

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
22nd JUDICIAL CIRCUIT
STATE OF MISSOURI

REGIONAL CONVENTION)	
AND SPORTS COMPLEX AUTHORITY)	
)	
Plaintiff,)	Case No. _____
)	
v.)	Division _____
)	
CITY OF ST. LOUIS, MISSOURI)	
Serve: Winston Calvert, Esq.)	
City Counselor)	
City of St. Louis)	
1200 Market Street, Room 314)	
St. Louis, Missouri 63103)	
)	
Defendant.)	

PETITION FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff Regional Convention and Sports Complex Authority, by and through the undersigned counsel, and for its Petition for Declaratory Judgment against the City of St. Louis, Missouri, states as follows:

PARTIES

1. Plaintiff Regional Convention and Sports Complex Authority is a body politic and corporate and public instrumentality duly organized under the laws of the State of Missouri.
2. Defendant the City of St. Louis, Missouri (the "City") is a constitutional charter city pursuant to Article VI, Section 19 of the Missouri Constitution.

BACKGROUND ON THE LITIGATION

Purpose of Litigation

3. As described further herein, the Plaintiff is unable to proceed with submission of a proposed financing plan to the National Football League ("NFL") for the construction of a new stadium for NFL professional football due to the uncertainty caused by a purported ordinance of the City of St. Louis. The ordinance seeking to limit City financial assistance to the development of professional sports facilities is obstructing needed participation by the City in the development and financing of the Plaintiff's proposed new stadium. The City's assistance in the development and its financial assistance, along with that of others, is needed for the new stadium. A financing plan for the new stadium is difficult to structure in view of the overly broad, vague and

ambiguous provisions of the ordinance. The Plaintiff seeks a ruling that the ordinance does not apply to a financing plan for a new stadium or, alternatively, is unconstitutional and void.

The State's Preemptive Plan for Professional Football Facilities in the St. Louis Metropolitan Area

4. In the late 1980s, in reaction to the need in the St. Louis Metropolitan Area (the "Metropolitan Area") for a venue for a professional football team and additional convention and meeting space, the Missouri General Assembly enacted the statutes creating the Plaintiff, the Regional Convention and Sports Complex Authority (the "RSA"). These statutes are Sections 67.650 to 67.658 of the Revised Statutes of Missouri (the "RSA Statutes"). The Missouri General Assembly recognized that these needs were a matter of state-wide concern and so it established a unique special-purpose governmental entity with special powers to address the issue. The RSA Statutes create the RSA as a public instrumentality of the state. The RSA operates with an eleven-member board of commissioners, five of which are appointed by the Governor and three each by the Mayor of the City and County Executive of St. Louis County. Pursuant to the RSA Statutes the RSA is authorized and empowered, among other things, to develop and finance the acquisition, planning, construction, equipping and operation of sports stadiums for NFL professional football. In further recognition of the unique nature of the RSA, the RSA Statutes authorize the City, the State and other governmental entities to enter into agreements to cooperate with the RSA in the development and financing of such facilities. Section 67.657.3 RSMo. The RSA Statutes further provide a financing mechanism (a voter-approved hotel/motel tax) to support certain of the City's payment obligations in the City's agreements with the RSA and in certain other City financings. The City hotel/motel tax is statutorily directed to be deposited into a "City Convention and Sports Facility Trust Fund" and is authorized to be used for several purposes, including payments related to agreements with the RSA. Section 67.657.8, 9 and 10 RSMo. This 3-1/2% was approved by the City voters in 1993 and has been collected since 1993 (the "City Tax"). A similar hotel/motel tax mechanism is provided for St. Louis County.

The Existing Financing of St. Louis' Professional Football Facility

5. Pursuant to the RSA Statutes, in 1991 the RSA entered into a Project Financing, Construction, and Operation Agreement with St. Louis County, the City and the State of Missouri (the "Dome Agreement") in order to document the cooperation and the obligations of the parties relative to the financing of the construction and operation of the Edward Jones Dome (the "Dome"). The Dome was designed to provide a suitable venue for a national football league franchise. Pursuant to the Dome Agreement, the RSA owns the Dome and leases it to the County, the City and the State (collectively, the "Sponsors") in exchange for base rental payments (the "Base Rental Payments") and preservation payments (the "Preservation Payments"). The Sponsors sublease the Dome back to the RSA. The RSA has further leased and contracted with the St. Louis Convention and Visitors Commission (the "CVC") to manage and operate the Dome. The CVC has leased the Dome to the St. Louis Rams NFL professional football team (the "Rams") which has played football in the Dome since 1995.

