MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WARREN G. "GREG" PLUMB and TARA BENNETT,	)	
Appellants,	)	
v.	)	**WD88043**
MISSOURI DEPARTMENT OF REVENUE, et al.,	)	**Filed: April 14, 2026**
Respondents.	)	

Appeal from the Circuit Court of Platte County
The Honorable Megan B. Benton, Judge

Before Division Four: Anthony Rex Gabbert, C.J., Presiding
Alok Ahuja, J., and Patricia Breckenridge, Sr. J.[1]

Warren Plumb and Tara Bennett (collectively "Plumb") filed a Petition for Writ of Mandamus in the Circuit Court of Platte County against the Platte County Commission and its Commissioners, and against the Missouri Department of Revenue and its Director. Plumb's petition sought to compel the Commission and the Department to implement a countywide sales tax, following authorization of the tax by Platte County voters in the November 2024 general election. The circuit court denied relief. The court concluded that, even after voter

[1] Judge Breckenridge retired from the Missouri Supreme Court in October 2023, and is also a former member of this Court. She is sitting with the Court as a Senior Judge by special assignment.

authorization, the Commission could choose not to impose the tax. Plumb appeals. We affirm.

Factual Background

This case involves efforts by Platte County residents to adopt a quarter-cent local sales tax pursuant to The Children's Services Protection Act, §§ 67.1775-67.1776.[2] Pursuant to § 210.861.4, funds generated by such a sales tax may be used to provide children in need with a variety of services, including temporary shelter; substance abuse and mental health treatment; and assistance with pregnancies.

Efforts to adopt a children's services tax in Platte County have a checkered history. In April 2024, a group of citizens requested that the County Commission place a quarter-cent children's services sales tax on the November 2024 general election ballot. The Commission refused. In response, a campaign committee called Platte County 4 Kids circulated a petition to have the children's services tax placed on the ballot. Platte County 4 Kids submitted signatures to the Platte County Board of Election Commissioners in June 2024. On July 15, 2024, the Board of Election Commissioners certified that Platte County 4 Kids had submitted sufficient qualified signatures to have the tax placed on the ballot. The Board of Election Commissioners concluded, however, that it lacked the power to order that the measure be placed on the ballot without the authorization of the County Commission. For its part, the Commission denied that it had the legal authority to order that the tax be placed on the ballot.

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[2] Unless otherwise indicated, statutory citations refer to the 2016 edition of the Revised Statutes of Missouri, updated by the 2024 Cumulative Supplement.

On August 9, 2024, Platte County 4 Kids and Plumb (the committee's Treasurer) filed a petition for writ of mandamus in the Circuit Court of Platte County against the Board of Election Commissioners, the Board's Directors, and the County Commission. No. 24AE-CC00216. The August 2024 action sought a court order compelling the respondents to place the children's services tax on the November 2024 general election ballot. On August 23, 2024, the circuit court issued a permanent writ of mandamus, ordering that the Board of Election Commissioners place the following question on the November 2024 ballot:

> Shall Platte County, solely for the purpose of establishing a community children's services fund for the purpose of providing services to protect the well-being and safety of children and youth nineteen years of age or less and to strengthen families, be authorized to levy a sales tax of one-quarter of one cent in Platte County?

At the November 2024 general election, 56.46% of voters voted to authorize the levy of the children's services tax. Despite the majority vote in favor of the tax, on December 15, 2024, the Commission adopted "An Order not Levying a New Sales Tax Pursuant to Section 67.1775, RSMo." In its Order, the Commission acknowledged that the majority of voters had voted in favor of the new sales tax. The Commission took the position, however, that under § 67.1775, the electorate's vote only "authoriz[ed], but [did] not requir[e], the tax to be levied." In its Order the Commission found "that it is not in the best interests of the county to levy the tax which was authorized on November 5, 2024"; the Commission accordingly "order[ed] that the community children's services fund tax authorized on November 5, 2024, to establish a community children's services fund is NOT levied."

