

SC98907

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IN THE SUPREME COURT OF MISSOURI

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ADAM L. LAYNE, Defendant/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 St. Louis City, Missouri  
The Honorable Michael F. Stelzer, Judge

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BRIEF OF APPELLANT STATE OF MISSOURI

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## **JURISDICTIONAL STATEMENT**

The case falls within this Court's exclusive jurisdiction because the circuit court declared that §§ 82.485 and 82.487, RSMo, are unconstitutional, thus this appeal involves the constitutional validity of two statutes. MO. CONST. ART. V, § 3. The circuit court issued its final judgment on November 6, 2020, and the State timely filed its notice of appeal on December 16, 2020.



## INTRODUCTION

This case asks whether §§ 82.485 and 82.487, RSMo,<sup>1</sup> (“the Parking Statutes”) fix the powers and duties of municipal officers, and thus violate article VI, § 22. The trial court held that the Parking Statutes did because the laws require certain City officials to serve on the Parking Commission and also require the Parking Commission to fulfill its mission: overseeing parking policy and operations in St. Louis.

But the trial court missed the mark because the Treasurer’s Office is a county office and the Parking Commission is a county entity. *City of St. Louis v. Doss*, 807 S.W.2d 61, 62-63 (Mo. banc 1991). To the extent a City official serves on the Parking Commission, they serve in a county capacity and exercise state, not municipal, power. And to the extent the City Charter requires some municipal officers to serve on the Parking Commission, the City Charter expressly imposes those duties on its officers. As a result, article VI, § 22 does not apply and the Parking Statutes should be upheld.

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<sup>1</sup> Unless otherwise noted, statutory citations refer to the 2016 edition of the Revised Statutes of Missouri, updated through the 2020 Cumulative Supplement.

Even if parts of the Parking Statutes are unconstitutional, the trial court erred by failing to sever those parts. The district court found only that the Comptroller, Alderman, and Director of Streets served as municipal officials. Rather than simply severing those officials from the Parking Commission, the court declared the whole Parking Commission unconstitutional. That cannot be. There is no reason that the Parking Commission cannot continue without those members, or more properly, without the one member that the City Charter does not appoint: the Comptroller. The Parking Commission would continue to approve matters within its jurisdiction and the Treasurer/ supervisor of parking meters would continue to exercise powers under §§82.485 and 82.487, RSMo. Severance is feasible, and the General Assembly has long expressed its preference to retain constitutional provisions.

The trial court should be reversed on its failure to follow this Court's precedents requiring that courts treat the City of St. Louis as a county and for failing to sever the unconstitutional appointment.

## STATEMENT OF FACTS

### A. The Parking Statutes

Since enacting the original Parking Statute in 1951, the General Assembly has entrusted the control of the parking revenues and initial budget to the Treasurer. *See* L. 1951, p. 347, §§ 1, 2; App 59-60. Section 82.487, RSMo, established the current Parking Commission in 1994. *See* L. 1994, S.B. No. 567, § A. App 61-62.

The Parking Statutes establish the Treasurer as supervisor of parking meters and govern parking revenues in the City of St. Louis. The Treasurer exists by virtue of Missouri statutes. *See, e.g.*, § 82.490, RSMo, (Fixing the salary and the elected term of the City Treasurer). The Treasurer's Office is not a subdivision or branch of the City or municipal government that is established or governed by the City's Charter.

Section 82.485.1 provides that "The treasurer of any city not within a county is hereby made and constituted supervisor of parking meters." Subsection 2 states, in part, that it shall be the Treasurer's duty to "establish and supervise a parking division to enforce any statute or ordinances now or hereafter established pertaining to the

parking of motor vehicles, including automated zone parking and all other parking functions, and to make all disbursements on any parking contracts, including employment, consulting, legal services, capital improvement and purchase of equipment and real property which may hereafter be made.” Subsection 3 requires the Treasurer, as supervisor of parking meters, to establish and maintain a parking meter fund. The Parking Statutes provide for the creation of the Parking Commission and expressly state that such Commission shall be “supervised” by the Treasurer. § 82.485.4 RSMo; App 59-60.

