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IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, Plaintiff, vs. CITY OF ST. LOUIS, MISSOURI, Defendant.	)	Cause No. 1522-CC00782 Division No. 2

DEFENDANT CITY OF ST. LOUIS, MISSOURI'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

The initiative process is a powerful tool of direct democracy. The initiative process outlined in the City's Charter provides everyday St. Louisans a powerful tool to override their own elected officials on issues of great public importance. *See* Charter, Art. V, § 1. Courts acknowledge that this democratic process serves a critical function in our municipal structure by upholding ordinances passed through the initiative process if at all possible. *ACI Plastics, Inc. v. City of St. Louis*, 724 S.W.2d 513, 516 (Mo. banc 1987) ("When the people have demonstrated their will at the polls, this Court must uphold that result if possible."); *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981) (where "the people have demonstrated their will, this Court's duty is not to seek to condemn the amendment, but to seek to uphold it if possible").

Given this high standard, the Regional Convention and Sports Complex Authority (the "RSA") has a tough row to hoe in this case. And the RSA has failed to meet its heavy burden: it has not identified any basis for the Court to conclude that state law preempts Ordinance 66509 (the "Ordinance") or that the Ordinance is in any way invalid. The RSA's key theory is that the state laws at issue create a "state-wide plan" that preempts the Ordinance, but the RSA has yet to

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identify where in state law we should look for the well-defined comprehensive plan governing the processes every municipality in the State of Missouri must follow in deciding whether to provide financial assistance toward the development of a professional sports facility. The RSA's theories fall far short of the high standard necessary for the Court to overturn the peoples' will. The RSA's lawsuit should be dismissed and the Court should uphold the validity of Ordinance 66509.

I. The RSA Statutes are not a "state-wide plan" for financing a sports facility and do not preempt local regulations concerning the process for approving financial assistance to the development of a sports facility.

"State law occupies an area when it has created a comprehensive scheme on a particular area of the law, leaving no room for local control. When state law has so completely regulated a given area of the law, then it is said to be occupied, and preempts any local act." *Borron v. Farrenkopf*, 5 S.W.3d 618, 624 (Mo. App. 1999) (citations omitted). The RSA Statutes do not provide a framework for such a process, thereby leaving plenty of room for local control of inherently local processes like deciding whether a city should extend financial assistance to a sports facility. *Borron*, 5 S.W.3d at 624.

A. The RSA Statutes are not a comprehensive scheme governing the processes municipalities must follow to decide whether to offer financial assistance to sports facilities.

Plaintiff argues that the Ordinance contravenes a "state-wide plan for financing a professional sports facility by a special purpose governmental entity." Plaintiff's Memorandum in Support of Plaintiff's Motion for Judgment on the Pleadings at p. 7. Plaintiff is pretending that the RSA Statutes are far broader than they are in the real world. The RSA Statutes do allow the City to participate in the financing of a sports facility with the RSA, the County, and the State, but they do not limit the internal processes that the City, the County, or the State follow in

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determining how, when, and to what extent each government will provide financial assistance to the construction of a sports facility.

Missouri simply has not created a comprehensive scheme governing the process municipalities follow to decide whether to offer financial assistance to professional sports facilities. The process each municipality undertakes to offer financial assistance to any project is governed by its own law. In the City of St. Louis, the process is set out in the City's Charter and Code, including Ordinance 66509. Like the role of the City's Board of Estimate and Apportionment in approving of some of the City's financial decisions, the role of the public in approving some forms of financial assistance is different from some other municipalities in Missouri. That difference is the result of different governmental forms, reflecting different histories and the experiences of different communities. And it is those differences that underscore the lack of any comprehensive state regulation of the area.