Despite the Commission's Order refusing to levy the sales tax, Plumb notified the Department of Revenue that a majority of Platte County voters had voted in favor of the tax. The Department responded that it "cannot impose a tax without an imposing ordinance from Platte County or a court order to impose the tax."

On February 19, 2025, Plumb filed the present Petition for Writ of Mandamus in the Circuit Court of Platte County. No. 25AE-CC00044. Plumb's Petition prayed that the court order the County Commission to formally notify the Department of Revenue that the children's services tax had been approved by voters. Plumb also requested that the court order the Commission to appoint members to a Board of Directors to administer the fund created by the tax. Finally, Plumb's Petition prayed that the Department of Revenue be ordered to begin collecting the sales tax within Platte County.

On February 24, 2025, the circuit court entered a Preliminary Order in Mandamus. The Commission and the Department filed their answers on March 7, 2025. The circuit court held a hearing on the Petition on March 31, 2025. At the hearing, the parties stipulated that Plumb and Bennett were both Platte County taxpayers and supporters of the children's services tax; that Plumb was the treasurer of the campaign committee which circulated the petition to place the tax on the ballot; and that Plumb was one of the relators in the earlier mandamus proceeding in which the court ordered that the tax be placed on the ballot. Without objection, the circuit court also admitted several exhibits as evidence: the mandamus petition; the sample ballot; the certified election results; the Commission's order refusing to impose the tax; and correspondence

between Plumb's counsel and the Department, in which the Department refused to begin collecting the tax without a duly enacted ordinance or court order. The circuit court also took judicial notice of the filings in the August 2024 mandamus proceeding.

On April 1, 2025, the circuit court entered its judgment denying Plumb's Petition. The court's judgment reviewed the present language of § 67.1775, as well as the language of a predecessor statute. The court also considered the wording of the ballot question submitted to voters. The court concluded that "[t]he plain language of § 67.1775 gives the Commission discretion to levy or not to levy the tax after voter approval. Because the statute confers this discretion, the Court denies the Petition for Writ of Mandamus."

Plumb appeals.

Discussion

Although Plumb's briefing asserts three separate Points Relied On, his arguments are all based on one central claim: that once voters approved the children's services sales tax, the County Commission and the Department of Revenue *had to* impose and implement the tax. Plumb contends that the circuit court erroneously interpreted the relevant statutes when it concluded that, even after voter approval, the County Commission retained discretion whether or not to levy the tax.

I.

We begin by briefly discussing our authority to hear this appeal, and the legal standards we apply in deciding it.

Generally, where a circuit court denies a petition for writ of mandamus, the petitioner cannot appeal the circuit court's decision; the petitioner's remedy is instead to file a new, original petition for mandamus in the appellate court. *Bartlett v. Mo. Dep't of Ins.*, 528 S.W.3d 911, 913 (Mo. 2017). An appeal is permitted, however, where – as here – the circuit court denies permanent relief after issuing a preliminary order in mandamus. *See*, *e.g.*, *Doe v. Frisz*, 643 S.W.3d 358, 361 (Mo. 2022) (citing *State ex rel. Ashby Rd. Partners, LLC v. State Tax Comm'n*, 297 S.W.3d 80, 83 (Mo. 2009)); *U.S. Dep't of Veterans Affs. v. Boresi*, 396 S.W.3d 356, 359 (Mo. 2013).

In order to be entitled to a writ of mandamus, Plumb was required to show that the Commission and the Department had mandatory legal obligations to implement the children's services tax, and had no discretion in the matter.

> A writ of mandamus will issue when there is an unequivocal showing that a public official failed to perform a ministerial duty imposed by law. This Court has often said a ministerial duty is a duty of a clerical nature which a public officer is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to his own judgment or opinion concerning the propriety of the act to be performed.

State ex rel. Fitz-James v. Bailey, 670 S.W.3d 1, 11 (Mo. 2023) (cleaned up); *see also*, *e.g.*, *State ex rel. Tivol Plaza, Inc. v. Mo. Comm'n on Hum. Rts.*, 527 S.W.3d 837, 841 (Mo. 2017) ("To be entitled to a writ, a litigant asking relief by mandamus must allege and prove that he has a clear, unequivocal, specific right to a thing claimed." (cleaned up)).

