

SC94212

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**IN THE SUPREME COURT OF MISSOURI**

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**CITY OF ST. LOUIS, et al.,**  
**Appellant/Cross-Respondent,**

**v.**

**SARAH TUPPER, et al.,**  
**Respondents/Cross-Appellants.**

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**Appeal from the Circuit Court of St. Louis City, Missouri**  
**The Honorable Steven R. Ohmer, Judge**

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**BRIEF OF APPELLANT DIRECTOR OF REVENUE**

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## JURISDICTIONAL STATEMENT

This Court has transferred this appeal pursuant to Rule 83.01. The Court has jurisdiction pursuant to Art. V, § 10, of the Missouri Constitution.

## STATEMENT OF FACTS

In their Petition, the plaintiffs named the Director of Revenue as a defendant. L.F. at 15. At the outset, they made one allegation regarding the authority and work of the Director :

85. Under RSMo. 302.302.1 the Director of Revenue is to put into effect a point system for the suspension and revocation of licenses.

L.F. at 29. But nowhere in the Petition did Plaintiffs in any way challenge the “point system,” nor the manner in which the Director “put into effect [that] point system.”

The Plaintiffs did make allegations regarding the system through which violations are input into the Director’s “point system.” That input is done by court clerks, using a “charge code.”

86. Pursuant to that system court clerks are required to report all traffic convictions for point offenses to the Director of Revenue.

\* \* \*

89. When a Defendant is convicted of, for example, running a stop sign, the municipal court sends the information about the charge to the Director of Revenue (DoR) through the REJIS computer system which identifies the offense by its charge code. Pursuant to RSMo. 302.302 and [Department of Revenue] policy, REGIS [sic] then automatically assesses one point against the driver for running a stop sign. Thus if a Defendant is convicted of running a stop sign in the City of Rock Rill, the effect on his license is the same as if he were convicted of that same traffic offense in the City of St. Louis. Charge codes thus directly affect driver's license records in that they affect [the Director of Revenue's] assessment of points.

L.F. at 29. And Plaintiffs made allegations about the creation and revision of "charge codes":

80. In the Missouri criminal justice system there is an identifying “charge code” for each separate offense. These charge codes are generally six digits long, although some charge codes also have an additional digit to the right of the decimal point.

81. These charge codes are created by RSMo. 43.500(7), which is a definitions statute:

“Missouri charge code”, a unique number assigned by the office of state courts administrator to an offense for tracking and grouping offenses. Beginning January 1, 2005, the complete charge code shall consist of digits assigned by the office of state courts administrator, the two-digit national crime information center modifiers and a single digit designating attempt, accessory, or conspiracy.

82. The publication of a book of charge codes is authorized by RSMo. 43.512:

The central repository, with the approval of the supreme court, shall publish and make available to criminal justice officials, a

standard manual of codes for all offenses in Missouri. The manual of codes shall be known as the “Missouri Charge Code Manual”, and shall be used by all criminal justice agencies for reporting information required by sections 43.500 to 43.530.

83. Historically it has fallen to the Missouri Office of State Courts Administration (OSCA) and the Missouri Highway Patrol to co-publish the charge codes in the “Missouri Charge Code Manual”.

84. There exists an informal state committee of law enforcement officials called the State Judicial Records Committee. Historically that organization has handled the nuts and bolts of creation of charge codes.

L.F. at 28-29.

According to the Petition, then, “charge codes” are promulgated by the Office of State Courts Administrator, under the direction of the State Judicial Records Committee. They are then used by municipal courts to report violations to the Director of Revenue—here, through REJIS. In fact, the Plaintiffs confirmed that regardless of who promulgated the charge codes, the

choice of codes resided with the City:

99. When the City of St. Louis sends [the Department of Revenue] a record of a camera violation, it uses the non-point charge code for running a red light and there are no points assessed.

L.F. at 31

Plaintiffs then sought two forms of relief.

In Count I, they asked for

a temporary restraining order, a preliminary injunction, and a permanent injunction to enjoin the City from prosecuting red light camera tickets by:

- a. Taking photos of drivers with flashes,
- b. Attempting to enforce the red light camera ticket ordinance, No. 66868, Codified at 17.07.010&c.
- c. Sending citizens Notices of Violations and Summons and Supplemental Notices of Violation for violations of red lights which have been detected by cameras as opposed to live police officers,
- d. Processing payments for alleged violations of such tickets,
- e. Dividing the proceeds between the City and

ATS,

f. Proceeding with any enforcement of the red light camera ticket ordinance against Petitioners (particularly by not stopping the actions against them), and

g. Sending dunning letters for such tickets.

L.F. at 34-35.