6. Contemporaneously with the execution of the Dome Agreement in 1991, the RSA issued three series of revenue bonds to provide funds to finance the Dome (collectively, the "RSA Bonds"). The Base Rental Payments of each of the Sponsors pursuant to the Dome Agreement were designed to be sufficient to pay the debt service on the respective series of bonds sponsored

by each of the three Sponsors through 2021. In addition, each of the three Sponsors pay Preservation Payments for upkeep and maintenance of the Dome through 2024 pursuant to the Dome Agreement and a related Cooperation Agreement.

The Need for Additional Convention Facilities and for a New Stadium and for Improvement of the Blighted North Riverfront Area

7. The efforts of the CVC to attract more and larger conventions, trade shows and entertainment events to the Metropolitan Area have been seriously impeded by the lack of availability of the Dome for a large portion of each year due to the requirement that it be reserved for many months of the year for Rams home games.

8. In the judgment of the Rams the Dome has become an inadequate venue for professional football. In 2013, arbitrators ruled in favor of the Rams in an arbitration with the CVC over the terms of the Rams' Dome lease and concluded that the Rams could not be forced to remain as a tenant of the Dome through 2025. The Rams are presently on a year-to-year lease of the Dome through the 2015 season. The owner of the Rams has announced and is proceeding with a plan to build a new football stadium in southern California which could serve as a new venue for the Rams.

9. The Governor of Missouri appointed a task force to lead the efforts to develop a financing plan for construction and operation of a new sports stadium to present to the Rams ownership and to the NFL. The Governor tasked the RSA with developing a viable financing plan for a new stadium to present to the NFL. The RSA has developed and announced plans for a new open-air 64,000 seat stadium suitable for multiple purposes but designed and constructed to meet National Football League franchise standards together with parking and related development (the "New Stadium").

10. Construction of the New Stadium would create additional opportunities for convention and tourism within the Metropolitan Area because, in addition to events at the New Stadium, the Dome would be available year-round for conventions, trade shows and entertainment events.

11. The New Stadium would also dramatically enhance the North Riverfront area in the City. The proposed location for the New Stadium is in a heavily blighted area. The development of the New Stadium would greatly improve that location and be the impetus for growth in the surrounding underutilized area. This would have the effect of creating jobs and economic development in the City and the State.

2015 Plan for a New Stadium

12. The RSA is developing a financing plan involving the State and the City as authorized by the RSA Statutes relative to the cost of development of the New Stadium (the "Financing Plan") described in this Section 12. The Financing Plan when finalized is expected to include the following components:

(a) Contributions to the cost of the New Stadium by the NFL, the team owner and by virtue of the sale of seat licenses relative to the attendance at football games.

(b) The execution by the RSA, the State and the City of a new Project Financing, Construction and Operation Agreement relative to the New Stadium (the “New Stadium Agreement”) which would lease the New Stadium to the State and City which entities would lease the New Stadium back to the RSA to operate.

(c) Contributions to the cost of the New Stadium by the State pursuant to the terms of said New Stadium Agreement.

(d) Contributions to the cost of the New Stadium by the City pursuant to the terms of the New Stadium Agreement which could include the following: (i) the City causing the issuance of bonds (the “City’s New Stadium Bonds”) with an annual debt service obligation of the City not in excess of six million dollars (\$6,000,000) less amounts owed as Preservation Payments on the RSA Bonds for the Dome (the “City’s RSA Dome Bonds”) with the proceeds of the City’s New Stadium Bonds being used (A) to provide for the payment in full (defease) the City’s RSA Dome Bonds and (B) as a lease payment to the RSA which it could use for the development and construction of the New Stadium or to provide for the purchase of the Dome from the RSA (which amount the RSA could use for the development and construction of the New Stadium); (ii) the City causing the donation to the RSA of land and related property at the site of the New Stadium; (iii) the City providing tax increment financing, transportation development financing, community improvement district financing, or other tax abatement or economic incentives deemed appropriate by the City, in connection with the development of the New Stadium; and (iv) the City providing or allowing services and governmental approvals to the New Stadium routinely furnished by the City for the development, safety and security of real estate development sites in the City including, without limitation, police, fire, water, electricity, gas and the issuance of building and occupancy and other permits or approvals.

