

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

REGIONAL CONVENTION AND SPORTS))	
COMPLEX AUTHORITY,))	
)	
Plaintiff,))	Cause No. 1522-CC00782
)	
vs.))	Division No. 2
)	
CITY OF ST. LOUIS, MISSOURI,))	
)	
Defendant.))	

DEFENDANT CITY OF ST. LOUIS, MISSOURI'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR JUDGMENT ON THE PLEADINGS

Ordinance 66509 (the “Ordinance”) requires the City of St. Louis to prepare a fiscal note, hold a public hearing, and obtain voter approval before acting to provide some forms of financial assistance to the development of a professional sports facility. In its petition, the Regional Convention and Sports Complex Authority (the “RSA”) alleges that the Ordinance’s existence creates “uncertainty” rendering it unable to prepare a plan for financing a new football stadium that could potentially involve financial assistance from the City.

The Court should enter judgment in favor of the City of St. Louis for at least two reasons. First, although this lawsuit raises issues of public interest, the RSA has not made the threshold showing that a justiciable controversy exists. A declaratory judgment action requires the plaintiff to prove that there is a substantial controversy about the plaintiff’s legally protectable interest, and that the controversy is ripe for adjudication. But the RSA has not been prevented from preparing proposals for the construction of a new stadium by the Ordinance’s existence. Undoubtedly, the democratic process required by the Ordinance before the City may offer certain

types of financial assistance may be unpredictable—but an unpredictable democratic process does not necessarily create a cause of action. There is no ripe, justiciable controversy.

The Court should also enter judgment for the City because Ordinance 66509 is valid and is not preempted by state law. A state law’s existence about a subject does not, *ipso facto*, render an ordinance about a related subject invalid. An ordinance is preempted only if the state law expressly preempts the relevant area of law or an ordinance conflicts with state law. Ordinance 66509 empowers the City to provide financial assistance if the City follows a particular process. In other words, the Ordinance provides a path for the City to follow in the course of providing some forms of financial assistance to a sports facility; it does not prohibit financial assistance or in any way touch upon the RSA’s authority to pursue a stadium project in accordance with state law. Ordinance 66509 was validly adopted and does not conflict with state law. The Court should declare the Ordinance valid.

I. Background

The RSA is a public entity created by state law to develop and finance the acquisition, planning, construction, equipping, and operation of public sports stadiums. Petition, ¶ 4. The RSA derives its authority from §§ 67.650 to 67.658 of the Missouri Revised Statutes (the “RSA Statutes”). Petition, ¶ 4. The RSA Statutes authorize the RSA, the State, and the City to enter agreements regarding the development of sports facilities. *Id.*

The City is a constitutional charter city created pursuant to Article VI, section 31 of the Missouri Constitution and governs itself under the Charter and Revised Code of the City of St. Louis (“Charter”). The Missouri Constitution grants the City the authority to enact ordinances without specific enabling legislation. Defendant’s Answer, Affirmative and Additional Defenses, ¶ 4(a); Mo. Const. Art. VI, §19(a). The City also has broad authority to tailor a form of government that its citizens believe will best serve their interests. Defendant’s Answer,

Affirmative and Additional Defenses, ¶ 4(a); Mo. Const. Art. VI, §§ 19–22 & Art. VI, § 32(a). In accordance with that authority, the City adopted a charter that gives voters the ability to legislate through an initiative procedure whereby voters propose and adopt ordinances at the polls. Defendant’s Answer, Affirmative and Additional Defenses, ¶ 4(b); Charter, Art. V, § 1.

In 2002, through the Charter’s initiative procedures, voters approved an ordinance requiring public input and a public vote before the City offers certain kinds of financial assistance to the development of professional sports facilities. Defendant’s Answer, Affirmative and Additional Defenses, ¶ 4(c)-(d). Voters approved what became known as Ordinance 66509 (“the Ordinance”). Defendant’s Answer, Affirmative and Additional Defenses, ¶ 4(d). The Ordinance, codified at Chapter 3.91 in the City’s Revised Code, provides that “[n]o financial assistance may be provided by or on behalf of the City to the development of a professional sports facility without the approval of a majority of the qualified voters of the City voting thereon.” *Id.*; Code, § 3.91.030.

