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Retrospective Lawmaking in Missouri: Can School Districts Assert Any Constitutional Rights against the State

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Retrospective Lawmaking in Missouri: Can School Districts Assert Any Constitutional Rights Against the State?

Savannah R-III School District v. Public School Retirement System of Missouri[1]

I. INTRODUCTION

The controversy in *Savannah R-III School District v. Public School Retirement System* centered on the retrospective enactment by the Missouri legislature of a law precluding numerous school districts from recovering refunds of payments illegally collected by the Missouri Public School Retirement System. The Missouri legislature used retrospective legislation to eliminate the school districts' right to recovery. Despite a clear constitutional prohibition against retrospective laws in Article I, section 13 of the Missouri Constitution, the retroactive law at issue in *Savannah R-III School District* withstood constitutional challenge.

The Missouri Supreme Court upheld the seemingly unconstitutional retrospective law by means of a broad assertion that the legislature may waive the rights of school districts at will. This conclusion may surprise many communities that feel they have a direct interest at the local level in the operation of their school districts and in the preservation of school district funds. The *Savannah R-III School District* case illustrates the power of distant government to tread upon rights which belong, at least in part, to local communities.

This Note will first discuss retroactive lawmaking as it occurred in *Savannah R-III School District*. Next, this Note will examine the status and rights of school districts and the law in Missouri underlying retrospective civil legislation. This Note will conclude with a comment on the dangers of retroactive lawmaking and a discussion of why the rights of school districts should be respected by the State in certain cases.

II. FACTS AND HOLDING

Despite a complex history of trial, appeal, remand and legislative intervention, the *Savannah R-III School District* case consists simply of a class action brought by several Missouri school districts against the Missouri Public School Retirement System (PSRS).[2] The PSRS administers a pension plan for teachers to which both teachers and school districts contribute.[3] The class of

1. 950 S.W.2d 854 (Mo. 1997).
2. *Id.* at 855.
3. *See* MO. REV. STAT. § 169.020 (1994).

school districts, also representing Missouri public school teachers, sued the PSRS for a refund of overpayments made to the system and for a declaration that a 1996 amendment to Section 169.030.3 of the Missouri Revised Statutes was unconstitutional.[4]

The certified class of plaintiffs in this case consisted of two groups: public school teachers who were members of the retirement system and school districts that contributed to the retirement system as required by Section 169.030.[5] The named representatives of the class were the Savannah R-III School District, Sweet Springs R-VII School District, Cameron R-I School District and Plattsburg R-III School District.[6] For the purposes of this Note, only the school districts' claims are relevant, because the Court rejected the teachers' claims due to a defect in class representation.[7]

Section 169.030 of the Revised Statutes of Missouri requires public school teachers and school districts to contribute to the Missouri PSRS to fund a pension plan for teachers.[8] Funding for the retirement system comes entirely from teacher and school district contributions.[9] Public school teachers are required to make contributions based on a percentage of their "salary rate,"[10] and school districts must match their teachers' contributions.[11] The retirement system board of trustees sets the contribution rates,[12] and the funds are used to pay allowances to retired teachers.[13]

In 1970, the PSRS began notifying school districts that fringe benefits, such as health insurance, were to be included in the salary rate on which the districts

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4. *Savannah R-III Sch. Dist.*, 950 S.W.2d at 855-56.

5. *Id.* at 856. The entire class consisted of approximately 573 school districts and 58,000 teachers. *Id.*

6. *See* Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 912 S.W.2d 574, 574 (Mo. Ct. App. 1995), *appeal after remand*, Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854 (Mo. 1997).

7. Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854, 857 (Mo. 1997). Despite the teachers' original inclusion in the class, none of the class representatives were teachers. *Id.* As a result, the Missouri Supreme Court found that the representative school districts lacked standing to assert the teachers' rights and refused to consider the merits of the teachers' claims. *Id.* For this reason, this Note will not discuss the teachers' specific claims.

8. *Id.* at 856. *See* MO. REV. STAT. § 169.030 (1994 & Supp. 1997). The retirement system was created and is governed by MO. REV. STAT. §§ 169.010-.141 (1994 & Supp. 1997).

9. *Savannah R-III Sch. Dist.*, 950 S.W.2d at 856 (citing MO. REV. STAT. § 169.030.1 (1994)).

10. *Id.* (citing MO. REV. STAT. § 169.030.3 (1994)).

11. *Id.* (citing MO. REV. STAT. § 169.030.1 (1994)).

12. *Id. See* MO. REV. STAT. § 169.030.4 (1994).

13. Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854, 856 (Mo. 1997) (citing MO. REV. STAT. § 169.030.1 (1994)).

and teachers calculated their contribution amounts.[14] Though most of the school districts complied with the direction,[15] the PSRS discovered in 1982 that some districts were not including fringe benefits in their teachers' salary rates.[16] When the retirement system sued these school districts to enforce compliance, the circuit court dismissed the suit, finding that no justiciable controversy existed because the retirement system had failed to adopt a rule officially promulgating its interpretation of the statute.[17]

The PSRS then issued a rule[18] on December 29, 1987, which defined "salary rate," as used in Section 169.030.3, to include the value of health insurance premiums or annuities.[19] In response to this rule, the school districts filed a lawsuit seeking declaratory and injunctive relief, claiming that the rule was contrary to Section 169.030.3.[20] The school districts also sought a refund of prior contributions that had been made based on salary rates that included health insurance benefits.[21] The circuit court certified the case as a class action, upheld the rule, and granted summary judgment in favor of the retirement system.[22]

The court of appeals reversed the circuit court and held that the "salary rate" of Section 169.030.3 did not include fringe benefits such as health insurance or annuities purchased in lieu thereof.[23] The court also found the rule[24] to be arbitrary and contrary to the statute's plain meaning.[25] The court of appeals reversed the grant of summary judgment in favor of the retirement system and remanded the case to the circuit court for further proceedings.[26]

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14. *Id.*

15. *Id.*

16. *Id.* at 856-57.

