SC97544

IN THE SUPREME COURT OF MISSOURI

JAMES WILSON, et al., Plaintiffs/Appellees,

vs.

CITY OF ST. LOUIS, et al., Defendant/Respondent

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

REPLY BRIEF OF APPELLANT STATE OF MISSOURI

Respectfully Submitted,

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REPLY ARGUMENT

The Parking Statutes make the "county" Treasurer the supervisor of parking meters, and chairperson of a "Parking Commission." The City of St. Louis seems to concede that the Treasurer is a county official, not a city official, and it is the Treasurer that does all the work. But, the City says, the Parking Statutes should be struck down in their entirety because they make three city officials—the comptroller, director of streets, and an alderman—members of the Parking Commission to which the Treasurer reports. But serving on the Parking Commission is a *county* function, not a *city* function, and so does not violate Article VI, Section 22. Besides, these officials are placed on the Parking Commission to give the City input in how the supervisor of parking meters (Treasurer) carries out her statutory duties. That does not violate Article VI, Section 22. Nothing in the statute limits the powers or duties of the three city officials or even requires that they come to meetings of the Parking Commission. If the City does not want them to give any input, they do not have to do so. The proof of this is in the proper remedy for the alleged constitutional violations. If the City's real concern was that the statute improperly

weighed down its officers with new powers and duties, then the right remedy would be to simply remove the city officers from the Parking Commission. But the City rejects this remedy because it wants more input and control. If so, the statute already provides for that, and does so without imposing new powers or duties on those officers.

I. While Article VI, Section 22 prohibits statutes that impose duties upon the municipal officers of a charter city, under the facts here, the Treasurer and the Parking Commission that the Treasurer supervises are "county" – not municipal – entities and not subject to the city charter so Article VI, Section 22 does not apply.

A. The Treasurer and the Parking Commission that the Treasurer supervises are county offices and thus Article VI, Section 22 does not apply.

The City of St. Louis is both a city and a county. *See* Mo. Const. Art. VI, § 31 and § 1.080, RSMo. The city has both municipal and county offices. Article VI, Section 22 does not apply because the Treasurer is not a "municipal office of a city" but, rather, is a "county" office. *State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854, 856 (Mo. 1943). Respondents do not dispute that the Treasurer is a county office but argue that this fact is not relevant. But the fact that the Treasurer is a county office is relevant to the analysis because under the plain language of the Parking Statutes, the county office of Treasurer

supervises the Parking Commission. It logically follows that the Parking Commission is a county office. Respondents do not explain how the Parking Commission is governed by the City Charter when the Chairman of the Commission, the Treasurer, holds a "county" office. The statute establishing the Parking Commission specifically states that the Parking Commission

> 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 meter operations, [and] 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.

§ 82.485.4. RSMo; App 35. Under the statute's plain meaning, the Parking Commission and its members control public parking.

Controlling public parking involves the city of St. Louis in its capacity as a county, not as a city, because other members of the public park in the city, not just city residents. Therefore, the officers of the Parking Commission come within the purview of the statutes.

The holding in *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. banc 1975) controls. In *McClellan*, statutes were enacted to abolish the office of county coroner in certain classes of counties and to create the office of county medical examiner. *McClellan* ask whether the constitution allowed a statute to "impose[] on, or allow[], the mayor [of St. Louis City] the right not only to call the election but to appoint a medical examiner and to fix the latter's compensation." *Id.* at 9. It was argued that the statutes unconstitutionally interfered with the exercise of the duties of a municipal office of the city of St. Louis, a charter city. *Id.*

This Court ruled that the status of a county office or county officer was not subject to the same restrictions as the duties of a municipal office in a charter city. *McClellan,* 519 S.W.2d at 9 (citing *Stemmler v. Einstein,* 297 S.W.2d 467 (Mo. banc 1956), and *Preisler v. Hayden*, 309 S.W.2d 645 (Mo. 1958)). This Court concluded that the office of Medical

Examiner was a county office and it was replacing the county office of coroner. The Court emphasized that "[t]he 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." *Id.* at 9. Therefore, the city and the officers come within the purview of the statutes. *Id.* at 10. As *McClellan* demonstrates, the result turns on the specific facts that determine whether the city of St. Louis is acting in its capacity as a city or a county.

