No. SC100554

In the
Supreme Court of Missouri
Western District

Jessica A Goodman, Saline County Assessor

Appellant,

v.

Saline County Commission, et al.

Respondents.

Appeal From the Saline County Circuit Court
The Honorable Kelly Rose, Circuit Judge
Case No. 22SA-CV00865

APPELLANT'S SUBSTITUE BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment by the Honorable Kelly Rose of the Circuit Court of Lafayette County, Missouri. The erroneous judgment comes from the court dismissing the Appellant's Petition, without prejudice, in a manner that served as a judgment on the merits. The Saline County Assessor is seeking an interpretation of Section 137.720 RSMo that her office is entitled to one percent (1%) of all ad valorem taxes and that the Saline County Assessor can use her duly approved budget as she deems required to fulfil her statutory duties. Pursuant to Article V, Section 3, of the Missouri Constitution, and Section 512.020(5), RSMo, (2007), the Western District rendered an opinion in this case finding this Court to have exclusive jurisdiction and pursuant Article V, Section 11, and Section 477.080., RSMO., ordered the appeal transferred to Missouri Supreme Court for decision. Jurisdiction is appropriate within the Missouri Supreme Court pursuant to Article V, Section 3, of the Missouri Constitution, and Section 512.020(5), RSMo, (2007).

STATEMENT OF FACTS

Saline County is currently a fourth (4th) class county operating as a second (2nd) class county pursuant Section 48.020, RSMo (L.F. Doc. #2, Page 3.) For five consecutive years Saline County has had an assessed valuation below six hundred million dollars ($600,000,000.00) (L.F. Doc. #2, Pages 10-11). Jessica Goodman (Assessor) is the duly elected Assessor for Saline County, Missouri (L.F. Doc .#2, Page 3). The role of the Assessor's Office is to assess all property within Saline County and respond to questions and needs of the taxpayers. (L.F. Doc. #3, Page 28). The Assessor creates an annual budget that is submitted to the Saline County Commission for approval (L.F. Doc. #2, Page 3). The Saline County Commission is composed of three members. At the time the petition was filed, the Commission was composed of Kile Guthrey Jr. (the presiding Commissioner), Charles Monte Fenner (Southern District Commissioner), and Stephanie Gooden (Northern District Commissioner) (L.F. Doc. #2, Page 3). Subsequently, there was an election, and now Becky Plattner is the presiding commissioner; thus, pursuant to Rule 52.13, Mr. Guthrey has been automatically substituted. *State ex rel. Bailey v. Fulton,* 659 S.W.3d 909, 911 (Mo. 2023).

Section 137.720., RSMo, requires the Saline County Collector to deposit one percent (1%) of the ad valorem taxes into the Assessment Fund (L.F. Doc. #2, Page 8). The Saline County Collector has only been depositing a half percent (1/2%) of the ad valorem taxes into the Assessment fund, and the Saline County Commission has refused to approve any budget other than one that reflects only half percent (1/2%) of ad valorem taxes being

placed into the assessment fund (L.F. Doc. #2, Pages 8-9). On February 14, 2022, the Assessor met with the Saline County Collector, Cindi Sims, to bring Section 137.720, RSMo, to the attention of the Saline County Commissioners and have her budget reflect the appropriate deposits (1%) into the Assessment Fund (L.F. Doc. # 2, Page 8). Neither the Collector nor the Commission took any action and expressed their views that they would not approve or modify the Assessor's budget to reflect the statutory required one percent (1%), so only one-half percent (1/2%) of ad valorem taxes continued to be deposited into the Assessment Fund (L.F. Doc. #2, Page 8; L.F. Doc. #13, Page 2).

On June 4, 2020, the Assessor decided to give her employees the day off on June 10, 2020, contingent upon her employees completing the yearly tax evaluations before June 10, 2022 (L.F. Doc. #13, Page 7). On June 10, 2022, the Assessor closed her office after she and her deputies completed the tax valuations for the year. Additionally, the Assessor declared that this time off would be compensated (L.F. Doc. #2, Page 5). The compensation did not exceed the budget (L.F. Doc. #2, Page 6). The Commission refused to compensate the Assessor's employees for the time off, so the Assessor turned to the Commission's HR Department to correct the issue and have the pay returned (L.F. Doc. #2, Page 6). However, the Commission ordered the Human Resources department not to change the employees' hours and pay, and none of the payroll requests were fulfilled (L.F. Doc. #2, Page 6).

The Assessor filed suit on five counts. Count I requested correcting the payroll errors and mandating the Assessor's authority over her budget (L.F. Doc. #2, Pages 4-8). Count II requested that the Collector deposit the mandated amount of one percent (1%) of

ad valorem taxes into the Assessor's fund (L.F. Doc. #2, Pages 8-10). Count III requested that Saline County be declared a third (3rd) class county since it met the required valuations for classification as a third (3rd) class county (L.F. Doc. #2, Pages 10-11). Count IV requested a temporary restraining order to deposit the required additional one-half percent (1/2%) of the ad valorem taxes (L.F. Doc. #2, Pages 11-12). Count V requested attorney's fees (L.F. Doc. #2, Pages 12-13). Subsequently, the Defendants moved to dismiss (L.F. Doc. #5, Page 1). On March 6, 2023, the Circuit Court of Saline County granted the Respondent's motion to dismiss (L.F. Doc. # 20, Page 2). Pertaining to Count I, the Court ruled that the Assessor did not have the authority to close her office and pay her employees for not working that day and that even if she had such authority the Commission had not approved it (L.F. Doc. #20, Page 2).[1] Counts II-IV pertaining to the one percent (1%) ad valorem taxes and classification of the Saline County Assessor's Office were dismissed as well (L.F. Doc. #20, Page 2). The Assessor filed her timely notice of appeal on March 10, 2023 (L.F. Doc. #21, Page 2). The Western District of Missouri issued its opinion on April 2, 2024, finding that the Assessor's appeal was from a final judgment and appealable. However, the Western District found that exclusive jurisdiction of Assessor's appeal lies in the Missouri Supreme Court and ordered this appeal be transferred to the Missouri Supreme Court.