Uncertainty and Controversy Due to the City Ordinance

13. At the City’s 2002 general election a proposition was passed purporting to enact an ordinance requiring voter approval before the City could provide financial assistance to the development of a professional sports facility. It is codified as Chapter 3.91 of the Revised Code of the City (the “City Ordinance”) and a copy is attached hereto as **Exhibit A**. The City Ordinance in overly broad, vague and ambiguous terms purports to contain restrictions on the power of the City (and many other legally separate entities) to provide “financial assistance” to the development of a professional sports facility.

14. 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. A critical component of the RSA proposal is a financing plan which requires development assistance and some funding by the City.

15. Bond financing aspects of the Financing Plan are difficult to structure in view of the overly broad, vague and ambiguous provisions of the City Ordinance seeking to limit City financial assistance to the development of professional sports facilities.

THIS ACTION

16. Jurisdiction is proper in this case pursuant to Section 478.070 RSMo.
17. Venue is proper in this Court pursuant to Section 508.060 RSMo.
18. Plaintiff brings this action pursuant to Chapter 527 RSMo.
19. This action involves the above-described controversies that have arisen as to the ability of the City to approve and perform pursuant to the Financing Plan.
20. This case is appropriate for entry of declaratory relief under Chapter 527 RSMo and Rule 87.
21. The Plaintiff has no remedy at law to protect its rights and interests described herein.

COUNT I

The State's Plan for Facilities for Professional Football in the RSA Statutes was in place long before the adoption of the City Ordinance and is intended to be preemptive by the State as to the Financing Plan and to prohibit a more restrictive local law such as the City Ordinance

22. In the alternative, the Plaintiff re-alleges and incorporates paragraphs 1 through 21, as if fully set forth herein.

23. The State's plan for authorizing the development and financing of professional football facilities in the City was enacted in 1988 in the RSA Statutes. The primary purpose of the RSA Statutes is to increase convention and sports activity in the St. Louis Metropolitan Area. In recognition that this stadium need was a matter of state-wide concern, the Missouri General Assembly created the RSA as a unique state instrumentality governed by commissioners appointed by each of the State, the City and St. Louis County. The RSA, the State and the City are specifically authorized to contract pursuant to the provisions of Article I, Section 16 of the Missouri Constitution, Sections 70.210 and 70.325, RSMo and Sections 67.653.1(6) and 67.657.3 of the RSA Statutes. This constitutional provision and the statutes specifically authorize the contracting and cooperating for the construction of public improvements and is controlling over the provisions of the City Ordinance. Rice v. Ashcroft, 831 S.W.2d 206 (Mo. App. W.D. 1991). The construction of the New Stadium authorized by the RSA Statutes is not a matter of purely local concern. The RSA Statutes authorize the RSA, the State and the City to enter into the New Stadium Agreement and perform the Financing Plan pursuant to it. The RSA Statutes, as an action by the State, preemptively stop a local government like the City from passing a more restrictive local law. The RSA Statutes include a financing mechanism for payment of some of the City obligations in the form of the City Tax which was voter-approved in 1993. The subsequently-adopted City Ordinance cannot retroactively attempt to impose an additional voter approval requirement for actions that the State has preemptively authorized without such an additional voter requirement. Local laws such as the City Ordinance must be in harmony with the State law when they touch upon matters of state preemption and policy. The RSA Statutes are created

pursuant to Article I, Section 16 of the Missouri Constitution and preempt the City Ordinance on this matter.

WHEREFORE, the Plaintiff prays for an order, declaration, and judgment of this Court that:

a. The City Ordinance does not prevent the City from approving and performing the Financing Plan or any financing plan pursuant to the RSA Statutes without further voter approval.

b. The City Ordinance is void to the extent it attempts to impact the Financing Plan or any financing plan pursuant to the RSA Statutes or any other state statutes on which a financing plan may rely and the City Ordinance does not prevent the City from approving and performing the Financing Plan or any financing plan pursuant to the RSA Statutes without further voter approval.

c. The City Ordinance is void because it is beyond the power of the City to enact in limitation of the RSA Statutes.

d. The City is prohibited from conducting a referendum or other vote of the electorate as a condition to its participation in the Financing Plan or any financing plan pursuant to the RSA Statutes.