17. *Id.* at 857.

18. MO. CODE REGS. ANN. tit. 16, § 10-3.010(8) (1988).

19. Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854, 857 (Mo. 1997).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* (citing Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 912 S.W.2d 574, 577 (Mo. Ct. App. 1995)).

24. MO. CODE REGS. ANN. tit. 16, § 10-3.010(8) (1988).

25. Savannah R-III Sch. Dist. v. Public. Sch. Retirement Sys., 950 S.W.2d 854, 857 (Mo. 1997).

26. *Id.* (citing *Savannah R-III Sch.Dist.*, 912 S.W.2d at 577).

While the case was pending in the circuit court on remand, the legislature amended Section 169.010 to redefine the term "salary rate" so that it specifically included medical benefits paid by the employer.[27] The legislature also added the following language to Section 169.030.3:

> Contributions transmitted to the retirement system before the effective date of this act [February 20, 1996], based on salary rates which either included or excluded employer paid medical benefits for members, shall be deemed to have been in compliance with this section. The retirement system shall not refund or adjust contributions or adjust benefit determinations with respect to any period before [February 20, 1996], solely because of the treatment of employer paid medical benefits for members.[28]

Based on the 1996 amendment to Section 169.030.3, the PSRS moved to dismiss the case on the grounds that the amendment mooted the controversy.[29] The school districts subsequently amended their petition to add constitutional challenges to the 1996 amendment and moved for summary judgment.[30] The circuit court denied the school districts' motion, upheld the constitutionality of Section 169.030.3 as amended in 1996, and granted the retirement system's motion to dismiss.[31] The plaintiff school districts appealed this dismissal to the Missouri Supreme Court.[32] The school districts argued before the Missouri Supreme Court that the 1996 amendment to Section 169.030.3 was an unconstitutional enactment of a retrospective law.[33]

The Missouri Supreme Court affirmed the judgment of the trial court, finding that the 1996 amendment to Section 169.030.3 did not violate the Missouri constitutional prohibition against retrospective laws.[34] The court held that when school districts overpay a state agency and subsequently sue for a refund, the Missouri legislature may constitutionally enact retroactive legislation

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27. *Id.* (citing 1996 Mo. Laws 386).

28. *Id.* (citing 1996 Mo. Laws 387) (brackets in original).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 858. The school districts also argued that the amendment impaired an obligation of contract, violated the separation of powers requirement and was a prohibited special law. *Id.* at 857-60. Because this Note will be limited to the constitutionality of retrospective laws, a discussion of the plaintiffs' other rejected constitutional claims is omitted.

34. *Id.* at 856, 860. The Missouri Supreme Court had jurisdiction in this case because it involved the validity of a statute. *Id.* at 856 (citing MO. CONST. art. V, § 3).

specifically to deny recovery to the school districts, without violating the prohibition of retrospective laws found in the Missouri Constitution.[35]

III. LEGAL BACKGROUND

A. Retrospective Laws

Article I, section 13 of the Missouri Constitution prohibits the enactment of any law that is "retrospective in its operation."[36] Missouri courts consistently define retrospective laws as those which "take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past."[37] Article I, section 13 does not prohibit retrospective laws merely relating to past transactions, but rather, it prohibits laws that operate retrospectively, affecting past transactions "to the substantial prejudice of parties interested."[38] A law that is "retrospective in its operation" may also be referred to as a "retroactive law."[39]

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35. *Id.* at 860. *See infra* Part III.A.

36. MO. CONST. art. I, § 13. The full text of Article I, section 13 provides: "[N]o ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted." MO. CONST. art. I, § 13.

37. State *ex rel.* St. Louis-San Francisco Ry. v. Buder, 515 S.W.2d 409, 410 (Mo. 1974); *see* Doe v. Roman Catholic Diocese, 862 S.W.2d 338, 340 (Mo. 1993); Barbieri v. Morris, 315 S.W.2d 711, 714 (Mo. 1958); Lucas v. Murphy, 156 S.W.2d 686, 689 (Mo. 1941); Liberty Mut. Ins. Co. v. Garffie, 939 S.W.2d 484, 486 (Mo. Ct. App. 1997); Kinder v. Peters, 880 S.W.2d 353, 355 (Mo. Ct. App. 1994); State *ex rel.* City of Springfield v. Public Serv. Comm'n, 812 S.W.2d 827, 832 (Mo. Ct. App. 1991), *overruled in other respects by* Missouri Mun. League v. State, 932 S.W.2d 400 (Mo. 1996; Elliot v. Kesler, 799 S.W.2d 97, 102 (Mo. Ct. App. 1990).

38. Cosada Villa, Inc. v. Missouri Dep't. of Soc. Serv., 868 S.W.2d 157, 160 (Mo. Ct. App. 1994) (quoting Fisher v. Reorganized Sch. Dist. No. R-V, 567 S.W.2d 647, 649 (Mo. 1978) (emphasis added); *see* Beatty v. State Tax Comm'n, 912 S.W.2d 492, 495 (Mo. 1995) (citing Dial v. Lathrop R-II Sch. Dist., 871 S.W.2d 444, 447 (Mo. 1994)). Another Missouri case states that:

> There is no prohibition against the passage of laws which might be "retroactive," but not "retrospective."
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> . . .
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> The constitutional inhibition against laws retrospective in operation . . . does not mean that no statute relating to past transaction can be constitutionally passed, but rather, that none can be allowed to operate retrospectively . . . to the substantial prejudice of parties interested.

