City of Crestwood v. Affton Fire Prot. Dist.

Supreme Court of Missouri

April 20, 2021, Opinion Issued

No. SC97653

Reporter
2021 Mo. LEXIS 140 *; 2021 WL 1554743

CITY OF CRESTWOOD, et al., Appellants, v. AFFTON FIRE PROTECTION DISTRICT, et al., Respondents.

Notice: NOT FINAL UNTIL EXPIRATION OF THE REHEARING PERIOD.

Prior History: [*1] APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY. The Honorable Jon E. Beetem, Judge.

Counsel: Crestwood and its residents were represented by William Ray Price Jr. and Laura A. Bentele of Armstrong Teasdale LLP in St. Louis.

James C. Hetlage and Brian J. Malone of Lashley & Baer PC in St. Louis.

The fire protection district was represented by James R. Layton of Tueth Keeney Cooper Mohan & Jackstadt PC in St. Louis.

The state was represented by Emily A. Dodge of the attorney general's office in Jefferson City.

Judges: PATRICIA BRECKENRIDGE, JUDGE. Draper, C.J., Wilson, Russell, Powell and Fischer, JJ., concur.

Opinion by: PATRICIA BRECKENRIDGE

Opinion

en banc

The city of Crestwood and two of its resident-taxpayers, Gregg Roby and Stefani Hoeing (collectively, "plaintiffs"), appeal the circuit court's judgment on the pleadings in favor of the Affton Fire Protection District, the governor, and the attorney general (collectively, "defendants").[1] The plaintiffs claim the circuit court erred in entering judgment on the pleadings because sections 72.418.2 and 321.322.3,[2] which govern the provision of and payment for fire protection services in certain annexed areas, violate the prohibition [against special laws] in article III, section 40 of the Missouri Constitution. The plaintiffs also claim section 72.418.2 violates the due process clauses of the Missouri [*2] and United States constitutions as well as article X, sections 11(b), 16, 21, and 22 of the Missouri Constitution prohibiting certain taxes and the creation of unfunded mandates.

Because a rational basis supports the classification scheme challenged by the plaintiffs with respect to sections 72.418 and 321.322.3, their special-law challenges fail. As for the plaintiffs' remaining claims, section 72.418.2 does not impose a tax on Crestwood residents, offend due process, or create an unfunded mandate. The circuit court's judgment is affirmed.

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[1] At the time the petition was filed in 2017, the governor of Missouri was Eric Greitens and the attorney general of Missouri was Joshua Hawley. Neither individual remains in office, so, by operation of Rule 52.13(d), their successors, Governor Michael Parson and Attorney General Eric Schmitt, have been substituted as defendants.

[2] All statutory references and citations are to RSMo 2016, unless otherwise noted.

Factual and Procedural Background

Crestwood is a constitutional charter city located entirely within St. Louis County. The Affton Fire Protection District provides fire protection services to an unincorporated portion of St. Louis County that lies adjacent to Crestwood. In 1997, Crestwood annexed a portion of the unincorporated area within the Affton Fire Protection District.

In first-class counties with a charter form of government and more than 900,000 inhabitants, the requirements for fire protection districts and annexing cities upon the annexation of previously unincorporated areas are governed by section 72.418.2. Sections 321.322.3, 72.418.2. Pursuant to section 72.418.2, the district must continue to provide fire protection services and emergency medical [*3] services to the annexed area but no longer can levy taxes on property in the annexed area, except for bonded indebtedness that existed before the annexation. Instead, the district taxes property within its territorial limits that lies outside the annexed area, and that tax rate determines the amount of the fee Crestwood pays to the district. *Id.* Crestwood must pay to the district an amount equal to what the district would have levied on the taxable property within the annexed area had annexation not occurred. *Id.* In other words, following Crestwood's annexation of the previously unincorporated area, Crestwood now pays to the district what the district would have collected in tax revenue within the annexed area. *Id.*

In 2017, the plaintiffs filed a petition for declaratory judgment against the defendants. In their amended petition, the plaintiffs seek a declaration that sections 72.418.2 and 321.322.3 are constitutionally invalid special laws. They seek a further declaration that section 72.418.2 violates article X, section 11(b) (limit on the tax rate for political subdivisions); article X, sections 16, 21, and 22 of the Missouri Constitution (provisions of the "Hancock Amendment" prohibiting certain tax increases and unfunded mandates); and the due process clause of both [*4] the Missouri and United States constitutions.