"An appellate court reviews the denial of a petition for a writ of mandamus for an abuse of discretion." *Tivol Plaza*, 527 S.W.3d at 841. Although the circuit court entered judgment in this case after receiving evidence, the parties do not

dispute the underlying facts. Instead, the parties submitted the case for decision based on stipulated facts and a limited set of exhibits which were admitted without objection. In such circumstances, "'the only question on appeal is whether the trial court drew the proper legal conclusions.'" *Fitz-James v. Hoskins*, 726 S.W.3d 133, 144 (Mo. App. W.D. 2025) (quoting *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110, 125 (Mo. App. W.D. 2022)). "A circuit court 'necessarily abuses its discretion where its ruling is based on an erroneous interpretation of the law.'" *Despain v. Despain*, 717 S.W.3d 796, 802 (Mo. App. W.D. 2025) (quoting *Bohrn v. Klick*, 276 S.W.3d 863, 865 (Mo. App. W.D. 2009)). Even when a particular ruling is subject to review only for an abuse of discretion, "when the issue is primarily legal, no deference is warranted and appellate courts engage in de novo review." *State v. Taylor*, 298 S.W.3d 482, 492 (Mo. 2009).

Resolution of this case depends on the proper interpretation of a number of Missouri statutes. "'Matters of statutory interpretation are question of law reviewed *de novo*.'" *Doe v. Frisz*, 643 S.W.3d at 361 (citation omitted). "'This Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue.'" *C.S. v. Mo. State Hwy. Patrol Crim. Just. Info. Serv.*, 716 S.W.3d 264, 268 (Mo. 2025) (quoting *Sun Aviation, Inc. v. L-3 Comm'ns Avionics Sys., Inc.*, 533 S.W.3d 720, 723 (Mo. 2017)). "'If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then [this Court is] bound by that intent and cannot resort to any statutory construction in

interpreting the statute.'" *State v. Winter*, 719 S.W.3d 738, 752 (Mo. 2025) (quoting *Smith v. St. Louis Cnty. Police*, 659 S.W.3d 895, 898 (Mo. 2023)).

This appeal does not involve the construction of *just any* statutes, however – it involves the interpretation of statutes authorizing *the imposition of a tax*. Tax statutes are subject to special rules of construction. The Missouri Supreme Court has explained that tax-related statutes are strictly construed, and that the authority to impose a tax must clearly appear from a statute's plain language. The Court has declared that "'statutes relating to taxation are to be *strictly and narrowly construed* against the taxing authority and in favor of the taxpayer.'" *Office Depot, Inc. v. Dir. of Revenue*, 484 S.W.3d 793, 796 (Mo. 2016) (quoting *Goldberg v. Admin. Hearing Comm'n*, 609 S.W.2d 140, 144 (Mo. 1980)); *see also*, *e.g.*, *Carfax, Inc. v. Dir. of Revenue*, 653 S.W.3d 415, 418 (Mo. 2022). The Court has described this rule of strict construction as a "basic precept," to which the Court "hold[s] fast." *Brown Grp., Inc. v. Admin. Hearing Comm'n*, 649 S.W.2d 874, 881 (Mo. 1983).

Because taxing statutes are strictly and narrowly construed, "'taxes are not to be assessed unless they are expressly authorized by law.'" *St. Louis Cnty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 712 (Mo. 2011) (citation omitted). "[T]he right to tax must be conferred by plain language, for it will not be extended by implication." *Kanakuk-Kanakomo Kamps, Inc. v. Dir. of Revenue*, 8 S.W.3d 94, 96 (Mo. 1999) (citation omitted).

