

IN CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

ST. LOUIS COUNTY, MISSOURI,)
 et al.,)
)
 Plaintiffs,)
)
 v.) Case No. 04CV323913
)
STATE OF MISSOURI,)
)
 Defendant.)

Defendant State of Missouri’s Motion for Summary Judgment

The defendant State of Missouri is entitled to summary judgment. Rule 74.04.

Undisputed material facts

The parties do not dispute issues of material fact, simply their legal import. On July 23, 2004, the parties filed a joint stipulation of facts (copy attached) for the purpose of preparing motions for summary judgment. The undisputed material facts are as follows:

1. St. Louis County is a constitutional charter county. Jt. Stip. ¶1.
2. Charlie Dooley is County Executive of St. Louis County, and a resident and taxpayer of St. Louis County and the State of Missouri. Jt. Stip. ¶2.
3. If an authorized law enforcement official for St. Louis County undertook the processing of applications for endorsements to carry concealed weapons pursuant to Sections 571.101, *et seq.*, RSMo (Supp. 2003), that official would incur costs. Such costs would include costs that are not for the purchase of equipment or the provision of training, such as

the costs of fingerprint checks performed by state or federal law enforcement agencies. The costs that are not for training and equipment would be more than *de minimis*. Jt. Stip. ¶3.

4. As of the date of this stipulation, the State of Missouri has neither funded nor made an appropriation to fund those costs that law enforcement officials would incur for undertaking the processing of applications for endorsements to carry concealed weapons pursuant to Sections 571.101, *et seq.*, RSMo (Supp. 2003), apart from authorizing the fee described in Sections 50.535 and 571.101.10 – .11, RSMo (Supp. 2003). Jt. Stip. ¶4.

5. As of the date of this stipulation, the State of Missouri has not taken any action to compel an authorized law enforcement official for St. Louis County to process applications for endorsements to carry concealed weapons pursuant to Sections 571.101, *et seq.*, RSMo (Supp. 2003). Jt. Stip. ¶5.

The State is entitled to summary judgment as a matter of law

6. Plaintiff St. Louis County lacks standing to sue to enforce Sections 16 and 21 of the Hancock Amendment because it is not a “taxpayer.” *Missouri Association of Counties v. Wilson*, 3 S.W.3d 772, 776-77 (Mo. banc 1999).

7. Plaintiff Charlie Dooley, who sues in his official capacity as County Executive of St. Louis County, Missouri, has no standing to pursue his claims and, in that capacity, must be dismissed as a plaintiff. A suit in “official capacity” is merely a suit by the political subdivision itself and, as shown above, St. Louis County lacks standing to enforce the Hancock Amendment. *State ex rel. Mathewson v. Bd. of Election Comm.*, 841 S.W.2d 633

(Mo. 1992).

8. The State is entitled to summary judgment because Plaintiffs have failed to name parties necessary and indispensable to resolution of the claims as pleaded. Rules 55.27(7) and 52.04. Plaintiffs allege that the duties assigned by the Concealed Carry Act to the Sheriff of St. Louis County have, by that county's Charter, been reassigned to the Superintendent of the Police Department. Petition, p. 2, ¶ 7. The State has no interest at stake in interpreting the effect of the St. Louis County Charter on the allocation of the duties in question. But certainly both the Sheriff and Superintendent of Police have such interests – and those interests are directly contradictory.

9. The court lacks subject matter jurisdiction of plaintiffs' claims against the State, because they are not ripe. The State has neither sought nor threatened to compel the county to implement the process.

10. The claims are not ripe for a separate reason. Plaintiffs have not alleged that St. Louis County, which is a first class county, has pursued the statutorily available alternative, §§50.535.3 and 571.101.12, of designating the processing of concealed carry applications to police chiefs.

11. This Court cannot grant the declaratory relief that plaintiffs seek, *i.e.*, that §571.101 be declared altogether “unconstitutional and void” due to the alleged violation of Mo. Const. art. I, Sections 16 and 2. Petition, pp. 4-5 (both Counts I and II). The only relief that this Court could grant is a limited injunction prohibiting the State from compelling

plaintiffs to undertake the processing of concealed carry applications. But, plaintiffs do not seek an injunction and, as stipulated, the State has not taken any action to compel an authorized law enforcement official for St. Louis County to process applications for endorsements to carry concealed weapons pursuant to Sections 571.101, *et seq.*, RSMo (Supp. 2003). Jt. Stip. ¶5.

WHEREFORE the defendant State of Missouri asks this Court to grant its motion for summary judgment against plaintiffs with respect to all claims, and to enter such other orders as this Court deems just and proper.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

PAUL C. WILSON
Missouri Bar No. 40804
Deputy Chief of Staff

ALANA M. BARRAGÁN-SCOTT
Missouri Bar No. 38104
Chief Counsel
Assistant Attorneys General

Broadway State Office Building
221 West High Street, 8th Floor
Jefferson City, Missouri 65102
(573) 751-3321
(573) 751-8796 (facsimile)

ATTORNEYS FOR DEFENDANT STATE OF
MISSOURI

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, on this _____ day of August, 2004, to:

Michael A. Shuman
Associate County Counselor
Lawrence K. Roos Bldg.
41 S. Central Avenue
Clayton, MO 63105

Assistant Attorney General