The Treasurer serves as the Supervisor of Parking Meters and is responsible for installing, maintaining, and repairing parking meters, and collecting parking meter fees. § 82.485.2 RSMo. At all relevant times, the Treasurer's duties have also included “establish[ing] and supervis[ing] a parking enforcement division and a parking meter division to enforce any statute or ordinances now or hereafter established pertaining to the parking of motor vehicles....” *Id.*

The Treasurer is also the appointed “Chairperson” of the Parking Commission. § 82.485.4 RSMo. The other members of the Parking Commission are the chairperson of the aldermanic traffic committee,

the Director of Streets (a representative of the Mayor), the Comptroller, and the Director of Parking Meter Operations. *Id.* As Chairperson of the Parking Commission, the Treasurer has the authority to issue revenue bonds and pledge parking division and other revenues for the purpose of capital improvements and debt service. § 82.485.3 RSMo. The Treasurer is further authorized and required to establish and maintain a Parking Meter Fund, and any other funds deemed to be necessary to provide for public parking. § 82.485.4 RSMo. Under the oversight of the Parking Commission, the Treasurer may “make and pay contracts and other obligations.” § 82.485.2 RSMo. The statute also requires that the Director of Parking [Meter] Operations, in addition to the Treasurer, from the Office of the Treasurer serves on the Parking Commission. *Id.*

Section 82.487 pertains to the Parking Commission and the Treasurer, as supervisor of parking meters, and sets forth the duties for each. The Parking Commission approves the “[g]uidelines governing the administrative adjudication, disposition and collection of any parking violations or complaints issued by the city;” modification to the

parking fund budget; and “[t]he acquisition, development, regulation, and operation of parking facilities” overseen by the parking division.

§ 82.487, RSMo. App 61. The Treasurer establishes joint public-private parking ventures, supervises the development and operation of parking division properties, supervises on- and off-street parking programs, makes and pays contracts and other obligations, provides monthly reports on revenues, and makes biannual installment payments of the annual general fund. *Id.*

#### B. Procedural History

On the constitutional claim, the trial court’s two summary judgment rulings are before this Court. The City first moved for summary judgment arguing that the Parking Statutes were unconstitutional. D173. The State filed its opposition to the City’s motion. D178. On April 5, 2018, the trial court granted the City’s motion. D180. The trial court declared the Parking Statutes unconstitutional and void under Article VI, § 22 of the Missouri Constitution because they create or fix the powers and duties of municipal offices in the City of St. Louis, namely the Comptroller, the

Director of Streets, and the Chairperson of the Aldermanic Traffic Committee. D180.

Plaintiffs Wilson, Lane, and Boyd also filed a motion for partial summary judgment arguing the unconstitutionality of the Parking Statutes. D198. The State filed its opposition to the motion. D209. On October 25, 2018, the trial court granted the motion ruling that the Parking Statutes are unconstitutional and void for the same reasons stated in its April 5 order and judgment. D240. On October 25, 2018, the court granted permanent injunctive relief. D241. The court ordered “Defendants, and all persons acting in concert or participation with them, were permanently restrained and enjoined from adhering to, observing or acting in accordance with [the Parking Statutes].” D241.

On January 2, 2019, the trial court, with the consent of all parties, certified the court’s orders and judgments dated April 5, 2018 and October 25, 2018 as Final for purposes of appeal. D248. The State and other parties filed their notices of appeal. D242, 245, 252. This Court dismissed these appeals for lack of jurisdiction because the judgments were not “final judgments” as required under Section 512.020(5) RSMo. *Wilson v. City of St. Louis*, No. SC97544.

On November 6, 2020, the trial court entered its Order and Judgment addressing all remaining claims between the plaintiffs and non-State defendants. D316. The State timely filed its notice of appeal. D329. The Treasurer filed his notice of appeal. D322. Plaintiffs filed a motion for new trial. D317. On January 7, 2021, the trial court denied Plaintiffs’ motion for new trial. D337. Plaintiffs filed a notice of appeal. D338.

