

**No. SC 085403**

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**IN THE MISSOURI SUPREME COURT**

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**STATE EX REL. L. DAVID ORMEROD, M.D.  
Plaintiff/Relator,**

**vs.**

**THE HONORABLE GENE HAMILTON, PRESIDING JUDGE,  
CIRCUIT COURT OF BOONE COUNTY,  
Respondent**

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**Petition For Writ of Prohibition or  
In The Alternative For Writ of Mandamus**

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**RELATOR'S OPENING BRIEF**

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**TABLE OF CONTENTS**

Table of Cases, Statutes, and Other Authorities 2

Jurisdictional Statement 6

Statement Of The Facts 7

Point Relied On 19

Summary Of The Argument 20

Argument 22

Conclusion 35

Certification Under Rule 84.06(c) 36

Certificate Of Service 37

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Appendix

## TABLE OF AUTHORITIES

### *Cases*

<i>Anglim v. Missouri Pacific R. Co.</i> , 832 S.W.2d 298 (Mo. banc 1992)	23
<i>Ball v. American Greetings Corp.</i> , 752 S.W.2d 814 (Mo.App.W.D. 1988)	22, 30, 31
<i>Boyd v. Kansas City Area Transportation Authority</i> , 610 S.W.2d 414 (Mo.App.W.D. 1980)	33
<i>Jones v. Overstreet</i> , 865 S.W.2d 717 (Mo.App. E.D. 1993)	23
<i>Rothermich v. Gallagher</i> , 816 S.W.2d 194 (Mo. banc 1991)	23
<i>State v. Long</i> , 278 Mo. 379, 213 S.W. 436 (1919)	33
<i>State ex rel. Auto Club, etc. v. Gaertner</i> , 636 S.W.2d 68 (Mo. banc 1982)	29
<i>State ex rel. Baker v. Goodman</i> , 364 Mo. 1202, 274 S.W.2d 293 (Mo. banc 1954)	19, 28

*State ex rel. Board of Trustees of the City of North Kansas City Memorial Hospital v. Russell*, 843 S.W.2d 353 (Mo.App.W.D. 1993)

32

*State ex rel. Bunker Resource, Recycling And Reclamation, Inc. v. Dierker*, 955 S.W.2d 931 (Mo. banc 1997)

24, 26

*State ex rel. Coca Cola Bottling Company of Mid-America v. Gaertner*, 681 S.W.2d 445 (Mo. banc 1984)

27

*State ex. rel. Curators of the University of Missouri v. Neill*, 397 S.W.2d 666 (Mo. banc 1966)

33

*State ex rel. Dick Proctor Imports, Inc. v. Gaertner*, 671 S.W.2d 273 (Mo. banc 1984)

27, 30

*State ex rel. Dress Industries v. Ruddy*, 592 S.W.2d 789 (Mo. banc 1980)

29

*State ex rel. Elson v. Koehr*, 856 S.W.2d 57 (Mo.banc 1993)

19, 24, 31

<i>State ex rel. Johnson v. Griffin</i> , 945 S.W.2d 445 (Mo.banc 1997)	23
<i>State ex rel. Linthicum v. Calvin</i> , 57 S.W.3d 855 (Mo. banc 2001)	24
<i>State ex rel. Milham v. Rickhoff</i> , 633 S.W.2d 733 (Mo. banc 1982)	19, 20, 27, 33
<i>State ex rel. Pagliara v. Stussie</i> , 549 S.W.2d 900 (Mo.App.E.D. 1977)	30
<i>State ex rel. Sharp v. Romines</i> , 984 S.W.2d 500 (Mo. banc 1999)	23
<i>State ex rel. Smith v. Gray</i> , 979 S.W.2d 190 (Mo. banc 1998)	28
<i>State ex rel. Vaughn v. Koehr</i> , 835 S.W.2d 543 (Mo.App.E.D. 1992)	19, 29
<i>State ex rel. Webb v. Satz</i> , 561 S.W.2d 113 (Mo. banc 1978)	27
<i>Willman v. McMillen</i> , 779 S.W.2d 583 (Mo. banc 1989)	24

### *Statutes*

§ 172.020, RSMo.	19, 32
§ 172.035, RSMo.	32
§ 172.330, RSMo.	32
§ 172.350, RSMo.	32
§ 508.010, RSMo.	<i>passim</i>
§ 508.040, RSMo.	<i>passim</i>
§ 508.050, RSMo.	20
Chapter 529, RSMo.	6
Chapter 530, RSMo.	6

### *Other Authorities*

Article V § 4.1, Missouri Constitution	6
Missouri Supreme Court Rule 84	6
Missouri Supreme Court Rule 94	6
Missouri Supreme Court Rule 97	6

## **JURISDICTIONAL STATEMENT**

Relator L. David Ormerod M.D. invokes the jurisdiction of this Court pursuant to Article V § 4.1 of the Missouri Constitution, Chapters 529 and 530 of the Missouri Revised Statutes, and Rules 94 and 97 of the Missouri Supreme Court Rules.

