

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

PATRICK TUOHEY,)
614 East 73rd Terrace)
Kansas City, MO 64131,)
)
Plaintiff,)
)
vs.)
)
THE CITY OF KANSAS CITY)
MISSOURI,)
)
SERVE: Vickie Thompson, City Clerk)
25th Floor, City Hall)
Kansas City, MO 64106)
)
KANSAS CITY BOARD OF ELECTION)
COMMISSIONERS,)
)
SERVE: Melodie Powell, Chair)
1828 Walnut, Suite 300)
Kansas City, MO 64108)
)
Defendants.)

Case No: _____

PETITION FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

COMES NOW Plaintiff Patrick Tuohey, by and through counsel, and for his Petition for Declaratory Judgment and Injunctive Relief against the City of Kansas City, Missouri , states as follows:

Jurisdiction and Venue

1. Plaintiff Patrick Tuohey (“Tuohey” hereinafter) is a resident of the City of Kansas City residing at 614 East 73rd Terrace, Kansas City, Missouri 64131, and a taxpayer of the City of Kansas City, Missouri.

2. Defendant City of Kansas City, Missouri (“City” hereinafter) is a home rule charter city, a municipality and a political subdivision of the State of Missouri, with its principal place of business in Jackson County, Missouri.

3. Defendant Kansas City Board of Election Commissioners (“KCEB”) is the election authority for the City of Kansas City in Jackson County, and serves as the lead election authority for all Kansas City issues, with its principal place of business located in Jackson County, Missouri.

4. Venue is proper in this Court, pursuant to Section 508.010, since it is brought in the Circuit Court for the County of Jackson, in which both the City’s and KCEB’s principal places of business are located.

Enactment Requirements

5. Section 502(b) of the Kansas City Charter states as follows:

Ordinances, except emergency ordinances, shall not be passed until they shall have been read on three separate days at regular or special meetings of the Council unless the requirement of reading on three separate days is dispensed with by the affirmative vote of nine members of the Council.

6. Section 503(a)(2) defines an emergency ordinance as follows:

An ordinance declaring an emergency is an ordinance which in whole or in part is passed by the affirmative vote of nine members of the Council *for the immediate preservation of the public peace, property, health, safety or morals, in which the emergency is set forth and defined in the preamble to the ordinance.*

(Emphasis added).

Invalid Enactment of Light Rail Ordinance

7. On September 4, 2008, the Kansas City Council enacted Ordinance No. R-2008-010409, with Legislation No. 080909 (the “Light Rail Ordinance”). A copy of the Light Rail Ordinance is attached to this Petition as Exhibit A.

8. The Light Rail Ordinance set a special election for November 4, 2008, at which election the voters of Kansas City purportedly will decide whether to approve a sales tax to fund a light rail system in Kansas City (“Light Rail Ballot Initiative”).

9. Substantial sums of funds derived from tax revenues will be spent by the City and the KCEB in conducting the special election. Similarly, significant sums of money and great political efforts, will be expended by both the supporters and opponents of light rail in campaigning for or against the Light Rail Ballot Initiative.

10. In enacting the Light Rail Ordinance, the City violated the City Charter by failing to read the Light Rail Ordinance on three separate days at regular or special meetings of the Council, as required by Section 502(b) of the City Charter.

11. The Light Rail Ordinance cannot be considered an emergency ordinance because it does not comply with the requirements for declaring an emergency, set forth in Section 503(a)(2) of the Kansas City Charter. Although section 9 of the Light Rail Ordinance states that the Light Rail Ordinance is an “emergency measure within the meaning of Section 503, Charter of Kansas City,” the Light Rail Ordinance fails to set forth and define the emergency in the ordinance’s preamble, as required by Section 503(a)(2) of the Kansas City Charter.

12. Furthermore, the Light Rail Ordinance was not enacted for the immediate preservation of the public peace, property, health, safety or morals, as required for an ordinance to qualify as an emergency under Section 503(a)(2) of the Kansas City Charter.

13. Based on the foregoing, the Council was required to read the Light Rail Ordinance three times. Since the Council failed to do so, the Light Rail Ordinance was enacted unlawfully and in violation of the Kansas City Charter.

14. The Light Rail Ordinance was unlawfully enacted by the Kansas City Council and is, therefore, null and void *ab initio*.

15. A justiciable, present and real controversy exists as to whether the Light Rail Ordinance was validly enacted.

16. Plaintiff has a legally protected pecuniary and personal interest directly at issue and subject to immediate or prospective consequential relief, in that Plaintiff owns property and pays taxes in Kansas City, Missouri and will be directly impacted by the Light Rail Ordinance.

17. The question presented is ripe for judicial determination.

18. Plaintiff does not have an adequate remedy at law.

19. Plaintiff will suffer irreparable harm if the election on the Light Rail Ballot Initiative is allowed to take place, or if the tax in the Light Rail Ordinance becomes effective.

