IN THE
SUPREME COURT OF MISSOURI

No. SC87405

JACKSON COUNTY, MISSOURI

Respondent-Cross Appellant,

v.

STATE OF MISSOURI, *et al.*,

Appellants-Cross Respondents.

Appeal From The Cole County Circuit Court,
The Honorable Richard G. Callahan

Appellants-Cross-Respondents' Second Brief

JEREMIAH W. (JAY) NIXON
Attorney General

HEIDI C. DOERHOFF
Missouri Bar No. 49664
207 W. High Street
P.O. Box 899
Jefferson City, Missouri 65102-0899
Phone: (573) 751-3321
Fax: (573) 751-7094
heidi.doerhoff@ago.mo.gov

ATTORNEYS FOR APPELLANTS-CROSS-RESPONDENTS

Table of Contents

Table of Authorities

Cases:

Constitutional and Statutory Authorities:

Other:

STATEMENT OF FACTS

With respect to the County's cross appeal regarding the validity of § 115.348, the following additional facts are significant:

Two bills from the 93rd General Assembly enacted near-identical, but separate versions of § 115.348. H.B. 58's version of § 115.348 provides that:

> No person shall qualify as a candidate for elective office in the State of Missouri who has been *convicted* of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America.

L.F. 113 (emphasis added).

H.B. 353's version of § 115.348 provides that:

> No person shall qualify as a candidate for elective office in the State of Missouri who has been *found guilty* of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America.

App. 15 (emphasis added).

The Revisor of Statutes mistakenly included only one version of § 115.348 in the 2005 cumulative supplement (the H.B. 58 version) and mistakenly wrote in the statutory note that "H.B. 58 merged with H.B. 353." App. 1.[1]

---

[1]The Attorney General's office became aware of the H.B. 353 version of § 115.348 after the slip opinion in *Rizzo v. State*, No. SC87550, was handed down on April 25, 2006.

The County's petition challenged § 115.348 as an infringement on its rights to operate under a charter form of government under Article VI, § 18, and challenged H.B. 58 as having been enacted in violation of the original purpose requirement of Article III, § 21 and single subject requirement of Article III, § 23. L.F. 218-21. The County's petition did not challenge (or refer to) H.B. 353.

ARGUMENT

Reply Brief in Support of Appellants' Appeal

I.

The County does not dispute Appellants' statement of the legal standards applicable to special law challenges. Instead, it tries to defend the trial court's erroneous special law holding on the following three grounds: (1) there are procedural bars to this Court's consideration of Appellants' arguments, (2) deference is owed to the trial court's determinations, and (3) this case is indistinguishable from *School District of Riverview Gardens v. St. Louis County*, 816 S.W.2d 219 (Mo. banc 1991). None of these arguments has merit.

A. There are no procedural bars to correcting the trial court's erroneous special law holding.

The County is mistaken in asserting (Br. 27) that Appellants "are not in a procedural posture" to seek correction of the trial court's special law holding. A motion for a directed verdict was not, as the County claims (Br. 27), necessary to preserve an argument that the County failed to put forward a *prima facie* showing that § 67.2555 was

invalid as a special law. Indeed, a motion for a directed verdict would have been procedurally improper in this court-tried case.

> In a trial without a jury, the judge is not only the trier of facts but also the determinant of whether the plaintiff has shown a right to relief. It is for this reason that the motion for directed verdict, so apt in a jury case to differentiate the judge function as to whether the evidence is submissible from the jury function to find the facts and return a verdict under the instructions of the court, has no role or function in a trial to the court without a jury.

Keefhaver v. Kimbrell, 58 S.W.3d 54, 57-58 (Mo. App. W.D. 2001).[2]

The County is also wrong to suggest (Br. 27) that Appellants are hampered by not having requested findings of fact and conclusions of law. Here, the trial court set forth its reasoning in detail, and its analysis is unquestionably reviewable. *See Graves v. Stewart*, 642 S.W.2d 649, 651 (Mo. banc 1982) (when court voluntarily makes findings and conclusions, "such findings and conclusions do form a proper basis for assigning error

---

[2]"The proper motion after a plaintiff has completed presentation of her evidence [in a case tried without a jury] is a motion for judgment on the grounds that upon the facts and the law the plaintiff is not entitled to relief." *Keefhaver*, 58 S.W.3d at 58. *See also* Rule 73.01(b). But the filing of such a motion, unlike its analog in a jury case, "is not required in order to preserve for review on appeal a claim or issue as to the sufficiency of the evidence." 24 Missouri Practice Series, Appellate Practice § 2.13 (2006).

and should be reviewed").