The plaintiffs filed a motion for summary judgment, and the defendants filed a motion for judgment on the pleadings. In their motion, the defendants contended sections 72.418 and 321.322 are not special laws and section 72.418.2 is otherwise constitutionally valid. The circuit court granted judgment on the pleadings in the defendants' favor, finding the challenged statutes were not special laws because the statutes distinguished between counties based on open-ended characteristics. On the plaintiffs' other claims, the circuit court found section 72.418.2 constitutionally valid because it does not impose a tax or require a city to undertake new or increased levels of activity. The circuit court then overruled, as moot, the plaintiffs' motion for summary judgment.

The plaintiffs appealed to this Court, which has exclusive jurisdiction over an appeal challenging the constitutional validity of a statute. Mo. Const. art. V, sec. 3.

Standard of Review

This appeal arises from the circuit court's grant of judgment on the pleadings in favor of the defendants. "This Court reviews a circuit court's ruling on a motion for judgment on the pleadings *de novo*." *Woods v. Mo. Dep't of Corr.*, 595 S.W.3d 504, 505 (Mo. banc 2020). In reviewing a grant of judgment on the pleadings, the Court must decide [*5] "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 362 S.W.3d 7, 12 (Mo. banc 2012) (internal quotation omitted). The circuit court's judgment "will be affirmed if the facts pleaded by the plaintiffs, considered by the court as admitted, demonstrate that they could not prevail under any legal theory." *Boland v. Saint Luke's Health Sys., Inc.*, 471 S.W.3d 703, 707 (Mo. banc 2015).

In reviewing a circuit court's ruling on a motion for judgment on the pleadings, "[t]his Court will not 'blindly accept the legal conclusions drawn by the pleaders from the facts.'" *Ocello v. Koster*, 354 S.W.3d 187, 197 (Mo. banc 2011) (quoting *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990)). Moreover, this Court must affirm the circuit court's judgment if it is supported by any theory, "regardless of whether the reasons advanced by the [circuit] court are wrong or not sufficient." *Rouner v. Wise*, 446 S.W.3d 242, 249 (Mo. banc 2014). This is because this Court is "primarily concerned with the correctness of the [circuit] court's result, not the route taken by the [circuit] court to reach that result." *Id.*

Discussion

The plaintiffs raise seven claims of error. In the first three, they claim the circuit court erred in granting

judgment on the pleadings in the defendants' favor because sections 72.418.2 and 321.322.3 are constitutionally invalid special laws in that they apply only to cities in St. Louis County and subject residents of those cities [*6] to a different set of statutes than residents in similarly situated cities in other counties. In claims four, five, and six, the plaintiffs aver the fee Crestwood must pay the fire district under section 72.418.2 is a constitutionally invalid tax under the Missouri Constitution because it exceeds the tax rate prescribed in article X, section 11 of the Missouri Constitution; it takes tax dollars from Crestwood voters in violation of due process; and Crestwood voters suffer an increased tax burden in violation of the Hancock Amendment. The plaintiffs' final point claims the circuit court erred in granting judgment on the pleadings because section 72.418.2 creates an unfunded mandate in violation of the Hancock Amendment by requiring Crestwood to undertake new financing of the fire district without an appropriation from the Missouri General Assembly.

I. The Challenged Statutes Are Supported by a Rational Basis

The plaintiffs challenge sections 72.418.2 and 321.322.3 as constitutionally invalid special laws. The circuit court held the plaintiffs could not prevail on their special laws challenges because the challenged statutes created classifications based on open-ended characteristics. After the circuit court entered its judgment, this Court decided *City of Aurora v. Spectra Communications Group, LLC*, 592 S.W.3d 764 (Mo. banc 2019), and realigned the test for a local or special [*7] law with the text of the Missouri Constitution and the Court's historical analysis of special laws by readopting rational basis review.

