

**IN THE SUPREME COURT OF MISSOURI**

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**No. SC98907**

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**ADAM LAYNE, Defendants/Appellant,**

**VS.**

**JAMES J. WILSON, et al., Plaintiffs/Respondents.**

**STATE OF MISSOURI, Cross-Claim Defendant Appellant**

**VS.**

**CITY OF ST. LOUIS, Cross-Claim Plaintiff/ Respondent.**

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**Appeal from the Circuit Court of the City of St. Louis, Missouri**

**The Honorable Michael F. Stelzer, Circuit Judge**

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**BRIEF OF RESPONDENT CITY OF ST. LOUIS**

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## **JURISDICTIONAL STATEMENT**

The jurisdictional statement provided in the brief of Appellant State of Missouri is accurate.

## **STATEMENT OF FACTS**

The State of Missouri's recitation of facts is incomplete and includes some misstatements. For those reasons, Respondent City of St. Louis will provide corrections and a complete statement of the undisputed facts.

The City of St. Louis ("City") and State of Missouri were among the defendants in the original suit below.<sup>1</sup> The City filed a cross-claim against the State of Missouri seeking a declaratory judgment pursuant to § 527.010 R.S.Mo. to the effect that that Missouri Revised Statutes §§ 82.485 and 82.487 (the "Parking Statutes") are unconstitutional and unenforceable because they exceed constitutional limitations established in Article VI, Section 22 of the Missouri Constitution. City Supplemental Legal File, D53, D54. The home rule provisions of Article VI, Section 22 prohibit the

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<sup>1</sup> No record citation is provided here because the Legal File designated by appellants did not include the plaintiffs' first two petitions. The record before this Court does not include the petition that states the claims upon which the trial court granted summary judgment to plaintiffs on their Count I.

general assembly from "creating or fixing the powers, duties or compensation of any municipal office or employment . . ." for any charter city.

The City subsequently moved for summary judgment on its cross-claim against the State of Missouri, seeking a declaratory judgment holding that the Parking Statutes are unconstitutional and unenforceable because the statutes: (1) require officials of a charter city (the City's comptroller, an alderman and the City's director of streets) to serve on a State-created Parking Commission in violation of Article VI, Section 22 of the Missouri Constitution; and (2) create a municipal parking commission and municipal position of "supervisor of parking meters" in violation of the same constitutional limitations. D172-177. The trial court granted the City's Motion based on the first contention, but did not make findings on the second. D180, p. 17.

As noted by the trial court, the State of Missouri did not deny or otherwise respond to any of the seven statements of uncontroverted fact submitted by the City in support of its summary judgment motion. D180, p. 2. Pursuant to Missouri Rule 74.04(c)(2), the trial court considered the lack of a response an admission of the truth of the City's fact statements. *Id.* Therefore, there was no dispute as to a material fact when the trial court issued its judgment in favor of the City. In addition to the seven undisputed statements of fact, the summary judgment record consisted of two affidavits. D175, 176.

By their terms, the Parking Statutes apply only to "any city not within a county," which means that said statutes apply only to the City of St. Louis. Comptroller, Alderman and Director of Streets are City offices with duties prescribed by the St. Louis City Charter. D174, ¶¶ 1-5; D175-176. The State did not dispute the fact that the City



of St. Louis is a charter city and that the Parking Statutes establish additional powers and duties for a City alderman (Boyd), the City's Director of Streets (Wilson) and Comptroller Green in addition to their respective municipal duties as alderman, director of streets and comptroller of a charter city. D174, ¶ 7. The trial court took judicial notice of the City's Charter. D180, p. 6. Darlene Green, the City comptroller, is the City's chief fiscal officer. City Charter, Art. II, § 2; Art. XV, § 2. D. 15. By their terms, the Parking Statutes require that she serve on the Parking Commission, thus assuming the additional powers and duties described in § 82.487 R.S.Mo.

The State of Missouri filed a legal memorandum in opposition to the City's Motion for Summary Judgment. D178. Although the City's cross-claim and summary judgment motion were directed against only the State of Missouri, Defendant Jones (the City Treasurer at the time) joined in the State's memorandum opposing the City's summary judgment motion. *Id.* No additional statements of fact and no exhibits were offered in opposition to the City's summary judgment motion, so the summary judgment record was limited to the seven undisputed facts and two affidavits submitted by the City, along with the City's Charter provisions. In the trial court, both the State of Missouri and the Treasurer conceded that Article VI, Section 22 prohibits the general assembly from imposing additional duties on City officials: "The State Constitution does indeed prohibit the General Assembly from enacting statutes that impose duties upon municipal officers of a charter city such as the City of St. Louis." D178, p. 3.

