

IN THE SUPREME COURT OF MISSOURI
EN BANC

STATE OF MISSOURI, ex rel.)	
VELMA P. JACKSON and)	
ALICIA D. SEABAUGH,)	
)	
Relators,)	
)	
vs.)	No. SC92717
)	
HON. DAVID A. DOLAN,)	
)	
Respondent.)	

An Original Proceeding In Prohibition

Brief Of Relators
Velma P. Jackson and Alicia D. Seabaugh

HUSCH BLACKWELL, LLP

Mark G. Arnold, #28369
190 Carondelet Plaza, Suite 160
St. Louis, MO 63105
Office: (314) 480-1500
Fax No: (314) 480-1505

Attorneys for Relators

Table of Contents

Table of Contents i

Table of Cases and Other Authorities iii

Jurisdictional Statement 1

Statement of Facts 2

Points Relied On 4

Argument 5

I. Relators Are Entitled To An Order Prohibiting Respondent From Entering His Order Of Condemnation, Because The Port Authority Had No Power To Condemn Relators’ Property Under § 523.271, R.S.Mo., In That The Proposed Use Of The Property Was Solely For Economic Development. 5

Standard of Review 6

Argument 6

II. Relators Are Entitled To An Order Prohibiting Respondent From Entering His Order Of Condemnation, Because The Port Authority Had No Power To Condemn Relators’ Property Under Art. I, § 28 Of The Constitution, In That The Proposed Use Is Private, Not Public. 12

Standard of Review 12

Argument	13
Conclusion	18
Certificate of Compliance	19
Certificate of Service	20

Table of Cases and Other Authorities

Arata v. Monsanto Chem. Co.,
 351 S.W.2d 717 (Mo. 1961) 13

Baycol, Inc. v. Downtown Development Authority,
 315 So.2d 451 (Fla. 1975) 4, 11

Centene Plaza Redev. Corp. v. Mint Properties,
 225 S.W.3d 431 (Mo. banc 2007)..... 4, 10

City of Kansas City v. Hon,
 972 S.W.2d 407 (Mo. App. 1998) 13

City of Smithville v. St. Luke’s Northland Hosp.,
 972 S.W.2d 416 (Mo. App. 1998) 4, 13, 16

City of Springfield v. Sprint Spectrum, L.P.,
 203 S.W.3d 177 (Mo. banc 2006)..... 13

In re Condemnation by the Redevelopment Authority of
 Lawrence County,
 962 A.2d 1257 (Pa. Cmwltth 2008) 4, 9-10

J.C. Nichols Co. v. City of Kansas City,
 639 S.W.2d 886 (Mo. App. 1982) 13-14

Kelo v. City of New London,
 545 U.S. 469 (2005)..... 5

Kelo v. City of New London,
 843A.2d 500 (Ct. 2004) 5

<u>Ladue Group, L.C. v. Level 3 Communications, L.L.C.,</u>	
111 S.W.3d 492 (Mo. App. 2003)	15-16
<u>McKinney v. State Farm Mut. Auto. Ins. Co.,</u>	
123 S.W.3d 242 (Mo. App. 2003)	6
<u>Middlemas v. Director of Revenue,</u>	
159 S.W.3d 515 (Mo. App. 2005)	12
<u>Murphy v. Carron,</u>	
536 S.W.2d 30 (Mo. banc 1976).....	6
<u>Schoemehl v. Treasurer,</u>	
217 S.W.3d 900 (Mo. banc 2007).....	9
<u>State ex rel. Broadway-Washington Associates, Ltd. v.</u>	
<u>Manners,</u>	
186 S.W.3d 272 (Mo. banc 2006).....	1
<u>State ex rel. City of Creve Coeur v. Weinstein,</u>	
329 S.W.2d 399 (Mo. App. 1959)	11-12
<u>State ex rel. Gove v. Tate,</u>	
442 S.W.2d 541 (Mo. banc 1969).....	4, 15
<u>State ex rel. Wagner v. St. Louis County Port Auth.,</u>	
604 S.W.2d 592 (Mo. banc 1980).....	4, 14, 16-17
<u>Tierney v. Planned Indus. Exp. Auth.,</u>	
742 S.W.2d 146 (Mo. banc 1987).....	1

Statutes and Other Authorities

Mo. Const. Art. I § 283-4, 12-14
.....16-17, A-6

Mo. Const. Art. V § 4..... 1

Mo. Const. Art. VI §§ 23 and 25 16

§ 68.020, R.S.Mo. 6-7

§ 523.271, R.S.Mo.2, 4-6, 9-10,
.....12, 17, A-7

Jurisdictional Statement

This Court has jurisdiction of this case pursuant to Art. V § 4 of the Missouri Constitution, by virtue of its authority to issue and determine original remedial writs directed to inferior courts.

