

NEWS FROM VALERIE CHASTAIN, ATTORNEY AT LAW

I am providing legal representation for Clay Chastain and the Committee of Petitioners regarding the voter-approved light rail initiative.

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Response to the “Outline” from the Office Of The City Attorney of Kansas City, Missouri advising the mayor and city council of the “potential” legal defects and other “significant problems” of the voter-approved light rail initiative.

It is the wishes of those I represent to try to resolve these issues outside of the court of law by clearing the legal air and the resulting confusion surrounding the light rail initiative approved by the majority of the voters of Kansas City on November 7, 2006.

After extensive and careful legal review of the matter at hand, it is my legal opinion that there is nothing involving the petition initiative approved by the voters that is illegal, impossible, or unconstitutional.

Therefore in the event, upon taking office, the new mayor and city council of Kansas City delay implementing the voter-approved light rail plan by attempting to either repeal it or amend it significantly and resubmit it to the voters, these actions will be met with a legal challenge. Legal action will also be taken if said same body sits on the initiative and takes no action to begin implementing it in a timely fashion.

My response to the alleged defects of the petition is limited to those issues which are capable of adjudication by a court of law, and is as follows:

1. JURISDICTIONAL CONFLICTS-STATE OF MISSOURI, NORTH KANSAS CITY, GLADSTONE.

Kansas City has the legal authority to condemn property for use in a light rail system outside its boundaries when that property is located within a county in which the city exists. Thus, the petition is not defective in this regard.

2. THE LIGHT RAIL ROUTE SPECIFIED BY THE PETITION WILL REQUIRE THE COOPERATION OF THE MISSOURI DEPARTMENT OF TRANSPORTATION, THE CITY OF GLADSTONE, THE CITY OF NORTH KANSAS CITY, THE STATE OF MISSOURI, AND THE FEDERAL GOVERNMENT.

A court cannot adjudicate who will cooperate with whom. However, the reality that cooperation is necessary between these adjoining municipalities does not make the petition defective.

3. BECAUSE OF THE WAY THE INITIATIVE PETITION WAS PREPARED, THE ORDINANCE

ADOPTED BY THE VOTERS CONFLICTS WITH THE CITY CHARTER. THE ORDINANCE DICTATES HOW SOME OF THE CITY'S PARKS AND BOULEVARDS WILL BE OPERATED. THIS IS THE EXCLUSIVE PURVIEW OF THE BOARD OF PARKS AND RECREATION COMMISSIONERS.

The Charter of the City of Kansas City, Missouri, provides that property may be removed from the park system if the Board of Parks and Recreation Commissioners makes an initial determination that such property is no longer necessary or appropriate for park use, and the people then vote for its removal. Mr. Geary claimed that the failure of the Committee of Petitioners to first obtain from the Board its determination that certain property in the park system which is affected by the light rail petition is no longer necessary or appropriate for park use renders the ordinance in conflict with this provision of the City Charter.

The Charter provides that the parks and boulevard system is for the enrichment and enjoyment of the people of Kansas City, and not the Board of Parks and Recreation Commissioners. Where, as here, the people have adopted a measure, courts disregard post-election, technical objections to the petition such as this one.

4. BECAUSE ALL NECESSARY FUNDING FOR THE PROJECT IS NOT PROVIDED FOR BY THE INITIATIVE ORDINANCE, THE ORDINANCE IS POSSIBLY SUBJECT TO CHALLENGE AS AN UNCONSTITUTIONAL INITIATIVE.

Article III, Section 51 of the Missouri Constitution states:

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

Courts give great latitude to initiative petitions which are attacked on constitutional or statutory grounds. An ordinance adopted through the initiative process will be upheld if there is any reasonable theory upon which it may be upheld, and it will not be held unconstitutional unless it clearly and undoubtedly contravenes some constitutional provision. A court would very likely uphold the light rail ordinance on the reasonable theory that additional federal, state, and regional funds will be forthcoming to help fund the transportation projects therein. This is so, especially because the Federal Transit Authority's "New Starts" program, which is the federal government's primary financial resource for supporting locally-planned, implemented, and operated major transit capital improvements, has helped to make possible literally hundreds of new or extended transit fixed guideway systems across the country.

The confusion and doubt created by the City Attorney's office regarding these alleged "legal constraints" of the light rail ordinance not only unnecessarily delay implementation of the light rail ordinance, but also undermine the goodwill of the people and the wave of momentum generated by the vote. It is my fervent hope that my response will quell the dilatory tactics of the City and the uncertainty created in the voters as a result of these machinations.