State *ex rel.* Webster v. Myers, 779 S.W.2d 286, 289 (Mo. Ct. App. 1989) (quoting *Fisher*, 567 S.W.2d at 649).

39. Dial v. Lathrop R-II Sch. Dist., 871 S.W.2d 444, 447 (Mo. 1994). Though these distinctions are worth noting, courts may mean the same thing when they refer to

The prohibition of laws which change the legal ramifications of past actions initially arose in American constitutional jurisprudence under Article I, section 9, clause 3 of the United States Constitution: "No Bill of Attainder or ex post facto Law shall be passed."[40] The Supreme Court determined early on in *Calder v. Bull*, however, that the Ex Post Facto Clause applied only to criminal laws.[41] Since the United States Constitution does not contain an express provision condemning the enactment of retrospective civil laws, after *Calder*, federal laws that operated retroactively in the civil context had to be challenged under other federal constitutional provisions, such as the Due Process Clause.[42]

Both federal and state constitutions prohibit retrospective civil lawmaking, but the means of achieving the prohibition vary. Retrospective laws may be prohibited under the U.S. Constitution primarily through interpretation of the Due Process Clause,[43] but also through the Bill of Attainder Provision,[44] the Contracts Clause,[45] or the Takings Clause.[46] These provisions implicitly prohibit retrospective civil laws under certain circumstances[47] and apply to the states through the 14th Amendment. State constitutions generally contain provisions similar to those of the United States Constitution under which the constitutionality of retrospective laws may be challenged. While most states condemn retrospective lawmaking indirectly through the interpretation of federal or state constitutional provisions, a few state constitutions, including that of Missouri, contain express provisions forbidding retrospective laws.[48]

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retroactive laws, retrospective laws, or laws operating retrospectively as being unconstitutional.

40. U.S. CONST. art. I, § 9, cl. 3.

41. Calder v. Bull, 3 U.S. 386, 396 (1798).

42. *See infra* notes 43-46 and accompanying text.

43. U.S. CONST. amend. V, § 1 ("No person shall . . . be deprived of life, liberty, or property, without due process of law;"); U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property without due process of law;").

44. U.S. CONST. art. I, § 9, cl. 3 ("No Bill of Attainder or ex post facto Law shall be passed."); U.S. CONST. art. I, § 10, cl. 1 ("No State shall . . . pass any Bill of Attainder . . . ."); *see also* United States v. Lovett, 328 U.S. 303, 315 (1946) (striking down statutory provision as bill of attainder).

45. U.S. CONST. art. I, § 10, cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ."); *see also* Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 250-51 (1978) (striking down state act as violation of Contracts Clause).

46. U.S. Const. amend. V ("No person shall . . . be deprived of life, liberty, or property, without due process of law;"). *See generally* Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992).

47. Harold J. Krent, *The Puzzling Boundary Between Criminal and Civil Retroactive Lawmaking*, 84 GEO. L.J. 2143, 2149-50 (1996).

48. *See* COLO. CONST. art. II, § 11; GA. CONST. art. I, § 1, ¶ 10; IDAHO CONST. art. XI, § 12; MD. CONST. DECL. OF RIGHTS art. XVII; N.H. CONST. art. I, § 23; OHIO CONST. art. II, § 28; TENN. CONST. art. I, § 20; TEX. CONST. art. I, § 16; *see also* N.C. CONST. art. I, § 16 (banning retrospective tax laws).

Article I, section 13 of the Missouri Constitution contains both a prohibition of Ex Post Facto laws in the criminal context and a prohibition of retrospective civil laws:

> That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted.[49]

The term "retrospective" in Article I, section 13 refers only to civil laws and remedies,[50] while "ex post facto" pertains solely to criminal laws.[51] The express prohibition of retrospective civil laws is a relatively unique feature of the Missouri Constitution, shared with only a few other states.[52]

The divergence in the means by which federal and state constitutions prohibit retrospective lawmaking raises the question of what sources of authority may be used to construe Missouri law on the subject.[53] The Missouri Constitution contains a specific prohibition of retrospective civil laws in Article I, section 13 which is absent from the United States Constitution. Consequently, Missouri state precedent will be used exclusively to define the constitutional bounds of retrospective lawmaking under Missouri constitutional law. As the

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49. MO. CONST. art. I, § 13.

50. State *ex rel.* Webster v. Meyers, 779 S.W.2d 286, 289 (Mo. Ct. App. 1989) (citing State v. Thomaston, 726 S.W.2d 448, 459 (Mo. Ct. App. 1987)).

51. "As used in both the State and Federal Constitutions the term ex post facto law applies only to criminal legislation . . . ." State *ex rel.* Jones v. Nolte, 165 S.W.2d 632, 638 (Mo. 1942).

52. *See supra* note 48.