The Parking Statutes create a five-person Parking Commission to collect and spend City of St. Louis parking revenue. § 82.485.4 R.S.Mo. The Parking Statutes

require that three charter City officials - the City's comptroller (Green), director of streets (Jamie Wilson) and the alderman who chairs the Streets, Traffic and Refuse Committee of the Board of Aldermen (Boyd) – serve on the State-created Parking Commission. *Id.* The Parking Statutes require the Parking Commission members to perform several duties and functions, including: (1) approve parking policy as necessary to control public parking; (2) set rates and fees to ensure the successful operation of the parking division; and (3) produce a detailed accounting of parking division revenues. § 82.485.4 R.S.Mo. The Parking Commission members are also required to approve guidelines governing the adjudication, disposition and collection of any parking violations issued by the City; approve budget modifications of the parking fund; and approve the acquisition, development, regulation and operation of parking facilities or spaces. § 82.487.1 R.S.Mo.

The Parking Statutes also create an office known as the “supervisor of parking meters,” tasked with duties described in the statutes. §§ 82.485.1, 82.487.2, R.S.Mo. That position is assigned to the City’s Treasurer. § 82.487.2 R.S.Mo. The supervisor of parking meters serves as chairperson of the Parking Commission. § 82.485.4 R.S.Mo. The State’s Brief erroneously states that the Parking Statutes require that Parking Commission “shall be ‘supervised’ by the Treasurer.” State Brief, p. 4. The citation provided by the State for that assertion, § 82.485.4 R.S.Mo., does not state such and does not contain the term “supervised.” As the trial court found (D180, p. 17), the Parking Statutes state the opposite – the parking supervisor (i.e., the Treasurer) “shall be subject to the oversight . . . by the parking commission.” § 82.487.2 R.S.Mo.

Intervenor-Plaintiff Jeffrey Boyd is an alderman of the City of St. Louis and was the chairperson of the aldermanic Streets, Traffic and Refuse Committee. D174, ¶ 2; D176. Boyd’s powers and duties as alderman are established in the City’s charter. D174; D176, ¶ 4. Because he chaired the aldermanic Streets, Traffic and Refuse Committee, Boyd was required to assume additional powers and to perform additional duties as a result of the requirement that he must serve on the Parking Commission referenced in §§ 82.485.4 and 82.487, R.S.Mo. D174, ¶7; D176, ¶ 8.

City Director of Streets Jamie Wilson’s powers, duties and responsibilities as Director of Streets were established in the City Charter of the City of St. Louis. D174, ¶¶ 1, 4; D175. As the City’s director of streets, Wilson was required to assume additional powers and to perform additional duties as a result of the requirement that he must serve on the Parking Commission referenced in §§ 82.485.4 and 82.487, R.S.Mo. D174, ¶ 7.<sup>2</sup>

Without record attribution or citation, the State incorrectly represents that “[t]he City Charter also expressly appoints some officers to the Parking Commission . . .” State

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<sup>2</sup> In addition to the City and the State of Missouri, defendants in the underlying suit were City Comptroller Darlene Green, Jamie Wilson, City director of streets, City Treasurer Tishaura Jones and Carl Edwards, director of parking operations.<sup>2</sup> D2, pp. 2-3; D9. Jones and Edwards were referenced in the trial court as the “Treasurer Defendants.” D180, p. 4.

Brief, p. 10.<sup>3</sup> In fact, the City Charter makes no mention of a Parking Commission, imposes no such duties and does not designate anyone to serve as parking commissioner.<sup>4</sup> Similar mistaken assertions regarding the Charter are repeated throughout the State's Brief without citations (see pp. 1-2, 10, 19, 22, 25).

The City accepts the Procedural History section in the Statement of Facts section of the State's Brief.

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<sup>3</sup> Treasurer Lane's Brief contains the same mistaken assertion. See e.g., Treasurer Brief, pp. 3-4.

