

**MISSOURI CIRCUIT COURT
 TWENTY-SECOND JUDICIAL CIRCUIT
 (City of St. Louis)**

FILED
 OCT 11 2023
 22ND JUDICIAL CIRCUIT
 CIRCUIT CLERK'S OFFICE
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CHARLES A. LANE, et al.,)	
)	
Plaintiffs,)	
)	Cause No. 2122-CC00751
vs.)	
)	Division No. 6
POLICE RETIREMENT SYSTEM OF)	
THE CITY OF ST. LOUIS, et al.,)	
)	
Defendants.)	

ORDER AND PARTIAL JUDGMENT

The Court has before it Cross-Claimant City of St. Louis’s Motion for Summary Judgment on its Cross-Claim against Defendant State of Missouri and Plaintiff James A. Crawford (“Plaintiff”)’s Motion for Partial Summary Judgment. The Court now rules as follows.

In Count I of Plaintiff’s¹ Amended Petition for Declaratory Judgment and Injunctive Relief, Plaintiff seeks an order and judgment declaring that certain statutory enactments or amendments made after 1981, that Plaintiff alleges require increased pension benefit payments to the Police Retirement System of the City of St. Louis (“PRS”) retirees, to be unlawful, as well as null and void, and in violation of Missouri’s Hancock Amendment, Art. X, § 21 of the Missouri Constitution, and seeks to preliminarily and permanently enjoin the enforcement and payment of such benefits. In Count II, Plaintiff asks the Court to declare that §§ 86.364 and 86.810 RSMo are inapplicable to Plaintiff’s cause of action in Count I, or in the alternative, are invalid, unconstitutional and void. In Count III, Plaintiff asks the Court to declare that Plaintiff has the right to pursue his taxpayer derivative claims for the benefit of the City of St. Louis (“City”) and

¹ The Amended Petition filed on May 19, 2021 was brought by Charles A. Lane and James A. Crawford. On May 20, 2021 Charles A. Lane dismissed his claims in this lawsuit.

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its taxpayers. Lastly, in Count IV, Plaintiff seeks a money judgment against Defendant State of Missouri (“State”) based on proof of restitution damages, and in favor of Plaintiff derivatively on behalf of the City. Plaintiff moves for summary judgment on Count II of his Amended Petition.

In Count I of the City’s Cross-Claim Petition for Declaratory Judgment, the City seeks declaratory judgment that § 86.810 RSMo has no application to taxpayer claims brought pursuant to Article X, § 21 of the Missouri Constitution including the taxpayer claims asserted by Plaintiff in the present cause of action. In Count II, the City seeks declaratory judgment that § 86.364 RSMo has no application to police pension benefits where the City’s legislative body has not approved or authorized such benefits.

The Court notes that legal conclusions are not binding on the Court on a motion for summary judgment. Universal Underwriters Ins. Co. v. Dean Johnson Ford, 905 S.W.2d 529, 533 (Mo. App. W.D. 1995). “Legal conclusions are not admissible facts.” Scott v. Ranch Roy-L, Inc., 182 S.W.3d 627, 635 (Mo. App. E.D. 2005)(citing Cardinal Glennon Children's Hospital v. St. Louis Labor Health Institute, 891 S.W.2d 560, 561 (Mo. App. E.D. 1995)). In addition, on a motion for summary judgment, the non-movant is required to file a response either admitting or denying the movant's material facts. Green v. Fotoohigham, 606 S.W.3d 113, 117 (Mo. banc 2020).

Specifically:

The response shall set forth each statement of fact in its original paragraph number and immediately thereunder admit or deny each of movant's factual statements. A denial may not rest upon the mere allegations or denials of the party's pleading. Rather, the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial...A response that does not comply with this Rule 74.04(c)(2) with respect to any numbered paragraph in movant's statement is an admission of the truth of that numbered paragraph.

Id., quoting Rule 74.04(c)(2).