### POINTS RELIED ON

- I. **The trial court erred in holding §§ 82.485 and 82.487 (“the Parking Statutes”) unconstitutional because the General Assembly may enact the Parking Statutes that apply to county entities, in that they do not create or fix the powers and duties of municipal offices of any charter city as prohibited by Mo. Const. Art. VI, § 22.**

*City of St. Louis v. Doss*, 807 S.W.2d 61, 62-63 (Mo. banc 1991)

*State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 9 (Mo. banc 1975)

*City of Springfield v. Goff*, 918 S.W.2d 786 (Mo. banc 1996)



Mo. Const. Art. VI, § 22

§ 82.485 RSMo.

§ 82.487 RSMo.

**II. The trial court erred in finding the Parking Statutes unconstitutional in their entirety because any unconstitutional provision of the Parking Statutes is severable from the remainder of the Statutes, in that Plaintiffs did not overcome Missouri law's strong presumption of severability, the unaffected provisions of the Parking Statutes are complete and susceptible of enforcement, and the remaining provisions must survive because the legislature would have enacted them had it known that the allegedly unconstitutional provisions were invalid.**

*Dodson v. Ferrara*, 491 S.W.3d 542 (Mo. 2016)

*Akin v. Dir. of Revenue*, 934 S.W.2d 295 (Mo. banc 1996)

§ 1.140 RSMo.

## SUMMARY OF THE ARGUMENT

The trial court erred in declaring the Parking Statutes unconstitutional because the Treasurer and any City officers serving on the Parking Commission do so in their “county” and not municipal capacities. This Court’s precedents are clear that as applied to the City of St. Louis, the Treasurer and the Parking Commission are “county” entities and not subject to the city charter. *See Doss*, 807 S.W.2d 61, 62-63 (Mo. banc 1991). Any officer on the Parking Commission serves in their county capacity and exercising state power. The City Charter also expressly appoints some officers to the Parking Commission, causing no conflict with §82.485.4, RSMo. Further, if there were a conflict, state statutes govern the powers of the Parking Commission, under article VI, § 19a. As a result, the statutory duties and obligations imposed by the Parking Statutes do not implicate article VI, § 22.

To the extent this Court finds any merit to the constitutional challenge, it should go no further than to sever these provisions of the statute and uphold the remaining provisions. This would merely remove those municipal officers the City Charter does not authorize to sit on the Parking Commission: the Comptroller. Even if other City

officials were severed, the Parking Commission can still serve its purpose and severance is required.

## ARGUMENT

### *Standard of Review*

The constitutionality of a statute is a question of law subject to *de novo* review. *Hodges v. City of St. Louis*, 217 S.W.3d 278, 279 (Mo. banc 2007). This Court must decide whether the Parking Statutes are constitutional. “[S]tatutes are presumed to be constitutional, and this Court is to construe any doubts regarding a statute in favor of its constitutionality.” *McEuen v. Mo. State Board of Educ.*, 120 S.W.3d 207, 209 (Mo. banc 2003); *see also Rentschler v. Nixon*, 311 S.W.3d 783, 786 (Mo. banc 2010) (“A statute is presumed valid and will not be held unconstitutional unless it clearly contravenes a constitutional provision.”); *Jackson County Sports Complex Auth. v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007) (“laws enacted by the legislature and approved by the governor have a strong presumption of constitutionality.”); *Gen. Motors Corp. v. Dir. of Revenue*, 981 S.W.2d 561, 566 (Mo. banc 1998) (The court must “adopt any reasonable reading of the statute that will allow its validity,” and “resolve any doubts in favor of

constitutionality.”). The burden of proving a clear and undoubted constitutional violation rests heavily on “[t]he person challenging the act . . . .” *Rentschler*, 311 S.W.3d at 786; *see also State v. Salter*, 250 S.W.3d 705, 709 (Mo. banc 2008).

