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JURISDICTIONAL STATEMENT

This controversy arose from Respondent's administrative action against the Appellant under an automated photo red light ordinance wherein the Appellant received an adverse decision prompting him to seek an appeal of the decision by filing an application for a trial de novo under RSMo. 479.200. Appellant's de novo was dismissed for lack of jurisdiction. This controversy centers on whether or not there is a right to a review of an administrative decision under R.S.Mo. 479.200.

This appeal does not involve subject matter granted exclusively to the Supreme Court under Art. V, Sec. 3 of the Constitution, thus the jurisdiction of this Honorable Court is appropriate.

ARGUMENT

I. The circuit court did not err in sustaining Respondent's Motion to Dismiss Appellant's trial de novo because the action below was an administrative procedure and there is no right to a trial de novo from an administrative procedure.

Respondent initiated an administrative action against the Appellant under City Code Sec. 106-161; the Photo Red Light Ordinance, or PRLO. The Appellant received an adverse decision in that matter and filed both an application for trial de novo under R.S.Mo. 479.200 and a petition for judicial review pursuant to the Missouri Administrative Procedure Act (MAPA). R.S.Mo. Chap. 536 (2007). It appears Appellant would hope to grow both an apple and orange tree from a single seed.

The appellant would have a right to a trial de novo, if at all, under R.S.Mo. Section 479.200 (2007). The right of appeal is purely statutory, and where a statute does not provide for such a right, it does not exist. Hutchison vs. Vandenburg, 90 S.W. 3rd 229, (Mo. Ct. Ap. W.D. 2002). Under R.S.Mo. Sec. 479.200, a party is entitled to a trial de novo in all cases tried before a municipal court judge. However, the proceeding below was not a *case* that was *tried* before a *municipal court judge* as those terms are used in the statute.

This is a matter of statutory construction. Litigation that is referenced in the clause “cases tried before a municipal court judge” from Section 479.200 is litigation that is controlled by all of Chapter 479. They are cases of “violations of municipal ordinances...” that are heard by judges who “shall have original jurisdiction to hear and determine all violations against the ordinances of the municipality....” R.S.Mo. Sections 479.010 and 479.020.1. Said cases are to be conducted in accordance with Supreme Court Rules and “shall be instituted by information....” R.S.Mo. 479.090. The municipality shall designate an attorney to prosecute the cases. R.S.Mo. 479.120 (All references to R.S.Mo. are as amended 2007). All of this being said, it is not true that all legal actions touching or concerning a municipal ordinance fall under the provisions of Chapter 479.

R.S.Mo. 536.010(2), (2007), defines an agency for purposes of an administrative action. The Missouri Constitution Art. VI, Section 19(a), grants a charter city all of the powers which the general assembly has the authority to confer. The Respondent is a charter city, therefore the Respondent is authorized to act as an agency. Reynolds vs. City of Independence, 693 S.W.2d 129, (Mo. Ct. Ap., W.D. 1985).

A charter city functions by means of its legislative body crafting and adopting legislation. Adopted legislation becomes an ordinance and part of the city code. When a city moves to act as an administrative agency, it does so by adopting an ordinance establishing an administrative procedure. The ordinance adoption process is analogous to the notice and comment process usually used under the Federal Administrative Procedure Act to satisfy basic fairness and due process. National Labor Relations Board vs. Wyman-Gordon Co. 394 U.S. 759 (U.S., 1969).

When circumstances trigger the administrative municipal ordinance, one might assert that there had been a *violation* of the ordinance and consequently an action must be initiated under Chapter 479 because said chapter deals with violations of municipal ordinances. However such an assertion is logically incompatible with the law because a city may act as an administrative agency, and if it does so the city must follow MAPA procedures. MAPA does not call for a prosecution by information, establish a right to a trial before a municipal court judge, nor does it establish a right to a trial de novo. MAPA provisions require an initial notice, an opportunity for a hearing, a specific notice of a hearing, a set of procedures for a hearing, and a right to a judicial review of an adverse administrative decision. R.S.Mo. 536.063 through 536.140 (2007).

While there are similarities in the procedures set forth in Chapters 479 and 536,

particularly with regard to providing for due process of law, the procedures are not consistent with one another. If a municipality follows the procedures established in Chapter 479, then the municipality is pursuing a criminal (or quasi-criminal) action. If the municipality follows procedures established by Chapter 536, then the municipality is pursuing an administrative action.

