

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT OF MISSOURI

FILED JAN - 4 2007

Case No. ED 88881

STATE OF MISSOURI, EX REL.
CITY OF JENNINGS, MISSOURI

88464

Relator,

v.

HONORABLE JOHN J. RILEY

Respondent.

DUPLICATE
OF FILING ON

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IN OFFICE OF
CLERK SUPREME COURT

Appeal from the Circuit Court of the County of St. Louis

Division No. 1

The Honorable John J. Riley

BRIEF OF RELATOR CITY OF JENNINGS, MISSOURI

W. Dudley McCarter, #24939
Edward V. Crites, #33985
Timothy J. Reichardt, #57684
7777 Bonhomme Avenue, Suite 1400
St. Louis, MO 63105
314.862.3800 – *telephone*
314.862.3953 – *facsimile*
ATTORNEYS FOR RELATOR CITY OF JENNINGS, MISSOURI

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JURISDICTIONAL STATEMENT

This action involves whether Respondent, a Missouri State Circuit Court Judge, was required to rule in favor of Relator with respect to Relator's Motion to Transfer for Improper Venue. This action also involves whether Respondent lacked jurisdiction to rule as he did in his 10/31/06 Order with respect to Relator's Motion to Transfer for Improper Venue. Improper venue is a defect of jurisdictional nature that authorizes the issuance of a writ. *See State ex rel. City of Bella Villa v. Nicholls*, 698 S.W.2d 44 (Mo.App. E.D. 1985). As a result, this Court has jurisdiction over this matter pursuant to Article 5, Section 4 of the Missouri Constitution, MO.REV.STAT. §530.020, and Missouri Supreme Court Rules 84.23 and 97.01.

STATEMENT OF FACTS

Relator, the City of Jennings (“Jennings”), is and was a municipal corporation organized and existing as a city of the third class under the laws of the state of Missouri wholly located in St. Louis County. Exhibit A to Relator’s Suggestions in Support of its Petition for Writ of Mandamus or, in the Alternative, Petition for Writ of Prohibition, p. 3, Cheryl Balke’s affidavit, ¶¶ 3, 4.¹

On 7/25/06, Ruth Ann Harris (“Plaintiff”), individually and as the survivor of Maurice Harris, filed a lawsuit against Jennings, its mayor, Ben Suthin, and Jennings police officer Paul Bachman (“Bachman”) in the Circuit Court of the City of St. Louis, Missouri, alleging that the wrongful death of Maurice Harris resulted from an automobile accident that occurred on 1/28/06 when a vehicle being pursued by officer Bachman collided with a vehicle operated by Maurice Harris. Ex. B, Petition.

Count I of the Petition alleges that Jennings was negligent in training and supervising Bachman. *See* Ex. B. Count II alleges that Jennings is vicariously liable for Bachman’s acts. Id. Count III is against Bachman for his negligence. Id.

On 8/31/06, Jennings filed its Motion to Transfer Venue pursuant Mo.R.Civ.P. 51.045 (“Venue Motion”) on the basis that, under MO.REV.STAT. §508.050, venue in this tort action against Jennings, a municipal corporation located in St. Louis County, is

¹ All Exhibits hereafter referenced, unless otherwise noted, are attached to Relator’s Suggestions in Support of its Petition for Writ of Mandamus or, in the alternative, Writ of Prohibition.

proper only in the county in which Jennings is situated; namely, St. Louis County. *See Ex. A.* The Venue Motion also alleged that all Defendants were served in St. Louis County, Missouri. *Ex. A*, ¶ 7. Plaintiff filed no reply to the Venue Motion. *See Ex. C*, 10/17/06 Order; A1.

On 10/17/06, Respondent, upon duly calling and hearing the Venue Motion, entered an order granting Plaintiff ten days to file a legal memorandum of cases addressing the application of the 30-day rule under Rule 51.045, after which the matter would be taken as submitted. *See Ex. C*; A1. Plaintiff filed no cases with the court. *See Ex. C, D*; A1-A2. On 10/31/06 the court entered an order (“Order”) denying Relator’s Venue Motion on the basis that §508.101.4 invalidates §508.050 as regards tort claims. *See Ex. D*; A2-A4.

