

OFFICE OF THE CITY ATTORNEY



To: Mayor Kay Barnes
From: William D. Geary, Assistant City Attorney
Subject: Light rail legislation
Date: January 11, 2007

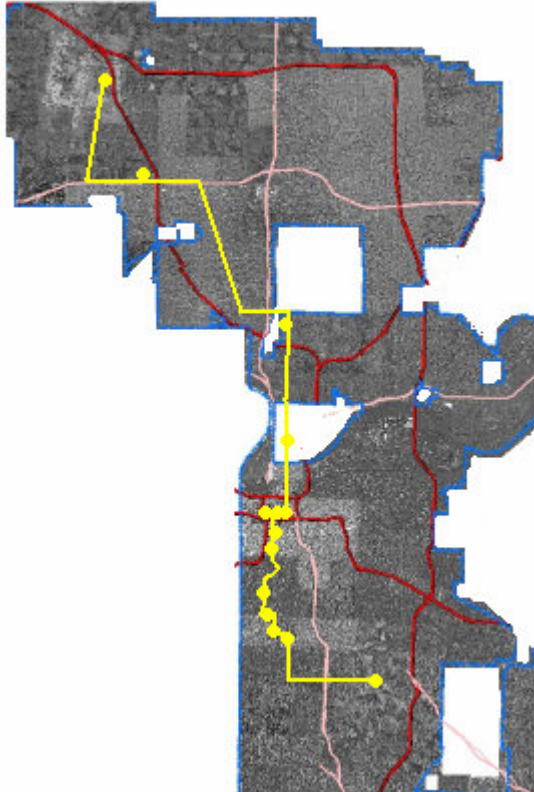
I have been asked for an outline of the most obvious legal constraints posed by the legislation proposed by initiative petition and adopted by the voters concerning a light rail system.

JURISDICTIONAL CONFLICTS – STATE OF MISSOURI, NORTH KANSAS CITY, GLADSTONE

State of Missouri

The route is required to go over the Heart of America Bridge. This is a bridge controlled by the State of Missouri. What goes on this bridge is within the discretion of the State acting through the Department of Transportation and the Missouri Highways and Transportation Commission. The citizens of Kansas City cannot supplant the decisionmaking authority of the State.

Issues Traversing North Kansas City



The legislation requires the light rail system to travel through North Kansas City and Gladstone. It also requires a stop *at* North Kansas City. (Whether this means the stop may be in Kansas City at the border with North Kansas City or in Kansas City is unclear.) The ordinance states:

Implement Kansas City's new Heartland Light Rail System consisting of a north/south light rail spine beginning at the Kansas City Zoo in Swope Park and ending at the Kansas City International Airport including, but not limited to, stops at . . . North Kansas City . . . with the route following . . . Heart of America Bridge, Burlington Avenue, N. Oak Trafficway, Englewood Road, Waukomis Drive . . .

Ordinance 060931, As Amended, §B.1 (adopted Aug. 24, 2006).

Generally, a city has the authority to condemn property outside its borders if the property is located within a county in which the city exists.¹ But that does not provide a solution to the problem faced by the route required by the initiated legislation, for there are still matters of respecting the public uses of property by the cities in which property would need to be taken.

For example, a major intersection providing one of the main east-west routes through North Kansas City into its commercial district is at Armour Road and Burlington. If alternative traffic management cannot solve the problem of the traffic volume going through that intersection, condemnation of property may not be allowed.

Issues Traversing Gladstone

An identical problem exists at the intersection of Englewood Road and North Oak Trafficway. The Route is required to go from that intersection to Waukomis Drive. The traffic management problems are significant within Kansas City, but the City's voters are not required to impose the most efficient or cost effective route that could have been selected. But when dealing with the challenge of securing property within Gladstone, the same analysis applied to the North Kansas City segment must be applied to the Gladstone segment.

The Englewood Road segment would also require the cooperation of the State since it goes underneath a state overpass at U.S. 169 where there are exit and entrance ramps at each corner of the intersection of Englewood Road and U.S. 169. It is also here that the Gladstone city limit moves south of Englewood Road, necessitating the redirection of Gladstone streets and services.

CHARTER CONSIDERATION –BOARD OF PARKS AND RECREATION COMMISSIONERS

Because of the way the initiative petition was prepared, the ordinance adopted by the voters conflicts with the City Charter. The ordinance dictates how some of the City's parks and boulevards will be operated. This is the exclusive purview of the Board of Parks and Recreation Commissioners.

The City Charter grants the power over our parks and boulevard system to the Board in the following expansive terms:

There will exist a Parks and Recreation Department. The Parks and Recreation Department shall be under the direct control of a Board of Parks and Recreation Commissioners, who shall employ a Director of Parks and Recreation to perform the following duties, when not otherwise assigned: Plan, develop, extend,

¹ Section 82.240, RSMo. The City Charter provides a broad grant of power to the City: "The City shall have all powers which the General Assembly of the State of Missouri has authority to confer upon any City." §102, Charter (2006). This is sufficient for purposes of §82.240, RSMo. *City of Cape Girardeau v. Jett*, 851 S.W.2d 114 (Mo.App. 1993).

maintain and operate a system of public parks, parkways, boulevards, and facilities for the use of the City and its inhabitants.²

It is an explicit duty of the Board of Parks and Recreation Commissioners to “*directly superintend, control, manage, develop and extend all parks, parkways, boulevards and other properties and resources as assigned by the City Council upon recommendation of the Board.*”³

An ordinance adopted by the City Council attempting to supplant the authority of the Board of Parks and Recreation Commissioners is not lawful. It would violate the dictates of the City Charter. Such mandatory requirements cannot be evaded by adopting an ordinance by initiative.⁴ An ordinance that could not be passed by the City Council cannot be passed by initiative.⁵

Although the City Charter provides that property can be removed from the park system by a vote of the people that power is contingent upon the Board of Parks and Recreation Commissioners finding the property *is no longer necessary or appropriate* for park, parkway, or boulevard use. The Charter provides the following:⁶

If any property is determined by the Board of Parks and Recreation Commissioners to be no longer necessary or appropriate for park, parkway, or boulevard use, such property may be removed from the park system by a vote of the people.