Accordingly, the following combined facts are not in dispute:

The City is a constitutional charter city. Plaintiff James Crawford is a resident of the City of St. Louis, State of Missouri, who has paid, and continues to pay, sales, and personal property taxes to the City of St. Louis. PRS is a defendant in the underlying claims in the above-captioned cause of action. The State does not provide any funding for PRS. Pursuant to §86.344 RSMo, the amounts certified annually by the board of trustees of Defendant PRS “shall be appropriated by the [C]ity and transferred to the retirement system in equal payments in the first six months of the ensuing year.” Plaintiff in this cause asserts, among other things, claims based upon Article X, §§ 16 through 24 of the Missouri Constitution (collectively referenced as the “Hancock Amendment”). The City does not assert Hancock Amendment claims in its Cross-Claim. The City has not approved or authorized payment of any of the PRS benefits or compensation provided for in enactments or amendments contained in §§ 86.253(4), 86.251, 86.253(1), (3), and/or 86.200 RSMo that Plaintiff alleges are additional post-Hancock Amendment benefits.

The City and Plaintiff both move for summary judgment. Summary judgment is appropriate where the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law. ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. banc 1993). A claimant seeking summary judgment must establish that there is no genuine dispute as to those material facts upon which the claimant has the burden of persuasion at trial. Id. at 381. The Court is to view the record in the light most favorable to the non-movant, and accord the non-movant the benefit of all reasonable inferences that may be drawn therefrom. Id. at 376 and 382. “The key to summary judgment is the undisputed right to judgment as a matter of law; not simply the absence of a fact question.” Id. at

380.

The City argues that based on the undisputed facts, the declaratory relief sought in Counts I and II of the City's Cross-Claim is appropriate and proper because (a) by its terms, § 86.810 RSMo applies only to Hancock claims asserted by the City and the claims in this case are asserted by an individual taxpayer (Count I), and the City did not approve or authorize the pension benefits that the taxpayer Plaintiff contests, making § 86.364 inapplicable by its terms to the case at bar (Count II). Similarly, Plaintiff moves for summary judgment on Count II of his Amended Petition.

I. Ripeness.

The City argues the State disputes the City's contentions regarding the subject statutes, therefore, there exists a ripe and justiciable controversy regarding the applicability of §§ 86.810 and 86.364 to the Hancock Amendment claims asserted by Plaintiff in this case. The City argues that there can be a ripe controversy before a statute is enforced. The City argues that Plaintiff has a pending Hancock Amendment claim with this Court which if successful, would potentially trigger § 86.810 and 84.364 RSMo to the detriment of City police officers. There is no requirement that the Court must wait until police pension benefits are terminated to determine the applicability of the statutes in this case. The City further argues it has a legally protectable interest at stake in protecting and preserving accrued pension benefits that were promised to its police officers. The termination of police pension benefits would threaten the City's ability to hire and retain police officers and to conduct the business and operations of its Police Division.

Likewise, Plaintiff contends the City and Plaintiff on one hand and the State on the other hand have sharply divergent views as to the applicability of the statutes. Plaintiff argues therefore this matter is appropriately resolved via a declaratory judgment action. Plaintiff contends the

State's ripeness argument conveniently ignores black letter law that a controversy can be ripe before a statute is enforced. Plaintiff argues that if the Court rules that neither of the statutes applies, it will avoid a constitutional dilemma presented by the statutes.

The State contends the City and Plaintiff's requests for declaration concerning § 86.364 are speculative, not ripe, and depend upon the hypothetical content of an imagined Missouri Supreme Court opinion resulting from an appeal of a non-existent judgment. The State argues what the Missouri Supreme Court might write in an opinion in a future appeal from a judgment finally resolving Plaintiff's claims is speculative.

The State further argues that the City and Plaintiff's requests for declaratory judgment as to § 86.810 RSMo are not ripe, and are merely requests for an advisory opinion that this Court lacks authority to issue. Whether the City or PRS might seek in the future a declaratory judgment concerning the application of Article X, § 21 of the Missouri Constitution to the provisions of Chapter 86, § 86.810, and what a court might determine in a hypothetical judgment if such a claim were filed is speculative.