Consequently, Jennings filed its Petition for writ of mandamus to compel Respondent to grant Jennings’ Venue Motion or, in the alternative, a writ of prohibition to prevent Respondent from exercising any jurisdiction over Jennings, except to grant the Venue Motion.

POINTS RELIED ON

I.

RELATOR CITY OF JENNINGS IS ENTITLED TO AN ORDER MANDATING RESPONDENT TO GRANT RELATOR'S MOTION TO TRANSFER FOR IMPROPER VENUE ("VENUE MOTION") BECAUSE, PURSUANT TO MO. R. CIV. P. 51.045(c), RESPONDENT LACKED DISCRETION TO DENY RELATOR'S VENUE MOTION AND HAD A MINISTERIAL DUTY TO GRANT RELATOR'S VENUE MOTION, THUS EXCEEDING HIS JURISDICTION IN DENYING RELATOR'S VENUE MOTION, IN THAT THE UNDERLYING PLAINTIFF FAILED TO FILE A REPLY TO RELATOR'S VENUE MOTION AS REQUIRED BY MO. R. CIV. P. 51.045(c).

State ex rel. USAA Cas. Ins. Co. v. David, 114 S.W.3d 447 (Mo. App. E.D. 2003).

Vee-Jay Contracting Co. v. Neill, 89 S.W.3d 470 (Mo. banc 2002).

Missouri Rule of Civil Procedure 51.045 (2006).

II.

IN THE ALTERNATIVE, RELATOR CITY OF JENNINGS IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM DENYING RELATOR'S MOTION TO TRANSFER FOR IMPROPER VENUE ("VENUE MOTION") BECAUSE UNDER MO. REV. STAT. §508.050, WHICH WAS NOT REPEALED BY MISSOURI HOUSE BILL 393, THE CITY OF JENNINGS, A MUNICIPAL

CORPORATION ORGANIZED AND EXISTING AS A CITY OF THE THIRD CLASS UNDER THE LAWS OF THE STATE OF MISSOURI WHOLLY LOCATED IN ST. LOUIS COUNTY MISSOURI, CAN BE SUED IN THIS TORT ACTION ONLY IN ST. LOUIS COUNTY; THEREFORE, RESPONDENT LACKS JURISDICTION TO DO ANYTHING EXCEPT GRANT THE MOTION OF JENNINGS TO TRANSFER VENUE TO ST. LOUIS COUNTY.

Sales v. Barber Asphalt Pav. Co., et al., 66 S.W. 979 (Mo. 1902).

State ex rel. City of Bella Villa v. Nicholls, 698 S.W.2d 44 (Mo. App. E.D. 1985).

State ex rel. Eggers v. Enright, 609 S.W.2d 381 (Mo. banc 1980).

State ex rel. Casey's General Stores, Inc. v. City of West Plains, 9 S.W. 3d 712 (Mo.

App. S.D. 2000).

MO.REV.STAT. §508.010 (2005).

MO.REV.STAT. §508.050 (2003).

Missouri House Bill 393 (2005).

Sutherland on Statutory Construction, 5th Ed. (1992).

ARGUMENT

I.

RELATOR CITY OF JENNINGS IS ENTITLED TO AN ORDER MANDATING RESPONDENT TO GRANT RELATOR'S MOTION TO TRANSFER FOR IMPROPER VENUE ("VENUE MOTION") BECAUSE, PURSUANT TO MO. R. CIV. P. 51.045(c), RESPONDENT LACKED DISCRETION TO DENY RELATOR'S VENUE MOTION AND HAD A MINISTERIAL DUTY TO GRANT RELATOR'S VENUE MOTION, THUS EXCEEDING HIS JURISDICTION IN DENYING RELATOR'S VENUE MOTION, IN THAT THE UNDERLYING PLAINTIFF FAILED TO FILE A REPLY TO RELATOR'S VENUE MOTION AS REQUIRED BY MO. R. CIV. P. 51.045(c).

A. STANDARD OF REVIEW

A writ of mandamus will issue where a court has exceeded its jurisdiction or authority. State ex rel. Schnuck Markets, Inc. v. Koehr, 859 S.W.2d 696, 698 (Mo. banc 1993). The writ will lie both to compel a court to do that which it is obligated by law to do and to undo that which the Court was by law prohibited from doing. Id.

