SUPREME COURT OF MISSOURI
en banc

STATE EX REL. CITY OF ST. LOUIS, Relator, v. THE HONORABLE JOSEPH P. WHYTE, Respondent.	)	No. SC101315 ***Opinion issued June 23, 2026***

ORIGINAL PROCEEDING IN PROHIBITION

Christy Roberts initiated the underlying class action lawsuit alleging a claim for money had and received against the city of St. Louis (the City), seeking a refund of fees paid for solid waste services due to the City's failure to collect recyclables and yard waste separately from garbage. The City filed a motion to dismiss, asserting it was immune from suit under section 432.070.[1] The circuit court overruled the motion. The City now seeks a writ of prohibition barring the circuit court from taking any further action other than to vacate its order overruling the City's motion and to dismiss Roberts'

[1] All statutory references are to RSMo 2016 unless otherwise noted.

claim with prejudice. Finding the City is entitled to sovereign immunity and section 432.070 bars suit, this Court's preliminary writ of prohibition is now made permanent.

Factual and Procedural Background

Prior to 2010, the City did not charge its residents a fee for solid waste collection. The City's general revenue covered the cost of the service. In 2010, Ordinance 68698 was adopted, establishing a monthly solid waste services fee of $11 per dwelling unit.[2] Ordinance 68698 provided the fee was necessary "to maintain the health and welfare of the population of the City by preventing the accumulation of solid waste, including yard waste, through the collection and disposal and/or recycling of such waste…." In 2017, Ordinance 70579 increased the monthly fee to $14 per dwelling unit. This fee is included in residents' water bills. Ordinance 68698 defined "solid waste services" as "regular solid waste collection and disposal services and the provision of equipment necessary for such services, which services may include separate collection of recyclable waste[.]" When Ordinance 68698 was adopted in 2010, the City did not separately collect residents' recyclables.

In 2011, the City implemented a residential recycling and yard waste program and publicized information about this program on the City's website. Thereafter, the City separately collected recyclables and yard waste some of the time, but other times exigent circumstances required it to collect recyclables, yard waste, and trash together, sending

[2] Section 260.215.1 authorizes cities and counties to charge fees for the necessary cost of providing solid waste services.

all of it to landfills.[3] On August 15, 2025, after years of difficulties with recycling and yard waste collection, the City announced that the recycling and yard waste program would be terminated.

Roberts, a resident of the City, initiated the underlying putative class action lawsuit based on the City's failure to separately collect recyclables and yard waste. Roberts initially asserted claims of breach of contract, unjust enrichment, and money had and received. After the City argued section 432.070 barred her breach of contract and unjust enrichment claims, Roberts filed a second amended petition asserting only a claim for money had and received. Roberts' claim focused on the following allegations:

> 97. The City of St. Louis's obligation that gives rise to this cause of action arises out of law from Section 260.215 of the Revised Statutes of Missouri, which is a statutory provision created by the State of Missouri that allows cities and counties to regulate waste management.
>
> 98. Under Section 260.215, the Missouri legislature authorized the City of St. Louis to impose a service charge for solid collection and disposal services.
>
> ….
>
> 102. Plaintiff Roberts paid the City of St. Louis under the reasonable but mistaken belief that the City was actually recycling the materials Plaintiff placed in the City's blue recycling dumpsters for pickup.
>
> 103. Plaintiff Roberts paid the City of St. Louis under the reasonable but mistaken belief that the City was actually providing yard waste collection services for the yard waste Plaintiff placed in the City's green yard waste dumpsters for pickup and disposing of it lawfully.

[3] For example, separate collection often was not feasible due to residents mixing trash and recyclables in their recycling containers. In addition, during the summer of 2021 and spring of 2022, the City publicly announced a suspension of recycling services due to a labor shortage.

> 104. Defendant fraudulently charged Plaintiff for residential recycling and yard waste collection services as part of its solid waste services program even though Defendant did not actually provide the residential recycling pickup and yard waste collection services that Plaintiff paid for.
>
> 105. The City of St. Louis obtained possession of Plaintiff's and Class Members' money in the form of service charges for solid waste collection services.
>
> 106. The City of St. Louis thereby appreciated a benefit from Plaintiff and the members of the Class.
>
> 107. The City of St. Louis's acceptance and retention of this money was unjust because Plaintiff and the members of the Class paid for services that were never rendered.
>
> 108. The City of St. Louis has received money from Plaintiff and members of the Class for services that were never rendered, which in equity and good conscience ought to be returned to Plaintiff and the Class.

On behalf of herself and a purported class of City residents, Roberts seeks damages in the amount of all, or a portion, of the monthly solid waste services fees paid since 2011.