[1] Appellant and Respondents conceded during oral argument on the motion to dismiss that the Saline County Commission had reimbursed the Assessment Fund for the ARPA funds (Tr. 17). Thus, this issue pertaining to Count I was deemed moot.

POINTS RELIED ON

I. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW THE PETITION DOES NOT NEED TO SET FORTH THE ASSESSED VALUATION OF SALINE COUNTY ON AUGUST 13, 1988, IN THAT THE PETITION SETS FORTH THE PRIOR FIVE YEARS OF ASSESSED VALUATION AND ARGUES EITHER THE STATUTES SHOULD BE INTERPRETED FOR THE ASSESSOR TO RECEIVE 1% OF THE AD VALORUM TAXES TO THE ASSESSMENT FUND OR IN THE ALTERNATIVE SALINE COUNTY SHOULD BE CLASSIFIED AS A THIRD CLASS COUNTY.

Russell v. Callaway County, 575 S.W.2d 193 (Mo. 1978)

Hinds v. Kircher, 379 S.W.2d 607 (Mo. 1964)

Fox v. State, 640 S.W.3d 744 (Mo. 2022)

Chaffin v. Christian County, 359 S.W.2d 730 (Mo. banc 1962)

137.720 § RSMo.

137.722 § RSMo.

48.020 § RSMo.

48.030 § RSMo.

II. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW SALINE COUNTY IS IMPROPERLY CLASSIFIED IN THAT THE PETITION SETS FORTH THAT SALINE COUNTY MEETS THE ASSESSED VALUATION OF A THIRD-CLASS COUNTY AND A CLASSIFICATION CHANGE TO A THIRD-CLASS COUNTY IS APPROPRIATE FOR SALINE COUNTY.

State ex rel. Hall v. Bauman, 466 S.W.2d 177 (Mo. App. 1971)

Chaffin v. Christian County, 359 S.W.2d 730 (Mo. banc 1962)

RSMo § 48.020.

RSMo § 48.030.

RSMo § 137.720.

III. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW THE ASSESSOR HAS AUTHORTY OVER THE COMPENSATION OF HER EMPLOYEES IN THAT THE PETITION STATES A CLAIM THAT THE ASSESSOR HAS THE ABILITY TO DECLARE COMPENSATION FOR EMPLOYEES AND THE PAY IN QUESTION WAS NOT A BONUS.

Pippin v. City of Springfield, 596 S.W.2d 770 (Mo. App. S. Dist. 1980),

Kuyper v. Stone County Com'n., 838 S.W.2d 436 (Mo. 1992).

State ex rel. Lack v. Melton, 692 S.W.2d 302 (Mo. 1985).

Art. III, § 39, Mo. Const.

IV. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW THE TRIAL COURT'S INTERPRETATION IS UNCONSTITUTIONAL IN THAT THE CURRENT VERSION OF SECTION 48.020 AS APPLIED BY THE TRIAL COURT VIOLATES ARTICLE VI SECTION 8 OF THE MISSOURI CONSTITUTION BECAUSE SECTION 48.020 RSMO PURPORTS TO CREATE TWO DIFFERENT CRITERIA FOR CLASSIFYING COUNTIES: THE FIRST CRITERION FOR FIRST THROUGH THIRD CLASS COUNTIES AND ANOTHER CRITERION FOR FOURTH CLASS COUNTIES RESULTING IN THE CREATION OF MORE THAN FOUR CLASSES OF COUNTIES.

Chaffin v. Christian County, 359 S.W.2d 730 (Mo. banc 1962).

Russell v. Callaway County, 575 S.W.2d 193 (Mo. 1978).

Calzone v. Interim Commissioner of Department of Elementary and Secondary Education, 584 S.W.3d 310 (Mo. banc 2019).

Berry v. State, 908 S.W.2d 682 (Mo. banc 1995)

Collector of Winchester v. Charter Communications, Inc., 660 S.W.3d 405 (Mo. App. E.D. 2022).

48.020 § RSMo.

Art. III, § 8, Mo. Const.

Art. VI, § 18(a), Mo. Const.

Art. VI, § 18(m), Mo. Const.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW THE PETITION DOES NOT NEED TO SET FORTH THE ASSESSED VALUATION OF SALINE COUNTY ON AUGUST 13, 1988, IN THAT THE PETITION SETS FORTH THE PRIOR FIVE YEARS OF ASSESSED VALUATION AND ARGUES EITHER THE STATUTES SHOULD BE INTERPRETED FOR THE ASSESSOR TO RECEIVE 1% OF THE AD VALORUM TAXES TO THE ASSESSMENT FUND OR IN THE ALTERNATIVE SALINE COUNTY SHOULD BE CLASSIFIED AS A THIRD-CLASS COUNTY.

