

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

FILED
OCT 14 2015

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

COOPERATIVE HOME CARE,)
INC., et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF ST. LOUIS,)
MISSOURI, et al.,)
)
Defendants.)

Case No.1522-CC10607

Division No. 13

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Plaintiffs seek a judgment declaring Ordinance 70078 of the Revised City Code of the City of St. Louis to be invalid. Ordinance 70078 raises the minimum wage for workers in the City of St. Louis on October 15, 2015. This Court's duty is to determine the validity of the ordinance without considering the social or economic effect of its enforcement. This Court's opinion of the benefits or detriments of raising the minimum wage has no bearing on its ruling.

This case was tried before the Court on October 6, 2015. The parties submitted proposed findings of fact and conclusions of law on October 8, 2015. Upon review of the record, the

relevant law, the argument made at trial, and the submissions of the parties, the Court now rules as follows.

Plaintiffs brought this action for declaratory judgment and injunctive relief seeking a declaration that Ordinance 70078 is void and enjoining Defendants from enforcing it. In Counts I and II of Plaintiffs' Verified Petition for Declaratory Judgment and Injunctive Relief, Plaintiffs contend that Ordinance 70078 is preempted by State law. In Counts III and IV, Plaintiffs contend that Defendant City of St. Louis lacks the authority to enact Ordinance 70078. In Count V, Plaintiffs contend that Ordinance 70078 is an unauthorized delegation of legislative powers. Plaintiffs voluntarily dismissed Counts VI and VII of the Petition.

All objections taken with the case are hereby overruled.

FINDINGS OF FACT

1. Plaintiff Cooperative Home Care, Inc., is a corporation organized and existing under the laws of Missouri with a principal place of business in the City of St. Louis.

2. Plaintiff Missouri Chamber of Commerce and Industry is a non-profit corporation organized and existing under the laws of Missouri. The issues at stake in this lawsuit are germane to its purpose and relevant to the operations of its members.

3. Plaintiff Missouri Restaurant Association, Inc., is a non-profit corporation organized and existing under the laws of Missouri. The issues at stake in this lawsuit are germane to its purpose and relevant to the operations of its members.

4. Plaintiff Missouri Retailers Association is a benevolent corporation organized and existing under the laws of Missouri. The issues at stake in this lawsuit are germane to its purpose and relevant to the operations of its members.

5. Plaintiff National Federation of Independent Business is a non-profit corporation organized and existing under the laws of California. The issues at stake in this lawsuit are germane to its purpose and relevant to the operations of its members.

6. Plaintiff Naufel, Inc., d/b/a Carrie Elligson Geitner Home is a corporation organized and existing under the laws of Missouri with a principal place of business in the City of St. Louis.

7. Plaintiff Associated Industries of Missouri is a non-profit corporation organized and existing under the laws of Missouri. The issues at stake in this lawsuit are germane to its purpose and relevant to the operations of its members.

8. Defendant City of St. Louis, Missouri is a constitutional charter city of Missouri.
9. Defendant Mayor Francis G. Slay is the duly elected Mayor of the City of St. Louis.
10. Defendant Winston Calvert is the City Counselor of the City of St. Louis.
11. Defendant Eddie Roth is the Director of the Department of Human Services of the City of St. Louis and a Member of the Board of Public Service of the City of St. Louis.
12. Defendant Mavis Thompson is the License Collector of the City of St. Louis.
13. Defendant Board of Public Service of the City of St. Louis is established by the Charter of the City of St. Louis with powers and duties set out in Article XIII, Section 5 of the Charter.
14. Defendant Richard T. Bradley is the President of the Board of Public Service.
15. Defendant Melba Moore is a Member of the Board of Public Service.
16. Defendant Greg Hayes is a Member of the Board of Public Service.

17. Defendant Richard Gray is a Member of the Board of Public Service.

18. Defendant Curtis Skouby is a Member of the Board of Public Service.

19. Defendant Stephen Rundle is a Member of the Board of Public Service.

20. The current minimum wage rate in Missouri is \$7.65 an hour and applies to certain employees and employers as defined in Section 290.500 RSMo.

21. On August 28, 2015, Mayor Slay signed Board Bill No. 83FSAA which became effective immediately as Ordinance 70078.

22. Ordinance 70078 states that its purpose is "for the preservation of public peace, health and safety." Its express terms identify the intent to address local concerns for the health, safety and welfare of the citizens of the City of St. Louis.