B. A WRIT OF MANDAMUS MUST ISSUE BECAUSE PLAINTIFF DID NOT FILE A REPLY TO JENNINGS' VENUE MOTION

A Writ of Mandamus must issue because Plaintiff did not file a reply to Jennings' Venue Motion. Missouri Rule of Civil Procedure 51.045 provides:

(b) Within thirty days after the filing of a motion to transfer for improper venue, an opposing party may file a reply. For good cause shown, the court may extend the time to file the reply or allow the party to amend it.

The reply shall set forth the basis for venue in the form. The court shall not consider any basis not set forth in the reply.

(c) [I]f no reply is filed, the court **shall** order a transfer of venue to a court where venue is proper.

Mo. R. Civ. P. 51.045 (2006) (Emphasis added).

In Vee-Jay Contracting Co. v. Neill, 89 S.W.3d 470, 472 (Mo. banc. 2002), a plaintiff, who sustained a slip and fall injury in St. Louis County brought suit in the City of St. Louis. The defendant filed a timely motion to transfer venue, to which the plaintiff filed no reply. When the court overruled the motion to transfer venue, the defendant petitioned for a writ of mandamus. In granting the writ, the Supreme Court explained that Rule 51.045 “mandates a transfer of venue when no reply is filed by the opposing party, to a motion to transfer venue that alleges venue is improper. The term ‘shall’ is mandatory. A judge must transfer venue if the opposing party does not reply to a proper motion to transfer.” Vee-Jay, 89 S.W.3d at 472 (emphasis added). As in Vee-Jay, Relator Jennings filed a timely motion to transfer venue. *See* Ex. C, D; A1-A4. Plaintiff

filed no reply. Id. Under Vee-Jay, Rule 51.045 clearly mandates a transfer of venue and, therefore, a writ of mandamus should issue to compel Respondent to grant the motion.

State ex rel. USAA Cas. Ins. Co. v. David, 114 S.W.3d 447 (Mo. App. E.D. 2003), likewise supports Relator. In USAA, the plaintiff sued an insurer and others for vexatious refusal for failure to honor an insurance policy. The petition alleged that defendants had a registered office agent within City of St. Louis. The defendant filed a timely motion to transfer venue which denied that it had any offices or agents in City of St. Louis. Plaintiff filed its reply out-of-time. After the trial court denied the venue motion, relator petitioned for a writ of mandamus. Due to the mandatory nature of the term “shall” in Rule 51.045(c), the Court of Appeals held that the trial court lacked discretion to deny the venue motion; granting the motion was “purely ministerial,” and therefore, a writ of mandamus issued. USAA, 114 S.W.3d at 448. Here, Plaintiff’s reply was not simply untimely, it was not filed at all. Just as in USAA, a writ of mandamus is required here.

II.

IN THE ALTERNATIVE, RELATOR CITY OF JENNINGS IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM DENYING RELATOR'S MOTION TO TRANSFER FOR IMPROPER VENUE ("VENUE MOTION") BECAUSE UNDER MO. REV. STAT. §508.050, WHICH WAS NOT REPEALED BY MISSOURI HOUSE BILL 393, THE CITY OF JENNINGS, A MUNICIPAL CORPORATION ORGANIZED AND EXISTING AS A CITY OF THE THIRD CLASS UNDER THE LAWS OF THE STATE OF MISSOURI WHOLLY LOCATED IN ST. LOUIS COUNTY MISSOURI, CAN BE SUED IN THIS TORT ACTION ONLY IN ST. LOUIS COUNTY; THEREFORE, RESPONDENT LACKS JURISDICTION TO DO ANYTHING EXCEPT GRANT THE MOTION OF JENNINGS TO TRANSFER VENUE TO ST. LOUIS COUNTY.

A. STANDARD OF REVIEW

Whether a writ of prohibition should be issued in a particular case is a question left to the sound discretion of the court in which a petition has been filed. State ex rel. Baldwin v. Dandurand, 785 S.W.2d 547, 549 (Mo. banc 1990). Prohibition will lie where necessary to prevent a usurpation of judicial power, to remedy an excess of jurisdiction, or to prevent an absolute irreparable harm to a party." State ex rel. Director of Revenue, State of Mo. v. Gaertner, 32 S.W.3d 564, 566 (Mo. banc 2000).