A. Standard of Review

The standard of review by an appellate court is de novo when there is an appeal from the decision of a trial court to grant a motion to dismiss. *Mosley v. English*, 501 S.W.3d 497, 503 (Mo. App. E. Dist. 2016). De novo review requires this court to evaluate the merits of a motion to dismiss using the same criteria as the trial court used to evaluate the issue, meaning that all pled facts are assumed as true. Generally, no appeal lies from a dismissal without prejudice. However, when the trial court grants a motion to dismiss and it operates as a judgment on the merits, the issue is ripe for appeal. *Sutton v. St. Joseph*, 265 S.W.2d 760, 762 (Mo. Ct. App. 1954). Here, the trial court granted the motion to dismiss and essentially made a judgment on the pleadings and denied the Appellant's

motion to amend her Petition (L.F. Doc. #20, Pages 1-2). As such, the appeal is properly before this Court.

B. The Saline County Assessor Should Receive 1% of Ad Valorum Taxes.

According to Section 48.030., RSMo, the only relevant assessed valuation required by statute is the prior five years. For purposes of Appellant's argument, the valuation and classification as of August 13, 1988, is simply not relevant. The argument put forth in the Petition is twofold: either the relevant statutes should be interpreted to allow the Assessor to receive 1% of the ad valorem taxes to the assessment fund, or alternatively, Saline County should be classified as a third (3rd) class county, which would also allow the Assessor the receive 1% of the ad valorem taxes. Neither of these counts requires that the Petition allege the valuation or classification of Saline County on August 13, 1988. *Compare Russell v. Callaway County*, 575 S.W.2d 193, 199 (Mo. 1978) ("Once initial classification was made, assessed valuation was to be determinative of any change in classification.").

The trial court stated that one reason for dismissing Counts II-IV was because the Petition failed to set forth the classification of Saline County on August 13, 1988. However, the trial court's holding completely ignores the substance of Appellant's argument. The trial court's ruling effectively eliminates there being any "fourth (4th) class counties" in Missouri by strictly interpreting Section 48.020., RSMo, to mean that all counties that attained second classification prior to August 13, 1988, are fourth (4th) class counties operating as second (2nd) class counties regardless of any changes in assessed

valuation. Such an interpretation makes no sense and effectively causes the statutes that refer to fourth (4th) class counties to contain superfluous language. Appellant argued a plain and ordinary interpretation of the statutes that would not lead to absurd results whereby a county assessor should receive 1% of ad valorem taxes in fourth (4th) class counties pursuant to Section 137.720., RSMo, or a plain and ordinary interpretation of Section 48.020., RSMo, classifying Saline County as a third (3rd) class county and thus receiving one percent (1%) of ad valorem taxes. As more fully set forth below, the Appellant's Petition is sufficient to set forth a cause of action that has not been interpreted by any Missouri Courts. The trial court's judgment leads to an absurd interpretation of Missouri law when construing the statutes as a whole.

The primary argument put forth in the Petition is that Section 137.720., RSMo, should be interpreted to allow the Assessor to receive one percent (1%) of the ad valorem taxes to the assessment fund. The language of the statutes should be given a reasonable interpretation that achieves the legislative intent behind the provision. *Hinds v. Kircher*, 379 S.W.2d 607 (Mo. 1964). The legislative intent behind 137.720., RSMo, is to provide adequate funding for the Assessor's Office to carry out its responsibilities effectively. To achieve this, the statute mandates one percent (1%) of the ad valorem property taxes collected each year be deposited into the county Assessor's budget (RSMo § 137.720.1). The language is clear and leaves no room for ambiguity: "The percentages *shall be* . . . one percent for counties of the third and fourth classification." Section 137.720.1., RSMo. (emphasis added).

The Respondent's and the trial court's interpretation of the statute simply leads to absurd results the legislature did not intend. To better understand the legislative intent, the statutes should not be read in a vacuum and must be considered in light of all of the applicable statutes. *Fox v. State*, 640 S.W.3d 744, 757 (Mo. 2022). Furthermore, "statutes are interpreted to avoid unreasonable or absurd results. *Id.*

There are several mentions of fourth (4th) class counties throughout Missouri law, as well as a clear system of governance as to how the different classes are divided. For example, first (1st) and second (2nd) class counties only have half a percent (1/2%) of the ad valorem taxes deposited into the Assessment Fund because their tax base is required to be above nine hundred million ($900,000,000.00) and six hundred million ($600,000,000.00) respectively. Third (3rd) and fourth (4th) class counties, which have a lower ad valorem tax base, are to receive one percent (1%) of ad valorem taxes to be able to operate the same duties of assessors in first (1st) and second (2nd) class counties.

In Addition to Section 137.720., RSMo, Sections 137.721. and 137.722., RSMo, also cover the percentage of ad valorem property taxes to be deposited into the county assessment fund. Section 137.721., RSMo, covers the percentage of all ad valorem taxes allocable to the county for counties that become first (1st) class after September 1, 1996. More relevant to this case is Section 137.722., RSMo, which states "in all counties which become counties of the second (2nd) class after September 28, 1987, one percent of all ad valorem property taxes allocable to each taxing authority within the county and the county shall continue to be deducted from the collections of taxes each year and shall be deposited

into the assessment fund of county." This statute highlights that second (2nd) class counties are to receive one percent (1%) of ad valorem taxes. This reading provides an alternative interpretation if the court accepts the interpretation that Saline County was grandfathered into a second (2nd) class county. Since this grandfathering occurred after 1988, that means that one percent (1%) of all ad valorem taxes shall be deducted and deposited into the assessment fund.

