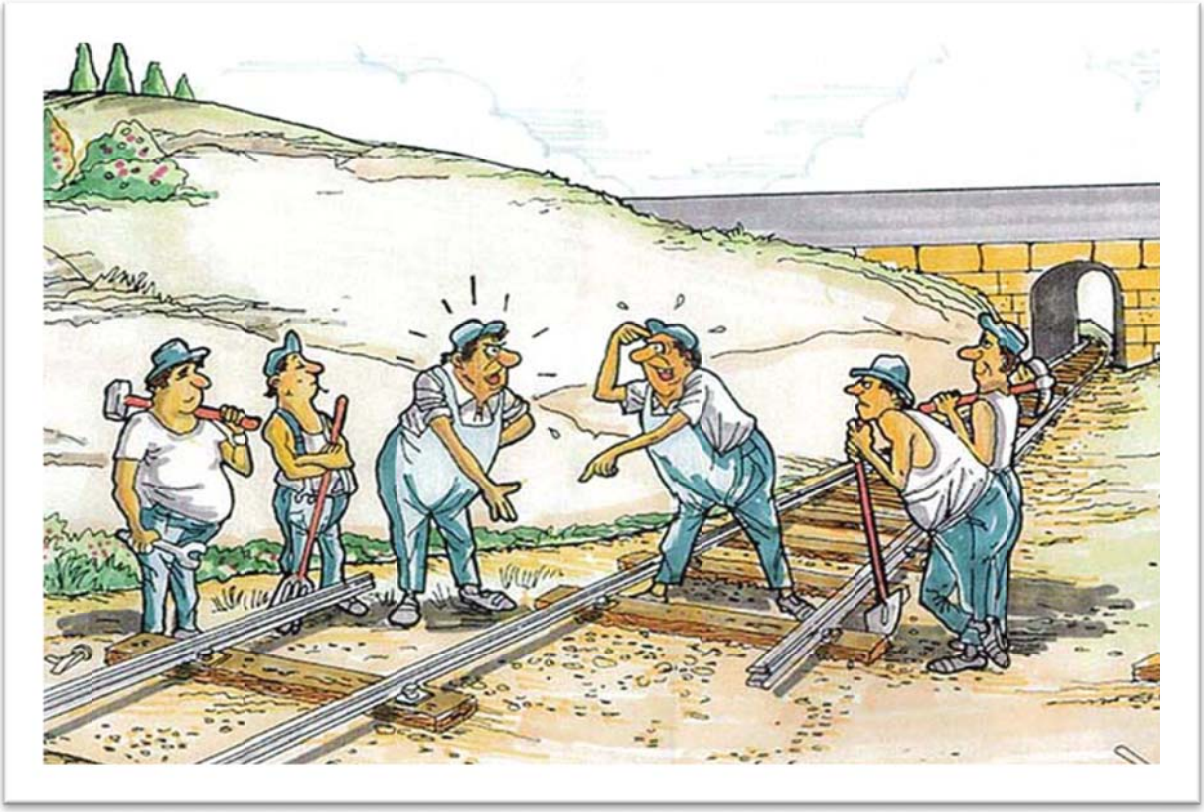
Intergovernmental Conflicts:
Zoning Disputes and Beyond



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INTERGOVERNMENTAL CONFLICTS: ZONING DISPUTES AND BEYOND

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I. LOCAL GOVERNMENT CONFLICTS