23. Ordinance 70078 establishes a minimum wage in the City of St. Louis and increases that rate to \$8.25 per hour on October 15, 2015, with additional increases on a yearly basis until January 1, 2019. On January 1, 2019, the ordinance provides for potential increases to the minimum wage based on the rate of inflation.

24. Ordinance 70078 requires employers to post in a conspicuous place at each facility where an employee works in the City of St. Louis a notice of the minimum wage and of the employee's rights under the ordinance.

25. Ordinance 70078 authorizes the City of St. Louis's Director of the Department of Human Services, with the direction and approval of the Ways and Means Committee of the Board of Aldermen, to promulgate rules and regulations regarding the ordinance.

26. Ordinance 70078 authorizes the City of St. Louis's Department of Human Services and City Counselor's Office to receive complaints that the ordinance was violated and to investigate such violations and take the steps necessary to enforce the ordinance.

27. The penalty for violating Ordinance 70078 includes a jail sentence of up to 90 days, and/or a fine of up to \$500 per violation.

28. Repeated or intentional violations of Ordinance 70078 can result in the revocation of an employer's licenses and permits issued by the City of St. Louis.

29. Plaintiffs Cooperative Home Care, Inc., and Naufel, Inc., d/b/a Carrie Elligson Geitner Home will be required to pay higher wages to some of their employees under Ordinance 70078.

30. Members of Plaintiffs Chamber of Commerce, Restaurant Association, Retailers Association, National Federation and Associated Industries will be required to pay higher wages to some of their employees under Ordinance 70078.

31. Plaintiffs have identified their potential harm from the enforcement of Ordinance 70078 as including the delay of planned projects, the need to renegotiate contracts and reduce hours worked by employees, and potential termination of employees and end to their business operations in the City of St. Louis.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter. Section 527.010 RSMo; City of Kan. City v. Chastain, 420 S.W.3d 550, 555 (Mo. banc 2014).

2. The 22nd Judicial Circuit is proper venue in this case. Section 508.060 RSMo.

3. Section 527.120 RSMo states that the purpose of a declaratory judgment action is to "afford relief from uncertainty and insecurity with respect to rights, status and

other legal relations." Damon v. City of Kansas City, 419 S.W.3d 162, 182 (Mo. App. W.D. 2013).

4. The declaratory judgment act may be used to challenge the validity of an ordinance. See Northgate Apartments, L.P. v. City of N. Kansas City, 45 S.W.3d 475, 481 (Mo. App. W.D. 2001).

5. "In order to maintain a declaratory judgment action, a party must meet four requirements." City of Sullivan v. Truckstop Rests., Inc., 142 S.W.3d 181, 193 (Mo. App. E.D. 2004) (citing Grewell v. State Farm Mutual Auto Insurance Co., Inc., 102 S.W.3d 33, 36 (Mo. banc 2003)). "First, the party must show that a justiciable controversy exists that presents a real, substantial, presently existing controversy as to which specific relief is sought." 142 S.W.3d at 193. "The party must also demonstrate a legally protected interest directly at issue and subject to immediate or prospective consequential relief." Id. "Third, the question presented by the party has to be ripe for judicial determination." Id. "Fourth, the party must also show that he or she does not have an adequate remedy at law." Id.

6. There is a real and existing justiciable controversy between the parties.

7. Plaintiffs have a legally protectable interest in the minimum wage they or their members are required to pay their

employees.

8. The questions presented in this matter are ripe for judicial determination. See Ferguson Police Officers Asso. v. Ferguson, 670 S.W.2d 921, 925 (Mo. App. E.D. 1984) ("An injury need not have occurred prior to bringing a declaratory action; one of the main purposes of the remedy is to resolve conflicts in legal rights before a loss occurs.").

9. Plaintiffs do not have an adequate remedy at law.

10. Plaintiffs have met the standard to bring a declaratory judgment action.

11. Plaintiffs have sufficient pecuniary interest in this matter for standing to bring a declaratory judgment action. See Dodson v. City of Wentzville, 133 S.W.3d 528, 535 (Mo. App. E.D. 2004).