Alternatively, Count III of the Petition proposes that Saline County should be classified as a third (3rd) class county pursuant Section 48.020., RSMo. This statute states that counties that attained the second (2nd) classification prior to August 13, 1988, and would otherwise return to the third (3rd) classification after that date due to changes in assessed valuation should remain classified as second (2nd) class counties. Thus, as the statute was enacted, Saline County's initial classification as of August 13, 1988, was that of a fourth (4th) class county remaining a county in the second classification.

The issue becomes the legislative intent behind the statute. If this Court were to find under Section 48.020., RSMo, that Saline County is a fourth (4th) class county operating as a second (2nd) class county, the result is a situation where there is in effect no fourth (4th) class counties and every mention of fourth (4th) class counties is meaningless throughout Missouri law. An interpretation that would not lead to this absurd result would be fourth (4th) class counties were to remain operating as second (2nd) class counties until the county's ad valorem taxes fell below the threshold for second (2nd) class counties for five consecutive years after August 13, 1988, pursuant to Section 48.030., RSMo. Such an

interpretation would also be consistent with this Court's prior rulings that a county's assessed valuation determines its classification. *Chaffin v. Christian County*, 359 S.W.2d 730 (Mo. banc 1962) and *Russell v. Callaway County*, 575 S.W.2d 193 (Mo. 1978).

A rational interpretation of the statute would be as follows. Since the legislature passed the law on August 13, 1988, there were concerns that if a second (2nd) class county was to be reclassified as a third (3rd) class county on August 14, 1988, that county would not have had enough time to prepare for the change in governance. As such, the legislature, in its foresight, gave counties that would be in that predicament time to change if their ad valorem taxes continued to be lower than the threshold required by second (2nd) class counties. It is absurd to think the legislature believed counties that had a lower ad valorem tax than many third (3rd) class counties would be able to continue to operate with the funding it set forth for second (2nd) and first (1st) class counties. For instance, the legislature did not intend for two county offices, with the same level of ad valorem tax base, to receive significantly different funding. When looking directly at the county assessor budget, one assessor would get double the amount of funding for being in a third (3rd) class county, while one, due to their county happening to qualify as a fourth (4th) class county on August 13, 1988, would have their funding slashed in half. Both assessors are similarly situated, and both are required to carry out the same duties pursuant to statute. It is clear the legislature intended a certain level of funding for the certain level of duties of the office. Any other interpretation of the statutes simply leads to absurd results where offices in fourth (4th) class counties are hamstrung and not able to fulfill their statutory obligations

due to lack of funding. This Court in *Chaffin* examined the legislative intent behind the existing classification scheme and found it revealed a clear objective to align governance and funding based on the tax base of each county. *Id.* at 735-36.

Saline County has had five consecutive years of assessed valuations placing it as a third (3rd) class county based on Section 48.030., RSMo. This provision stipulates that if a county's assessed valuation falls below a certain threshold for five consecutive years that it should be considered a third (3rd) class county (Section 48.030., RSMo). It would be absurd for the legislature to freeze a county in time and have its entire form of governance suffer from a lack of funding to multiple offices. As Saline County meets the criteria of being a third (3rd) class county, it follows that the county should be classified as a third (3rd) class county. Saline County's assessed valuation when the statue took effect in August of 1988 is not relevant. Rather, the Petition alleges that if the court finds the argument persuasive that Saline County should be a third (3rd) class county, then Section 137.720., RSMo, mandates that all third (3rd) class counties receive one percent of ad-valorem taxes.

Regardless of which interpretation the court favors, based on Sections 137.720. and 137.722., RSMo, the Collector has a ministerial duty to deposit one percent of the ad valorem taxes into the assessment fund. This duty implies that the funds should be made available to the Assessor's Office. Moreover, the County Commission has a ministerial duty to set the budget of the assessment fund at one percent (1%) of the ad valorem taxes. These statutory duties emphasize the legislative intent to allocate adequate funding for the Assessor's Office.

C. Conclusion

The Petition does not need to list the assessed valuation of Saline County on August 13, 1988. Therefore, the trial court erred in granting appellee's motion to dismiss. There also has been no judicial determination of how Section 48.020., RSMo, should be interpreted when read in context of the entire chapter which developed a system where counties move up or down in classification based upon a five (5) year rolling average of ad valorem taxes. As conceded by the Respondent's during oral argument, an answer needs to be made on the statutory interpretation of the aforementioned statutes. Due to this, the Court should reverse the trial court's decision and allow the Appellant's case to proceed on the merits.

II. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW SALINE COUNTY IS IMPROPERLY CLASSIFIED AS A SECOND-CLASS COUNTY IN THAT THE PETITION SETS FORTH THAT SALINE COUNTY MEETS THE ASSESSED VALUATION OF A THIRD-CLASS COUNTY AND A CLASSIFICATION CHANGE TO A THIRD-CLASS COUNTY IS APPROPRIATE FOR SALINE COUNTY.

A. Standard of Review

Appellants incorporate the standard from Point I.

B. The Current Classification of Saline County is Outdated.

A change in classification is warranted for Saline County. The classification scheme outlined in Section 48.020., RSMo, defines the various classes of counties, ranging from first (1st) class to fourth (4th) class counties. It is evident that the initial classification of Saline County as a fourth (4th) class county operating as a second (2nd) class county is outdated and no longer serves its intended purpose. The classification system was established to ensure that counties are governed and provided with resources according to their size and needs. *Chaffin* at 735-36.