This rule of strict construction applies to "*all* statutes relating to taxation." *Goldberg*, 609 S.W.2d at 144 (emphasis added). Thus, in *Cascio v. Beam*, 594 S.W.2d 942 (Mo. 1980), the Court strictly construed a statutory provision

authorizing the inspection of a taxpayer's business records in connection with the enforcement of a sales tax. The Court explained:

> The statutes in question are part of the Sales Tax Act, and are unquestionably taxing statutes. Statutes relating to taxation are to be narrowly construed in favor of the taxpayer and against the taxing authority. . . .
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> . . . .
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> This rule of construction has been applied even to statutes that are only partially revenue statutes, such as the Unemployment Compensation Act. . . .
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> > . . . [I]t is well established that the right of the taxing authority to levy a particular tax must be clearly authorized by the statute, and that all such laws are to be construed strictly against such taxing authority.

Id. at 945 (cleaned up).

With these principles in mind, we turn to the statutes authorizing the levying and collection of the local children's services sales tax.

II.

A.

Plumb's claims rest on the interpretation of three principal statutes. First, § 67.1775 authorizes counties to impose a sales tax of up to .25% to fund services for children. Section 67.1775 provides in relevant part:

> 67.1775. **Authorizes local sales tax in all counties and St. Louis City to provide services for children — establishes fund. —** 1. The governing body of a city not within a county, or any county of this state may, after voter approval under this section, levy a sales tax not to exceed one-quarter of a cent in the county or city, . . . for the purpose of providing services described in section 210.861, including counseling, family support, and temporary residential services to persons nineteen years of age or less. The question shall be submitted to the qualified voters of the county or

city . . . at a county or city or state general, primary or special election upon the motion of the governing body of the county or city, . . . or upon the petition of eight percent of the qualified voters of the county or city . . ., determined on the basis of the number of votes cast for governor in such county at the last gubernatorial election held prior to the filing of the petition. . . . The question shall be submitted in substantially the following form:

> Shall _____ County or City, solely for the purpose of establishing a community children's services fund for the purpose of providing services to protect the well-being and safety of children and youth nineteen years of age or less and to strengthen families, be authorized to levy a sales tax of _____ (not to exceed one-quarter of a cent) in the city or county?
>
> ☐ YES ☐ NO

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second calendar quarter after the director receives notification of the local sales tax. If a question receives less than the required majority, then the governing authority of the city or county . . . shall have no power to impose the sales tax unless and until the governing authority of the city or county . . . has submitted another question to authorize the imposition of the sales tax authorized by this section and such question is approved by the required majority of the qualified voters voting thereon. . . .

2. After the effective date of any tax imposed under the provisions of this section, the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax and the director of revenue shall collect in addition to the sales tax for the state of Missouri the additional tax authorized under the authority of this section. . . .

. . . .

5. Except as modified in this section, all provisions of sections 32.085 and 32.087 shall apply to the tax imposed under this section.

> 6. All revenues generated by the tax prescribed in this section shall be deposited in the county treasury . . . to the credit of a special community children's services fund to accomplish the purposes set out herein and in section 210.861, and shall be used for no other purpose. Such fund shall be administered by a board of directors, established under section 210.861.

Section 32.087.1 specifies when counties must notify the Director of Revenue of the levying of a local sales tax (which triggers the effective-date provision of § 67.1775.1). Section 32.087.1 provides:

> Within ten days after the adoption of any ordinance or order in favor of adoption of any local sales tax authorized under the local sales tax law by the voters of a taxing entity, the governing body or official of such taxing entity shall forward to the director of revenue by United States registered mail or certified mail a certified copy of the ordinance or order. The ordinance or order shall reflect the effective date thereof.

Finally, § 210.861.1 directs that, "[w]hen the tax prescribed by . . . section 67.1775 is established, the governing body of the city or county . . . shall appoint a board of directors consisting of nine members, who shall be residents of the city or county . . . ." Section 210.861.2 provides that "[t]he board shall administer and expend all funds generated pursuant to . . . section 67.1775," while §§ 210.861.4 and .6 specify the purposes for which tax revenues may – and may not – be used.

B.

Despite the public's vote in favor of a local children's services sales tax in the November 2024 general election, we conclude that the County Commission retained the final authority to decide whether or not to actually levy the tax. We reach this conclusion based on five primary features of the relevant statutes.

