

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

**REPLY 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

Michael T. White, #19261
ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.
4510 Belleview Avenue, Suite 300
Kansas City, Missouri 64111
Telephone: 816-753-9200
Facsimile: 816-753-9201
mwhite@rousepc.com

ATTORNEYS FOR
INTERVENOR-APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS2

ARGUMENT.....3

1. The Director’s reference to the purchase of certain trivial items is outside the scope of the issues in this case.3

2. The Director’s argument that certain items were paid for out of the Project Fund is not supported by any evidence......4

3. The identity of the ‘purchaser’ of the items on the Contested Items List is irrelevant to the issue of whether the sale is exempt from taxation.5

4. Conclusion.6

CERTIFICATIONS.....7

ARGUMENT

1. The Director’s reference to the purchase of certain trivial items is outside the scope of the issues in this case.

This case could have been submitted on a stipulation, because there is little if any disagreement over the facts. For example, there is no disagreement about how the renovations at the Truman Sports Complex were funded, or about whether the Chiefs contributed \$125 million to the Missouri Development Finance Board in exchange for \$62.5 million in tax credits, all of which ended up with the trustee of the Jackson County bond issue. [TR 34:22-40:10; TR Exhs. 22 & 23.] Rather, the disputes center on the Director of Revenue’s characterizations of terms such as “purchaser” and “funds of the County.” The Director makes much of the use of the word “owner” in some of the contracts used by the Chiefs to order items incorporated into the renovations at issue. Yet a number of these were standard AIA form contracts. In fact, the Development Agreement encouraged the use of AIA forms. [Exh. G to the Development Agreement, LF 00306-07.]

In Respondent’s Brief, however, the Director for the first time claims that the Chiefs purchased certain trivial items¹ without paying sales tax or use tax and that these items were paid for out of the Project Fund. [Respondent’s Brief, pp. 11-12.] The Director’s position is inconsistent because it relies on an assertion that the Chiefs, and not Jackson County, legally “purchased” the items while at the same time admitting that the County actually paid for them, in that payment from the Project Fund, described as “funds of the County” in Section 401 of the Trust Indenture [LF 00357], is a payment by the County out of public funds under Article X, Section 6 of the Missouri Constitution.

More importantly, the items mentioned are not at issue in this case. The parties have stipulated to an agreed-upon list of contested items, the “Contested Items List,” that does not include them. [LF 00555-60.] During the course of this litigation, the Chiefs

¹ Cheerleader uniforms and boots, cookie bouquets sent to a corporate sponsor, gifts of champagne, football helmet wax.

paid sales tax on all the assessments except those in the Contested Items List. [Parties' Stipulation of Facts and Exhibits, ¶¶ 23 & 24, LF 00057-58.] The Court should ignore this allegation which is outside the scope of the issues raised in this proceeding.

2. The Director's argument that certain items were paid for out of the Project Fund is not supported by any evidence.

Nevertheless, the Director now is raising an issue regarding these trivial items beyond the Contested Items List. The Authority can only surmise that the Director has done so for the purpose of sensationalism. It *would* be sensational if the County paid for champagne and helmet wax. There is only one problem with this assertion: there is no evidence in the record that it ever happened. To support this dramatic allegation, on page 11 of Respondent's Brief the Director relies solely on the following statement made by Michael Ragsdale during his deposition:

Q. Then on the second page of this exhibit, it's another handwritten note and it says, Bill, are we running this through the stadium project, and it looks like that's either Dale or I guess it could be Dave. Do you know who those people would be?

A. Bill I'm not sure. Dale is the former treasurer of the Kansas City Chiefs.

Q. What was his full name?

A. Dale Young.

Q. Now you said you were responsible for fixed assets during the stadium renovation, is that correct?

A. A portion of it, yes.

Q. Given your work on that, do you know what would have been meant by are we running this through the stadium project?

A. There are certain items that the Chiefs purchase directly and then were reimbursed from the stadium project fund.

Q. As far as reimbursed from the stadium project fund, the Chiefs also contributed funds to that project fund, is that correct?

