
IN THE SUPREME COURT OF MISSOURI

No. SC85674

**ALVIN BROOKS, *et al.*,
Respondents,**

v.

**STATE OF MISSOURI, *et al.*,
Appellants.**

**On Petition For Review
From the Circuit Court of The City of St. Louis
The Honorable Steven R. Ohmer**

**BRIEF OF AMICUS CURIAE JACKSON COUNTY,
MISSOURI**

Respectfully submitted,

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STATEMENT OF INTEREST OF AMICUS CURIAE

Jackson County, Missouri (“Jackson County”), with a charter form of government, serves approximately 654,000 citizens within 607 square miles. As one of the 115 counties in Missouri affected by Mo. Rev. Stat. § 571.101, *et seq.*, Jackson County presents in this amicus brief the impact this law has on county operations and its budget.

JURISDICTIONAL STATEMENT

Pursuant to Mo. Const. Art. 5, § 3, the Supreme Court of Missouri has jurisdiction of this action in that the validity of a statute of this state is at issue.

STATEMENT OF FACTS

On September 11, 2003, the Missouri General Assembly passed Mo. Rev. Stat. §§ 571.101, *et seq.*, popularly referred to as the concealed carry law, over Governor Holden's veto. This law requires the help of county sheriffs across the state for its implementation. Twenty-three years earlier, the Hancock Amendment, Article 10, § 21 of the Missouri Constitution, was approved, prohibiting the Missouri General Assembly from requiring the provision of a new activity or service without an appropriation to pay counties or other political subdivisions for the increased cost.

POINT RELIED ON

The trial court erred in denying plaintiffs’ challenge to Mo. Rev. Stat. §§ 571.101, *et seq.*, popularly referred to as the “concealed carry law,” because Mo. Const., Article 10, § 21 prohibits the Missouri General Assembly from requiring that counties or other political subdivision provide a new activity or service or an increase in the level of any activity or service beyond that required by existing law unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs in that the concealed carry law requires that Jackson County and all other affected local governments provide the administration of and approval process for certificates of qualification for a concealed carry endorsement without establishing a funding source from which the local governments’ costs of providing this service can legally be paid.

Mo. Const., Article 10, § 21

Mo. Rev. Stat. §§ 517.101, *et seq.*

Mo. Rev. Stat. § 50.535

St. Charles County v. Director of Revenue, 961 S.W.2d 44 (Mo. banc 1998)

City of Jefferson v. Missouri Department of Natural Resources, 916 S.W.2d 694 (Mo. banc 1996)

ARGUMENT

The trial court erred in denying plaintiffs’ challenge to Mo. Rev. Stat. §§ 571.101, *et seq.*, popularly referred to as the “concealed carry law,” because Mo. Const., Article 10, § 21 prohibits the Missouri General Assembly from requiring that counties or other political subdivision provide a new activity or service or an increase in the level of any activity or service beyond that required by existing law unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs in that the concealed carry law requires that Jackson County and all other affected local governments provide the administration of and approval process for certificates of qualification for a concealed carry endorsement without establishing a funding source from which the local governments’ costs of providing this service can legally be paid.

I. Introduction

On September 11, 2003, the Missouri General Assembly passed Mo. Rev. Stat. §§ 571.101, *et seq.*, popularly referred to as the “concealed carry law,” over Governor Holden’s veto. This law requires that county sheriffs perform numerous administrative tasks for its implementation. It also provides for an initial application fee of \$100 and a fee of \$50 for renewals, to be used “for the purchase of equipment

and to provide training.” Mo. Rev. Stat. § 50.535.2. It does not, however, provide for increased personnel and overtime costs associated with the performance of the tasks required by this statute. As such, it violates the Hancock Amendment. Mo. Const., Art. 10, § 21.

II. The Concealed Carry Law

On September 11, 2003, the Missouri General Assembly passed Mo. Rev. Stat. §§ 571.101, *et seq.*, popularly referred to as the “concealed carry law,” over Governor Holden’s veto. This law allows Missouri residents who qualify to carry concealed weapons in Missouri, with the exception of some locations enumerated in the statute.¹ Mo. Rev. Stat. §§ 571.101 and 571.107.

A. Funding

To implement this law, the legislation provided for the collection of an application fee as follows:

For processing an application for a certificate of qualification
for a concealed carry endorsement pursuant to sections

¹ In addition to those who have been residents of Missouri for the last six months before application for a certificate of qualification, a member of the armed forces stationed in Missouri or the spouse of such a member of the armed forces [who] is a citizen of the United States may also qualify to carry a concealed weapon in Missouri.

571.101 to 571.121, the sheriff in each county shall charge a nonrefundable fee not to exceed one hundred dollars which shall be paid to the treasury of the county to the credit of the sheriff's revolving fund.