12. The association Plaintiffs have made the requisite showing for associational standing. See St. Louis Ass'n of Realtors v. City of Ferguson, 354 S.W.3d 620, 623 (Mo. banc 2011)

13. "The purpose of an injunction is to restrain actual or threatened acts that constitute a real injury." Metmor Fin. v. Landoll Corp., 976 S.W.2d 454 (Mo. App. W.D. 1998). "A permanent injunction should be granted sparingly in clear cases

only, and the decree should be framed to afford relief to which complainant is entitled and not to interfere with legitimate and proper action by those against whom it is directed." Id. "A permanent injunction acts as a final disposition of the merits of a case." Id.

14. Count I of Plaintiffs' Petition seeks a declaration that Ordinance 70078 is in conflict with Section 71.010 RSMo and Missouri's Minimum Wage Law, Sections 290.500 RSMo *et seq.*, and as such is void and Defendants should be enjoined from enforcing it.

15. "Municipal ordinances are presumed valid, and will be construed in light of the presumption of validity." City of St. John v. Brockus, 434 S.W.3d 90, 93 (Mo. App. E.D. 2014) (citing Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Nixon, 185 S.W.3d 685, 688 (Mo. banc 2006)).

16. "If, however, an ordinance conflicts with the general laws of the state, the ordinance is void and unenforceable." City of St. John, 434 S.W.3d at 93 (citing Unverferth v. City of Florissant, 419 S.W.3d 76, 97 (Mo. App. E.D. 2013)). "The test for determining if a conflict exists is whether the ordinance permits what the statute prohibits or prohibits what the statute permits." City of St. John, 434 S.W.3d at 93 (citing Page W.,

Inc. v. Cmty. Fire Prot. Dist. of St. Louis Cnty., 636 S.W.2d 65, 67 (Mo. banc 1982)). "The ordinance should be construed to uphold its validity unless the ordinance is expressly inconsistent or in irreconcilable conflict with the general law of the state." Id.

17. Section 71.010 RSMo states as follows:

Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject.

18. Sections 290.500 to 290.530 RSMo constitute Missouri's Minimum Wage Law.

19. Section 290.502 RSMo reads as follows:

1. Except as may be otherwise provided pursuant to sections 290.500 to 290.530, effective January 1, 2007, every employer shall pay to each employee wages at the rate of \$ 6.50 per hour, or wages at the same rate or rates set under the provisions of federal law as the prevailing federal minimum wage applicable to those covered jobs in interstate commerce, whichever rate per hour is higher.

2. The minimum wage shall be increased or decreased on January 1, 2008, and on January

1 of successive years, by the increase or decrease in the cost of living. On September 30, 2007, and on each September 30 of each successive year, the director shall measure the increase or decrease in the cost of living by the percentage increase or decrease as of the preceding July over the level as of July of the immediately preceding year of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase or decrease rounded to the nearest five cents.

20. Section 290.510 RSMo provides that "[t]he director [of the department of labor and industrial relations] shall have authority to investigate and ascertain the wages of persons employed in any occupation included within the meaning of sections 290.500 to 290.530."

21. Section 290.523 RSMo provides the department of labor and industrial relations with the authority to "promulgate such rules and regulations as are necessary for the enforcement and administration" of Missouri's Minimum Wage Law.

22. Section 290.522 RSMo states as follows:

Every employer subject to any provision of sections 290.500 to 290.530 or of any regulations issued under sections 290.500 to 290.530 shall keep a summary of sections 290.500 to 290.530, approved by the director, and copies of any applicable wage regulations issued under sections 290.500 to

290.530, or a summary of the wage regulations posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. Employers shall be furnished copies of the summaries and regulations by the state on request without charge.

23. Section 290.525 RSMo states that an employer is guilty of a class C misdemeanor for violating Missouri's Minimum Wage Law.

24. Section 290.512.2 RSMo states that "[i]f an employee receives and retains compensation in the form of goods or services as an incident of his employment and if he is not required to exercise any discretion in order to receive the goods or services, the employer is required to pay only the difference between the fair market value of the goods and services and the minimum wage."

25. Section 290.515 RSMo provides for the regulation for the employment of "individuals whose earning capacity is impaired by physical or mental deficiency at wages lower than the wage rate applicable."

26. Section 290.517 RSMo provides for "regulation for the employment in any occupation, at wages lower than the wage rate applicable under sections 290.500 to 290.530, of such learners and apprentices as he finds appropriate to prevent curtailment

of opportunities for employment."

27. Ordinance 70078 prohibits the payment of the minimum wage permitted under Sections 290.500 to 290.530 RSMo.

28. Ordinance 70078 provides for the enforcement of a minimum wage by entities and officials other than Missouri's department of labor and industrial relations and its director.

