

## HOW THE NEW "MACKS CREEK LAW" AFFECTS YOUR CITY

It has now been more than a year since HB 103's revisions to the "Macks Creek Law" (302.241.2 RSMo) became effective in August 2013. Most cities have had an annual financial report come due since the revisions came into effect.

- Traffic costs and fees now cannot exceed 30 percent of annual general operating revenue, rather than the prior limit of 35 percent. Excess revenues are still to be remitted through the Department Of Revenue to the school districts.
- The limit now applies to all traffic violations and not just those occurring on state roads.
- The limit now also expressly includes revenues derived from amended or reduced charges.
- Cities are now required to provide an accurate and timely accounting of traffic fines and court costs with their annual financial reports to the state auditor.
- The amended law now provides the potential penalty for non-compliant cities of the loss of jurisdiction of the municipal courts with respect to traffic matters until compliance is achieved.

### *MISSOURI MUNICIPAL LEAGUE V. STATE OF MISSOURI, 13AC-CC00558*

On Sept. 19, 2013, the Missouri Municipal League (MML) filed suit in Cole County challenging HB 103 on several grounds, including Article III, Section 23 of the Missouri Constitution that requires "[n]o bill shall contain more than one subject which shall be clearly expressed in its title . . ." The Bill seems to contain a wide variety of issues from authorizing the sale of land to the state highway department, to placing revenue caps on municipal courts and imposing punitive measures that could alter the jurisdiction of the municipal courts. The title of the Bill indicates that it relates to "Transportation," raising the secondary question as to whether that title is sufficiently "clear."

On July 25, 2014, the circuit court rejected the challenge, holding that all of the provisions of HB 103 are sufficiently related to "Transportation" for purposes of the Missouri Constitution. The circuit court judgment also held that "Transportation" was a "broad" title, but did not find it to be so unclear as to be in violation of the Missouri Constitution.

The MML also challenged whether HB 103 offends the notion of separation of powers as set forth in Article II, Section 1 of the Missouri Constitution that provides: "The powers of government shall be divided into three distinct departments - the legislative, executive and judicial, each of which shall be confided to a separate magistracy, and no person or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others."

In rejecting the MML's challenge on this issue, the circuit court held that the state legislature has the power to regulate municipal judges.

Finally, the MML also argued that HB 103's provisions pertaining to the 30 percent limit were not germane to the original purpose of the Bill in violation of Article III, Section 21 of the Missouri Constitution. The trial court rejected this argument also.

This case is now on appeal. An order was entered during the pendency of the suit that stayed, pending resolution of the case, and the effect of the penalty "loss of municipal court jurisdiction" provision.

### OTHER LEGAL ISSUES

In addition to those arguments raised in the MML suit, there are a number of other legal issues regarding HB 103.

Article 10, Section 16 of the Missouri Constitution prohibits the state from requiring any new or expanded activities by political subdivisions without full state financing. Further,

Article 10, Section 21 of the Missouri Constitution 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 unless a state appropriation is made and disbursed to pay the political subdivision for any increased costs.

HB 103 requires cities to provide additional accounting information in their annual financial statements that are far more burdensome than what was required previously, resulting in increased costs to cities. HB 103 arguably, therefore, places an improper unfunded mandate upon municipalities.

HB 103 also contains a number of terms that have not been defined, with the collective result that its provisions are vague. The terms "accurate," "fines and costs" and "annual general operating revenue" are not defined. This means that an accurate accounting is required without any indication as to the exact parameters of either the nominator or denominator to be used in making the calculations required by the statute. Additionally, HB 103 is completely devoid of any guidance as to how its provisions will be enforced and regulated, except for the very limited rulemaking authority given to the director of revenue.

### PRACTICAL IMPLICATIONS

Although on its face HB 103 would seem to impact only those cities with relatively high traffic fines and costs as compared to general operating revenue, the changes actually materially affect *all* municipalities. The statute requires that "[a]n accounting of the percent of annual general operating revenue from fines and court costs for traffic violations, including amended charges from any charged traffic violation, occurring within the city, town, village or county and charged in the municipal court of that city, town, village or county shall be included in the comprehensive annual financial report submitted to the state auditor by the city, town, village

or county under section 105.145.”

All municipalities need to be aware of this additional requirement, particularly in light of the penalty provision for any municipality’s failure to provide an “accurate” accounting.

In order to determine the limit under HB 103, a municipality needs to calculate 30 percent of its “annual general operating revenue.” However, because there is no definition of “annual general operating revenue,” it is unclear if this equates to the city’s operating budget, general revenues or total revenues, including those from special funds.

The other part of the calculation of the revenue limit is the total amount of court fines and costs derived from traffic violations. Hence, a line must be drawn between traffic violations and non-traffic violations. Would a drug possession charge be considered a traffic violation because it was uncovered during a traffic stop? It would seem reasonable to consider such a ticket as a non-traffic case. If it were to be considered a traffic violation, then the reporting would become even more difficult, as cities would not be able to simply disregard those charges

that are not facially traffic violations, but instead would have to look at the circumstances behind each charge.

Another anomaly in the required accounting is that although restricted municipal income may not count towards annual general operating revenue, the statute calls for the inclusion of fines and court costs. Most cities have court costs ranging from \$24.50 to \$27.50 per case. Of that number, only \$12 is retained by a city for general purposes – the rest is for specifically designated purposes. HB 103 refers to both costs and surcharges as forms of court costs. So cities arguably have to count the additional revenue as “court fines and costs,” even though they do not retain it.

### CONCLUSION

Although the new Macks Creek Law appears to have been designed to address municipalities collecting relatively large amounts of traffic fines, in reality the provisions of this law, as amended, concern all municipalities. The practical ramifications are difficult to fully ascertain. Cities are now confronted with greater reporting requirements and potentially may

suffer harsh penalties for any failure to comply, even if their traffic fines are well below the limit set by HB 103. Consult with your city attorneys and auditors to determine how HB 103 will affect your community. □

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