

IN THE MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

---

APPEAL NO. ED89659

---

STEPHANIE REYNOLDS, et al.

Plaintiffs – Respondents – Cross-Appellants

v.

CITY OF VALLEY PARK, MISSOURI, et al.

Defendants – Appellants – Cross-Respondents

---

On Appeal from the Circuit Court  
of the County of St. Louis  
State of Missouri  
The Honorable Barbara W. Wallace

---

BRIEF OF APPELLANTS WITH REGARD TO RESPONDENTS'  
CROSS-APPEAL ON THE ISSUE OF ATTORNEY'S FEES

---

Kris W. Kobach  
University of Missouri -  
Kansas City School of Law  
5100 Rockhill Road  
Kansas City, MO 64110-2499  
Phone: 816-235-2390  
Fax: 816-235-5276

Louis J. Leonatti  
Leonatti & Baker, P.C.  
123 East Jackson Street  
P. O. Box 758  
Mexico, MO 65265  
Phone: 573-581-2211  
Fax: 573-581- 6577

Eric M. Martin  
109 Chesterfield  
Business Parkway  
Chesterfield, MO  
63005-1233  
Phone: 636-530-1515  
Fax: 636-530-1556

ATTORNEYS FOR DEFENDANTS –  
APPELLANTS – CROSS-RESPONDENTS

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
TABLE OF AUTHORITIES.....	iii
POINT RELIED ON.....	1
ARGUMENT.....	2
CONCLUSION.....	11

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Page No.</u></b>
<b>Baumli v. Howard County</b> , 660 S.W.2d 702 (Mo. 1983).....	1-8
<b>Bernheimer v. First National Bank of Kansas City</b> , 225 S.W.2d 745 (Mo. 1949).....	3
<b>Client Services, Inc. v. Missouri Coordinating Board for Higher Education</b> , 30 S.W.3d 194 (Mo. App. E. D. 2000).....	1,5
<b>Law v. City of Maryville</b> , 933 S.W.2d 873 (Mo. App. W. D. 1996).	7
<b>Mayor, Councilmen, &amp; Citizens of the City of Liberty v. Beard</b> , 636 S.W.2d 330, 331 (Mo. banc 1982).....	3
<b>Simasi v. City of Fenton</b> , 659 S.W.2d 532 (Mo. App. E. D. 1983)...	4-5
<b>Temple Stephens Co. v. Ronald Westenhaver</b> , 776 S.W.2d 438 (Mo. App. W. D. 1989).....	9
<b>The David Ranken, Jr. Technical Institute v. Boykins</b> , 816 S.W.2d 189, 193 (Mo. banc 1991).....	8-9
<b>Tillis v. City of Branson</b> , 975 S.W.2d 949 (Mo. App. S. D. 1998), Note (1).....	1-4, 7-8
<b>V.M.B., D.D.S. v. Missouri Dental Board</b> , 74 S.W.3d 836 (Mo. App. W. D. 2002).....	1,5
<b><u>Missouri Statutes</u></b>	
Section 527.100, R.S.Mo.....	2-3, 5-6
<b><u>United States Statute</u></b>	
42 USC, § 1983.....	9

**POINT RELIED ON**

**I. THE TRIAL COURT'S DENIAL OF RESPONDENTS' REQUEST FOR ATTORNEY'S FEES SHOULD BE AFFIRMED BECAUSE THE APPELLANT, CITY OF VALLEY PARK, MISSOURI, IS A POLITICAL SUBDIVISION OF THE STATE OF MISSOURI, AND MISSOURI'S DECLARATORY JUDGMENT ACT DOES NOT AUTHORIZE AN AWARD OF ATTORNEY'S FEES AGAINST A POLITICAL SUBDIVISION OF THE STATE OF MISSOURI.**

*Baumli v. Howard County*, 660 S.W.2d 702 (Mo. 1983).

*Tillis v. City of Branson*, 975 S.W.2d 949 (Mo. App. S. D. 1998), Note (1).

*Client Services, Inc. v. Missouri Coordinating Board  
for Higher Education*, 30 S.W.3d 194 (Mo. App. E. D. 2000).