Under *City of Aurora*, a law is special only if it does not apply equally to all members of a given class and its disparate treatment of class members has no rational basis. *Id.* at 776. "[E]very law is entitled to a presumption of constitutional validity in this Court, and if the line drawn by the legislature is supported by a rational basis, the law is not local or special and the analysis ends." *Id.* at 780. In other words, if there is a rational basis for a classification created by the statute, the statute is not a special law. *Id.* Whether the statute excludes members of a class based on open-ended or closed-ended characteristics is no longer relevant. *Id.* at 779.

Even if a statute qualifies as a local or special law under article III, section 40 by treating members of a given class differently without a rational basis for doing so, that does not render it *per se* constitutionally invalid. The legislature may enact local or special laws not prohibited by article III, section 40, so long as it complies with the notice and publication requirements in article III, section 42. *Id.* at 776. To challenge a law as a *constitutionally [*8] invalid* special law, therefore, a challenger must show not only that the law is special because its classification scheme lacks a rational basis but also that the special law violates article III because it either (1) violates the notice and publication requirements of article III, section 42, or (2) violates any one of the specific prohibitions in article III, section 40, subsections (1)-(30). *See id.*

As noted above, the circuit court entered its judgment without the benefit of this Court's decision in *City of Aurora*. The circuit court's reasoning (i.e., its focus on whether a classification is based on open-ended or close-ended characteristics) is inconsistent with *City of Aurora*. This Court, however, is primarily concerned with the correctness of the circuit court's result, regardless of how the circuit court arrived at that result. *Rouner*, 446 S.W.3d at 249. This Court, therefore, will affirm the circuit court's judgment if it is ultimately correct. *Id.* Because this Court reviews the circuit court's grant of judgment on the pleadings *de novo*, this Court—consistent with *City of Aurora*—must determine whether the circuit court's judgment is ultimately correct by considering whether the line drawn by the legislature is supported [*9] by a rational basis with respect to each of the challenged statutes. *See City of Aurora*, 592 S.W.3d at 780.

"Under rational basis review, this Court will uphold a statute if it finds a reasonably conceivable state of facts that provide a rational basis for the classifications." *Id.* at 781 (quotations omitted). "Identifying a rational basis is an objective inquiry that does not require unearthing the legislature's subjective intent in making the classification." *Id.* "Rational basis review is highly deferential, and courts do not question the wisdom, social desirability or economic policy underlying a statute." *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012) (internal quotations omitted) (quoting *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 491 (Mo. banc 2009)). "Instead, all that is required is that this Court find a plausible reason for the classifications in question." *Id.* (alteration omitted).

Section 72.418 sets forth a post-annexation procedure whereby a city choosing to annex an unincorporated area served by a fire protection district must make annual payments to the fire protection district in an amount equal to what the fire protection district would have collected in tax revenue in the annexed area. Section 72.418.2. In return, the fire protection district continues to serve the annexed area but no longer levies taxes in the annexed area (with the exception [*10] of bonded indebtedness that existed prior to the annexation). *Id.* By virtue of section 72.401.1, the application of section 72.418.2 is limited to cities within counties that have a charter form of government, 50 or more municipalities, and have adopted a boundary commission—in effect, the plaintiffs allege, only cities within St. Louis County.[3]

Section 321.322 also sets forth post-annexation procedures. Its terms, however, differ from section 72.418.2. Instead of mandating payment from an annexing city to a fire protection district, section 321.322 provides, among other things, that the annexing city can contract with the fire protection district to assume fire protection and emergency services in the annexed area and purchase the fire protection district's real and personal property in exchange for a mutually agreeable payment to the fire protection district. Section 321.322.1. After payment, the fire protection district must [*11] cease levying taxes in the annexed area. *Id.* In short, section 321.322 allows annexing cities and fire protection districts to negotiate for a mutually agreeable arrangement following annexation. The provisions of section 321.322, however, "shall not apply" in any first-class county with a charter form of government and more than 900,000 inhabitants. Section 321.322.3. The plaintiffs assert the classification scheme in section 321.322.3 is drawn so narrowly that, in its practical effect, the statute excludes only St. Louis County.