53. To examine state constitutional challenges to retroactive statutes, three approaches may be used. Marshall J. Tinkle, *Forward Into the Past: State Constitutions and Retroactive Laws*, 65 TEMP. L. REV. 1253, 1255 (1992). First, where the state constitutional provision is analogous to a federal constitutional provision, United States Supreme Court and federal decisions construing the federal provision may be used to interpret the state provision. *Id.* Second, state court opinions may be controlling when the construction of the state provision departs from federal interpretation of the comparable federal provision. *Id.* Lastly, reliance may be placed on state court decisions where the state constitutional provision is not found in the United States Constitution. *Id.*

retrospective law challenge in *Savannah R-III School District* was brought solely under the Missouri Constitution,[54] federal precedent is largely irrelevant.[55]

Despite Missouri's express prohibition of retrospective laws in Article I, section 13, the state legislature still enacts laws that operate retroactively.[56] The propriety of retroactive lawmaking becomes questionable when the new law affects vested rights.[57] As stated above, retroactive laws are those which "take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past."[58] Of the aforementioned terms, "vested rights" appears to be the most ambiguous. A vested right, the impairment of which renders a law retrospective in its operation, was described by the court in *Fisher v. Reorganized School District No. R-V of Grundy County* to be:

> [S]omething more than a mere expectation based upon an anticipated continuance of the existing law. It must have become a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of the demand, or a legal exemption from a demand made by another.[59]

The prohibition in Article I, section 13 only applies when substantive rights are affected.[60] Retrospective laws may be enacted "where the statute is only procedural and does not affect any substantive rights of the parties."[61] Courts

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54. *See* Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854, 856 (Mo. 1997). The retrospective law and other claims raised in *Savannah* were brought solely under the Missouri Constitution. *Id.* These same claims could, however, have been brought under the United States Constitution. In practice, it is important to examine the possibility of both federal and state constitutional claims. Even when federal and state constitutions have identical provisions, state courts will have more leeway in interpreting state constitutional provisions than federal provisions.

55. *See* Johnson v. Fankell, 117 S. Ct. 1800, 1804 (1997) ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the state.").

56. *See, e.g., Savannah R-III Sch. Dist.*, 950 S.W.2d at 857 (recognizing that the legislature amended Section 169.030.3 to retroactively preclude refund claims against the retirement system).

57. *See* Dial v. Lathrop R-II Sch. Dist., 871 S.W.2d 444, 447 (1994) (holding that the constitutional prohibition against retroactive laws applies where the law impairs a vested right or works substantial prejudice).

58. State *ex rel.* St. Louis-San Francisco Ry. v. Buder, 515 S.W.2d 409, 410 (Mo. 1974); *see* cases cited *supra* note 37.

59. Fisher v. Reorganized Sch. Dist. R-V, 567 S.W.2d 647, 649 (Mo. 1978) (citation omitted).

60. Doe v. Roman Catholic Diocese, 862 S.W.2d 338, 341 (Mo. 1993).

61. Brennecka v. Director of Revenue, 855 S.W.2d 509, 511 (Mo. Ct. App. 1993);

must make the crucial determination of whether the right asserted is procedural or substantive "because the bar against retrospective legislation has traditionally been applied to only substantive laws."[62] "Generally, substantive laws are those which relate to the rights and duties giving rise to a cause of action; procedural laws relate to the machinery for processing the cause of action."[63] The Missouri Constitution prohibits the retrospective application of substantive laws, while procedural laws may operate retrospectively.[64]

Missouri courts previously allowed a broad exception to the constitutional prohibition against retrospective laws in cases where the legislature manifests a clear intent for retrospective application.[65] The legislative intent exception was recognized early on by courts.[66] From the outset, this exception made little sense and clearly ran contrary to the constitutional prohibition in Article I, section 13. In essence, the exception allowed the legislature to pass retroactive laws that affected vested, substantive rights as long as the legislature manifested a clear intent that the law was to operate retroactively. This previously accepted exception was rejected outright in *Doe v. Roman Catholic Diocese.*[67]

In *Doe*, the Missouri Supreme Court rejected the "legislative intent" exception to the constitutional prohibition of retrospectively applied statutes, holding that even clear legislative intent will not permit retrospective application.[68] The court stated that "[r]egardless of legislative intent, it should be obvious that a statute cannot supercede a constitutional provision."[69] Nonetheless, at least two Missouri courts since *Doe* have erroneously quoted the "legislative intent" exception as if it was still valid.[70]

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see Doe 862 S.W.2d at 341; Cartwright v. Wells Fargo Armored Servs., 921 S.W.2d 165, 167 (Mo. Ct. App. 1996); Kinder v. Peters, 880 S.W.2d 353, 355 (Mo. Ct. App. 1994); State Bd. of Registration for the Healing Arts v. Warren, 820 S.W.2d 564, 565 (Mo. Ct. App. 1991); State *ex rel.* Webster v. Myers, 779 S.W.2d 286, 289 (Mo. Ct. App. 1989); State v. Thomaston, 726 S.W.2d 448, 460 (Mo. Ct. App. 1987).

62. *Doe*, 862 S.W.2d at 341.

63. *Id.* (citing Wilkes v. Missouri Highway & Transp. Comm'n, 762 S.W.2d 27, 28 (Mo. 1988)). *See* Fletcher v. Second Injury Fund, 922 S.W.2d 402, 407 (Mo. Ct. App. 1996).

64. *Doe*, 862 S.W.2d at 341.

65. *See* State v. Thomaston, 726 S.W.2d 448, 460 (Mo. Ct. App. 1987); State *ex rel.* St. Louis-San Francisco Ry. v. Buder, 515 S.W.2d 409, 410 (Mo. 1974).

66. *See* Lucas v. Murphy, 156 S.W.2d 686, 690 (Mo. 1941); Supreme Council of the Royal Arcanum v. Heitzman, 120 S.W. 628, 630 (Mo. Ct. App. 1909).

67. 862 S.W.2d 338, 341 (Mo. 1993).

68. *Id.*

69. *Id. See also* Deptartment of Soc. Servs. v. Villa Capri Homes, 684 S.W.2d 327, 332 n.5 (Mo. 1985) (stating that where the legislature manifests an intent that a statute apply retrospectively, the intent only pertains to the construction of the statute and to whether the presumption against retroactivity should not apply).

70. *See* Fletcher v. Second Injury Fund, 922 S.W.2d 402, 407 (Mo. Ct. App. 1996); Cartwright v. Wells Fargo Armored Servs., 921 S.W.2d 165, 167 (Mo. Ct. App. 1996).