*V.M.B., D.D.S. v. Missouri Dental Board*, 74 S.W.3d 836  
(Mo. App. W. D. 2002).

**ARGUMENT**  
**RESPONDENTS' REQUEST FOR ATTORNEY'S FEES**

Respondents advocate the novel theory that a municipal legislative body should be held liable for attorney's fees when it enacts ordinances. Respondents cite no precedent dealing with this particular fact situation. Rather, they attach the City of Valley Park's insurance policy to the Appendix to their Brief, and then cite to the Court decisions which are not authoritative.

To permit a Court to assess attorney's fees against a legislative body for passing an ordinance would have a chilling effect on the separation of powers.

The Respondents have consistently maintained throughout this lawsuit that they are asserting a single claim under the Missouri Declaratory Judgment Act. The "wherefore clause" and request for relief in the Respondents' Second Amended Petition seek to recover attorney's fees for attorneys who are handling this matter on a pro bono basis. Such relief is not available against a political subdivision of the State of Missouri under the Missouri Declaratory Judgment Act. See *Baumli v. Howard County*, 660 S.W.2d 702 (Mo. 1983) and *Tillis v. City of Branson*, 975 S.W.2d 949 (Mo. App. S. D. 1998), Note (1).

Respondents have voluntarily dismissed the allegation that the Valley Park Board of Alderman violated the Missouri Open Meetings Law.

*Section 527.100, R.S.Mo.*, permits the Circuit Court to award costs "as may seem equitable and just." Missouri follows the *American Rule* which requires each

party to bear their own attorney's fees unless there is statutory authorization or a contractual agreement which permits the recovery of attorney's fees. See *Mayor, Councilmen, & Citizens of the City of Liberty v. Beard*, 636 S.W.2d 330, 331 (Mo. banc 1982).

The *Mayor* decision involved the annexation of five (5) square miles of land by the City of Liberty. The Appellant cited the Missouri Declaratory Judgment Act, *Section 527.100, R.S.Mo.*, as authority for the award of attorney's fees. The Missouri Supreme Court rejected this argument, and limited the decision in *Bernheimer v. First National Bank of Kansas City*, 225 S.W.2d 745 (Mo. 1949), to its facts. *Bernheimer* involved a determination of the meaning of the "lawful issue" clause of a Will. The Court permitted an allowance of attorney's fees in this Will construction case. The trial determined that special circumstances existed which permitted the award of attorney's fees as "costs". The *Mayor* decision, *Baumli v. Howard County, id.*, and *Tillis v. City of Branson, id.*, all specifically hold that there must be express statutory authority to permit the recovery of attorney's fees against a political subdivision of the State of Missouri. Each of these Appellate decisions clearly holds that *Section 527.100, R.S.Mo.*, does not provide the statutory foundation required to award attorney's fees. The decision in *Tillis* succinctly sets forth the governing precedent:

“Although the basis of this opinion is limited to the duty of a Circuit Court in entering the judgment after a mandate, attorney’s fees are not assessable as costs against the state in the absence of statute explicitly providing for such assessment. A city is a subdivision of the state, therefore, attorney’s fees cannot normally be recovered from such an entity.” 975 S.W.2d at p. 951, Note (1).

At paragraphs 16 and 19 of their Second Amended Petition, the Respondents have judicially admitted that the City of Valley Park is a City of the Fourth Class and a political subdivision of the State of Missouri. Respondents have also judicially admitted that Mayor Whitteaker is sued in his official capacity. The other individual members of the Board of Aldermen who were named as defendants have been dismissed by the Circuit Court as parties.

*Baumli v. Howard County* was decided in 1983 by the Missouri Supreme Court. There is a pre-*Baumli* decision of the Missouri Court of Appeals, Eastern District – *Simasi v. City of Fenton*, 659 S.W.2d 532 (Mo. App. E. D. 1983) – which recognizes the possibility that attorney’s fees may be recovered in “unusual circumstances” when a court of equity finds it necessary to balance benefits. The Court of Appeals in *Simasi* reversed an award of attorney’s fees by the trial court. *Simasi* is not referenced by the Missouri Supreme Court in the Opinion in *Baumli*. *Simasi* also is not referenced by the Missouri Court of Appeals, Southern District, in the *Tillis* decision. Both *Baumli* and *Tillis* were decided after *Simasi*, and explicitly hold that attorney’s fees may not be awarded against a political

subdivision of the State of Missouri, pursuant to the Missouri Declaratory Judgment Act.