The plaintiffs allege that, as a result of being excluded from section 321.322.3, cities within St. Louis County cannot negotiate mutually agreeable arrangements to assume fire protection services following annexation of unincorporated areas. Instead, annexing cities must pay to the relevant fire protection district the statutorily determined fee as required by section 72.418.2, even though other similarly situated cities in other counties are not subject to that fee and may negotiate with fire protection districts pursuant to section 321.322.1.

The parties do not contest the language of the statutes or the manner in which they operate. Nor do they contest that St. Louis County is currently the only county governed by section 72.418.2 and excluded from section 321.322.1. Rather, they disagree only as [*12] to whether the classification scheme in the challenged statutes is supported by a rational basis.

On this point, in their amended petition, the plaintiffs alleged there is "no justification" for treating cities in St. Louis County differently from other similarly situated cities in other counties. The better practice is to plead expressly that a statute lacks a rational basis. The plaintiffs, however, did not have the benefit of this Court's decision in *City of Aurora* at the time they filed their petition. And, in any case, this Court does not require magic language but looks instead to the substance of a pleading to determine its nature and effect. *See Latham v. State*, 554 S.W.3d 397, 405-06 (Mo. banc 2018). "Justification" is defined as a "lawful or sufficient reason for one's acts or omissions." *Justification*, BLACK'S LAW DICTIONARY (11th ed. 2019). By pleading the statutes have "no justification" whatsoever, the plaintiffs sufficiently alleged the statutes lack a rational basis.[4]

After this Court decided *City of Aurora*, the parties also submitted supplemental briefing further addressing whether the challenged statutes were supported by, or instead lacked, a rational basis. The defendants assert the economic viability of fire protection [*13] districts is subject to unique considerations in St. Louis County and constitutes a rational basis for the challenged statutes given the county's "scores of municipalities, [] unique annexation history, and large unincorporated urbanized areas." The plaintiffs reject that argument and claim no

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[3] Section 72.401.1 provides that:

> If a commission has been established under sections 72.400 to 72.423 in any county with a charter form of government where fifty or more cities, towns and villages have been established, any boundary change within the county shall proceed solely and exclusively in the manner provided for by sections 72.400 to 72.423, notwithstanding any statutory provisions to the contrary concerning such boundary changes.

[4] Additionally, the plaintiffs stated in their amended petition, "There is no ... rational basis for the General Assembly's failure to adopt a general law instead of this special law." This assertion conflates the threshold issue of whether a statute's classification scheme lacks a rational basis and is, therefore, special, with the secondary issue of whether the statute is constitutionally invalid. This Court, nonetheless, notes the plaintiffs' apparent attempt to plead at the outset that the challenged statutes lack a rational basis.

rational basis exists for the scheme created by sections 72.418.2 and 321.322.3 because fire protection districts in St. Louis County already enjoy greater protection from annexation under the boundary commission act, sections 72.400-72.430, because the act makes annexation more difficult to complete.[5] As a result, the plaintiffs say, the tax bases that support fire protection districts in St. Louis County already are adequately protected, making the post-annexation restrictions imposed by section 72.418.2 "redundant." In short, the plaintiffs argue sections 72.418 and 321.322.3 provide an unnecessary layer of protection for fire protection districts in St. Louis County. For this reason, the plaintiffs say, sections 72.418 and 321.322.3 lack a rational basis.

The plaintiffs' arguments are not persuasive because they challenge the wisdom of sections 72.418 and 321.322.3. This Court does not question the wisdom of a statute. *Estate of Overbey*, 361 S.W.3d at 378. Nor does this Court question the economic policy underlying a statute. *Id.* Instead, this Court asks only whether there is "a plausible reason" for the classification created by the statute. *Id.*

Here, a plausible reason for limiting the application of section 72.418 to St. Louis County is the unique risk of annexation that exists in St. Louis County, which in turn presents a unique risk to the economic viability of fire protection districts levying taxes in areas subject [*15] to annexation. St. Louis County is the most populous county in Missouri, and the plaintiffs themselves acknowledge St. Louis County has "approximately 90 cities, towns, and villages." The greater the number of cities, the greater likelihood annexation may occur.[6] This is particularly true given the large, unincorporated but urbanized area within St. Louis County. Indeed, this Court has recognized that St. Louis County is unique because it "has a large population, lacks a central city, has 90 separate municipalities within its borders, and has a large, unincorporated area." *City of Chesterfield v. State*, 590 S.W.3d 840, 844 (Mo. banc 2019).[7] All of these factors increase the likelihood of annexation within St. Louis County.