If the Court finds that the statutes are unconstitutional, it must determine whether the offending portions of the statutes can be severed from the remainder of the statutes. § 1.140, RSMo. This severability issue is also subject to *de novo* review. *See Akin v. Dir. of Revenue*, 934 S.W.2d 295 (Mo. banc 1996).

**I. The trial court erred in granting summary judgment declaring the Parking Statutes unconstitutional because while Article VI, Section 22 prohibits statutes that impose duties upon the municipal officers of a charter city, under the facts here, the Treasurer and the Parking Commission that the Treasurer supervises are “county” – not municipal – entities and not subject to the city charter so Article VI, Section 22 does not apply.**

**A. The Treasurer and the Parking Commission are “county” entities.**

The Treasurer is not a “municipal office of a city” but, rather, is a “county” office. *State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854, 856 (Mo. 1943); *Preisler v. Hayden*, 309 S.W.2d 645, 648 (Mo. 1958). The Parking

Statutes—administered by the Treasurer and the Parking Commission—do not create or fix duties for “a municipal office of a city that has adopted its own charter.” This argument is preserved. D178, 209. As a result, the Parking Statutes do not violate or contravene the terms of article VI, § 22.

Article VI, § 22 prohibits the General Assembly from “creating or fixing the powers, duties or compensation of any municipal office.” But “[t]he state has the right in the exercise of the police power to prescribe a policy of general state-wide application which applied to special charter cities.” *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W.2d 65, 70 (Mo. 1974), (citing *Petition of City of St. Louis*, 266 S.W.2d 753, 755 (1954)). And “[i]nterference in the performance of the duties of the city officers, for the purpose of securing compliance with state policy, is not ‘fixing the powers (or) duties’ of a municipal office, which is what the constitution prohibits.” *City of St. Louis*, 517 S.W.2d at 70. This Court’s precedents show that article VI, § 22 does not apply because the Treasurer is not a municipal office.

This Court’s decision in *City of St. Louis v. Doss*, 807 S.W.2d 61, 62-63 (Mo. banc 1991), is dispositive. In that case, the City sought to

transfer the powers of the License Collector, a statutory position, to the City's Comptroller. As here, the City claimed that § 82.340 and § 82.410, RSMo, violated article VI, § 22 because they required the License Collector "to issue all licenses and receipts for license taxes, except water, dramshop and boat or wharf licenses." *Doss*, 807 S.W.2d at 61-62. The Court explained that the "key" to article VI, § 22 is "the distinction between municipal offices and county offices." *Id.* at 63. It reaffirmed that the "constitution contains no prohibition against the legislature assigning a state or *county official* the responsibility to issue licenses and collect license taxes for a municipality." *Id.* (emphasis added). Thus, article VI, § 22 "covers only municipal offices for any city." *Id.* (quoting *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 9 (Mo. banc 1975)).

*State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. banc 1975), also holds that the city of St. Louis is a county, such that article VI, § 22 does not apply to its county offices. There, the Board of Election Commissioners challenged the constitutionality of statutes replacing the office of county coroner with the office of City Medical Examiner. *Id.* at 5. The alleged unlawful duty was that the statutory scheme

“imposes on, or allows, the mayor the right not only to call the election but to appoint a medical examiner and to fix the latter’s compensation.” *Id.* at 9. This allegedly interfered with the exercise of the duties of a municipal office of the City. *Id.* Citing *Stemmler v. Einstein*, 297 S.W.2d 467 (Mo. banc 1956), and *Preisler v. Hayden*, 309 S.W.2d 645 (Mo. 1958), this Court ruled that statutes directed at county offices do not impose duties on a municipal office. *McClellan*, 519 S.W.2d at 9. The Court explained that the office of Medical Examiner was a county office because it replaced the county office of coroner. The Court emphasized that “[t]he activity of the mayor, called for by the Act, creates no constitutional violation because such activity does not involve the city of St. Louis in its capacity as a city but as a county. In that capacity the mayor is subject to the general laws of the state.” *Id.* at 9. Therefore, “the city of St. Louis and the officers thereof come within the purview of §§ 58.700 and 58.765....” *Id.* at 10.

