

IN THE MISSOURI SUPREME COURT

No. SC95713

**OFFICE OF PUBLIC COUNSEL,
Appellant,
v.
PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, AND
MISSOURI AMERICAN WATER COMPANY,
Respondents.**

**AMICUS CURIAE BRIEF OF ST. LOUIS COUNTY, MISSOURI AND ST.
LOUIS REGIONAL CHAMBER IN SUPPORT OF THE PUBLIC
SERVICE COMMISSION OF MISSOURI AND MISSOURI
AMERICAN WATER COMPANY**

**PETER J. KRANE
COUNTY COUNSELOR
Cynthia L. Hoemann, #28245
Associate County Counselor
41 South Central, 9th Floor
Clayton, MO 63105
(314) 615-7042 Fax (314) 615-3732
choemann@stlouisco.com
Attorneys for St. Louis County, Missouri**

**Jason R. Hall, #54139
General Counsel
One Metropolitan Square, Suite 1300
St. Louis, Missouri 63102
(314) 444-1175
jhall@stlregionalchamber.com
Attorney for St. Louis Regional Chamber**

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STATEMENT OF INTEREST OF AMICUS CURIAE

St. Louis County, Missouri is a charter county that has been and continues to be the most populous county in Missouri. As of the effective date of the 2000 census, St. Louis County had a population of 1,016,300.¹ No other Missouri county has ever had a population of over one million. During the period 2000-2010, the Missouri General Assembly enacted many statutes that refer to a charter county with more than one million inhabitants. According to the 2010 census, St. Louis County's population decreased by 1.7 percent to 998,954 prior to taking into account the effect of St. Louis County federal employees serving overseas.²

Appellant Missouri Office of the Public Counsel ("OPC") argues that the drop in population causes statutes that refer to a county with a population over one

¹ U.S.Census Bureau, Census 2000 Redistricting Data (P.L. 94-171) Summary File, Table PL1, and 1990 Census. OPC Appendix ("A") – 22.

² U.S.Census Bureau, Census 2010 Redistricting Data (P.L. 94-171) Summary File, Summary File Geographic Update- Missouri. Issued August, 2011. A-23.

When Missourians who are federal employees serving overseas are counted proportionally among Missouri counties, the population of St. Louis County remains more than one million. This brief addresses the drop-in-population issue assuming *arguendo* that Missouri's overseas federal employees are not counted.

million to cease applying to St. Louis County. According to OPC's construction of § 1.100.2 RSMo ("population statute"), a county that has the requisite population when a law is passed is not always in, but rather falls out of the statute if the population drops below the specified level. This brief discusses this issue from a county and regional perspective and will help the Court further understand the confusion and negative impacts that would result from OPC's construction of the population statute.

Furthermore, St. Louis County possesses an email expressing the opinion of the staff of the constitutionally-created Committee on Legislative Research adopting the position advocated by St. Louis County and Missouri-American Water Company, further demonstrating legislative intent.

The St. Louis Regional Chamber (the "Regional Chamber") is a broad community of leaders united for economic prosperity throughout the entire bi-state St. Louis region. The Regional Chamber serves the 15-county bi-state metropolitan region as the leading private-sector economic development organization. Its members employ roughly one-third of the region's workforce, with member businesses of every size from start-ups to large, publicly-traded companies, as well as non-profit organizations, educational institutions, and public-sector partners. In the Regional Chamber's experience, employers who are considering starting, relocating, or expanding in St. Louis County evaluate the

stability and reasonableness of the regulatory climate. Employers and investors must be able to make business decisions based on a just, efficient and consistent legal system, not one that changes due to tiny population fluctuations outside of any employer's control. OPC's challenge makes it impossible for employers to engage in effective long-term planning.

OPC argues that Respondent Missouri American Water Company ("MAWC") is no longer eligible for an infrastructure system replacement surcharge ("ISRS") because, due to the 2010 population drop, St. Louis County lacks the population required by § 393.1003 RSMo ("authorizing statute") passed in 2003. OPC's construction of the population statute does not simply affect MAWC's eligibility for an ISRS. It creates all sorts of confusion and negative impacts with respect to other statutes that, by their terms, apply to a charter county with a population over one million. Many of these statutes refer not only to St. Louis County, but also to municipalities and other governmental agencies within St. Louis County. For example:

- The Regional Taxicab Commission Law, §§ 67.1800 – 67.1822 RSMo, which establishes a Regional Taxicab Commission to regulate taxicab services within a single Regional Taxicab District that encompasses "any city not within a county and any county with a charter form of government and with more than one million inhabitants."