The declaratory judgment act vests trial courts with the power "to declare rights, status, and other legal relations whether or not further relief is or could be claimed." § 527.010 RSMo. The trial court is afforded wide discretion in administering the provisions of the declaratory judgment act. City of St. Louis v. Crowe, 376 S.W.2d 185, 189 (Mo. banc 1964). In Regal-Tinneys Grove Special Rd. Dist. of Ray County v. Fields, 552 S.W.2d 719, 722 (Mo. banc 1977), the Missouri Supreme Court held:

A declaratory judgment action provides an appropriate method of determining controversies concerning the construction of statutes and powers and duties of governmental agencies thereunder, provided the court is presented with a justiciable controversy, ripe for determination, brought by someone with standing

by reason of having a legally protectable interest at stake, in a case wherein a judgment conclusive in character which settles the issues involved may be entered.

“A justiciable controversy exists where 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.” Barron v. Shelter Mut. Ins. Co., 220 S.W.3d 746, 748 (Mo. banc 2007). “A controversy is ripe when the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a presently existing conflict, and to grant specific relief of a conclusive nature.” Foster v. State, 352 S.W.3d 357, 360 (Mo. banc 2011) (internal citation omitted); Graves v. Mo. Dep't of Corr., Div. of Prob. & Parole, 630 S.W.3d 769, 773 (Mo. banc 2021). The Court employs a two-fold test in ascertaining whether a controversy is ripe for judicial determination: (1) whether the issues presented are fit for judicial resolution, and (2) whether denying relief would create hardship for either party. Mo. Soybean Ass'n v. Mo. Clean Water Comm'n, 102 S.W.3d 10, 27 (Mo. banc 2003).

“[A] pre-enforcement challenge to a law is sufficiently ripe to raise a justiciable controversy when: "(1) the facts necessary to adjudicate the underlying claims [are] fully developed and (2) the laws at issue [are] affecting the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute." Tupper v. City of St. Louis, 468 S.W.3d 360, 370 (Mo. 2015)(internal quotation omitted). "Cases presenting predominantly legal questions are particularly amenable to a conclusive determination in a pre-enforcement context, and generally require less factual development." Id.

The Court finds that the City's claims in Counts I and II, and Plaintiff's claim in Count II of his Amended Petition are ripe. The City and Plaintiff's claims regarding the construction and application of §§ 86.364 and 86.810 RSMo predominately present legal questions. The facts

necessary to adjudicate the underlying claims are fully developed. The statutes affect the City in a manner that gives rise to an immediate, concrete, dispute in light of Plaintiff's present claims brought under the Hancock Amendment. If the statutes were found to apply in this case, City police pension benefits could be negatively impacted. In addition, there is an immediate, concrete dispute between the City and Plaintiff on one hand and the State on the other hand in that the State argues these statutes could potentially apply to the present case. The City and Plaintiff contend that the statutes do not apply to the pension benefits of police officers. With regard to § 86.364 RSMo, the State argues the statute could apply in this case, but it depends on the Missouri Supreme Court's opinion. With regard to § 86.810, the State contends the statute does not apply currently, but could apply later. Therefore, the Court finds that the City and Plaintiff's pre-enforcement challenge to the law is sufficiently ripe to raise a justiciable controversy. Tupper v. City of St. Louis, 468 S.W.3d 360, 370 (Mo. banc 2015).

The State argues that the City and Plaintiff's claims regarding § 86.364 RSMo are not ripe because they depend upon hypothetical content of an imagined Missouri Supreme Court opinion resulting from an appeal of a non-existent judgment. This argument conflicts with one of the primary functions of a declaratory judgment, to resolve conflicts before a loss occurs. Foster, 352 S.W.3d at 360. The statutory granting of certain benefits and compensation to beneficiaries will terminate upon such a Missouri Supreme Court decision mentioned in the statute. Therefore, the parties need not wait until such an opinion is issued, and such benefits are terminated to resolve the conflict.