Relator commenced the underlying action in the Circuit Court of Jackson County seeking damages against the defendant Board of Curators of the University of Missouri. The case is now pending in the Circuit Court of Boone County following transfer from the Circuit Court of Jackson County.

This Court ordered the Honorable Gene Hamilton, presiding judge of the Boone County Circuit Court, as the substitute named respondent.

Respondent originally named the Honorable Edith Messina, a duly appointed circuit judge of the Jackson County Circuit Court, as respondent. Relator made application, but the Western District of the court of appeals denied his request for original remedial relief concerning the venue transfer order Relator considers improper as against cases and authorities. This Court entered its alternative writ of mandamus, and the substitute respondent made written return.

Accordingly, Relator L. David Ormerod, M.D. invokes the jurisdiction of this Court pursuant to the authorities noted.

## STATEMENT OF FACTS

### **Parties**

Relator L. David Ormerod, M.D. [Ormerod] commenced a lawsuit in the Circuit Court of Jackson County. ¶ 1 [unless indicated otherwise, a paragraph reference corresponds to the paragraph number in Relator's Statement of Facts ("SOF") and Respondent's Response to Statement of Facts ("RSOF") and the referenced exhibit therein]. The defendant in the underlying case is the Curators of the University of Missouri [Curators]. ¶ 3.

The original respondent, Honorable Edith L. Messina, the duly appointed Circuit Judge, sitting in Division 12, Sixteenth Judicial Circuit, entered the order at issue in this action and transferred the case from Jackson County Circuit Court to the Boone County Circuit Court. ¶ 2. This Court ordered that the Honorable Gene Hamilton be substituted as respondent. RSOF ¶ 2; Order dated August 26, 2003. Judge Hamilton is a duly appointed circuit judge and the presiding judge of the Boone County Circuit, Thirteenth Judicial Circuit, the transferee court. RSOF ¶ 2.

## **Original Petition For Damages**

Plaintiff filed his original petition for Damages in the Circuit Court for the Sixteenth Judicial Circuit in November of 2001. ¶ 4. The case was assigned to Division 12, the division in which the original Respondent the Honorable Edith L. Messina presides. ¶ 4.

Relator pleaded the existence and location of the Kansas City campus of the University of Missouri, and further alleged “Therefore, defendant Curators maintain an office for the transaction of their usual and customary business in Kansas City, Jackson County, Missouri.” ¶ 5 [Exhibit A, ¶ 4]. Relator further alleged “The University of Missouri-Kansas City is located in the western venue for Jackson County, Missouri.” Exhibit A, ¶ 5.

## **First Venue Transfer Motion**

Certain individual curators filed a Motion to Dismiss or Transfer for Improper Venue. ¶ 7 [Exhibit B]. The motion alleges in pertinent part “. . . venue is not proper in the Circuit Court of Jackson County, Missouri as venue properly resides only in Boone County or Cole County.” ¶ 7 [Exhibit B, ¶ 2]. Suggestions in support accompanied this motion. ¶ 8 [Exhibit C]. The curators submitted no evidence in support of this motion or in the suggestions. ¶¶ 7, 8, [Exhibits B, C]. Relator claims the motion and

suggestions [Exhibits B, C] do not allege and show by any competent proof that the Curators do not “have or usually keep an office or agent for the transaction of their usual and customary business” in Jackson County, Missouri. ¶ 7, 8 SOF [Exhibits B, C]. Respondent denies Relator’s claim the Curators failed to prove that venue is improper in Jackson County. RSOF ¶ 5.

Relator opposed this venue transfer motion. ¶ 9 SOF [Exhibit D]. In pertinent part, he suggested the following regarding the venue issue:

“Specifically, one of the places where the Curators conduct business is on its Kansas City campus which the Court can judicially note is in Jackson County, Missouri. Therefore, in accordance with § 508.040, R.S.Mo., venue is proper in Jackson County, Missouri.” [Exhibit D]

Certain other curators filed a motion to dismiss or transfer for improper venue and accompanying suggestions. ¶¶ 10, 11 SOF. [Exhibit E]. This motion alleges in pertinent part “. . . venue is not proper in the Circuit Court of Jackson County, Missouri as venue properly resides only in Boone County or Cole County.” ¶ 10 SOF, [Exhibit E, ¶ 2]. Relator opposed this motion also. ¶ 11 SOF [Exhibit F]. No evidence accompanied

the motion or suggestions. [Exhibits E, F]. Respondent denies this contention. RSOF ¶ 6.