This writ petition challenges Respondent's judgment and order condemning Relators' property. A-1; App. 37¹. An appeal is an inadequate remedy because the taking will be complete and the property irrevocably altered months or years before Respondent enters a final judgment. This Court has squarely held that prohibition is appropriate to review an order of condemnation when, as here, the relator argues that "the condemnation proceedings are unauthorized by law." Tierney v. Planned Indus. Exp. Auth., 742 S.W.2d 146, 149 (Mo. banc 1987). Accord, State ex rel. Broadway-Washington Associates, Ltd. v. Manners, 186 S.W.3d 272, 274 (Mo. banc 2006).

¹ "A" refers to Relator's Appendix to this Brief and "App," refers to the Appendix of Exhibits filed with the Petition for Writ of Prohibition.

Statement of Facts

The facts of this case are both simple and uncontested. The Port Authority wants to acquire a 30.65 acre parcel of land in Scott County owned by Relators in their capacity as trustees of the Lambert Family Trust. App. 19. The statutory purpose of the Port Authority is “to promote economic development and encourage employment.” App. 22. The Port Authority’s executive director, Daniel Overby, testified that “the public purpose” of this acquisition was “economic development.” App. 24.

To that end, the Port Authority proposes to lease a portion of the condemned property to an unnamed corporation. The corporation will then build a tank farm and related facilities for the purpose of holding liquid products for transshipment from rail to barge, truck to barge or barge to rail. App. 25. The corporation will own the improvements. App. 29. Mr. Overby characterized the arrangement as the Port Authority acting like a developer and then leasing the site to a private company. Id.

Mr. Overby explained that the Port Authority hopes that the new tank farm will attract other tenants with similar kinds of operations. It also hopes that these tenants collectively will fund an expansion of the existing railroad track, enabling the railroads to use it more efficiently. App. 22-23.

Relators filed a motion to dismiss the condemnation proceeding and a memorandum in support thereof. App. 13. These papers argued, inter alia, that the sole purpose for the taking was economic development and that § 523.271,

R.S. Mo. prohibited the use of eminent domain for such purposes. The papers also argued that the primary purpose of the taking was to benefit the unnamed corporation, which violates Art. I, § 28 of the Constitution.

After an evidentiary hearing, Respondent denied the motion to dismiss and issued an order of condemnation. Respondent rejected the constitutional argument on the theory that this Court had ruled that port authorities generally serve public purposes and any benefit to a private company was incidental. A-3; App. 39. Respondent's opinion does not acknowledge that the case he cited:

- A. Involved a facial challenge to the Port Authority Law and specifically reserved a ruling on whether any particular acquisition of property via eminent domain would violate Art. I, § 28.
- B. Dealt with constitutional provisions other than Art. I, § 28, involving a far more deferential standard of review.

Respondent rejected the statutory argument on the theory that the taking was not solely for the purpose of economic development. Instead, he concluded that the taking would promote private investment, improve river commerce, and improve transportation facilities. A-4; App. 40. Respondent did not explain why these objectives are anything different than elements of economic development. The purpose of the taking was to encourage economic development, as Mr. Overby testified. App. 22.

Points Relied On

- I. Relators Are Entitled To An Order Prohibiting Respondent From Entering His Order Of Condemnation, Because The Port Authority Had No Power To Condemn Relators' Property Under § 523.271, R.S.Mo., In That The Proposed Use Of The Property Was Solely For Economic Development.

Centene Plaza Redev. Corp. v. Mint Properties, 225 S.W.3d 431
(Mo. banc 2007)

In re Condemnation by the Redevelopment Authority of Lawrence County, 962 A.2d 1257 (Pa. Cmwlth 2008)

Baycol, Inc. v. Downtown Development Authority, 315 So.2d 451 (Fla. 1975)

§ 523.271, R.S.Mo.

- II. Relators Are Entitled To An Order Prohibiting Respondent From Entering His Order Of Condemnation, Because The Port Authority Had No Power To Condemn Relators' Property Under Art. I, § 28 Of The Constitution, In That The Proposed Use Is Private, Not Public.