The City filed a motion to dismiss arguing section 432.070 barred Roberts' claim for money had and received. After hearing the parties, the circuit court overruled the City's motion. The City sought a writ of prohibition from the court of appeals, asking it to order the circuit court to dismiss Roberts' petition with prejudice. The court of appeals denied the writ petition. This Court subsequently issued a preliminary writ of prohibition, which the City seeks to make permanent.

Standard of Review

This Court has authority to issue and determine original remedial writs. Mo. Const. art. V, sec. 4. A writ of prohibition is discretionary and is appropriate: "(1) to prevent the usurpation of judicial power when a lower court lacks authority or

jurisdiction"; (2) to remedy an excess of authority or jurisdiction or abuse of discretion by a lower court; and (3) to prevent a party from suffering irreparable harm. *State ex rel. Bailey v. Sengheiser*, 692 S.W.3d 20, 22 (Mo. banc 2024) (quotation omitted). "A writ of prohibition is appropriate when a defendant is entitled to sovereign immunity, or is otherwise immune from liability." *State ex rel. Dep't of Nat. Res. v. Crane*, 708 S.W.3d 157, 160 (Mo. banc 2025) (citations omitted). This is because immunity from liability includes immunity from suit. *State ex rel. Morales v. Alessi*, 679 S.W.3d 467, 471 (Mo. banc 2023). Whether sovereign immunity applies is a question of law, which this Court reviews *de novo*. *Ramirez v. Mo. Prosecuting Att'ys' & Cir. Att'ys' Ret. Sys.*, 694 S.W.3d 432, 435 (Mo. banc 2024).

Analysis

The City asserts Roberts' claim for money had and received is barred by sovereign immunity and section 432.070. This Court agrees.[4]

"Sovereign immunity is a common law judicial doctrine barring suit against a governmental or public entity." *Id.* (quotation omitted). "[S]overeign immunity is the rule and applies to ***all*** suits against public entities" unless the plaintiff shows "an express statutory exception … or a recognized common law exception such as the proprietary function and consent exceptions" applies. *Metro. St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 921-22 (Mo. banc 2016) (emphasis added).

[4] Because this Court holds the City is immune from suit, it does not reach the City's remaining points.

"Missouri courts have routinely held that sovereign immunity is not an affirmative defense and that the plaintiff bears the burden of pleading with specificity facts giving rise to an exception to sovereign immunity when suing a public entity." *Richardson v. City of St. Louis*, 293 S.W.3d 133, 137 (Mo. App. 2009). "Accordingly, to state a cause of action sufficient to survive a motion to dismiss on the pleadings, the petition, when viewed in its most favorable light, must plead facts, which if taken as true, establish an exception to the rule of sovereign immunity." *Id.* (quotation omitted). "Legal conclusions are disregarded." *Bell v. Shelter Gen. Ins. Co.*, 701 S.W.3d 614, 618 (Mo. banc 2024). To overcome the default application of sovereign immunity, the plaintiff must show "the legislature expressly intended to waive sovereign immunity." *Poke v. Indep. Sch. Dist.*, 647 S.W.3d 18, 21 (Mo. banc 2022).

The only allegations in Roberts' second amended petition relating to sovereign immunity state: "The claims asserted herein are not precluded by sovereign immunity because sovereign immunity is not a bar to money had and received claims. Nor does sovereign immunity bar claims against a municipality related to its performance of proprietary functions." The Court treats this statement as two separate arguments that sovereign immunity does not apply and addresses each in turn.

Roberts' unsupported legal conclusion that sovereign immunity does not bar money had and received claims is incorrect. Equitable claims for money against the government, including claims for money had and received, are precluded by sovereign immunity unless the plaintiff shows the legislature clearly authorized the suit or some other exception applies. *See Kubley v. Brooks*, 141 S.W.3d 21, 29-30 (Mo. banc 2004)

(acknowledging sovereign immunity applies to non-tort actions, such as an action for money had and received, absent exception). Beyond referencing the proprietary function exception in a separate argument, Roberts failed to reference any authority in her second amended petition showing an exception to the default application of sovereign immunity to her money had and received claim. That failure alone requires the application of sovereign immunity.

In her briefing to this Court, Roberts points to a provision of the city code providing "***[t]he Collector*** shall have ***power to sue*** any customer and any owner of property on which dwelling unit is located in a civil action to recover any sums due for solid waste services fees, plus a reasonable attorney's fee to be fixed by the court." § 11.02.127, City of St. Louis Code (2020) (emphasis added). She asserts any provision stating a governmental entity has the power to sue is sufficient to waive sovereign immunity under this Court's precedent. Roberts is again incorrect. Even had Roberts raised this provision in her second amended petition, it is insufficient to waive sovereign immunity for several reasons, most apparent being it does not provide ***the City*** may sue ***and be sued***.[5] *See Kubley*, 141 S.W.3d at 23-30 (holding statutory "sue and be sued" language in general enabling statutes waives sovereign immunity as to certain claims against the agency created by the enabling statute). Indeed, all of the cases on which Roberts relies involve statutory provisions stating a specific governmental entity may sue and be sued. *See, e.g.*, *Bush v. State Highway Comm'n of Mo.*, 46 S.W.2d 854, 846 (Mo.