Plaintiff inaptly cites *Alumax Foils, Inc. v. City of St. Louis*, 959 S.W.2d 836 (Mo. App. 1997), for the proposition that a city's charter authority can be "preempted" by comprehensive state legislation on a matter. In *Alumax*, the court found the City lacked the authority to enact a use tax because the state completely occupied and preempted the field of use taxes and did not carve out a process for cities to enact use taxes as it did for sales taxes. *Id*. at 839. Here, however, the RSA Statutes do not completely occupy and preempt all local regulation for providing financial support to a stadium. The RSA Statutes certainly do not contain an express statement of preemption. Nor do they contain language creating affirmative duties or obligations on the part of the City or County.

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B. The RSA Statutes were designed for St. Louis, and do not set state-wide policy.

The RSA argues that the state laws at issue here create "state-wide" policy. A state-wide policy is one that extends "throughout all parts of a state." *See Statewide*, Webster's Dictionary, at http://www.merriam-webster.com/dictionary/state-wide. Plaintiff not identified how the RSA Statutes set policy for financing sports facilities throughout all parts of Missouri. This is perhaps because the RSA Statutes apply only to the development of a professional sports stadium in the St. Louis area.

Section 67.650, RSMo., states that "[i]n each city not within a county and in each first class county with a charter form of government which adjoins such city not within a county there is hereby established a joint 'Regional Convention and Sports Complex Authority.'" This provision makes clear that the legislature intended the joint Regional Convention and Sports Complex Authority to be established for City of St. Louis and St. Louis County only. The City of St. Louis is the only "city not within a county" within the state of Missouri. *See School Dist. of Riverview Gardens v. St. Louis County*, 816 S.W.2d 219, 220 (Mo. banc 1991); *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 8 (Mo. banc 1975). It follows, then, that the statute's reference to a "first class county with a charter form of government which adjoins such city not within a county" within § 67.650 is referring to St. Louis County. *See O'Reilly v. City of Hazelwood*, 850 S.W.2d 96, 99 (Mo. banc 1993) ("any first class county with a charter form of government which adjoins a city not within a county" applies only to St. Louis County and no other county in Missouri).

Further, the RSA Statutes require that ten of the eleven RSA commissioners must be residents of either the City or St. Louis County, and the eleventh commissioner must be chosen from residents of the City, County, or a county adjacent to St. Louis County. § 67.652.1. The

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governor must select his five picks from residents of the St. Louis Metropolitan area. § 67.652.3. If the legislature truly had considered the development of a stadium to be a matter of state-wide concern, it would have crafted an authority with state-wide representation. Instead, the RSA is composed entirely of commissioners from the St. Louis region. Further, as plaintiff points out, the court in *Rice v. Ashcroft*, 831 S.W.2d 206, 210 (Mo. App. 1991), found that the primary purpose of the RSA Statutes was "to increase convention and sports activity in the St. Louis City–County area." Accordingly, contrary to plaintiff's assertion, the Ordinance does not invade the province of general legislation involving the public policy of the state as a whole. *Flower Valley Shopping Center, Inc. v. St. Louis County*, 528 S.W.2d 749, 754 (Mo. banc 1975).

C. The RSA Statutes are not comprehensive, and simply provide authority to enter an agreement without requiring the City to enter an agreement or to follow any particular process to do so.

Throughout its Memorandum, Plaintiff incorrectly conflates two separate issues: voter approval of the City's authority to enter an agreement with the RSA and voter approval of the City providing financial support to a sports facility. Memorandum at pp. 3, 4, 10, and 13. These two issues are governed by two different sets of laws: state law and local law.

On one hand, § 67.657.3, RSMo., expressly authorizes the City to enter into an agreement with the RSA. The City has no obligations pursuant to the RSA Statutes, and plaintiff has not identified any section of the statutes mandating the City's participation. The RSA statutes merely "authorize" the City to make contributions of money or property to the RSA and to enter into contracts, agreements, leases and subleases with the authority. § 67.657.2-.3, RSMo. All mandatory language contained within the RSA Statutes deals exclusively with the composition, powers and duties of the RSA itself. § 67.650, *et seq*., RSMo. And although § 67.657.3, authorizes such agreements, it does not mandate participation or what processes the City must follow in approving financial assistance.