The Board never made this required determination before the initiated ordinance was presented to the public.

The park property required for use in the light rail system by the initiated legislation is simply not available for that use until the following things happen. First, the Board of Parks and Recreation Commissioners must determine that the property, such as Broadway or parts of Penn Valley Park, is no longer needed for parks purposes. Second, the City Council must place a measure before the voters asking that the property be removed from the Parks system. Third, the voters must approve of the change in the Parks system.

There is property under control of the Board of Parks and Recreation Commissioners all along the dictated route. In some instances significant fountains are located in the affected parks. Each

² §412(a)(1), Charter (2006).

³ §1001(c), Charter (2006).

⁴ *Rice v. Stoff*, 844 S.W.2d 529 (Mo.App. 1993), *cert. denied sub nom., Carter v. City of St. Louis*, 509 U.S. 924 (1993) [requirements of redevelopment statutes cannot be evaded by initiative]; *International Telemeter of Columbia Corp. v. City of Columbia*, 488 S.W.2d 224 (Mo.App. 1972) [requirements of federal law cannot be evaded by initiative].

⁵ *Baum v. City of St. Louis*, 123 S.W.2d 48 (Mo. 1938).

⁶ §1004(b), Charter (2006).

piece of property must be presented to the voters for their permission to allow the use of the property for the light rail system.

CONTRACTUAL CONFLICTS

I will address by way of example a project that could be impacted by the route required by the initiated legislation. If City property is not available for the construction of the light rail system then alternative private property along the route must be used. There can be conflicts with existing City agreements. For example, the Cerner Corporation occupies a building at 3301 North Oak Trafficway, opposite the Waterworks Park. The City has issued \$30 million of Chapter 100 bonds that are to be paid off by payments from Cerner to the City. By taking the property for light rail purposes the agreement between the City and Cerner is put into question.

FUNDING OF THE PROJECT

Although not a technical defect in the ordinance establishing the route and technology that must be used for the light rail system, there is in my opinion yet at least one additional potential legal defect in the petition. An ordinance adopted by initiative must identify the funds required to pay for the project.

The Missouri Constitution states:

The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, or for any other purpose prohibited by this constitution.⁷

This provision applies to cities.⁸

If an initiated ordinance does not provide the funds to accomplish the requirements of the ordinance, it is unconstitutional.⁹

The light rail ordinance dictates a specific system, including route and to some extent the technology that must be used. The system is not solely dependent upon the 25-year $\frac{3}{8}\%$ sales tax approved by the voters. It contemplates and requires the use of State and federal funds to cover the cost of the system. These financing sources are not guaranteed or specific.

The initiated ordinance requires a system be built to the dictates of the ordinance, but the money necessary to do this is, admittedly by the spokesman for the Committee of Petitioners and as

⁷ MO. CONST. art. III §51.

⁸ *State ex rel. Card v. Kaufman*, 517 S.W.2d 78 (Mo. 1974).

⁹ *State ex rel. Sessions v. Bartle*, 359 S.W.2d 716 (Mo. 1962); *Kansas City v. McGee*, 269 S.W.2d 662 (Mo. 1954).

reflected in the ballot language, contingent upon federal and state support. It is the contingent nature of the proposition that arguably renders it unconstitutional.

SUMMARY

Assuming the authority to condemn property for use in a light rail system outside the boundaries of Kansas City, the dictated route still poses significant problems:¹⁰

1. A route will require the cooperation of the Missouri Department of Transportation and the Highways and Transportation Commission to use part of the Heart of America Bridge to cross the Missouri River, as well as to use Burlington Ave if that right of way is part of the project.
2. The route could require condemnation of property owned by the City of North Kansas City and the State of Missouri.
3. The route will require the cooperation of the Missouri Department of Transportation and the Highways and Transportation Commission to deal with the segment of the route that travels underneath U.S. Highway 169.
4. The Board of Parks and Recreation Commissioners has the authority granted it by the City Charter to determine the design and use of parks and boulevards and an ordinance, whether passed by the City Council or by the people through an initiative, cannot ignore the requirements of the City Charter. The use of property currently within the Parks and Boulevard system for light rail must be removed from the system upon recommendation of the Board and approval of the voters.
5. The City has economic development agreements with some property owners along the dictated route that may be invalidated by the condemnation of property.
6. Because all necessary funding for the project is not provided for by the initiated ordinance, the ordinance is possibly subject to challenge as an unconstitutional initiative.



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¹⁰ The problems I have briefly identified flow from the need to follow the dictates of the initiated legislation. Because of the specific nature of the proposition there is no flexibility or discretion that may be exercised in constructing the project. The Hancock Amendment requires the tax approved to be used for the things promised in the language of the legislation approving the tax. To alter the specific mandates requires approval of the voters.