Under current Missouri law, to determine whether a law is unconstitutionally retrospective, the dispositive issue is whether the law affects a vested or substantive right of the party or whether the law is merely procedural in nature.[71] If the law is procedural in nature, then Article I, section 13 does not apply.[72] If the law affects a substantive right, it is unconstitutional even if the legislature has expressed a clear intent to legislate retroactively.[73]

Another less obvious exception to the prohibition of retrospective laws arose in *Savannah R-III School District*. The exception indicates that the state may waive its own rights,[74] including the rights of entities that are merely "instrumentalities" of the state.[75]

B. State Power To Waive the Rights of School Districts

The Missouri Supreme Court in *Savannah R-III School District* stated that "[b]ecause the retrospective law prohibition was intended to protect citizens and not the state, the legislature may pass retrospective laws that waive the rights of the state."[76] This exception apparently permits the legislature to abrogate even the substantive rights of a school district.[77] However, the key to this exception is a finding that the school district is an "instrumentality of the state."[78] By defining the school district as a "state instrumentality," the legislature may waive the rights of the school district to the same extent as it can waive the rights of the state.[79] A school district's mixture of state and local functions may, however, call into question the propriety of the "state instrumentality" categorization.

Many courts have commented on the nature and function of a school district vis-à-vis the state. In *State ex rel. Independence School District v. Jones*,[80] the Court stated the general proposition that "[s]chool districts are bodies corporate, instrumentalities of the state established by statute to facilitate effectual discharge of the General Assembly's constitutional mandate to establish and maintain free public schools . . . ."[81] The Court also stated that "[a]s 'creatures

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71. State v. Thomaston, 726 S.W.2d 448, 460 (Mo. Ct. App. 1987).

72. *See* Doe v. Roman Catholic Diocese, 862 S.W.2d 338, 341 (Mo. 1993).

73. *Id.*

74. Savannah R-III Sch. Dist. v. Public School Retirement Sys., 950 S.W.2d 854, 858 (Mo. 1997) (citing State *ex rel.* Meyer v. Cobb, 467 S.W.2d 854, 856 (Mo. 1971)); Graham Paper Co. v. Gehner, 59 S.W.2d 49, 51-52 (Mo. 1933)).

75. *See* discussion *infra* Part III.B.

76. *Savannah R-III Sch. Dist.*, 950 S.W.2d at 858 (citing *Meyer*, 467 S.W.2d at 856; *Graham*, 59 S.W.2d at 51-52).

77. *Id.* (citing Dye v. School Dist. No. 32, 195 S.W.2d 874, 879 (Mo. 1946)).

78. *Id.*

79. *Id. See also Dye*, 195 S.W.2d at 879 (recognizing that the legislature may waive or impair the vested rights of school districts).

80. 653 S.W.2d 178 (Mo. 1983).

81. *Id.* at 185.

of the legislature,' the rights and responsibilities of school districts are created and governed by the legislature."[82] Based on such attributes, other courts have concluded that "the legislature may waive or impair the vested rights of school districts without violating the retrospective law prohibition."[83] Part of the reasoning would seem to be that school districts are state agencies fulfilling a state purpose because public education is a constitutional obligation of the legislature.[84]

However, the nature of a school district may not be so clearly governmental in every respect. Missouri cases deciding questions of sovereign immunity in the public school context discuss in depth the legal nature of a school district. Modern sovereign immunity cases indicate that school districts can be considered something other than mere state instrumentalities for some purposes. Under the theory that a school district constitutes simply an "arm of the state," a school district may claim sovereign immunity as much as the state itself.[85] To be immune, the school district must be found to be an "arm of the state."[86] The sovereign immunity cases recognize, however, that a school district is not "the state" for all purposes. These cases draw a distinction between a district's governmental and proprietary functions. The "governmental-proprietary" analysis in these cases helps illustrate how a school district may be more like a local political subdivision and less like an arm of the state in certain circumstances.

In *Beiser v. Parkway School District*,[87] the Missouri Supreme Court compared school districts to municipalities.[88] The court stated that while "a municipality can perform both proprietary and governmental functions and loses sovereign immunity when performing proprietary functions, [a] special government district . . . is an arm of the state, and can by its nature perform only governmental functions for which it will enjoy sovereign immunity."[89] In

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82. *Id.*

83. Savannah R-II Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854, 858 (Mo. 1997) (citing Dye v. School Dist. No. 32, 195 S.W.2d 874, 879 (Mo. 1946)). This idea has been expressed in other jurisdictions as well. *See* Rousselle v. Plaquemines Parish Sch. Bd., 633 So. 2d 1235, 1247 (La. 1994); Duplechain v. St. Landry Parish Sch. Bd., 657 So. 2d 110, 113 (La. Ct. App. 1995) ("This state may constitutionally pass retrospective laws waiving or impairing its own rights or those of its subdivisions . . . as long as private rights are not infringed.").

84. *See* MO. CONST. art. IX, § 1(a); *Savannah R-III Sch. Dist.*, 950 S.W.2d at 858 (citing *Jones*, 653 S.W.2d at 185); Alex J. Grant, *When Does the Clock Start Ticking?: Applying the Statute of Limitations in Asbestos Property Damage Actions*, 80 CORNELL L. REV. 695, 732 (1995).

85. Allen v. Salina Broad., Inc., 630 S.W.2d 225, 226-27 (Mo. Ct. App. 1982).

86. *Id.*

87. 589 S.W.2d 277 (Mo. 1979).

88. *Id.* at 280.

89. *Id.* (citations omitted).