Section 48.020., RSMo, regards county classifications. Classifications 1, 2 and 3 are based upon a county's assessed valuation. However, a fourth (4th) class county, such as Saline County, operates as a second (2nd) class county. If a county such as Saline is to have a permanent classification as a second (2nd) class county, then its classification fails

to accurately reflect the status and characteristics of the county as seen by its valuations over the past five years. The classification system is not meant to be static, but rather it is subject to changes and updates as circumstances require. Otherwise, what is the purpose of Section 48.030., RSMo., regarding how a county's classification can change based upon assessed valuations?

State ex rel. Hall v. Bauman directly discusses the legislative intent and purpose of the law, 466 S.W.2d 177, 182 (Mo. App. 1971). There is a built-in delay in the statue that a county is required to maintain respective valuation of a different county for five years. The main purpose is for stability, and the period of time is long enough to show that the change of the county was permanent. Under the scheme, the legislature has established each county is going to be receiving the appropriate funding for their county based on their valuation. Counties with significantly different valuations or economies having significantly different needs for the various county departments. As is, Saline County is getting the ad valorem taxes of the needs of a second (2nd) class county when they are a third (3rd) class county. This situation is counter to the legislative intent of Section 48.030., RSMo, and it also impractical for the needs of Saline County.

Moreover, the continued misclassification of Saline County is detrimental to the county's residents and its ability to provide essential services. The county's current classification as second (2nd) class denies it resources and funding that are commensurate with its actual valuation and needs. Consequently, Saline County is at a disadvantage compared to third (3rd) class counties that receive the appropriate funding. This discrepancy

undermines the purpose of the classification system and perpetuates an inequitable distribution of resources among counties.

RSMo § 48.030(1) provides the criteria for a county to change its classification. It states that a county can only move from a lower class to a higher class or vice versa if it meets the valuation requirements for the higher class for five consecutive years. Saline County has fallen under the valuation of a third (3rd) class county for the past five consecutive years qualifying the county for reclassification.

Respondent points to the "plain" language of Section 48.020., RSMo, and asserts that Saline County should be classified as a fourth (4th) class county that operates as a second (2nd) class county. Upon careful examination of the "plain" language of Section 48.020., RSMo, it becomes apparent that there is no distinct fourth (4th) class county designation. Instead, all counties that have attained the second classification prior to the statute's enactment that would otherwise revert to the third (3rd) classification due to changes in assessed valuation are to remain second (2nd) class counties.

The legislative framework and statutory language consistently support the reclassification of Saline County as a third (3rd) class county. It aligns with the county's current assessed valuation and would ensure that Saline County receives fair and appropriate treatment under the classification system.

C. Conclusion

In sum, the current classification of Saline County as a second (2nd) class county is outdated and does not align with the current classification scheme. Saline County should

instead be classified as a third (3rd) class county. Therefore, the trial court erred in granting the Respondent's motion to dismiss.

III. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW THE ASSESSOR HAS AUTHORITY OVER THE COMPENSATION OF HER EMPLOYEES IN THAT THE PETITION STATES A CLAIM THAT THE ASSESSOR HAS THE ABILITY TO DECLARE COMPENSATION FOR EMPLOYEES AND THE PAY IN QUESTION WAS NOT A BONUS.

A. Standard of Review

Appellants incorporate the standard from Point I.

B. The Assessor has Authority over her Employee's Compensation.

The Assessor of Saline County holds significant autonomy and authority over budgetary decisions within their office, including the determination of employee compensation. *See generally, Pippin v. City of Springfield,* 596 S.W.2d 770 (Mo. App. S. Dist. 1980); *Kuyper v. Stone County Commn.;* 838 S.W.2d 436 (Mo. 1992), *State ex rel. Lack v. Melton,* 692 S.W.2d 302 (Mo. 1985). The Commission's role is to approve the overall budget, the Collector's role is to deposit the funds, and the Assessor uses the funds as they see fit within the budget. Ultimately, the Assessor, not the Commission, has the final say on matters of employment and compensation within the approved budget. *See Kuyper* 838 S.W.2d at 440*; see also Melton* 692 S.W.2d at 304. Therefore, the Commission lacks the authority to withhold payment for any paid day off the Assessor at her discretion may want to provide her employees.

In *Pippin,* the Missouri Court of Appeals determined that ordinances providing extra vacation leave for employees with a specified amount of continuous service were constitutional, 596 SW.2.d 770, 775 (Mo. App. S.D. 1980). In *Pippin*, the Springfield city council enacted two ordinances that changed the vacation policy. The Missouri Court of Appeals analyzed whether these ordinances violated the Missouri Constitution. *Id* at 771-74. The plaintiffs, representing employee associations, claimed that the ordinances entitled employees with specific years of continuous service to additional weeks of vacation leave, while the city argued that the ordinances only allowed for higher accrual rates without immediate entitlement to extra leave. *Id.* at 773. The defendants appealed the trial court's interpretation that the ordinances were constitutional. *Id.* The appellate court affirmed that the benefit is not extra compensation and is not unconstitutional under Article III Section 39(3). The court reasoned that the vacation leave was constitutional because it was given as encouragement and was a benefit *prior* to the service being rendered. *Id.* at 775. If the employee had stopped working prior to the extra vacation leave, they would not have received the benefit further indicating it was not a bonus. *Id.*

The nature of the benefit offered by the Assessor is no different from *Pippin*. In both cases, the benefit was contingent on certain future conditions being met. While the conditions for receiving time off in the case were different, the employees had to continue working until a certain date to receive the paid leave. Thus, as the court held in *Pippin* that vacation leave was not a bonus, the benefit offered by the Assessor in the case at hand was likewise not a bonus. Because the Assessor informed her employees ahead of time and

they had to continue working to receive the benefit, the compensation was not a bonus but rather a benefit the Assessor had the discretion to give her employees.