[5] Further, as more fully discussed below, the City may not consent to suit not authorized by the legislature.

1932) (interpreting a statute providing the state highway commission "may sue and be sued"); *V.S. DiCarlo Const. Co. v. State*, 485 S.W.2d 52, 56 (Mo. 1972) (acknowledging statutes conferring authority for state or local government agencies "to sue and be sued" provide a waiver of sovereign immunity in certain cases as to those agencies); *State ex rel. New Liberty Hosp. Dist. v. Pratt*, 687 S.W.2d 184, 186 (Mo. banc 1985) (interpreting a statutory provision that a hospital district "may sue and be sued"); *Palo v. Stangler*, 943 S.W.2d 683, 685 (Mo. App. 1997) (interpreting a statutory provision that the division of child support enforcement "may sue and be sued"). The provision of the city code on which Roberts relies speaks only to the city collector's authority to sue – it says nothing about whether the City may be sued. Under *Kubley* and the remainder of Roberts' cited cases, this provision is insufficient to constitute the requisite consent to suit.

The City gratuitously directs this Court to the city charter, which provides the City may "sue and be sued." City of St. Louis Charter, art. I, sec. 1 (2025). The City, however, may not consent to suit beyond that authorized by the legislature. *See Winston v. Reorganized Sch. Dist. R-2, Lawrence Cnty., Miller*, 636 S.W.2d 324, 328 (Mo. banc 1982) ("[T]he decision to waive immunity, and to what extent it is waived, lies within the legislature's purview."); *State ex inf. Hannah ex rel. Christ v. City of St. Charles*, 676 S.W.2d 508, 512 (Mo. banc 1984) (A "municipality possesses all powers which are not limited or denied … by statute …."). Via section 432.070, the legislature has indicated its clear intention that municipal corporations such as the City are immune from claims like Roberts'.

Section 432.070 provides:

> No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, *shall be in writing* and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing.

(Emphasis added).

Section 432.070 provides cities with immunity from claims based on contracts that do not satisfy the statute's requirements; any contract that does not satisfy the requirements of the statute is void. *Howard Cnty. Ambulance Dist. v. City of Fayette,* 549 S.W.3d 1, 5 (Mo App. 2018). "Section 432.070 seeks to protect municipalities, not parties who seek to impose obligations upon government entities." *Withers v. City of Lake St. Louis*, 318 S.W.3d 256, 263 (Mo. App. 2010) (quotations omitted). To protect cities from liabilities other than those premised on authorized, wholly executory, written and signed contracts, courts have held quasi-contractual or implied-in-fact contract claims also are prohibited – otherwise, any claim section 432.070 bars could simply be restated as unjust enrichment, *quantum meruit*, or some other quasi-contract theory. *See Bride v. City of Slater*, 263 S.W.2d 22, 27 (Mo. 1953) (holding section 432.070 barred a claim for unpaid purchase price under a contract not meeting the statute's requirements, "[n]or could there be a recovery on the theory of implied contract, or estoppel"); *Donovan v. Kansas City,* 175 S.W.2d 874, 881, 884-85 (Mo. banc 1943) (finding the predecessor to section 432.070 barred a claim by a supplier who provided food to

hospitals and jails based on telephone orders regardless of whether it is styled as a claim of estoppel or a claim of implied or quasi contract); *Withers*, 318 S.W.3d at 264 ("The fact that a municipality has received the benefit of a performance by the other party does not make the municipality liable either on the theory of ratification, estoppel or implied contract." (quotation omitted)); *Mays-Maune & Assocs., Inc. v. Werner Bros.*, 139 S.W.3d 201, 208 (Mo. App. 2004) (finding section 432.070 "preclude[s] recovery against a [political subdivision] on any theory of implied contract"); *Goodyear v. Junior Coll. Dist. of St. Louis*, 540 S.W.2d 621, 621 (Mo. App. 1976) ("Missouri courts have uniformly interpreted [section 432.070] to preclude recovery against school districts on *quantum meruit* or any theory of implied contract.").