The trial court’s reliance on *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791 (Mo. 1968), is error. In *Cervantes*, a state law allowed the mayor to appoint an arbitration board to resolve wage and condition-of-employment disputes between the mayor and city firefighters.

423 S.W.2d at 793. As a result, the court held that the mayor acted as “municipal office” and not a county one and applied article VI, § 22. *Id.* at 794. This Court’s decision in *McClellan* clarified that *Cervantes* only dealt with the mayor regulating “city affairs,” but that the mayor’s office is subject to the general laws of the state when exercising county authority. 519 S.W.2d at 9. As in *McClellan*, the Parking Statutes do not involve the city in its capacity as a city because the statutes apply the City in its capacity as a county. This principle applies even when the “statute’s coverage [i]s limited to counties of certain size with certain forms of government.” *Id.* at 8.

The trial court also erred by applying *State ex rel. Sprague v. City of St. Joseph*, 549 S.W.2d 873 (Mo. 1977). There the challenged law created, *in every city* with 15,000 or more residents, a three-member Board of Plumbing Examiners comprised of the chairmen of the city’s Board of Health and two plumbers appointed by the mayor. *Id.* at 875. The Court found the law unconstitutional because the City of St. Joseph can only “have [] municipal offices, it being a constitutional charter city. *Id.* at 877. So unlike the City of St. Louis, St. Joseph was *just a city and not also a county.* *Id.* at 877.



In enacting the Parking Statutes, the General Assembly exercised its police power in a general state-wide application to manage parking and county offices overseeing parking. *Doss* holds that the prohibition under Mo. Const. Art. VI, § 22 applies to “municipal,” not “county” offices. Of course, it is well settled that the Treasurer’s Office is a “county office,” not a “municipal office.” *State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854, 856 (Mo. 1943) (the office of City Treasurer was a “county”, not “municipal” office, and, therefore, “that part of the [City] charter fixing the Treasurer’s salary is void, it being repugnant” to Missouri statute); *State, on Inf. of McKittrick v. Dwyer*, 124 S.W.2d 1173, 1176 (1938) (“The word ‘county’ ... includes the City of St. Louis, and the [City’s] mayor was without authority to appoint respondent to the office of treasurer of the City of St. Louis”).

Even if this were a close decision, and it is not, the Parking Statutes do not “clearly and undoubtedly contravene the constitution” or “plainly and palpably affront fundamental law embodied in the Constitution” and should be affirmed. *See Smith v. Coffey*, 37 S.W.3d 797, 800 (Mo. banc 2001). Article VI, § 22 does not apply to the Parking Statutes and the circuit court should be reversed. *Doss*, 807 S.W.2d at

63; *see also Preisler v. Hayden*, 309 S.W.2d 645, 649 (Mo. banc1958) (holding article VI, § 22 does not apply to “the office of License Collector [that] must be classed as a county office”).

**B. The plain and ordinary meaning of the Parking Statutes gives effect to the General Assembly’s intent to establish the Treasurer and Parking Commission as county entities to regulate parking.**

“The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning.” *Howard v. City of Kansas City*, 332 S.W.3d 772, 779 (Mo. banc 2011) (quoting *Farmers’ & Laborers’ Co-op Ins. Ass’n v. Director of Revenue*, 742 S.W.2d 141, 145 (Mo. banc 1987)); *see also* Matthew Davis, Note, *Statutory Interpretation in Missouri*, 81 Mo. L. Rev. 1127, 1128–29 (2016). The General Assembly is presumed to be aware of other laws when it legislates. *Turner v. School District of Clayton*, 318 S.W.3d 660, 667 (Mo. banc 2010). Therefore, it is presumed to be aware of the organization of St. Louis City offices under its charter.