B. The General Assembly may direct municipal officers to perform county functions.

Respondents argue that *City of St. Louis v. Doss*, 807 S.W.2d 61, 62-63 (Mo. banc 1991) is inapposite because no charter city official in Doss was compelled to serve as license collector. *Doss* reveals the flaw in Respondents' reasoning because the key to the analysis there was the distinction between "municipal offices" and "county offices." The specific statutes that the City sought to invalidate in *Doss* were those that govern the office of the City License Collector. Many years after the General Assembly created the License Collector for the City of St. Louis, the City Board of Alderman enacted an ordinance that

transferred all responsibilities for the collection of municipal taxes, fees and disbursements of taxes and fees collected from the License Collector to the Comptroller for the City of St. Louis. *Id.* at 61. In the following legislative session, the General Assembly amended the statute. The new statute restored the old system, imposing upon the License Collector the "exclusive authority … to issue all licenses and receipts for license taxes, except water, dramshop and boat or wharf licenses." *Id.* at 61-62. But the amended statute also provided:

> No duties imposed under this section or designated for the license collector's office by the city shall be altered by any means other than legislative action. Any employees transferred from the license collector's office due to a change in such duties by a means other than legislative action shall be transferred back to the license collector's office to the positions previously held, even where such duties were changed within fifteen months prior to August 28, 1990.

Id. at 62, quoting § 82.340 RSMo.

In *Doss* the City also challenged Section 82.410 that states:

> Every person, firm, association or corporation shall owe to the license collector all and every duty now due by law or ordinance to the city collector of the revenue or to the license commissioner, or other city officer of such city, with respect to the assessment, levy, issue, transfer or revoking of licenses, or license taxes, for any purpose whatsoever; all and every duty of said city collector, license commissioner and other office of such city imposed by law or ordinance with respect to the assessment, levy, issue, transfer or revoking of licenses or license taxes for any purpose whatever is hereby transferred to the office of license collector created by sections 82.310 to 82.410.

Id. at 62. In other words, the statute expressly transferred duties from the city collector or license commissioner back to the License Collector, transferred employees back to the License Collector's office, then then expressly prohibited any local attempt to reassign those duties or

employees to anyone else. The City claimed in *Doss* that the statute governing the License Collector's Office was invalid because it imposed upon the City Comptroller certain duties and restrictions, allegedly in violation of Article VI, Section 22, arguing that the License Collector was a municipal office. *Id.* at 61-62.

This Court rejected the City's argument and upheld the validity of the statutes because it drew a distinction between "municipal offices" and "county offices." The Court stated: "The key to the applicability of [a]rt. [VI], § 22, is the distinction between municipal offices and county offices." *Id.* at 63. The point of *Doss* is that the General Assembly may set the powers and duties of other officers in the City of St. Louis when they perform county functions. *Doss* applied the interpretation of Article VI, Section 22 from *McClellan* and determined that "[t]he constitutional provision covers only municipal office . . . for any city." *Id.* at 63. Further, "[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.*

Similarly, the Parking Statutes create powers and duties for county officers – the Treasurer and the Parking Commission. *Doss*

controls because the Treasurer and the Parking Commission are part of the county and thus, Article VI, Section 22 is not applicable.

Doss also established a way to determine when an official is acting as a county officer. *Doss* states that 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.* Here, the City Treasurer carries out similar functions to treasurers of other counties, such as taking in monies and issuing receipts. *See* § 54.102, RSMo. Further, the election for Treasurer is in November during the state election and not in April during the St. Louis City municipal election. Under *Doss*, the Treasurer is a county office, and so is the Parking Commission.

Respondents argue that *McClellan* is inapposite, but do not distinguish this Court's finding in *McClellan* that "[t]he 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." *Id.* at 9 (emphasis added). Thus, the city and the city officers come within the purview of the statutes. *Id.* at 10.

