

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT**

HOWARD WRIGHT, et al.)	
)	
Plaintiffs,)	
)	
v.)	No. 07AC-CC00068
)	
STATE OF MISSOURI, MISSOURI)	
DEPARTMENT OF LABOR AND)	
INDUSTRIAL RELATIONS, et al.)	
)	
Defendants.)	

AMENDED JUDGMENT

Now on this 20th day of February, 2008, the Court again takes up this matter for the purpose of entering an amended judgment. In this lawsuit, Plaintiffs¹ seek a declaration that the new minimum wage and overtime requirements enacted by passage of Proposition B do not apply to local government employers. Alternatively, if it is determined that the new minimum wage and overtime requirements of Proposition B apply to local governments, plaintiffs seek declarations that such application violates Mo. Const. art. III, § 51, art. X, §§ 16 and 21, and art. VI, §§ 18(e) and 22. Plaintiffs also seek injunctive relief against the application of Proposition B. The parties agree that there are no genuine issues of material fact and have submitted this case to the Court on cross motions for summary judgment.

¹ Plaintiffs are eight local government bodies (the Cities of Springfield, Olivette, Hazelwood, Chesterfield, and Brentwood, St. Louis County, and the Maryland Heights and Monarch Fire Protection Districts), eight taxpayer citizens of these local government bodies, the Missouri Municipal League, and the Missouri Association of Fire Protection Districts.

This Court concludes that the new minimum wage law does not apply to local governments. Because of this holding, the constitutional issues raised by plaintiffs are moot and are not addressed.

Before the passage of Proposition B, Missouri's minimum wage law did not apply to local governments. Proposition B was placed on the ballot by initiative petition and passed by the voters in the fall of 2006. Interestingly, the ballot title summary for Proposition B which was approved by the Attorney General made no mention of minimum wage coverage being extended to local governments; similarly, the fiscal note and fiscal note summary prepared by the Auditor included no suggestion that the minimum wage coverage was being extended to local governments.

By its plain terms, Proposition B applies to all employers, and simply defines an employer as "any person acting as an employer." The more crucial definition then is that of "person", which is defined by section 290.500(8) as follows:

Any individual, partnership, association, corporation, business, business trust, legal representative, or any organized group of persons.

Accordingly, local governments must meet the definition of "person" to be covered by the new law.

The "person" category most seemingly adaptable to local governments would be that of "corporation," but in construing and applying that statutory term, Missouri courts have long recognized a clear distinction between public and private corporations. In *City of Webster Groves v. Smith*, 102 S.W.2d 618 (Mo. 1937), the Missouri Supreme Court considered whether the city was liable to the state treasurer for a license tax on the sale of

water. The germane statute provided that any “person” so engaged was subject to the tax, with “person” being defined, among other things, as “any...corporation.” After a lengthy analysis the Court rejected the statute’s application to a city, holding that a municipality was not included in the ordinary meaning of the term “corporation.” The Court stated:

In view of the foregoing considerations, the meaning commonly ascribed to the word “corporation” both in popular usage and legal nomenclature and absence of language indicating a legislative intent to use it in a different sense we must assume it was used in its ordinary and commonly understood meaning and the assumption legitimately follows that had the legislature intended to include a municipality in the act it would have done so by specific language to that effect.

Webster Groves v. Smith, at 619-620.

Missouri courts have been remarkably consistent on this point, always finding that the statutory term “corporation” does not encompass municipal corporations.² The latest pronouncement on the subject is again by the Missouri Supreme Court: “Unless otherwise specified, where the term ‘corporation’ is used in our statutes and Constitution, it uniformly refers to private or business organizations, not to public corporations.” *State ex rel. Ormerod v. Hamilton*, 130 S.W.3d 571, at 572 (Mo banc 2004).

The Defendants concede that local governments are not included by the term “corporation”; instead, they point out that the Proposition B definition of “person” also includes the term “organized group of persons” and argue that municipal corporations fall

² See *State ex rel. State Highway Commission of Missouri v. Bates*, 296 S.W. 418 (Mo. banc 1927); *In re East Park Dist. Of Kansas City v. Dougherty*, 237 S.W.2d 118 (Mo. banc 1951); *Hunt v. St. Louis Housing Authority*, 573 S.W.2d 728 (Mo. App 1978); *Sprenger v. City of Springfield*, 629 S.W.2d 493 (mo. App 1981); *Kraassney v. Curators of University of Missouri*, 765 S.W.2d 646 (Mo. App 1989).

within the meaning of this term.³ This argument, however, ignores the spirit of *Omerod* and its predecessors. Those cases clearly hold that the term “corporation” is not descriptive enough to include municipal corporations; yet Defendants would have the Court interpret “organized group of persons” – a phrase much more amorphous than “corporation” - as encompassing municipal corporations even though the phrase “corporation” does not. If Missouri courts insist on more statutory specificity than “corporation” to encompass municipal corporations, certainly the phrase “organized group of individuals” will not and does not satisfy that specificity requirement. By its plain language then, Missouri’s Minimum Wage Law as embodied in Proposition B does not apply to the Plaintiffs that are local government bodies.⁴ Accordingly, Judgment is entered on behalf of Plaintiffs against Defendants on Counts I and IV. Defendants and their respective officers, agents, and employees are restrained and enjoined from implementing and enforcing the provisions of Proposition B against county and municipal governments. All remaining claims of Plaintiffs are dismissed without prejudice as being moot.

SO ORDERED THIS 20th DAY OF FEBRUARY, 2008.

Richard G. Callahan
Circuit Court Judge, Division II

³ The statute at issue in *Webster Groves*, supra, also defined “person” as including “any group or combination acting as a unit”; nevertheless, the Supreme Court found that language lacking so as to include municipal corporations.

⁴ This decision that the local government body Plaintiffs in this case are not “employers” under the Minimum Wage Law as amended by Proposition B does not mean and should not be construed to be a determination that these and other local government bodies are not “employers” under any other law or for any other purpose.