Relator opposed this motion. ¶ 12 SOF [Exhibit G]. In pertinent part, relator suggested the following regarding the venue issue:

“Specifically, one of the places where the Curators conduct business is on its Kansas City campus which the Court can judicially note is in Jackson County, Missouri. Therefore, in accordance with § 508.040, R.S.Mo., venue is proper in Jackson County, Missouri.” [Exhibit G]

Relator claims the first challenge to venue did not allege and show by any competent proof that the Curators do not “have or usually keep an office or agent for the transaction of their usual and customary business” in Jackson County, Missouri. ¶ 11 SOF. Respondent disagrees. ¶ 6 RSOF.

### **Order – No Improper Venue – No Appeal Or Writ**

On July 12, 2002, Judge Messina denied the first motions [by the individual curators] relating to venue. ¶ 13 SOF [Exhibit H]. The curators did not seek review of this order. ¶ 6 RSOF.

## **First Amended Petition – Board of Curators Named Defendant**

Judge Messina granted plaintiff leave to amend his Petition to simply refer to the “Curators of the University of Missouri” rather than have them named individually in their representative capacity. ¶ 14, SOF. Relator complied. ¶ 15 SOF [Exhibit I]. Relator alleged in the first amended petition that “Defendant operates the four campuses of the University of Missouri system.” ¶ 15 SOF [Exhibit I, ¶ 3]. Relator also alleged:

“One of the campuses of the University of Missouri system is located in Kansas City, Jackson County, Missouri, and is known as the University of Missouri-Kansas City. Therefore, defendant Curators maintain an office for the transaction of their usual and customary business in Kansas City, Jackson County, Missouri.”

¶ 15 SOF [Exhibit I, ¶ 4]. Relator alleged “The University of Missouri-Kansas City is located in the western venue for Jackson County, Missouri.” ¶ 15 SOF [Exhibit I]. Relator also alleged “Defendant Curators employ individuals to fill positions at various campuses.” ¶ 15 SOF [Exhibit I, ¶ 6]. Respondent claims these allegations are not relevant to the proceedings. ¶ 6 RSOF.

## **Second Venue Transfer Motion**

The Curators of the University of Missouri filed a Motion for Transfer for Improper Venue. ¶ 16 SOF [Exhibit J]. The Curators alleged in pertinent part:

“The Curators of the University of Missouri, as a body politic, does not keep an office for its “usual and customary business” in Jackson County. The “usual and customary business” of the Board is the governance function, not the operation of individual campuses. The only ‘place of business’ of the Board is Boone County, Missouri.” [Exhibit J, pp. 1-2]

Relator opposed the second motion related to venue. 2<sup>nd</sup> ¶ 15 SOF [Exhibit K]. Relator stated in pertinent part “. . . it is clear that the Curator’s [sic] operates a campus in Jackson County, Missouri. That would be an office for its usual and customary business.” [Exhibit K]. Respondent denies the relevancy of this. ¶ 6 RSOF.

## **Order – No Improper Venue – No Appeal Or Writ**

On April 11, 2003, Judge Messina denied the Curators’ motion relating to venue. ¶ 16 SOF [Exhibit L]. The curators did not seek review of this order. ¶ 16 SOF; ¶ 6 RSOF.

## **Second Amended Petition**

On April 28, 2003, Relator filed his Second Amended Petition for Damages. ¶ 18 SOF [Exhibit M]. Relator alleged “Defendant operates the four campuses of the University of Missouri system.” ¶ 18 SOF [Exhibit M, ¶ 3]. Relator also alleged:

“One of the campuses of the University of Missouri system is located in Kansas City, Jackson County, Missouri, and is known as the University of Missouri-Kansas City. Therefore, defendant Curators maintain an office for the transaction of their usual and customary business in Kansas City, Jackson County, Missouri. [Exhibit M, ¶ 4]

Relator alleged “The University of Missouri-Kansas City is located in the western venue for Jackson County, Missouri” and “Defendant Curators employ individuals to fill positions at various campuses.” ¶ 18 SOF [Exhibit I, ¶ 6]. Respondent does not deny the foregoing, but adds that plaintiff resides in Boone County and that is the only venue where the Curators may be found. RSOF ¶ 7.

### **Third Venue Transfer Motion**

The Curators filed “Defendant’s Amended Motion To Transfer For Improper Venue In Response To Second Amended Petition” and accompanying suggestions in support. ¶¶ 19, 20 SOF [Exhibits N, O]; ¶ 8 RSOF. The Curators state in pertinent part “. . . as grounds states § 508.010 controls, and because defendant resides in Boone County and not Jackson County, venue is in the Circuit Court of Boone County.” ¶ 19 SOF [Exhibit N, p. 1]; ¶ 8 RSOF. The accompanying suggestions in pertinent part state “The Curators of the University of Missouri is a body politic. . . . Venue in this case is governed by § 508.010.” ¶ 20 SOF [Exhibit O, p. 1]; ¶ 9 RSOF. The Curators also claimed the following: the existence of a campus of the university in Jackson County is “irrelevant”; the Curators “as a body politic, does not ‘reside’ in Jackson County; the location of the defendant’s administrative offices, records, seal, books, papers, and reports is Boone County; and that Boone County is the proper venue for the action under § 508.010. ¶ 20 SOF [Exhibit O, pp. 1-2]; ¶ 9 RSOF. Respondent maintains that venue is only proper in Boone County. ¶ 9 RSOF.