A. Correct.

[Respondent's Exh. B, Ragsdale Depo., 48:10-49:6.] What the Director omits is any mention that Ragsdale's testimony about "running [items] through the stadium project" is explicitly limited to a single item—the statue of Chiefs' founder Lamar Hunt installed on

the stadium concourse. Instead, the Director elides this limitation, incorrectly grouping the statue with other trivial items in a string cite and attempting to transform those trivial items into a scandal by association. [Respondent’s Brief, pp. 11-12.] In fact, the only testimony promoted by the Director is focused only on the statue itself or generally on “some of these renovation transactions.” [Respondent’s Exh. B, Ragsdale Depo., 48:10-49:6; 84:14-85:1.]

Under the Development Agreement [LF 00225 *et seq.*] and the Trust Indenture [LF 00328 *et seq.*], the Authority reviewed all items which were submitted for either payment or reimbursement from the Project Fund. There is no evidence supporting the Director’s insinuation that the Authority was ever presented with a request for payment or reimbursement for these trivial items. The Court should ignore this allegation which is not supported by the record.

3. The identity of the ‘purchaser’ of the items on the Contested Items List is irrelevant to the issue of whether the sale is exempt from taxation.

The Authority answered in discovery that it was not the “purchaser” of the items on the Contested Items List. [Authority Responses to Request for Admissions, TR Exh. 18.] It is clear that the role of the Authority under Section 6.06(c) of the Development Agreement [LF 00261], Section 10.5.3 of the 2006 Lease² [LF 00176], and Section 404(a) of the Trust Indenture [LF 00360-61] was to approve payment from the

² Section 10.5.3 provides, in part:

Disbursement of Football Stadium RMMO Funds. Disbursements of available Football Stadium RMMO Fund Monies are subject to the prior reasonable written approval of Landlord based on Tenant’s written request. Subject to such prior approval, Landlord shall, from time-to-time, disburse to Tenant, as soon as reasonably possible not to exceed thirty (30) days after Tenant’s request available Football Stadium RMMO Fund Monies to pay costs and expenses paid or to be incurred by Tenant for Tenant’s repair, maintenance, management or operation obligations under Sections 10.3, 11.1 or 16.1 of the Amended Lease for the Leased Premises, including the Football Stadium, Tenant’s practice facilities and any office administration building.

Disbursement Account (under the Development Agreement) or Project Fund (under the 2006 Lease). This was true regardless of whether items were purchased by the Chiefs and reimbursed, or simply ordered by the Chiefs and paid for out of the Project Fund. Since the Authority did not order the items, or pay for them, it was never a “purchaser.” The Authority’s Responses to Requests for Admissions, [TR Exh. 18], traces the history of each of the disputed items from order to final payment. In either case, it is clear from the record that it was not the role of the Authority to order and select the thousands of items that went into the rehabilitation of Arrowhead Stadium and the Chiefs’ practice facility. The Authority was simply the filter through which these items were approved for reimbursement or payment ultimately out of “funds of the County.” [Trust Indenture § 4.01, LF 00357-58.] Payment for the items out of “funds of the County” is payment out of public funds under Missouri law, and exempt from tax.

4. Conclusion.

For the reasons stated herein and in its original Brief, the Authority requests that this honorable Court reverse the decision of the Administrative Hearing Commission.

Respectfully submitted,
 ROUSE FRETS WHITE GOSS
 GENTILE RHODES, P.C.

By: /s/ Michael T. White
 Michael T. White #19261
 4510 Belleview Avenue, Suite 300
 Kansas City, Missouri 64111
 Telephone: (816) 753-9200
 Facsimile: (816) 753-9201
 mwhite@rousepc.com

ATTORNEYS FOR
 INTERVENOR-APPELLANT

CERTIFICATIONS

I certify that:

1. I signed this Reply Brief of Intervenor-Appellant as required by Rules 55.03 and 103.04.
2. This Reply Brief of Intervenor-Appellant complies with Rule 84.06(b) because it contains 1,557 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 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

{31312 / 67776; 847408.6 }