1. The first sentence of § 67.1775.1 states that "[t]he governing body of . . . any county of this state may, after voter approval under this section, levy a

sales tax . . . ." This sentence makes clear that it is the county's governing body – *not* the voting public – which actually levies the sales tax. Plumb argues that the phrase "[t]he governing body" in the first sentence refers only to the governing body of "a city not within a county," *not* to the governing body of *a county*. According to Plumb, the first sentence of § 67.1775.1 authorizes "any county" to levy a tax, but does not limit that authority to the county's *governing body*. We disagree. Although the first sentence of § 67.1775.1 refers to "[t]he governing body of a city not within a county, or any county of this state," the penultimate sentence of § 67.1775.1 refers to the taxing power of "the governing authority of the city or county, or city not within a county." It is evident that the legislature used the two phrases interchangeably, and understood them to have the same meaning despite their slightly different wording. Both refer to the tax-levying authority of the governing body of a city, the governing body of a county, and/or the governing body of a city not within a county.

Besides specifying that the county's governing body actually levies the sales tax, the first sentence of § 67.1775.1 also specifies that the tax may only be levied "*after* voter approval." (Emphasis added.) When used as a preposition, the relevant meaning of "after" is "following in time or place," or "subsequent to and in consequence of." WEBSTER'S THIRD NEW INT'L DICTIONARY 38 (unabridged ed. 2002); *see also* https://www.merriam-webster.com/dictionary/after. Thus, the statement that a tax may be levied only "after" voters approve it indicates that the tax will be levied following, and in light of, voters' earlier approval of the tax. The statement that a tax may be levied "after" voter approval indicates that election results do not, on their own, have the effect of levying the sales tax.

But the critical aspect of the first sentence of § 67.1775.1 is the statement that a county's governing body "may" levy a sales tax. "It has long been the rule that the word 'may' in a statute, unless the contrary is otherwise indicated therein, is generally held to be permissive, not mandatory." *State ex rel. Dresser Indus., Inc. v. Ruddy*, 592 S.W.2d 789, 794 (Mo. 1980); *accord*, *State ex inf. McKittrick v. Wymore*, 119 S.W.2d 941, 944 (Mo. 1938) ("It is the general rule that in statutes the word 'may' is permissive only, and the word 'shall' is mandatory."). "The word 'may' is generally recognized as the equivalent of the word 'can' and denotes a possibility, likelihood or contingency. On the other hand, the word 'shall' is usually used to express compulsion, obligation or necessity." *Lewandowski v. Ala. Hous. Fin. Auth.*, 637 S.W.3d 354, 361 (Mo. App. E.D. 2021) (cleaned up); *see also*, *e.g.*, *Wolf v. Midwest Nephrology Consultants, PC.*, 487 S.W.3d 78, 83 (Mo. App. W.D. 2016) (observing that "[t]he General Assembly could have used the word 'shall' if it had intended to require that [particular action be taken], but the General Assembly chose the word 'may' instead").

By stating that the County Commission "may" levy a children's services sales tax, § 67.1775.1 did not impose a mandatory, ministerial obligation on the Commission which was enforceable by mandamus. Instead, the General Assembly gave the Commission discretion whether or not to enact the taxing measure which voters had authorized.

2. The sample ballot language contained in § 67.1775.1 supports the conclusion that the Commission was not *required* to impose a children's services sales tax. Section 67.1775.1 specifies that, when an election is held, voters must

be asked whether a county's governing body "[s]hall . . . be *authorized* to levy a sales tax" to fund services for at-risk youth. (Emphasis added.)

By asking voters only whether they wish to "authorize" imposition of a children's services sales tax, the ballot question asks only whether the electorate wishes to empower the county's governing body to levy the tax. "Authorization" does not normally *require* an authorized party to act, but merely *permits* the authorized party to act *if they choose*. In *Crecelius v. Chicago, Milwaukee & St. Paul Railway Co.*, 205 S.W. 181 (Mo. 1918), the Missouri Supreme Court held that it was incorrect to instruct a jury that they were "authorized" to reduce a damages award if an injured party was guilty of contributory negligence, when a federal statute *required* a reduction. The Court explained:

> the imperative command of the federal statute, requiring the jury to diminish the damages, . . . in the event that they find that the deceased was guilty of contributory negligence, was not conveyed to the triers of fact by the use of *the mere permissive word "authorize."* This word as here means "to warrant; to justify; to furnish a ground for." Webster's Dict. It does not connote the idea that pursuant to the statute the jury must so diminish the damages. *It merely permits the jury to do so, leaving it to the discretion of the jury whether they actually do so or not*.

