

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

Case No. ED 88881

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

Relator,

v.

HONORABLE JOHN J. RILEY

Respondent.

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

Division No. 1

The Honorable John J. Riley

BRIEF OF AMICUS CURIAE MISSOURI MUNICIPAL LEAGUE

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TABLE OF CONTENTS

<u>Page</u>	
Table of Authorities	2
Interest of Amicus Curiae	3
Jurisdictional Statement	5
Statement of Facts	6
Point Relied On	7
Argument	8
Conclusion	16

TABLE OF AUTHORITIES

<u>Page</u>	
<u>Burlington Northern Railroad Co. v. Forder</u> , 787 S.W.2d 725 (MO 1990)	
10	
<u>Greenbriar Hills Country Club v. Director of Revenue</u> , 47 S.W.3d 346 (Mo. 2001)	
12	
<u>Kearney Spec. Road Dst. v. County of Clay</u> , 863 S.W.2d 841 (MO banc 1993)	
13	
Missouri House Bill 393 (2005)	3, 10, 12,
13, 14	
Section 508.010 RSMo (2005)	3, 9, 11, 12,
13, 16	
Section 508.050 RSMo (2003)	3, 8, 9, 10, 11, 12, 13, 14,
15, 16	
<u>State v. Coor</u> , 740 S.W.2d 350 (SD Mo.App. 1987)	
14	
<u>Sales v. Barber Asphalt Pav. Co., et al.</u> , 66 S.W. 979 (MO 1902)	
15	
<u>City of Bella Villa v. Nicholls</u> , 698 S.W.2d 44 (ED Mo. App. 1985)	
9	
<u>State ex rel. Eggers v. Enright</u> , 609 S.W.2d 381 (MO banc 1980)	10,
11, 13	

St. Charles County v. Director of Revenue, 961 S.W.2d 44 (MO banc 1998)

10

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

14, 15

Wrightsman v. Gideon, 247 S.W. 135 (MO 1922)

14, 16

INTEREST OF AMICUS CURIAE

The Missouri Municipal League (hereafter League) is an association of over 600 municipalities in the State of Missouri. The League provides a vehicle for cooperation in formulating and promoting municipal policy at all levels of government to enhance the welfare and common interests of municipalities' citizens. The League believes that the Court's decision in this case could have a serious adverse impact and detrimental effect on the venue for tort actions against municipalities unless the Court sustains Relator's position that Section 508.050 RSMo.

The League believes that the trial court's finding that Section 508.010 RSMo applies in this case rather than Section 508.050 RSMo, the special and exclusive venue statute for suits brought against municipalities, was contrary to the Missouri law when construing these statutes together.

Missouri courts have applied various rules of statutory construction that clarify the legislature's intention when repealing certain statutes but not all related to a subject, such as is the case with House Bill 393. By expressly repealing several special venue statutes in House Bill 393, and leaving Section 508.050 RSMo out from the repealing language, it is clear that the legislature intended to preserve the special venue statute related to municipalities and it did not intend to repeal Section 508.050 RSMo providing venue protection to municipalities.

Therefore, while the Municipal League supports the Points Relied On as presented by Relator City of Jennings, it respectfully submits this additional discussion and argument in support of the municipalities throughout the state which will lose their special protections unless the Court grants Relator's arguments and orders the venue transfer requested.

JURISDICTIONAL STATEMENT

Amicus Curiae Missouri Municipal League adopts the jurisdictional statement of Relator City of Jennings, Missouri.

STATEMENT OF FACTS

Amicus Curiae Missouri Municipal League adopts the statement of facts of Relator City of Jennings, Missouri.

POINT RELIED ON

I. A WRIT OF PROHIBITION SHOULD ISSUE BECAUSE, UNDER SECTION 508.050 RSMo, 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 A TORT ACTION ONLY IN ST. LOUIS COUNTY.

Burlington Northern Railroad Co. v. Forder, 787 S.W.2d 725 (MO 1990)

Missouri House Bill 393 (2005)

Section 508.010 (2005)

Section 508.010 (2003)

Sales v. Barber Asphalt Pav. Co., 66 S.W. 979 (MO 1902)

City of Bella Villa v. Nicholls, 698 S.W.2d 44 (ED Mo. App. 1985)

Kearney Spec. Road Dst. v. County of Clay, 863 S.W.2d 841 (MO banc 1993)

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

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

ARGUMENT

I. A WRIT OF PROHIBITION SHOULD ISSUE BECAUSE, UNDER SECTION 508.050 RSMo, 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 A TORT ACTION ONLY IN ST. LOUIS COUNTY.