Respondents try to circumvent these holdings by referencing cases which do not deal with the issue on appeal, and in particular, contain no citation to the Supreme Court's decision in *Baumli*.

Subsequent to the *Simasi* decision, the Missouri Court of Appeals, Eastern District, decided *Client Services, Inc. v. Missouri Coordinating Board for Higher Education*, 30 S.W.3d 194 (Mo. App. E. D. 2000). The Court of Appeals reversed the trial court's award of attorney's fees in a declaratory judgment action against a state agency. It held:

“It is well-settled that attorney's fees are not assessable as costs against the state in the absence of a statute that explicitly provides for such assessment.” *Baumli v. Howard County*, 660 S.W.2d 702, 705 (Mo. banc 1983) . . . The Missouri Declaratory Judgment Act, *Section 527.100, R.S.Mo.*, which permits a trial court to ‘make such award of costs as may seem equitable and just,’ does not give the trial court express authority to award attorney's fees or other costs against the state.”  
30 S.W.3d at p. 195.

The Missouri Court of Appeals, Western District, followed the *Client Services* decision, with its decision in *V.M.B., D.D.S. v. Missouri Dental Board*, 74 S.W.3d 836 (Mo. App. W. D. 2002). This case involved a dentist's application to practice dentistry in Missouri. He had previous convictions for felony possession of cocaine and misdemeanor possession of marijuana in the State of



Kansas. The dentist had not revealed these convictions on his application for a license in Missouri. When the convictions were discovered, an agreement was entered into which placed him on probation for five (5) years. The Missouri Dental Board notified Blue Cross/Blue Shield after an inquiry about the disciplinary action which had been taken and the reason for the disciplinary action. The dentist then sued the Dental Board seeking damages for negligence, tortious interference with contractual rights, a declaratory relief and an injunction.

His claim for attorney's fees was denied. The Court of Appeals affirmed.

The dentist cited various statutory provisions including the Missouri Declaratory Judgment Act to support his theory that he should be awarded attorney's fees. The Court of Appeals, in its Opinion, held:

“The State argues that these provisions do not help V.M.B., because equity is not an exception to the rule requiring statutory authority before assessing attorney's fees against a state agency. The State is correct.

Attorney's fees may not be assessed against the State unless a statute expressly provides the authority . . . See *also Baumli v. Howard County*, 660 S.W.2d 702, 705 (Mo. banc 1983) (holding that § 527.100 did not provide the express statutory authority needed to assess attorney's fees against a county).” 74 S.W.3d at p. 842.

Clearly the established precedent in Missouri is that attorney's fees cannot be awarded against the State or one of its political subdivisions under the Missouri Declaratory Judgment Act.

Respondents, in their Brief, cite various cases which they claim are precedent to allow attorney's fees. None of these cases deal with the award of attorney's fees against a political subdivision other than the decision in *Law v. City of Maryville*.

Let's discuss the decision in *Law v. City of Maryville*, 933 S.W.2d 873 (Mo. App. W. D. 1996). *Law* involved an award by the trial judge against the City of Maryville ordering the City to pay \$1,000 in attorney's fees. The case was concerned with the passage of a new zoning code which designated property to be zoned as "R-2", single family residence. Prior to the passage of the new zoning code, the real estate in question had been used as a residence and an attached building had been used for business-related activities which included an auto repair shop. Obviously, the commercial use was grandfathered when the zoning law was changed. The City of Maryville claimed on appeal, that the facts did not establish "unusual circumstances". The Court of Appeals, in its Opinion, did not cite *Baumli* or *Tillis*. It did note that there was testimony that the City had actively interfered with the purchasers of the property, their tenants, and had "scared off" tenants and potential purchasers by telling them that the block structure's commercial use was limited to an auto repair shop only. The trial court held, and the Court of Appeals affirmed, that this action was improper and constituted unusual circumstances. It relied on the precedent in the Missouri Supreme Court's

Opinion in *The David Ranken, Jr. Technical Institute v. Boykins*, 816 S.W.2d 189, 193 (Mo. banc 1991), without citing the *Baumli* or *Tillis* decisions.