The Missouri Supreme Court's decision in *Kuyper* provides further support for the Assessor's autonomy. *Id.* at 439. In this case, the Commission lowered the salary of an employee already hired by the Assessor. *Id*. The court said the Stone County Commission had no authority to reduce the individual salary of an employee hired by the Assessor when the Assessor intended to pay that employee with funds appropriated to the Assessor's office for the fiscal year in which the assessor hired the new employee. *Id.* at 440. The court held, "Once appropriations are fixed and the appropriation order entered, the Commission may not control the spending decisions of the county assessor made within appropriations to that office." *Id.* at 440.

Applying the standards in *Kuyper*, the Commission's actions in denying the promised compensation to the Assessor's employees are in violation of the Assessor's authority. The court's ruling in *Kuyper* emphasized that once appropriations are fixed and the appropriation order is entered, the Commission cannot interfere with the spending decisions made by the Assessor within the approved budget. Since in this case the Assessor was acting within the budget after it had been approved, then it was within her authority alone to determine the pay of her employees. Therefore, the Commission infringed on the Assessor's authority to determine compensation, and the employees are entitled to the compensation promised by the Assessor.

In *Melton,* the court interpreted Section 137.715., RSMo, and held that the legislature did not intend to subjugate the Assessor's office to the political whims of the county commission via an 'advice and consent' stratagem, 692 S.W.2d. 302, 305 (Mo. 1985). *Melton* highlights that a county Assessor has a significant amount of budget control after the Commission approves it. *Id.* at 304-05. The court agreed with the Assessor in *Melton* that the Commission authorizes the total budget, but the Assessor has the final decision over who is employed in the office. *Id.*

Applying *Melton* to this case, the principle that an Assessor has control over their budget and has autonomy as to how to use their budget applies directly to the case at hand. Just as the Assessor in *Melton* had control over the budget, the same principle applies here. Thus, the Saline County Assessor is allowed to determine compensation within the budget, and since the additional compensation did not violate the budget, the Commission does not have the authority to not pay for the day off.

In *Hunter v. County of Morgan*, this Court held that the County Collector had the authority to set compensation of his deputies and assistants for his office, 12 S.W.3d 749, 758-60 (Mo.App. W. D. 2000). The County Commission was responsible for appropriating funds for compensation. *Id.* at 752-55. The County Collector submitted annual revenue and expenditure requests for his worker's compensation, but the Commission often appropriated less than the requested amount. *Id.* The Commission believed it had the authority to set the worker's hourly wage, and the Commission paid her according to its set rates. *Id.* The trial court found that the Commission was required to appropriate specific

amounts for compensation. *Id.* The court also concluded that the county collector could expend the appropriated funds within the limits and purposes of the appropriation order, but the Commission's separate line-item appropriations for deputy and clerical salaries were appropriate. *Id.*

The Court's decision in *Hunter* supports the Assessor's autonomy in determining the compensation of her employees. Just as the county collector had exclusive authority to set the compensation of deputies and assistants in *Hunter,* the Assessor has similar authority to determine compensation. Additionally, as per the decision in *Hunter*, the Commission was required to appropriate funds for the compensation of the collector's deputies and assistants, and they were not authorized to set the salaries. Similarly, the Saline County Assessor is authorized to set salaries for her employees.

Furthermore, the Court in *Hunter* clarified that the Commission cannot restrict the expenditure of funds allocated for the compensation of deputies and assistants. The Commission's actions in denying the budgeted compensation to the Assessor's employees would also be in violation of the Assessor's authority, as demonstrated by the principles established in *Hunter*.

Respondents rely on *Estes v. Cole Cnty,* 437 S.W.3d 307, 309 (Mo. App. W. D. 2014), arguing that the facts of that case are identical to our case; however, there are significant distinctions between that case and this matter. In *Estes,* the county finance office sent an invoice for technology expenses. *Id*. at 309 The Assessor refused to authorize the invoice and claimed that the expenses were not authorized under the assessment fund. *Id.*

The issue in *Estes* was whether the expenditure was an authorized expenditure such that the Commission was authorized to pay the Assessor's costs and expenses from the Assessment Fund. *Id.* at 309-11. The central issue in *Estes* was whether the Cole County Assessor had the authority to authorize expenditures from the Assessment Fund without the approval of the County Commission. *Id.* Conversely, in the current case, the Assessor paid her employees within the bounds of the approved budget. This indicates that the expenditure was allocated and authorized within the Assessment Fund. The larger picture from *Estes* is that a county Assessor cannot prevent the Commission from paying expenses from the assessment fund. *Id.* Whereas in this case, the Assessor is paying expenses that were within the budget for employee pay.

There are a series of three cases that provide that the Saline County Assessor holds autonomy and authority over budgetary decisions, including employee compensation. The Commission's role is to approve the overall budget, while the Assessor decides how to use the funds within that budget. As demonstrated in the cases of *Pippin*, *Kuyper*, *Hunter* and *Melton*, the Assessor has the final say on matters of employment and compensation within the approved budget. Therefore, the Commission lacks the authority to withhold payment for the day off, as it falls within the Assessor's discretion.

