duties without the existence of a Parking Commission.

Respondents fail to convincingly counter the Treasurer's position that the State Parking Statutes are capable of constitutional enforcement even if this Court severs the Parking Commission from the statutes entirely. App. Jones Br. 23-26. They argue that the Parking Commission is inseparable from the duties prescribed to it by statute. Individuals' Resp. Br. 34; City's Resp. Br. 32. This, however, misunderstands the legislative intent.

The Treasurer of the City of St. Louis has been acting as the supervisor of parking meters since 1951. The 1951 statute did not include a Parking Commission and the legislature would not add a Commission until 1992. App. at A4. The section granting additional duties to the Parking Commission, Section 82.487 was not enacted until 1994. App. at A5-A6. It is a historical fact that the Treasurer functioned as the sole supervisor of parking meters (without the Parking Commission) for more than 40 years. She can do so again.

If this Court determines that the Statutes are unconstitutional and the municipal officers cannot serve on the Parking Commission, then the Treasurer's title of "supervisor of parking meters" should be preserved. This is the only way to ensure the legislature's intent is maintained.

The legislature intended to task the Treasurer with the duties of "supervisor of parking meters." *See* § 82.515, RSMo. One such duty is now chairing the Parking Commission. But the Treasurer does not rely on the Parking Commission to carry out her duties as "supervisor of parking meters." Rather, the Parking Commission relies on the leadership of the supervisor of parking meters. The plain reading of the statute confirms this. The duties of the "supervisor of parking meters" are spelled out in the State Parking States separate and apart from the duties of the Parking Commission. Each iteration of the State Parking Statutes added additional duties for the supervisor of parking meters. Essentially, the Court would judicially strike out all references to the "parking commission" in the statute.

- i. *The Parking Commission can be severed from Section 82.485, RSMo, leaving a complete, enforceable statute.*

In the 1990 revision of the Section 82.485, the supervisor of parking meters was given the additional duty of supervising “a parking enforcement division.” App. at A3.

Further, the supervisor of parking meters is obligated to submit an operating budget to the Board of Aldermen. Although the Parking Commission reviews this budget, the responsibility to create a budget and submit it to the Board of Aldermen is separate from the Commission’s review function. The legislature entrusted this duty to the supervisor of parking meters when a Parking Commission (in its current form) did not exist. *See id.* The legislature intended that the “supervisor of parking meters” operate autonomously from the Parking Commission. Striking the references to the “parking commission” basically restores the statute to the pre-1990 version.

- ii. *Severing section 1 from Section 82.487, RSMo, preserves the duties of the “supervisor of parking meters.”*

If the Parking Commission itself was an unconstitutional creation, the Court must also address Section 82.487. That statute has two sections. The first section prescribes duties of the Parking Commission. Section 2 prescribes additional duties of the supervisor of parking meters. If this Court determines that the Parking Commission cannot stand, section 1 is the only provision of Section 82.487 that need be severed from the statute. The supervisor of parking meters can continue to carry out her duties separately from the Parking Commission.

As discussed in the previous section, past versions of the State Parking Statutes provide a guide for how to sever any potentially unconstitutional provisions. Section

82.485 as enacted in 1990 provides a roadmap for preserving the supervisor of parking meter's duties, while severing the Parking Commission. Additionally, Section 82.487 can be severed by removing section 1, leaving only the responsibilities of the supervisor of parking meters as outlined in section 2. Severing the State Parking Statutes in this way maintains the legislature's intent of naming the Treasurer as supervisor of parking meters, while removing any potentially unconstitutional Commission.

CONCLUSION

Treasurer Jones 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, Treasurer Jones respectfully requests this Court sever only those provisions necessary to cure the invalidity and enter the judgment that the trial court should have. *See* Rule 84.14.

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 April, 26, 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 5,842, 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