- The Missouri Downtown and Rural Economic Stimulus Act, §§ 99.915-99.1060 RSMo, which provides for a countywide downtown economic stimulus authority to undertake downtown development financing in counties with a population over one million and the cities within such county. See §§ 99.921(3) and 99.939 RSMo.
- § 227.107 RSMo, which authorizes certain additional design-build highway projects in certain counties, including “any county with a charter form of government and with more than one million inhabitants.”
- § 163.011 RSMo, which varies the methodology for calculation of state aid for certain special districts “in a county with a charter form of government and with more than one million inhabitants.”
- §99.820.3 RSMo, which authorizes “any city, town, or village in a county with a charter form of government and with more than one million inhabitants” to create a twelve-person commission, six of whom are appointed by the county executive.

It is of vital importance that duly enacted statutes continue to apply to St. Louis County and to the cities and other government agencies within St. Louis County without injecting the confusion and instability that result from OPC’s interpretation. For that reason, St. Louis County and the Regional Chamber submit

this brief in support of Respondent State of Missouri Public Service Commission (“Commission”) and Respondent MAWC.

All parties have consented to the filing of this brief.

POINTS RELIED ON

- I. The Public Service Commission’s order granting MAWC’s water ISRS petition is lawful because laws applying to charter counties having a population over one million continue to apply to St. Louis County and the cities and agencies within it despite the decrease in population reflected in the 2010 census [Response to Appellant’s Point I]**

State ex rel. and to Use of Jamison v. St. Louis-San Francisco Railway Company, 300 S.W. 274 (Mo. banc 1927)

Ben Hur Steel Worx, LLC v. Director of Revenue, 452 S.W. 3d 624 (Mo. banc 2015)

Kershaw v. City of Kansas City, 440 S.W. 3d 448 (Mo. banc 2014)

§ 1.100 RSMo

STANDARD OF REVIEW

St. Louis County and the Regional Chamber incorporate the standard of review set forth in the Brief of the Commission.

ARGUMENT

- I. The Public Service Commission’s order granting MAWC’s water petition is lawful because laws applying to charter counties having a population over one million continue to apply to St. Louis County and the cities and agencies within it despite the decrease in population reflected in the 2010 census [Response to Appellant’s Point I].**

Seeking to overturn the Commission’s Report and Order granting the relief requested by MAWC, OPC argues that the Commission’s jurisdiction to consider water ISRS petitions is limited to those instances in which the petitioner provides water service in a charter county with more than one million inhabitants, and because of the drop in population reflected in the 2010 census, MAWC does not provide water service in a charter county with more than one million inhabitants.

OPC’s construction of the population statute³ is wrong. Common sense dictates that the legislature would not repeal existing statutes applying to St. Louis County and to cities and agencies within it simply because the 2010 census reflects

³ Section 1.100.2 RSMo.

a decrease in population. The practical effect of OPC’s argument is to create the same confusion and negative impacts that would be caused by an explicit repeal. There is no question that the statutes referring to a charter county with a population over one million were clearly intended to apply to St. Louis County and the cities and agencies within it, and OPC’s construction leads to an illogical and absurd result, contrary to the intent of the legislature.

Section 1.100 RSMo, which generally determines county population (“population statute”) provides: “Any law which is limited in its operation to counties . . . having a specified population . . . shall be deemed to include all counties . . . which thereafter acquire such population . . . as well as those in that category at the time the law passed.” § 1.100.2 RSMo (emphasis added).

Statutes should be construed in such a way as to avoid unreasonable or absurd results. *Kershaw v. City of Kansas City*, 440 S.W. 3d 448, 458 (Mo. banc 2014); *State ex rel. Office of Public Counsel v. Missouri Public Service Commission*, 331 S.W. 3d 677, 687 (Mo. banc 2011). “The primary rule of statutory interpretation is to give effect to the General Assembly’s intent as reflected in the plain language of the statute at issue.” *Ben Hur Steel Worx, LLC v. Director of Revenue*, 452 S.W. 3d 624, 626 (Mo. banc 2015). Courts look to canons of statutory interpretation only when the meaning of a statute “is ambiguous or would lead to an illogical result that defeats the purpose of the

legislation.” *Id.* Missouri courts interpret statutes in a way that is not hyper-technical, but instead, is reasonable and logical and gives meaning to the statute. *Id.* citing *Ivie v. Smith*, 439 S.W. 3d 189, 203 (Mo. banc 2014). “It is a basic rule of statutory construction that words should be given their plain and ordinary meaning whenever possible.” *State ex rel. Jackson v. Dolan*, 398 S.W. 3d 472, 479 (Mo. banc 2013).