29. Ordinance 70078 provides for penalties for the violation of a minimum wage law that are separate and distinct from the penalties for violation of the Missouri minimum wage law stated in Section 290.525 RSMo.

30. Ordinance 70078 does not provide for the same exemptions and exceptions as Missouri's Minimum Wage Law. The payment of a wage lower than the applicable wage rate allowed by Sections 290.512.2 and 290.517 RSMo would be prohibited under the ordinance.

31. The actions considered to be violations of Ordinance 70078 include several activities that are not considered violations of Missouri's Minimum Wage Law as set out in Section 290.525 RSMo.

32. Ordinance 70078 conflicts with state law because it prohibits activities that are permitted by Sections 290.500 to 290.530 RSMo. See City of St. John, 434 S.W.3d at 93.

33. Defendants cannot rely on HB 722 to authorize Ordinance 70078 or otherwise render it in conformity with Missouri law.

34. HB 722 was not in force and effect at the time Ordinance 70078 was passed and HB 722 will not be in force and effect until October 16, 2015.

35. "[W]hile a statute may have a potential existence before its effective date, no rights may be acquired under it and no one is bound to regulate his or her conduct according to its terms, and all acts purporting to have been done under it prior to that time are void." Levinson v. City of Kan. City, 43 S.W.3d 312, 317 (Mo. App. W.D. 2001) (citing 82 C.J.S. *Statutes* § 388.).

36. Ordinance 70078 is not in conformity with the laws of Missouri and as such this Court must find in favor of Plaintiffs and against Defendants in Count I of the Petition.

37. The general rule is that the unconstitutionality of a part of a statute or ordinance does not render the remainder of the statute invalid where enough remains, after discarding the invalid part, to show the legislative intent and to furnish sufficient means to effectuate that intent. State ex rel. McKittrick v. Cameron, 117 S.W.2d 1078, 1080 (Mo. 1938).

38. In this case, not enough remains of Ordinance 70078 after discarding the invalid part to furnish sufficient means to effectuate the intent of the ordinance.

39. The Court must find in favor of Plaintiffs and against Defendants on Count I of the Petition.

40. Count II of Plaintiffs' Petition seeks a declaration that Ordinance 70078 expressly preempted by Section 67.1571 RSMo.

41. Section 67.1571 RSMo states that "[n]o municipality as defined in section 1, paragraph 2, subsection (9) shall establish, mandate or otherwise require a minimum wage that exceeds the state minimum wage."

42. Defendants contend that Section 67.1571 RSMo is unconstitutional due to a procedural defect in its enactment.

43. Section 516.500 RSMo provides for a five year statute of limitations on bringing actions "alleging a procedural defect in the enactment of a bill into law."

44. "Under Missouri law, even though a claim may be barred by the applicable statute of limitations, the essence of the claim may be raised as a defense." Boone Nat'l S&L Ass'n v. Crouch, 47 S.W.3d 371, 375 (Mo. banc 2001); see also Lebeau v. Comm'rs of Franklin County, 422 S.W.3d 284, 291 fn.6 (Mo. banc

2014) (discussing the ability to raise "procedural constitutional claims as a defense with no statute of limitations.") .

45. Section 67.1571 RSMo in its current form was originally introduced as an amendment to the Community Improvement District Act, House Bill 1636 of 1998.

46. Prior to this amendment, the Community Improvement District Act only related to the establishment, governance and operation of community improvement districts.

47. House Bill 1636 violates the single subject rule set out in Article III, Section 23 of the Missouri Constitution and Section 67.1571 RSMo should be severed from it to permit the remainder of the bill to stand with its core subject intact.

See Rizzo v. State, 189 S.W.3d 576, 581 (Mo. banc 2006).

48. The Court must find in favor of Defendants and against Plaintiffs on Count II of the Petition.

49. Count III of Plaintiffs' Petition seeks a declaration that Ordinance 70078 exceeds the charter authority under Article VI, Section 19(a) of the Missouri Constitution.

50. The Missouri Constitution, Art. VI §19(a) allows a charter city to exercise certain powers, "provided such powers are consistent with the constitution of this state and are not

limited or denied by either the charter so adopted or by statute."

51. Sections 1 (25), (26) and (27) of the City Charter empower the City to regulate businesses and occupations, to place limitations on business practices and to enact laws that promote the general welfare and commerce of the City and its inhabitants.