Fire protection districts are empowered to levy taxes only within their territorial limits. Section 321.230 ("For the purpose of providing revenue for such districts, the board shall have the power and authority to order the

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[5] The plaintiffs point to the considerations required of the boundary commission before an annexation may be approved. In particular, the plaintiffs cite section 72.403.3, which provides:

> In reviewing any proposed boundary change, the commission shall approve such proposal if it finds that the boundary change will be in the best interest of the municipality or municipalities and unincorporated territories affected by the proposal and [*14] the areas of the county next to such proposed boundary. In making its determination, the commission shall consider the following factors:
>
> (1) The impact, including but not limited to the impact on the tax base or on the ability to raise revenue, of such proposal on:
>
> (a) The area subject to the proposed boundary change and its residents;
>
> (b) The existing municipality or municipalities, if any, proposing the boundary change and the residents thereof;
>
> (c) Adjoining areas not involved in the boundary change and the residents thereof; and
>
> (d) The entire geographic area of the county and its residents[.]

[6] Annexation within St. Louis County has been a uniquely controversial and much-discussed issue for decades. *See, e.g.*, Steven H. Goldberg, *Annexations in Urban Counties: Missouri's Scheme and a Plan for Reform*, 29 WASH. U. J. URB. & CONTEMP. L. 187, 213, 217 (1985) (stating that "[a]ggressive competition for the rich commercial real estate lying in St. Louis County's unincorporated areas" had "sharpened the conflict between municipalities, the county and the unincorporated areas targeted for annexation" and analyzing in particular "the legislature's response to the wave of annexations in St. Louis County" following changes in the law).

[7] In *City of Chesterfield*, this Court rejected a special-laws challenge to two countywide sales tax laws. The first law provided that a first-class county with a charter form of government and a population of 900,000 or more—i.e., St. Louis County—could adopt a countywide sales tax by passing an ordinance. 590 S.W.3d at 842. The second law classified cities in St. Louis County into two groups and set forth a procedure for distributing the countywide sales tax between the groups. *Id.* at 842-43. In analyzing whether the challenged laws had a rational basis, this Court noted specifically that St. Louis County is unique because it "has a large population, lacks a central city, has 90 separate municipalities within its borders, and has a large, unincorporated area." *Id.* at 844. Based on these unique characteristics, the Court concluded the distribution scheme in the challenged law had a rational basis because it "serve[d] the state's legitimate interest in providing stable revenue sources for [certain] cities and discouraging opportunistic annexations." *Id.* at 845.

levy and collection of ad valorem taxes on and against all taxable tangible property *within the district* ...." (emphasis added)). When a city annexes an unincorporated area within a fire district's territorial limits, the fire [*16] district potentially loses the benefit of tax revenue that would have been collected in the annexed area. The legislature could have reasonably conceived that the post-annexation procedure mandated by section 72.418 would dissuade opportunistic annexation of unincorporated urbanized areas.

Furthermore, the legislature could have reasonably conceived that, given the likelihood of annexation in St. Louis County, the post-annexation procedure in section 72.418 would protect the economic viability of fire protection districts serving unincorporated areas even in the event of annexation. Specifically, the legislature could have reasonably conceived that one way to cloak fire protection districts with post-annexation protection is to require that they receive from an annexing city the same revenue they would have collected in taxes if annexation had not occurred. The plaintiffs themselves admit the challenged classification scheme "insulates the fire protection district from a loss in tax revenue resulting from annexation." This is a rational basis for the challenged classification.

In short, the economic viability of fire protection districts in St. Louis County is a plausible reason for the challenged classification [*17] in section 72.418.2. Likewise, there is a plausible reason for the interrelated exclusion in section 321.322.3—without the exclusion, section 72.418.2 would not apply to fire protection districts in St. Louis County and those fire protection districts would not be guaranteed the same revenue they would have collected in previously unincorporated areas.