City of Smithville v. St. Luke's Northland Hosp., 972 S.W.2d 416
(Mo. App. 1998)

State ex rel. Gove v. Tate, 442 S.W.2d 541 (Mo. banc 1969)

State ex rel. Wagner v. St. Louis County Port Auth., 604 S.W.2d 592
(Mo. banc 1980)

Mo. Const. Art. I § 28

Argument

I. Relators Are Entitled To An Order Prohibiting Respondent From Entering His Order Of Condemnation, Because The Port Authority Had No Power To Condemn Relators' Property Under § 523.271, R.S.Mo., In That The Proposed Use Of The Property Was Solely For Economic Development.

In Kelo v. City of New London, 843A.2d 500 (Ct. 2004), the Supreme Court of Connecticut held that “economic development can be, in and of itself, a constitutionally valid public use” for purposes of takings. 843 A.2d at 532. The Supreme Court of the United States affirmed. Kelo v. City of New London, 545 U.S. 469, 484 (2005) (“Promoting economic development is a traditional and long-accepted function of government,” indistinguishable from “other public purposes” for which taking is allowed).

The response of the public and the state legislatures to this unprecedented expansion of the takings power was both prompt and negative. In Missouri, the legislature enacted § 523.271, prohibiting takings “solely for economic development” except in the context of blighting.² A-7. The uncontested evidence before Respondent establishes that the sole purpose of the instant condemnation is the promotion of economic growth.

² Respondent’s order expressly found that blight “is not an issue in the case.’

A-3; App. 39.

Standard of Review

The standard of review in a court-tried case is the familiar Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976). The Court will affirm the judgment “unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.” Id. at 32.

Here, Respondent’s factual findings about the purpose of this taking reflect the uncontested evidence in the record. The only issue is whether Respondent correctly applied the statute to those facts. “Whether a statute applies to a given set of facts is also a question of law,” which this Court reviews de novo. McKinney v. State Farm Mut. Auto. Ins. Co., 123 S.W.3d 242, 245 (Mo. App. 2003).

Argument

Section 523.271, provides that “[n]o condemning authority shall acquire private property through the process of eminent domain for solely economic development purposes.” A-7. The statute defines “economic development purposes” to mean “use of a specific piece of property or properties which would provide an increase in the tax base, tax revenues, employment, and general economic health.” Id.

The Port Authority is a creature of statute. Section 68.020, R.S. Mo., provides that its purpose is:

to promote the general welfare, to promote development within the port district, to encourage private capital investment by fostering the creation of industrial facilities and industrial parks within the port district and to endeavor to increase the volume of commerce, and to promote the establishment of a foreign trade zone within the port districts.

As Mr. Overby testified, the Port Authority's charter is "to promote economic development and encourage employment through river-related commerce." App. 22.

The pleadings and the testimony confirm that the sole purpose of this taking is economic development. The petition describes the Port Authority's intended use of the property as "construction of storage facilities for general cargo, liquid bulk cargo, dry bulk cargo and project cargo, for present and prospective tenants." App. 2.

Similarly, Mr. Overby testified that "the public purpose" for which the Port Authority sought to acquire Relators' property was "economic development." App. 24:

Q: I think you just testified for Mr. Hux that the primary purpose of the port authority is to promote economic development for Scott and Cape Girardeau County; is that correct?

A: Yes.

Q: And you do that by attracting industry, attracting business that would like to use the port, rail, truck as part of your economic development arm?

A: Yes.

Q: And in connection with the port authority then the public purpose for which you are condemning the Lambert's property is for economic development, is it not?

A: Yes.

Q: So in connection with this particular condemnation it is for economic development purposes; is that correct? In connection with the lease you are doing. You are in lease negotiations with another company; is that correct?

A: Yes. It all pertains to river-related commerce, yes.

App. 24.

Based on this evidence, Respondent held that the purposes of the Port Authority “included promoting private investment in the Port Authority, improving river commerce and improving transportation facilities.” A-4; App. 40. Respondent further found that the purpose of the taking was to “facilitate construction of a loop track to handle unit trains to greatly expand and enhance the transportation facilities at the Port Authority, and improve river commerce.” Id. Respondent concluded that these purposes “place[] the Plaintiff’s actions beyond the solely limitation of the statute.” Id.

This conclusion is a wholesale elevation of form over substance. Promoting private investment, improving rail access and improving river commerce are elements of economic development. Such things are desirable precisely because they increase the tax base, tax revenues, employment and general economic conditions – the very definition of economic development.