The population statute clearly and unambiguously provides that any law which is limited in operation to a county having a population over one million “shall be deemed to include all counties . . . which thereafter acquire such population . . . as well as those in that category at the time the law passed.” § 1.100.2 RSMo (emphasis added). The plain and ordinary meaning of “as well as those in that category at the time the law passed” is that a county that has the requisite population at the time the law is passed does not drop out of the statute if its population drops below the specified level.⁴ This reading of the statute does not

⁴ In light of the clear and unambiguous meaning of “as well as those in that category at the time the law passed,” OPC’s reliance on the “*expressio unius*” doctrine and other canons is entirely misplaced. Further, contrary to OPC’s argument, the 1971 amendment adding a sentence to the population statute does not make the once in always in clause ambiguous.

lead to an absurd result. To the contrary, it carries out the legislative intent that laws referring to a charter county with a population over one million continue to apply to St. Louis County, which is the only county in the state that has ever had a population over one million.

By contrast, OPC's proposed reading of the statute leads to the absurd result that the Regional Taxicab Commission Law, §§ 67.1800 – 67.1822 RSMo , which was clearly intended to create a regional commission to regulate taxicab service, has been nullified by the 2010 drop in St. Louis County's population.

Additionally, OPC's construction leads to the absurd result that the Missouri Downtown and Rural Economic Stimulus Act, §§ 99.915-99.1060 RSMo, no longer authorizes St. Louis County and the cities within it to undertake downtown development financing. Third, OPC's construction nullifies the 2008 amendment to Section 99.820.3 RSMo, which enables a more regional approach to tax increment financing by granting St. Louis County a greater presence on TIF commissions, and the 2016 amendment⁵ to Section 99.820.4 (3), which specifies that a tied vote on a recommendation of approval by a TIF commission created under Section 99.820.3 is considered a recommendation in opposition. These are only a few examples of the confusion and mischief that would result from OPC's

⁵ SCS for HCS for H.B. 1434 & 1600, signed by the Governor in June 2016.

construction of the population statute.

A statute should never be construed to work confusion and mischief unless no other reasonable construction is possible. *State ex rel. and to Use of Jamison v. St. Louis-San Francisco Railway Company*, 300 S.W. 274, 290 (Mo. banc 1927). Applying the population statute as written avoids the confusion and mischief that would follow from OPC's erroneous construction, and carries out the legislative intent that laws referring to a charter county with a population over one million continue to apply to St. Louis County.

Finally, the legislative intent is further shown by an email exchange **in 2012** between the Committee on Legislative Research and a St. Louis County official on the very issue in this case. The Chief Bill Drafter for the Committee agreed with St. Louis County's position that the relevant decennial census is the one in effect "at the time of passage," and that "[o]nce a statute applies to a county/city at the time of passage it always applies, regardless of subsequent population changes." (See County/Chamber Appendix at A1). The Chief Bill Drafter said that such an interpretation "avoids the untenable position of constantly having to go back and amend every statute with a description of a county/city which changes population at the next decennial census. *Id.*

Amici realize that the opinion of the staff of the Committee on Legislative Research is not binding on this Court. But when the issue is what did the

legislature intend when it drafted bills with population categories, the opinion that the Chief Bill Drafter was providing to the legislature is a strong indication of the legislative intent. After all, the Chief Bill Drafter serves the Committee, which is established by the constitution and guided in its duties to advise the legislature. Mo. Const. Art. 3, § 35; Mo. Rev. Stat. § 23.020.

For these reasons, and the reasons explained in the briefs of Respondents Commission and MAWC, by virtue of the population statute, the authorizing statute continues to apply to MAWC, and the Commission had authority to approve an ISRS.

CONCLUSION

For the reasons stated above, the Commission's Report and Order granting the ISRS to MAWC should be affirmed.

Respectfully submitted,

PETER J. KRANE
COUNTY COUNSELOR

/s/ Cynthia L. Hoemann
Cynthia L. Hoemann, #28245
Associate County Counselor
41 South Central Ave.
Clayton, Missouri 63105
(314) 615-7042 Fax (314) 615-3732
choemann@stlouisco.com
Attorneys for St. Louis County

/s/ Jason R. Hall
Jason R. Hall, #54139
General Counsel
One Metropolitan Square, Suite 1300
St. Louis, Missouri 63102
(314) 444-1175
jhall@stlregionalchamber.com
Attorney for St. Louis Regional Chamber

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the Court's electronic filing system upon all attorneys of records.

/s/Cynthia L. Hoemann
Cynthia L. Hoemann

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 2010 and contains 2,611 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure. The font is Times New Roman, proportional spacing, 14-point type.

/s/ Cynthia L. Hoemann

Cynthia L. Hoemann