<sup>4</sup> The City has adopted ordinances to create a City-governed Parking Commission, but the State and the Treasurer did not include any of those ordinances in their joint response to the City's summary judgment motion. See D178. Municipal ordinances are not subject to judicial notice by trial or appellate courts. *State v. Furne*, 642 S.W.2d 614, 616 n. 3 (Mo. 1982); *Stanton v. City of Skidmore*, 620 W.W.3d 245, 254 (Mo.App. W.D. 2021).

## STANDARD ON REVIEW

Summary judgment shall be entered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Mo.R.Civ.P.* 74.04(c)(3); *Adams Ford Belton v. Missouri Motor Vehicle Comm'n*, 946 S.W.2d 199, 202 (Mo. 1997). No disputed issues of fact exist here. Review of the grant of summary judgment and a challenge to the constitutional validity of a state statute are each subject to *de novo* review. *ITT Commercial Finance v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993)(summary judgment). *Hill v. Boyer*, 480 S.W.3d 311, 313 (Mo. banc 2016)(declaratory judgment). A statute is presumed constitutional and will not be held unconstitutional unless it clearly contravenes a constitutional provision. *Cooperative Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571, 578 (Mo. 2017).

## ARGUMENT

**I. IN RESPONSE TO THE STATE OF MISSOURI'S POINT I, THE TRIAL COURT CORRECTLY GRANTED THE CITY'S SUMMARY JUDGMENT MOTION BECAUSE THE UNAMBIGUOUS TERMS OF THE STATE'S PARKING STATUTES REQUIRE THREE CHARTER CITY OFFICIALS TO SERVE ON A STATE-CREATED PARKING COMMISSION AND TO ASSUME ADDITIONAL POWERS AND DUTIES IN VIOLATION OF ARTICLE VI, SECTION 22 OF THE MISSOURI CONSTITUTION.**

The plain, undisputed fact is that the Parking Statutes create and fix new powers and duties for three charter city officials. Article VI, Section 22 provides:

No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents.

Mo. Const., Art. VI, Section 22.

The Parking Statutes require the City's chief fiscal officer, its director of Streets and an alderman to serve on the State-created Parking Commission. § 82.485.4 R.S.Mo. As attested in the trial court, these State-imposed duties are in addition to the officials' respective municipal duties as comptroller, director of streets and alderman of a charter city. D174, ¶ 7. The State of Missouri did not dispute any of these facts in the trial court.

Based on those undisputed facts, the Parking Statutes clearly and unambiguously contravene the provisions of Article VI, Section 22.

The State of Missouri seeks to evade these constitutional constraints on the general assembly's authority by asserting (i) that because the Treasurer is a county official, it necessarily follows that the Parking Commission is a county entity rather than a charter city entity; and (ii) the City's comptroller, director of streets and an alderman were effectively converted from charter city officials to "county" officials by virtue of the enactment of the Parking Statutes.

The State's arguments attempt to muddle a constitution provision that this Court has characterized as clear and "straightforward." *City of St. Louis v. State of Missouri*, 382 S.W.3d 905, 910 (Mo. 2012). Where the language of a constitutional provision is plain and unambiguous, courts should give effect to such language as written and not engage in statutory construction. *Theerman v. Frontenac Bank*, 308 S.W.3d 756, 764 (Mo.App. 2010); *Rathjen v. Reorganized School District R-II*, 284 S.W.2d 516, 523 (Mo. banc 1955). The "straightforward" meaning of Article VI, Section 22 is clear and unambiguous in stating that statutes purporting to impose additional powers and duties upon charter city officials are unconstitutional and void. *State ex rel. Sprague v. St. Joseph*, 549 S.W.2d 873, 879 (Mo. 1977). "[T]he General Assembly may not tell the officers of a charter city what they must do." *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. 1996).

It is undisputed that the Parking Statutes assign additional powers and duties to three officials of the City of St. Louis, a charter city. As such the Parking Statutes violate

the Article VI, Section 22 limitation on the general assembly's authority State's power to interfere with the City functions as a charter city.