Mo. Rev. Stat. § 571.101.10. In addition, a fee may be charged upon renewal:

For processing a renewal for a certificate of qualification for a concealed carry endorsement pursuant to sections 571.101 to 571.121, the sheriff in each county shall charge a nonrefundable fee not to exceed fifty dollars which shall be paid to the treasury of the county to the credit of the sheriff's revolving fund.

Mo. Rev. Stat. § 571.101.11. The concealed carry law also sets forth the disposition of these fees in the sheriff's revolving fund:

. . . The fee collected pursuant to subsections 10 and 11 of section 571.101, RSMo, shall be deposited by the county treasurer into a separate interest-bearing fund to be known as the "County Sheriff's Revolving Fund" to be expended at the direction of the county or city sheriff or his or her designee as provided in this section *This fund shall only be used by*

law enforcement agencies for the purchase of equipment and to provide training.

Mo. Rev. Stat. § 50.535 (emphasis added). Conspicuously absent from the disposition of funds is personnel to use the equipment purchased and to undergo the training provided. This law assumes that there are employees of sheriff's offices with a lot of extra time on their hands—time that they can now use to carry out the duties required to implement this law.

B. New or Additional Service Required of Sheriffs for the Implementation of the Concealed Carry Law

Missouri sheriffs play a pivotal role in implementing the concealed carry law, performing administrative tasks for the approval and tracking of certificates of qualification for concealed carry endorsements. Some of those tasks are as follows:

1. Review applications to ensure that the application has provided the required information and nine affirmations. Mo. Rev. Stat. § 571.101.3
2. Receive a photocopy of a firearms safety training certificate of completion or other evidence of completion of a firearms safety training course that meets certain standards. Mo. Rev. Stat. § 571.101.4.(1).²
3. Collect the application or renewal fee. Mo. Rev. Stat. § 571.101.4.(2).

² Not required for renewals.

4. May require that the applicant display a Missouri driver's license or nondriver's license or military identification and orders showing the person being stationed in Missouri. Mo. Rev. Stat. § 571.101.5.

5. Fingerprint the applicant. Id.³

6. Request a criminal background check through the appropriate law enforcement agency within three working days after submission of the properly completed application. Id.

7. Forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check if no disqualifying record is identified by the fingerprint check at the state level. Id.

8. Issue a certificate of qualification for a concealed carry endorsement within three working days after receipt of the completed background check or within 45 calendar days if the criminal background check has not been received. Id.

9. Revoke a certificate and endorsement within 24 hours of receipt of any background check that results in a disqualifying record, and notify the department of revenue. Id.

10. Deny the application if any of the requirements are not met or if the sheriff has a "substantial and demonstrable reason to believe that the applicant has rendered a false statement" Mo. Rev. Stat. § 571.101.6.

11. If the application is denied, notify the applicant in writing, stating the grounds for the denial and informing the applicant of the right to submit, within thirty days, any additional documentation relating to the grounds of the denial. Id.

12. Reconsider a decision to deny an application if the applicant sends the sheriff additional documentation and inform the applicant of the outcome and the right to appeal, in writing. Id.

13. Observe the applicant signing the certificate of qualification. Mo. Rev. Stat. § 571.101.7.

14. Keep a record of all applications for a certificate of qualification for a concealed carry endorsement and the action taken thereon. Mo. Rev. Stat. § 571.101.8.

15. Report the issuance of a certificate of qualification to the Missouri uniform law enforcement system. Id.

16. Collect a late fee of \$10 per month if a renewal application is not filed on or before the expiration date of the certificate. Mo. Rev. Stat. § 571.104.3.

17. Notify the director of revenue that a certificate is expired if the renewal application is not received within six months of the expiration date of the certificate. Id.

18. Receive and track change of address notifications from certificate

³ Not required for renewals.

holders. Mo. Rev. Stat. § 571.104.4.

19. Receive and track notifications of lost or destroyed licenses containing a concealed carry endorsement. Mo. Rev. Stat. § 571.104.5.

20. Reissue a new certificate of qualification within three working days of being notified of the loss or destruction of a license containing a concealed carry endorsement. Id.

21. Receive notifications of name changes and, upon satisfactory proof of the name change, reissue a corrected certificate of qualification. Mo. Rev. Stat. § 571.104.6.

As the above list demonstrates, the duties imposed by the state upon local governments are substantial. More importantly, they are activities that must be carried out by employees. They cannot be automated. No equipment can be purchased to perform them. However, without funding for personnel to carry out these duties, the provision of fees for equipment and training is meaningless. As a result, to implement this state law, local governments are required to expend a sizeable amount of their own funds to provide personnel to take the training provided and to use the equipment purchased.

III. The Hancock Amendment

The Hancock Amendment provides, in part, that:

a new activity or service or an increase in the level of any activity or

service beyond that required by existing law shall not be required by the general assembly or any state agency or counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county...for any increased costs.