Later, the Plaintiffs amended their petition by interlineation to expand the relief sought to cover “all other Respondents.” L.F. at 104. Although that would bring the Director within the scope of the proposed injunction, nowhere in the Petition did the Plaintiffs assert that the Director of Revenue had taken or could take any of the actions in the list of actions to be enjoined.

In their Count II, the Plaintiffs asked “the court to declare that the City’s red light camera ticket ordinance and prosecutions based thereon are void and unenforceable as a matter of law.” They sought no declaration as to State law, the “charge codes,” or any action taken or that could be taken by the Director. Indeed, it seems apparent that they did not want the charge codes and reports to be changed so that the “red light camera” ordinance violations would lead to the imposition of “points”—the Director’s sole role in the system as described in the Petition.

In light of the allegations in the Petition—and in particular the absence

of any request for relief as to the Director—the Director moved to dismiss the claims against him. L.F. 123.

In its final judgment, the Circuit Court then refused to dismiss the Director as a defendant. L.F. at 465. The Circuit Court first cited the portion of Rule 87.04 providing that in a declaratory judgment action, “if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.” The court noted that the Attorney General had appeared in this case for the Director of Revenue. L.F. at 465. The Court then observed that parties “having an interest in the subject matter of the controversy” can be named as parties, and found that the Director, as “the party responsible for the promulgation and application of the charge codes related to the ordinance,” had such an interest. L.F. at 465.

The Director moved for reconsideration, pointing out that his reliance on the charge codes was not challenged by the Plaintiffs, and that as a matter of law, responsibility for promulgating and revising the charge codes lies elsewhere. L.F. at 490. The circuit court denied that motion. L.F. at 536.

## **POINT RELIED ON**

The trial court erred in denying the Director of Revenue's Motion to Dismiss because the Plaintiffs did not state a claim as to the Director in that the Petition sought no relief from and made no allegations of remediable injury caused by the Director.

§ 43.500

Rule 87.04

## ARGUMENT

### *Standard of Review*

“On review of a court-tried case, an appellate court will affirm the circuit court’s judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *Ivie v. Smith*, --- S.W.3d ----, 2014 WL 3107448 (Mo. 2014), *citing* *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976).

***The Attorney General’s authority to “be heard” in this case is irrelevant to whether the Director was a proper defendant.***

In explaining its reasons for refusing to dismiss the Director as a defendant, the Circuit Court began by citing the portion of the second sentence of Rule 87.04 that provides that in a declaratory judgment action, “if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.” The court noted that the Attorney General had appeared in this case for the Director of Revenue. L.F. at 465. But that is irrelevant here, for two reasons.

First, the second sentence of Rule 87.04 says nothing about the Director of Revenue, the person named as a defendant. It addresses only the Attorney General. That the Attorney General is entitled to appear does not mean that

a state official such as the Director of Revenue can appear when an ordinance is challenged.

Second, the second sentence of Rule 87.04 says nothing about naming a state official, not even the Attorney General, as a defendant. Mirroring § 527.110, it merely gives the Attorney General the right to appear and “be heard” in litigation on behalf of the State of Missouri. Whether to do so is entirely discretionary—and the Attorney General declines the vast majority of invitations to “be heard” in litigation in which a “statute, ordinance or franchise is alleged to be unconstitutional.”

The rule and the statute allow the Attorney General to appear in the Plaintiff’s action. But they cannot be read to allow the Plaintiffs to name any state official as a defendant—particularly in a circuit court far from Cole County, where most state officials reside. The Circuit Court’s reference to the second sentence of Rule 87.04 is misplaced.

***That some action by the Director may be different because of “a declaration of invalidity of the ordinance” is not a sufficient basis for compelling the Director to appear as a defendant.***

The Circuit Court next turned to the first sentence of Rule 87.04: “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no

declaration shall prejudice the rights of persons not parties to the proceedings.” The Circuit Court concluded that the Director was a proper defendant because he “may be affected by a declaration of invalidity of the Ordinance since [he] is the party responsible for the promulgation and application of charge codes related to the Ordinance.” L.F. at 465. But the Circuit Court’s conclusion is based on an incorrect reading of the rule and on a misstatement of the Director’s role with regard to “charge codes”—and on a reading of “affected” that expands the scope of possible, if not necessary, parties beyond recognition.

We begin with the Director’s role—which is *not*, contrary to the circuit court’s conclusion, “the promulgation ... of charge codes related to the Ordinance.” Mostly, the Plaintiffs got it right in their Petition. The Director is responsible for creating a system that imposes “points” on the driving privileges of drivers who commit moving violations. Thus the Plaintiffs correctly alleged:

85. Under RSMo. 302.302.1 the Director  
of Revenue is to put into effect a point system  
for the suspension and revocation of licenses.