- (i) The Treasurer's status as a county official is irrelevant in determining whether the general assembly improperly assigned additional powers and duties to the City's comptroller, director of streets and an alderman.**

Throughout its Point I, the State of Missouri attempts to misdirect the Court's attention to whether Article VI, Section 22 applies to the City Treasurer as a so-called "county" official. State Brief, p. 12. The City did not base its summary judgment motion upon duties assigned to the Treasurer. Rather, the City based its Motion on the fact that the Parking Statutes undeniably require three different charter city officials – the City's comptroller, director of streets and a specific alderman – to serve on the State-created Parking Commission. D173, 174. In the trial court, the State did not dispute the uncontroverted, material fact that the Parking Statutes create additional duties and powers for each of those three charter city officials. D174. That fact is also apparent on the face of the Parking Statutes.

Comptroller Green is an elected official and the City's chief fiscal officer. City Charter, Art. II, § 2; Art. XV, § 2. Alderman Boyd is also an elected City official. City Charter, Art. II, § 3. Director of Streets Wilson is a mayoral appointee (City Charter, Art. VIII, § 1) and oversees the repair, cleaning and maintenance of all City roadways and bridges. City Charter, Art. XIII, § 13. The State did not dispute the fact that the powers



and duties of Alderman Boyd and Director Wilson are governed by the City Charter and the City Code. D174, ¶¶ 1, 4, 7 (Wilson); D174, ¶¶ 2, 5, 7 (Boyd).

The State's assertion that the Treasurer is a county official is meaningless in this context. Article VI, Section 22 does not contain an exception for legislation that creates or fixes the powers or duties of charter city officials if similar burdens are also imposed on a different, county official. "The home rule law is quite straightforward. It gives charter cities authority to set the powers, duties and compensation of their employees." *City of St. Louis v. State of Missouri*, 382 S.W.3d at 910. And the essence of Article VI, Section 22 of the Missouri Constitution is that "the General Assembly may not tell the officers of a charter city what they must do." *City of Springfield v. Goff*, 918 S.W.2d at 789.

Moreover, the State over-simplifies the source of the Treasurer's authority, which depends upon what role she is performing. As the State notes, the City Treasurer has duties and responsibilities stemming from state statutes. But the constitution provides that the City's charter may also provide for the exercise of powers and duties of county officers. Mo. Const., Art. VI, § 31. The City has, in fact, adopted charter provisions pertaining to the Treasurer. *See e.g.*, City Charter, Article XV, Section 24. The Charter makes the Treasurer a member of the City's Department of Finance. Charter Art. XV, Section 1. The City's comptroller is the head of the department of finance and exercises "a general supervision over its divisions," including the Treasurer. Charter Art. XV, Section 2. State law also requires the Treasurer to perform such duties as required by City ordinances. § 82.515 R.S.Mo. Therefore, the Treasurer derives authority from state

statutes, the City Charter or City ordinances, depending on the topic. State statutes are not the sole source of the Treasurer's authority, as the State seems to suggest.

The State also argues that because the Parking Commission was created by statute, and because the "supervisor of parking meters" duties were assigned to a county official (the Treasurer), it necessarily follows that the Parking Commission must be a county commission and the rest of the Parking Commission members must be county officials. State Brief, pp. 12-13. Therefore, according to the State, the Article VI, Section 22 home rule provisions are not applicable. This argument is contrived, contradicted by the undisputed facts, and contrary to the terms of the Parking Statutes.

First, the express terms of the Parking Statutes are inconsistent with the State's argument. Unlike the statutes at issue in *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. 1975), which expressly applied to counties, none of the terms in the Parking Statutes indicate that lawmakers intended that the Parking Commission be a county entity. Rather, the statutes make multiple references to the fact that the Parking Commission is intended to be a municipal entity: "The parking commission . . . **shall be the city's authority** for overseeing public parking." § 82.487.1 R.S.Mo. (emphasis added). The Parking Commission acts "[o]n behalf of the city" in approving multiple aspects of the parking division's operations (*id.*),<sup>5</sup> and "parking revenues collected by the

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<sup>5</sup> Section 82.487.1 provides:

On behalf of the city, the parking commission shall approve:

city." §§ 82.487.2(5), 82.487.2(6)(emphasis added). The City's Board of Aldermen must approve the parking division's annual budget (§ 82.485.4) and all or part of the net change in the parking meter fund's balance is transferred to the City's general fund. § 82.485.4 R.S.Mo. The statutes refer to the supervisor of parking meters as "the supervisor of parking meters of such city." § 82.485.3 R.S.Mo. The statutes contain no terms indicating intent to create a county entity.