B. MO.REV.STAT. § 508.050 MANDATES THAT SUIT BE BROUGHT IN ST. LOUIS COUNTY.

Improper venue is a defect of jurisdictional nature that authorizes issuance of writ of prohibition. State ex rel. City of Bella Villa v. Nicholls, 698 S.W.2d 44 (Mo. App. E.D. 1985); State ex rel.BJC Health System v. Neill, 86 S.W.3d 138 (Mo. App. E.D. 1985). Here, Relator Jennings is a municipal corporation situated in St. Louis County. As regards municipal corporations, MO.REV. STAT. §508.050 provides:

“Suits against municipal corporations as defendant or codefendant shall be commenced only in the county in which the municipal corporation is situated....”

MO.REV.STAT. §508.050. Accordingly, venue in this tort action is proper only in St. Louis County, even though the accident that is subject of this lawsuit allegedly occurred in the City of St. Louis.

In Bella Villa, a pedestrian was struck and killed by a car being pursued a police car being driven by a Bella Villa police officer. Bella Villa, 698 S.W.2d 44. The pursuit began in the City of Bella Villa, located in St. Louis County and proceeded into the City of St. Louis, where the pursued car struck a pedestrian. The pedestrian’s widow brought suit against Bella Villa and the police officer in the City of St. Louis. Defendants moved to transfer for improper venue based upon MO.REV.STAT. §508.050. Plaintiff responded that the general venue statute, MO.REV.STAT. §508.010, applied rather than §508.050. After the trial court denied the motion to transfer venue, the Court of Appeals issued a

writ of prohibition to order transfer. In its opinion, the Court of Appeals explained that where a general and a special statute deal with the same subject matter, the specific statute prevails. §508.050 is a special venue statute that pertains to municipal corporations and prevails over §508.010, the general venue statute. Because §508.050 mandated that Bella Villa could be sued only in St. Louis County, the case was ordered transferred to the Circuit Court of St. Louis County.

The same operative facts are present here. Jennings is a municipality located in St. Louis County. Its police officer commenced a vehicular pursuit in St. Louis County that proceeded into City of St. Louis where the accident occurred. As in Bella Villa, the special venue statute for municipalities, §508.050, controls and the suit must be transferred to St. Louis County.

C. MISSOURI LAW REQUIRED RESPONDENT TO APPLY §508.050 IN DETERMINING VENUE IN THIS CASE BECAUSE §508.050 WAS NOT REPEALED EXPRESSLY OR IMPLIEDLY BY MISSOURI HOUSE BILL 393

1. MISSOURI SUPREME COURT PRINCIPLES OF STATUTORY CONSTRUCTION CONFIRM THAT §508.050 WAS NOT REPEALED BY HOUSE BILL 393

Bella Villa, *supra*, holds that §508.050 is the special venue statute that applies to municipalities over the more general venue statute, §508.010. However, Respondent's Order applies §508.010 against Jennings, a Missouri municipality, due to the changes in law made by Missouri House Bill 393 (H.B. 393). See Ex. D; A2-A4. H.B. 393 has not expressly repealed §508.050 to any extent. See A5. Therefore, Respondent's ruling

presumes that H.B. 393 repealed §508.050 by implication. Missouri courts have held that repeal by implication are rare and disfavored.

State ex rel. Eggers v. Enright, 609 S.W.2d 381 (Mo. banc 1980), indicates that H.B. 393 did not repeal §508.050 in any capacity.

“A special statute...applicable to a particular (subject) is not repealed by a statute general in its terms and application, unless the intention of the legislature to repeal or alter the special law is manifest, although the terms of the general act would, taken strictly but for the special law, include the case or cases provided for by it.... Where there is one statute dealing with the subject in general in comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and **where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.** Recently this cannon of statutory construction was stated this way: a statute dealing with a subject generally will rarely have the effect of

repealing by implication, either wholly or partially, an earlier statute which deals narrower subject in a particular way.”

Eggers, 609 S.W.2d at 384 (emphasis added). Repeal by implication is disfavored, and if two statutes can be reconciled then both should be given effect. St. Charles County v. Director of Revenue, 961 S.W.2d 44, 47 (Mo. banc. 1998).