The RSA alleges that it is developing a plan to develop a new football stadium that calls for financial assistance from the City, and that it will make a proposal to the NFL in the “very near future.” Petition, ¶¶ 12,14. The RSA filed this lawsuit seeking a declaratory judgment regarding the validity of the Ordinance.

This Motion puts before the Court two legal questions: (1) whether the RSA’s legal theories are justiciable; and (2) whether the Ordinance is preempted by state law.

II. Legal Standard

A motion for judgment on the pleadings should be granted where there are no disputed issues of material fact on the face of the pleadings. Rule 55.27(b); *McGuire v. Dir. of Revenue*, 174 S.W.3d 87, 89 (Mo. App. 2005). By moving for judgment on the pleadings, a party does not admit legal conclusions or the opposing party’s construction of the subject matter. *Mitchell v.*

Nixon, 351 S.W.3d 676, 680 (Mo. App. 2011). Where “the question before the court is strictly one of law,” the Court should enter judgment on the pleadings. *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599-600 (Mo. banc 2007).

III. The RSA’s legal theories are not justiciable.

“Plaintiffs seeking declaratory relief must demonstrate a justiciable controversy for which they have no adequate remedy at law.” *Barron v. Shelter Mut. Ins. Co.*, 220 S.W.3d 746, 748 (Mo. banc 2007). A justiciable controversy exists when the plaintiff has a legally protectable interest at stake, a substantial controversy exists between parties with genuinely adverse interests, and that controversy is ripe for judicial determination. *Clifford Hindman Real Estate, Inc. v. City of Jennings*, 283 S.W.3d 804, 806-07 (Mo. App. 2009).

A. The RSA does not have a legally protectable interest at stake.

To obtain a declaratory judgment, the RSA must establish that it has a legally protectable interest in the disputed issues. *See Cooper v. State*, 818 S.W.2d 653, 655 (Mo. App. 1991). The Declaratory Judgment Act requires the RSA to establish that its “rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise.” § 527.020, RSMo. A mere difference of opinion or disagreement on a legal question is not enough—the RSA must prove that its rights are impacted. *See Akin v. Dir. of Rev.*, 934 S.W.2d 295, 298 (Mo. banc 1996).

The RSA may wish that the Ordinance did not exist. It may believe that financing a new stadium would be easier if the Ordinance was held invalid. But, to maintain an action, the RSA must establish that its “rights . . . are affected” by the Ordinance. It has not done so.

B. There is no substantial controversy because the state law creating the RSA and the Ordinance are not irreconcilable.

To obtain a declaratory judgment, the RSA must prove that it has a substantial

controversy with the City. *Meekins v. St. John's Regional Health*, 149 S.W.3d 525, 530 (Mo. App. 2004); *George v. Brewer*, 62 S.W.3d 106 (Mo. App. 2001); *Hayward v. Independence*, 967 S.W.2d 650, 653 (Mo. App. 1998). But the Ordinance does not pit the City against the RSA in any way; the Ordinance outlines a process for the City to follow to provide some forms of financial assistance to sports facilities. The Ordinance does not create a substantial controversy between the City and the RSA.

C. The RSA's legal theories are not ripe for adjudication.

The RSA's petition presents many legal theories that will, and already have, interest law professors and students. Socratic analysis of the RSA's theories are best left to law school classrooms. This Court is a place for resolving real-life controversies, with real-world impacts, in real-time.

This latter requirement—that a controversy be heard by the Court when the time is right—is an important one. The doctrine of ripeness “is a ‘tool’ of the court . . . used to determine whether a controversy is . . . ready for judicial review, or whether by conducting the review, [the court] would simply be rendering an advisory opinion on some future set of circumstances.” *Schultz v. Warren County*, 249 S.W.3d 898, 901 (Mo. App. 2008); *Local 781 Intern. Ass'n of Fire Fighters v. City of Independence*, 947 S.W.2d 456, 461 (Mo. App. 1997). A case is ripe if the issues are appropriate for judicial resolution and the parties will suffer hardships if judicial relief is denied. *Mo. Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 27 (Mo. banc 2003). In order for a controversy to be ripe, the party seeking relief must show that there is “sufficient immediacy” to the legal issues presented in the case. *Schultz*, 249 S.W.3d at 901; *Buechner v. Bond*, 650 S.W.2d 611, 614 (Mo. banc 1983).