Second, even if the Treasurer is generally considered a county official, it does not necessarily follow that the position of "supervisor of parking meters" is also a county official. The determination of whether an office is classified as a county or municipal office depends on the functions it performs. *State ex rel. McKittrick v. Dwyer*, 343 Mo. 973, 979 (Mo. banc 1938). This Court has noted that "the treasurer of the city performs official duties relating to the city as a political subdivision and also performs official duties relating to the city in its corporate capacity." *Id.* Thus, even if the Treasurer is generally a county officer who also serves as "supervisor of parking meters," it would not

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(1) Guidelines governing the administrative adjudication, disposition and collection of any parking violations or complaints issued by the city;

(2) Budget modifications for the parking fund, also known as the "parking meter fund"; and

(3) The acquisition, development, regulation and operation of such parking facilities or spaces owned in whole or in part, leased or managed by the parking division.

(Emphasis added).

conclusively resolve whether the Treasurer's duties as supervisor of parking meters are duties "relating to the city as a political subdivision [or are] official duties relating to the city in its corporate capacity." *Id.* The Treasurer's responsibilities in the capacity of "supervisor of parking meters" are separate and apart from the duties as City Treasurer.

In any event, the Parking Statutes improperly require the City's chief fiscal officer, an alderman and its director of streets to perform duties as members of the State-created Parking Commission. It makes no difference if the statutes also assign powers and duties to a county official. The trial court's judgment granting summary judgment in favor of the City on its cross claim should be affirmed.

**(ii) The home rule provisions of the constitution do not allow the State to convert the City's comptroller, director of streets and an alderman from charter city officials to "county" officials by enacting the Parking Statutes.**

The State argues that the Article VI, Section 22 limitations do not apply in this instance because the Parking Statutes effectively converted the City's comptroller, director of streets and an alderman from charter city officials into county officials.

The flaw in this conversion argument is readily apparent. Using this logic, the general assembly could create the position of county dog catcher and then require the City's mayor to assume all of the powers and duties of county dog catcher. The home rule limitation against legislation "creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter" would be rendered meaningless.

For purposes of this argument, the State primarily relies upon *City of St. Louis v. Doss*, 807 S.W.2d 61 (Mo. banc 1991) and *Godfrey*, 519 S.W.2d at 9, neither of which is apposite. *Doss* held that the State's creation of the county office of license collector was valid and outside the scope of Article VI, Section 22. Unlike here, no charter city official in *Doss* was compelled to serve as license collector. The trial court correctly found *Doss* inapplicable. D180, pp. 11-12.

*Godfrey* addressed a permissive statute that allowed the City's mayor to call an election for a county medical examiner to replace a county coroner. The pertinent statute provided that "[t]he governing body of the county may make an order presenting the proposition for the establishment of a county medical examiner at a special election or at any primary or general election." *Godfrey*, 519 S.W.2d at 6 (emphasis added). The subject statute (§ 58.760 R.S.Mo.) therefore allowed, but did not require, the City's mayor to call an election. The *Godfrey* petitioners alleged that merely allowing the mayor to call an election, appoint a medical examiner and to fix the examiner's compensation violated Article VI, Section 22. *Id.* at 9. This Court held that it did not.<sup>6</sup>

The statute at issue in *Godfrey* also was applicable statewide. *Id.* at 6. The Parking Statutes have no "state-wide application." The Parking Statutes apply only to "any city not within a county." §§ 82.485.1, 82.487.1 R.S.Mo. Therefore, the statutes apply only to the

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<sup>6</sup> The primary issue in *Godfrey* was whether the subject statutes were intended to include the City as a county when they were made applicable to all first class counties. 519 S.W.2d at 8-9.

City of St. Louis. Mo. Const., Art. VI, § 31; *Treadway v. State*, 988 S.W.2d 508, 511 n. 2 (Mo. 1999). The State's assertion that Parking Statutes have a general, state-wide application to manage parking is simply wrong. State Brief, pp. 20, 22.

In addition, the statute in *Godfrey* was expressly directed to the City in its capacity as a county. Unlike *Godfrey*, there is no reference to a county body or entity in the Parking Statutes. Finally, as noted in *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791 (Mo. 1968), Article VI, Section 22 could possibly leave room for legislation that imposes *de minimus* requirements on charter city officials: "there may be some doubt as to whether or not the "powers, duties or compensation" specified and protected [Article VI, Section 22] would include a mere isolated act of appointment . . . ." *Id.* at 794 (concurring opinion). *Godfrey* involved such isolated acts. In contrast, the Parking Statutes require the three charter city officials to serve on the Parking Commission and perform several duties for as long as they hold their respective charter city positions.