COUNT II

As it relates to the Financing Plan, the City Ordinance conflicts with a State Statute and violates the Missouri Constitution and is therefore void because it attempts to retroactively impose a vote requirement not contained in State Statutes

24. In the alternative, the Plaintiff re-alleges and incorporates paragraphs 1 through 23, as if fully set forth herein.

25. The RSA Statutes enacted in 1988 authorize the RSA, the State and the City to enter into the New Stadium Agreement and perform their actions pursuant to the Financing Plan. See §67.657.3 RSMo. The Missouri Court of Appeals has held that no voter approval by the City of agreements like the New Stadium Agreement is required. Rice v. Ashcroft, 831 S.W.2d 206 (Mo. App. W.D. 1991). As it relates to the Financing Plan, the City Ordinance is an unconstitutional attempt to retroactively impose an additional vote requirement and to override the State's plan in the RSA Statutes. A local law that conflicts with a state law violates Article VI, Section 19 of the Missouri Constitution. In the present case the subsequent City Ordinance attempts to prohibit what state law allows without a vote of the electorate. The Missouri Court of Appeals has held that a city charter provision was unconstitutional and void for attempting to impose a referendum requirement on a type of financing authorized by state statute without a vote. State ex rel. Hazelwood Yellow Ribbon Committee v. Klos, 35 S.W.3d 457 (Mo. App. E.D. 2000). See also Moschenross v. St. Louis County, 188 S.W.3d 13 (Mo. App. E.D. 2006) in which the Court held a charter amendment similar to the City Ordinance inapplicable to a sports venue financing. While the RSA Statutes provided for a vote of the electorate relative to the City Tax, which was accomplished, it does not by its terms require any additional vote of the electorate. In drafting the RSA Statutes, the legislators recognized how to require an election but only chose to require one for hotel/motel tax increases. Further, the intergovernmental contracting statutes provide

that the exercise of the power by the City to enter into a contract such as the New Stadium Agreement shall be authorized by a majority vote of the members of the City's governing body. These statutes do not authorize such approvals by, or contingent upon, a vote of the electorate. Sections 67.657.3, 70.230 and 70.300 RSMo. The City Ordinance seeks to impose a new duty not required by the RSA Statutes.

WHEREFORE, the Plaintiff prays for an order, declaration, and judgment of this Court that:

a. The City Ordinance does not prevent the City from approving and performing the Financing Plan or any financing plan pursuant to the RSA Statutes without further voter approval.

b. The City Ordinance is void to the extent it attempts to impact the Financing Plan or any financing plan pursuant to the RSA Statutes or any other state statutes on which a financing plan may rely and the City Ordinance does not prevent the City from approving and performing the City's actions provided for in the Financing Plan or any financing plan pursuant to the RSA Statutes without further voter approval.

c. The City Ordinance is void because it is beyond the power of the City to enact in limitation of the RSA Statutes.

d. The City is prohibited from conducting a referendum or other vote of the electorate as a condition to its participation in the Financing Plan or any financing plan pursuant to the RSA Statutes.

COUNT III

The City Ordinance is unconstitutional (a) because it is vague and ambiguous, (b) because it attempts to regulate legal entities separate from the City, and (c) because it seeks to impose voter requirements in certain types of financings in contravention of statutes which provide to the contrary

26. In the alternative, the Plaintiff re-alleges and incorporates paragraphs 1 through 25, as if fully set forth herein.

27. The City Ordinance violates Article I, Section 10 of the Missouri Constitution and Article Fourteen of the United States Constitution, in that the City Ordinance is vague, ambiguous and overbroad in numerous respects and is in contravention of state statutes to the contrary, including, but not limited to, the following:

a. The City Ordinance does not adequately define the purported restrictions on the governmental entities' power to provide, without voter approval, "assistance of value, direct or indirect" to the "development" and "site preparation" of any professional sports facility, in that such terms could mean, and could require voter approval, for the providing of services routinely furnished by the local governmental entity for the continuing safety, security, or comfort of the people such as police, fire, sewer or water services, electric or gas services, transit services, and providing services such as the issuance of building and occupancy permits. The terms used in the City Ordinance are unconstitutionally vague, ambiguous and overbroad.

b. The provision of the City Ordinance requiring approval for any “indirect” assistance of value in the context of a real estate development is so vague, ambiguous and overbroad as to be unknowable. Some have suggested that the term “indirect” is so broad as to require a vote before a City official even considers the New Stadium and before the City can provide typical municipal services provided to all City residents or property owners or even before providing services or support to nearby projects that might upgrade the facilities in which the New Stadium is to be located.