Id. at 186 (emphasis altered).

Citing *Crecelius*, this Court recently held that a statute empowering the Public Service Commission to "authorize" a sale of utility assets did not give the Commission the power to *compel* a sale. We explained that "Missouri courts analyzing the term 'authorize' have concluded that the term *permits a result but does not compel it*." *Osage Util. Operating Co. v. Mo. Pub. Serv. Comm'n*, 637 S.W.3d 78, 90 n.9 (Mo. App. W.D. 2021) (emphasis added).

The electorate's passage of a measure to "authorize" the County Commission to levy a children's services sales tax "merely permit[ted] the [County Commission] to do so, leaving it to the discretion of the [Commission] whether they actually do so or not." *Crecelius*, 205 S.W. at 186.

Section 67.1775 was repealed and reenacted in 2005 as part of a large omnibus bill, which contained multiple other local taxing statutes. H.B. 58, 93rd Gen. Assembly, 1st Reg. Session, 2005 MO. LAWS 205. Several of those other taxing statutes mandate the use of ballot language very different from that required by § 67.1775.1. Thus, unlike § 67.1775.1, which merely requires that voters be asked to "authorize" a tax, many of the other statutes require that voters be directly asked whether their locality "[s]hall . . . *impose* a tax" in a particular amount, for particular purposes. *See* 2005 MO. LAWS at 231 (§ 67.1305.3), 250 (§ 94.837.2), 251 (§ 94.838.3); 299 (§ 190.292.3), 300 (§ 190.335.3).

"Differences in statutes should be interpreted in context, particularly where the provisions were passed simultaneously or appear sequentially." *Simpson v. Saunchegrow Constr.*, 965 S.W.2d 899, 904 (Mo. App. S.D. 1998), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 226 (Mo. 2003). In this case, the 2005 General Assembly plainly knew how to ask voters whether they wished to "impose a tax." Yet, in amending § 67.1775.1, the General Assembly did not require that voters be asked whether their county "shall . . . impose a tax"; instead, voters are asked only whether the county "[s]hall . . . be *authorized* to levy a sales tax . . . ." (Emphasis added.) Unlike the other statutes enacted or reenacted at the same time, the popular vote required by § 67.1775.1

does not itself *impose* or *levy* a children's services sales tax; the vote merely *empowers the county's governing body* to levy the tax.

Plumb cites *State ex rel. Gateway Green Alliance v. Welch*, 23 S.W.3d 861 (Mo. App. E.D. 2000), to argue that, if the electorate's vote merely authorized the Platte County Commission to impose a children's services sales tax, the election constituted a non-binding "opinion poll" which was an inappropriate subject for the initiative process. In *Gateway Green Alliance*, however, a proposed ballot measure would have "merely direct[ed] [city officials] to write letters expressing the attitude of the City's voters on food labeling to relevant State and Federal authorities in the hope of persuading those authorities to enact laws requiring labeling of genetically modified foods." *Id.* at 864. Thus, the ballot measure merely asked city officials to express a non-binding opinion to the State and federal regulators who actually had jurisdiction over a particular matter. The Court's opinion does not identify the law under which voters claimed the authority to place the measure on the ballot. In this case, § 67.1775.1 authorized election authorities to ask the precise question which was included on the November 2024 ballot: whether voters "authorized" a children's services sale tax. Moreover, authorization by the electorate is not an empty formality – it is a necessary precondition for the imposition of the tax by the county's governing body. Unlike in *Gateway Green* Alliance, the election results in this case have an important legal effect, even if those results did not *compel* the County Commission to levy the tax. The November 2024 election was not a mere "opinion poll."