On behalf of municipalities across the state, the Missouri Municipal League (hereafter League) urges this Court to issue a Writ of Prohibition with regards to the Order entered by Respondent concerning venue in the underlying case of Harris v. City of Jennings, Missouri, et al.

This case presents an issue critical to all Missouri municipalities. The ultimate outcome could adversely affect the special venue law granted to municipalities that was ignored by the trial court. The rationale used by Respondent in denying the Relator's Motion to Transfer for Improper Venue is contrary to existing Missouri statute and case law. The rationale employed by Respondent ignores various rules of statutory construction long applied and accepted by Missouri Courts. This case presents an issue that is critical to municipalities' right to be sued in the County they are located under clearly expressed special statutory provisions of Section 508.050 RSMo.

A. SECTION 508.050 RSMO MANDATES THAT SUIT BE BROUGHT IN ST. LOUIS COUNTY.

Relator is a municipal corporation located in St. Louis County. Section 508.050 RSMo provides in pertinent part:

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

Consequently, venue in this tort action is proper only in St. Louis County against a municipality located in St. Louis County.

In the case of City of Bella Villa v. Nicholls, 698 S.W.2d 44 (ED Mo. App 1985), the Court of Appeals issued a writ of prohibition to order transfer. The Bella Villa case and Relator's case are significantly similar. The Court of Appeals, following long standing principles of statutory construction, explained that where a general and a special statute deal with the same subject matter, the specific statute prevails. Section 508.050 RSMo is a special venue statute that pertains to municipal corporations. It prevails over the general venue statute Section 508.010 RSMo when applying the rule in Bella Villa because Section 508.050 RSMo mandated that Bella Villa could be sued only in St. Louis County where it was located.

The same operative facts are present in this matter. Jennings is a municipality located in St. Louis County which has been sued in tort. As in Bella Villa, Section 508.050 RSMo, the special venue statute for municipalities, controls and suit must be brought in St. Louis County.

The public policy created by Section 508.050 RSMo has been violated by Respondent when Respondent applied the general venue statute over the special venue statute. Respondent violated long standing established statutory construction rules that jeopardizes the rights of every municipality in Missouri if

the ruling is permitted to stand. See Burlington Northern Railroad Co. v. Forder, 787 S.W.2d 725 (MO 1990) in which the Missouri Supreme Court recognized the special venue statute of Section 508.050 RSMo. This Court needs to continue to act to protect and preserve the special rights accorded to municipalities under Section 508.050 RSMo.

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

1. MISSOURI SUPREME COURT PRECEDENT SHOWS THAT SECTION 508.050 RSMO WAS NOT REPEALED BY HOUSE BILL 393

Notwithstanding the exact wording of Section 508.050 RSMo and the holding in the case of Bella Villa that Section 508.050 is the special venue statute that applies to municipalities over the more general venue statute, Respondent's Order applied Section 508.010 RSMo against Relator. Respondent made its ruling against the Missouri municipality, due to the changes in law made by Missouri House Bill 393 that allegedly applied to Section 508.050 RSMo.

House Bill 393 did not expressly repeal Section 508.050 RSMo to any extent. Therefore, Respondent's ruling can only be based on an assertion that House Bill 393 repealed Section 508.050 RSMo by implication.

Missouri courts have long held that repeal of a statute 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).

In the case of State ex rel. Eggers v. Enright, 609 S.W.2d 381 (MO banc 1980), the Court set out the rule related to repeal by implication. Applying the Eggers' rationale to this case it is clear that House Bill 393 did not repeal Section 508.050 RSMo in any manner, directly or by implication. Eggers, 609 S.W.2d at page 384, states in pertinent part:

“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.”

A review of the two statutes under review in this case, Section 508.010 RSMo and Section 508.050 RSMo, are clearly reconcilable in that Section 508.010 RSMo is the more general venue statute covering all types of actions and Section 508.050 RSMo (“Suits against municipal corporations”) is the more specific venue statute applicable to **municipalities only**.

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 Section 508.050 RSMo as a special venue exception for municipalities from the general venue requirements of Section 508.010 RSMo.

