

No. SC97730

IN THE SUPREME COURT OF MISSOURI

THE KANSAS CITY CHIEFS FOOTBALL CLUB, INC.
Petitioner-Appellant

and

JACKSON COUNTY SPORTS COMPLEX AUTHORITY
Intervenor-Appellant

v.

DIRECTOR OF REVENUE, STATE OF MISSOURI
Respondent

**BRIEF OF INTERVENOR-APPELLANT
JACKSON COUNTY SPORTS COMPLEX AUTHORITY**

PETITION FOR REVIEW
FROM THE ADMINISTRATIVE HEARING COMMISSION,
STATE OF MISSOURI
CASE NO. 14-1973 RS

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JURISDICTIONAL STATEMENT

This action questions whether the purchases of certain items for the renovation of Arrowhead Stadium and the offices and practice facility of the Kansas City Chiefs Football Club, Inc. (“Chiefs”) are subject to sales and use taxes. The Jackson County Sports Complex Authority (“Authority”) and the Chiefs appeal the decision of the Administrative Hearing Commission (“Commission”) finding that certain of the purchases are taxable. This Honorable Court has jurisdiction over this matter pursuant to § 621.189 RSMo., which provides in relevant part:

Final decisions of the administrative hearing commission in cases arising pursuant to the provisions of section 621.050 shall be subject to review pursuant to a petition for review to be filed in the court of appeals in the district in which the hearing, or any part thereof, is held or, where constitutionally required or ordered by transfer, to the supreme court... .

Article V, § 3 of Missouri’s Constitution provides in relevant part:

The supreme court shall have exclusive appellate jurisdiction in all cases involving ... the construction of the revenue laws of this state... .”

This case involves the construction of the revenue laws of this state, specifically § 144.062 RSMo., and jurisdiction in this Court is proper.

STATEMENT OF FACTS

1. Summary.¹

The Harry S. Truman Sports Complex (“Complex”) is owned by Jackson County, Missouri (“County”) and leased to the Authority. The Authority, in turn, sublets parts of the Complex to the Kansas City Royals Baseball Corporation (“Royals”) and the Chiefs. In 2006, the County and the Authority, to convince the Royals and Chiefs to stay in Kansas City for another 25 years, agreed to provide the financing for major renovations at the Complex, by issuing over \$400 million in County bonds. In return, the teams agreed to take on the responsibility for cost overruns and the repair, management, maintenance, and operations of their respective facilities. In the case of the Chiefs, this meant maintaining the Chiefs’ offices, practice facility, and Arrowhead Stadium in a first-class National Football League condition. To implement this agreement, the Authority and Chiefs entered into a development agreement and lease amendment. The development agreement stated how the project would be financed with one-time revenues such as bond proceeds and the lease amendment directed how maintenance and repair would be financed with on-going revenues such as sales taxes not needed for debt service along with funds from the state, county, and city.

The Authority issued an exemption certificate on a form provided by the Department of Revenue (“Department”) so the Chiefs could buy materials and other tangible personal property, on behalf of the County, incorporated and used in the renovation project. The certificate was issued pursuant to § 144.062 RSMo. which provides an exemption for tangible personal property and materials purchased “for the purpose of constructing, repairing or remodeling facilities” for a county or other political subdivision or instrumentality exempt from taxation. [Appx. A035-37.] The Chiefs were required by section 6.05(b) of the development agreement to contribute at least \$75 million to the project in the form of a contribution to the Missouri Development Finance Board (“MDFB”), for which the Board would issue a 50% state income tax credit in the

¹ This section summarizes the Statement of Facts sections which follow and which contain the necessary citations to the transcript and record.

amount of \$37.5 million. By agreement among the MDFB, Chiefs, County, and Authority, both the contribution and the credits were placed under the control and custody of the bond trustee and were spent on the renovation, as was a second contribution by the Chiefs in the amount of \$50 million.

In a subsequent audit, the Department challenged certain of the purchases of tangible personal property (including the scoreboard at Arrowhead Stadium) that were made free of sales or use tax on the theory that the property was purchased with the Chiefs' funds and treated by the Chiefs as if the Chiefs owned such property. For example, the Chiefs have the exclusive right to use the property under their lease and they were named in certain contracts—specifically the Roscor and Daktronics contracts for components of the scoreboard—as “owner.”

2. The 2006 Lease Amendment.

Arrowhead Stadium and the Chiefs' offices and practice facilities (“Chiefs Premises”) are located in the Complex generally located in the southwest quadrant of the intersection of Interstate 435 and Interstate 70 in Kansas City, Missouri. The Complex is owned by the County, a political subdivision of the state of Missouri. [Parties' Stipulation of Facts and Exhibits, LF 00055; TR 58, lines 5-9; TR 65, lines 16-17.] The Complex is leased by the County to the Authority, a political subdivision of the state of Missouri, created pursuant to §§ 69.920 *et. seq.* RSMo. [Parties' Stipulation, LF 00055.] The Authority sublets the Chiefs Premises to the Chiefs. [Parties' Stipulation, LF 00055; 2006 Lease Amendment, LF 00148 *et seq.*] Pursuant to § 7.1 of a lease amendment executed on January 24, 2006 (the “2006 Lease”), an earlier lease (the “1990 Lease”) was amended to ensure that the Chiefs would remain in Kansas City for another 25 years. [2006 Lease Amendment, LF 00148 *et seq.*] The obligations of the Chiefs in the 2006 Lease were contingent upon a major renovation by the Authority of the Complex, including the Chiefs Premises. [2006 Lease Amendment, LF 00148 *et seq.*; Arrowhead Stadium Development Agreement, LF 00225 *et seq.*] The Commission decision erroneously states that the Authority leases the Chiefs' St. Joseph, Missouri practice facility to the Chiefs.

