

IN THE CIRCUIT COURT OF COOPER COUNTY, MISSOURI

Cooper County Clerk,)
 Sarah Herman)
)
 And)
)
 Sarah Herman, individually,)
 Plaintiff,)
)
 v.)
)
 County Commission of)
 Cooper County,)
 Serve:)
 200 Main Street, room 24)
 Boonville, MO 65233)
)
 Don Baragary)
 Serve:)
 200 Main Street, room 24)
 Boonville, MO 65233)
)
 Charlie Melkersman)
 Serve:)
 200 Main Street, room 24)
 Boonville, MO 65233)
)
 David Booker)
 Serve:)
 200 Main Street, room 24)
 Boonville, MO 65233)
)
 Defendants.)

Case No.

2000-CC00009

PETITION FOR DECLARATORY JUDGMENT

COME NOW, Plaintiff, by and through her attorney of record, and for her Petition for Declaratory Judgment, state to the Court the following:

GENERAL ALLEGATIONS RELEVANT TO ALL COUNTS OF THIS PETITION

1. Plaintiff is a resident of Boonville, Cooper County, Missouri.
2. Plaintiff is the current County Clerk for Cooper County, Missouri.

3. Defendant Don Baragary is the Presiding Commission of Cooper County, Missouri.

4. Defendant Charlie Melkersman is the Eastern District Commissioner of Cooper County, Missouri.

5. Defendant David Booker a Commissioner for Cooper County, Missouri. (collectively, David Booker, Charlie Melkersman and Don Baragary the “County Commissioners”).

6. Defendants may be served at 200 Main Street, room 24, Boonville, MO 65233.

7. As this is an action against Cooper County, venue and jurisdiction is proper pursuant to Section 508.060 RSMo.

8. Defendant County Commission, Defendant County Commissioners, Plaintiff, and the City of Boonville entered into a contract in 1991 to perform extension and collection of certain taxes in Boonville to Cooper County (the “1991 Contract”) and is attached hereto as **Exhibit A**.

9. The 1991 Contract provides compensation to be paid to Cooper County, the County Collector, and the Plaintiff.

10. The Defendants and the City of Boonville subsequently entered into a new contract in 2018 without the Plaintiff for the same services provided in the 1991 Contract, except for the services provided by the County Clerk to extend the taxes into the Cooper County tax book (the “2018 Contract”). The 2018 Contract is attached hereto as **Exhibit B**.

11. The 2018 Contract does not include the Plaintiff as a party.

12. The 2018 Contract only provides compensation to the Cooper County Collector.

13. On January 27, 2020, The County Commissioners ordered the Cooper County Treasurer to refund the funds due under the 1991 Contract from the City of Boonville for payment

to the County Clerk. The Commission Order 2-2020 is attached hereto as Exhibit C. Plaintiff did not receive said order until January 30, 2020.

14. The County Commission refuses to allow the County Clerk to receive her compensation under the 1991 Contract.

15. Plaintiff has made multiple attempts to reconcile this issue with the County Commissioners, and the County Commissioners refuse to allow her to collect her compensation under the 1991 Contract.

16. At no time has Plaintiff ever consented to the Defendants entering into the 2018 Contract.

COUNT I

DECLARATORY JUDGMENT COUNTY CLERK CAN CONTRACT WITH OTHER

POLITICAL SUBDIVISIONS FOR EXTENSION OF TAXES

17. Plaintiffs reallege, adopt, and incorporate herein by reference all of the allegations of paragraphs 1 through 15 of this Petition as if the same are fully set forth herein.

18. Rule 87.02(a) of the Missouri Rules of Civil Procedure provides that any person interested whose rights, status, or legal relations are affected by a statute or contract may have determined any question of construction or validity arising under the statute or contract, and obtain a declaration of rights, status, or other legal relations thereunder.

19. A controversy has arisen between the Plaintiff, the County Commissioners, and the County Commission regarding whether the Revised Statutes of Missouri require that the County Clerk provide facilities, equipment, employees, and services for extension of taxes to cities and villages within the County, and whether charges for said facilities, equipment, employees, and services may or must be collected from said cities and villages.

Background Facts

20. The City of Boonville is a third class city.
21. Cities are political subdivisions of the State and not political subdivisions of the county in which they are incorporated.
22. The Revised Statutes of Missouri place upon cities, including third class cities, the burden to have a city clerk make out appropriate and accurate tax books. *See e.g.* § 94.130 RSMo.
23. Under Missouri law, an “abstract of taxes” is the total amount of assessed valuation of all taxes in the various categories of real and personal *ad valorem* property taxes, from which political subdivisions may, first, set their levies, and thereafter, extend their taxes.
24. Under Missouri law, “extension of taxes” is the making of the tax books to depict how each individual taxpayer will pay per parcel. The process of extension takes the levy set by the political subdivision and multiplies it against the valuation.
25. The foregoing process is defined as follows:
 - a. The assessor is required by Section 137.252 RSMo to list the property so assessed by him in the assessment book.
 - b. Pursuant to Section 137.245, the assessor’s book is thereafter returned to the county commission which prepares an abstract of the assessment book, setting forth the aggregate amounts of the different kinds of property and the valuation thereof, and forwards the abstract to the state tax commission.
 - c. The state tax commission equalizes the valuation of each class of property among the respective counties of the state pursuant to Section 138.390 RSMo.