B. No deference is owed to the trial court's legal inferences.

The County would also have this Court view this appeal through the rose-colored lenses appropriate for cases with conflicting evidence. *See* Resp. Br. 26. But deference to the trial court is unwarranted here, because the facts were uncontested. *Hedrick v. Director of Revenue*, 839 S.W.2d 300, 302 (Mo. App. E.D. 1992) ("Deference to the trial court's findings is only required where the evidence is contested, and where the case is virtually one of admitted facts or where the evidence is in conflict, no such deference is required.") (internal quotations omitted). As such, "the only question before this court is whether the trial court drew the proper legal conclusions" – a *de novo* determination. *Schroeder v. Horack*, 592 S.W.2d 742, 744 (Mo. banc 1979). As shown in Appellants' opening brief (Br. 25-31), the trial court's legal conclusions were wrong.

C. *Riverview Gardens* is inapposite.

The County further argues that *School District of Riverview Gardens v. St. Louis County*, 816 S.W.2d 219 (Mo. banc 1991), controls the outcome here. But *Riverview Gardens* is inapposite, for two reasons. *First*, the *Riverview Gardens* law was facially special (*i.e.*, not opened-ended),[3] and subject to a presumption of unconstitutionality. *See*

[3]Specifically, the *Riverview Gardens* law established one *ad valorem* tax adjustment scheme for political subdivisions generally, but another, different scheme for St. Louis County and St. Louis City. The City and the County were singled out based on

generally Tillis v. City of Branson, 945 S.W.2d 447, 448-49 (Mo. banc 1997) & *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96, 99 (Mo. banc 1993) (facially special laws are presumed unconstitutional, unless the State demonstrates a "substantial justification" for the special treatment). In stark contrast, laws founded on open-ended classifications, such as § 67.2555, are presumed constitutional unless the plaintiff shows that classification being challenged does not rest on any reasonable basis. *See State ex rel. Public Defender Com'n v. County Court of Greene County*, 667 S.W.2d 409, 413 (Mo. banc 1984).

Second, in the *Riverview Gardens* case, the law's proponents apparently failed to articulate *any* reason for the facially special treatment, because the Court's opinion does not discuss any justifications put forward in support of the law. In this case, however, the General Assembly had two rational reasons for the limitations put on § 67.2555's scope – the differing powers that the two other charter county executives were given under their respective county charters, and the likelihood that the Jackson County executive was abusing her power by handing out no-bid contracts as political favors. *See* Appellants' Br. 26-29 (discussing rational bases for § 67.2555) & Appellants' Br. App.15-22 (Kansas City Star articles on federal probe).

---

close-ended geographic and constitutional criteria. *See* 816 S.W.2d at 222 (exception for "those [political subdivisions] the greater part of which is located in first class charter counties adjoining any city not within a county [St. Louis County] or any city not within a county [the City of St. Louis]").

In short, *Riverview Gardens* does speak directly to, much less control, the issues here.

II.

The County also seeks to defend the trial court's invalidation of § 67.2555 on each of the alternate theories it advanced in the trial court. Most of these flawed arguments are fully addressed on pages 33-44 of the State's initial brief. Thus, only a few additional points need be made here.

A. Section 67.2555 does not infringe on the County's right to operate under a charter form of government.

In arguing that § 67.2555 infringes on its right to operate as charter county under Article VI, § 18, the County relies heavily on cases involving charter cities. *See* Resp. Br. 33-38, citing, *inter alia*, *Grant v. City o f Kansas City*, 431 S.W.2d 89 (Mo. banc 1968); *Tremayne v. City of St. Louis*, 6 S.W.2d 935 (Mo. banc 1928); & *State ex inf. Taylor ex rel. Kansas City v. North Kansas City*, 228 S.W.2d 762 (Mo. banc 1950). But as Appellants have shown in their initial brief (Br. 33-37), those cases have no application here, because the Constitution's charter county provisions are written differently than the charter city provisions and were the outgrowth of different concerns. The County does not dispute these points, and hence effectively concedes them.