Roberts argues, under the reasoning in *Karpierz v. Easley*, 68 S.W.3d 565 (Mo. App. 2002), and *Investors Title Co. v. Hammonds*, 217 S.W.3d 228 (Mo. banc 2007), section 432.070 does not preclude her action for money had and received. Those cases, however, are distinguishable, as both involved actions for money had and received based on a sovereign taking money in violation of a statute. *See Karpierz*, 68 S.W.3d at 568 (involving a plaintiff seeking to recover money police seized from him in violation of Missouri's Criminal Activity Forfeiture Act); *Hammonds*, 217 S.W.3d at 295 (involving a plaintiff seeking to recover money from being illegally overcharged for court filing fees in violation of statute). In other words, each plaintiff alleged the sovereign violated some specific legal provision (*i.e.*, an obligation arising out of law), not a contract allegedly violating section 432.070. *Hammonds*, 217 S.W.3d at 295 (citing *Karpierz*, 68 S.W.3d at 573). *Karpierz* and *Hammonds* held section 432.070 does not render an obligation

arising out law void as it would an obligation arising out of a contract implied in fact. *Id.* Accordingly, section 432.070 did not bar those claims.

In contrast, Roberts' second amended petition does not claim the City violated section 260.215 or any other statute by failing to separately collect recyclables and yard waste. Roberts' second amended petition asserts her cause of action arises out of the City's obligation under section 260.215 to collect and dispose of solid waste. But Roberts does not claim that statute requires the City to separately collect recyclables and yard waste (indeed, it does not) – she simply asserts it allows cities and counties to regulate waste management and authorizes the imposition of a fee for solid waste collection and disposal services. Roberts makes no claim the City was not authorized to charge the solid waste services fee or that doing so violated some statute. Nor does Roberts claim the City failed to provide "regular solid waste collection and disposal services" as Ordinance 68698 stated it would. Roberts merely argues the City's website states solid waste services include the collection of recyclables and yard waste such that it led her to believe the fee included those services. The second amended petition makes no claim the City violated an obligation imposed by law.

Roberts essentially argues the City, having begun separate collection of recyclables and yard waste as touted on its website, was bound by equity to continue that service or reduce the solid waste services fee. The City's alleged obligation arises, if at all, from the facts Roberts alleged. In other words, Roberts' claim constitutes an implied-in-fact contract claim based on the City's allegedly unjust conduct, the type of claim the

legislature sought to prevent by enacting section 432.070. Given the legislature has prohibited Roberts' claim, sovereign immunity applies.

Roberts' second amended petition also asserts sovereign immunity does not apply because the City was engaged in a proprietary function, a common law exception to sovereign immunity. "Missouri municipalities are not provided immunity for proprietary functions – those performed for the benefit or profit of the municipality as a corporate entity – but are immune for governmental functions – those performed for the common good." *Southers v. City of Farmington*, 263 S.W.3d 603, 609 (Mo. banc 2008).

"[I]t is the settled law of Missouri that the collection of garbage by a city is a governmental function[.]" *Dallas v. City of St. Louis*, 338 S.W.2d 39, 40 (Mo. 1960). Even so, Roberts argues her second amended petition established the City's solid waste collection service is proprietary because the service includes recycling and yard waste collection, for which the City charges a fee. Roberts concedes garbage collection is a governmental function, but she argues the collection of recycling and yard waste is proprietary because the City may sell the material it collects, resulting in profit.

In determining whether an activity is governmental or proprietary, the Court looks to the "generic nature of the activity" and "the motives of the legislature that conferred the power upon all municipalities." *State ex rel. Bd. of Tr's of City of N. Kan. City Mem'l Hosp. v. Russell*, 843 S.W.2d 353, 359 (Mo. banc 1992). The generic nature of solid waste collection is necessarily to ensure public health and safety and serve the public good, even if doing so may result in profit. Indeed, The City specifically stated in Ordinance 68698 that its provision of solid waste services was "to maintain the health

and welfare of the population of the City." In giving cities the authority to collect and dispose of solid waste, the legislature simply sought to ensure there are "proper and effective solid waste management system(s)" throughout the state. § 260.215.1. By allowing cities to collect a fee for providing those services, the legislature intended to cover "the necessary cost of providing such services," not provide a profit-generating enterprise for municipalities. *Id.* The payment for solid waste services or the City's ability to profit from the program's operation does not change the activity's governmental character.[6] *See Russell*, 843 S.W.2d at 359 ("[P]aying for services in a hospital does not change the governmental character of the hospital."). The proprietary function exception does not apply. The City is entitled to sovereign immunity.

Conclusion

This Court's preliminary writ of prohibition is made permanent.

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ROBIN RANSOM, JUDGE

All concur.

[6] Moreover, Roberts' argument that solid waste services are a proprietary function rests on her allegation that the services include recycling and yard waste services. As explained, the City is not required to provide recycling and yard waste collection as part of its solid waste services. Additionally, Ordinance 68698 provides the fee at issue is for solid waste services generally, not recycling and yard waste services specifically. Roberts' argument that the City charges a fee for and therefore profits from recycling and yard waste services lacks support.