A. POLICE POWER CONFLICTS

1. General Rule. Other local governments are subject to city police powers unless expressly exempted. Missouri has long "accepted that the police powers of the city generally extend to all within its boundaries and unless an express statutory exception is extended to other state agents or agencies within it they are subject to the ordinances of the city." *Bredeck v. Bd. of Educ. of City of St. Louis,* 213 S.W.2d 889, 893 (Mo. App. 1948)(School district subject to city health code regulations controlling sanitation of restaurants)(emphasis added), *on appeal, Smith v. Bd. of Educ. of City of St. Louis,* 221 S.W.2d 203 (Mo. 1949)(same); *see also Kansas City v. Sch. Dist. of Kansas City,* 201 S.W.2d 930, 933 (Mo. 1947)("Generally, the police power affecting property and persons within the municipality's corporate limits is reposed in City."). The exception to this rule is where a statute "expressly and specifically" preempts other authority. *See Smith,* 221 S.W.2d at 205 ("[T]here is nothing in the statutes relied upon by respondents that could be said to expressly and specifically give . . . [the school] the right to control the sanitary conditions of the school restaurants and their employees.")(emphasis added); *c.f Bd. of Educ. of City of St. Louis v. City of St. Louis,* 184 S.W. 975, 267 Mo. 356, 363 (Mo. 1916)(City's building code preempted to extent specific statutory authority granted school "responsibility for the ventilating, warming, and sanitary condition of such building.").

2. City v. Counties.

   i. County Subject to City Ordinance Regulating County Property. The Missouri Supreme Court held that a county was not exempt from a city ordinance installing parking meters on county property. *State ex rel. Audrain County v. City of Mexico,* 197 S.W.2d 301, 303 (Mo. 1946). In holding that the city's authority must prevail over the county, the Missouri Supreme Court explained that while both "[c]ounties and cities are subdivisions of the state[,]" counties "have been said to rank low in the grade of corporate existence." *Id.* This is in part because the inhabitants voluntarily elect to form a municipality, whereas a county's authority for government administration is only "secondary" and therefore "[t]he jurisdiction of the city attaches and that of the county ceases when rural or county territory is annexed to a municipality." *Id.*

   ii. County Granted No or Limited Authority to Enforce Building Codes. Section 64.170.1 RSMo. grants to first and second class counties the authority to enact and enforce building codes with voter approval and, therefore, denies third and fourth class counties (approximately 80% of all Missouri counties[1]) any building code authority. §64.170.1 RSMo. ("[C]ounties of the first and second classification...shall not have the authority to adopt a building code pursuant to such sections unless the authority is approved by voters). Section 64.170 RSMo. further restricts such limited power by specifically restricting any county from enforcing such building code in "any incorporated area" and limits authority to "other than federal, state or local governments . . ."

[1] 93 of Missouri's 114 counties are third or fourth class counties. See http://www.mocounties.com/countyinfo/2012classification.pdf

iii. **County Subject to City Building and Safety Regulations.** When constructing within a municipality, various authorities have held that a county is subject to building code regulations including permit and inspections requirements. *Engelage et al. v. City of Warrenton,* (Case No. 10BB-CC00093)(appeal pending)(Held county subject to building code requiring building permits and inspection fees in construction of new administrative building)*; City of Warrenton, v. Kopmann,* Cause No. 2010-01680 (Dec. 2, 2011)(Declining dismissal of municipal ordinance violation against county contractor because county was subject to city ordinance requirements); *see also* Nev. Att'y. Gen. Op. 61-201 (Carson City, 1961)(Citing Missouri law, "County is subject to the building code regulations and fees prescribed by the City ... with respect to such construction the county may undertake within the city limits."); *Cook County v. City of Chicago,* 311 Ill. 234, 240 & 247 (Ill. 1924)(Noting counties "have been referred to as ranking low in scale of corporate existence[...,]" court found "the Legislature intended to confer upon the city council such power over all of the buildings erected within the city...including those of the county or other municipalities located therein."); *City of Decatur v. Dekalb County,* 567 S.E.2d 376, 377 (Ga. App. 3rd Div. 2002)("[H]old that county government building projects are not subject to city zoning regulations, but that they are subject to other municipal regulations...[and] reverse the trial court's order to the extent it exempts county from *all* municipal building regulations beyond zoning regulations.")(emphasis original).