The *David Ranken* decision involved a city license tax. Ranken Technical Institute had paid the city license tax under protest, claiming that it was a charitable corporation established in 1907 whose function was to teach young people in manual and mechanical trades. It qualified as a charity, and thus was exempt from property taxes assessed by the City of St. Louis, the State of Missouri sales and use taxes, and the United States' income and excise taxes. It further alleged that the City's license tax should not apply to it. The Circuit Court found that Ranken Tech was not subject to the license tax. The Court of Appeals affirmed this holding, and reversed the judgment that granted Ranken an attorney's fee. The Missouri Supreme Court, at p. 193 of its Opinion, states:

“The rule at common law in actions at law is that the successful litigant is not automatically entitled to an attorney's fee because the justice of his claim has been established. Generally, attorney's fees were not awarded . . . Missouri has adopted the *American Rule*; that is, absent statutory authorization or contractual agreement, with few exceptions, each litigant must bear his own attorney's fee . . .” 816 S.W.2d at p. 193.

Missouri courts have limited the exception to those cases involving ‘very unusual circumstances’ or where the natural and proximate result of a breach of duty is to involve the wronged party in collateral litigation.

The Missouri Supreme Court, noting that the *Ranken Tech* case involved a case of first impression, said that there was no evidence that this was a reckless and punitive assessment of the license tax. As a result, there were no unusual circumstances which warranted the award of attorney's fees.

Respondents then turn to the decision in *Temple Stephens Co. v. Ronald Westenhaver*, 776 S.W.2d 438 (Mo. App. W. D. 1989), as justification for an award of attorney's fees. What they fail to point out in their brief is that this case fell within the exception of special circumstances because fraudulent action was taken to deprive an adjoining landowner of notice about a proposed change in zoning classification. The Court specifically found that the landowner seeking the change intentionally omitted listing the *Temple Stephens Co.*, the adjoining property owner, as an affected property. Thus, it awarded attorney's fees against the wrongdoers, individually, because they had deprived *Temple Stephens* of its legal right to protest a re-zoning application.

It should be clearly noted that the *Temple Stephens* decision does not involve an award of attorney's fees against a political subdivision of the State of Missouri.

Also, Respondents purposely did not pursue a Federal Civil Rights Act under *42 USC, § 1983*, which could have resulted in an award of attorney's fees.

The case at bar is a case of first impression as to whether or not a municipality has the authority to enact an ordinance governing occupancy permits and employment of individuals who are illegally in the United States of America.

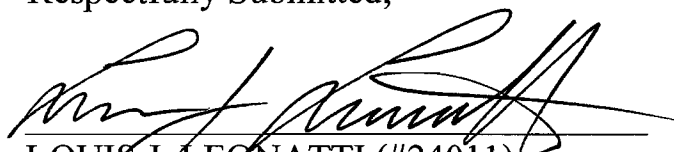
There is no authority for the award of attorney's fees against a political subdivision for passing legislation under the Missouri Declaratory Judgment Act.

The legislative act of passing an ordinance is not a tort.

**CONCLUSION**

The decision of Judge Wallace denying the Respondents' request for attorney's fees should be affirmed.