First, the statutes at issue here, §508.010 and §508.050, are clearly reconcilable in that §508.010 (“Suits by Summons, where brought”) is the more general venue statute covering actions not subject to specific venue statutes and §508.050 (“Suits against municipal corporations”) is the more specific venue statute applicable to municipalities only. See A28-A30. These statutes must be harmonized to the extent possible. Eggers, 609 S.W.2d at 384. Because these statutes are reconcilable, there can be no repeal by implication; any such implication is not “necessary.” See Eggers, 609 S.W.2d at 384. This is not the rare case where a new enactment clearly contradicts another prior statute such that the two laws cannot co-exist. Eggers requires Respondent to construe §508.050 as remaining an exception to the terms of §508.010. Eggers, 609 S.W.2d at 384.

Furthermore, even in the event that these statutes are deemed irreconcilable, the special venue statute (§508.050) prevails over the general venue statute to the extent of any repugnancy. See Eggers, 609 S.W.2d at 384; Bella Villa, 698 S.W.2d at 45. While these statutes are obviously reconcilable, §508.050 applies with respect to venue regardless of whether these statutes are harmonized.

Moreover, H.B. 393 contains no manifest intention to repeal or alter the special venue statute for municipalites. H.B. 393 expressly repealed various other special venue statutes (i.e. §508.040 – corporations, §508.070 – motor carriers) without repealing the special venue statute for municipalities.² *See* A5. The legislature is presumed to know the existing law when enacting a new piece of legislation. Greenbriar Hills County Club v. Director of Revenue, 47 S.W.3d 346 (Mo. banc. 2001). The legislature’s intent to keep §508.050 in force is clear. There is no reason why the legislature would specifically identify some special venue statutes being repealed and not identify other special venue statutes in the very same chapter unless it intended to repeal only those statutes listed.

Finally, the purpose behind H.B. 393 and its repeal of certain Missouri venue statutes was to limit the scope of proper venues in which a lawsuit could be maintained. Likewise, §508.050 serves this purpose. In Bella Villa, it was noted that the purpose of §508.050 was to prevent local officials from defending lawsuits in courts across the state. Bella Villa, 698 S.W.2d at 45. The existing version of §508.050 is consistent with the legislative intent behind the repeal by H.B. 393 of certain, identified venue statutes. *See*

² The Act’s preamble and introductory language provide:

AN ACT

To repeal sections 355.176, 408.040, 490.715, 508.010, 508.040, 508.070, 508.120, 510.263, 510.340, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.230, and 538.300, RSMo, and to enact in lieu thereof twenty-three new sections relating to claims for damages and the payment thereof.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 355.176, 408.040, 490.715, 508.010, 508.040, 508.070, 508.120, 510.263, 510.340, 516.105, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.230 and 538.300, RSMo, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 355.176, 408.040, 490.715, 508.010, 508.011, 510.263, 510.265, 512.099, 516.105, 537.035, 537.067, 537.090, 538.205, 538.210, 538.220, 538.225, 538.228, 538.229, 538.232, 538.300, 1, 2, and 3.

Eggers, 609 S.W.2d at 384 (holding that “two [such statutes] should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy.”) Therefore, when also considering that the drafters of H.B. 393 clearly omitted §508.050 from the list of repealed statutes (while listing several other statutes in that same chapter), it is clear that the legislature intended that §508.050 remain in effect.

2. RULES OF STATUTORY CONSTRUCTION CLARIFY THE LEGISLATURE’S INTENTION AND CONFIRM THAT HOUSE BILL 393 DID NOT REPEAL §508.050 BY IMPLICATION

Given that H.B. 393 expressly repealed statutes other than §508.050, rules of statutory construction recognized by Missouri courts and cited by legal scholars confirm that §508.050 has not been repealed by implication.