3. <u>City v. School Districts</u>.

i. **School District Employees Subject to Ordinance Regulating Operation of Steam Boilers.** Missouri Supreme Court applied city ordinance, requiring anyone in charge of a steam heating boiler to be a fireman or city licensed engineer, to school district employee in recognizing that the city had a legitimate interest and authority to protect against inexperienced persons working on boilers subject to explosion. *Kansas City v. Fee,* 160 S.W. 537, 538 (Mo. 1913)("[T]he work of maintaining public order, establishing and enforcing police regulations which preserve health and safety of persons and property is committed to the city, and the school board has no right to interfere with that work, nor is it or its employees[sic] exempt from such police regulations.").

ii. **School District Restaurants Subject to City Health Regulations.** Applying the same general rule, the Missouri Supreme Court held school district subject to city health regulations concerning sanitation of restaurants because "there is nothing in the statutes relied upon by respondents that could be said to <u>expressly</u> and <u>specifically</u> give . . . [the school] the right to control the sanitary conditions of the school restaurants and their employees." (emphasis added). *Smith v. Bd. of Educ. of City of St. Louis,* 221 S.W.2d 203, 205 (Mo. 1949). Compare this with an earlier decision finding school exempt from city ventilation ordinance. *Bd. of Educ. of City of St. Louis v. City of St. Louis,* 184 S.W. 975, 267 Mo. 356, 363 (Mo. 1916)(City's building code preempted to extent specific statutory authority granted school "responsibility for the ventilating, warming, and sanitary condition of such building.").

iii. **School District Subject to Inspection Fees.** Following the long-standing rule that generally "the police powers affecting property and persons within the municipality's corporate limits is reposed in [the] City[,]" the Missouri Supreme Court held school district subject to inspection and inspection fee ordinances designed to protect the

general health. *Kansas City v. Sch. Dist. of Kansas City,* 201 S.W.2d 930, 933-35 (Mo. 1947)(City police power requiring inspection of boilers, elevators, and other building facilities and payment of corresponding inspection fees applied where school district has not "expressly and specifically been given full duty to attend to these responsibilities...").

4. City v. Fire Districts.

i. **Fire District Authority Preempts City Authority to Regulate Commercial Construction Related to Fire Prevention and Protection.** A fire protection district territory is generally subject to a municipality's building and construction code, however, a specific regulation of the fire district established by statute regarding fire prevention preempts a city's power on that specific and limited regulation. See e.g. *Wellston Fire Prot. Dist. of St. Louis County v. State Bank and Trust Co. of Wellston,* 282 S.W.2d 171, 178 (Mo. App. 1955)(In determining whose authority prevailed regarding construction of school building in city and fire district territory, court found that while cities "possess the authority to regulate and control the construction of buildings and other structures[...,]" the fire protection law withdraws authority from the city to control the construction of buildings or other structures "for the purpose of preventing fire and protecting the property and members of the public from the hazards thereof.").

ii. **Fire District Has No Authority to Preempt Municipal Police Power over Streets.** Fire district does not have authority to override city police powers over streets and traffic. *Normandy Fire Dist. v. Village of Pasadena Park*, 927 S.W.2d 516 (Mo. App. 1996)(Fire district could not prevent village from placing permanent gates on village street to regulate traffic congestion and crime preventions; traffic regulations were not laws within Districts fire prevention jurisdiction).

iii. **New Law May Further Preempt Fire District's Authority Related to New Residential Construction.** Senate Bill No. 769, currently waiting signature by the governor, creates a new section, §321.228 RSMo., which provides that "if the city, town, village, or county adopts or has adopted, implements, and enforces a residential construction regulatory system" (defined basically as a building code), then "any fire protection districts wholly or partly located within such city, town, village, or county **shall be without power, authority, or privilege to enforce or implement a residential construction regulatory system** purporting to be applicable to **any residential construction** within such city, town, village, or country. Any such residential regulatory system adopted by a fire protection district or its board shall be treated as advisory only." (emphasis added). "Residential construction" is defined as "new" construction relating to single-family or two-family dwellings or development sites). The new statute grants "final regulatory authority regarding location and specifications of fire hydrants, fire hydrant flow rates, and fire lanes, all as it relates to residential construction" in the fire protection district. *Id.* Therefore, if signed by the governor, this statute will greatly change the relationship between the fire district and city concerning new residential structures and all cities should ensure they have adopted or should adopt a fire code (irrespective of the building code) to ensure no gap in fire safety regulation exists from this new law. *Id.*