This case is distinguishable from Graves v. Mo. Dep't of Corr., Div. of Prob. & Parole, 630 S.W.3d 769, 774 (Mo. banc 2021), cited to by the State. In Graves, the Missouri Supreme Court

found that the plaintiff's case lacked ripeness, but noted his petition did not seek a pre-enforcement declaration regarding the construction or validity of a statute. Graves, 630 S.W.3d at 774. Here, the City and Plaintiff seek a pre-enforcement declaration to the construction and application of two statutes.

In sum, the Court finds that Counts I and II of the City's Cross-Claim and Count II Plaintiff's Amended Petition are ripe for judicial determination.

II. Whether §§ 86.364 and 86.810 RSMo apply to this case.

A. § 86.810 RSMo.

The City and Plaintiff argue the provision and penalties contained in § 86.810 RSMo are not applicable to the Hancock Amendment claims asserted by Plaintiff as an individual taxpayer. The City and Plaintiff maintain that the statutes have no application to the pension benefits of any police officers, including officers not yet vested, in the context of Hancock Amendment claims filed by individual taxpayers.

The State contends that the City and Plaintiff's assumption that the operation of § 86.810 would terminate or void already-earned benefits of retired or vested police officers is incorrect. The State contends that any termination of additional benefits that might be found to violate the Hancock Amendment would not apply to vested or retired Retirement System members because of § 86.354 RSMo. The State further contends the City and Plaintiff's arguments on § 86.810 RSMo appear to be reasonable but only if the pleadings are not amended in this case, and if the City and PRS do not file any additional pleadings seeking a declaratory judgment regarding the application of the Hancock Amendment to a provision of Chapter 86.

Mo. Const. art. X, § 21 is violated if both: (1) the state requires a new or increased activity

or service of political subdivisions; and (2) the political subdivisions experience increased costs in performing that activity or service. Breitenfeld v. Sch. Dist. of Clayton, 399 S.W.3d 816, 819 (Mo. banc 2013). “The first prong of this test for an ‘unfunded mandate’ in contravention of the Hancock Amendment is established when the state requires local entities to begin a new mandated activity or to increase the level of an existing activity beyond the level required on November 4, 1980.” Id. “A new mandated activity or service in violation of the Hancock Amendment is not established when a statute imposes a requirement on governmental entities that requires continuance of an existing activity or service.” Id.

Plaintiff alleges after 1981, several Missouri statutes were enacted or amended requiring increased pension benefit payments to PRS retirees. Plaintiff alleges these enactment or amendments include:

- a statutory provision requiring a refund of member contributions, § 86.253(4) RSMo;
- the institution of the DROP program, §§ 86.320(4) and 86.251 RSMo;
- an increase in the maximum cost of living allowance to 30%, § 86.253(3) RSMo;
- an increase in the maximum service retirement allowance to 75%, § 86.253(1) RSMo; and
- a reduction in the formula/calculation of the final average annual compensation to 2 years, § 86.200(3) RSMo.

§ 86.810 RSMo states:

The provisions of any other law notwithstanding, the board of trustees of any retirement system, the provisions of which are governed by this chapter, or any political subdivision which funds such retirement system, shall have standing to seek a declaratory judgment concerning the application of article X, section 21 of the Missouri Constitution to the provisions of this chapter. In the event a final judgment is rendered by a court which judgment determines that any provision of this chapter constitutes a new activity or service or increase in the level of an activity or service beyond that required by existing law under article X, section 21 of the Missouri Constitution, or any successor to that section, that provision of this

chapter shall be void ab initio and any new benefit or feature required by such provision of this chapter shall be deemed not to have accrued and shall not be payable to members.

