

IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS  
STATE OF MISSOURI

STATE OF MISSOURI, EX REL.	)	
KIEL CENTER PARTNERS, L.P., et al.,	)	
	)	
Relators,	)	Cause No: 1722-CC11018
	)	
v.	)	Division No: 31
	)	
DARLENE GREEN,	)	
	)	
Respondent.	)	

**RESPONDENT DARLENE GREEN’S MOTION PURSUANT TO RULE 75.01 TO  
MODIFY THIS COURT’S NOVEMBER 27, 2017 ORDER AND JUDGMENT IN  
MANDAMUS**

COMES NOW Respondent Darlene Green and moves that this Court enter an Order modifying its November 27, 2017 Order And Judgment In Mandamus (“Judgment”) and in support thereof states:

1. This Court ruled in its Judgment that Kirby v. Nolte, 349 Mo. 1015, 164 S.W. 2d 1 (Mo. 1942) held that the City of St. Louis Comptroller may challenge proposed contracts only for “illegality”. Id., p. 11.

2. Contrary to this Court’s Judgment, the Missouri Supreme Court actually ruled in Kirby that “the Comptroller may challenge contracts [that are made] arbitrarily or in abuse of discretion”, id., p. 15, and she has “broad powers, in the exercise of which [s]he is vested with a second discretion ....” Id.

3. This Court manifestly failed to appreciate in its Judgment the existence of Respondent’s broad discretionary powers and responsibilities in the area of City of St. Louis

contracting that Respondent believes would impair the City's credit. Accordingly, this Court's Judgment is fatally infected with legal error, and it should modify the Judgment accordingly.

WHEREFORE, Respondent Darlene Green requests that this Court modify its Judgment such that it would provide that it denies Relator Kiel Center Partners, L.P.'s motion for summary judgment and that this Court provide her with such other relief as is just.

**BICK & KISTNER, P.C.**

By: /s/ Elkin L. Kistner

Elkin L. Kistner #35287

Sean M. Elam #56112

Joseph H. Neill #69250

101 South Hanley Road, Suite 1280

St. Louis, Missouri 63105

Telephone: (314) 571-6823

Facsimile: (314) 727-9071

E-mail: [elkinkis@bick-kistner.com](mailto:elkinkis@bick-kistner.com)

E-mail: [smelam@bick-kistner.com](mailto:smelam@bick-kistner.com)

E-mail: [joey@bick-kistner.com](mailto:joey@bick-kistner.com)

*Attorneys for Respondent Darlene Green*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document was served this 4<sup>th</sup> day of December, 2017, to the following attorneys of record via the Court's electronic filing system to:

JoAnn T. Sandifer

[joann.sandifer@huschblackwell.com](mailto:joann.sandifer@huschblackwell.com)

Denyse L. Jones

[Denyse.Jones@huschblackwell.com](mailto:Denyse.Jones@huschblackwell.com)

*Attorneys for Relator Kiel Center Partners*

Michael Garvin

[garvinm@stlouis-mo.gov](mailto:garvinm@stlouis-mo.gov)

Erin McGowan

[mcgowane@stlouis-mo.gov](mailto:mcgowane@stlouis-mo.gov)

*Attorneys for Intervenor Relator City of St. Louis*

/s/ Elkin L. Kistner