Respectfully Submitted,



LOUIS J. LEONATTI (#24011)  
RANDALL P. BAKER (#36579)  
LEONATTI & BAKER, P.C.  
123 EAST JACKSON STREET  
P. O. BOX 758  
MEXICO, MO 65265  
TELEPHONE: 573-581-2211  
FAX: 573-581-6577

ERIC M. MARTIN (#27466)  
109 CHESTERFIELD BUSINESS  
PARKWAY  
CHESTERFIELD, MO 63005-1233  
TELEPHONE: 636-530-1515  
FAX: 636-530-1556

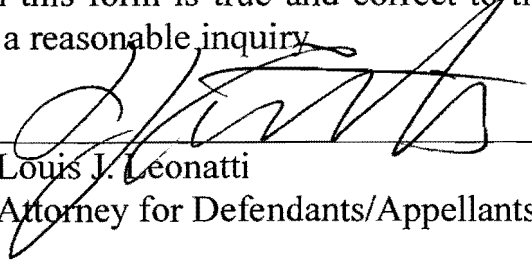
KRIS W. KOBACH  
UNIVERSITY OF MISSOURI –  
KANSAS CITY SCHOOL OF LAW  
5100 ROCKHILL ROAD  
KANSAS CITY, MO 64110-2499  
TELEPHONE: 816-235-2390  
FAX: 816-235-5276

ATTORNEYS FOR DEFENDANTS/  
APPELLANTS/CROSS-  
RESPONDENTS

### **Certificate of Compliance**

As required by S. Ct. Rule 84.06, I hereby certify that this brief is proportionally spaced, 14 point type, font is Times New Roman, and contains 2,359 words exclusive of the Table of Contents, Table of Authorities, and Certificates of Counsel. The software used is Microsoft Word 2003. I relied on my word processor to obtain the count. Also, a CD Rom of this brief is filed with the written copies. Undersigned counsel further states that a copy of the CD Rom has been provided to opposing counsel, that the CDs have been scanned for viruses, and that the CDs are virus-free.

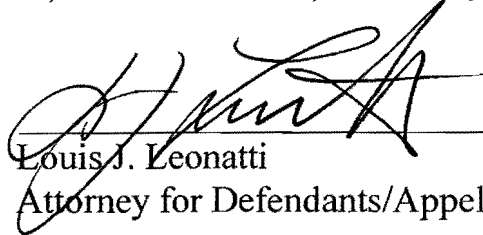
I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Louis J. Leonatti  
Attorney for Defendants/Appellants

### **Certificate of Service**

I hereby certify that two (2) copies of Appellants' Brief were mailed, postage prepaid this 18<sup>th</sup> day of March, 2008, along with a CD Rom of the brief, scanned for viruses to: Elizabeth Ferrick, Esq., Bryan Cave LLP, One Metropolitan Square, St. Louis, MO 63102; two (2) copies of Appellants' Brief were mailed, postage prepaid this 18<sup>th</sup> day of March, 2008, along with a CD Rom of the brief, scanned for viruses to: Karen Tokarz, Esq., Washington University School of Law, Civil Rights & Community Justice Clinic, One Brookings Drive, CB 1120, St. Louis, MO 63108; two (2) copies of Appellants' Brief were mailed, postage prepaid this 18<sup>th</sup> day of March, 2008, along with a CD Rom of the brief, scanned for viruses to: John J. Ammann, Esq., St. Louis University Legal Clinic, 321 North Spring, St. Louis, MO 63108; one (1) copy of Appellants' Brief was mailed, postage prepaid this 18<sup>th</sup> day of March, 2008, along with a CD Rom of the brief, scanned for viruses to: Eric M. Martin, Esq., 109 Chesterfield Business Parkway, Chesterfield, MO 63005-1233; one (1) copy of Appellants' Brief was mailed, postage prepaid this 18<sup>th</sup> day of March, 2008, along with a CD Rom of the brief, scanned for viruses to: Kris W. Kobach, Esq., University of Missouri – Kansas City School of Law, 5100 Rockhill Road, Kansas City, MO 64110-2499.

I further certify that on the 18<sup>th</sup> day of March, 2008, ten (10) copies of Appellants' brief and a CD Rom were filed with the Missouri Court of Appeals for the Eastern District by sending same via Federal Express, standard overnight delivery, to: Laura Thielmeier Roy, Clerk of the Missouri Court of Appeals for the Eastern District, One Post Office Square, 815 Olive Street, St. Louis, MO 63101.



---

Louis J. Leonatti  
Attorney for Defendants/Appellants