[Commission Decision, LF 00561 & 564, Appx. A001 & 04.] The Authority has no legal relationship with the St. Joseph facility.

3. Source of funding for renovations.

The one-time funds used in the renovation consisted of Jackson County sales tax bond proceeds, contributions made in 2006 (the “2006 Contribution”) and 2009 (the “2009 Contribution”) by the Chiefs to the MDFB, and 50% tax credits issued by the MDFB (the “Credits”). [Table of One-Time Revenues, Exh. 23.] The 2006 Lease provided in § 10.5 for the Repair Maintenance Management & Operations Fund (“RMMO Fund”) which is required to be funded by (1) 50% of the sales tax revenues not needed for debt service (the other 50% going to the Royals RMMO Fund), (2) 50% of city, county, and state revenues, and (3) Chiefs’ parking and ticket user fees. [2006 Lease Amendment, LF 00148 *et seq.*] Pursuant to § 10.5.3 of the 2006 Lease, the Chiefs are entitled to requisition the Football Stadium RMMO Fund for, as the name implies, football stadium repair, maintenance, management, and operations using the form of disbursement request set forth in Exhibit I to the 2006 Lease. [2006 Lease Amendment, LF 00148 *et seq.*]

4. The Development Agreement.

On March 23, 2006 the Authority, County, and Chiefs entered into a development agreement (the “Development Agreement”) for the renovations of the Complex including the Chiefs Premises, setting forth how the renovations of the Chiefs’ portion of the Complex would be funded, designed, and built. [Development Agreement, LF 00225 *et seq.*] The Development Agreement allowed the Chiefs to seek reimbursement from the Bond Trustee for the cost of the items used in the renovation, or to request the Bond Trustee to pay the vendor of those items directly. Specifically, pursuant to § 6.06 and Exhibit G of the Development Agreement, the Chiefs were entitled to submit draw requests (also referred to as “requisitions” in § 6.06) to the Bond Trustee for disbursements from the Disbursement Account established in § 6.05 to reimburse or pay renovation project costs. [Development Agreement, LF 00225 *et seq.*] Section 6.05 of the

Development Agreement anticipated that the contributions would be made and would be required to be used on the renovations. Specifically, § 6.05(b)(1) provided that the Chiefs were required to contribute \$75 million to the project and that such contribution “must be administered and disbursed as required by the MDFB Agreement.” [Development Agreement, LF 00225 *et seq.*] The Development Agreement anticipated that all of the one-time revenues, *e.g.*, bond proceeds, contributions, and tax credits, would be used in the renovation of the Complex. Specifically, the Disbursement Account was required by § 6.05(b) of the Development Agreement to be funded as follows:

Landlord’s Capped Contribution: \$250,000,000 in public funds [a combination of bond proceeds, approximately \$37,500,000 from the sale of Missouri State Tax Credits issued by the Missouri Development Finance Board (MDFB), and county sales taxes to cover any discount resulting from the sale of the credits]. Tenant’s Contribution: \$75,000,000 plus cash in the amount of any project cost overruns, to be administered and disbursed by the MDFB.

[Development Agreement, LF 00225 *et seq.*]

5. The Bonds and the Indenture.

On August 10, 2006, the County issued \$447.24 million in bonds pursuant to an agreement between the County and a trustee for the bond-holders (the “Indenture”). [Trust Indenture, LF 00328 *et seq.*] What was deemed the Disbursement Account by the Development Agreement became known as the Project Fund, Bond Proceeds and Non-Bond Proceeds Sub-Accounts under the Indenture. [Trust Indenture, LF 00328 *et seq.*] This change in nomenclature was anticipated by § 6.05(d) of the Development Agreement, which also provides that the Chiefs are a third-party beneficiary of the Indenture. [Development Agreement, LF 00225 *et seq.*] Section 401(a)(4) of the Indenture creates the Project Fund and designates it as “funds of the county.” [Trust Indenture, LF 00328 *et seq.*; TR 48, lines 8-12.] The monies under the control of the Bond Trustee could only be accessed through a disbursement request. [TR 51, lines 10-13; TR 105, lines 1-10; Trust Indenture, LF 00328 *et seq.*] The procedure that was followed under the Indenture was that a request for reimbursement or payment was sent

by the Chiefs to the Authority and, once approved, sent to the Bond Trustee for payment. [TR 52, lines 1-10; TR 105, lines 1-10.]

6. Contributions to the MDFB.

The MDFB was established by the legislature in §§ 100.250-100.297 RSMo. for the purpose of assisting in the financing of major projects for the benefit of the citizens of Missouri. Pursuant to § 100.286.6 RSMo., an approved contribution to one of the MDFB funds generates a 50% state income tax credit. Once contributed, the contribution becomes funds of the state. § 100.286.6 RSMo.