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The process by which the City approves financial assistance is found in the City's Charter and Code (including—for professional sports facilities—the Ordinance). Before the Ordinance was adopted, the Court of Appeals held that the City had authority to help finance a stadium without voter approval. *See Rice v. Ashcroft*, 831 S.W.2d 206, 207 (Mo. App. 1991). But the City's ability to extend financial assistance to such projects without voter approval changed in 2002 when the Ordinance was adopted. The Ordinance now places conditions precedent—a public vote, public hearing, etc.—on the City offering financial assistance.

As a result of these two sets of laws—state law extending the authority to enter an agreement and local law prescribing the processes for extending financial assistance—the City may enter an agreement and it must follow its own internal processes (including complying with the Ordinance) to determine what, if any, financial assistance it will agree to provide in that agreement. *Cf. Moschenross v. St. Louis County*, 188 S.W.3d 13, 19 (Mo. App. 2006). There is no disharmony between the two.

II. The Ordinance does not conflict with the RSA Statutes, the intergovernmental cooperation statutes, TIF statutes, or City Charter.

A. The Ordinance does not conflict with the RSA Statutes.

Plaintiff contends that the Ordinance is void and alleges it "conflicts with the RSA Statutes" because the Ordinance may prevent the City from satisfying "its obligations" under the RSA Statutes. Memorandum at pp. 11, 13, 20. Plaintiff misstates RSA Statutes' effect on the City because the City has no obligations under the statutes. The state laws establishing the RSA are permissive—they do not mandate that the City take any particular action. *See* § 67.657.2 (authorizing the City to make gifts, donations, grants, and contributions of money or real or personal property to the RSA but not mandating such contributions); § 67.657.3 (authorizing the RSA and the City to enter agreements for the development of a facility, but not mandating what

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processes the City must follow in approving financial assistance or prohibiting the City from imposing additional requirements on itself before the statutory authority may be exercised).

While preemption forbids a conflict with state law, it does not prohibit extra regulations by a municipality. *Borron v. Farrenkopf*, 5 S.W.3d 618, 622 (Mo. App. 1999); *State ex rel. Hewlett v. Womach*, 196 S.W.2d 809, 814 (Mo. banc 1946). Thus, an ordinance does not conflict with state law if it is simply regulatory. *See, e.g., Hewlett*, 196 S.W.2d at 814 (holding that an ordinance that requires a liquor license applicant to obtain signatures of nearby property owners before obtaining a liquor license did not conflict with state law because it did not prohibit liquor sales but was merely regulatory, and not prohibitory); *Borron*, 5 S.W.3d at 624-25 (holding that an ordinance regulating animal feeding operations was not preempted because it merely placed additional regulations on feeding operations and did not prohibit them altogether); *Frech v. City of Columbia*, 693 S.W.2d 813, 815 (Mo. banc 1985) (holding that a city may allow municipal judges to issue search warrants where state law does not expressly or implicitly prohibit such warrants); *Myron Green Cafeterias Co. v. Kansas City, Mo.*, 240 S.W. 132, 135 (Mo. 1922) (finding ordinance did not conflict with the Public Service Commission statute of Missouri where a city ordinance only regulated the activities of consumers of gas who were not within the scope of the Commission's power simply because they purchase gas from a utility the Commission has power to regulate).

The test for determining whether an ordinance conflicts with state law is whether an ordinance "prohibits what the statute permits" or "permits what the statute prohibits." *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986). Plaintiff fails to demonstrate that the Ordinance does either.

First, the Ordinance does not permit something that the RSA Statutes prohibit. The RSA

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has not cited any provision of the RSA Statutes or state law that prohibits public input and a public vote as conditions precedent to financial assistance from the City. Nor has the RSA cited any provision that requires the City to provide financial assistance to the new stadium project. Here, the Ordinance merely creates conditions that must occur prior to the City providing financial assistance to develop any professional sports facility. Notably, the state laws on which the RSA relies anticipate public participation in at least some of the funding decisions—public participation is hardly as anathema as the RSA seems to pretend. *See, e.g.*, § 67.657.4, RSMo.