Conversely, if Respondent’s conclusion is valid, § 523.271 is a complete nullity. Any authority with the power of eminent domain can avoid the statute by ascribing its taking to promoting investment or improving commerce. Such a result is, of course, inconsistent with the most fundamental principles of statutory construction. Schoemehl v. Treasurer, 217 S.W.3d 900, 902 (Mo. banc 2007) (“words in a statute are presumed to have meaning, and any interpretation rendering statutory language superfluous is not favored”).

No Missouri case has interpreted § 523. 271. In re Condemnation by the Redevelopment Authority of Lawrence County, 962 A.2d 1257 (Pa. Cmwlth 2008), overturned a taking under statutory provisions considerably more favorable to the condemnor than § 523.271. The relevant statute authorized condemnation of blighted property and it included “economically or socially undesirable land uses” within the definition of blight. 962 A.2d at 1261.

The Hamilton property included an office, a manufacturing facility and a residential rental unit. The Whittaker property was an 84-acre tract on which the Whittakers had built a home. The condemnor proposed to take these tracts and combine them with others it already owned to enable construction of a

manufacturing facility. The condemnor conceded that the “driving force” behind the condemnation was “economic development activities” – i.e., “the ability to take advantage of opportunities for industrial development that would provide jobs.” 962 A.2d at 1264-65.

The Pennsylvania appellate court squarely held that “economically undesirable land uses” does “not mean property that is merely put to a use other than the most economically profitable.” 962 A.2d at 1263. And the “desire to put the properties to industrial use does not render their present use undesirable.” Id. at 1265.

In a case arising before the enactment of § 523.271, this Court endorsed the Pennsylvania Court’s analysis. In Centene Plaza Redev. Corp. v. Mint Properties, 225 S.W.3d 431 (Mo. banc 2007), the condemnor sought to justify the taking based on the “increase in jobs” and the “pedestrian-friendly atmosphere” that the redevelopment would allegedly promote. 225 S.W.3d at 434. Just as the Pennsylvania Court, this Court held that such “evidence focuses only upon the prospective benefits of the redevelopment – not the current state of the properties themselves.” Id.

The clear implication of Centene is that a higher and better use of the property after redevelopment – i.e., economic growth – does not even support a finding of blight. If such evidence does not support a finding of blight, it surely cannot justify a non-blight taking when the legislature has specifically provided that economic growth, standing alone, does not warrant such action.

This is not a case in which the Port Authority proposes to condemn property to build a railroad or other public infrastructure, hoping thereby to induce economic growth. It is a case in which the Port Authority predicts that economic growth will cause some third party to build the railroad. App. 22-23. That hope does not convert this private fuel tank farm into a public railroad infrastructure project.

The Supreme Court of Florida addressed a similar issue in Baycol, Inc. v. Downtown Development Authority, 315 So.2d 451 (Fla. 1975). The city of Fort Lauderdale proposed to erect a shopping mall covering several square blocks of the downtown area. It then condemned Baycol's property to erect a parking garage to support the mall. In finding the taking unauthorized, the Court held:

[W]ithout the private development there would be no need for the parking cited as the sole basis for condemnation. This is a very dangerous precedent which would allow a total departure from the basic requirement that there must first be a showing of a public necessity or public use, in order for eminent domain to be utilized against private ownership

315 So.2d at 458. The Port Authority's efforts to bootstrap a "public use" in the instant case are no different than in Baycol.

Finally, Respondent's order completely ignores Mr. Overby's repeated admissions that the Port Authority's general purpose was economic development and that the specific "public purpose for which you are condemning the Lambert's property is for economic development." App. 24. "The purpose for which private

property is condemned is the very basis of the right to condemn.” State ex rel. City of Creve Coeur v. Weinstein, 329 S.W.2d 399, 405 (Mo. App. 1959). Respondent was “not free to disregard unequivocal and uncontradicted evidence,” such as Mr. Overby’s admissions, that bear directly on the case. Middlemas v. Director of Revenue, 159 S.W.3d 515, 517 (Mo. App. 2005).

If § 523.271 has any meaning at all, it must ban takings based solely on attracting private investment, inducing rail improvements and improving river commerce. Those objectives are the essence of economic development and the statute prohibits a taking solely for that purpose.

II. Relators Are Entitled To An Order Prohibiting Respondent From Entering His Order Of Condemnation, Because The Port Authority Had No Power To Condemn Relators’ Property Under Art. I, § 28 Of The Constitution, In That The Proposed Use Is Private, Not Public.