52. Plaintiffs contend that Ordinance 70078 exceeds the City of St. Louis's charter authority because it goes beyond purely local concerns and extends to matters of statewide and national concerns.

53. A charter city's ordinance "may not invade the province of general legislation involving the public policy of the state as a whole." Mo. Bankers Ass'n v. St. Louis County, 448 S.W.3d 267, 271 (Mo. banc 2014).

54. The Court finds no merit in this argument. Ordinance 70078 by its own express terms is limited to local concerns.

55. When a charter city's power to pass an ordinance is challenged under Article VI, Section 19(a) of the Missouri Constitution, the proper question is "not whether the City had authority for its ordinance, but whether its authority to enact

the [ordinance] was denied by other law." City of Kansas City v. Carlson, 292 S.W.3d 368, 371 (Mo. App. W.D. 2009).

56. This Court has determined that the City of St. Louis's authority to enact Ordinance 70078 is denied by Section 71.010 RSMo.

57. The Court must find in favor of Plaintiffs and against Defendants on Count III of the Petition.

58. Count IV of Plaintiffs' Petition seeks a declaration that Ordinance 70078 is barred because it creates a civil liability between citizens.

59. "[A] city has no power, by municipal ordinance, to create a civil liability from one citizen to another, nor to relieve one citizen from that liability by imposing it on another." Yellow Freight Systems, Inc. v. Mayor's Com. on Human Rights, 791 S.W.2d 382, 384 (Mo. banc 1990).

60. Ordinance 70078 does not state that it creates a civil liability from one citizen to another.

61. Sections 2(E) and 5(C) of Ordinance 70078 do not explicitly create civil liabilities from one citizen to another, but arguably could be construed to create such liabilities.

62. As previously stated, this Court must construe Ordinance 70078 in light of the presumption of validity. See City of St. John, 434 S.W.3d at 93.

63. The Court must find in favor of Defendants and against Plaintiffs on Count IV of the Petition.

64. In Count V of their Petition, Plaintiffs contend that Ordinance 70078 is an unauthorized delegation of legislative powers.

65. "A legislative body cannot delegate its authority, but alone must exercise its legislative functions." Ex parte Williams, 139 S.W.2d 485, 491 (Mo. 1939). "[I]t is well established that in order for a statute or ordinance to be valid, which places restrictions upon lawful conduct or lawful business, in themselves harmless, it must specify the rules and conditions to be observed in such conduct or business, and must admit of the exercise of the privilege by all citizens alike who will comply with such rules and conditions." Id. at 490.

66. "The courts recognize three general exceptions to the strict rule which requires the inclusion of standards in an ordinance or statute when a delegation is made to an administrative body: (1) where the ordinance or statute deals with situations which require the vesting of some discretion in

public officials, and where it is difficult or impracticable to lay down a definite, comprehensive rule; (2) where the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare; (3) where personal fitness is a factor to be taken into consideration." ABC Sec. Service, Inc. v. Miller, 514 S.W.2d 521, 524-525 (Mo. banc 1974).

67. Ordinance 70078 deals with a situation where it would be impracticable to lay down a comprehensive rule and expressly states that it is necessary to protect the public morals, health, safety and general welfare.

68. The Court finds that, to the extent Ordinance 70078 delegates the authority of the City's Board of Aldermen, it falls within the general exceptions to the rule that a legislative body cannot delegate its authority.

69. The Court must find in favor of Defendants and against Plaintiffs on Count V of the Petition.

JUDGMENT

The Court now orders, adjudges and decrees as follows.

The Court finds in favor of Plaintiffs and against Defendants on Counts I and III of Plaintiffs' Verified Petition for Declaratory Judgment and Injunctive Relief.

The Court finds in favor of Defendants and against Plaintiffs on Counts II, IV and V of Plaintiffs' Verified Petition for Declaratory Judgment and Injunctive Relief.

It is hereby declared that Ordinance 70078 is void and unenforceable as in conflict with Section 71.010 RSMo and Missouri's Minimum Wage Law, Sections 290.500 to 290.530 RSMo.

Defendants are hereby permanently restrained and enjoined from implementing or enforcing Ordinance 70078.

Plaintiffs' motion for judgment on the pleadings is denied as moot.

Court costs taxed against Defendants.

SO ORDERED:



Steven R. Ohmer, Judge

Dated: October 14, 2015

CC: ATTORNEYS