- d. The state tax commission thereafter returns to the county a report showing the value of the real and tangible personal property of the county as equalized by the commission pursuant to Section 138.400 RSMo.
- e. After the county board of equalization considers appeals, the county clerk extends the taxes on the valuation shown in the assessor's book at the rates certified by the county court, school districts and other taxing subdivisions pursuant to Section 137.290 RSMo.

26. Section 137.290 RSMo in pertinent part: "The clerk of the county commission in each county, upon receipt of the certificates of the rates levied by the county commission, school districts and other political subdivisions authorized by law to make levies or required by law to certify levies to the county commission or clerk of the county commission, shall then extend the taxes in the assessor's book, in proper columns prepared for the extensions, according to the rates levied..."

27. No statute requires or permits cities, towns, or villages to certify levies to the County Commission.

28. The Revised Statutes of Missouri require that cities, towns, and villages certify levies to their city collectors.

29. Therefore, cities, towns, and villages, including Boonville, are not authorized by law to make levies to the County Commission.

30. Section 137.392 RSMo states the County Clerk's duties and states: "On or before October thirty-first of each year, the county clerk shall deliver the real estate and personal property tax books, with the taxes correctly extended thereon...."

31. Chapter 137 does not govern whether the County Clerk has a duty to extend city taxes or whether the County Collector has a duty to collect them.

32. Chapter 137 does not create authority for the County Clerk to extend and the County Collector to collect taxes for all political subdivisions and municipalities in which happen to lie within Cooper County.

33. The Revised Statutes of Missouri do not grant the County Commission the authority to dominate or control the taxing decisions made by cities, towns, and villages within the county's boundaries.

34. Cities, towns, and villages are created by the state, or with the state's authority, and derive their taxing authority from the state, not the county.

35. Cities towns, and villages are independent subdivisions of the state.

36. The Revised Statues of Missouri provide methods of levying, extending, and collecting taxes for the various classes of cities, towns, and villages, independent of the County Commission.

The City Clerk is Not Required to Extend Tax Books to Third Class Cities

37. The Defendants maintain that the Revised Statutes of Missouri require that the County Clerk, as part of the duties of his/her office and without further compensation, extend taxes for third-class cities, specifically Boonville.

38. However, at the same time, Defendants maintain the County Collector is not required to extend taxes to third-class cities and may contract with those cities for additional compensation.

39. Section 77.370.1 RSMo states: “Except as hereinafter provided, the following officers shall be elected by the voters of the city: mayor, police judge, attorney, assessor, collector, treasurer and, except in cities which adopt the merit system police department, a marshal.”

40. Section 77.370.4 RSMo states: “Whenever a city contracts for the assessment of property or the collection of taxes with either a public or private entity as authorized by section 70.220, the city council may by ordinance provide that at the expiration of the term of the then city assessor or collector...the office is abolished....”

41. The Revised Statutes of Missouri do not require a third-class city to contract with any entity to collect and levy property taxes.

42. Section 94.130 RSMo states: “When the council shall have fixed the rate of taxation for any given year, the city clerk shall make out appropriate and accurate tax books....”

43. Section 94.150 RSMo states: “The enforcement of all taxes authorized by sections 94.010 to 94.180 shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes...provided, that all suits for the collection of city taxes shall be brought in the name of the state, at the relation and to the use of the city collector.

44. Section 94.170 RSMo states:

f. The city council shall require the collector, at the first meeting of the council in April of each year, or as soon thereafter as may be, to make out, under oath, lists of delinquent taxes remaining due and uncollected for each year, to be known as “the land and lot delinquent list” and the “personal delinquent list.”

g. ...

- h. The city council shall return the delinquent lists to the collector, charging him therewith, and he shall proceed to collect the same in the manner provided by law for the collection of delinquent lists of real and personal taxes for state and county purposes.

45. Section 94.180 RSMo states: “The city collector shall report to the city council, at the regular meetings in each month, all taxes collected on the real and personal delinquent lists; and he shall pay the same to the city treasurer, and receive credit therefor. He shall turn over to his successor all uncollected delinquent lists, receiving credit therefor, and his successor shall be charged therewith; provided, that the city council may declare worthless any and all personal delinquent taxes which the council may deem uncollectable.”

46. Section 94.140 RSMo. states: “It shall be the duty of the city collector to pay into the treasury, monthly, all moneys received by him from all sources, which may be levied by law or ordinance....”

47. Chapter 94 does not require the County Clerk to extend taxes for a third-class city.

48. Taxes for a third-class city cannot be extended until the board of alderman sets the city’s levy, which is done after the county clerk delivers the abstract to the mayor.

49. Section 94.130 RSMo makes it the responsibility of a third class city’s clerk to extend taxes for a third-class city.