Moreover, the Ordinance does not prohibit what the RSA Statutes allow. The Ordinance does not prohibit the City from providing financial assistance. The Ordinance merely places conditions on that assistance and is therefore akin to a regulatory ordinance, which is clearly permitted under Missouri law. *Borron*, 5 S.W.3d at 624-25; *Hewlett*, 196 S.W.2d at 814.

The RSA claims that "if the voters do not vote to provide financial assistance, this could prevent the RSA from receiving money it was statutorily directed to receive, pursuant to § 67.653.1(7). Memorandum at p. 14. Bu, the RSA Statutes do not mandate that the City provide any funds. That much is clear from the language of § 67.653.1(7), which states that RSA has the power "to receive . . . any rental, contributions or moneys appropriated or otherwise designated for payment to the authority by municipalities, counties, state or other political subdivisions . . . ." Thus, before the RSA is entitled to any financial assistance from the City, the City would have to first elect to "appropriate or otherwise designate" the funds for payment to the RSA. The City must "appropriate or otherwise designate" pursuant to the City's laws, including Ordinance 66509. The RSA cannot articulate any other way in which Ordinance 66509 conflicts with state law and has failed to demonstrate that the Ordinance conflicts with the Constitution or state statute.

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B. Plaintiff's claims concerning tax increment financing (TIF) are not ripe and do not present a justiciable controversy

Plaintiff alleges that "TIF by the City is certainly contemplated to be part of the RSA financing plan for the New Stadium" and any attempt to require a vote by the electorate before a charter city can engage in TIF is void. Memorandum at p. 15. Plaintiff's assertion that TIF will be part of a RSA financing project is speculative and therefore cannot serve as a basis for invalidation the Ordinance. For that reason and those reasons described below in Section IV, such a claim is not ripe.

Further, should the court ultimately determine that a voting requirement as a condition to TIF financing is void, the Court could hold that the Ordinance is invalid to the extent that it applied to TIF plans. Invalidating the entire Ordinance is unnecessary.

C. The Ordinance is consistent with the "intergovernmental cooperation statutes."

Plaintiff next claims that the "intergovernmental cooperation statutes," §§ 70.21 to 70.325, forbid a public vote requirement before the City provides funding for a public stadium. Memorandum at pp.15-16.

The language of the "intergovernmental cooperation statutes" makes clear that the City's participation in an agreement with an authorized agency like the RSA is wholly voluntary. Section 70.220 specifically states that the City "*may* contract and cooperate with any other municipality or political subdivision . . . for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service." The operative language in § 70.220 is "may contract," and it is clear that the statute is permissive—not mandatory. *See State ex rel. Hopkins v. Stemmons*, 302 S.W.2d 51, 55 (Mo. App. Spring. Dist. 1957) (noting that word "may" is permissive language); *Allen v. Public Water Supply Dist. No. 5*, 7 S.W.3d 537, 541 (Mo. App. E.D. 1999) (finding that the word "may" is permissive

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language, in contrast to the mandatory language of "shall"); *See also School Dist. v. Kansas City*, 382 S.W.2d 688, 696 (Mo. banc 1964) (using permissive language in stating that "the Constitution, in essence provides that municipalities or political subdivisions *may* contract and cooperate for the construction and operation of any public improvement or facility") (emphasis added). Since the intergovernmental cooperation statutes' use of the permissive language "may" indicates that the City is free to opt out of participating, an Ordinance that determines the processes the City must follow in approving financial assistance in no way conflicts with § 70.220.

Plaintiff also claims that § 70.220 requires the approval of the "'governing body' only" for contracts executed pursuant to its provisions. Memorandum at p. 16. Plaintiff, however, takes this provision out of context. Section 70.220.4 simply states that "[i]f any contract or cooperative action entered into under this section is between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, such contract or cooperative action shall be approved by the governing body of the unit of government in which such elective or appointive official resides." Thus the statute distinguishes between the governing body that approves the contract and the official that enters the contract.