(a) SUTHERLAND ON STATUTORY CONSTRUCTION INDICATES THAT THE LEGISLATURE’S INTENT WAS NOT TO REPEAL §508.050

It is a well-established principle that a valid legislative enactment containing an express provision repealing a particular act or part of an act effectuates the repeal it describes. Sutherland on Statutory Construction, 5th Ed., §23.07 (citing to Wrightsmen v. Gideon, 247 S.W. 135, 138 (Mo. 1922)). The chief value of an express repeal is the fact that it generally leaves no uncertainty whether the statutes or parts of statutes designated have been repealed. Sutherland on Statutory Construction, 5th Ed., §23.07 (citing to State v. Coor, 740 S.W.2d 350, 355 (Mo.App. S.D. 1987)). Little difficulty is encountered in the interpretation of statutory provisions expressly repealing particular legislation or parts

of statutes. Where the repeal is clearly stated, the courts have no responsibility or authority but to follow and apply the legislative will as expressed. Id. See also State v. Coor, 740 S.W.2d 350, 355 (Mo.App. S.D. 1987) (“Because repeal of the old statute and the enactment of another was clearly intended and expressly stated, we have no responsibility or authority but to follow and apply the legislative will as expressed.”)

Where the repealing effect of a statute is doubtful, the statute is strictly construed to effectuate its consistent operation with the previous legislation. Sutherland on Statutory Construction, 5th Ed., §23.10. The existence of a specific repealer is considered to be evidence that further repeals are not intended by the legislature. Id. at §23.11.

(b) MISSOURI COURTS RECOGNIZING PRINCIPLES OF STATUTORY CONSTRUCTION INDICATE THAT THE LEGISLATURE DID NOT INTEND TO REPEAL §508.050

Several Missouri cases have discussed instances where a the Missouri Legislature expressly repealed statutes or parts of statutes in an act and it was later argued that that act repealed other statutes by implication. Each of these Missouri courts has recognized the prevailing rule of construction that the legislature’s intent is clear when several laws, and not others, are expressly repealed. These principles apply to an analysis of H.B. 393.

In Sales v. Barber Asphalt Pav. Co., et al., 66 S.W. 979, 980 (Mo. 1902), an act repealed several statutes in the same chapter, thereafter enacting a new section for each statute repealed by the act. At issue in Sales was whether a particular section in the chapter “left unmentioned and untouched by the repealing act” was in fact repealed by

the act. In holding that the unmentioned section was not repealed and was still in full force, the Sales court recognized that “if there is anything well settled in statutory construction, it is this: that where a repealing statute expressly repeals certain sections of a statute by numbers, or a specified portion of another act, or even repeals one clause of a certain section, it follows that in the judgment of the legislature no further repeal was necessary or intended.” Sales v. Barber Asphalt Pav. Co., et al., 66 S.W. 979, 980 (Mo. 1902) (recognizing holding in State v. Morrow, 26 Mo. 131 (1857), that “the repeal of one clause of a section specifically raises a clear implication that nothing else was intended.”).

Similarly, in Wrightsman v. Gideon, 247 S.W. 135, 138 (Mo. 1922), the Missouri Supreme Court addressed an instance of purported repeal by implication where an act specifically repealed other laws. In addressing the legislature’s intention behind the repeal and enactment, the Wrightsman court found that “the new act expressly repealed a designated article, and that fact raises an implication that no further repeal was intended.” Wrightsman, 247 S.W. at 138. The Wrightsman court analyzed the laws at issue and found that they were reconcilable; thus, there was no reason to believe that the legislature intended to repeal a statute not expressly repealed in the act. Id. at 138-139.

At issue here is whether the legislature intended that §508.050 be repealed. Given that the legislature expressly repealed several special venue statutes in Chapter 508 and actually “skipped over” §508.050 in that express repealing language, rules of statutory construction indicate that no further repeal was intended in H.B. 393. §508.050 can

easily be reconciled with §508.010 and must not be treated as repealed by implication. Therefore, §508.050 is still in effect and controls venue issues in this case.

3. AS USED IN MO.REV.STAT §508.010.4, “NOTWITHSTANDING” DOES NOT PRECLUDE APPLICATION OF §508.050.

In his 10/31/06 Order, Respondent relied on the term “notwithstanding” in the current version of § 508.010.4 to conclude that § 508.010 exclusively governs venue in all tort cases. See Ex. D; A3-A4. Missouri cases demonstrate however that Respondent cannot rely solely on this term as the basis for denying Jennings’ Venue Motion.