Ability of County Clerk to Contract

50. The Revised Statues of Missouri provide an alternate method whereby cities, towns, and villages may contract for services from counties and county officers.

51. This alternate method is not mandatory for cities, towns, and villages.

52. This alternate method is not mandatory for county officers.

53. Counties derive their authority to contract with municipalities from Section 50.332 RSMo, which states: “Each county officer in all counties except first class counties having a charter form of government may, subject to the approval of the governing body of the county, contract with the governing body of any municipality located within such county, either in whole or in part, to perform the same type of duties for such municipality as such county officer is performing for the county. Any compensation paid by a municipality for services rendered pursuant to this section shall be paid directly to the county, or county officer, or both, as provided in the provisions of the contract, and any compensation allowed any county officer under any such contract may be retained by such officer in addition to all other compensation provided by law.”

54. Municipalities derive their authority to enter into such contracts from Section 70.220 RSMo, which states: “Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivisions shall be within the scope of the powers of such municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperate action must be approved by the governing body of the unit of government in which such elective or appointive official resides.”

55. As such, the Revised Statutes of Missouri make it clear the Plaintiff has the ability to contract for services with the City of Boonville.

56. The Revised Statutes of Missouri of Missouri make clear that the Plaintiff has no statutory duty to extend taxes to the City of Boonville.

57. By reason of the foregoing, declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations, and liabilities that exist among the parties to this action.

WHEREFORE, Plaintiff pray the order, judgment, and decree of this Court declaring, ordering, adjudging, and decreeing as follows:

- A. The County Clerk is not required by law to extend taxes from cities, villages, or towns;
- B. The County Clerk can contract with cities, villages, or towns for her services in extending taxes to the County;
- C. For Plaintiffs' reasonable attorneys' fees and costs herein incurred and expended; and
- D. For such other and further relief as the Court shall deem just and proper in the circumstances.

COUNT II

DECLARATORY JUDGMENT THE 1991 CONTRACT IS NOT VOID AND STILL

ENFORCEABLE

58. Plaintiffs reallege, adopt, and incorporate herein by reference all of the allegations of paragraphs 1 through 57 of this Petition as if the same are fully set forth herein.

59. The Defendants maintain the new contract entered into between the Defendants and the City of Boonville supersede the 1991 Contract making the 1991 Contract void.

60. The 1991 Contract was between the City of Boonville, the Plaintiff, and the Defendants.

61. The Plaintiff has never consented or been a party to the 2018 Contract.

62. The 1991 Contract, by its own terms renews every year, unless by March 31st of that year the agreement was changed or voided.

63. The 2018 Contract was entered into on November 1, 2018.

64. Even if the 2018 Contract were to superseded the 1991 Contract, by the specific terms of the 1991 Contract, it stayed in effect during the 2019 year.

65. The City of Boonville believed the 1991 Contract was still in effect as shown in the e-mail attached hereto as **Exhibit D**.

66. Even if the intent between the Defendants and the City of Boonville was to alter the 1991 Contract, the Plaintiff, a party to the 1991 Contract never consented or was made a party to the 2018 Contract.

67. The County Collector cannot extend taxes to the City of Boonville unless the County Clerk is contracted to do so as more detailed in Count I.

68. The County Clerk is a required party to a contract to extend taxes from a municipality to Cooper County.

69. The Defendants are attempting to have the Plaintiff return all funds rightfully earned by the 1991 Contract in the previous year to the City of Boonville.

70. By reason of the foregoing, declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations, and liabilities that exist among the parties to this action.

WHEREFORE, Plaintiff prays the order, judgment, and decree of this Court declaring, ordering, adjudging, and decreeing as follows:

- A. Declare and further specify the 1991 Contract is still binding between all parties;
- B. Declare the Plaintiff is entitled to the compensation;
- C. Declare that order 2-2020 be void and allow Plaintiff her compensation;
- D. For Plaintiffs' reasonable attorneys' fees and costs herein incurred and expended; and
- E. For such other and further relief as the Court shall deem just and proper in the circumstances.

COUNT III

STAY OF EXECUTION OF ORDER 2-2020

71. Plaintiffs reallege, adopt, and incorporate herein by reference all of the allegations of paragraphs 1 through 70 of this Petition as if the same are fully set forth herein.

72. The County Commissioners order 2-2020 requires the compensation Plaintiff is entitled to be sent back to the City of Boonville.

73. The order is required to be carried out by February 3, 2020.

74. This Court has yet to determine the Plaintiff's rights and entitled to the compensation.

75. The Plaintiffs are concerned that if such funds are sent to the City of Boonville, it may be impossible for her to obtain her compensation for services already performed.

WHEREFORE, the Plaintiff prays the order, judgment, and decree of this Court declaring, ordering, adjudging, and decreeing as follows:

- A. Cooper County Commissioner order 2-2020 is stayed pending the resolution of this suit.

- B. For Plaintiffs' reasonable attorneys' fees and costs herein incurred and expended; and
- C. For such other and further relief as the Court shall deem just and proper in the circumstances.

/s/ Richard B. Hicks
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