The Chiefs made the 2006 Contribution and the 2009 Contribution to the MDFB pursuant to agreements between the MDFB, Chiefs, County, and Authority in which the parties agreed that MDFB would allocate the contributions to the renovation project and the Chiefs would do the same with the Credits. [Tax Credit Agreement, LF 00499 *et seq.*; 1st Amendment to Tax Credit Agreement, LF 00535 *et seq.*] The 2006 and 2009 Contributions and the net proceeds of the 2006 Credits were, pursuant to the tax credit agreements, placed under the control and custody of the Bond Trustee and were designated as funds of the County in the Indenture. [Trust Indenture, LF 00328 *et seq.*; Tax Credit Agreement, LF 00499 *et seq.*; 1st Amendment to Tax Credit Agreement, LF 00535 *et seq.*; Project Funding Flow Chart, Exh. 22.] As explained below, the MDFB transferred them to the custody and control of the same bank that served as the Bond Trustee with the proviso that they had to be spent on the renovation of the Complex and that they were subject to requisitions by the Chiefs in the same manner as requisitions were made for all other public funds in the project. [Trust Indenture, LF 00328 *et seq.*; Tax Credit Agreement, LF 00499 *et seq.*; 1st Amendment to Tax Credit Agreement, LF 00535 *et seq.*; Project Funding Flow Chart, Exh. 22.]

A. The 2006 Contribution.

On October 12, 2006, the MDFB, Chiefs, County, and Authority entered into a tax credit agreement (the “Tax Credit Agreement”) which provided for the Chiefs to make the 2006 Contribution—a \$75 million contribution by the Chiefs to the renovation project

resulting in \$37.5 million in tax credits (the “2006 Credits”). [Tax Credit Agreement, LF 00499 *et seq.*] The 2006 Contribution was placed in a segregated trust account held by the Bond Trustee. [TR 79, line 17-TR 80, line 11.] Section 4.1 of the Tax Credit Agreement provides that all contributions received by MDFB shall be deposited into a designated account and then transferred to a segregated account held by the Bond Trustee. [Tax Credit Agreement, LF 00499 *et seq.*] The 2006 Contribution was paid to the Bond Trustee to be used for project costs. [Project Funding Flow Chart, Exh. 22.] Section 4.2 of the Tax Credit Agreement provides that the Bond Trustee shall disburse amounts from the Bond Trustee account upon receipt of executed requisitions pursuant to the Development Agreement.

B. The 2006 Credits.

Normally the tax credits received for such a contribution belong to the taxpayer and may be used to offset the taxpayer’s state income tax liability or may be sold. § 100.286.7 RSMo. However, the Chiefs surrendered ownership of the 2006 Credits by entering into the Tax Credit Agreement which in § 3.7 required the net proceeds of the 2006 Credits to be placed in the Disbursement Account defined in § 6.05(a) of the Development Agreement (or any similar Project construction account established pursuant to any “Bond Indenture” as defined in § 6.04(d) thereof) and disbursed as therein set forth to be used on the renovation. [Tax Credit Agreement, LF 00499 *et seq.*]

C. The 2009 Contribution.

With the renovation underway, on January 7, 2009, the Chiefs made the 2009 Contribution—an additional \$50 million which resulted in an additional \$25 million in credits (the “2009 Credits”) pursuant to the First Amendment to Tax Credit Agreement. [First Amendment to Tax Credit Agreement, LF 00535 *et seq.*] The 2009 Contribution was transferred to the Bond Trustee and placed in the Project Non-Bond Proceeds Sub Account of the Project Fund. [First Amendment to Tax Credit Agreement, LF 00535 *et seq.*; Project Funding Flow Chart, Exh. 22.]

D. The 2009 Credits.

The proceeds from the sale of the 2009 Credits were placed in a separate account, the Additional Tax Credit Proceeds Disbursement Account. [First Amendment to Tax Credit Agreement, LF 00535 *et seq.*] None of the items in dispute in this litigation were paid with funds from the Additional Tax Credit Proceeds Disbursement Account. [1990 Lease Agreement, LF 00061 *et seq.*; Project Funding Flow Chart, Exh. 22; TR 44, lines 10-13.]

7. The Authority's exemption certificate.

Section 3.2.4.7 of the 2006 Lease obligates the Authority to provide, to the extent legally possible, an exemption from sales taxes for property and materials used in the renovation of the Chiefs Premises. [2006 Lease Amendment, LF 00148 *et seq.*] On January 10, 2007, the Authority issued its project exemption certificate to the Chiefs on the form provided by the Department. [Project Exemption Certificate, Exh. 10.] The Chiefs used the certificate to order or purchase items on the Contested Items List, [Contested Items List, LF 00555 *et seq.*], without paying sales or use taxes. Items on the list were purchased and used in the renovation of the Chiefs Premises from 2007 to 2010. [TR 15, lines 3-6.] The Chiefs provided the exemption certificate to vendors of items on the list. [Project Exemption Certificate, Exh. 10; TR 99, lines 1-25.] The payment or reimbursement was made from the Project Fund or the Football Stadium RMMO Fund, both funds designated as "Funds of the County" under the Indenture. [Trust Indenture, LF 00328 *et seq.*] The sources of the Funds of the County used by the Bond Trustee to pay or reimburse these costs were bond proceeds, the Chiefs' 2006 and 2009 Contributions to the MDFB, and the 2006 Credits issued by the MDFB. [Project Funding Flow Chart, Exh. 22; Table of One-Time Revenues, Exh. 23; TR 37-41.]