In order to establish an administrative procedure, a municipality adopts an ordinance. If an act, an event, or a status falls within that ordinance but is deemed to be a *violation of a municipal ordinance* as said clause is used in R.S.Mo. 497.010, then the municipality cannot lawfully conduct business by means of an administrative procedure. An administrative procedure must follow MAPA in order to be valid, but cannot be valid if the procedure must also follow the requirements of Chapter 479. The law allows a municipality to act through an administrative process. Consequently it is logically impossible for a *violation* of an ordinance that establishes an administrative procedure to be the same as a *violation* that falls under Chapter 479.

The action below was an administrative action, therefore R.S.Mo. 479.200 is not controlling. It follows then that if R.S.Mo. 479.200 does not provide for a trial de novo, and there is no other section of the law that affords such a right, then no such right exists. Since the court below had no jurisdiction to proceed in the trial de novo, the only option available for the court was to exercise its

inherent power to dismiss. Wooldridge vs. Greene County, 198 S.W. 3rd 676, (Mo. Ct. Ap., S.D. 2006). In fact, it is Respondent's position that the order certifying the trial de novo to the circuit court was itself a nullity. State v. Carter, 202 S.W. 3RD 700 (Mo. Ct. Ap. W.D. 2006). The Appellant was entitled to a contested administrative hearing, as well as a judicial review of an adverse decision from that hearing. R.S.Mo. Chapter 536.100. The Appellant is not entitled to a trial de novo under R.S.Mo. 479.200. Under MAPA, Appellant does have a right to a *de novo review* of an administrative decision, under certain circumstances, within the context of the judicial review; but a MAPA de novo review is not a Chapter 479 *trial de novo*.

The Appellant was not *charged* with a violation of the code making it illegal for a driver to fail to stop for a red signal. Code of the City of Springfield Missouri, Gen. Ord. No. 5643, Sec. 106-155 (2007). In an administrative action it was alleged that the Appellant owned a vehicle that was photographed while the vehicle was in violation of Municipal Code Sec. 106-155. Section 106-155(3)a. says "[V]ehicular traffic facing a ... red signal ... shall stop" Under this language, a violation occurs if a *vehicle*, which is part of *vehicular traffic*, fails to stop at the red signal. Section 106-161(d) says "[T]he owner or operator of a *vehicle* which is photographed ... while in violation of section 106-155 shall be mailed a notice of violation" The administrative action is not

primarily focused on the driver of the vehicle. The focus of the criminal code section (106-155) is on the danger created by the driver who drives the vehicle into the intersection. The focus of the civil code section (106-161) is on the danger created by the presence of the vehicle in the intersection.

In a prosecution under Sec. 106-155, the defendant faces the possibility of arrest, incarceration, a fine, and a point penalty on his driver's license. In an administrative action, the defendant faces the possibility of a civil penalty only. The administrative action is not a criminal action in disguise. When the Respondent adopted the PRLO, the Respondent gave up the ability to seek the incarceration of, an arrest warrant for, and the right to have a point penalty impact on the driver's license of any defendant in an action filed under the PRLO. The Respondent may seek new efficient ways to execute the duties, rights, and obligations that are entrusted to it. Idris vs. City of Chicago, 2008 WL 182248, U.S. Dist. (N.D. Ill. 2008). A vehicle in an intersection when opposing traffic has authorization to proceed creates a risk to the wellbeing of the Respondent's citizens. The Respondent can exercise its authority to protect the safety of those citizens.

The Appellant argues that the action below was a municipal court trial creating an entitlement to a trial de novo. (App. Brief p.11). The Appellant correctly states that the assistant city attorney in the action below sometimes acts

as a prosecutor for the Respondent. (App. Brief p.9). The Appellant correctly states that evidence was offered and a judgment was reached in the administrative hearing below. (App. Brief p.10). The Appellant correctly states that the administrative hearing officer below sometimes serves as a municipal court judge. (App. Brief p.9). It is Appellant's position that these factors convert the action below into a case qualifying for a trial de novo under Section 479.200. However in the words of Mr. Justice Oliver Wendell Holmes, Jr., "[A] word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used. Lamar vs. United States, 240 U. S. 60 at 65 (U.S. 1918).

The Respondent may call upon its attorneys to fill a number of roles. A contested administrative hearing must include the introduction of evidence and the issuance of findings and conclusions. A judge is defined as "a public official with authority to hear and decide cases in a court of law" which equally applies to a municipal court judge and an administrative hearing officer. Webster's New World Dictionary, (2nd Ed. 1965) at 407. The job description for Respondent's municipal court judges includes acting "as an administrative hearing officer with respect to contested cases under Chapter 536 RSMo." Updated Job Description, Gen. Ord. 4024 (Sept. 2006). Serving as an administrative hearing officer is a function that is expected of the Respondent's municipal court judges, not a

separate office that would be prohibited by R.S.Mo. 479.020.6 (2007). None of the factors emphasized by the Appellant would cause the administrative action below to be converted into something it is not.