House Bill 393 contains no actual words or any indication of an intention to repeal or alter the special venue statute for municipalities. House Bill 393 expressly repealed various other special venue statutes (i.e. Section 508.040 RSMo – corporations, Section 508.070 RSMo – motor carriers) without repealing Section 508.050 RSMo, the special venue statute for municipalities.

The Act’s preamble and introductory language to House Bill 393 provides clear proof of the legislature’s intent. House Bill 393’s repealer and re-enactment wording is cited as follows:

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.

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 2001). Section 508.050 RSMo was not repealed and was not re-enacted by House Bill 393. It remained as it had been, a special exception applicable to municipalities. The legislature's intent to keep Section 508.050 RSMo in force as an exception to the revised Section 508.010 RSMo is clear. There is no reason why the Legislature would specifically identify some special venue statutes to repeal and not identify Section 508.050 RSMo in the same sequence of laws unless it intended to repeal only those statutes listed and not the unlisted Section 508.050 RSMo.

Courts are without authority to read into a statute legislative intent contrary to the intent made evident by the statute's plain language. See Kearney Spec. Road Dist. v. County of Clay, 863 S.W.2d 841 (MO banc 1993). The enactment's plain language did not repeal Section 508.050 RSMo and the courts should not read it as the trial court did.

It is for this Court to maintain the special protections that the trial court sought to remove. It is for this Court to continue the legislated special venue rights of all municipalities in Missouri.

The existing Section 508.050 RSMo is consistent with the Eggers 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 House Bill 393 specifically omitted Section 508.050 RSMo from the list of repealed statutes, it is clear from the words of the enactment that the legislature intended that Section 508.050 RSMo remain in effect to protect municipalities from unfavorable venue selections.

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

Because Missouri House Bill 393 expressly repealed statutes other than Section 508.050 RSMo, the rules of statutory construction recognized by Missouri courts and cited by legal scholars support the proposition that Section 508.050 RSMo has not been repealed by implication.

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

It is well established principle that a valid legislative enactment which contains 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 (SD Mo.App. 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. Because repeal of the old statute and the enactment of another was NOT clearly intended and expressly stated, the Courts have no responsibility or authority but to follow and apply the legislative will as expressed – to maintain Section 508.050 RSMo as a special venue statute for municipalities’ protections.

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. A statutory provision expressly repealing specific statutes may serve to disprove that the subsequent statute was intended to be exclusive. Id. at §23.13.

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

Several Missouri have discussed instances where 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. Relator has identified these cases and argued them well. The League adopts the arguments made by Relator as if they were restated here.

In Sales v. Barber Asphalt Pav. Co., 66 S.W. 979, 980 (MO 1902), 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.”

Similarly, in Wrightsmen 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. The Wrightsmen court analyzed the laws 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.

At issue here is whether the legislature intended that Section 508.050 RSMo be repealed when it was not mentioned in the repealer provision and when it is not repugnant to the sections revised. Under the cited cases and analysis it is clear that the rules of statutory construction require a finding by this Court that no further repeal was intended in House Bill 393. Section 508.050 RSMo is easily reconciled with the general venue law, Section 508.010 RSMo, and therefore it cannot be treated as repealed by implication.

CONCLUSION

Based on the foregoing facts, arguments and authority, Amicus Curiae Missouri Municipal League respectfully urges this Court to grant Relator the relief that it requests against Respondent .

Respectfully submitted,

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LEAGUE

CERTIFICATION PURSUANT TO SUPREME COURT RULE 84.06(c)

AND (g)

I, Ivan L. Schraeder, hereby depose and state as follows:

1. I am an attorney for Amicus Curiae Missouri Municipal League.
2. I certify that the foregoing Suggestions of Amicus Curiae Missouri Municipal League contains 3,219 words and 358 lines and thereby complies with the word and line limitations contained in Missouri Rule of Civil Procedure 84.06(b).
3. In preparing this Certificate, I relied upon the word count function of the Microsoft Word XP word processing software.
4. I further certify that the accompanying floppy disk containing a copy of the foregoing Suggestions of Amicus Curiae has been scanned for viruses and is virus-free.

Ivan L. Schraeder Mo. Bar No. 35383

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed,
postage pre-paid, via U.S. mail, on this ____ day of January, 2007, to:

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