8. The Director's assessment.

The Director assessed sales and use taxes on certain of the items purchased for the renovation of the Chiefs Premises on the grounds that they were paid for out of private funds, *e.g.*, the Contributions and Credits, and treated by the Chiefs as if they were the

exclusive property of the Chiefs by, among other things, using the items in a private business. [Contested Items List, LF 00555 *et seq.*]

9. The ruling of the Commission.

This matter was tried before the Commission on October 10, 2017. The Commission issued its ruling on January 29, 2019, upholding the Director’s ruling in part and overruling it in part. In summary, the Commission found that the items it deemed taxable (1) were not purchased with County funds and (2) were not owned by the County.

A. Private funds.

The Commission decided the items held to be taxable were not purchased with funds of the County, but instead were purchased with private funds. The Commission reached this conclusion for two reasons. First, the Chiefs made two contributions to the MDFB which in turn reinvested the contributions, along with the tax credits received by the Chiefs, in the renovation of Arrowhead Stadium, as described above. [Commission Decision, LF 00573-77, Appx. A013-17.] The Commission found that these funds were used to purchase the items deemed taxable, and that they were not funds of the County, but rather were private funds. [Commission Decision, LF 00578, Appx. A018.]

Second, the Development Agreement gave the Chiefs an option to direct the purchase of certain items out of the Chiefs’ contribution and deem such purchases to be made from private funds. [Commission Decision, LF 00573, Appx. A013.] The Commission concluded this inchoate right converted the funds to private funds even though the Chiefs never exercised this right, and even though they surrendered this right when they entered into the tax credit agreements. [Commission Decision, LF 00576-79, Appx. A016-19.]

B. Private ownership.

The Commission held the Chiefs owned certain of the items for two reasons. First, the Commission held the identification of the Chiefs as “owner” in certain contracts was dispositive. For those items, which include the Daktronics and Roscor scoreboard

contracts, the Chiefs used a standard form American Institute of Architects contract that identified the entity placing the order for the property as the “owner.” [Commission Decision, LF 00582, Appx. A022.] Second, the Commission held the lack of identification of the County as “owner” in the Lease or Development Agreement meant it could not be the owner for purposes of taxation. [Commission Decision, LF 00575-76, Appx. A015-16.]

POINTS RELIED ON

1. The Commission erred in finding that the items deemed taxable were paid for by the private funds of the Chiefs because the competent and substantial evidence on the whole record shows they were paid with funds of the County, in that the Contributions and Credits which were used to pay for the items were, pursuant to the Tax Credit Agreements, placed under the control and custody of the Bond Trustee and were, from that moment on, funds of the County.

State ex rel. City of St. Louis v. Baumann, 153 S.W.2d 31 (Mo. 1941)

Art. III, § 39, Mo. Const.

§ 64.940 RSMo.

§ 144.062 RSMo.

2. The Commission erred in finding that the items deemed taxable were owned by the Chiefs because the competent and substantial evidence on the whole record shows they were used to rehabilitate infrastructure owned by the County, in that purchases of items of personal property by the County to rehabilitate the Chiefs Premises, which is County property, are exempt from sales and use taxes.

§ 144.062 RSMo.

3. The Commission erred in finding that the purchases of certain items were taxable as a result of the Chiefs ordering the items from the vendor, because under § 144.062.1(1) RSMo., a purchase of personal property to be used in the rehabilitation of facilities owned by a political subdivision is exempt from sales or use tax in that the statute allows a contractor (in this case the Chiefs) to order and pay for such property without waiving the exemption.

§ 144.062 RSMo.

4. The Commission erred in finding that the purchase of property incorporated into a project owned by a political subdivision is rendered taxable merely because the project is leased to and exclusively occupied by a private entity because § 144.062 RSMo. anticipates such an arrangement in that the exempt functions and activities of the Authority under § 64.940 RSMo. include building and leasing facilities to professional sports franchises.

Sports Unlimited, Inc. v. Director of Revenue, 962 S.W.2d 885 (Mo. banc 1998)

Art. VI, § 27, Mo. Const.

§ 100.050 RSMo.

§ 144.062 RSMo.

5. The Commission erred in finding that none of the items deemed taxable were ‘construction materials’ and that this somehow determined the taxability of their purchase because neither Article III, § 39 of the Constitution nor § 144.062.1(1) RSMo. require a designation as ‘construction materials’ to exempt a sale from sales or use taxes in that the constitution exempts all purchases paid for out of the funds of the County or the Authority, and § 144.062.1(1) RSMo. exempts the purchase of any property consumed or incorporated into the renovation of property owned by the County.

Art. III, § 39, Mo. Const.

§ 144.062 RSMo.