Because a reasonably conceivable set of facts provides a rational basis for the classification scheme in sections 72.418.2 and 321.322.3, the plaintiffs' special-law challenges in Counts I, II, and III fail, and the defendants were entitled to judgment as a matter of law on the face of the pleadings. The circuit court's judgment, therefore, ultimately reached the correct result with respect to these counts.

II. Section 72.418.2 Does Not Impose a Tax on Crestwood Residents

The plaintiffs' next three claims of error challenge the annual fee Crestwood must pay the fire district under section 72.418.2 as a constitutionally invalid tax that (1) exceeds the municipal tax rate set by article X, section 11(b) of the Missouri Constitution; (2) violates Crestwood residents' due process rights under article I, section 10 of the Missouri Constitution and amendment XIV, section 1 of the United States Constitution; and (3) increases the tax liability of Crestwood resident-taxpayers without voter approval in violation of article X, sections 16 and 22 of the Missouri Constitution [*18] (provisions of the "Hancock Amendment"). The circuit court found the fee Crestwood paid annually to the district did not qualify as a tax and entered judgment on the pleadings for the defendants.

The parties do not dispute the material facts related to these claims. Rather, they dispute the legal conclusion to be drawn from the relevant facts. In particular, the plaintiffs' claims of error are based on their allegation that the fee Crestwood must pay the district pursuant to section 72.418.2 is effectively a tax on Crestwood resident-taxpayers. The label attached to a charge imposed by the government—whether called a "tax" or something else—does not determine whether it meets the legal criteria for a "tax." *See Zweig v. Metro. St. Louis Sewer Dist.*, 412 S.W.3d 223, 244 (Mo. banc 2013); *President Riverboat Casino-Mo., Inc. v. Mo. Gaming Comm'n*, 13 S.W.3d 635, 638 (Mo. banc 2000); *Beatty v. Metro. St. Louis Sewer Dist.*, 867 S.W.2d 217, 221 (Mo. banc 1993). Rather, the Court must examine the effect of the imposed contribution to determine whether it is a tax. *See Zweig*, 412 S.W.3d at 232.

There is no perfect formula for determining whether a particular charge is a "tax." However, certain criteria are useful. For example, in distinguishing between a "tax" and a "user fee," this Court has indicated that, generally speaking, a charge is more likely to be a "tax" if: (1) it is due to be paid on a periodic basis; (2) it is blanket-billed to all or almost all residents [*19] of the relevant political subdivision; (3) it does not depend on the level of goods or services provided; (4) it is imposed regardless of whether the government is providing a good or service; (5) the government has historically and exclusively provided the good, service, permission, or activity for which the charge is imposed; and (6) if unpaid, it triggers a lien against property. *See, e.g., Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301, 305 n.10 (Mo. banc 1991); *Arbor Inv. Co., LLC v. City of Hermann*, 341 S.W.3d 673, 682-86 (Mo. banc 2011).

Here, it is not necessary to examine the nature of the fee paid to the district, however, because the resident-taxpayers of Crestwood, which include Mr. Roby and

Ms. Hoeing, do not pay any charge to the district. Rather, pursuant to section 72.418.2, *Crestwood*—not its residents—must pay an annual fee to the district. The fee imposed upon Crestwood is in an amount equal to what the district *would have* levied (but following annexation *cannot* levy) on the taxable property within the annexed area. Section 72.418.2. Section 72.418.2 does not impose a financial obligation upon the resident-taxpayers of Crestwood, and no resident-taxpayer pays money to the district. Accordingly, the fee imposed on Crestwood under section 72.418.2 is not a tax on the resident-taxpayers of Crestwood.

Section 72.418.2, therefore, does not violate article X, section 11(b), which "addresses the amount of tax that [*20] a political subdivision may levy without voter approval." *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278, 284 (Mo. banc 2000). In relevant part, article X, section 11(b) provides: "Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates [without a vote, as specified in article X, section 11(c)]: For municipalities—one dollar on the hundred dollars assessed valuation ...." The plaintiffs claim section 72.418.2 creates a "tax rate of $1.451763 per $100 of assessed valuation within the Annexed Area." This claim fails, however, because the fee Crestwood paid to the district is not a tax on any resident-taxpayer within the annexed area (or any other resident-taxpayer of Crestwood).