L.F. at 29. But this case is not about the “point system.” It is about the creation and use of “charge codes” that direct violation data into the “point

system.” And responsibility for “charge codes” is statutorily assigned to the judicial branch, as stipulated below:

3. The Supreme Court created the State Judicial Records Committee and appoints its members, and that Committee approves charge codes that are assigned by the Office of State Courts Administrator (OSCA), as provided in RSMo. 43.500.

L.F. at 235. That is consistent with what the Plaintiffs alleged in somewhat different language in the Petition. *See* pp. 3-4, *supra*.

If the Plaintiffs had a problem with the “points” system (and they have never stated one), they could take that up with the Director. But if the Plaintiffs were to sue for a change in the “charge codes” (and they have never asked for one), the proper defendant would not be the Director of Revenue, who relies on charge codes, but has no authority to promulgate or change them.

When the circuit court said that the Director was responsible not only for promulgating but for “application of charge codes related to the Ordinance” (L.F. at 465), it was presumably referring to that reliance. But the Circuit Court’s generalization suggested that the Director has a broad role when actually his is a limited, ministerial one. The Joint Stipulation

described the key roles in use of charge codes for traffic ordinance violations—roles performed by cities and their municipal courts:

9. Regional Justice Information Services

(REJIS) is a quasi-governmental entity created by St. Louis County and the City of St. Louis. It provides information technology services for reporting criminal justice information.

10. After a conviction is entered in a case involving a violation of the City's red light camera ordinance, the Clerk of the Municipal Court enters a record of that conviction into the data system operated by REJIS in a format that enables REJIS to determine that the conviction is one for a violation of a red light camera ordinance.

11. After a conviction is entered in a case in the City involving a red light violation that was not captured by a red light camera system, the Clerk of the Municipal Court enters a record of that conviction into the data system operated by REJIS in a format that enables REJIS to determine that the conviction is one that is for a red light ordinance violation other

than one captured by a red light camera system.

12. After the Clerk of the Municipal Court of the City of St. Louis enters the record of a red light camera conviction into the database operated by REJIS, REJIS assigns the record of conviction the corresponding State charge code for violations of red light camera ordinances that is published by OSCA and the Missouri Highway Patrol. REJIS then transmits that record of conviction to the Missouri Department of Revenue.

L.F. at 222-223. The parties thus implicitly confirmed that the role of the Director is merely ministerial: to assess points when there is a report of a violation using a “charge code” for a “moving violation” against a driver against whom “points” can be assessed. The choice of which charge code to use for which violation is made not by the Director, but by the municipal court or by REJIS based on data submitted by the municipal court. And there is nothing in the Petition, nor elsewhere in the proceedings and record below, that suggests the Plaintiffs have any complaint about what the Director does when he receives reports from municipal courts, directly or through REJIS.

That the Plaintiffs did not complain about nor ask for relief with regard to the Director’s actions, the charge codes, or the use of those codes by a court

or REJIS, is easily understandable. After all, the Plaintiffs benefitted from the way in which the charge codes were established by the Office of State Courts Administrator and the way in which they are used by the courts to report to the Director. Because of the choice by the municipal court to record the violations using the “red light camera” code created for non-moving, non-“points” violations, and the Director’s reliance on that choice, the Director did not assess the “points” against Plaintiffs. That is evident from what Plaintiffs stipulated:

6. The Department of Revenue does not assess points for “red light camera violations” that are reported under the OSCA red light camera charge code, # 9342799.0.

\* \* \*

8. The Director of Revenue does not upload from REJIS any reports of any red light camera violations that are reported using the State’s red light camera charge code, # 9342799.0, and the Director of Revenue therefore has no knowledge of what information the City reports about such violations through REJIS.

L.F. at 236.

That explains why in their Petition, Plaintiffs sought no relief from the Director—which showed, in turn, from the outset that the Director was not a proper defendant. And despite the Circuit Court’s statement, its decision does not affect what the Director does. Because the current “charge code” excludes from the “points” system violations that are reported as “red light camera” as opposed to moving “red light” violations, the Director does today precisely what he did before the Circuit Court ruled—and what he will do if this Court reverses the Circuit Court. Any change that results from a decision regarding the validity of the ordinance happens outside the scope of the Director’s responsibility.

## CONCLUSION

For the reasons stated above, the Court should reverse the decision of the circuit court with regard to the Director of Revenue, and hold that a State official such as the Director of Revenue cannot be named as a defendant in a declaratory judgment action challenging the validity of a municipal ordinance based on that State official's ministerial tasks that may result from reports of violations of the challenged ordinance.

Respectfully submitted,

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## CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was served electronically via Missouri CaseNet e-filing system on July 30, 2014, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 3,005 words.

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