ARGUMENT

1. **The Commission erred in finding that the items deemed taxable were paid for by the private funds of the Chiefs because the competent and substantial evidence on the whole record shows they were paid with funds of the County, in that the Contributions and Credits which were used to pay for the items were, pursuant to the Tax Credit Agreements, placed under the control and custody of the Bond Trustee and were, from that moment on, funds of the County.**

A. *Standard of review.*

This Court reviews the Commission's decision to determine whether it is "authorized by law and supported by competent and substantial evidence upon the record as a whole unless clearly contrary to the reasonable expectations of the General Assembly." *Balloons Over the Rainbow, Inc. v. Director of Revenue*, 427 S.W.3d 815, 820 (Mo. banc 2014). The Commission's interpretations of revenue laws are reviewed *de novo*. *Street v. Director of Revenue*, 361 S.W.3d 355, 357 (Mo. banc 2012). The Commission's error was preserved for review because the evidence relied on and legal arguments were presented to the Commission.

B. *The items on the Contested Items List were paid for out of County funds and were therefore exempt from sales and use taxes under § 144.062.1 RSMo. and Art. III, § 39 of the Constitution of Missouri.*

- i. *Purchases made on behalf of the County or the Authority are exempt from sales and use taxes since both are exempt entities under § 144.062.1 RSMo.*

On January 10, 2007, the Authority issued its project exemption certificate to the Chiefs on the form provided by the Department. [Project Exemption Certificate, Exh. 10.] The Authority's role under the Development Agreement and §§ 404 and 408 of the Indenture was not to select or order the property to be used in the renovation, it was rather to approve the payment for such property by the Bond Trustee. [Trust Indenture, LF 00328 *et seq.*] Indeed, the Authority lacked the expertise to order the thousands of items involved in the over half-billion dollar renovation of the Complex. As stated in *Becker Electric Co. v. Director of Revenue*:

The procedure followed merely reflects the economic realities of the situation; the Housing Authority lacks the expertise to purchase such materials on its own, and it is doubtful the exemption would ever be invoked if, as a prerequisite, the Housing Authority were required to perform all of the purchasing functions.

749 S.W.2d 403, 408 (Mo. banc 1988).

Regardless of whether the Authority ordered or paid for the items used in the renovation of Arrowhead Stadium, the “purchases” of these items were exempt under the certificate as they were made on behalf of the exempt owner (the County) or on behalf of the Authority, which is also an exempt entity. This conclusion is plain from the reading of § 144.062.1 RSMo., which provides in relevant part:

With respect to exempt sales at retail of tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for:

(1) A county, other political subdivision or instrumentality thereof exempt from taxation under subdivision (10) of Section 39 of Article III of the Constitution of Missouri; or ...

(5) Any authority exempt from taxation under subdivision (39) of subsection 2 of section 144.030; ...

hereinafter collectively referred to as exempt entities, such exemptions shall be allowed for such purchases if the purchases are related to the entities’ exempt functions and activities. In addition, the sales shall not be rendered nonexempt ... due to such purchases being billed to or paid for by a contractor or the exempt entity contracting with any entity to render any services in relation to such purchases, including ... use of materials ... for construction of the building or other facility ... whether or not the contractor or other entity exercises dominion or control in any other manner over the materials in conjunction with services or labor provided to the exempt entity.²

[Appx. A035-37.]

² Under this statute, which was passed in response to *Becker Electric Co. v. Director of Revenue*, 749 S.W.2d 403 (Mo. banc 1988), a contractor could order, pay for, and exercise dominion over personal property, and the purchase would be exempt even if the contractor was never reimbursed, so long as the property was used for the purpose of constructing, repairing or remodeling facilities for a county or other political subdivision.

The exempt functions and activities of the Authority are spelled out in § 64.940 RSMo., which functions include the renovation of the Complex, providing in relevant part:

1. The authority shall have the following powers:

(1) To acquire by gift, bequest, purchase or lease from public or private sources and to plan, construct, operate and maintain, or to lease to others for construction, operation and maintenance a sports stadium, field house, indoor and outdoor recreational facilities, centers, playing fields, parking facilities and other suitable concessions, and all things incidental or necessary to a complex suitable for all types of sports and recreation, either professional or amateur, commercial or private, either upon, above or below the ground; ...

(6) To borrow money for the acquisition, planning, construction, equipping, operation, maintenance, repair, extension and improvement of any facility, or any part or parts thereof, which it has the power to own or to operate...

(8) To perform all other necessary and incidental functions; and to exercise such additional powers as shall be conferred by the general assembly or by act of Congress.

2. The authority is authorized and directed to proceed to carry out its duties, functions and powers in accordance with sections 64.920 to 64.950 as rapidly as may be economically practicable and is vested with all necessary and appropriate powers not inconsistent with the constitution or the laws of the United States to effectuate the same, except the power to levy taxes or assessments.