Relator claims the motion and suggestions by the Curators (including the affidavit attached to the suggestions) [Exhibits N, O] do not allege and

show by any competent proof that the Curators do not “have or usually keep an office or agent for the transaction of their usual and customary business” in Jackson County, Missouri. ¶ 20 SOF. Relator claims the motion by the Curators and supporting suggestions does not allege and show by any competent proof any matter to the contrary of or to counter the allegations of ¶¶ 4, 5, 6 of the active petition which establish venue in Jackson County. ¶ 20 SOF. Respondent disagrees. ¶ 9 RSOF.

Relator opposed the third motion for transfer of venue. ¶ 21 SOF [Exhibit P]; ¶ 22 SOF [Exhibit Q]. In pertinent part, the Relator stated regarding the Curators “As a corporation it may be sued in any county where it has an office for the transaction of its usual and customary business”. ¶ 21 SOF [Exhibit P, p. 4].

The Curators submitted a reply in support of its third motion for transfer. ¶ 23 SOF [Exhibit R]. Relator filed a rebuttal to the reply suggestions filed by the Curators. ¶ 24 SOF [Exhibit S]. Relator stated:

“The fact is that the defendant has been judicially and constitutionally declared to be a corporation. As a corporation it has not been inconvenient for it to do business in Jackson County; maintain and [sic] office for the transaction of its usual and customary business in Jackson County; and to collect tuition, fees and other money in Jackson County associated with the University of Missouri-Kansas City.” [Exhibit S]

¶ 24 SOF. Relator also noted that the “. . . failure by the defendant to seek an extraordinary writ when the motions to dismiss and transfer were denied on two previous occasions constitutes a waiver or an error.” ¶ 24 SOF [Exhibit S].

The Curators submitted no evidence in support of the third motion or with the suggestions. ¶ 23 SOF. The Curators presented no evidence to show that the entity is not a corporation. ¶ 23 SOF. The Curators presented no evidence to show the entity does not keep an office in Jackson County for the transaction of its usual and customary business. ¶ 23 SOF. The Curators presented no evidence to show the entity does not keep an agent in Jackson County for the transaction of its usual and customary business. ¶ 23 SOF. Respondent disagrees, maintaining the citations and evidence tendered by

the Curators show that venue is proper in Boone County under § 508.010, RSMo.. ¶¶ 12, 13 RSOF.

### **June 18, 2003 Order Transferring Case**

On June 18, 2003, original Respondent Judge Messina entered her Order stating that unless prohibited by an order from a higher court, the court would order the case transferred to the Circuit Court of Boone County, Missouri on June 28, 2003. ¶ 25 SOF [Exhibit T]; ¶ 14 RSOF.

### **Writ Application to Western District, Ruling, Transfer to Boone County**

Relator applied for a writ of prohibition concerning original Respondent Judge Messina's June 18, 2003 order transferring the case to the Circuit Court of Boone County on June 23, 2003. ¶ 26 SOF; ¶ 15 RSOF. The Western District of the Missouri court of appeals denied Relator's application for writ by its order dated June 24, 2003. ¶ 27 SOF [Exhibit U]; ¶ 16 RSOF. Judge Messina ordered the case transferred to the Circuit Court of Boone County by order dated June 27, 2003. Exhibit V.

## **Reasons Why Writ Should Issue**

Relator contends that venue for his case against the Curators is proper in Jackson County; that he properly commenced the case in the Jackson County venue; and the original Respondent Judge Messina did exceed her jurisdiction by granting the motion for the Curators relating to venue and transferring this case to the circuit court of Boone County, Missouri. ¶ 28 SOF. The substitute Respondent will exceed his jurisdiction by allowing the case to proceed on the docket in the Boone County Circuit Court and should be commanded to enter an order transferring the case to Circuit Court of Jackson County, where venue is proper. Relator has no adequate remedy at law or by appeal. ¶ 29 SOF.