Art. I § 28 of the Constitution provides that “private property shall not be taken for private use with or without compensation,” subject to certain exceptions inapplicable to the instant case. A-6. Here, the only direct beneficiary of the proposed taking is the unknown corporation. The indirect consequence of hoped-for economic development, outside the context of blight, is insufficient.

Standard of Review

Art. I § 28 provides that, when “an attempt is made to take private property for a use alleged to be public,” the court shall determine “whether the

contemplated use be public” without regard to any legislative determination. Id. Thus, the determination of whether a proposed use is a “public use is a legal rather than a factual question.” City of Kansas City v. Hon, 972 S.W.2d 407, 412 (Mo. App. 1998). Missouri appellate courts review questions of law de novo. City of Springfield v. Sprint Spectrum, L.P., 203 S.W.3d 177, 182 (Mo. banc 2006).

Argument

In the context of takings, whether a particular use is public or private “is a public policy inquiry” that is “highly dependent on the specific facts and circumstances” of each case. City of Smithville v. St. Luke’s Northland Hosp., 972 S.W.2d 416, 420 (Mo. App. 1998). While Missouri courts liberally apply the “flexible and imprecise” test of public vs. private uses, there are “some basic principles” that govern the outcome. Id.:

- “Public use means public benefit.” Id.
- While it is unnecessary that any large fraction of the public actually obtain that benefit, a “considerable number” must benefit. Arata v. Monsanto Chem. Co., 351 S.W.2d 717, 721 (Mo. 1961).
- When an allegedly public use also provides private benefit, Missouri has adopted the “primary purpose” test. J.C. Nichols Co. v. City of Kansas City, 639 S.W.2d 886, 892 (Mo. App. 1982). If the primary objective is public, incidental private benefit does not matter. But if the primary object is “to promote some private end, the expenditure

is illegal, even though it may incidentally serve some public purpose.” Id. at 892-93.

In the context of expenditures of public funds, the law is clear that the benefit to the public “must be direct and immediate from the purpose, and not collateral, remote or consequential.” State ex rel. Wagner v. St. Louis County Port Auth., 604 S.W.2d 592, 597 (Mo. banc 1980). In contrast to the de novo review afforded public purpose analysis in takings cases, the standard in public expenditure cases is “arbitrary and unreasonable.” Id. at 596. In the takings context, therefore, remote and consequential public benefits cannot possibly satisfy Art. I, § 28.

Here, it is quite clear that the primary purpose of the taking is to benefit the unnamed corporation with whom the Port Authority has been negotiating. The purpose of the taking is to construct a tank farm to hold liquid products that can be transshipped from truck to barge, rail to barge or barge to rail. App. 23. The proposed tenant will build the tank farm and related infrastructure and will own and operate those facilities after construction. App. 25; 29. All of those uses are for the purely private benefit of the corporation.

Apart from the possibility of economic development, there is no evidence in the record that suggests any public benefit to be derived from this taking. There is no evidence that any substantial number of the public will benefit. There is no evidence that any member of the public will have a right of access to the condemned property and any such notion is completely inconsistent with the

corporation's right of ownership. Thus, there is no evidence of any primary purpose to benefit the public.

The Court's opinion in Gove is in point. The City condemned an easement across Gove's property in order to install a sewer line. The sewer line could serve a four-family unit owned by one James Wolfe and, possibly, another house that Wolfe was building on adjacent property. Granting a permanent writ of prohibition, the Court held:

The only persons who can use the sewer line are Wolfe and his tenants or permittees. Few, if any, of the community at large would be benefited.

The dominant purpose for which the condemnation is sought is to acquire an easement for a private sewer line to the Wolfe property.

State ex rel. Gove v. Tate, 442 S.W.2d 541, 543 (Mo. banc 1969).

In Ladue Group, L.C. v. Level 3 Communications, L.L.C., 111 S.W.3d 492 (Mo. App. 2003), Level 3 installed conduit on Ladue Group's property for the purpose of laying fiber optic cable. Level 3 did not lay any cable through the conduit so removing it would not interfere with any public service. The court of appeals affirmed a dismissal of Level 3's counterclaim for condemnation:

Here, the conduit installed on plaintiff's property was not necessary to serve the public interest. . . .

There was insufficient evidence that it was necessary for Level 3 to acquire an easement because the underground conduit was not devoted to or needed for a public purpose.

111 S.W.3d at 494.

Respondent's sole discussion of the constitutional issue is that State ex rel. Wagner v. St. Louis County Port Auth., 604 S.W.2d 592 (Mo. banc 1980), held that port authorities serve a valid public purpose and any aid to private corporations is merely incidental. A-3; App. 39. For a variety of reasons, Wagner is completely irrelevant to the instant case.