WHEREFORE, Plaintiff Patrick Tuohey, prays for judgment against Defendants, City of Kansas City, Missouri, and the Kansas City Board of Election Commissioners, as follows:

- (a) A Declaration that the Light Rail Ordinance was enacted in violation of the City Charter and is, therefore, null and void, *ab initio*;
- (b) A preliminary and permanent injunction prohibiting the special election on the Light Rail Ballot Initiative from occurring;
- (c) A preliminary and permanent injunction prohibiting the tax in the Light Rail Ordinance from becoming effective;
- (d) An Order that all costs, including attorney fees incurred by Plaintiff, be assessed against Defendant City of Kansas City, Missouri; and
- (e) For such other relief as this Court deems appropriate.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By:



Marc H. Ellinger, #40828
308 East High Street
Suite 301
Jefferson City, MO 65101
Telephone No.: (573) 634-2500
Facsimile No.: (573) 634-3358
E-mail: mellinger@blitzbardgett.com

ORDINANCE NO. [R-2008-01049]

080909

Providing for submission of a question concerning light rail to the qualified voters of the City for their approval at a special election called for Tuesday, November 4, 2008; authorizing and directing the City Clerk to notify the responsible election authorities of this election if permitted by court order; repealing Committee Substitute for Ordinance 080693 As Amended; directing the City Attorney to take the steps necessary to seek permission from the courts to file a late notice of the election called by this ordinance; and recognizing this ordinance to be an emergency measure.

WHEREAS, the City Council adopted Committee Substitute for Ordinance 080693 As Amended, to call for an election on November 4, 2008, to present to the voters the question of enacting sales taxes totaling three-eighths percent to build a light rail system; and

WHEREAS, the election laws of the State of Missouri require notice of elections be submitted to election authorities 10 weeks prior to the election, or in the case of the November 4, 2008 election by August 26, 2008; and

WHEREAS, the General Assembly of the State of Missouri passed, and the Governor signed, House Committee Substitute for Senate Committee Substitute for Senate Bill 1311 which removes the taxes proposed for light rail from distribution to a special allocation fund for tax increment financing projects; and

WHEREAS, House Committee Substitute for Senate Committee Substitute for Senate Bill 1311 did not become effective until August 28, 2008, two days after the deadline for filing notice for an election on November 4, 2008; and

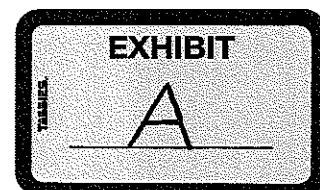
WHEREAS, the rule of law that a City may not take any step to implement a statute until the statute is effective imposed by the case of *Levinson v. City of Kansas City*, 43 S.W.3d 312 (Mo.App. 2001) has not been applied to the situation presented by House Committee Substitute for Senate Committee Substitute for Senate Bill 1311, thus leaving at risk of challenge any approval of the light rail funding; and

WHEREAS, Missouri law allows cities to seek a court order to permit a late filing of an election notice after the 10-week deadline passes but before the sixth Tuesday prior to the election, or September 23, 2008 for the November 4, 2008 election; and

WHEREAS, the Council wishes to avoid any circumstances that needlessly place the actions of the voters in legal jeopardy; and

WHEREAS, the Council wishes to present this important question at an election for which a turnout larger than any other potential election date within the next four years is expected; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:



ORDINANCE NO. [R-2008-01049]

Section 1. **AUTHORITY FOR LIGHT RAIL TAX.** Upon approval of the voters to impose taxes to fund a light rail public mass transportation system pursuant to the authority granted by and subject to the provisions of Sections 94.575 through 94.577 RSMo and Sections 94.600 through 94.655 RSMo, the City Council shall impose the sales taxes approved by a majority of the qualified voters that shall be used for the purpose of funding a light rail public mass transportation system, and become effective thereafter in accordance with the laws of the State of Missouri as then in effect.

Section 2. **SPECIAL ELECTION CALLED.** A special election is called and shall be held on Tuesday, November 4, 2008, at which election the question of imposing and extending the sales taxes described in this ordinance shall be submitted to the qualified voters of the City for their consideration, as required by section 94.577 and section 94.605, Revised Statutes of Missouri.

Section 3. **BALLOT TITLE.** The ballot title shall be:

QUESTION _____
SHALL THE FOLLOWING BE APPROVED?

Light Rail Sales Taxes

For the purpose of funding a light rail passenger system running from the area around the intersection of Bruce R. Watkins Roadway and 63rd Street on the south to the area around the intersection of Northeast Vivion Road and North Oak Trafficway on the north, which can ultimately connect to a regional public transportation system, shall the City of Kansas City impose a sales tax of 1/4% under the authority of Section 94.577, RSMo, for the purpose of funding capital improvements, and a sales tax of 1/8% under the authority of Section 94.605, RSMo, both for a period not to exceed 25 years, beginning April 1, 2009, and which may include the retirement of debt under authorized bonded indebtedness?