Beiser, the court reaffirmed its previous position from *Rennie v. Belleview School District* that examining the governmental-proprietary distinction for school districts would serve no useful purpose.[90] Despite holdings of this sort, courts soon began to question whether a school district was an arm of the state for all purposes.

Although the prevailing view was that school districts served "one single and noble purpose, *viz.*, to educate the children of the district,"[91] the Missouri Supreme Court in *State ex rel. Allen v. Barker* moved away from this previous position and declared that the functions of a school district that do not serve this "noble purpose" are proprietary functions that do not afford immunity to a school district.[92] The court indicated, in *Barker*, that the governmental-proprietary distinction could be applied to school districts such that a district would not be considered an arm of the state for some purposes.[93]

To make the distinction, governmental functions can be considered those that concern the state in general while proprietary functions relate to local necessities and the conveniences of a school district's citizens.[94] Another consideration is whether the function or activity is done more for the benefit of the state or for the benefit of the community.[95] As the governmental-proprietary distinction clearly applies to school districts,[96] these sovereign immunity cases indicate that school districts may not be mere instrumentalities or arms of the state for all purposes.

IV. INSTANT DECISION

In the instant case, the Missouri Supreme Court held that the 1996 amendment to Section 160.030.3 did not violate the prohibition of retrospective laws in Article I, section 13 of the Missouri Constitution and that the school districts were not entitled to a refund of the overpayments they made to the

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90. *Id.* (citing Rennie v. Belleview Sch. Dist., 521 S.W.2d 423, 424 (Mo. 1975)).

91. Allen v. Salina Broad., Inc., 630 S.W.2d 225, 226-27 (Mo. Ct. App. 1982) (citing Kansas City v. School Dist., 201 S.W.2d 930, 933 (Mo. 1947)).

92. 581 S.W.2d 818, 825 (Mo. 1979).

93. *Id.* (holding that the governmental-proprietary distinction "is still viable and must be applied").

94. *Allen*, 630 S.W.2d at 227.

95. *Id.* at 227-28 ("It is proper to consider whether the activity is primarily for the advantage of the state as a whole or for the special local benefit of the community involved . . . .") (citations omitted).

96. *See* Gabbett v. Pike County Mem'l Hosp., 675 S.W.2d 950, 951 (Mo. Ct. App. 1984); Fowler v. Board of Regents, 637 S.W.2d 352, 353 (Mo. Ct. App. 1982) ("It is correct that some functions performed by school districts may be considered proprietary and that suits arising therefrom will not be barred by sovereign immunity."); Allen v. Salina Broad., Inc., 630 S.W.2d 225, 226 (Mo. Ct. App. 1982).

Public School Retirement System.[97] The court found that the legislature intended the retrospective law prohibition in Article I, section 13 to protect citizens and not the state, and concluded that the legislature could waive the vested rights of the school districts without violating the retrospective law prohibition because school districts were instrumentalities of the state.[98]

Judge Robertson criticized this decision in his dissenting opinion, arguing that the court was ignoring the plain language of the constitution.[99] He contended that because school districts were more akin to municipal corporations than to state entities, the school districts' rights could not be waived by the legislature.[100]

V. COMMENT

The *Savannah R-III School District* decision illustrates in a shocking manner, the extent to which a politically unpopular lawsuit can be nullified by legislative action and judicial deference. When the legislature realized that the courts were about to require the Public School Retirement System to pay enormous refunds to the plaintiff school districts, it hastily enacted legislation to stop that result.[101] The Missouri Supreme Court suggested in its opinion that the school districts did, in fact, have a vested right in the overpayments collected

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97. Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854, 858, 860 (Mo. 1997). Though this Note limits its discussion to retrospective lawmaking, the court also disposed of the plaintiffs' other constitutional claims, holding that the 1996 amendment to Section 160.030 did not violate the separation of powers requirement because the amendment did not abrogate a final adjudication of the school districts' claim. *Id.* at 859. The amendment did not impair an obligation of contract in violation of Article I, section 13 of the Missouri Constitution because the relationship between the retirement system and the school districts was purely statutory and not contractual. *Id.* at 857. Furthermore, the amendment was not a "special law" in violation of Article III, section 40(25) of the Missouri Constitution because the law had a rational relation to a legitimate government objective. *Id.* at 860.

The court also disposed of the teachers' claims early in the opinion by reasoning that because the school districts' claim had become moot, the class action had to fail for the teachers because none of the named class representatives were teachers. *Id.* at 857-58. The court stated, however, that "[t]he analysis of this constitutional claim would be different had any one of the named parties been a teacher." *Id.* at 858.

98. *Savannah R-III Sch. Dist.*, 950 S.W.2d at 858. Judge Holstein wrote the opinion in which Judge Covington and Judges Smith and Crahan, sitting by designation, concurred. *Id.* at 860. Judge Price concurred in the result. *Id.* Judge Limbaugh concurred in the dissenting opinion of Judge Robertson, and Chief Justice Benton and Judge White did not sit for this case. *Id.* at 860.

99. *Id.* at 861.

100. *Id.* at 860-62.

101. The legislature amended Section 169.030.3 "in an apparent attempt to put to rest the pending litigation." *Id.* at 857.

by the Public School Retirement System.[102] Fortunately for the court and for the legislature, some Missouri precedent existed which allowed the legislature to waive the rights of the state and state instrumentalities.[103] By finding the school districts to be "instrumentalities of the state" for these purposes,[104] the unconstitutional retrospective legislation could be upheld. Though the decision has some precedential justification, the outcome raises some troubling questions.