B. CONDEMNATION OF ANOTHER LOCAL GOVERNMENT'S PROPERTY

1. **General Rule.** A condemning authority generally may not acquire property by condemnation if it will destroy or materially impair or interfere with an existing public use. *See Kansas City v. Ashley,* 406 S.W.2d 584 (Mo. 1966)(City denied authority to condemn a railroad right-of-way because court found that taking would have impaired, injured, and interfered with such use); *City of Blue Springs v. Cent. Dev. Ass'n,* 684 S.W.2d 44 (Mo. App. W.D. 1984)(Remanding to brief the use of the property to be condemned because "property already devoted to a public use cannot be taken by another public use which will totally destroy or materially impair or interfere with the former use."); *Cole County v. Bd. of Trustees,* 545 S.W.2d 422 (Mo. App. 1976)(County denied authority to condemn property owned by the Jefferson City Free Library District because the property was devoted to a public use).

2. **Exceptions.**

   i. **No Harm to Public Use.** "The logical corollary of this rule is that if the proposed use does not totally destroy or materially impair or interfere with the existing use, the public property can be acquired by another political subdivision to further serve a public purpose without express authority by the legislature." *State ex. rel Maryland Heights v. Campbell,* 736 S.W.2d 383, 385 & 386 (Mo. 1987)(St. Louis County could condemn fire district's property in order to widen a roadway because the court found the "proposed use is not shown to be inconsistent with or a material impairment of the already existing use...").

   ii. **Condemnation of Public Utilities' and Cooperatives' Property for Purpose of Providing Same Service Expressly Authorized for Certain Rights-of-Way or Utility Purposes.** Section 71.525 RSMo. generally prohibits all cities, including charter cities, town or villages from condemning property of a public utility or cooperative used or useful in providing utility services except for (1) rights-of-way acquisition that does not materially interfere with the utility, (2) condemning street lighting or signals of a utility (Kansas City), (3) water or sewer utility property with less than 500 hookups.

C. CHAPTER 89 PLANNING AND ZONING CONFLICTS

1. **Zoning and Police Powers Distinguished.** Missouri courts have long distinguished between a city's limited zoning power and its broad police power aimed to protect the general welfare and health of its citizens. *See Congregation Temple Israel v. City of Creve Coeur,* 320 S.W.2d 451, 455-456 (Mo. 1959)(Explaining limited scope of zoning authority under Chapter 89 RSMo. as compared to broader building and safety authority when stating that "municipalities under the police powers have the power of regulation of the facilities of public schools..."); Thomas K. Riley, Local Government Law, *Intergovernmental Relations-Cooperation and Conflicts* §12.53, MISSOURI BAR CLE (Vol. II, 3rd ed.)("Municipalities may apply police power regulations to other units of government in some cases even though their zoning power may not be applied.").

2. **Three Missouri Applied Tests.** Missouri courts appear to have applied 3 tests to analyze whether a local government is subject to a municipality's zoning regulations:

i. **Power of Eminent Domain Test –** Local zoning is not applicable to public uses of property for which an agency has the power of eminent domain. *See City of Washington v. Warren County*, 899 S.W.2d 863, 866 (Mo. 1995)(Applying eminent domain test to determine county could not use zoning to prevent airport expansion). The test applies even if eminent domain was not used as long as it could have been used. *State ex rel Askew v. Kopp,* 350 S.W.2d 882, 889 (Mo. 1960)(The crucial factor is "that the city had the *right to condemn* private property for the use in question.")(emphasis original). Since most cities derive their zoning power from statute (other than charter cities), the practical effect is that most municipal uses of property are allowed, regardless of city zoning laws.

ii. **Statutory Guidance Test –** Interpreting relevant statutory provisions and determining whether the legislature intended that regulation to apply to another local government. *State ex. rel St. Louis Union Trust Co. v. Ferriss,* 304 S.W.2d 896, 900 (Mo. 1957)(Although also using the power of eminent domain test, the Court noted that §89.020 RSMo. did not expressly grant city authority to regulate location of "*schools or other public buildings*")(emphasis original).