1. The RSA will not suffer imminent harm in the absence of relief.

The RSA's petition fails to present any reason why it requires an urgent resolution or that

their interests require relief of “sufficient immediacy.” *See Buechner*, 650 S.W.2d at 614. Plaintiff’s Petition simply alleges that “the RSA must make a proposal to the NFL regarding development of the New Stadium in the very near future or else the City, State and the Metropolitan Area are in eminent danger of not having an NFL team” and “[b]ond financing aspects [of the financing plan] are difficult to structure in view of . . . provisions of the City Ordinance seeking to limit City financial assistance to the development of professional sports facilities.” Petition, ¶¶ 14-15.

The harms alleged by the RSA are speculative. Plaintiff cites no circumstances requiring urgent judicial relief. Notably, the RSA makes no allegation that, but for a declaratory ruling on the Ordinance’s validity, any damage would be certain to occur. *See Buechner*, at 614. The RSA fails to articulate a cognizable legal harm or hardship that it will be forced to endure if it is denied a resolution by the courts at this stage. Until the RSA can show with certitude that it is prejudiced by compliance with the Ordinance, it will be unable to establish the “sufficient immediacy” required by Missouri law. The RSA has therefore failed to establish that it will suffer an adverse impact as a result of the alleged “uncertainty” surrounding the Financing Plan.

2. The RSA has not been delayed or harmed by the Ordinance because there has not been a fiscal note prepared, a public hearing, or a public vote.

The RSA’s legal theories are also not ripe because there has not been a fiscal note, a public hearing, or a public vote. Because ripeness does not exist when the legal question rests solely on a probability that an event will occur, any review at this stage is premature. *Buechner*, 650 S.W.2d at 614; *see Schultz*, 249 S.W.3d at 901 (“Review should occur when any claims of harm are more imminent and more certain, and the effects felt in a concrete way.”).

The RSA has failed to establish that it will suffer an imminent harm absent judicial intervention. The legal theories in the RSA’s petition are not yet ripe.

IV. Ordinance 66509 is valid, lawful, and enforceable.

A. The Court must presume that Ordinance 66509 is valid.

The City of St. Louis is authorized to enact ordinances without enabling legislation, Mo. Const. Art. VI, §19(a); *Smith v. City of St. Louis*, 409 S.W.3d 404 (Mo. App. 2013). Courts also presume an ordinance to be valid and lawful. *City of St. John v. Brockus*, 434 S.W.3d 90, 93 (Mo. App. 2014); *City of Kansas City v. Carlson*, 292 S.W.3d 368, 372 n. 3 (Mo. App. 2009).

The City's Charter accords its citizens the ability to legislate through the initiative process, a process where citizens propose and adopt ordinances at the polls. Art. V, § 1. Ordinances adopted through the initiative process may be repealed only by a two-thirds vote of the Board of Aldermen. Art. V, § 6. Missouri courts generally uphold the validity of an ordinance that has been adopted at the polls. See *ACI Plastics v. City of St. Louis*, 724 S.W.2d 513, 516 (Mo. banc 1987); *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981).

In 2002, City voters enacted Ordinance 66509 through the initiative process. Petition, ¶ 13. Under Missouri law, Ordinance 66509 is presumed to be valid, and the Court should seek, wherever possible, to uphold its validity. The party challenging an ordinance's validity must negate every potential basis that might support it, and the RSA has not done so. *St. Charles County v. St. Charles Sign & Elec., Inc.*, 237 S.W.3d 272, 275 (Mo. App. 2007)

B. Ordinance 66509 is not preempted by state law.

The RSA claims that Ordinance 66509 is preempted by state law. "The issue of preemption may fairly be divided into two questions: Has the Missouri legislature expressly preempted the area? And, is the city's regulation in conflict with state law?" *Miller v. City of Town & Country*, 62 S.W.3d 431, 438 (Mo. App. 2001). In this case, the answer to both

questions is “no”: the state laws governing RSA do not preempt the area of law, and Ordinance 66509 does not conflict with the state laws.

1. The State of Missouri has not expressly preempted the area of law governing the process municipalities follow to decide whether to offer financial assistance to professional sports facilities.

“State law occupies an area when it has created a comprehensive scheme on a particular area of the law, leaving no room for local control. When state law has so completely regulated a given area of the law, then it is said to be occupied, and preempts any local act.” *Borron v. Farrenkopf*, 5 S.W.3d 618, 624 (Mo. App. 1999) (citations omitted).