The State also argues that the analysis in *Sprague* is inapplicable because *Sprague* notes that the City of St. Joseph is not both a city and a county. State Brief, p.16. That reference is taken out of context. The city-verses-county distinction had nothing to do with *Sprague's* determination that its offending statutes improperly assigned powers and duties to a charter city official, which was the basis for the trial court's decision here. *Sprague* held that the offending statutes violated Article VI, Section 22 in two ways: (i) they assigned additional powers and duties to a charter city official; and (ii) they created a municipal office and board. 549 S.W.2d at 879. *Sprague's* reference to the City's dual status as a county came in the context of the second claim – the improper creation of a

municipal office or board. 549 S.W.2d at 877. Unlike *Sprague*, the trial court here did not render a decision regarding the City's contention that the Parking Statutes improperly created a municipal office and board. D180, p. 17.

This context is important because the trial court expressly declined to decide whether the Parking Statutes impermissibly created a municipal board or municipal position in a charter city. D180, p. 17. That is the context in which the city-county topic was addressed in *Sprague*. The city-verses-county distinction had nothing to do with *Sprague's* determination regarding the imposition of additional powers and duties were to a charter city official. *Sprague* is directly on point in the context of whether the general assembly may assign additional powers and duties to charter city officials, including City of St. Louis officials.

The trial court was correct in granting summary judgment to the City on its cross claim against the State of Missouri.

**II. IN RESPONSE TO THE STATE'S POINT I-C, THE LIMITATIONS ON THE GENERAL ASSEMBLY'S AUTHORITY OVER CHARTER CITIES IN ARTICLE VI, § 22 ARE NOT SUPERSEDED BY ARTICLE VI, § 19(A) OF THE MISSOURI CONSTITUTION.**

Subpart C of the State's first point on appeal begins with the inexplicable statement that the trial court "overlooked" that the Parking Statutes would control if they conflict with the City Charter or City Code provisions. State Brief, p. 19. The State then goes on to reference Article VI, Section 19(a) for the premise that State law controls

when it conflicts with a city charter or ordinance. State Brief, pp. 19-20. The State concludes that the trial court “seemed to accept that any conflict between the City Charter’s provisions dealing with the powers of the Parking Commission and § 82.487, RSMo, means that municipal provisions control.” State Brief, 22.

The State’s assertions are remarkable because none of them have anything to do with the City’s summary judgment motion, the trial court’s decision, or this appeal. The City’s summary judgment motion does not require a preemption analysis. The issue raised in the City’s summary judgment motion is whether the State’s Parking Statutes are unconstitutional and invalid because they run afoul of the home rule limitations imposed by Article VI, Section 22 of the Missouri Constitution. D173, 177. The City’s charter and ordinances have nothing to do with that analysis. The trial court simply found the Parking Statutes unconstitutional and invalid based upon the limitations contained in Article VI, Section 22. There was no issue or argument regarding whether the City Charter or ordinances conflict with any provision of State law. No ordinances were in the summary judgment record and the Charter does not address a parking commission. The State’s argument in its Point I-C simply has no bearing on the issues in this appeal.

Since Article VI, Section 22 was enacted, Missouri courts have repeatedly affirmed that it acts as a limitation on the power of the Missouri legislature with respect to constitutional charter cities. *Sprague*, 549 S.W.2d at 876. The constitution expressly limits the State’s authority to interfere in the affairs of a charter city. The issue here is whether the Parking Statutes run afoul of that constitutional limitation.



The trial court did not “overlook” anything. The State’s suggestion otherwise completely misses the point. The trial court correctly granted the City’s summary judgment motion.

**III. IN RESPONSE TO POINT II OF THE STATE’S BRIEF, THE TRIAL COURT CORRECTLY HELD THAT THE OFFENDING SECTIONS OF § 82.485 AND § 82.487 COULD NOT PROPERLY BE SEVERED BECAUSE THE TERMS OF THE TWO STATUTES ARE INSEPARABLY CONNECTED.**

The trial court correctly rejected the State’s request to sever the offending terms in Parking Statutes because laws creating a governing board and assigning it oversight authority are inseparably connected. D180, pp. 15-17. Severing those portions of the Parking Statutes would have the effect of gutting the Parking Commission, leaving the Treasurer and his employee to "oversee" themselves in the administration of millions of dollars in annual revenue. No principled basis exists to believe that legislators intended that the Treasurer would oversee himself.