**POINT RELIED ON**

**RELATOR IS ENTITLED TO AN ORDER COMMANDING THE RESPONDENT CIRCUIT JUDGE TO ENTER AN ORDER TRANSFERRING THE CASE TO THE CIRCUIT COURT OF JACKSON COUNTY BECAUSE RELATOR'S CHOSEN VENUE OF JACKSON COUNTY FOR THE ACTION AGAINST THE BOARD OF CURATORS IS PROPER UNDER THE CORPORATION VENUE STATUTE IN THAT THE BOARD OF CURATORS IS A CORPORATION WITHIN THE MEANING OF CORPORATION VENUE STATUTE § 508.040 AND HAS AN OFFICE OR AGENT FOR THE TRANSACTION OF ITS BUSINESS IN JACKSON COUNTY.**

*State ex rel. Milham v. Rickhoff*, 633 S.W.2d 733 (Mo. banc 1982)

*State ex rel. Baker v. Goodman*, 364 Mo. 1202, 274 S.W.2d 293 (Mo. banc 1954)

*State ex rel. Elson v. Koehr*, 856 S.W.2d 57 (Mo.banc 1993)

*State ex rel. Vaughn v. Koehr*, 835 S.W.2d 543 (Mo.App.E.D. 1992)

§ 172.020, RSMo.

§ 508.040, RSMo.

## SUMMARY OF THE ARGUMENT

This venue case presents the following issue: What venue law applies to suits brought against the Curators of the University of Missouri as sole defendant?

Relator suggests the issue presents two questions:

1. Is the Curators of the University of Missouri a “corporation” within the meaning of corporation venue statute § 508.040, RSMo?; and
2. Under the facts of this case, is venue in the Jackson County Circuit Court proper?

This Court determined in *State ex rel. Milham v. Rickhoff*, 633 S.W.2d 733 (Mo. banc 1982) that the municipal corporation special venue law, § 508.050, RSMo., does not apply to the suits against the university and that the general venue statute, § 508.010, RSMo., establishes venue for cases involving the university and individual defendants. This case involves only one defendant - the Curators of the University of Missouri.

The underlying case concerns the claims of a physician and former member of the medical faculty at the University of Missouri. Plaintiff properly lodged venue of his lawsuit against the Curators of the University of Missouri in the circuit court of Jackson County. The circuit court improperly transferred the case to Boone County.

The original respondent circuit judge, after twice denying motions to transfer on the ground of improper venue, granted the motion by the Curators and did transfer the case to the circuit court of Boone County.

As relator, plaintiff claims the Curators is a “corporation” within the meaning of venue law § 508.040 of the Revised Statutes and that venue in Jackson County is proper because the defendant Curators has or keeps an office or agent in Jackson County for the transaction of its usual and customary business.

Relator seeks relief in this Court after the Western District of the court of appeals denied his application for relief by extraordinary writ. Relator requests the Court command Respondent to enter an order transferring the case to the Circuit Court of Jackson County, where venue is proper.

## ARGUMENT

**RELATOR IS ENTITLED TO AN ORDER COMMANDING THE RESPONDENT CIRCUIT JUDGE TO ENTER AN ORDER TRANSFERRING THE CASE TO THE CIRCUIT COURT OF JACKSON COUNTY BECAUSE RELATOR’S CHOSEN VENUE OF JACKSON COUNTY FOR THE ACTION AGAINST THE BOARD OF CURATORS IS PROPER UNDER THE CORPORATION VENUE STATUTE IN THAT THE BOARD OF CURATORS IS A CORPORATION WITHIN THE MEANING OF CORPORATION VENUE STATUTE § 508.040 AND HAS AN OFFICE OR AGENT FOR THE TRANSACTION OF ITS BUSINESS IN JACKSON COUNTY.**

### *Overview of Venue*

Jurisdiction concerns the power and authority of a court to act as it relates to the subject under consideration and the persons and entities involved. Venue relates to the place of adjudication, and subserves the “convenience of the litigants.” *Ball v. American Greetings Corp.*, 752 S.W.2d 814, 825 (Mo.App.W.D. 1988).

Statutes determine venue in the state of Missouri. *Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. banc 1991). Absent a special venue statute, Chapter 508 of the Revised Statutes sets out the venue law of the state of Missouri.

Both plaintiffs and defendants have rights in and concerning venue. A defendant has the right to only be sued in an appropriate venue, and a plaintiff has the right to pursue a cause of action in any venue where a suit may be properly filed against a defendant. *State ex rel. Johnson v. Griffin*, 945 S.W.2d 445, 446-47 (Mo. banc 1997). Whenever multiple venues are proper for the filing of a suit, a trial judge does not have the discretion to disturb the plaintiff's choice of venue. *Jones v. Overstreet*, 865 S.W.2d 717, 718 (Mo. App. E.D. 1993). Stated differently, if the plaintiff's choice of venue is proper, the trial court may not weigh the applicable factors and determine what venue is the most convenient for the processing of the case.

