

**IN THE CIRCUIT COURT WEBSTER COUNTY
STATE OF MISSOURI**

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| STATE OF MISSOURI, ex rel. |) | |
| Attorney General ERIC S. SCHMITT, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. |
| |) | |
| CITY OF MARSHFIELD, MISSOURI |) | |
| |) | |
| |) | |
| Respondent. |) | |

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioner, State of Missouri, at the relation of Attorney General Eric S. Schmitt, brings this Petition and upon information and belief states as follows:

Nature of the Action

1. The era of “taxation by citation” ended in the State of Missouri with the passage of Senate Bill 5 in 2015, Senate Bill 572 in 2016, and Senate Bill 765 in 2016. Before these laws, various municipalities were treating citizens as nothing more than ATMs. Among other things, these laws began the process of reestablishing trust in municipal courts by prohibiting municipalities from setting traffic ticket quotas for the purpose of generating revenue and supporting bloated governments. The laws protect Missouri citizens—especially our least fortunate citizens—from oppressive ticketing practices and nefarious revenue-generating tactics. The Attorney General of Missouri has received credible information that the City of Marshfield, Missouri, and its Chief of Police, Doug Fannen, are flagrantly violating these prohibitions. On information and belief, the City of Marshfield and its Chief of Police are directing

their police officers to write a minimum number of tickets every month for the purpose of generating additional municipal revenue. The Attorney General seeks immediate declaratory and injunctive relief to put an end to this unlawful practice.

Parties

2. Eric S. Schmitt is the Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 27, RSMo. Section 27.060, RSMo, provides that the “attorney general shall institute, in the name and on behalf of the state, all civil suits and other proceedings at law or equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary.”

3. As the Supreme Court of Missouri has explained, “The attorney general has the authority ‘to seek enforcement of the legislature’s statutory purpose.’” *State ex rel. Hawley v. Pilot Travel Centers, LLC*, 558 S.W.3d 22, 30 (Mo. banc 2018), quoting *Fogle v. State*, 295 S.W.3d 504, 510 (Mo. App. W.D. 2009).

4. The “Attorney General, both because of his statutory and common law powers, is a proper party to bring an action for the state ... which would prevent injury to the general welfare.” *State ex. rel. Taylor v. Wade*, 231 S.W.2d 179, 182 (Mo. banc 1950).

5. In addition, the Attorney General has common law authority to seek equitable relief and enforce the provisions and statutory purposes of §§ 304.125 and 575.320, RSMo. “If there were no other remedy for a great wrong, and public justice

and individual rights were likely to suffer for want of a prosecutor capable of pursuing the wrongdoer and redressing the wrong, the courts would ... find authority for the attorney general to intervene in the name of the people.” *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 135 (Mo. banc 2000), quoting *State ex rel. McKittrick v. Missouri Public Service Comm’n*, 175 S.W.2d 857, 864–65 (Mo banc 1943).

6. Respondent City of Marshfield, Missouri (herein, “City of Marshfield”) is a municipal corporation located in Webster County, Missouri.

Jurisdiction and Venue

7. This Court has subject matter and personal jurisdiction over this action under Art. V, § 14 of the Missouri Constitution and § 506.500, RSMo.

8. Venue is proper in this Court pursuant to § 508.050, RSMo, which provides that “[s]uits against municipal corporations as defendant or codefendant shall be completed only in the county in which the municipal corporation is situated.”

9. This court may grant declaratory relief pursuant to § 527.010, RSMo, and injunctive relief pursuant to § 526.010, RSMo.

Senate Bill 765 and Misconduct in the Administration of Justice

10. In 2016, the Missouri General Assembly passed Senate Bill 765, which enacted § 304.125, RSMo, and amended § 575.320, RSMo.

11. Section 304.125, RSMo, provides in relevant part: “No political subdivision or law enforcement agency shall have a policy requiring or encouraging an employee to issue a certain number of citations for traffic violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis.”