The only non-charter city case cited by the County is *State on inf. Dalton ex rel. Shepley v. Gamble*, 280 S.W.2d 656 (Mo. banc 1955). But *Shepley* does not help the County either, because it does not answer the question presented here. The issue in

Shepley was whether St. Louis County could, by its charter, vest its board of police commissioners with the power to perform certain duties previously committed to the county sheriff and constables. The relator argued that sheriffs and constables were state officers, not county officers, and that the transfer of power was therefore void. *Id.* at 659. The Court disagreed in light of the plain language of § 18(b) and § 18(e) of Article VI. The former provision requires charter counties to provide "for the exercise of all powers and duties of counties and county officers prescribed by the constitution and laws of the state," while giving such counties control over the structure of the county government, including the "number," and "kinds" of county officers. Mo. Const. art. III, § 18(b). The latter provision in turn prohibits the General assembly from "provid[ing] for any other office or employee of the county." Mo. Const. art. III, § 18(e). Read together, the Court concluded, these provisions require charters counties to have *someone* perform all duties enjoined by state statute, but they let such counties have "the choice as to what officer or agency will be designated to perform the duties." 280 S.W.2d at 660.

Here, the issue is not to what extent the County may allocate power among its county officers, but whether those officers must follow competitive bidding requirements assigned under state law. For the reasons stated in Appellants' opening brief (Br. 33-37), the answer to that question emphatically is "yes."

B. Even if one assumes that the addition of § 115.348 to H.B. 58 changed the original purpose of the bill, § 67.2555 must be upheld under severability principles.

The County's brief (Br. 38) has a subheading arguing that § 67.2555 is invalid because the addition of § 115.348 (prohibiting persons with federal criminal records from qualifying as candidates for public office in the State) changed the original purpose of H.B. 58. But, the County does not following this heading with any supporting argument. Instead, it claims (Br. 39) that this Court's ruling in *Rizzo v. State*, --- S.W.3d ---, 2006 WL 1073051, Docket No. SC87550 (Mo. banc April 25, 2006), "controls here." It does not. The single-subject ruling in *Rizzo* does not speak to the original purpose challenge asserted by the County in this case. For the reasons stated in Appellants' opening brief (Br. 37-38), the County's original purpose challenge must fail.

Even if the County were right that the addition of § 115.348 changed the original purpose of H.B. 58, however, the trial court's judgment with respect to § 67.2555 would remain unsustainable. Only non-germane sections of a bill should be struck for an original purpose violation. *See Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 8 (Mo. 1945) (holding that the offending section of bill (as opposed to entire bill) should declared void). Here, § 67.2555 must stand because it is self-evidently germane to H.B. 58's original purpose of regulating political subdivisions. Indeed, § 67.2555 is highly consistent with the initial provisions of H.B. 58 in that it some of those provisions expressly dealt with competitive bidding requirements for political subdivisions. *See* L.F.

11-14 (Pet. Ex. A – H.B. 58, as introduced).

C. The County's Article III, § 23 challenge cannot invalidate § 67.2555.

The County also argues that this Court's holding in *Rizzo* supports invalidation of § 67.2555. The opposite is true. In *Rizzo*, this Court concluded that H.B. 58 had a "single central purpose" or "core subject" of "legislation relating to political subdivisions." 2006 WL 1073051, *4. And, further, that the "provisions of the bill that specifically relate to political subdivisions are not so dependent upon section 115.348 ... that it cannot be presumed that the legislature would have passed the bill without it." *Id.*

In this case, § 67.2555 is well within H.B. 58's core subject of regulating political subdivisions, because it imposes a competitive bidding requirement on a specific class of political subdivisions – charter counties within a specified population range. Accordingly, § 67.2555 must be upheld under severability principles. *See id.* The County's attempt to categorize § 67.2555 as beyond the bill's core subject is wholly unpersuasive. By definition, practically every provision in a legislative bill effects a change in the law. So, the County's suggestion that the test for determining whether a provision relates to a bill's core subject is whether the provision imposed a requirement that "never existed before" (Br. 41) simply makes no sense.