Further, § 70.220 contains no language requiring a municipality's participation—in fact, the language used in Section 70.220.4 makes clear that participation is voluntary. The provision merely states that "if"—and only if—an agreement is reached and a contract is entered between the City and an elective or appointed official of another municipality or political subdivision (or vice versa) then it is the governing body—rather than the public official—that approves the contract.

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These "intergovernmental cooperation statutes," grant governing bodies the power to enter into an agreement to cooperate on a public improvement but do not compel such participation. Section 70.220 has no bearing on the validity of the Ordinance, and nothing contained in §§ 70.210 to 70.325 is expressly inconsistent with an Ordinance requiring a public vote before public financing is provided.

D. The Ordinance does not conflict with City Charter.

Plaintiff claims that the Ordinance conflicts with the City Charter because the Ordinance allegedly limits the legislative power of the Board of Aldermen. This argument ignores provisions of the City Charter explicitly granting the citizens the power to legislate through voter initiative and also granting the Aldermen the power to override ordinances enacted via the initiative process.

The Ordinance at issue was approved by voters in 2002 through the City's Charter's initiative procedures. Defendant's Answer, Affirmative and Additional Defenses, ¶ 4(c)-(d). The City is a constitutional charter city created pursuant to Article VI, section 31 of the Missouri Constitution and governs itself under the Charter and Revised Code of the City of St. Louis ("Charter"). The Missouri Constitution grants the City the authority to enact ordinances without specific enabling legislation. Mo. Const. Art. VI, §19(a); *Smith v. City of St. Louis*, 409 S.W.3d 404 (Mo. App. 2013). The City also has broad authority to tailor a form of government that its citizens believe will best serve their interests. Defendant's Answer, Affirmative and Additional Defenses, ¶ 4(a); Mo. Const. Art. VI, §§ 19–22 & Art. VI, § 32(a). In accordance with that authority, the City adopted a charter that gives voters the ability to legislate through an initiative procedure whereby voters propose and adopt ordinances at the polls. Defendant's Answer, Affirmative and Additional Defenses, ¶ 4(b); Charter, Art. V, § 1. The City's Charter accords its citizens the ability to legislate through the initiative process, a process where citizens propose

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and adopt ordinances at the polls. Art. V, § 1. Ordinances adopted through the initiative process may be repealed only by a two-thirds vote of the Board of Aldermen. Art. V, § 6.

Thus, the City's Charter clearly empowers citizens to legislate through the initiative process. Moreover, the City Charter explicitly grants the Board of Aldermen power to invalidate ordinances passed by voter initiative in that such ordinances can be repealed by a two-thirds vote of the Board. Contrary to plaintiff's assertion, the Ordinance in no way usurps or curtails the Board of Aldermen's power.

III. The RSA's vagueness arguments are flawed because they are premised on hypothetical scenarios and ignore the plain and ordinary meaning of the language in the Ordinance itself.

The RSA also argues that the Ordinance is void because it is vague. In reviewing whether laws are unconstitutionally vague, the test is "whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. However, neither absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague." *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999). If a law's language "is susceptible of any reasonable and practical construction which will support it, it will be held valid, and . . . the courts must endeavor, by every rule of construction, to give it effect." *State v. Duggar*, 806 S.W.2d 407, 408 (Mo. banc 1991); *City of St. Louis v. Brune*, 520 S.W.2d 12, 16–17 (Mo. 1975). Courts give "greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe." *Cocktail Fortune*, 994 S.W.2d at 957-58.

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A. The RSA's vagueness challenge is premature in that it lacks any concrete facts for the Court to rule upon.