Respondents also rely on *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791 (Mo. 1968), but the facts here are different. *Cervantes* involved a state law that allowed the mayor to appoint an arbitration board to resolve wage and condition-of-employment disputes between the mayor and city firefighters. *Cervantes,* 423 S.W.2d at 793. This Court noted that these were employment disputes between the mayor and the firefighters of the city. The mayor was found to be a "municipal office" and not a county one. *Id.* at 794. In fact, *McClellan* distinguished the holding in *Cervantes* by clarifying that *Cervantes* dealt with city policemen and firemen in connection with city affairs. *McClellan,* 519 S.W.2d at 9. Here, the Treasurer, and the city officers on the Parking Commission that the Treasurer supervises, are acting in their capacity as county officers and are subject to the general laws of the State under the holding in *McClellan*.

Under *McClellan*, when there are State regulated activities that do not involve the city of St. Louis in its capacity as a city but as a county, the mayor and city officers are subject to the statute. Here, the

Parking Statutes do not involve the city in its capacity as a city because the statutes have general state-wide application and do not set duties between the mayor and city employees.

The legislative intent is clear—the Treasurer has the authority by the plain language of the statutes to "establish and supervise a parking enforcement division and a parking meter division to enforce any statute or ordinance . . . pertaining to the parking of motor vehicles . . . and all other parking functions, and to make disbursements on any parking contracts, including employment, consulting, legal services, capital improvement and purchase of equipment and real property…." Mo. Rev. Stat. § 82.485.2; App 35. While the statutes require City officials to participate in the Parking Commission, this does not make them unconstitutional. As the cases above show, municipal officers can be required to participate in activities that are a county function.

Respondents also cite *State ex rel. Sprague v. St. Joseph*, 549 S.W.2d 873, 870 (Mo. 1977) to argue that the Parking Statutes are unconstitutional, but it is not applicable. In *Sprague*, the question was whether the state statutes regarding licensing and regulating persons in the business of plumbing apply to the city of St. Joseph. *Id.* at 874.

This Court determined that the City of St. Joseph was, by law, *just a city and not also a county*, which is why this Court found the law unconstitutional. *Id.* at 877 (emphasis added). "[T]he only offices St. Joseph can have are municipal offices, it being a constitutional charter city. That being the case, the legislature cannot create or establish for St. Joseph a board of examiners of plumbers or say who its members shall be or their duties or compensation or who shall appoint them." *Id.* at 877.

II. Article VI, Section 19(a) permits the enactment of statutes that limit or deny the exercise of a charter power.

Respondents argue that the home rule provisions negates statutes that apply to charter cities, but the Missouri Constitution specifically permits the enactment of statutes that limit or deny the exercise of a charter power in Article VI, Section 19(a). Respondents argue there is no "hierarchy" but the plain language of Article VI, Section 19(a) establishes a hierarchy and states how constitutional charter cities may operate because it states:

> Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority

> to confer upon any city, *provided such powers* are consistent with the constitution of this state and *are not limited or denied* either by the charter so adopted or *by statute*.

Mo. Const. Art. VI, §19(a) (emphasis added); App 39-40.

Under this hierarchy, "the emphasis is whether the exercise of that [home rule] power conflicts with the Missouri Constitution, State statutes or the charter itself. . . . Once a determination of conflict between a constitutional or statutory provision and a charter or ordinance provision is made, the State law provision controls." *Cape Motor Lodge, Inc. v. City of Cape Girardeau,* 706 S.W.2d 208, 211 (Mo. banc 1986). *See also State ex inf. Hannah v. City of St. Charles,* 676 S.W.2d 508, 513 (Mo. banc 1984) ("Under §19(a), a constitutional charter city is prohibited from exercising its home rule power in a manner that is inconsistent with a State statute").