12. Section 575.320, RSMo, provides in pertinent part:

A public servant in his or her public capacity or under color of his or her office or employment, commits the offense of misconduct in administration of justice if he or she ... (6) Orders or suggests to an employee of a political subdivision that such employee shall issue a certain of traffic citations on a daily, weekly, monthly, quarterly, yearly, or other quota basis or that such employee shall increase the number of traffic citations that he or she is currently issuing.

13. In passing Senate Bill 765, the General Assembly intended to limit the ability of municipalities to finance their operations by issuing traffic citations and to hold municipalities and their employees accountable when they establish policies that encourage “taxation by citation.”

Allegations of Official Misconduct

14. On October 16, 2019, the Office of the Missouri Attorney General obtained credible information of violations of Missouri law committed by Respondent from whistleblowers familiar with the police department’s internal operations.

The Traffic Ticket Quota Scheme

15. On information and belief, Chief of Police Doug Fannen, on behalf of the City of Marshfield, has given instructions to department employees to write sixteen (16) citations per month. At all times relevant in this Petition, the Chief of Police was acting on behalf of the City of Marshfield and the Marshfield Police Department.

16. On information and belief, the Chief of Police has informed department employees that officers’ performance evaluations would reflect whether the employee had issued a minimum of sixteen (16) citations per month.

17. On information and belief, the Chief of Police has called officers who issued fewer than sixteen (16) citations per month into his office to discuss their performance.

Statistics Exhibiting the Traffic Ticket Quota Scheme

18. On information and belief, in January 2019, the Chief of Police began posting officers' monthly traffic citation statistics to the Department bulletin board. See **Exhibit A**, Monthly Traffic Statistics.

19. On information and belief, the Chief of Police briefly stopped posting officer statistics after the Attorney General sued the City of Diamond in April 2019 for an illegal traffic ticket quota scheme.

20. On information and belief, the Chief of Police noted that the City of Diamond chief "messed up" by documenting a quota policy. The Chief of Police asserted that he had never written down his quota policy.

21. Marshfield Police Department's traffic stop statistics submitted by the Department to the Attorney General's Office support that the Chief of Police began encouraging increased traffic citations to boost revenue in 2018:

- a. The number of citations issued by Marshfield police officers increased dramatically in 2018—in 2016, the total number of citations was 383; in 2017, the total number of citations was 646; and in 2018, the total number of citations was 1,386.
- b. The number of warnings given by Marshfield police officers has decreased—in 2016, the total number of warnings was 982; in 2017, the

total number of warnings was 811; and in 2018, the total number of warnings was 767.

- c. The number of citations issued by Marshfield police officers on the Interstate highway has increased exponentially—in 2016 the total number of Interstate highway stops was zero; in 2017, the total number of Interstate highway stops was eight; and in 2018, the total number of Interstate highway stops was 241.

See **Exhibit B**, Marshfield Traffic Stop Data.

Tickets Needed to Generate Revenue for New Positions and the Department

22. On information and belief, the Department and the Chief of Police is motivated not by a concern for public safety, but rather to generate revenue for the City of Marshfield.

23. In addition to requiring officers to write 16 citations per month, the Marshfield Police Department created a new “traffic enforcement officer” position in early 2019.

24. The proposed 2019 budget for the City of Marshfield included an increase of \$35,321 in wages for the purpose of hiring a traffic enforcement officer, and explained:

The police department is asking to add a traffic officer to our department.... The way we would pay for this position (assuming the court is able to collect all fines owed) is that there are five common ordinance violations that are currently written during traffic enforcement.... For the purpose of this example, I am using an \$85.00 fine to show potentially what a traffic officer could generate in fines per

year. 6 citations per shift =\$510, 30 citations per week = \$2,550, 1,560 citations per year = \$132,600. If the officer were to write 8 citations per shift = \$680, 40 citations per week = \$3400, 2,080 citations per years = \$176,600.