Finally, it bears mention that the County does not argue H.B. 58's title is unclear, and so this issue (which, in any event, was improperly raised in the trial court) must be deemed abandoned. *See, e.g.*, *Kennedy v. Bowling*, 4 S.W.2d 438, 448 (Mo. banc 1928).

D. The County does not dispute that it is not a "person" entitled to due process protections.

Appellants cited in their opening brief (Br. 42) cases from this and other Missouri appellate courts holding that political subdivisions, like Jackson County, are not "persons" entitled to assert due process rights, the underpinnings of the vagueness and overbreadth doctrines. The County effectively concedes the point by not contesting the efficacy of these cases. For this and for the other reasons stated in Appellants' opening brief, neither doctrine provides any basis to set § 67.2555 aside.

* * * *

Cross-Respondents' Brief

I. The Trial Court Erred In Setting § 67.2555 Aside. [Responds to Points I, III, IV, & V of Respondent's Cross Appeal]

In Points I, III (insofar as it pertains to § 67.2555), IV, and V of its cross appeal, the County refers this Court to the portions of its response brief that contain its charter government, single subject, vagueness/overbreadth, and special law arguments against § 67.2555. For the reasons stated above and in Appellants' opening brief, none of the County's arguments can sustain the trial court's judgment declaring § 67.2555 invalid. Accordingly, the Court should deny Points I, III, IV, and V of the cross appeal.

II. The Trial Court Did Not Err In Upholding § 115.348. [Responds to Points II & III of Respondent's Cross Appeal]

In Points II and III (insofar as it pertains to § 115.348), the County argues that the trial court erred in upholding § 115.348 as against original purpose and single subject challenges to H.B. 58. In *Rizzo*, this Court held that the addition of § 115.348 to H.B. 58 caused the bill to have multiple subjects in violation of Article III, § 23, and that § 115.348, as enacted by H.B. 58, must be struck. 2006 WL 1073051, *4.

Rizzo, however, does not dispose of the County's cross appeal, because the trial court's judgment that § 115.348 is constitutional is sustainable on alternate grounds. *See Lough by Lough v. Rolla Women's Clinic, Inc.*, 866 S.W.2d 851, 852 (Mo. banc 1993) ("if the judgment of the trial court is sustainable on any grounds, it will not be overturned on appeal"). Because each of the County's appellate arguments vis-a-vis § 115.348 are based on procedural deficiencies in the enactment of H.B. 58, they provide no basis to set aside the § 115.348 that was enacted by H.B. 353.[4] Accordingly, the trial court's

---

[4]The fact that the Revisor of Statutes failed to include both versions of § 115.348 in the 2005 cumulative supplement of the Missouri Revised Statutes is irrelevant. The "revised statutes are no more than prima facie evidence of such statutes." *Protection Mut. Ins. Co. v. Kansas City*, 504 S.W.2d 127, 130 (Mo. 1974). Both H.B. 58 and H.B. 353 became law when they were signed by the governor. *See* Mo. Const. art. III, § 31 ("If the bill be approved by the governor it shall become law.").

judgment with respect to § 115.348 must be sustained.

Conclusion

For the foregoing reasons, the Court should REVERSE the circuit court's judgment that § 67.2555 is invalid and must be enjoined and AFFIRM the court's judgment that § 115.348 (as enacted by H.B. 353) is valid.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

HEIDI C. DOERHOFF
Missouri Bar No. 49664
207 W. High Street
P.O. Box 899
Jefferson City, Missouri 65102-0899
Phone: (573) 751-3321
Fax: (573) 751-7094
heidi.doerhoff@ago.mo.gov

ATTORNEYS FOR APPELLANTS-CROSS-RESPONDENTS

Certificate of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this _____ day of June, 2006, one true and correct copy of the foregoing brief and one disk containing the foregoing brief were mailed, postage prepaid, to:

Lisa Noel Gentleman (#40111)
Deputy County Counselor
415 East 12th Street, Suite 200
Kansas City, Missouri 64106
(816) 881-3123 FAX (816)881-3398
ATTORNEYS FOR RESPONDENT/
CROSS-APPELLANT

The undersigned certifies that the foregoing brief complies with the limitation contained in Rule 84.06(b), and that the brief contains 3277 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

_____
Heidi C. Doerhoff

APPENDIX

Index to the Appendix