As explained in State ex rel. Casey’s General Stores, Inc. v. City of West Plains, 9 S.W. 3d 712, 717 (Mo. App. S.D. 2000), although “notwithstanding” is defined as “in spite of,” its context must be examined to determine if it means “complete exclusion of all other provisions.” Casey’s, 9 S.W.3d at 717. In Casey’s, plaintiff sought to sell intoxicating liquor within a city without obtaining a city liquor license, contending that, because it had obtained a “resort” liquor license from the State of Missouri, the city could not regulate its liquor sales. Plaintiff relied upon §311.095.1, which provides that “Notwithstanding any other provisions within this chapter...any person...may apply for a license to sell intoxicating liquor...on the premises of any resort.” The city responded that it was entitled to regulate the sale of all intoxicating liquors within its corporate limits under §311.220.2, which provides that a city may make and enforce ordinances regulating the sale of intoxicating liquors. Both statutes are contained in Chapter 311

(“Liquor Control Law”). Plaintiff appealed the trial court’s ruling that the city could require plaintiff to obtain a liquor license.

The court of appeals held that “the term ‘notwithstanding’... does not necessarily mean that it is to the complete exclusion of all other statutory provisions.” Id. at 717. “Courts look beyond the plain and ordinary meaning of a statute when its meaning is ambiguous” or “would lead to an illogical result defeating the purpose of the legislature.” Id. “The ultimate guide is the intent of the legislature.” Id. “In ascertaining that, it is appropriate for us to consider the statute’s history, surrounding circumstances, and examine the problem in society to which the legislation was addressed.” Id. After analyzing the statutory history, the court concluded that the legislature intended for §311.220.2 to remain in effect despite §311.095.1’s “notwithstanding” language. Id. at 720. Similarly, both statutes at issue here appear in Chapter 508. At the time §508.010.04 was enacted as part of H.B. 393, §508.050 was the special venue statute applicable to tort actions against municipalities and was intended to prevent local officials from having to defend lawsuits across the state. *See Bella Villa*, 698 S.W.2d 44.

Here, the trial court states that it “does not have authority to read into a statute a legislative intent that is contrary to the statute’s plain meaning.” *See Ex. D*; A3-A4. The court must however look beyond this presumed meaning of § 508.010.4 to avoid “an illogical result defeating the purpose of the legislature.” *See Casey’s*, 9 S.W.3d at 717. More specifically, the trial court must consider the circumstances of H.B. 393 and “examine the problem in society to which [H.B. 393] was addressed” in ruling on

Jennings' Venue Motion. Id. H.B. 393 limits the scope of proper venue; thus, suggesting that a "problem in society" addressed by H.B. 393 was the broad discretion afforded litigants in selecting venue. *See* A5, A8-A10. Section 508.050 serves that very same purpose – to limit proper venue when a municipality is sued. The Bella Villa court recognized that § 508.050 was intended to prevent local officials from having to defend lawsuits across the state, and the legislature is presumed to have full knowledge of the law when enacting a law. Respondent's finding that § 508.050 no longer applies in tort cases, in light of H.B. 393's underlying policy considerations and failure to expressly repeal § 508.050, is an "illogical result" that is clearly contrary to legislative intent behind H.B. 393. *See Casey's*, 9 S.W.3d at 717.

Furthermore, although H.B. 393 specifically repealed two special venue statutes within Chapter 508 (i.e. §§ 508.040 and 508.070), it skipped over §508.050. *See* A5. Given this context, it is clear that, as in Casey's, use of the word "notwithstanding" in one provision within a statutory chapter was not intended to completely exclude all other statutory provisions. Moreover, finding otherwise would defeat the legislative purpose of §508.050 by requiring public officials to defend lawsuits all over the state.