[Appx. A032-34.]

ii. *The items on the Contested Items List were paid for out of County funds and were therefore exempt from sales and use taxes under the Constitution of Missouri.*

As raised at the hearing before the Commission, [TR 23], Article III, § 39(10) of the Missouri Constitution provides: “The general assembly shall not have power ... to impose a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision.” [Appx. A030-31.] Since the source of payment for the items on the Contested Items List was funds of the County

under §§ 401, 404 and 408 of the Indenture, the purchases were exempt from sales and use taxes under the Constitution. The Commission found that the Contested Items were not “purchased” by the Authority³ because it believed the Chiefs became the owner of the items, largely due to identification of the Chiefs as “owner” on form contracts. The operative facts are clear and to the contrary: the Chiefs ordered the items and at times advanced the payment for them, and at other times sent the bill to the Authority. In either case, the Authority’s role was to approve the reimbursement or payment and notify the Bond Trustee to release funds. In either case, the ultimate source of payment, the Bond Trustee, released funds of the County to pay for the items. This is what determines the exemption, not a form contract or the identity of the entity selecting the items for purchase. The Constitution exempts the “*use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision.*” This is what occurred here, and the purchases, paid for out of County funds, are exempt.

C. County funds were not rendered private monies because a portion of them were contributed by the Chiefs.

The Commission held that the Contributions and the Credits retained a character as private funds, and thus were not funds of the County, because they were originally paid by the Chiefs. The Director’s focus on the original source of the funds is incorrect. If taken to its logical conclusion, all purchases made with public funds such as taxes must be subject to sales tax because the original source of such funds is private individuals and entities such as the Chiefs. Taxes are, after all, only private funds until paid to the government.

³ Paragraph 27, note 3 of the Commission’s findings of fact quotes the Authority’s answer to interrogatories that the Authority did not purchase any of the items. Whether or not the Authority made any decision to purchase individual items is not relevant, because the purchases occurred with County funds, as explained below.

- i. *The Chiefs' contributions became funds of the County the instant they were made.*

The Contributions made by the Chiefs lost their character as private funds upon payment as does any payment by a private individual to the state. Further, they were placed under the control of the MDFB by virtue of the Tax Credit Agreements which were executed before the contributions were made. Since the Contributions retained their character as funds of the County when transferred to the Trustee, purchases by the County are not subject to sales tax. *See State ex rel. City of St. Louis v. Baumann*, 153 S.W.2d 31, 35 (Mo. 1941) (holding land becomes immune from taxation the instant it is acquired by a political subdivision because if not, the state would simply be taxing itself).

- ii. *The 2006 Credits were immediately converted to public funds.*

The 2006 Credits would have been private funds if not for the MDFB Agreements, but were instead placed, along with bond proceeds, in the Project Fund under the control and custody of the Bond Trustee. The Contributions and the Credits under the control and custody of the Bond Trustee were designated as funds of the County in the Indenture. The Indenture controls and the funds used to purchase the Contested Items were County funds. This entire arrangement was approved in advance by the Director of Revenue who authorized the Tax Credits and the Tax Credit Agreements. [Joint Agreement, Exh. 28; Tax Credit Agreement, Exh. 5, § 3.1.]

- 2. **The Commission erred in finding that the items deemed taxable were owned by the Chiefs because the competent and substantial evidence on the whole record shows they were used to rehabilitate infrastructure owned by the County, in that purchases of items of personal property by the County to rehabilitate the Chiefs Premises, which is County property, are exempt from sales and use taxes.**

- A. *Standard of review.*

This Court reviews the Commission's decision to determine whether it is "authorized by law and supported by competent and substantial evidence upon the record as a whole unless clearly contrary to the reasonable expectations of the General Assembly." *Balloons Over the Rainbow, Inc. v. Director of Revenue*, 427 S.W.3d 815,

820 (Mo. banc 2014). The Commission’s interpretations of revenue laws are reviewed *de novo*. *Street v. Director of Revenue*, 361 S.W.3d 355, 357 (Mo. banc 2012). The Commission’s error was preserved for review because the evidence relied on and legal arguments were presented to the Commission.

B. All of the record evidence shows the County owns the Complex.

The direct testimony of Matthew Webster established that the County owns the Complex. [TR 58.] In addition, the Department stipulated on the record that the County owns the Complex. [TR 65.] Finally, the Development Agreement and the 2006 Lease recite that the County is the owner of the Complex. [2006 Lease Amendment, LF 00148 *et seq.*, Recitals A & B; Development Agreement, LF 00225 *et seq.*, Recitals A & B.] The Commission found that the County owns the Complex (although it erroneously stated that the St. Joseph practice facility is included in the Complex). [Commission Decision, LF 00562, Appx. A002.] Under § 144.062 RSMo., County ownership of the property into which the personal property and materials are incorporated means the sales are exempt from tax.

3. The Commission erred in finding that the purchases of certain items were taxable as a result of the Chiefs ordering the items from the vendor, because under § 144.062.1(1) RSMo., a purchase of personal property to be used in the rehabilitation of facilities owned by a political subdivision is exempt from sales or use tax in that the statute allows a contractor (in this case the Chiefs) to order and pay for such property without waiving the exemption.

A. Standard of review.

This Court reviews the Commission’s decision to determine whether it is “authorized by law and supported by competent and substantial evidence upon the record as a whole unless clearly contrary to the reasonable expectations of the General Assembly.” *Balloons Over the Rainbow, Inc. v. Director of Revenue*, 427 S.W.3d 815, 820 (Mo. banc 2014). The Commission’s interpretations of revenue laws are reviewed *de novo*. *Street v. Director of Revenue*, 361 S.W.3d 355, 357 (Mo. banc 2012). The

Commission's error was preserved for review because the evidence relied on and legal arguments were presented to the Commission.