iii. **Balancing of Interests Test –** The facts of each conflict are examined to see which government has the superior right to choose location. *See City of Bridgeton v. City of St. Louis*, 18 S.W.3d 107, 114 (Mo. App. E.D. 2000)(Factors weighed included: "the nature and scope of the instrumentality seeking immunity, *the kind of function or land use involved, the extent of the public interest to be served thereby,* the effect local land use regulation would have upon the enterprise concerned and the impact upon legitimate local interest.")(emphasis original).

iv. **Other Tests Discussed but Not Applied** – Two other tests have been applied nationally but have not been applied in Missouri intergovernmental conflicts: (1) Superior Sovereign Test – used mostly to resolve state v. local conflicts, this approach rules in favor of the superior sovereign; and (2) Governmental v. Proprietary Test –repudiated in S*tate ex rel. Askew v. Kopp, supra,* the test provides that if the proposed use is governmental, it is permitted regardless of zoning, but if the use is proprietary, it must comply with local zoning.

See Thomas K. Riley, Local Government Law, *Intergovernmental Relations-Cooperation and Conflicts* §12.42 *et. seq.*, MISSOURI BAR CLE (Vol. II, 3rd ed.).

3. <u>City v. Cities</u>.

i. **City May Purchase Land to Construct Swimming Pool Outside of City in Violation of Other City's Zoning.** In *City of Kirkwood v. City of Sunset Hills*, 589 S.W.2d 31, 36 (Mo. App. E.D. 1979), the court applied the Eminent Domain Test to determine that §90.010 RSMo., granting city power to acquire land by purchase or condemnation for park or pleasure grounds, is derived from Art. I, sec 26 of the Missouri Constitution and the state's concern for health and general welfare. Therefore, Sunset Hills could not apply zoning to prevent construction of a pool on property Kirkwood had the authority to condemn for such use.

ii. **City May Not Construct <u>New</u> Airport in Another City without Zoning Approval.** Section 305.200 RSMo. specifically prohibits a city from using its power to condemn land for a <u>new</u> airport in another city that is in violation of that city's zoning regulations or master airport plan without approval. *See* §305.200(3) RSMo. ("[N]o airport or landing field shall be established or located in any county, city or city under special charter in violation of any plan or master airport plan or zoning regulation restricting the location of an airport or landing field...").

iii. **City May <u>Expand</u> Airport Located Outside of City in Violation of Other City's Zoning.** Section §305.200(3) RSMo. does not apply to airport expansions and, therefore, did not apply to expansion of lanes at existing airport. *City of Bridgeton v. City of St. Louis*, 18 S.W.3d 107, 110-111 (Mo. App. E.D. 2000)(Lane expansion not subject to city zoning). According to the court, city's authority to operate an airport is rooted in the constitution, Art. I, sec 26, but because the City of Bridgeton is a charter city, its zoning power authority is also rooted in the constitution. *Id.* at 112. The court applied a balancing test to hold that the importance of expanding the airport outweighed Bridgeton's interest in enforcing its zoning regulations. *Id.* at 114; *see also City v. Bridgeton*, 705 S.W.2d 524 (Mo. App. E.D. 1985)(Expansion of airport parking lot not subject to city's zoning).

4. <u>City v. Counties</u>.

i. **City Generally May <u>Not</u> Subject County to Planning Statute Provision.** A county is generally <u>not</u> subject to city planning statute requirement because Missouri courts have found that the specific language of §89.830 RSMo. is limited to "boards" and a county is not a "board," as required for applicability of §89.830 RSMo. *Bd. of Ed. of the Sch. Dist. of Springfield, R-12 v. City of Springfield*, 174 S.W.3d 653 (Mo. Ct. App. 2005).

ii. **City May Expand Airport in Violation of County Zoning.** Similar to the conflict involving airport expansion between two cities, a county may <u>not</u> impose zoning regulations on a city in construction of an additional airport hangar. *City of Washington v. Warren County*, 899 S.W.2d 863, 866 (Mo. 1995)(City was exempt from county zoning regulations in constructing additional hangar on airport property).