Modern Day Veterans Chapter No. 251 v. City of Miller, 128 S.W.3d 176 (Mo. App. S.D. 2004) is also instructive. In Modern Day Veterans, a veteran's group sought a liquor license under §311.090.1. The city refused to issue the license, claiming that the plain meaning of "notwithstanding" in §311.040 meant that §311.040 supersedes §311.090.1. Finding that Chapter 311 establishes a comprehensive scheme for regulating

liquor sale, the court of appeals refused to apply §311.040 in a manner that would nullify §311.090.1. The court explained that its fundamental objective was to ascertain and give effect, if possible, to the legislative intent. Modern Day Veterans, 128 S.W.3d at 178-79. Similarly here, Chapter 508 is a comprehensive statutory scheme. Respondent's Order nullified § 508.050 through a narrow interpretation of "notwithstanding" in § 508.010.4. As in Modern Day Veterans, the court must give effect to the legislature's intent; § 508.050's application here is consistent with the purpose of H.B. 393. Modern Day Veterans, 128 S.W.3d at 178-79; *See also* Parkville Benefit Assessment Spec. Road Dist. V. Platte County, 906 S.W.2d 766, 769 (Mo. App. W.D. 1995) ("notwithstanding" read in a way to harmonize §§ 137.556.1 and 137.555, as "the principles of statutory construction require when possible").

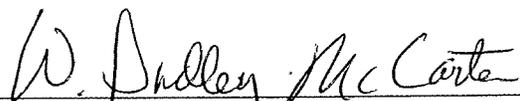
Relator's reliance upon the term "notwithstanding" is misplaced. Under Casey's, Modern Day Veterans and Parkville, Respondent cannot rely solely on the "notwithstanding" language in §508.010.4; Respondent was required to reconcile these statutes in light of the purpose of H.B. 393. Admittedly, Respondent made no attempt to reconcile these statutes because he felt that he had no authority to do so. *See* A3-A4. The clear legislative intent behind H.B. 393 and §508.050 confirms that §508.050 controls venue in this case.

CONCLUSION

For the above stated reasons, this Court should issue a writ of mandamus to compel Respondent to grant the Venue Motion, or, in the alternative, to issue a writ of prohibition

to prevent Respondent from exercising any jurisdiction except to transfer venue of this case to the Circuit Court of St. Louis County.

BEHR, McCARTER & POTTER, P.C.

By: 
W. Dudley McCarter, #24939
Edward V. Crites, #33985
Timothy J. Reichardt, #57684
7777 Bonhomme Avenue, Suite 1400
St. Louis, MO 63105
314.862.3800 – telephone
314.862.3953 – facsimile
Attorneys for Relator

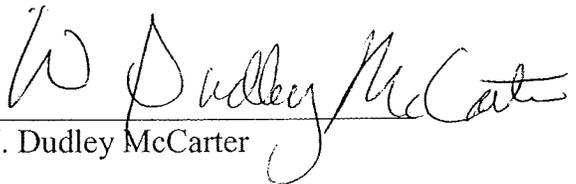
IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, EX REL.)	
CITY OF JENNINGS, MISSOURI)	
)	Case No. ED 88881
Relator,)	
)	
v.)	
)	
HONORABLE JOHN J. RILEY)	
)	
Respondent.)	

CERTIFICATION PURSUANT TO SUPREME COURT RULE 84.06(c) AND (g)

Comes now Counsel for Relator City of Jennings, Missouri and hereby certifies that:
(1) the brief includes the information required by Rule 55.03; (2) the brief complies with the limitations contained in Rule 84.06(b); (3) the brief contains 5,631 words; and (4) the brief contains 589 lines of monospaced type.

Furthermore, this Court should take notice that pursuant to Local Rule 363, and in lieu of filing a copy of this brief on floppy disk, Relator has sent this brief to the court as an electronic mail message attachment in accordance with the requirements of Local Rule 363 to the following address: moapped@courts.mo.gov

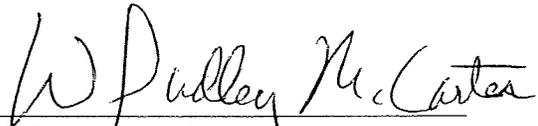

W. Dudley McCarter

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent via First Class U.S. mail, postage pre-paid, and, pursuant to Local Rule 363, transmitted via electronic mail message as an attachment (and in lieu of filing a floppy disk) on this 4th day of January, 2007 to: Harold Whitfield, 701 Market St., Suite 1550, St. Louis, MO 63101, Attorney for Plaintiff; and Hon. John J. Riley, City of St. Louis Circuit Court – Division 7, 10 N. Tucker, St. Louis, MO, 63101.



W. Dudley McCarter

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6. MO.REV.STAT. §508.050 (2003).	A30