B. The plain language of § 144.062 requires the opposite of the Commission's finding.

Under § 5.01 of the Development Agreement and § 10.3 of the 2006 Lease, the Chiefs had the responsibility to oversee the renovation project and to hire the general contractor or construction manager. Thus, as far as the Authority is concerned, it looked to the Chiefs to manage the renovation project and act as contractor for the project.

Section 144.062 RSMo. explicitly allows the exemption whether purchases are billed to or paid for by a contractor, or whether “the exempt entity contract[s] with any entity to render any services in relation to such purchases” such as selecting materials and use of materials. [Appx. A035-37.] Under the Development Agreement, the Authority contracted with its tenant, the Chiefs, to remodel the Chiefs Premises at the Complex to the satisfaction of tenant and the standards of the league in which it operates. It did so through the purchases and, consequently, satisfies this part of the statute.

4. The Commission erred in finding that the purchase of property incorporated into a project owned by a political subdivision is rendered taxable merely because the project is leased to and exclusively occupied by a private entity because § 144.062 RSMo. anticipates such an arrangement in that the exempt functions and activities of the Authority under § 64.940 RSMo. include building and leasing facilities to professional sports franchises.

A. Standard of review.

This Court reviews the Commission's decision to determine whether it is “authorized by law and supported by competent and substantial evidence upon the record as a whole unless clearly contrary to the reasonable expectations of the General Assembly.” *Balloons Over the Rainbow, Inc. v. Director of Revenue*, 427 S.W.3d 815, 820 (Mo. banc 2014). The Commission's interpretations of revenue laws are reviewed *de novo*. *Street v. Director of Revenue*, 361 S.W.3d 355, 357 (Mo. banc 2012). The

Commission's error was preserved for review because the evidence relied on and legal arguments were presented to the Commission.

B. Purchases of property incorporated into a project owned by a political subdivision are not rendered taxable merely because the project is leased to and exclusively occupied by a private entity.

Counsel for the Director argued in his opening statement before the Commission that the Chiefs are not a contractor for a political subdivision under § 144.062; instead they are just “a tenant in the facility.” [TR 25, lines 4-11.] The heart of the Director's argument is that for there to be a taxable event under the use tax statute (Chapter 144) legal title is not required: it is the control, ownership, or possession of the property that matters.

But the language of the statute is clear that exemptions are valid “whether or not the contractor *or other entity* exercises dominion or control ... over the materials in conjunction with services or labor provided to the exempt entity.” § 144.062.1 RSMo., Appx. A035-37 (emphasis added.) In § 5.01 of the Development Agreement, the Chiefs contracted with the County to undertake the renovations of their premises to “render ... services in relation to such purchases, including ... for construction of the building.” [Development Agreement, LF 00225 *et seq.*] The effect of this provision, in the words of this Court, “is to negate any claim that a contractor ... who in any way exercises ‘dominion or control’ over the materials would thereby become the actual purchaser of those materials.” *Sports Unlimited, Inc. v. Director of Revenue*, 962 S.W.2d 885, 887 (Mo. banc 1998).

Opposition to the ideas that public funds can be spent on a facility that is leased to a sports team for the exclusive use by the team in its private business, or that purchases of components of that facility are exempt from sales taxes, is understandable. However, Missouri's Constitution authorizes municipal leases where buildings owned by political subdivisions are leased to private parties who receive both property tax abatement and exemption from sales taxes. Article VI, § 27(b) of the Missouri Constitution was approved by a vote of the people in 1978. It provides as follows:

Any county, city or incorporated town or village in this state, by a majority vote of the governing body thereof, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery. The cost of operation and maintenance and the principal and interest of the bonds shall be payable solely from the revenues derived by the county, city, or incorporated town or village from the lease or other disposal of the facility.

This practice has been implemented in Chapter 100 of the Revised Statutes of Missouri. The title to a facility built with industrial development bonds is held by a city or county and the facility is therefore exempt from property taxes, Art. X, § 6, Mo. Const., and sales taxes, Art III, § 39(10), Mo. Const. [Appx. A030-31.] This exemption is recognized in § 100.050.2 RSMo., which provides in relevant part:

If the plan for the project is approved after August 28, 2003, and the project plan involves issuance of revenue bonds or involves conveyance of a fee interest in property to a municipality, the project plan shall additionally include the following information: ...

(4) Identification of any payments in lieu of taxes expected to be made by any lessee of the project, and the disposition of any such payments by the municipality.