_____ YES _____ NO

The voter who desires to vote in favor of this proposition shall place an X in the box opposite Yes. The voter who desires to vote against this proposition shall place an X in the box opposite No.

Section 4. **DELIVERY OF ORDINANCE BY CITY CLERK TO ELECTION AUTHORITIES.** That the City Clerk shall deliver certified copies of this ordinance and notice of election to the Board of Election Commissioners of Kansas City, Missouri, Board of Election Commissioners of Clay County, Board of Election Commissioners of Platte County, and the County Clerk of Cass County, which shall be the authority of the respective election authorities of the City to submit these amendments to the electors of Kansas City as herein provided and to give public notice thereof immediately upon approval of a court.

ORDINANCE NO. [R-2008-01049]

Section 5. **ELECTION NOTICE.** That the notice of election shall read as follows:

**NOTICE OF ELECTION
CITY OF KANSAS CITY, MISSOURI**

Notice is given that the City of Kansas City has called an election to be held in the City on Tuesday, November 4, 2008, at which election all qualified voters residing within the City of Kansas City, Missouri will be given the opportunity to vote.

The official ballot will be in substantially the following form:

**OFFICIAL BALLOT
CITY OF KANSAS CITY**

QUESTION _____

[Instructions to voters will be supplied by the election authorities]

Light Rail Sales Taxes

For the purpose of funding a light rail passenger system running from the area around the intersection of Bruce R. Watkins Roadway and 63rd Street on the south to the area around the intersection of Northeast Vivion Road and North Oak Trafficway on the north, which can ultimately connect to a regional public transportation system, shall the City of Kansas City impose a sales tax of 1/4% under the authority of Section 94.577, RSMo, for the purpose of funding capital improvements, and a sales tax of 1/8% under the authority of Section 94.605, RSMo, both for a period not to exceed 25 years, beginning April 1, 2009, and which may include the retirement of debt under authorized bonded indebtedness?

_____ YES _____ NO

The voter who desires to vote in favor of this proposition shall place an X in the box opposite Yes. The voter who desires to vote against this proposition shall place an X in the box opposite No.

A full and complete copy of the ordinance submitting the above proposition to the electorate is on file in the office of the City Clerk of Kansas City, Missouri where it is open for inspection and copying.

The polling places for the election will be [insert list of polling places in last publication only].

ORDINANCE NO. [R-2008-01049]

I hereby certify that the foregoing is the legal notice to be published pursuant to Section 115.127, RSMo.

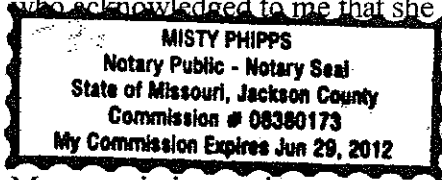
Given under my hand and the official seal of the City of Kansas City, Missouri, this 4 day of September, 2008.

(SEAL)

Vickie Thompson

VICKIE THOMPSON
City Clerk
City of Kansas City, Missouri

Before me, a notary public, personally appeared Vickie Thompson, to me known to be the Acting City Clerk of the City of Kansas City, Missouri, and the person who acknowledged to me that she executed the same for the purposes therein stated.



Misty Phipps
Notary Public

My commission expires:

Section 6. **REAFFIRMATION OF MBE/WBE AND WORKFORCE POLICIES.** The City's MBE/WBE and construction workforce policies will be followed in the use of all capital appropriations.

Section 7. **CITY ATTORNEY TO SEEK COURT APPROVAL.** That the City Attorney is directed to take the steps necessary to seek permission from the courts to file a late notice of the election called by this ordinance and to require removal of the proposition established by Committee Substitute for Ordinance 080693 As Amended.

Section 8. **REPEAL OF COMMITTEE SUBSTITUTE FOR ORDINANCE 080693 AS AMENDED.** That Committee Substitute for Ordinance 080693 As Amended is repealed effective upon authorization by a court to send notice to the election authorities of the election called by this ordinance prior to 5:00 p.m. on September 23, 2008.

Section 9. **EMERGENCY.** That this ordinance provides for the submission of a proposal to the people of Kansas City, Missouri, and is hereby recognized to be an emergency measure within the meaning of Section 503, Charter of Kansas City, and as such shall become effective in accordance with that section.

Authenticated as **Passed**



Mark Funkhouser
Mark Funkhouser, Mayor

Approved as to form and legality:

Vickie Thompson
Vickie Thompson, City Clerk

William Geary
William Geary
Assistant City Attorney

SEP 04 2008

Date Passed