

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI EX REL.,)
RAINERI CONSTRUCTION *et. al*,)
)
Relators,)
)
v.)
)
CHRIS KOSTER, ATTORNEY GENERAL)
OF THE STATE OF MISSOURI, *et al.*,)
)
Respondents.)

Cause No. 09AC-CC00634

MOTION TO INTERVENE AS A MATTER OF RIGHT,
OR IN THE ALTERNATIVE,
MOTION FOR PERMISSIVE INTERVENTION OF TIMOTHY GREEN, PRESIDENT,
MISSOURI STATE BUILDING AND CONSTRUCTION TRADES COUNCIL,
IN HIS CAPACITY AS CHIEF OFFICER AND PRESIDENT OF
THE MISSOURI STATE BUILDING AND CONSTRUCTION TRADES COUNCIL,
AN UNINCORPORATED ASSOCIATION

COMES NOW, the Missouri State Building and Construction Trades Council (hereinafter, "Council"), by and through its representative, Timothy Green, by virtue of the Doctrine of Virtual Representation, and requests that the Court grant Mr. Green, as representative of the Council, intervention, as a matter of right, or by permissive intervention, pursuant to Rule 52.12, Missouri Rules of Civil Procedure, and for its reasons therefor, states as follows:

1. Council represents building and construction trades local unions whose members perform public works construction throughout the State of Missouri and the Council is charged with representing the interests and rights of those members.

2. The Council is an association comprised of construction industry labor organizations throughout the State of Missouri, which has capacity to intervene as a party through Timothy Green, its President, in a representative capacity. Furthermore, the individual members of said labor

organizations consist of thousands of taxpayers of the State of Missouri.

3. The case at bar challenges conduct of the Bayless School District, located within the State of Missouri, and of the St. Charles County Ambulance District located within the State of Missouri, for allegedly violating Section 34.216, R.S.Mo. The contention is that even though the political subdivisions in question are not party to any project labor agreement, project construction agreements which were encouraged between a general contractor and its subcontractors and labor organizations which include members of the Missouri State Building and Construction Trades Council, somehow violate the "Fairness in Public Construction Act," at Sections 34.203 through 34.216, R.S.Mo.

4. It is the position of Intervenor that conduct of the Bayless School District and the St. Charles County Ambulance District is not violative of the Fairness in Public Construction Act, and is, in fact, in accordance with that Act, since in neither situation is the public entity (the Bayless School District or the St. Charles County Ambulance District) a party to the proposed project construction agreement or project labor agreement.


5. Since the Council is therefore an interested party, in that its member labor organizations would benefit from the agreements being challenged by Relators, Council is entitled to intervention as a matter of right, pursuant to Rule 52.12(a), Missouri Rules of Civil Procedure, in that applicant Council claims an interest relating to the subject of the action and is so situated that the disposition of the action may impair or impede applicant's ability to protect that interest.

6. Alternatively, Council should be granted intervention through the Rule of Civil Procedure permitting permissive intervention (52.12(b)), in that Council's application is timely, an answer has not been filed to Relators' Petition, and applicant Council traditionally has been

permitted, pursuant to the Missouri Prevailing Wage law, Section 290.210, R.S.Mo., *et seq.*, to intervene in such matters as an interested person, and the cause of action involves contracting for public works impacts the Missouri Prevailing Wage law. Since Council's claims with respect to the action in questions of law and fact common with that of parties to the action and generally are likely to coincide with those of Respondents, and the actions of a governmental subdivision have been brought into question with respect to conduct affecting public works construction, applicant Council should be granted a right to intervene as a matter of right, or, in the alternative, granted a right to intervene permissively.

WHEREFORE, applicant Council respectfully requests that this Court grant its application for intervention in the above-styled matter.

BARTLEY GOFFSTEIN, L.L.C.


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CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that the foregoing was served on the following, by placing same, postage pre-paid in the U.S. Mails, on this 13th day of November, 2009:

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A handwritten signature in black ink, appearing to read "Chris Koster", is written over a horizontal line.