Accordingly, whatever limitations Article VI, Section 22 may impose relative to city charters, those limitations do not negate or void the effect of Article VI, Section 19(a) that empowers the State to enact statutes limiting or denying powers to charter cities. *State v. Williams*,

548 S.W.3d 275, 280 n.5 (Mo. banc 2018) (explaining that constitutional provisions should be read in harmony). Rather, when a statute denies a power to a charter city or limits a power of the charter city, it abrogates or supersedes the power by higher authority. *See, e.g., Doss,* 807 S.W.2d at 63 (explaining that a later enacted statute which conflicts with an earlier city provision supersedes the provision and renders the provision unlawful).

Respondents argue that the language of Article VI, Section 22 is unambiguous and clear, but they read it more broadly than its language permits. The charter powers of the City of St. Louis are not elevated above the General Assembly's power to enact statutes. The City may not pre-empt or exclude the enactment of statutes related to municipal powers. Statutory limitations and provisions operate at a wholly different level - a higher level - than the charter and represent the retained power of the State to enact statutes that limit or deny powers to the charter city.

In their responsive briefs, Respondents rely on *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. 1996). In *Goff*, the City of Springfield argued that the General Assembly was fixing the powers of a municipal

office under Article VI, Section 22 when it established the majority by which the members of the city council must vote to approve a zoning change over a protest petition. *Id.* at 789. Respondents cite *Goff* for the proposition that the General Assembly may not tell officers of a charter city what they must do, but Respondents overlook the rest of the paragraph that states the General Assembly "may, however, limit the powers a charter city may exercise through its officers." *Id.* at 789. Thus, this Court concluded the statute did not violate Article VI, Section 22 because it did not create a municipal office or employment, nor did it fix the powers, duties or compensation of a municipal office or employment. The Court found that the statute placed limitations upon the exercise of powers by the governing bodies of municipalities. *Id.*

Another issue in *Goff* was whether Springfield's charter purported to grant to the city a power denied it by state statute in violation of Article VI, Section 19(a). The Court determined that the provision of the city charter allowed what the statute prohibits concerning protests by a lower percentage of owners and requiring a greater percentage of votes by members of the city council to override the protests. *Id.* at 790. Thus,

the section of the city charter violated Article VI, Section 19(a) and was void. *Id.*

III. The strong presumption of severability is not overcome, so if the Court finds any part of the Parking Statutes unconstitutional, it should give effect to the other parts of the statutes that are not invalidated.

The trial court specifically ruled that the Parking Statutes violate Article VI, Section 22 because they create or fix the duties or powers of municipal offices of the City, "namely, the Comptroller, the Chairperson of the Aldermanic Traffic Committee, and the Director of Streets." ("City Officers"). Doc. 21, pgs. 12-13; App 12-13.

The relevant part of the statute states:

> 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 .... 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 meter operations,* 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.

§ 82.485.4. RSMo. (emphasis added); App 35. The duties and responsibilities of the supervisor of parking meters include oversight of the parking meter fund. As such, these duties are separate and distinct from the members of the Parking Commission. The Treasurer is assigned these duties and does not rely on the officials on the Parking Commission to carry out these duties. Even if this Court finds that the comptroller, director of streets, and chair of the aldermanic traffic committee may not be assigned duties as part of the county function, removing the three City Officers from the Parking Commission leaves a committee of two individuals to carry out the statutory duties. Preserving this part of the statutes would preserve the General Assembly's intent to have the Treasurer oversee parking operations. The Parking Commission can continue to operate with the Treasurer and the Director of Parking Meter Operations as members. The Parking

Statutes are not "incomplete [or] incapable of being executed" without the City Officers. *See* § 1.140, RSMo.

Additionally, the trial court should not have struck Section 82.487 because it describes the duties and responsibilities of the Parking Commission and not the three City officers on the Commission. The duties assigned to the commission are "budget modification for the parking fund" and the "acquisition, development, regulation, and operation of such parking facilities" and rely on the five-member Parking Commission as set up by § 82.485 RSMo. A parking Commission consisting of the supervisor of parking meters and the director of parking operations would be able to carry out the duties prescribed by the statute.

CONCLUSION

For the foregoing reasons, the trial court's judgment should be reversed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 3, 543 words.

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