Unconstitutional provisions of a statute may not be severed from the remaining provisions of the statute if the valid provisions of the statute "are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." § 1.140. R.S.Mo.; *Missouri Nat’l Education Ass’n v. Missouri Dept. of Labor and Industrial Relations*, 623

S.W.3d 585, 594 (Mo. 2021). In general terms, when severance would effectuate an outcome that the legislature would have avoided, severance is not proper. *Missouri Nat'l Education Ass'n*, 623 S.W.3d at 594. Legislators certainly would have avoided the self-oversight result advocated by the State.

Although the Treasurer is designated the "supervisor of parking meters" (§ 82.485.1), the Parking Statutes specifically state that the Treasurer "shall be subject to the oversight" of the Parking Commission. § 87.487.2 R.S.Mo. The supervisor of parking meters (the Treasurer) reports to the five-member Parking Commission, a majority of which are City officials. § 82.485.4 R.S.Mo. The Parking Statutes place authority over City parking policies, revenues, budget decisions, property acquisition and development, enforcement and other parking-related functions with the Parking Commission. The Parking Commission, consisting of mostly City officials, was therefore intended to oversee the City's parking affairs.

The State suggests that legislature would retain the Parking Statutes even if the Treasurer is assigned to oversee his own actions. This argument defies logic and contradicts the legislative intent to provide the City with a measure of control and input regarding the City's parking revenues and policies. It cannot be presumed that State lawmakers "would have enacted the valid provisions without the void one." § 1.140 R.S.Mo.

Severing the invalid statutory provisions requiring City representation on the Parking Commission would defeat that legislative intent, leaving only the Treasurer and an employee of the Treasurer (the Treasurer Defendants) to establish City parking

policies and to control City parking revenues. The State cannot reasonably assert that the general assembly intended to vest complete control of City parking revenues and policies to non-City officials. As in *Sprague*, it is apparent that the statutory provisions governing authority over City parking policies and revenues are "essentially and inseparably connected with, and so dependent upon," the provisions governing the composition of the Parking Commission. § 1.140. R.S.Mo. The Court should decline the suggestion that it, by judicial caveat, should create a Parking Commission consisting of two people who "oversee" themselves. There is no reason to believe that legislators would intend such a result.

The creation of a governing board such as the Parking Commission is essentially and inseparably connected with, and dependent upon, the duties assigned to that board. This Court considered similar circumstances in *Sprague* upon finding that statutes creating a local regulatory scheme for plumbers exceeded the limitations in Article VI, Section 22. *Sprague*, 549 S.W.2d at 880. This Court held the entire regulatory scheme unenforceable as to charter cities, not just the provisions requiring charter city officials to serve on a board. *Id.* Specifically, eight separate statutes - sections 341.010 through 341.080 - were held unenforceable as to charter cities even though only one of the statutes (§ 341.040) required that a city official serve on a board of examiners for plumbers. 549 S.W.2d at 880. Had it employed the reasoning advocated here by the State, *Sprague* would have severed the offending statutory terms, leaving only plumbers on a board to regulate plumbers. Instead, this Court declared the entire regulatory scheme (all eight statutes) unenforceable as to charter cities due to the Article VI, Section

22 limitation. See also, *State ex rel. Burke v. Cervantes*, 423 S.W.2d at 792 (former state statute 290.360 requiring mayor to appoint members to a local fireman's labor arbitration board to render recommendation violated Article VI, Section 22, leading Court to also declare a separate statute establishing the board's duties also invalid [290.350]).