iii. **County May Not Use Zoning to Prevent City from Erecting Sewage Facility.** Court reasoned that city's power to erect a sewage treatment facility is derived from the constitution, Art. IV, section 37 and, therefore, the statutory authority of §§79.380 and 71.680 RSMo. authorizing s city to condemn or purchase land to erect sewage treatment facility in the county is authorized by the constitution. *State ex rel Askew v. Kopp,* 350 S.W.2d 882, 887 (Mo. 1960). Because no similar constitutional authority regarding a county's zoning laws exist, the city's power to condemn cannot be curtailed by a county's zoning regulations. *Id.* Although the Court noted that the county's zoning power under Chapter 64 does not authorize applicability of zoning regulations to public buildings, the Court seemed to base its holding more on the constitutional nature of the city's authority involved, which may explain the contrary result in *St. Louis County v. City of Manchester,* 360 S.W.2d 638 (Mo. 1962)(City's erection of sewerage facility subject to zoning of constitutional charter county as both authorities derive from the constitution).

5. City v. School Districts.

i. **School District Must Comply with §89.380 Planning Requirements but Can Veto.** In *Bd. of Ed. of the Sch. Dist. of Springfield, R-12 v. City of Springfield*, 174 S.W.3d 653 (Mo. Ct. App. 2005), the court held that school district was subject to §89.380 RSMo. planning requirements of the city. However, the court noted that the "School board can exercise its constitutional and statutory duties without conflicting with §89.380 RSMo. by submitting their plan to acquire property or construction upon such property to the planning commission because even if the commission disapproves, the School Board can override its disapproval 'by a vote not less than two-thirds of its entire membership.' Thus the ultimate decision lies with School Board." *Id.* at 661 (citations omitted).

ii. **City May Not Enforce Zoning to Prevent Location of School Building.** School district may condemn land for construction of a school within a city without regard to city's zoning regulations. *State ex. rel St. Louis Union Trust Co. v. Ferriss,* 304 S.W.2d 896 (Mo. 1957). The Court found that Article IX, section 1(a) of the Constitution, which provides that the "general assembly shall establish and maintain free public schools[,]" is the constitutional authority for school district's power to condemn land and choose sites for the schools and such authority cannot be limited by city zoning. *Id.* This Court noted that city's authority, §89.020 RSMo., to regulate "the location and use of buildings, structures and land for trade, industry, residence *or other purposes"* did not contemplate regulation of schools or other public buildings. *Id.* at 900 (emphasis original).

iii. **City May Not Enforce Height Restriction in Zoning Code.** Court rejected city's argument that by denying a building permit for violation of height restrictions in zoning code, it was not regulating the use of school property prohibited in *Ferriss*, but only regulated construction of proposed modual units. Court found denying building permit based on zoning restriction was enforcing zoning regulation beyond its authority. *See Normandy School Dist. v. City of Pasadena Hills*, 70 S.W.3d 488 (Mo. App. E.D. 2002)(City could not prohibit placement of temporary, portable classrooms).

6. City v. Public Utilities.

i. **Public Utilities Not Exempt from Zoning Regulations; Specific Restrictions May Be Preempted.** While the PSC's jurisdiction or regulations may preempt specific authority over certain types of utility uses, utilities are not exempted from general zoning regulations by statute. *See, e.g.,* §67.1844.1 RSMo. (Subjecting utility companies to "safety codes and all other applicable zoning and safety ordinances, to the extent not inconsistent with public service commission laws or administrative rules."); *Stopaquila.Org v. Aquila, Inc.,* 180 S.W.3d 24 (Mo. W.D. App. 2005)(Utility was subject to county zoning authority, rejecting interpretation of *Crestwood II* as exempting utilities from zoning regulations); *c.f. Union Electric Co. v. City of Crestwood (Crestwood II)*, 562 S.W.2d 344 (Mo. banc 1978)(Zoning authority did not provide basis for city to require under-grounding of intra-state transmission lines because PSC preempted that particular field of regulation); *see also* §67.1844.1 RSMo. (Referencing political subdivision authority to require public utility right-of-way users to comply with "all other applicable zoning and safety ordinances" not inconsistent with public service commission laws or administrative rules).

ii. **Section 89.380 RSMo. Applicable to Public Utilities.** Utilities are expressly subject to §89.380 RSMo. and, therefore, must submit project plans to the planning commission before the project can be constructed or authorized in a municipality.