Missouri does not apply the doctrine of *forum non conveniens* intrastate. *State ex rel. Sharp v. Romines*, 984 S.W.2d 500, 500 (Mo. banc 1999) and *Anglim v. Missouri Pacific R. Co.*, 832 S.W.2d 298, 302 (Mo. banc 1992). The reason that Missouri does not allow the trial court to weigh the factors relating to the convenience of the parties and does not apply the doctrine of *forum non conveniens* intrastate is that a presumption exists that

the legislature has determined that it is not inconvenient for a defendant to appear in the place designated by the legislature. *Willman v. McMillen*, 779 S.W.2d 583, 586 (Mo. banc 1989). “Venue is within the province of the legislature, and a court must be guided by what the legislature says.” *State ex rel. Bunker Resource, Recycling And Reclamation, Inc. v. Dierker*, 955 S.W.2d 931, 933 (Mo. banc 1997).

***Extraordinary Remedy – Appropriate Relief – Improper Transfer Venue***

Whenever the trial court makes an erroneous ruling on a venue issue, the appropriate remedy for a litigant is to challenge the ruling in a Petition for Writ of Prohibition. *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855 (Mo. banc 2001). Also, if a plaintiff files a case in a proper venue, and the court grants a motion to transfer, a writ of mandamus is an appropriate remedy by which to seek reinstatement of the case. *State ex rel. Elson v. Koehr*, 856 S.W.2d 57, 59 (Mo. banc 1993). Therefore, since transfer from a proper venue has already occurred, Relator may properly seek relief in this Court asking the Court to order Respondent to transfer the case to Jackson County Circuit Court and for other appropriate orders concerning reinstatement of his case in Jackson County.

***Facts Giving Rise To The Plaintiff's Filing This Action***

The record in these premises and the statement of facts herein shows the following circumstances as the backdrop for this application.

Relator filed his cause of action against the Curators of the University of Missouri in the Sixteenth Judicial Circuit for the State of Missouri – Jackson County, Missouri. Relator contends that venue is proper in Jackson County, Missouri. The reason venue properly lays in Jackson County is that the Curators is a corporation within the meaning of § 508.040 and it has an office – campus at Kansas City – and agents -- instructors, professors, and employees at the campus – for the transaction of its university business.

As set forth in the Petition for Writ of Prohibition, the Respondent twice denied the motions filed by the Curators of the University of Missouri wherein the Curators moved the Court to either dismiss the Relator's petition or to transfer the case to the Circuit Court of Boone County, Missouri. However, the original Respondent entered her order wherein she stated that unless prohibited the court would and in fact did transfer the case to Boone County. The substitute Respondent has not passed on these issues nor entered any rulings. The Honorable Judge Gene Hamilton is respondent herein by order of this Court.

Relator contends that the ruling and transfer by the original Respondent is contrary to the applicable statutes and case law and that the substitute Respondent should be prohibited from enforcing the order transferring venue and commanded to transfer the case to Jackson County, where venue is proper and the venue chosen by Relator.

***Corporation Defendant Venue Statute § 508.040***

Section 508.040 of the Missouri Revised Statutes prescribes venue in suits commenced against corporations. That venue statute provides:

“Suits against corporations shall be commenced either in the county where the cause of action accrued, or in case the corporation defendant is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state, then in either of such counties, or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.”

***Section 508.040 – Sets Venue For “Corporation” Defendants***

Section 508.040 applies in cases when a corporation is the sole defendant. *State ex rel. Bunker Resource Recycling And Reclamation,*

*Inc. v. Dierker*, 955 S.W.2d 931, 933 (Mo.banc 1997); *State ex rel. Dick Proctor Imports, Inc. v. Gaertner*, 671 S.W.2d 273, 274 (Mo. banc 1984). Section 508.040 also applies in suits where each of the several defendants is a corporation. *State ex rel. Webb v. Satz*, 561 S.W.2d 113, 114-15 (Mo. banc 1978). Also, if suit does not commence in the county where the action accrued, venue for a suit not involving individuals brought against multiple corporation defendants lodges in a county in which one or more of the corporations has an office or agent of the specified type. *Id.* at 115.

The general venue statute, § 508.010, RSMo, sets venue for cases against individuals and corporation defendants. *State ex rel. Coca Cola Bottling Company of Mid-America v. Gaertner*, 681 S.W.2d 445, 447 (Mo. banc 1984); *State ex rel. Milham v. Rickhoff*, 633 S.W.2d 733, 735 (Mo.banc 1982)(holding Board of Curators (a public corporation) not a municipal corporation for purposes of venue statute § 508.050, RSMo, and subject to general venue statute § 508.010 when defendant in suit with individual defendants). For suits against an individual defendant and a general and business corporation defendant subject to Chapter 351 of the Missouri Revised Statutes, the county where the corporation maintains its registered office determines the residence of corporation defendants for purposes of lodging venue for the case under general venue statute §

508.010(2), RSMo.. *State ex rel. Smith v. Gray*, 979 S.W.2d 190, 192 (Mo. banc 1998)(holding under §§ 508.010 and 508.040, corporations other than general and business corporations under 351 “reside” for venue purposes in any county where they have or usually keep an office or agent for the transaction of their usual and customary business). *Id.* at 193.