The Appellant correctly states that no formal Information was filed by the Respondent; which is a critical aspect of this discussion. The petitioner in an action gets to pick the pleading; the pleading is not dictated by the defendant. The Respondent attempted to establish an administrative procedure to regulate traffic safety. If the Respondent failed to establish a valid procedure under MAPA, that issue will be determined in the review process established by the Legislature and set forth in MAPA. If Respondent's administrative procedure below is faulty, then it becomes nothing more than a failed administrative procedure. It is not logical for a criminal procedure to arise from the ashes of a failed administrative procedure.

By the nature of its pleading, the Respondent gave Appellant notice that it intended to proceed under MAPA. Respondent's failure to file a formal Information was intentional. A litigant must defend against the matter that is pled, not the matter the litigant wishes to defend against. All other matters aside, the very fact that the Respondent did not file a formal Information as required by Chapter 479 means that the Respondent didn't invoke the jurisdiction of the

municipal or circuit courts. Since the jurisdiction of the court below was never invoked, the only option for the court below was to dismiss the action.

Appellant would hope to harvest oranges from an apple tree planted by the Respondent, but nothing about the administrative action below creates an entitlement for a trial de novo under R.S.Mo. 479.200.

II. Neither the municipal or circuit court below erred in not discharging the Appellant because the jurisdiction of neither court was invoked.

In a proceeding before an administrative tribunal pursuant to the Missouri Administrative Procedure Act (MAPA), a \$100.00 civil penalty was imposed upon the Appellant. The Appellant then filed an application for a trial de novo pursuant to R.S.Mo. 479.200 (2007), and a petition for judicial review pursuant to R.S.Mo. 536.100. The trial de novo was dismissed at the request of the Respondent by the court below. The judicial review of the administrative action is still before the circuit court below.

The Appellant correctly asserts that the Respondent did not file a formal Information as would be required by Rule 37.34 to invoke the jurisdiction of the municipal court. The Respondent did file a notice of violation consistent with MAPA thereby putting the Appellant on notice that the Respondent was proceeding in an administrative action. The jurisdiction of the municipal court was never invoked and it took no action on the administrative matter below. The municipal court did not create a file, no case number was assigned, no docket entries were made, no motions were entertained, and no trial was conducted. Appellant never appeared before the municipal court and asked that he be discharged from the action. Consequently it is not possible to logically assert that the municipal court erred in failing to discharge the Appellant from an

action below. Furthermore, even if there had been a decision on such an issue that was before the municipal court, that decision would not be reviewable by this Honorable Court because Missouri has not provided for an appeal from a municipal court to any other court acting in an appellate capacity. Kansas City vs. Henderson, 468 S.W. 2nd 48, (Mo. 1971).

The jurisdiction of the circuit court below would have been invoked, if at all, only if the Respondent had filed a formal Information before the municipal court thereby triggering a de novo process pursuant to R.S.Mo. 479.200 (2007). The delivery of the application for a trial de novo from the municipal court clerk to the circuit court was in error. Once the circuit court realized the error, it dismissed the trial de novo. A decision on the merits of “discharging” the Appellant, as suggested by the Appellant, was never before the circuit court and therefore said court did not decide that issue one way or the other. In fact, in a manner of speaking, the circuit court below did “discharge” the Appellant when it dismissed the trial de novo. In doing so, the circuit court in effect held that the Appellant had not been convicted of a municipal ordinance violation that would entitle him to a trial de novo. For these reasons, Appellant’s second point should be denied.

CONCLUSION

State law does not create a right to a trial de novo from an administrative action. The jurisdiction of the court below was never invoked. Without jurisdiction, the court below had no option but to dismiss Appellant's trial de novo. Without jurisdiction, the court below was not authorized to enter an order discharging the Appellant from liability.

**IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT**

CITY OF SPRINGFIELD, MISSOURI,)	
)	
Respondent,)	
)	
Vs.)	Case No. SD 29605
)	
ADOLPH BELT, JR.)	
)	
Appellant)	

CERTIFICATE OF SERVICE

By signature below, signatory certifies that a full and accurate copy of Respondent's Reply Brief (a printed version and an electronic version) has been served upon the Appellant by depositing same into the hands of the U. S. Postal Service addressed to Appellant's attorney of record: Jason T. Umbarger, Esq., P.O. Box 4331, Springfield, Missouri, 65808. This on the 22nd day of April in year of our Lord 2009.

So Certified:



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