Courts enforce statutes as written, not as they might have been written. *Id.* at 667. The General Assembly might have written the

Parking Statutes differently, but it did not. The legislative intent is clear—the Treasurer has the authority to “establish and supervise a parking enforcement division and a parking meter division to enforce any statute or ordinance . . . pertaining to the parking of motor vehicles . . . and all other parking functions, and to make disbursements on any parking contracts, including employment, consulting, legal services, capital improvement and purchase of equipment and real property....” § 82.485.2, RSMo; App 59. Under the statute’s plain text, the Parking Commission and its members control public parking. Thus, this Court should reverse the trial court’s ruling as to the unconstitutionality of the Parking Statutes.

**C. Article VI, Section 19(a) permits the enactment of statutes that limit or deny the exercise of a charter power.**

The trial court overlooked that should any conflict about the duties and powers of the Parking Commission arise between the Parking Statutes and the City Charter (or City Code provisions), the Parking Statutes control. Article VI, Section 19(a) establishes a hierarchy under which constitutional charter cities may operate.

Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has

authority to confer upon any city, *provided such powers* are consistent with the constitution of this state and *are not limited or denied* either by the charter so adopted or *by statute*.

MO. CONST. ART. VI, § 19(a) (emphasis added); App 63.

Under this provision, “the emphasis is whether the exercise of that [home rule] power conflicts with the Missouri Constitution, State statutes or the charter itself ... Once a determination of a conflict between a constitutional or statutory provision and a charter or ordinance provision is made, the State law provision controls.” *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986); *see also State ex inf. Hannah v. City of St. Charles*, 676 S.W.2d 508, 513 (Mo. banc 1984) (“Under § 19(a), a constitutional charter city is prohibited from exercising its home rule power in a manner that is inconsistent with a State statute.”).

The State may exercise its police powers to proscribe “a policy of general state-wide application which applies to special charter cities,” such as establishment of a Parking Commission overseen by City Officials that regulates issues connected with public parking. *See City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W.2d 65, 70 (Mo. 1974). The State may also limit the manner in which the City

Officials perform their powers and duties on the Parking Commission, which is a creature of statute. *See id.* at 69-70 (state has power to limit municipal officers' exercise of their powers and duties in a way that complies with state policy); *Petition of City of St. Louis*, 266 S.W.2d 753, 755 (Mo. 1954) (holding the city charter "does not restrict the State Legislature under its police powers in matters pertaining to the general public interest").

Here, public parking concerns the general public interest of the State, due to the effect commuting has on the State's largest metropolitan area and St. Louis's unique status of being both a city and a county. Rules regarding membership and regulation of the Parking Commission invite City Officials to participate and provide local input on the State's policy. The Parking Statutes do not impede City Officials from performing their already-existing duties, in part because the City Charter assigns them to the Parking Commission. As a result, the Parking Statutes do not "creat[e] or fix[] the powers, duties or compensation" of the City Officials. *See* Mo. Const. Art. VI, § 22; *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. 1996) (holding statute did not violate art. VI, § 22 of the Missouri Constitution because statute

merely “require[d] legislative bodies to follow certain procedures for rezoning land,” and did not “fix[] the powers, duties or compensation of a municipal office”).

The trial court seemed to accept that any conflict between the City Charter’s provisions detailing the powers of the Parking Commission and § 82.487, RSMo, means that the municipal provisions control. That is incorrect. That creates an establishment of a Parking Commission, and its powers.

