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POLITICAL SUBDIVISIONS - MISSOURI

City of Harrisonville v. Board of Trustees of Mo Petroleum Storage Tank Insurance Fund

Supreme Court of Missouri, en banc - December 20, 2022 - S.W.3d - 2022 WL 17823590

City brought action in Circuit Court against petroleum storage tank insurance fund. On remand of appeal of judgment against fund, city substituted fund's board of trustees as defendant and asserted cause of action for fraud arising from fund's failure to reimburse costs of remediation of petroleum leak in a city easement, and thereafter, the case was transferred.

The Circuit Court entered judgment against board and awarded $8 million in punitive damages to city, and denied board's motion to vacate, correct, alter, or amend the judgment. Board and city cross-appealed.

The Supreme Court held that:

- Board was a state agency entitled to sovereign immunity;
- Board did not waive or abandon sovereign immunity by failing to raise it prior to circuit court's entry of final judgment against fund; and
- Law of the case doctrine did not apply to bar board from asserting sovereign immunity.

Board of trustees of petroleum storage tank insurance fund was a state agency entitled to sovereign immunity from city's fraud claim arising from fund's failure to reimburse cost of installing petroleum-resistant pipe and fittings in an easement as remediation for leaking underground storage tanks from adjacent gas station, where board was designated as a "type III agency" by statute, implemented as a constitutional amendment reorganizing executive department of state government, and was vested thereunder with authority to appoint an executive director and other employees as needed, "who shall be state employees," and board participated in state's annual budget process and was given rulemaking authority that was subject to same rulemaking procedures as other state entities.

Substitution of board of trustees of petroleum storage tank insurance fund as defendant, in place of the fund in city's fraud action arising from fund's failure to reimburse costs of installing petroleum-resistant pipe and fittings in an easement as remediation for leaking underground storage tanks from adjacent gas station was not simply a misnomer, and thus, board did not waive or abandon its sovereign immunity by failing to assert it prior to circuit court's entry of final judgment against fund, because it was not clear that board was the correct party before the substitution, given that board and fund were separate and distinct entities, and as such, board was not party to the litigation until it was substituted on remand.

Circuit court's finding on city's motion in limine that petroleum storage tank insurance fund was not an agent of the state, in city's action arising from fund's failure to reimburse costs of remediation of petroleum leaking into city easement, did not decide issue of fund's board of trustees' sovereign immunity to final judgment, and thus, law of the case doctrine did not apply to bar board from

asserting sovereign immunity as defense after it was substituted for the fund on remand, because board was not a party at time of the ruling.

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