First, Wagner was a facial challenge to the validity of the Port Authority Law, not a challenge to the application of that Law to the specific actions of an entity created by it. Indeed, Wagner specifically held that a challenge to a "*particular* exercise of the power of eminent domain" under Art. I § 28 "would be beyond the scope of this proceeding." 604 S.W.2d at 601 (emphasis original).

Second, Wagner's explanation that incidental private benefit would not necessarily disqualify a project occurred in its discussion of a challenge under Art. VI §§ 23 and 25, dealing with extension of public funds or public credit for private purposes. 604 S.W.2d at 596-97. As previously explained, the standard of judicial review of such challenges is "arbitrary and unreasonable," id. at 596, as opposed to the de novo standard for takings.

Third, Respondent's reading of Wagner would make any condemnation by any port authority automatically valid. As previously explained, however, the proper test under Art. I, § 28 is "highly dependent on the specific facts and circumstances" of each case. Smithville, 972 at 420.

Finally, the only public purposes found in Wagner were “improving employment and stimulating the economy.” 604 S.W.2d at 597. Those are precisely the purposes that § 523.271 provides are **not** sufficient to justify condemnation of private property.

The kind of economic development which Respondent defends is not the typical development of a blighted tract of land – the assembly of several decaying parcels into a single tract on which to erect a manufacturing facility. Rather, the Port Authority hopes that the private corporation’s proposed tank farm will attract other businesses to the area that, in turn, will finance a loop train. App. 23.

That kind of “if you build it, they will come” approach may be a fit subject for a fantasy film about baseball. But it hardly meets the requirement that the public benefit be “direct and immediate.” Instead, that alleged public benefit is indirect, remote and consequential, and Art. I § 28 does not permit it.

In his suggestion in opposition to Relators’ writ petition, Respondent also argued that the lease payments the Port Authority would receive from its ground lease satisfy the public benefit requirement. By that logic, no parcel of land in the State is safe from condemnation. St. Louis County could condemn the largest estate in Ladue in order to enjoy the “public benefit” of leasing it to a tycoon.

The primary purpose of this taking is to benefit an unnamed corporation, not the public. For this reason alone, Relators are entitled to a writ of prohibition.

Conclusion

For these reasons, Relators respectfully pray that the Court grant its preliminary writ of prohibition and, after briefing and argument, its permanent writ prohibiting Respondent from taking any action in the case other than to dismiss it.

Respectfully Submitted,

HUSCH BLACKWELL LLP

By: /s/ Mark G. Arnold

Mark G. Arnold, MO #28369
Caroline L. Hermeling, MO #33998
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Telephone: (314) 480-1500
Facsimile: (314) 480-1505
mark.arnold@huschblackwell.com
carrie.hermeling@huschblackwell.com

and

Charles Leible, MO #27287
371 N. Kingshighway
P.O. Box 905
Sikeston, MO 63801
Telephone: (573) 471-7007
Facsimile: (573) 471-7033
asia99@swbell.net

Attorneys for Relators Velma P. Jackson
and Alicia D. Seabaugh

Certificate of Compliance

I hereby certify pursuant to Rule 84.06(c) that this brief (1) contains the information required by Rule 55.03; (2) complies with the limitations of Rule 84.06(b); and (3) contains 3,837 words exclusive of the sections exempted by Rule 84.06(b) based on the word count that is part of Microsoft Word 2010. The undersigned counsel further certifies that the electronic version of this brief has been scanned and is free of viruses.

/s/Mark G. Arnold

Mark G. Arnold

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2012, I electronically filed the foregoing with the Clerk of the Court for the Supreme Court of Missouri by using the Missouri eFiling System. Participants in the case who are registered users will be served by the Missouri eFiling System.

I hereby certify that some of the participants in the case are not Missouri eFiling System users. I hereby certify that on the 14th day of December, 2012, I have mailed the foregoing document by first class mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following:

The Honorable David A. Dolan
Judge of the Scott County Circuit Court
Scott County Courthouse
P.O. Box 256
131 S. Winchester Street
Benton, MO 63736

Respondent

James M. Hux
Hux & Hux
303 South Kingshighway
P.O. Box 8
Sikeston, MO 63801
E-mail: huxlawfirm@sbcglobal.net

Attorneys for Southeast Missouri Regional Port Authority

/s/ Mark G. Arnold
Mark G. Arnold