There is a legitimate debate that could be had about whether to amend Missouri's Constitution and laws to conform to the Director's view of social justice, but the place for that argument is at the ballot box. In the meantime, the exemption from sales taxes for the renovation of the Complex was the bargain that was struck between the County, Royals, Chiefs, and the State of Missouri to keep the teams in Missouri until at least 2031. Sections 3.2.1 and 10.3 of the 2006 Lease disclose that as part of the business deal, the Chiefs assumed all responsibility for cost overruns in the renovation and for all maintenance and repair of the facilities for 25 years. [2006 Lease Amendment, LF 00148 *et seq.*]

Hosting professional sports teams is part of the County's and the Authority's exempt functions and activities and has not been judicially questioned since the teams moved into the Complex in 1970. It is not unusual for states, which compete with each other for professional sports teams, to enter into such arrangements. In *Friends of the Parks v. Chicago Park Dist.*, 786 N.E.2d 161 (Ill. 2003), the challengers sought declaratory judgment that a legal regime similar to Missouri's which enabled public financing of renovations to Soldier Field, owned and operated by the city park district but used by the privately-owned Chicago Bears, was unconstitutional. The Illinois Supreme Court held that: (1) the law served a public purpose, as required by the state constitutional provision that public funds, property, or credit shall be used only for public purposes and (2) the law did not violate public trust doctrine. *See also Metropolitan Sports Facilities Comm'n v. County of Hennepin*, 478 N.W.2d 487 (Minn. 1991) (holding statute exempting from property taxation a sports facility leased by the Commission to two private sports organizations does not violate equal protection).

5. **The Commission erred in finding that none of the items deemed taxable were 'construction materials' and that this somehow determined the taxability of their purchase because neither Article III, § 39 of the Constitution nor § 144.062.1(1) RSMo. require a designation as 'construction materials' to exempt a sale from sales or use taxes in that the constitution exempts all purchases paid for out of the funds of the County or the Authority, and § 144.062.1(1) RSMo. exempts the purchase of any property consumed or incorporated into the renovation of property owned by the County.**

A. *Standard of review.*

This Court reviews the Commission's decision to determine whether it is "authorized by law and supported by competent and substantial evidence upon the record as a whole unless clearly contrary to the reasonable expectations of the General Assembly." *Balloons Over the Rainbow, Inc. v. Director of Revenue*, 427 S.W.3d 815, 820 (Mo. banc 2014). The Commission's interpretations of revenue laws are reviewed *de novo*. *Street v. Director of Revenue*, 361 S.W.3d 355, 357 (Mo. banc 2012). The

Commission’s error was preserved for review because the evidence relied on and legal arguments were presented to the Commission.

B. Under the Constitution, because the items deemed taxable by the Commission were paid for out of the funds of the County, they are exempt from sales and use taxes regardless of whether they meet a regulatory definition of ‘construction materials.’

The Commission erroneously focused on a term—“construction materials”—that is not part of the statute at issue. With this focus, the Commission found that none of the contested items—furniture, wayfinding signs, scoreboards, televisions, video equipment for the scoreboards, display cases for memorabilia in the hall of honor, video wall for the hall of honor, and clay molds for the statue of Lamar Hunt—were eligible for tax exemptions. Going further, the Commission concluded that they were not construction materials by further erroneously finding, against the overwhelming weight of the evidence, that none of these items were consumed or incorporated into the construction. [Commission Decision, LF 00582, Appx. A022.] The clearest example of items that were incorporated into the renovation is the components of the scoreboard, representing the lion’s share of the Contested Items List.

The Department does not have the power to tax sales which the Constitution renders exempt. Article III, § 39 of the Constitution provides: “The general assembly shall not have power: ... (10) To impose a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision.” [Appx. A030-31.]

C. The items are exempt under § 144.062 RSMo.

The Commission rested its finding of taxability in part on the conclusion that none of the items were construction materials, even though there is no definition of construction materials in the statute granting the exemption. The only place the term “construction materials” appears in § 144.062 is the title. The operative phrase in the body of the statute granting the statutory exemption to sales to the County and the Authority are “tangible personal property and materials for the purpose of constructing,

repairing or remodeling facilities.” § 144.062 RSMo., Appx. A035-37. If the Contested Items satisfy this standard, they are exempt.

Here, the Contested Items satisfy the standard. All of the Contested Items at issue—furniture, wayfinding signs, scoreboards, televisions, video equipment for the scoreboards, display cases for memorabilia in the hall of honor, video wall for the hall of honor, and clay molds for the statue of Lamar Hunt—were acquired for the sole purpose of and incorporated into the remodeling done on the Chiefs Premises. More specifically, the wayfinding signs, scoreboards, televisions, video equipment, display cases, and video wall all have been incorporated into the remodel in the sense they have been attached to the real property and have become “fixtures” of the real property. This is all that is required under the statute. All of this “personal property” which has been “incorporated into ... the project” retains the exemption. The Commission’s decision was in error.

CONCLUSION

In conclusion, the Authority prays that this Court reverse that portion of the ruling of the Commission which found that the purchases of items on the Contested Items List are not exempt from taxation since (1) they were purchased pursuant to a valid exemption certificate issued by the Authority under § 144.062 RSMo., and (2) they were “paid for out of the funds of” the County under Article III, § 39 of the Missouri Constitution.

Respectfully submitted,

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CERTIFICATIONS

I certify that:

1. I signed this Brief of Intervenor-Appellant as required by Rules 55.03 and 103.04.
2. This Brief of Intervenor-Appellant complies with Rule 84.06(b) because it contains 8,766 words. I relied upon Microsoft Word for this word count.
3. Under Rules 81.005, 81.006, and 103.08, I electronically filed the original Brief of Intervenor-Appellant and accompanying Appendix and served it on all counsel of record and registered users in this case through the Court's electronic filing system.

/s/ Michael T. White

Attorney for Intervenor-Appellant

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