Similarly, because the fee paid by Crestwood is not a tax on the resident-taxpayers of Crestwood, the resident-taxpayers' due process rights have not been violated. Article I, section 10 of the Missouri Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law." Amendment XIV, section 1 of the United States Constitution similarly provides that no state shall "deprive any person of life, liberty, or property, without due process of law." The resident-taxpayers argue they are deprived of property without due process of law [*21] because section 72.418.2 "simply mandates that Roby and Hoeing make the payments demanded, in the amount set by the District" and the residents cannot vote in the district's election. But, as discussed above, section 72.418.2 does not mandate that any resident pay an amount to the district. Rather, Crestwood resident-taxpayers pay an ad valorem tax to Crestwood. Crestwood then uses a portion of that tax revenue to pay the district's fee.

The resident-taxpayers further argue they are deprived of due process because they "have no means to block the District from increasing the amount they must pay in taxes." But, again, the district does not levy taxes upon Crestwood residents. Moreover, Crestwood resident-taxpayers do, in fact, have a means to ensure their municipal taxes (which are imposed by Crestwood) are not increased. As discussed below, the Hancock Amendment requires direct voter approval before a municipality or other political subdivision may increase tax rates. Mo. Const. art. X, secs. 16, 22. The Crestwood resident-taxpayers' rights to due process have not been violated.

Furthermore, section 72.418.2's fee does not violate article X, sections 16 or 22 of the Hancock Amendment.[8] The Hancock Amendment, Mo. Const. art. X, sections 16-24, was adopted in 1980. It "aspires to erect a comprehensive, constitutionally-rooted [*22] shield ... to protect taxpayers from government's ability to increase the tax burden above that borne by the taxpayers on November 4, 1980." *Fort Zumwalt Sch. Dist. v. State*, 896 S.W.2d 918, 921 (Mo. banc 1995). In passing the Amendment, "the voters ... guarantee[d] themselves the right to approve increases in taxes proposed by political subdivisions of the state." *Beatty*, 867 S.W.2d at 221. Article X, section 16 provides, in relevant part, "Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution." Mo. Const. art. X, sec. 16.

Section 22 provides, in relevant part:

> Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon.

Mo. Const. art. X, sec. 22(a).[9]

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[8] Crestwood does not have standing to bring challenges under the Hancock Amendment. Mo. Const. art. X, sec. 23; *Fort Zumwalt*, 896 S.W.2d at 921 ("The Hancock Amendment makes no pretense of protecting one level of government from another."); *City of Hazelwood v. Peterson*, 48 S.W.3d 36, 40 (Mo. banc 2001) ("Hazelwood is without standing to sue under the Hancock Amendment."), *abrogated on other grounds by Zweig*, 412 S.W.3d at 248-49.

What these provisions prohibit is an increase in taxes without direct voter approval. *Keller*, 820 S.W.2d at 304. Whether labeled a [*23] "tax, license or fees," if a charge operates as a tax, it is subject to the Hancock Amendment and any increase must be directly approved by the voters. *Id.*

Here, however, neither Crestwood nor the district has levied a tax on Crestwood's resident-taxpayers because, under section 72.418.2, Crestwood resident-taxpayers simply are not subject to a financial obligation. The plaintiffs, nonetheless, argue section 72.418.2 violates sections 16 and 22 because resident-taxpayers such as Mr. Roby and Ms. Hoeing "suffer an increased tax burden ... in that a tax increase by the Affton Fire Protection District necessarily increases taxes on resident-taxpayers of Crestwood due to the operation of § 72.418." This argument rings hollow. The district's tax rate does not "necessarily" increase taxes on Crestwood resident-taxpayers because Crestwood ***cannot*** tax its citizens at a higher rate unless the voters directly approve a tax rate increase, as that is precisely what the Hancock Amendment was enacted to require. *Beatty*, 867 S.W.2d at 221.