Article VI, § 22 of the Missouri Constitution prohibits the General Assembly from enacting any statute “creating or fixing the powers, duties or compensation of any municipal office ... for any city framing or adopting its own charter....” *Id.* Nothing in Article VI, Section 22 of the Missouri Constitution elevates the City’s charter powers above the General Assembly’s legislative power to make generally applicable state-wide law, even if it limits or denies powers to the charter city. Accordingly, any limits Article VI, Section 22 may impose relative to city charters, those limits do not negate or void the effect of Article VI, Section 19(a) that empowers the State to enact statutes limiting or denying powers to charter cities. *State v. Williams*, 548 S.W.3d 275,

280 n.5 (Mo. banc 2018) (explaining that constitutional provisions should be read in harmony). Rather, when a statute denies a power to a charter city or limits a power of the charter city, it abrogates or supersedes the power by higher authority. *See, e.g., City of St. Louis v. Doss*, 807 S.W.2d 61, 63 (Mo. banc 1991) (later enacted statute which conflicts with city provision supersedes the provision and renders the provision unlawful).

**II. The strong presumption of severability is not overcome, so if the Court finds any part of the Parking Statutes unconstitutional, it should give effect to the other parts of the statutes that are not invalidated.**

The trial court ruled that the Parking Statutes violate Article VI, § 22 because they create or fix the duties or powers of municipal offices of the City, “namely, the Comptroller, the Chairperson of the Aldermanic Traffic Committee, and the Director of Streets.” (“Municipal officials”); App 12-13. Even if this Court upholds the trial court’s ruling, this Court should find that the trial court erred in failing to sever the unconstitutional provisions from the Parking Statutes. This argument is preserved. D178. By statute, the strong presumption in favor of severability is set forth in § 1.140, RSMo:

The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provision of the statute are valid unless the court finds 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.

“Upon a finding of invalidity as to one provision of a statute, courts are to presume that the legislature intended to give effect to the other parts of the statute that are not invalidated.” *Dodson v. Ferrara*, 491 S.W.3d 542, 558 (Mo. banc 2016) (citing *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 300-301 (Mo. banc 1996)).

Here, the trial court determined that the Parking Statutes are unconstitutional because the statutes fixed the duties or powers of municipal officials. The relevant part of the statute states:

The parking commission, which shall consist of the supervisor of parking meters as chairperson, the *chairperson of the aldermanic traffic committee, the director of streets, the comptroller and the director of the parking meter operations*, shall approve parking policy as necessary to control public parking, shall set rates and fees to ensure the successful operation of the parking division,



and require a detailed accounting of parking division revenues from any agent or agency, public or private, involved in the collection of parking revenues.

§ 82.485.4. RSMo (emphasis added); App 59. The trial court erred because “[t]his Court must uphold valid portions of a statute despite the invalidity of other portions when: (1) after separating the invalid portions, the remaining portions are in all respects complete and susceptible of constitutional enforcement; and (2) the remaining statute is one that the legislature would have enacted if it had known that the rescinded portion was invalid.” *Dodson*, 491 S.W.3d at 558.

Here, the trial court found that the membership of the Comptroller, Alderman, and the Director of Streets was invalid. Under the State’s first fallback position, only the Comptroller would need to be struck because the City Charter does not authorize that position to be on the Parking Commission. But even under the trial court’s original ruling, those three positions can be struck without effecting the rest of § 82.485. The Treasurer can continue to be the “supervisor of parking meters” and oversee public parking operations. The Parking Commission would merely consist of two positions: the supervisor of parking meters and the director of parking operations. The Parking

Statutes do not impose a quorum or have a numerical requirement for the Parking Commission. Every provision of law would have effect, so the Parking Statutes are not “incomplete [or] incapable of being executed” without the municipal officials. *Id.* As a result, the other provisions are not “essentially and inseparably connected with, and so dependent upon” the municipal officials serving on the Parking Commission. § 1.140, RSMo.

Additionally, the trial court should not have struck § 82.487, RSMo, because it describes the duties and responsibilities of the Parking Commission and not the three City Officers on the Commission. The duties assigned to the commission are “budget modification for the parking fund” and the “acquisition, development, regulation, and operation of such parking facilities” and rely on the five-member Parking Commission as set up by § 82.485, RSMo. Because the Parking Commission would remain, it could still discharge its statutory duties.

## CONCLUSION

The Court should reverse the trial court's judgment.

Respectfully Submitted,

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