3. Section 67.1775.1 specifies that, "[i]f a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second calendar quarter after the director receives notification of the local sales tax." While this sentence may not be entirely clear, it distinguishes between "the question" on which the electorate votes, and "the ordinance or order and any amendments thereto" which will actually take effect as law.

It is also significant that, prior to 2005, the sentence specifying the consequences of a favorable vote provided that "[i]f a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, *then the tax shall be levied and collected* as otherwise provided by law." § 67.1775.1, RSMo Cum. Supp. 2004 (emphasis added). Thus, although the pre-2005 statute directed that "the tax shall be levied and collected" if voters authorized it, the *current* statute instead provides that, in the event of a favorable vote, "the ordinance or order and any amendments thereto shall be in effect . . . ."

The General Assembly's 2005 amendment to the language of § 67.1775.1 must be given weight in construing the current statute.

> [I]n enacting a new statute on the same subject as that of an existing statute, it is ordinarily the intent of the legislature to effect some change in the existing law. If this were not so the legislature would be accomplishing nothing, and legislatures are not presumed to have intended a useless act.

State ex rel. Edu-Dyne Sys., Inc. v. Trout, 781 S.W.2d 84, 86 (Mo. 1989) (cleaned up). "This Court should never construe a statute in a manner that would moot the legislative changes, because the legislature is never presumed to have committed a useless act." *Rasmussen v. Ill. Cas. Co.*, 628 S.W.3d 166, 176 (Mo.

App. W.D. 2021) (cleaned up). The 2005 amendment to § 67.1775.1 indicates that a favorable election result does not mandate that "the tax shall be levied and collected," even though that may have been the effect of the earlier statute.

The post-2005 language of § 67.1775.1 distinguishes this case from *State ex rel. Zoological Board of Control v. City of St. Louis*, 1 S.W.2d 1021 (Mo. 1928), on which Plumb relies. In the *Zoological Board* case, the relevant statute provided (like the *pre-2005* version of § 67.1775.1) that, "if the majority of all the votes cast . . . shall be for the tax, *the tax . . . shall be levied and collected*." *Id.* at 1024 (quoting statute; emphasis added). It was only in the face of this language that the Supreme Court held that city officials could not refuse to impose the tax, thereby "substitut[ing] their judgment for the mandatory terms of a law which . . . has been given the express approval of the taxpayers." *Id.* at 1028. The current language of § 67.1775.1 is significantly, and materially, different from the language of the statute at issue in the *Zoological Board* case; § 67.1775.1 does not contain the same "mandatory terms."

Plumb emphasizes that the phrase "ordinance or order and any amendments thereto" is undefined, and is broad enough to include measures approved by popular vote. Plumb also notes that § 67.1775.1 specifies that, "if" there is a favorable vote, "then" a taxing ordinance or order "shall be in effect" at a particular time. Relying on this "if/then" statement, Plumb argues that § 67.1775.1 *mandates* that the sales tax be implemented if voters authorize it. We acknowledge that the provisions Plumb highlights may introduce some ambiguity concerning how the statute operates. But even if § 67.1775.1 were deemed to be ambiguous, the Supreme Court caselaw discussed above in § I requires that we

interpret taxing statutes strictly and narrowly, and that the authority to impose a tax must clearly appear in the statute's plain language. The statutory provisions on which Plumb relies do not come close to meeting this clear statement requirement.

Plumb contends that "[t]he 2005 amendments simply resulted in Section 67.1775 specifying with more precision how and when the Children's Services Tax goes into effect." But if the only purpose of the 2005 amendments was to specify the effective date of a new sales tax, the General Assembly could have retained the language that "the tax . . . shall be levied and collected" after a favorable vote. If all the legislature intended to do was to specify the new tax's effective date more precisely, the section could have been revised to state that "the tax . . . shall be levied and collected *beginning on the first day of the second calendar quarter after the director receives notification of the local sales tax*." There was no need to eliminate the statement that "the tax . . . shall be levied and collected" in order to specify the effective date of the tax.