Mo. Const., Art. 10, § 21. Legislation violates the Hancock Amendment if two elements are present:

(1) a new or increased activity or service is required of a political subdivision by the state and (2) the political subdivision experiences increased costs in performing that activity or service.

St. Charles County v. Director of Revenue, 961 S.W.2d 44, 48, (Mo. banc 1998).

In City of Jefferson v. Missouri Department of Natural Resources, 916 S.W.2d 794 (Mo. banc 1996), the state required cities to submit new or revised solid waste management plans. Affirming the trial court's ruling that this requirement was an increase of activity for local governments, the Court noted that a finding of increased costs was satisfied by a showing greater than *de minimis*, and pointed out that a cost of \$15,289 was not *de minimis*. Id. at 796. The Court also stated that "increased costs are not presumed merely from a mandate of increased activity." Id. at 795. However, the the Court based its finding of a cost of \$15,289 on bids by consultants to complete the solid waste management plan. Id. at 796.

In the instant case, Captain Phillip Moran of the Jackson County Sheriff's Office

testified that the processing of the applications will increase the cost of operating the sheriffs' offices by \$150,000. Transcript, pp. 13-14. This amount is ten times that found not *de minimis* by the court in City of Jefferson. This testimony is uncontroverted. The statute, while providing for the charging of a fee, does not allow that fee to be used to defray the personnel expenses resulting from the increased activity. Although this Court cannot presume increased costs from increased activity, it may use common sense to determine that the above tasks may only be accomplished by people—people who are paid a salary by their local government employers.

Some of the sheriffs testifying at the hearing demonstrated great imagination in dealing with costs associated with the application processing. One suggested that he would pay costs by simply swapping funds budgeted for equipment for the fees allowed in the statute. Another said he would require two checks, one of which would be used to pay the state for fingerprint processing. Transcript, pp. 47-48, 86-87.

To the contrary, Captain Moran said that the Jackson County Sheriff's office could not shuffle funds because the discretionary fund came with a budget designation for equipment. It also appears that dividing the funds would violate Mo. Rev. Stat. § 50.535, which requires all fees collected to be deposited in the discretionary fund.

Expenditures for this fund may be made without prior approval from the governing body of the county. Mo. Rev. Stat. § 50.535.2. As a result, this law appears to be an open invitation by the General Assembly to Missouri's sheriffs to manipulate their budgets

without permission or oversight from local funding authorities. The sheriff ends up using local appropriations to pay for a state-mandated increase in activity—the very result that the Hancock Amendment seeks to prohibit.

In Boone County Court v. State of Missouri, 631 S.W.2d 321 (Mo. banc 1982), the Court considered whether a statute increasing county collector salaries violated the Hancock Amendment. The state refused to advance the increase. On appeal, the Court concluded that a salary increase was an increase in any activity. Id. at 325. The Court pointed out that the purpose of the Hancock Amendment was to “eliminate the state’s power to mandate new or increased levels of service or activity performed by local government without state funding.” Id. at 326. In reaching this conclusion, the Court relied upon the plain meaning of the language of the statute and the Amendment. Id.; see also Wolff Shoe Co. v. Div. of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

In the instant case, the state enacted a new law that allowed individuals who qualify to carry concealed weapons. To carry out the law throughout the state, however, the Missouri General Assembly uses the services of local government sheriffs to implement the law. People perform the tasks outlined herein, but the General Assembly failed to provide funding for people. Instead, it provides money through the imposition of fees for equipment and training. This law is akin to a restaurant with a manager and a full kitchen but no cooks. Equipment and training are useless without people to train and without people to use the equipment.

If this Court approves the General Assembly enacting a law with funding provisions that not only do not adequately fund the additional responsibilities required by the law but also mandate how local governments spend their money, local governments can only look forward to increasing losses of money and autonomy in the future.

IV. Conclusion

The concealed carry law, Mo. Rev. Stat. §§ 571.101, *et seq.*, requires personnel of local governments to perform numerous duties without concomitant funding. Further, it limits the application of fees to equipment and training, without regard to the need for additional personnel. As such, it violates the Hancock Amendment, Mo. Const., Art. 10, § 21.

WHEREFORE, amicus curiae respectfully request that this Court declare that the concealed carry law is unconstitutional under the Hancock Amendment and reverse the judgment of the trial court in this regard.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b) in that it contains 18,618 and 346 lines according to the word count function of Microsoft Word.

The undersigned counsel also certifies that the accompanying diskette, containing the brief in Microsoft Word format, has been scanned for viruses and is virus-free.

Respectfully submitted,

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I hereby certify that two copies of the foregoing brief and a diskette containing same, were mailed by United States mail, first class, postage prepaid, this 18th day of December, 2003, to the following:

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