The RSA claims that the Ordinance's terms "are unconstitutionally vague both in their plain language and as applied to the facts at hand." But, contrary to the RSA's position, courts do not rule on vagueness challenges in the abstract; rather, "the language is evaluated by applying it to the facts at hand." *Turner v. Missouri Dep't of Conservation*, 349 S.W.3d 434, 443 (Mo. App. 2011); *Feldhaus v. State*, 311 S.W.3d 802, 806 (Mo. banc 2010). An allegation that the "plain language" of an ordinance is vague is meaningless unless accompanied by concrete facts showing how the Ordinance has been applied to RSA to prevent it from obtaining something it would otherwise have obtained.

As noted in the City's initial memorandum in support of its motion, the RSA's claims are largely theoretical. The RSA asks the Court to issue an advisory opinion about how the Ordinance might apply if the RSA or other entities decide to do this or to do that. The RSA has not set forth sufficient "facts at hand" showing that the Ordinance is vague as to some act the RSA has taken or wishes to take relative to its request for relief. A vagueness challenge should not be permitted on such hypothetical scenarios. *See Conseco Fin. Servicing Corp. v. Missouri Dep't of Revenue*, 195 S.W.3d 410, 415 (Mo. banc 2006).

B. The Ordinance is not vague when its terms are given their plain and ordinary meaning.

In interpreting ordinances, Missouri courts give words their plain and ordinary meaning, by considering the entire law and its purposes, and by seeking to avoid unjust, absurd, unreasonable, confiscatory, or oppressive results. *State ex rel. Remy v. Alexander*, 77 S.W.3d 628, 630 (Mo. App. 2002); *Firemen's Retirement System of St. Louis v. City of St. Louis*, 911 S.W.2d 679, 680 (Mo. App. 1995); *McCollum v. Director of Revenue*, 906 S.W.2d 368, 369

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(Mo. banc 1995); *State ex rel. Jackson County v. Spradling*, 522 S.W.2d 788, 791 (Mo. banc 1975). Unless a statute is ambiguous, the court will not look past the plain and ordinary meaning of a statute. *Carmack v. Missouri Dept. of Agriculture*, 31 S.W.3d 40, 46 (Mo. App. 2000). Words that "have a plain and ordinary meaning to persons of ordinary intelligence, and are sufficiently understandable to satisfy constitutional requirements as to certainty and definiteness" are not vague and indefinite. *Liberman v. Cervantes*, 511 S.W.2d 835, 838 (Mo. 1974); *State v. Williams*, 473 S.W.2d 382, 384 (Mo. 1971); *State ex rel. Eagleton v. McQueen*, 378 S.W.2d 449, 453 (Mo. banc 1964); *Derboven v. Stockton*, 490 S.W.2d 301, 309 (Mo. App. 1972).

Here, the Ordinance itself supplies definitions for terms such as the "City," "development," and "financial assistance." St. Louis City Code § 3.91.010. These definitions provide guidance to the reader and undermine the RSA's argument that the Ordinance is vague and ambiguous. And, in instances where the drafters did not expressly define certain terms, Missouri courts will look to a dictionary to determine the plain and ordinary meaning of a word and interpret the Ordinance to avoid absurd results. *See Akers v. Warson Garden Apartments*, 961 S.W.2d 50, 53 (Mo. banc 1998) ("The plain and ordinary meaning of a word is generally derived from the dictionary."); *McCollum*, 906 S.W.2d at 369.

C. The Ordinance does not conflict with state statutes.

As discussed above and in the City's memorandum in support of its motion, which it incorporates by reference here, the Ordinance does not conflict with state statutes. The state statutes are permissive, and merely authorize the entering into of an agreement to finance a sports stadium. The RSA Statutes do not preempt the Ordinance. *See Borron*, 5 S.W.3d at 624-25; *Hewlett*, 196 S.W.2d at 814.

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Conclusion

Ordinance 66509 is valid as a matter of law. The Court should deny plaintiff's Motion for Judgment on the Pleadings, and dismiss the RSA's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of June, 2015, a true and correct copy of the foregoing document was served via electronic mail upon the following:

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