

Summary of SC95003, *Macon County Emergency Services Board v. Macon County Commission, Alan Wyatt, in his official capacity as a Macon County commissioner, Drew Belt, in his official capacity as a Macon County commissioner, and Jon Dwigins, in his official capacity as a Macon County commissioner*

Appeal from the Macon County circuit court, Judge Frederick Tucker

Argued and submitted December 10, 2015; opinion issued April 5, 2016

Attorneys: The emergency services board was represented by Deborah J. Neff of The Law Office of Deborah Neff LLC in Macon, (660) 385-1460. The county commission and commissioners were represented by Ivan L. Schraeder and Jamie N. Manier of The Lowenbaum Partnership LLC in St. Louis, (314) 746-4823. The Missouri Association of Counties, which submitted a brief as a friend of the Court, was represented by Travis A. Elliott of Ellis, Ellis, Hammons & Johnson PC in Springfield, (417) 866-5091.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A county emergency services board funded by a percentage of a county sales tax appeals the circuit court's judgment denying the board's request to be declared entitled to a similar percentage of the county's new use tax. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment. Without specific statutory direction and with no indication that the legislature intended the board to receive a share of the county use tax proportionate to its share of the county sales tax, this Court cannot create such a requirement.

Facts: The Macon County emergency services board has no taxing power of its own but relies on the county commission to authorize a permissible county sales tax rate for the board's benefit. When such a sales tax is proposed to voters, it must use language substantially similar to model ballot language found in section 190.335.3, RSMo, which indicates the revenue levied will be used for various emergency services. Beginning in 1992, the Macon County commission proposed an additional 0.375-percent sales tax – pursuant to section 190.335 – to fund the board. Voters approved the tax, and the board has received the revenue generated from this additional sales tax every year thereafter. In 2012, the county commission proposed a county use tax, which voters approved. The proceeds from the use tax were distributed solely to the commission. The board subsequently filed a petition seeking a judgment declaring that it was entitled to a proportional share of the county use tax. The circuit court denied the board's request. The board appeals.

AFFIRMED.

Court en banc holds: The statute authorizing the county use tax is silent as to the distribution of county use tax revenue in third-class counties such as Macon County. The statute does not require use tax revenue to be distributed in any particular manner, much less in the same proportion as sales tax revenue. The legislature could have included specific distribution directions for use tax revenue in third-class counties – as it did for other class counties – but it

did not. Without specific statutory direction as to the distribution of local use tax revenue in third-class counties, it was within the commission's discretion whether to share with the board a proportion of that revenue. And with no indication that the legislature intended the board to receive a share of the county use tax proportionate to its share of the county sales tax, this Court cannot create such a requirement.