IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI ex rel. MISSOURI AUTOMOBILE DEALERS ASSOCIATION, et al.,
Respondents,

v.

MISSOURI DEPARTMENT OF REVENUE AND ITS DIRECTOR and TESLA MOTORS, INC.,
Appellants.

DOCKET NUMBER WD80331
(Consolidated with WD80335)

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: December 5, 2017

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

JUDGES

Division IV: Pfeiffer, C.J., and Welsh and Witt, JJ. CONCURRING.

ATTORNEYS

Lowell D. Pearson and R. Ryan Harding, Jefferson City, MO, Attorneys for Respondents.

Joshua D. Hawley, Attorney General, and Curtis M. Schube, Assistant Attorney General, Jefferson City, MO, Attorneys for Appellant Missouri Department of Revenue and Its Director.

Richard N. Bien and R. Kent Sellers, Kansas City, MO; Jennifer S. Griffin, Jefferson City, MO; Daniel M. Petrocelli (*Pro Hac Vice*) and Charles C. Lifland (*Pro Hac Vice*), Los Angeles, CA; Anne E. Huffsmith (*Pro Hac Vice*), San Francisco, CA, Attorneys for Appellant, Tesla Motors, Inc.

James F. Bennett, St. Louis, MO, Attorney for *Amicus Curiae* Toyota Motor Sales, U.S.A., Inc.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI ex rel. MISSOURI AUTOMOBILE DEALERS ASSOCIATION, et al., Respondents,
v.
MISSOURI DEPARTMENT OF REVENUE AND ITS DIRECTOR and TESLA MOTORS, INC., Appellants.

WD80331 (Consolidated with WD80335) **Cole County**

Before Division Four Judges: Mark D. Pfeiffer, Chief Judge, and James Edward Welsh and Gary D. Witt, Judges

The Missouri Department of Revenue ("Department") and Tesla Motors, Inc. ("Tesla") appeal from the judgment entered by the Circuit Court of Cole County, Missouri, granting summary judgment in favor of Missouri Automobile Dealers Association ("MADA"), Reuther Ford, Inc. ("Reuther Ford"), and Osage Industries, Inc. ("Osage Industries") (collectively, "Plaintiffs") on their petition for declaratory judgment and writ of prohibition. Plaintiffs asserted that Tesla failed to meet the statutory requirements for obtaining a new motor vehicle dealer license, citing Chapters 301 and 407 of the Missouri Revised Statutes. Plaintiffs also alleged that they were aggrieved as taxpayers because the Department had expended public taxpayer funds and would continue to do so each year that Tesla applies for license renewal. The Department and Tesla each assert that the Plaintiffs lacked standing to bring this action as economic competitors of Tesla and as Missouri taxpayers.

REVERSED AND REMANDED WITH DIRECTIONS.

Division Four holds:

1. Plaintiffs fail to identify any statutory language evincing an intent by the legislature to include them within the "zone of interest" covered by Chapter 301, conferring them with standing to appeal a motor vehicle dealer licensing decision by the Department in which they are not a licensee or applicant aggrieved by a licensing decision by the Department.

2. Even though the Chapter 301 licensing statutes do not expressly or impliedly confer standing on Plaintiffs to challenge the issuance of the license to Tesla, Plaintiffs contend that their status as economic competitors of Tesla gives them a legally protected interest and confers standing. However, merely being an economic competitor is not enough to confer standing. Nevertheless, Plaintiffs contend that they have standing to challenge the issuance of the license to Tesla because they are in the "zone of interest" of the Motor Vehicle Franchise Practices Act ("MVFP Act"). However, the purpose of the MVFP Act is to protect franchisees from unlawful

practices of franchisors with respect to franchises in the possession of franchisees. While franchisors are prohibited from engaging in business in Missouri without being licensed, the MVFP Act does *not* regulate motor vehicle dealer *licensing* procedures.

3. Plaintiffs allege that their status as taxpayers gives them a legally protected interest and confers standing. Even if the Department expended funds for the salaries of the personnel who reviewed the applications for issuance and/or renewal of licenses to Tesla, this is not the type of expenditure of public funds which would establish taxpayer standing, as they are general operating expenses which would be incurred whether or not the challenged transaction took place. Plaintiffs have failed to demonstrate that the Department's actions impacted the direct expenditure of public funds of the nature sufficient to establish taxpayer standing. Plaintiffs also suggest that public policy demands a system of checks and balances; and if they do not have taxpayer standing, no one could challenge the Department's allegedly unlawful action. This argument is not a reason to find standing, as the identity of those who may challenge the Department's actions is left to the legislature.

Opinion by: Mark D. Pfeiffer, Chief Judge December 5, 2017

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