See **Exhibit C**, 2019 Budget, p. 28.

25. When the Board of Aldermen approved the new traffic enforcement officer, the Mayor of Marshfield endorsed the new position, noting that “the City of Marshfield spends a lot on law enforcement. The revenue does not come close to cover the cost of providing law enforcement.” **Exhibit D**, Board of Aldermen Minutes February 14, 2019, p. 6.

26. On information and belief, the traffic enforcement officer is required to write at least nine (9) citations per shift, or 144 citations per month, and other officers are still required to write at least sixteen (16) citations per month.

27. On information and belief, the Department is considering hiring a second traffic enforcement officer.

Efforts to Silence Whistleblowers

28. On information and belief, in early 2019, an officer employed by the Marshfield Police Department confronted the Chief of Police and stated that ticket quotas are illegal under Missouri law.

29. On information and belief, this officer resigned after receiving disparate treatment from the Chief of Police following the officer raising concerns to the Chief of Police about the ticket quota scheme.

30. On information and belief, the Chief of Police and/or a direct report to the Chief of Police approached the Webster County Prosecuting Attorney to discuss pursuing a felony charge against the resigned officer for an unrelated issue.

31. On information and belief, the Chief of Police asked an officer to relay a message to the resigned officer that if the resigned officer contacted the Attorney General's Office about the traffic ticket quota scheme, the Chief of Police would pursue a felony charge against the resigned officer on an unrelated issue.

Count I – Request for Declaratory Judgment

32. Petitioner incorporates all of the allegations contained in Paragraphs 1 through 31 above.

33. On information and belief, the City of Marshfield, Missouri, has engaged and continues to engage in methods, acts, uses, or practices that violate §§ 304.125 and 575.320, RSMo, by establishing a policy requiring or encouraging employees to issue a certain number of traffic citations.

34. Accordingly, Petitioner is entitled to an order pursuant to §§ 527.010 and 527.020, RSMo, declaring that the City of Marshfield is in violation of §§ 304.125 and 575.320, RSMo, because the people of Missouri's rights, status, and legal relations are affected by Respondent's non-compliance with Missouri statutes, and the legislative purpose in enacting those provisions has been frustrated by Respondent's unlawful conduct.

WHEREFORE, Petitioner State of Missouri ex rel. Attorney General Eric S. Schmitt, prays this Court for an Order declaring that the City of Marshfield,

Missouri, has violated and is continuing to violate §§ 304.125 and 575.320, RSMo. The Attorney General further requests an award of the costs and reasonable attorneys' fees incurred to bring this action, plus such additional relief as this court deems just and proper under these circumstances.

Count II – Request for Injunctive Relief

35. Petitioner incorporates all of the allegations contained in Paragraphs 1 through 34 above.

36. On information and belief, the City of Marshfield, Missouri, has engaged and continues to engage in methods, acts, uses, or practices that violate §§ 304.125 and 575.320, RSMo, by establishing a policy requiring or encouraging employees to issue a certain number of traffic citations.

37. Accordingly, Petitioner is entitled to injunctive relief pursuant to § 526.010, RSMo, prohibiting the City of Marshfield from its continued violations of §§ 304.125 and 575.320, RSMo, because the people of Missouri's rights are threatened, an adequate remedy cannot be afforded by an action for damages, the legislative purpose in enacting these provisions has been frustrated by Respondent's unlawful conduct, and Petitioner and the people of Missouri will be irreparably harmed in the absence of injunctive relief.

WHEREFORE, Petitioner State of Missouri ex rel. Attorney General Eric S. Schmitt, prays this Court for a preliminary and permanent injunction prohibiting the City of Marshfield, Missouri, from continued violation of §§ 304.125 and 575.320, RSMo. The Attorney General further requests an award of the costs and reasonable

attorneys' fees incurred to bring this action, plus such additional relief as this court deems just and proper under these circumstances.

Respectfully submitted,

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