Defendant PRS was created and operates pursuant to §§ 86.200 RSMo., et seq. See also Trantina v. Bd. of Trs., 503 S.W.2d 148, 151 (Mo. App. E.D. 1973). The City is required to make an annual contribution to PRS of actuarially-determined amounts certified by the PRS board of trustees. § 86.344 RSMo.; see also Neske v. City of St. Louis, 218 S.W.3d 417, 426 (Mo. banc 2007).² Accordingly, § 86.810 provides the board of trustees of PRS or the City standing to seek a declaratory judgment concerning the application of Article X, § 21 of the Missouri Constitution to the provisions of Chapter 86. In addition, the statute provides that if a final judgment is rendered by a court that determines that any provision of Chapter 86 constitutes a new activity or service or increase in the level of an activity or service beyond that required by existing law under Article X, § 21 of the Missouri Constitution, then that provision of Chapter 86 is void ab initio. It is undisputed that the City does not assert claims regarding the application of Article X, § 21 of the Missouri Constitution to the provisions of Chapter 86 in this case, nor does PRS.

The State agrees that currently § 86.810 does not apply in this case, but could apply later. However, the Court analyses the City and Plaintiff's Motions for Summary Judgment based on the current state of the pleadings and what is presently alleged, not what could be alleged. Based on the present pleadings, the Court finds that § 86.810 RSMo does not apply to the present matter.

B. § 86.364 RSMo.

The City and Plaintiff argue the provision and penalties contained in § 86.364 RSMo are

² Neske was overruled "insofar as it suggested that a public entity had standing to raise a Hancock Amendment challenge as a defense to compliance with a statute." Breitenfeld v. Sch. Dist. of Clayton, 399 S.W.3d 816, 826 n.20 (Mo. banc 2013).

inapplicable to Plaintiff's Hancock Amendment claims because the City did not approve or authorize any of the police pension benefit increases referenced in the Plaintiff's underlying claims.

The State argues that the City and Plaintiff misread § 86.364 RSMo. The State contends the language of the statute means that even if, after the Missouri Supreme Court issued an opinion that would result in the State being required to pay the additional benefits or compensation, the City were to formally authorize or approve those benefits, the City's actions in that regard would be immaterial and ineffective to restore the terminated benefits.

§ 86.364 RSMo states:

All provisions of this chapter which authorize the granting of additional benefits or compensation to beneficiaries shall terminate upon the issuance of an opinion by the Missouri supreme court which would result in the state of Missouri being obligated or required to pay any such additional benefits or compensation even though such additional benefits or compensation is formally approved or authorized by the appropriate body of the city.

Pursuant to Article IV, § 1 of the City's Charter, the legislative power of the City of St. Louis is vested in the Board of Aldermen. In addition, Article IV, § 23 provides:

The board of aldermen shall have power by ordinance not inconsistent with this chapter [article] to exercise all the powers of the city and provide all means necessary or proper therefor; also to do all things needful within or without the city or state to protect the rights of the city.

Here, Plaintiff alleges certain statutory provisions in Chapter 86 are police pension benefit increases enacted after the effective date of the Hancock Amendment. As the City's legislative power lies with the Board of Aldermen and it is undisputed the Board of Aldermen have not passed legislation approving or authorizing payment of any of the PRS benefits or compensation at issue in Plaintiff's Amended Petition, § 86.364 RSMo does not apply to the present matter. It is


undisputed that the City has not approved or authorized payment of any of the PRS benefits or compensation provided for in enactments or amendments contained in §§ 86.253(4), 86.251, 86.253(1), (3), and/or 86.200 RSMo that Plaintiff alleges are additional post-Hancock Amendment benefits.

In sum, the Court finds that the City has demonstrated a right to judgment as a matter of law as to Counts I and II of its Cross-Claim, and Plaintiff has demonstrated a right to judgment as a matter of law as to Count II of his Amended Petition, on the basis of facts as to which there is no genuine dispute. The Court need not address the City or Plaintiff's constitutional arguments.

THEREFORE, it is Ordered and Decreed that Cross-Claimant City of St. Louis's Motion for Summary Judgment on its Cross-Claim against Defendant State of Missouri and Plaintiff James A. Crawford's Motion for Partial Summary Judgment are hereby GRANTED.

Cause set for status conference on November 7, 2023 at 9:00 a.m.

SO ORDERED:


MICHAEL F. STBLZER, Judge

Dated: 10/11/23