

unnecessary for this Court to address the issue.” 516 S.W.3d at 829 (emphasis added). The only reasonable inference supported by what the Supreme Court actually said is that legislative action should make the result clear to everyone. The error of OPC’s assumption is further demonstrated by the fact that if the Supreme Court felt that the analysis of the Western District Court of Appeals was the correct one, the Supreme Court could have brought about the result suggested by OPC by merely denying the applications for transfer or re-transferring the case. It did not do either.

4. Given this situation, the OPC Reply attempts to rely on the previous Court of Appeals decision in the matter. However, that decision is of no legal significance as the Western District Court of Appeals decision was vacated once the Supreme Court took transfer of the case. *See Goad v. Treasurer*, 372 S.W.3d 1, 4 n.2 (Mo. App. 2011); *Coulter v. Michelin Tire Corp.*, 622 S.W.2d 421, 437 (Mo. App. 1981).

5. Accordingly, MAWC’s argument in the first instance does not “[hinge] on whether or not H.C.S. H.B. 451 merely clarifies the law or if it is change to the existing law,” as alleged by OPC. OPC Reply, para. 13. Certainly House Bill 451 provides additional reasons why MAWC’s interpretation of Sections 393.1000, et seq., and 1.100.2, RSMo, presented to the Missouri Supreme Court is correct, as was this Commission’s *Order Denying Rehearing* in Case No. WO-2015-0211, issued on July 7, 2015. But H.B. 451 is not necessary to reach that conclusion. Before and after H.B. 451’s enactment, the first sentence of Section 1.100.2, RSMo, states: “Any law which is limited in its operation to counties, cities or other political subdivisions having a specified population or a specified assessed valuation shall be deemed to include all counties, cities or political subdivisions which thereafter acquire such population or assessed valuation as well as those in that category at the time the law passed.” (emphasis added)

6. In order to provide the Commission with all the information MAWC presented to the Missouri Supreme Court,¹ MAWC is also providing the Appendix to MAWC's Brief before the Missouri Supreme Court (**Appendix SR-A**). This Appendix, among other things, includes the Statement of the Chief Bill Drafter indicating that Section 1.100.2, RSMo, has always been a once-in-always-in statute for subdivisions "in" at the time the law passed (A30-A31). The Chief Bill Drafter is the person who advises the legislators on drafting bills like that which created Sections 393.1000, et seq., RSMo. In other words, she's the person who would advise whether that bill or the others substantive bills need to say that the population is tested "at the time the law passed." Based on the attachment, she would have said to the author of the bill that became 393.1003, that no further language is needed in the Bill to address the possibility that St. Louis County would lose population. Her position is not surprising given the fact that there is no record of anyone even advocating in any proceeding OPC's interpretation of the 1971 amendment on Section 1.100.2 for the first 44 years of the existence of that amendment.

7. OPC alleges that the Bill Summary associated with H.B. 451 has significance to its arguments. If HB 451 becomes relevant, the first question is to determine precisely what is being referred to. MAWC might agree with the Bill Summary language, depending on what is meant by "this" in the clause stating: "Currently, this only applies to the City of St. Louis." The sentence appears to refer to the situation that "once" an entity *grew into a statute*, it stays in. If so, MAWC agrees that the City of St. Louis was previously the only entity protected in this situation. To stay in, other entities had to be "in that category at the time the law passed" (such as St. Louis County did when the ISRS bill was passed in 2003). Even if OPC wants the PSC to assume that the summary was intended the word "this" in the summary meant to apply to entities "in" at the time the law passed (and not any "once in"), the detailed description from the Chief

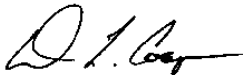
¹ MAWC provided its Brief along with its earlier Response to the OPC Motion to Dismiss.

Bill Drafter when 393.1003 was passed is far more persuasive as to legislative intent than this anonymous bill summary.

8. Lastly, OPC suggests that even with an effective H.B. 451, Sections 393.1000, et seq., RSMo, may not be actionable until a new U.S. Census has been completed (presumably in 2020, effective July 2021) based upon its argument that statutes may only operate prospectively (unless specified otherwise). However, “when a law makes only a procedural change, it is not *retrospective* and hence can be applied *retroactively*.” *Mo. Real Estate Comm’n v. Rayford*, 307 S.W.3d 686, 690 (Mo. App. 2010), citing *State v. Thomaston*, 726 S.W.2d 448, 460 (Mo.App. 1987). HB 451 will not be retrospective within the meaning of the Missouri Constitution.

WHEREFORE, MAWC respectfully requests that the Commission issue an order denying the OPC’s Motion to Dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on July 31, 2017, to the following:

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