C. Conclusion

The County Assessor can determine compensation for her employees. Due to there being at the very least a question of fact regarding the categorization of the pay in question, the trial court erred in dismissing the Appellant's claims.

IV. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION TO DISMISS BECAUSE AS A MATTER OF LAW THE TRIAL COURT'S INTERPRETATION IS UNCONSTITUTIONAL IN THAT THE CURRENT VERSION OF SECTION 48.020 AS APPLIED BY THE TRIAL COURT VIOLATES ARTICLE VI SECTION 8 OF THE MISSOURI CONSTITUTION BECAUSE SECTION 48.020 RSMO PURPORTS TO CREATE TWO DIFFERENT CRITERIA FOR CLASSIFYING COUNTIES: THE FIRST CRITERION FOR FIRST THROUGH THIRD CLASS COUNTIES AND ANOTHER CRITERION FOR FOURTH CLASS COUNTIES RESULTING IN THE CREATION OF MORE THAN FOUR CLASSES OF COUNTIES.

A. Standard of Review

Appellant incorporates the standard from Point I.

B. The Trial Court's interpretation of Section 48.020., RSMo, is Unconstitutional.

If the Court grants Points Relied On I or II, then the Court need not consider this Point Relied On. However, if the Court finds interpreting the plain language of § 48.020., RSMO, requires fourth (4th) class counties to operate as second (2nd) class counties even if the county has had five successive years of assessed valuations that would place that county in either the third (3rd) class or first (1st) class, then that interpretation is unconstitutional as more fully set forth below.

The Missouri Constitution clearly states that counties must be segregated into classes that have systematic relations founded upon common properties or characteristics. MO Const art VI § 8. Article VI, Section 8 of the Constitution explicitly requires that counties be classified based on the same standard: "the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions." This provision demands that the legislature establish a benchmark against which all counties can be uniformly measured. This Court in prior cases has unequivocally stated that a county's assessed valuation is that benchmark. However, if Respondents' interpretation is correct, then the current classification scheme that the legislature has established in Section 48.020., RSMo, has abandoned the assessed valuation scheme of classification creating different criterion between the counties and effectively creating an additional class in violation of the Constitution.

Originally, the general assembly divided counties into four classes all based on assessed valuation. *Chaffin v. Christian County*, 359 S.W.2d 730, 733 (Mo. 1962). This system was in line with the 1945 Constitution. *Id.* Currently, the Missouri constitution still requires that the organization or benchmark for determining county classes must be the same. MO Const art VI § 8. The current classification scheme categorizes the first three types of counties by assessed valuation, but the fourth (4^{th}) class is different (Section 48.020., RSMo,). A fourth (4^{th}) class county is a county that would be third (3^{rd}) class prior to August 13, 1988, but are currently operating as a second (2^{nd}) class and shall remain

operating as a second (2nd) class. This unequal treatment, whereby most counties are classified based upon assessed valuation while the fourth (4th) class counties are not, creates an imbalance and a mixture of classes with different benchmarks directly contravening the constitutional mandate of equal organization standards. Consequently, Saline County has been operating as a second (2nd) class by being a fourth (4th) class county but while having an assessed valuation that places the county firmly in the financial situation of third (3rd) class counties.

In *Chaffin*, the Missouri Supreme court analyzed an attempt by the legislature to implement a scheme whereby no fourth (4th) class county, though otherwise qualified by the assessed valuation scheme, could move to third (3rd) class until approved by the voters of the county. *Id.* at 731. In the iteration of Section 48.020, RSMo, analyzed by the Court in *Chaffin*, there were four classes of counties that obtained their classification based upon an assessed valuation. *Id.* at 733. Another section of the same statute (currently § 48.030), allowed for counties to move up or down in classification based upon an assessed valuation for five successive years. *Id*. The *Chaffin* Court stated that purpose of Section 8 of Art. VI of the Missouri Constitution "was to simplify and make more effective the organization and operation of the counties." *Id*. at 734. The *Chaffin* Court carefully defined a "class" as sharing "common attributes or a common attribute" and as being systematically related based upon "common properties or characters." *Id.* Then, this Court in *Chaffin* clearly stated the legislature had "provided that the common attribute, property, or character, should be the assessed valuation of the counties subject to classifications." *Id.* The issue

before the *Chaffin* Court was that the subdivision of the statute only allowing a fourth (4th) class county to move to a third (3rd) class county upon approval by the voters of the county "disrupted the common denominator of the classes." *Id.* at 735. The common denominator or common attribute was assessed valuation, and it was no longer controlling and thereby "perverts the entire scheme of classification and in effect creates an additional class of counties in violation of § 8, Art. VI, 1945 Constitution." *Id.* The *Chaffin* Court also examined the legislative intent behind the existing classification scheme and found it revealed a clear objective to align governance and funding based on the tax base of each county. *Id.* at 735-36. The *Chaffin* Court, cognizant of the constitutional requirement of equal standards, held this approach found in § 48.030.2, RSMO, to be unconstitutional. *Id.* at 735-36.