Missouri has not created a comprehensive scheme governing the process municipalities follow to decide whether to offer financial assistance to professional sports facilities. The process each municipality undertakes to offer financial assistance to any project is governed by its own law. In the City of St. Louis, the process is set out in the City’s Charter and Code, including Ordinance 66509. Like the role of the City’s Board of Estimate and Apportionment in approving of some of the City’s financial decisions, the role of the public in approving some forms of financial assistance is different from some other municipalities in the state. That difference is the result of different governmental forms, reflecting the diverse experiences of different communities. And it is those differences that underscore the lack of any comprehensive state regulation of the area. Accordingly, Ordinance 66509 is not preempted by a state law that occupies the field of municipal financial assistance for sports facilities.

2. Ordinance 66509 does not conflict with state law.

A conflict exists only where an ordinance “prohibits what the statute permits” or “permits what the statute prohibits.” *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986). While preemption forbids a conflict with state law, it does not prohibit extra regulations by a municipality. *Borron v. Farrenkopf*, 5 S.W.3d 618, 622 (Mo. App. 1999);

State ex rel. Hewlett v. Womach, 196 S.W.2d 809, 814 (Mo. banc 1946). Thus, an ordinance can conflict with state law only if it is prohibitory—not simply regulatory. *Id.*

Ordinance 66509 does not prohibit what state law allows. State law allows the City to provide financial assistance to the development of a professional sports facility. *See* § 67.657.3, RSMo. Ordinance 66509 does not prohibit the City from providing that financial assistance. *See, e.g., Hewlett*, 196 S.W.2d at 814 (holding that an ordinance that requires a liquor license applicant to obtain signatures of nearby property owners before obtaining a liquor license did not conflict with state law because it did not prohibit liquor sales but was merely regulatory, and not prohibitory); *Borron v. Farrenkopf*, 5 S.W.3d at 624-25 (holding that an ordinance regulating animal feeding operations was not preempted because it merely placed additional regulations on feeding operations and did not prohibit them altogether).

Likewise, Ordinance 66509 does not permit something that a state law prohibits. The RSA has not cited any provision of state law that prohibits public input and a public vote as a condition precedent to financial assistance from the City. Nor has the RSA cited any provision that requires the City to provide financial assistance to the new stadium project. In fact, the state laws on which RSA relies anticipate public participation in at least some of the funding decisions. *See, e.g.,* § 67.657.4, RSMo.

The RSA has not pointed to any other way in which Ordinance 66509 conflicts with state law. The state laws on which the RSA relies are permissive—they do not mandate any action to be taken, certainly not the construction of a new stadium. Section 67.657.3, RSMo., authorizes the State and the City to enter agreements for the development of a facility, but does not mandate what processes the City must follow in approving financial assistance or prohibit the City from imposing additional requirements on itself before the statutory authority may be exercised. *See,*

e.g., Frech v. City of Columbia, 693 S.W.2d 813, 815 (Mo. banc 1985) (holding that a city may allow municipal judges to issue search warrants where state law does not expressly or implicitly prohibit such warrants).

Conclusion

There are no material issues of fact in this case. Judgment on the pleadings is appropriate here because the RSA’s claims are not justiciable and the Ordinance is valid as a matter of law.

Respectfully submitted,

WINSTON E. CALVERT, CITY COUNSELOR

BY: /s/ Winston E. Calvert

Winston E. Calvert #57421

calvertw@stlouis-mo.gov

Mark Lawson #33337

lawsonm@stlouis-mo.gov

Erin McGowan #64020

mcgowane@stlouis-mo.gov

1200 Market Street

City Hall, Room 314

St. Louis, Missouri 63103

(314) 622-3361 (telephone)

(314) 622-4956 (facsimile)

ATTORNEYS FOR DEFENDANT CITY OF
ST. LOUIS, MISSOURI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of May, 2015, a true and correct copy of the foregoing document was served via electronic mail upon the following:

BLITZ, BARGETT & DEUTSCH, L.C.

Robert D. Blitz
Christopher O. Bauman
120 South Central Avenue, Suite 1650
St. Louis, Missouri 63105

THOMPSON COBURN LLP
Lawrence C. Freidman
Michael F. Lause
One US Plaza, Suite 2600
St. Louis, Missouri 63101

/s/ Erin K. McGowan