***Special Venue § 508.040 Trumps General Venue § 508.010***

This Court has determined regarding section 508.040 that “It is a special statute designed to take corporations from under the operation of Section 508.010.” *State ex rel. Baker v. Goodman*, 364 Mo. 1202, 274 S.W.2d 293, 297 (Mo. banc 1954). Section 508.040 “applies to all corporations and is mandatory in its provisions.” *Id.* This Court found “Section 508.040 designed to cover venue in suits against corporations, which statute can be construed to cover the situation.” *Id.*

“Being a special statute, it must prevail in all cases where it is possible to apply it, for it is a well-established rule of statutory construction that specific statutory provisions prevail over broad general provisions.”

*Id.*; *State ex rel. Dress Industries v. Ruddy*, 592 S.W.2d 789, 794 (Mo. banc 1980). General venue statute § 508.010 acknowledges that special venue statutes may apply. The introduction of the statute states in pertinent part “Suits instituted by summons shall, *except as otherwise provided by law*, be brought. . . .” § 508.010, RSMo. (emphasis added).

Section 508.040 applies to “corporations”, not individuals, partnerships or other recognized entities. *State ex rel. Dress Industries v. Ruddy*, 592 S.W.2d at 794. Section 508.040 applies to all corporations. *State ex rel. Vaughn v. Koehr*, 835 S.W.2d 543, 544 (Mo.App.E.D. 1992). “The clear, unambiguous language of § 508.040 applies to all corporations.” *Id.* (not-for-profit health care services corporation a “corporation” for purposes of venue statute § 508.040) (*discussing State ex rel. Auto Club, etc. v. Gaertner*, 636 S.W.2d 68, 74 (Mo. banc 1982)(unincorporated association a suable “statutory entity” subject to § 508.040, RSMo)). Section 508.040 does not consider residence to set venue for corporation defendants. *Id.* When all defendants are corporations, residence does not matter. *Id.* The corporate venue law § 508.040 does not exclude any corporation from its scope. If deemed necessary or desirable, the legislature could easily have done so. *Id.*

***Agent or Office – Broad Scope of Section 508.040***

Section 508.040 lodges venue against corporation defendants where the cause of action accrues or where the corporation has or usually keeps an office or agent for the transaction of their usual and customary business.

The scope of the corporate defendant venue statute embraces “the policy of broadly subjecting corporations to suit”. *State ex rel. Pagliara v. Stussie*, 549 S.W.2d 900, 903 (Mo.App.E.D. 1977). For purposes of section 508.040, the presence of a registered agent in a particular county does not determine venue. *State ex rel. Dick Proctor Imports, Inc. v. Gaertner*, 671 S.W.2d at 274.

In the *Pagliara* case, the court of appeals held that “agent” as used in the statute means “a person authorized by another to act for him, one intrusted with another’s business” sufficient to serve the objectives of the venue statutes. *Id.* Any person authorized by the defendant to act for it on a regular basis in its business efforts constitutes that person an “agent” within the meaning of section 508.040. *Id.* The court of appeals later explained that the term “agent” means, without technical restriction, a person authorized to act for another or entrusted with the business of another. *Ball v. American Greetings Corporation*, 752 S.W.2d 814, 825 (Mo.App.W.D. 1988). Activities undertaken in a county which may include the

employment, supervision and discharge of employees and other exercises of authority on behalf of the corporation do suffice to prove the transaction of business within the meaning of the statute and hence establishes venue. *Id.* This Court further explained the meaning of “agent” in § 508.040 as a person who has authority to act in any facet of the defendant’s business as long as that occurs within “a significant part of the ‘usual and customary business’”. *State ex rel. Elson v. Koehr*, 856 S.W.2d 57, 61 (Mo. banc 1993). Under section 508.040, the agent need not participate in or have authority to act in all facets of the usual and customary business. *Id.* at 61. The corporation venue statute has “broad language” with only this limitation – “the agent must be engaged in the “usual and customary business” of the principal.” *Id.* at 62.

Section 508.040 subjects corporate defendants to suit in a wide variety of venues – every county where the corporation maintains an office or agent. *Id.* Finally, the cause of action does not need to accrue in a particular county for section 508.040 to apply and properly lay venue therein. *Ball v. American Greetings Corporation*, 752 S.W.2d at 825. Activities of corporate personnel on behalf of the defendant within the usual and customary business suffice to prove venue under section 508.040. *Id.*

*University of Missouri – A “Corporation” Under Section 508.040*

The enabling statute of the University of Missouri, Section 172.020 of the Missouri Revised Statutes, states in pertinent part “The university is hereby incorporated and created a body politic and shall be known by the name of “The Curators of the University of Missouri. . . .” That law also confers the Curators with perpetual succession, the power to sue and be sued, and among others, the power to take, purchase and sell, convey or otherwise dispose of land or chattels. § 172.020, RSMo. The Board of Curators of the University of Missouri operates several campuses, including a campus in Kansas City. § 172.035.7, RSMo. In Kansas City it has employees, officers, instructors, and professors. § 172.330, RSMo. The Curators employ university police officers to protect persons, property, and to preserve peace and order in the public buildings, grounds, and facilities and locations over which it has charge or control. § 172.350, RSMo.