Lawmakers realized the need for oversight in the administration of the City's significant parking revenues, and the composition of the Parking Commission went hand-in-hand with its oversight function. For those reasons "it cannot be presumed that the legislature would have enacted the valid provisions without the void one." § 1.140 R.S.Mo. Nor can the Parking Commission's intended oversight responsibilities be "executed in accordance with the legislative intent" without the intended Commission members.<sup>7</sup>

Sections 82.485 and 82.487 are interdependent. If the Section 82.485.4 provisions governing the composition of the Parking Commission are unconstitutional and invalid, it disables the Parking Commission from performing its obligations and duties under both § 82.485 and § 82.487.<sup>8</sup> In denying the State's request to sever, the trial court correctly

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<sup>7</sup> The State's self-described "fallback position" on the severance issue is based on the erroneous premise that the City Charter somehow addresses membership on the Parking Commission. State Brief, p. 25. As noted earlier, the City Charter does not make any mention of a Parking Commission or how such a Commission would be constituted.

<sup>8</sup> The State also suggests that no quorum requirement exists for the Parking Commission because none is specified in the Parking Statutes. State Brief, p. 26. However, "[t]he

found that laws creating a governing board and assigning it oversight authority are inseparably connected.

**IV. THE CITY HAS STANDING TO SEEK DECLARATORY RELIEF REGARDING THE CONSTITUTIONALITY OF THE PARKING STATUTES.**

The State’s Brief does not contest the City’s standing to seek declaratory judgment regarding the constitutionality and enforceability of the Parking Statutes. In their joint pleading in opposition to City’s summary judgment motion in the trial court, neither the State nor the Treasurer challenged the City’s standing to seek such declaratory relief. D178. Nor did the State assert a standing defense in its answer to the City’s cross claim. City Supplemental Legal File, D-355. However, in his brief regarding plaintiffs’ claims, Treasurer Layne suggests that the City lacks standing to bring its cross-claim. Treasurer Brief, p. 22.

As the trial court noted, the declaratory judgment act “vests trial courts with the power to ‘declare rights, status, and other legal relations whether or not further relief is or could be claimed.’” § 527.010 R.S.Mo. D180, p 5. This includes controversies regarding the construction of statutes and powers and duties of governmental agencies thereunder. *Id.*, citing *Regal-Tinneys Grove Special Rd. Dist. of Ray County v. Fields*,

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almost universally accepted common-law rule is the precise converse -- that is, in the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body.” *Federal Trade Commission v. Flotill Products, Inc.*, 88 S.Ct. 401, 404 (1967).

552 S.W.2d 719, 722 (Mo. banc 1977). Charter cities have attacked the validity of State statutes based upon Article VI, Section 22 on many occasions, without a standing issue. *City of St. Louis v. State of Missouri*, supra, 382 S.W.3d 905; *City of Springfield v. Goff*, supra, 918 S.W.2d 786; *State ex rel. Sprague v. St. Joseph*, supra, 549 S.W.2d 873; , 879 (Mo. 1977); *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W.2d 65 (Mo. 1974); *City of Joplin v. Industrial Commission of Missouri*, 329 S.W.2d 687 (Mo. banc 1959). Charter cities have an inherent interest in protecting their constitutional home rule authority and enforcing the constitutional limits against improper encroachments by the general assembly.

The Treasurer suggests that the Parking Statutes do not cause the City any harm because City ordinances contain similar provisions. Treasurer Brief, p. 22. The contention is wrong, but the City's parking ordinances were not part of the record for the City's summary judgment motion in its cross-claim against the State. The Treasurer joined in the State's response opposing the City's motion for summary judgment, but did not provide any ordinances or other exhibits in support of his opposition. In any event, an "injury" is not required for a declaratory judgment claim. The City possesses standing to obtain a declaration of its rights, status or other legal relations with respect to the Parking Statutes pursuant to § 527.010 R.S.Mo. The City has a legally protectable interest in preserving its home rule authority and obtaining a declaration of its rights as a charter city.

**CONCLUSION**

The Parking Statutes, §§ 82.485, 82.487 R.S.Mo., violate the Missouri Constitution by purporting to assign additional powers and duties to officials of the City of St. Louis, a connotational charter city. Pursuant to this Court's holdings in *Sprague* and *Cervantes*, the proper remedy is a declaration that the subject statutes are unconstitutional and void. The trial court correctly held the statutes unconstitutional and invalid, and is Court should therefore affirm the trial court's order granting summary judgment to the City of St. Louis on its cross-claim against the State of Missouri.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned counsel certifies that a true and correct copy of the foregoing was served on counsel of record through the Court's electronic notice system on January 31, 2022, and by United States Postal Service to:

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The undersigned certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 6,205 words.

/s/ Michael A. Garvin