The Supreme Court continued to uphold this standard in *Russell v. Callaway County.* 575 S.W.2d 193, 199 (Mo. 1978). The Court held that the 1977 version of Section 48.020.2., RSMo, which allowed for creating more than four classes of counties, violated the Missouri Constitution. *Id.* 197. The Court found that the provision in question created a fifth and sixth classification of counties allowing certain counties to retain attributes of both their current and higher classes based on the approval of the electorate, which disrupted the common denominator of assessed valuation used for classification. *Id.* at 199. The Court in *Russell* in response to Appellants' argument that assessed valuation was only critical at the initial evaluation for a county's classification stated:

> A county could not move from one class to another unless it was initially placed in a class and then a change in valuation caused it to move to a different class. Thus,

> valuation is made the key factor for change in class as well as for initial classification. . . . Once initial classification was made, assessed valuation was to be determinative of any change in classification. Appellants confuse cause and effect. The assessed valuation determines the county's class, and the county's class its powers and restrictions. To say that the powers and restrictions conferred determine the class is to put the cart before the horse.

Id. at 199.

The court's reasoning was based on a previous case, *Chaffin v. County of Christian*, which held that any additional requirement for county classification beyond assessed valuation violated the constitutional limitation of four classes. *Id.* at 198-99. Therefore, the court concluded that Section 48.020.2., RSMo, was unconstitutional. *Id.*

If the current version of § 48.020, RSMo, actually requires fourth (4th) class counties to operate as second (2nd) class counties even if the county has had five successive years of assessed valuations that would place that county in either the third (3rd) class or first (1st) class, then fourth (4th) class counties are not being classified based upon assessed valuations. Unlike all other counties, the assessed valuation of a fourth (4th) class county is not even a consideration. Thus, a fourth (4th) class county such as Saline County is operating as a second (2nd) class county with an assessed value of a third (3rd) class county resulting in the effective creation of an additional fifth (5th) class county just as in *Chaffin* and *Russell*. Interestingly, the *Chaffin* Court referred to the "reluctant fourth-class county" that might never become a second (2nd) or first (1st) class county if its assessed valuation justified it. In the most recent iteration of Section 48.020, RSMo, as interpreted by the trial court and Respondents, the common benchmark has been thrown out and fourth (4th)

class counties in some cases are stuck operating as second (2nd) class counties in perpetuity.

Respondents rely upon the 1995 amendment to Article VI, Section 8, of the Missouri Constitution wherein there are special classifications for "charter" counties and certain other "constitutional" counties. However, the 1995 amendment simply allows special laws that apply to specific counties. The amendment addresses "special charter" counties (Art. VI, § 18(a) Mo. Const.) and "constitutional" counties applicable to only first (1st) class counties (Art. VI, § 18(b) Mo. Const.). "[T]here are numerous examples after the 1995 constitutional amendment in which St. Louis County and other charter counties continued to be recognized as "first class counties" in the context of the continued validity and applicability of certain statutes." *Collector of Winchester v. Charter Communications, Inc.*, 660 S.W.3d 405, 429-30 (Mo. App. E.D. 2022). The 1995 amendment did not alter the four-class scheme put forth in Section 48.020., RSMo., other than to allow charter counties and constitutional counties, and the amendment was certainly not intended to breakdown the four-class framework. Otherwise, there would not still exist language in Article VI, Section 8 that states: "The number of classes shall not exceed four . . . ."

However, if the 1995 amendment did in fact authorize and additional class of counties, then such amendment violated the one subject requirement of Article XII, § 2(b) of the Missouri Constitution and should not be followed. *See generally Calzone v. Interim Commissioner of Department of Elementary and Secondary Education*, 584 S.W.3d 310 (Mo. banc 2019) (discussing the one subject rule and how it protects the state, legislators,

and citizens); *Berry v. State*, 908 S.W.2d 682, 684 (Mo. banc 1995) (declining to rule on the constitutionality of the 1995 amendment under Article XII, § 2(b) since it was not properly before the Court).

Chaffin and *Russell* establish a precedent that the classification of counties must adhere to common benchmarks to meet the constitutional requirements set out in Art VI § 8. The common benchmark is a county's assessed valuation. Without this benchmark, there is disparity and inequality. Therefore, applying this precedent to current § 48.020., RSMo, the current classification law if interpreted and applied as argued by Respondents does not utilize the same common benchmarks. The Supreme Court has consistently struck down classification schemes that violate the Missouri Constitution. Given that, the current version of § 48.020., RSMo,, if interpreted and applied as done so by the trial court and argued by Respondents, violates the constitutional requirement of having a common standard to classify counties resulting in different criterion between counties for classified and the creation of more than four classes of counties and does not meet the standards as the Supreme Court has held before in prior cases.

C. Conclusion

In sum, the current classification scheme as argued by Respondents and applied by the trial court, fails to satisfy the constitutional requirement of equal standards under Article VI, Section 8. Therefore, the trial court erred in granting the appellee's motion to dismiss.

CONCLUSION

The judgment of the trial court should be reversed and remanded for trial so that the court can interpret Section 137.720., RSMo, such that the Saline County Assessor's office is entitled to one percent (1%) of all ad valorem taxes and the Saline County Assessor can use her duly approved budget as she deems required to fulfill her statutory duties.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06, the undersigned certifies that:

1. This brief complies with the typeface and type style requirements of Supreme Court Rule 84.06 as this brief has been prepared in Times New Roman font, a proportionally spaced typeface, using Microsoft 365 in 13 point.
2. The signature block of the foregoing Brief contains the information required by Rule 55.03(a). To the extent that Rule 84.06(c)(1) may require inclusion of the representations appearing in Rule 55.03(b), those representations are incorporated herein by reference.
3. This brief contains 7,866 words, excluding parts of the Brief exempted by Rule 84.06(b), as counted by Microsoft 365.

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2024, a true and correct copy of the foregoing was sent via electronic mail to those parties registered to receive electronic notification via the Missouri Courts eFiling System.

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