The language “body politic” in the enabling law § 172.020 constitutes an express grant of corporate existence recognized under Missouri law. **But cf. *State ex rel. Board of Trustees of the City of North Kansas City Memorial Hospital v. Russell*, 843 S.W.2d 353, 356 (Mo.App.W.D. 1993)(holding board not a corporation because its enabling law did not confer any corporate or political existence as a body corporate and politic).**

The phrase “body politic” has been recognized by Missouri courts as “an old term for a corporation”. *Boyd v. Kansas City Area Transportation Authority*, 610 S.W.2d 414, 416 (Mo.App.W.D. 1980). An entity incorporated under law with perpetual succession, which law grants the power to sue and contract, and declared a “body politic” constitutes a “corporation” under Missouri law. *Id.* (holding the Kansas City Area Transportation Authority a “corporation” within the meaning of the service letter statute, § 290.140, RSMo). Corporation status need not spring from organization under Chapter 351. *Id.*

The University of Missouri is a “corporation”. *State v. Long*, 278 Mo. 379, 213 S.W. 436, 437 (1919). The “University of Missouri is a corporation ‘known and styled the curators of the University of Missouri’”. *Id.* The government of the university is the Board of Curators. § 172.020, RSMo., *State ex. rel. Curators of the University of Missouri v. Neill*, 397 S.W.2d 666, 669 (Mo. banc 1966). Section 172.020 grants perpetual succession, enables the power to contract, and empowers the Board of Curators to “sue and be sued, complain and defend in all courts”. The Board of Curators is a “public corporation for educational purposes”. *State ex rel. Milham v. Rickhoff*, 633 S.W.2d 733, 735 (Mo. banc 1982). The legislature did not limit suit against the Board of Curators to Boone County. *Id.* at 734.

## **Reasons Why The Writ Should Issue**

The Relator requests relief for the following reasons:

1. The sole defendant Curators is a corporation within the meaning of Section 508.040 of the Missouri Revised Statutes which provides as follows:

“Suits against corporations shall be commenced either in the county where the cause of action accrued, . . . or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.”

2. At all times relevant, the defendant Curators had or kept in Jackson County a campus, including a law school, and employees or instructors or professors, that is an office or agent for the transaction of its usual and customary business as a university, all within the meaning of § 508.040, RSMo.

3. The residence of the Curators is not relevant herein and it otherwise waived any challenge to venue in this case.

4. Venue for Relator’s case against the Curators is proper in Jackson County, the venue of Relator’s choice, and the Respondent’s order which transfers the case to Boone County is improper for the additional reason that the order in effect grants a change of venue on the grounds of

intra-state forum non-conveniens, a doctrine specifically rejected by this Court.

### **RELIEF SOUGHT**

Relator seeks the Order of this Court prohibiting the Circuit Court of Boone County from further accepting the case on transfer from the Circuit Court of Jackson County or in the alternative that the Court order the transferee court precluded and estopped from assuming jurisdiction over the case; that the transferee court not allow the case to proceed on the docket of the Circuit Court of Boone County; and that the Court command the Respondent to enter an order transferring the case to the Circuit Court of Jackson County.

Relator seeks any other relief by way of extraordinary remedy, either in prohibition or mandamus, just and proper in the premises herein, and that he have and recover his costs and expenses incurred in the premises herein.

### **CONCLUSION**

For the foregoing reasons, the Court should enter its ORDER commanding the Respondent to enter an order TRANSFERRING the case to the Circuit Court of Jackson County, and for its FURTHER ORDER granting relator's costs, and for other relief just and proper herein.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 84.06(c), certification is hereby made that:

1. This brief includes the information required by Rule 55.03; and
2. This brief complies with the limitations of Rule 84.06(b); and
3. This brief contains 6,486 words, according to the word count of the word-processing software used to prepare the brief.

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2002, in 14 point font size and Times New Roman style.

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Attorney for Relator

**CERTIFICATE OF SERVICE**

Certification hereby made that the original and sufficient number of true copies of the foregoing was served via commercial, overnight delivery, on November \_\_\_\_\_ 2003, to the Clerk of the Court, and on the same date and in the same manner, two true copies of same, and floppy disk, to each opposing counsel, as follows:

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