c. The City Ordinance also does not adequately define any “department, agency, commission, entity, or corporation of, belonging to, created by, authorized by, or affiliated with the City” in that those definitional terms are so broad as to include other entities and to be unknowable. That provision seeks to preclude actions by legal entities which are separate legal entities from the City from taking action before a City vote by including them in the definition of the City. These separate legal entities cannot be bound by the City Ordinance. These separate legal entities that are created pursuant to and governed by separate state statutes include: The Industrial Development Authority of the City of St. Louis, Missouri (the Industrial Development Corporations Act, Sections 349.010-349.105 RSMo); the Planned Industrial Expansion Authority of the City of St. Louis (the Planned Industrial Expansion Law, Sections 100.300-100.620 RSMo); the Port Authority of the City of St. Louis, Missouri (the Missouri Port Authorities Law, Chapter 68 RSMo); the Land Clearance for Redevelopment Authority of the City of St. Louis (the Land Clearance for Redevelopment Law, Sections 99.300-99.660 RSMo); the St. Louis Housing Authority (the Housing Authorities Law, Sections 99.010-99.231 RSMo); The Metropolitan St. Louis Sewer District (created by vote of electorate in 1954); the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (Sections 70.370-70.441 RSMo); and other related but completely separate legal entities. While these entities may have been “created by” or “authorized by” or may be “affiliated” with the City, each is created and governed under separate state statutes and by a separate governing body and is not bound by an ordinance of the City. The City Ordinance is unconstitutional and void because the terms used in the City Ordinance are vague, ambiguous and overbroad and cannot regulate separate legal entities and is in contravention of state statutes.

d. There is “financial assistance” upon which the City Ordinance seeks to impose a voter-approval requirement in direct contravention of state statutes which expressly authorize such assistance without a vote. The City Ordinance specifically lists “tax increment financing” as a form of financial assistance requiring a vote. Yet, the state tax increment financing statutes expressly state that no referendum requirement shall be required as a condition to such financing. The Missouri Court of Appeals has held that a city charter provision attempting to impose a referendum requirement on such financing was unconstitutional and void for violation of Article 6, Section 19(a) of the Missouri Constitution for attempting by initiative to impose a voter requirement on tax-increment financing in violation of a state statute to the contrary (Section 99.835.3 RSMo).

e. The City Ordinance seeks to require a vote before there is “financial assistance” by the City in the form of a gift, donation or grant of land and related property to the RSA as provided in the Financing Plan. Yet, RSA Statutes expressly authorize donations by the City to the RSA in Section 67.675.2 RSMo.

WHEREFORE, the Plaintiff prays for an order, declaration, and judgment of this Court that:

- a. The City Ordinance is void for vagueness and because it is ambiguous and overly broad.
- b. The City Ordinance is void because it attempts to be binding on entities that are legally separate entities from the City and thus is vague, ambiguous and overly broad.
- c. The City Ordinance is void because it attempts to impose a voter-requirement on financial assistance such as for tax increment financing in direct contravention of the statutes authorizing such assistance without voter approval and thus violates the Missouri Constitution because the City Ordinance permits what the statute prohibits. Mo. Const. Art. 6, §19(a).
- d. The City Ordinance does not prevent the City from approving and performing the City's actions provided for in the Financing Plan or any financing plan pursuant to the RSA Statutes without further voter approval.
- e. The City is prohibited from conducting a referendum or other vote of the electorate as a condition to its participation in the Financing Plan or any financing plan pursuant to the RSA Statutes.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By:/s/ Robert D. Blitz
Robert D. Blitz #24387
Christopher O. Bauman, #52480
120 South Central Ave., Suite 1650
St. Louis, Missouri 63105
314-863-1500
314-863-1877 (facsimile)
rblitz@bbdlc.com
cbauman@bbdlc.com

Respectfully submitted,

THOMPSON COBURN LLP

By:/s/ Lawrence C. Friedman
Lawrence C. Friedman #34382
Michael F. Lause #24811
Shaun C. Broeker #65804
One US Plaza, Suite 2600
St. Louis, Missouri 63101
314-552-6000
314-552-7000 (facsimile)
lfriedman@thompsoncoburn.com
mlause@thompsoncoburn.com
sbroeker@thompsoncoburn.com

Counsel for the Plaintiff Regional Convention and Sports Complex Authority