4. Section 67.1775.1 also contains a sentence specifying the consequences of a *failed* vote to authorize a new sales tax. That sentence provides that, "[i]f a question receives less than the required majority, then the governing authority of the city or county . . . shall have *no power to impose the sales tax* unless and until" a new election is held. (Emphasis added.) The statement that a negative vote will deny the county's governing body the "power to impose the sales tax" confirms that the purpose of the popular vote is to *empower the governing body*, not to actually impose the tax. Notably, the pre-2005 version of this sentence provided that, if the public refused to authorize the

tax, "then *the tax shall not be levied* unless and until the question is again submitted to the qualified voters . . . ." § 67.1775.1, RSMo Cum. Supp. 2004 (emphasis added). Amending the statute to refer to the governing body's "power to impose the sales tax," rather than the levying of the tax, suggests yet again that voters are asked only whether to empower the County's governing body, not whether to themselves adopt the tax.

5. Section 67.1775.5 provides that, "[e]xcept as modified in this section, all provisions of sections 32.085 and 32.087 shall apply to the tax imposed under this section." Section 32.087.1 specifies that a taxing jurisdiction must notify the Director of Revenue of a new children's services sales tax "[w]ithin ten days after the adoption of any ordinance or order in favor of adoption of any local sales tax authorized under the local sales tax law by the voters of a taxing entity." Section 32.087.1 appears to refer to two different events: (1) "the adoption of any ordinance or order in favor of adoption of any local sales tax"; and (2) the "authoriz[ation] [of the tax] by the voters of a taxing entity." The November 2024 election only accomplished the second of the two events necessary to trigger the notification obligation. Before the County was required to notify the Director of Revenue, the other event likewise had to occur: "the adoption of an[ ] ordinance or order" actually levying the tax.

We recognize that the prepositional phrase "by the voters of the taxing authority" in § 32.087.1 could potentially be read to modify the phrase "the adoption of any ordinance or order in favor of adoption of any local sales tax." But that is not the most natural reading. Instead, it is more reasonable to read the phrase "by the voters of the taxing authority" as modifying the past participle

"authorized." "Authorized" is followed by two prepositional phrases, with no intervening punctuation: "under the local sales tax law," and "by the voters of a taxing entity." Both prepositional phrases can reasonably be read to modify the word "authorized."

> One canon of construction is the last antecedent rule, which dictates that "relative and qualitative words are to be applied only to the words or phrases preceding them. The relative and qualitative words 'are not to be construed as extending to or including others more remote.'"

Freestone v. Bd. of Police Comm'rs, 681 S.W.3d 602, 609 (Mo. App. W.D. 2023) (quoting *Spradling v. SSM Health Care St. Louis*, 313 S.W.3d 683, 688 (Mo. 2010) (in turn quoting *Norberg v. Montgomery*, 173 S.W.2d 387, 390 (Mo. 1943))).

* * * * *

We recognize that the statutes involved in this case may not be models of clarity. Even if there may be some ambiguity in the relevant statutes, however, we are required to adopt the narrowest reasonable interpretation, because these are tax laws. Seen through that lens, we cannot say that the imposition of a children's services sales tax, based solely on a favorable vote of the electorate, is "expressly"[3] or "clearly authorized,"[4] or that such a power is "conferred by plain [statutory] language."[5] The Platte County Commission, and the Department of Revenue, were not required to levy and implement a children's services sales tax

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[3] *St. Louis Cnty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 712 (Mo. 2011).

[4] *Cascio v. Beam*, 594 S.W.2d 942, 945 (Mo. 1980) (citation omitted).

[5] *Kanakuk-Kanakomo Kamps, Inc. v. Dir. of Revenue*, 8 S.W.3d 94, 96 (Mo. 1999).

based solely on the favorable result of the November 2024 election. Because the Commission and Department did not have a mandatory, ministerial duty to implement the tax, the circuit court did not err when it denied mandamus relief.

Conclusion

The judgment of the circuit court is affirmed.



Alok Ahuja, Judge

All concur.