7. **City v. Churches.**

i. **Section 89.020 RSMo. Does Not Apply to Restrict Location of Church.** Focusing on the language "trade, industry or residence" contained in §89.020 RSMo., the Missouri Supreme Court held that the legislature did not intend to allow a municipality to restrict location and use of buildings and land for churches. *Congregation Temple Israel v. City of Creve Coeur*, 320 S.W.2d 451 (Mo. 1959); *see also Village Lutheran Church v. City of Ladue*, 935 S.W.2d 720 (Mo. App. E.D. 1996)(City could not require special use permit for expansion of Church facilities); *c.f. Chaminade College Preparatory, Inc. v. City of Creve Coeur*, 956 S.W.2d 440 (Mo. App. E.D. 1997)(Upholding denial of permit to religiously-affiliated school because it was not a church and thus not exempt from operation of zoning ordinances).

ii. **However, Zoning Type Regulations Apply Under Police Power Authority.** Although city may not use §89.020 RSMo. to regulate location of churches (or possibly expansion), Missouri Courts have upheld municipality zoning regulations which are designed to regulate public health, safety and welfare. *See Congregation Temple Israel v. City of Creve Coeur*, 320 S.W.2d 451 (Mo. 1959)(Noting city could regulate churches through police powers to regulate facilities and protect the "public health, safety and welfare."); *St. John's Evangelical Lutheran Church v. City of Ellisville*, 122 S.W.3d 635 (Mo. App. E.D. 2003)(Holding church subject to city sign ordinance, court noted "'decisions have acknowledged that municipalities, in the exercise of their police powers, may regulate churches."')(quotations omitted).

iii. **Zoning Enforcement Can Form Basis for Violation of Free Exercise Claim.** Mere requirement that a church apply for a special use permit does not infringe on the free exercise of religion (even if not authorized under zoning statute). *Village Lutheran Church v. City of Ladue*, 997 S.W.2d 506 (Mo. App. E.D. 1999)(However, court provided an example of when enforcement of zoning regulations would violate the protection of the Free Exercise Clause: enforcement of zoning regulations to prohibit church from feeding homeless persons on its premises).

iv. **RLUIPA Limits City Zoning Authority.** Churches and houses of worship are also protected by the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") codified at 42 U.S.C. §§ 2000cc, *et seq.* RLUIPA prohibits zoning laws that "substantially burden" the religious exercise of churches or other religious assemblies or institutions absent the "least restrictive means" of furthering a compelling governmental interest. Specifically, RLUIPA prohibits zoning laws that: (1) treat churches or other religious assemblies or institutions on less than equal terms with nonreligious institutions; (2) discriminate against any assemblies or institutions on the basis of religion or religious denomination; (3) totally exclude religious assemblies from a jurisdiction; or (4) unreasonably limit religious assemblies, institutions or structures within a jurisdiction. *See* The Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106–274, 114 Stat. 803 (codified at 42 U.S.C. §2000cc)(Supp. 2000).

8. Zoning and Planning Conflict Summary. When will the court apply each test? The zoning authority cases are not fully consistent. *Ferriss* is cited for using both the power of eminent domain test and the statutory guidance test; but it is unclear why such analysis is necessary if §89.020 RSMo. does not even apply to public buildings or uses. Similarly, a balancing test in *City of Bridgeton* would seem inappropriate if Bridgeton's zoning authority simply did not apply to a use by the City of St. Louis. Therefore, relying on the scope of §89.020 RSMo. does not seem to fully answer the conflict, and future courts may need to readdress the reasoning and analysis of the applicability of zoning to public uses to provide more clarity.