First, should courts go to such lengths to uphold retrospective legislation when the Missouri Constitution clearly prohibits such legislation in Article I, section 13? Second, after this decision, do school districts have any constitutional rights that are enforceable against the state? The opinion suggests that they do not.[105]

The Missouri Supreme Court has grappled with the issue of retrospective lawmaking for years. In 1974, it stated:

> The underlying repugnance to the retrospective application of laws is that an act or transaction, to which certain legal effects were ascribed at the time they transpired, should not, without cogent reasons, thereafter be subject to a different set of effects which alter the rights and liabilities of the parties thereto.
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> . . .
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> Merely to label certain consequences as substantive and others as procedural does not give sufficient consideration to this principle, and notions of justice and fair play in a particular case are always germane.[106]

Without question, "[t]he principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal."[107] Though retrospective lawmaking does provide the legislature with a means of achieving particular goals, the

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102. The court rejected the Article I, section 13 challenge on the grounds that "the legislature may waive or impair the vested rights of school districts." *Id.* at 858.

103. The court based the constitutional waiver of vested rights on *Dye v. School District No. 32*, 195 S.W.2d 874, 879 (Mo. 1946). *See* Savannah R-III Sch. Dist.v. Public Sch. Retirement Sys., 950 S.W.2d 854, 858 (Mo. 1997).

104. *Savannah R-III Sch. Dist.*, 950 S.W.2d at 858.

105. Though the teachers who overpaid the retirement fund could still possibly collect their refund in a separate action, this would not replenish the local school districts' treasuries that the PSRS depleted by erroneously requiring payments.

106. State *ex rel.* St. Louis-San Francisco Ry. v. Buder, 515 S.W.2d 409, 411 (Mo. 1974).

107. Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 855 (1990) (Scalia, J., concurring).

question remains as to whether these goals outweigh the potential harm to the affected party and to society.[108]

Retroactive legislation does possess some positive attributes. It provides the legislature with the flexibility necessary to address social and political concerns.[109] It also allows the legislature to "rectify omissions, prevent unfairness, and maintain the integrity of state or federal programs."[110] Despite the clear and unambiguous language of Article I, section 13, court interpretations soften the constitutional prohibition in order strike a balance between the needs of protecting citizens and the benefits that retrospective lawmaking often achieves for society.

Missouri courts originally began approving retroactive laws that constituted curative legislation designed to fix some legislative oversight.[111] However, the category of curative legislation is often extended to cover legislative omissions and mistakes.[112] Undoubtedly, the ability to pass retroactive laws provides the legislature with a very useful tool to meet its policy objectives.[113]

Conversely, permissive retroactive lawmaking possesses numerous undesirable attributes. Retrospective laws destroy reliance interests[114] and often place an inordinate burden on particular groups. "Individuals should be able to rely on existing law when ordering their affairs. Clear legal obligations maximize an individual's freedom of action."[115] "Individuals' financial expectations and investments can be dramatically sundered by applying new laws retroactively."[116] These dangers extend equally to local political subdivisions. Restraining the government's ability to affect vested rights through retroactive civil laws may be necessary to avoid imposing inequitable burdens both on individuals and entities such as school districts.

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108. Krent, *supra* note 47, at 2158.

109. Krent, *supra* note 47, at 2151-52.

110. Krent, *supra* note 47, at 2156.

111. *See generally* State *ex rel.* Attorney Gen. v. Miller, 66 Mo. 328, 340 (1877) (upholding statute ratifying contract previously made by a municipal corporation); Barton County v. Walser, 47 Mo. 189, 205 (1871) (upholding act validating titles to previously sold swamp lands).

112. *See* Krent, *supra* note 47, at 2156 n.80 (citations omitted); Christopher L. Thompson, Note, *Special Legislation Analysis in Missouri and the Need For Constitutional Flexibility*, 61 MO. L. REV. 185, 199-200 (1996).

113. Krent, *supra* note 47, at 2156.

114. *See* Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 18-19 (1976) (upholding retrospective liability for disabilities of former employees under the Federal Coal Mine Health and Safety Act of 1969)); Krent, *supra* note 47, at 2143 (citing Pension Benefit Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 734 (1984) (upholding retroactive effective date of withdrawal liability provisions of Multiemployer Pension Plan Amendments Act)).

115. Krent, *supra* note 47, at 2160.

116. Krent, *supra* note 47, at 2163.

In addition, retroactive lawmaking may promote legislative self-dealing. Legislators may curry favor with influential campaign contributors to ensure their reelection.[117] By either eliminating or strictly applying the Missouri constitutional prohibition on retrospective laws, the governed may be better protected against favoritism and graft.[118]

Some of the dangers of retrospective lawmaking may be counteracted by lobbying efforts. Lobbying can help affected groups combat retroactive legislation that undermines their interests.[119] One commentator argues that the primary check on retroactivity in the civil context is "the ability of those targeted to organize collectively to block any retroactive measure . . . ."[120] "[G]roups targeted by retroactive civil legislation can often form effective coalitions to repulse any retroactive initiative."[121] The strength of this protection is, however, questionable.

In *Savannah R-III School District*, lobbying efforts worked to the detriment of the school district plaintiffs. Many Missouri education-based organizations lobbied against payment of the refund.[122] Their efforts prompted the legislature to hastily enact the 1996 amendment to Section 169.030.3. The educational and teachers' organizations concentrated their efforts and successfully defeated the plaintiffs' recovery. The school districts had a significantly diminished recourse to oppose these lobbying efforts, as they were pitted against the organizations that had traditionally supported, rather than opposed, their interests.

Clearly, in *Savannah R-III School District*, the protection of lobbying failed for the school districts. Whether the legislature acted subjectively for the benefit of the public, or to please educational organizations, cannot be ascertained absolutely. Regardless, the end result is that a multitude of school districts and school teachers were required to pay more than their fair share into the retirement fund. The legislature retroactively squelched their vested right to pay only their legally required share.