Reduced to its essence, the resident-taxpayers' real complaint is that they do not think Crestwood should have to pay the district a higher fee under section 72.418.2 just because the district increases its own tax rates. The resident-taxpayers argue they [*24] are harmed because the money Crestwood pays to the fire district could be used by Crestwood to benefit Crestwood residents more directly. The ways in which Crestwood must spend its tax revenue under section 72.418.2, however, is not equivalent to the imposition of a tax. "Changing the distribution of revenue is not the 'levying' of a new tax requiring voter approval." *Berry v. State*, 908 S.W.2d 682, 685 (Mo. banc 1995) (rejecting a claim under the Hancock Amendment).

Section 72.418.2 does not impose a tax on Crestwood's resident-taxpayers. Moreover, the tax burden on Crestwood resident-taxpayers is not increased as a function of section 72.418.2. Section 72.418.2, therefore, does not violate article X, section 16 or 22 and, on the face of the pleadings, the defendants were entitled to judgment as a matter of law.

III. Section 72.418.2 Does Not Create an Unfunded Mandate

The plaintiffs' final claim of error contends the circuit court erred in granting the defendants judgment on the pleadings on the plaintiffs' claim that section 72.418.2 creates an unfunded mandate in violation of the Hancock Amendment, article X, sections 16 and 21 of the Missouri Constitution. Section 16 provides, in relevant part, "The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties [*25] and political subdivisions." Section 21 provides, in relevant part:

> A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Mo. Const. art. X, sec. 21.

Again, the parties do not dispute the facts relevant to this claim. Rather, the plaintiffs urge this Court to accept the legal conclusion that section 72.418.2 requires Crestwood to undertake a new and increased level of activity "by financing the operations of the District in providing fire protection services in an adjacent political subdivision." This Court rejects the plaintiffs' legal conclusion. Crestwood voluntarily annexed the unincorporated area within the district. No statute required it to do so. Section 72.418.2 merely delineates the obligations that arise if a city chooses to annex an area within a fire protection district's territorial limit.

In *City of Jefferson v. Missouri Department of Natural Resources*, 863 S.W.2d 844, 848 (Mo. banc 1993), certain municipalities argued the legislature created an unfunded mandate by passing a law that allegedly required them to join and finance a solid waste [*26] management district. This Court rejected the claim, concluding the statute in question was "permissive and allow[ed] cities to join such districts if they [chose] to do so." *Id.* The statute, therefore, did not create an unfunded mandate. *Id.* Similarly, here, section 72.418.2 does not require any city to annex an area within a fire protection district and thereby enter into the statutory arrangement of which Crestwood complains. Whether to annex a certain area is a matter left entirely to the municipality and other relevant governing bodies. It is not an obligation imposed by the state.

Moreover, "the Hancock Amendment's aim is to prohibit

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[9] "Other political subdivisions" include cities. Mo. Const. art. X, sec. 15.

burden-shifting from the State to a local entity." *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 831 (Mo. banc 2013). It does not come into play when a statute "merely shifts the responsibility for an existing activity or service among local political subdivisions." *Id.* "Local-to-local shifting of responsibilities" does not offend the Hancock Amendment "because the amendment is not intended to be applied to prevent a statute's reallocation of responsibilities among political subdivisions." *Id.* Here, section 72.418.2 does not shift responsibility for financing fire protection services from the state to a local political subdivision. Rather, following [*27] Crestwood's voluntary annexation of the unincorporated area adjacent to it, section 72.418.2 merely shifts the financial responsibility for financing fire protection services in the annexed area from one local political subdivision (the fire district) to another (Crestwood). This local-to-local shifting does not offend the Hancock Amendment.

Section 72.418.2 does not create an unfunded mandate in violation of article X, sections 16 or 21 of the Missouri Constitution. The defendants were entitled to judgment as a matter of law on the face of the pleadings.

Conclusion

Treating the petition's well-pleaded facts as true, it is evident from the face of the pleadings that a rational basis supports the classification scheme in sections 72.418 and 321.322.3, the fee Crestwood pays to the district is not a tax on the resident-taxpayers of Crestwood, and section 72.418.2 does not create an unfunded mandate. Therefore, the defendants were entitled to judgment as a matter of law.

The circuit court's judgment is affirmed.

PATRICIA BRECKENRIDGE, JUDGE

Draper, C.J., Wilson, Russell,

Powell and Fischer, JJ., concur.