II. MUNICIPALITY V. STATE AND FEDERAL GOVERNMENT

A. CITY v. FEDERAL GOVERNMENT

1. General Rule. City may not regulate the federal government without express authority or permission. *See* Federal Supremacy Clause, U.S. Const. Art. VI, cl. 2. ("This Constitution, and the Laws of the United States... shall be the supreme Law of the Land").

   i. Preemption – City not authorized to enact any ordinance within a certain field that has been preempted by federal law.

   ii. Federal Government May Condemn without Regard to Property Use; City Needs Permission. The federal government has the power to condemn local property whether or not it is already being put to a public use. However, another local government cannot condemn federal land without the federal government's permission. Thomas K. Riley, Local Government Law, *Intergovernmental Relations-Cooperation and Conflicts* §12.46, MISSOURI BAR CLE (Vol. II, 3rd ed.).

2. Exceptions. Situations where federal government may allow enforcement of local law:

   i. Police Power May Apply to Federally-Owned Property. In *Kansas City v. Fee*, 160 S.W. 537, 540 (Mo. 1913), the Court noted, in holding school district employee subject to city's police power regulations, that the theory of police powers being exempted had been rejected by a court as to federally-owned property. But authority may be depend on whether federal statutory authority establishing the federal lands at issue granted exclusive federal jurisdiction. *See* Chapter 12 R.S.Mo. (Jurisdiction over federal lands); *Thiele v. City of Chicago,* 12 Ill.2d 218 (Ill. 1957)(No local jurisdiction where state ceded authority by statute.).

   ii. Zoning May Apply to Federal Government Property Leased for Private Purpose. In zoning disputes between a city and state, courts have tended to employ a government v. proprietor test. If the property will be used for a governmental purpose, the federal government is immune. However, courts have held that a lessee of a governmental body is subject to local zoning ordinances when the property use is proprietary. *See Applicability of Zoning Regulations to Nongovernmmental Lessee of Government-Owned Property,* Allen Manley, J.D., 84 ALR3d 1187.

B. CITY V. STATE

1. **General Rule.** City similarly may not regulate the state without express authority or permission.

   i. **Preemption –** City may not enforce regulations preempted by state law. Missouri Courts follow the rule that "a locality may not legislate in areas that are 'occupied' (thoroughly regulated) by state law." *Borron v. Farrenkopf,* 5 S.W.3d 618, 622 (Mo. App. W.D. 1999). State law is said to occupy the field when "it has created a comprehensive scheme on a particular area of law, leaving no room for control." *Id.* One example is the regulation of firearms and ammunition except conforming to §§571.010-571.070 RSMo.

   ii. **State May Condemn Property without Regard to Its Use.** State and its agencies, with such power, may condemn public property regardless of whether the property is currently serving a public purpose. *State ex rel. State Highway Comm'n v. Hoester,* 362 S.W.2d 519 (Mo. banc 1962)(Highway Commission had authority to condemn property being used as a fire station because §227.120 RSMo. specifically provided the Commission with authority to condemn lands in the name of the state and, therefore, the nature of the property and use could not limit such authority).

   iii. **City May Not Charge State Building Permit Fees.** Court rejected City's attempt to charge state contractor building permit fees. *See Paulus v. City of St. Louis,* 446 S.W.2d 144 (Mo. App. 1969)(City's authority to control construction of buildings and charge permit fees to cover costs of such inspections did not include applicability to the state).

   iv. **State and its Agencies Not Subject to City's Zoning Regulations Concerning Occupancy Limits.** Girls Shelter Care, a not-for-profit corporation organized for the purpose to raise funds for and to purchase real property for use of St. Louis County Juvenile Court as a Girls' Care Facility, was deemed an agency of the state and, therefore, exempt from the city's zoning laws dealing with occupancy limits and permits. *Vinita Park Board of Directors v. Girls Sheltercare, Inc.,* 664 S.W.2d 256 (Mo. App. 1984).

2. **Exceptions.**

   i. **Hancock Amendment Limits State Control.** Article X, section 21 of the Missouri Constitution prohibits the State from "reducing the state financed proportion of the costs of any existing activity or service" and municipalities are not required to provide a new activity or service or provide an increase in the level of any activity or service "unless a state appropriation is made and disbursed."

   ii. **Proprietary Services.** Where the City acts as landlord or service provider, absent statutory authority to the contrary, there appears to be no law or authority that generally preempts any applicant, including state or federal governments or their officers, from complying with applicable conditions for the purchase or lease of such public land or services.

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