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117. *See* Krent, *supra* note 47, at 2159.

118. *See* Krent, *supra* note 47, at 2159.

119. *See* Krent, *supra* note 47, at 2146.

120. Krent, *supra* note 47, at 2183.

121. Krent, *supra* note 47, at 2174. For example, when Hallmark Cards, Inc., was threatened with the loss of tax benefits regarding their multi-million dollar pension plans, the corporation successfully lobbied the Missouri legislature for a law protecting them against this loss. Dan Margolies, *Court Denies Creditors Access to Pensions of Debtors in Bankruptcy*, KANSAS CITY BUS. J., July 10, 1992, at 11.

122. Several associations representing the interests of retired and active teachers and school administrators covered by the retirement plan were permitted to intervene as defendants, including the Missouri State Teachers Association, the Retired Teachers Association of Missouri, the Missouri National Education Association, Cooperating School Districts of the St. Louis Suburban Area, the Missouri Association of School Administrators, the Missouri Association of Elementary School Principals, and the Missouri Association of School Board Officials. Savannah R-III Sch. Dist. v. Public Sch. Retirement Sys., 950 S.W.2d 854, 856 n.2 (Mo. 1997).

Though the result in *Savannah R-III School District* calls into question the propriety of retrospective lawmaking, the Missouri Supreme Court did not take the opportunity to discuss retrospective lawmaking at length in its opinion. It concluded that even though the school districts may have had a vested right in a refund of the overpayments, the legislature could waive the school districts' constitutional right not to be subjected to retrospective laws because the school districts were "creatures of the legislature" and "instrumentalities of the state."[123] The reasoning continues that if the legislature can waive the rights of the state, it can also waive the rights of school districts.

Though the proposition that the legislature may waive the rights of the state or one of its agencies does have some precedential basis, the threshold "governmental-proprietary" distinction found in other cases should be extended to legislative waivers of the rights of school districts. The governmental-proprietary distinction found in sovereign immunity cases seems to suggest that a threshold determination should be made, with regard to the right asserted, as to whether a school district is in fact an arm of the state, or rather, an entity more akin to a political subdivision protecting local interests.

The dissenting opinion in *Savannah R-III School District* suggested that such a determination should have been made in the court's decision. Judge Robertson stated that "[i]n formation and purpose, the [school districts] are more municipal corporations that they are state entities."[124] The majority did not, however, espouse this view in its decision.

The irony of the situation lies in the fact that a school district may lose the cloak of sovereign immunity when it performs proprietary as opposed to governmental functions. Thus, when a school district is sued, it may not claim immunity unless it is shown to be an arm of the state for that purpose. However, when a school district asserts claims against the state, no determination of governmental or proprietary rights or interests appears to be necessary before the legislature can waive a school district's claim of immunity.

For the purposes of determining whether sovereign immunity exists, courts will undertake an analysis of whether the action of the school district was governmental or proprietary in nature.[125] This determination should be extended to the legislature's waiver of a school district's rights, constitutional or otherwise. If the nature of the right claimed or the action by the school district appears to be proprietary rather than governmental, then the legislature should be required to respect that the right belongs to the school district and not to the state. Rights belonging to school districts in a proprietary sense should not be waivable by the legislature, and courts should protect these proprietary rights. The dissenting opinion in *Savannah R-III School District* clearly expressed the nature of this injustice as follows:

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123. *Id.* at 858.

124. *Id.* at 860 (Robertson, J., dissenting).

125. Allen v. Salina Broad., Inc., 630 S.W.2d 225, 226 (Mo. Ct. App. 1982).

> Surely the plaintiff school districts—created at the option of the local citizenry and receiving not only state money but local tax revenue to support their operations—have a legally protectible interest in paying only so much of their state funds/local tax revenues to the public school retirement system as the law requires.[126]

Though school districts are created or permitted by the legislature, their functions are not only governmental in nature, but also concern local interests. The sovereign immunity cases acknowledge this. The school district treasury receives funding from both state and local tax revenues. The disposition of the funds serves both the state and the local community. The school districts' obligation to preserve their funds thus involves an obligation to the state and an obligation to the local taxpayers. When the legislature under the facts of the *Savannah R-III School District* case waives the school districts' right to a refund of overpayments, it not only impairs the substantive rights of the school districts, but also those of the local community who will suffer directly from the loss of funds. If the courts permit the legislature to waive a party's rights on the grounds that the party is merely an "arm of the state," a threshold determination similar to that used in sovereign immunity cases should be made to prevent injustice.

In *Savannah R-III School District*, the attempt by the school districts to recover funds from the PSRS arguably constituted proprietary action. The school district tried to protect the funds primarily for the benefit of the local community, not for the state. Without questioning the validity of the state's ability to waive its own rights, Missouri courts should at least make the distinction between governmental and proprietary interests before abridging the rights of entities which perform both state and local functions.

VI. CONCLUSION

The ability of the legislature to waive the rights of school districts and to enact retroactive laws should come under closer scrutiny in order to preclude the State from trampling on the rights of school districts or other local political subdivisions. The "governmental-proprietary" distinction, as used in cases of sovereign immunity, should logically be extended to legislative waivers of school districts' rights to ensure that local interests are not frustrated by undue governmental interference and overreaching. Such a requirement may have kept the legislature from intervening in ongoing litigation, as it did in *Savannah R-III School District*, to the detriment of school districts and their local constituents.

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126. *Savannah R-III Sch. Dist.*, 950 S.W.2d at 861 (Robertson, J., dissenting).

This issue and the problems of retroactive lawmaking may be ripe for a more thorough state constitutional analysis in future cases.

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