

IN THE SUPREME COURT FOR THE STATE OF MISSOURI

State of Missouri ex rel., Missouri Public Service Commission)
)
)
 Relator,)
)
 vs.) Docket No. SC 89015
)
 The Honorable Gary Oxenhandler,)
 Circuit Judge for Boone County, Missouri,)
)
 Responden)

**ON APPEAL FROM THE
CIRCUIT COURT OF BOONE COUNTY, THIRTEENTH CIRCUIT
THE HONORABLE GARY OXENHANDLER, CIRCUIT JUDGE**

**BRIEF OF RELATOR
MISSOURI PUBLIC SERVICE COMMISSION**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

JURISDICTIONAL STATEMENT 6

STATEMENT OF FACTS 6

STANDARD OF REVIEW 8

POINTS RELIED ON:

I. Relator Is Entitled To An Order Prohibiting Respondent From Transferring Venue Because Section 386.600, RSMo Contains A Specific Venue Provision, In That The Specific Venue Provision In Section 386.600 Supersedes The General Venue Provisions Of Section 508.010 RSMo..... 14

II. Relator Is Entitled To An Order Prohibiting Respondent From Transferring Venue Because The Trial Court Relied On The *Thompson* Case And That Case Should No Longer Be Followed, In That The Line Of Cases On Which The *Thompson* Case Relied Have Been Expressly Overruled 15

III. Relator Is Entitled To An Order Prohibiting Respondent From Transferring Venue Because The *Thompson* Case Is Inapplicable, In That The Facts Of That Case Are Distinguishable From The Facts In This Case 17

IV. Relator Is Entitled To An Order Prohibiting Respondent From

Transferring Venue Because Recent Courts Have Not Followed The Reasoning Of The *Thompson* Case, In That Specific Venue Provisions Have Been Upheld In The Absence Of Service of Process Provisions In Statutes Containing Specific Venue Provisions19

V. Relator Is Entitled To An Order Prohibiting Respondent From Transferring Venue Because This Case Was Not Brought Pursuant To Section 386.570 RSMo, In That Section 386.570 Is Merely A Statute That Sets Out The Applicable Penalty Range For Violation Of Commission Orders And Section 386.570 Does Not Provide For An Independent Cause of Action19

VI. Relator Is Entitled To An Order Prohibiting Respondent From Transferring Venue Because Boone County Is A Convenient And Logical Forum For Adjudication As Required By Case Law, In That Suburban’s Only Business Operations And Its Entire Customer Base Are Located In Boone County And Suburban’s Registered Agent Was Located In Boone County Until Two Weeks Prior To The Filing Of The Underlying Penalty Action20

VII. Relator Is Entitled To An Order Prohibiting Respondent From Transferring Venue Because The Specific Venue Provisions Of Section 386.600 Should Be Given Effect, In That If The Provision Is Not Given Effect Any Corporation Subject To The Jurisdiction Of

**The Commission Would Be Able To Avoid Having To Defend A
Penalty Action In The Same County As Its Business Operations
Simply By Changing Its Registered Agent As Happened In This**

Case21

ARGUMENT 14

CONCLUSION 22

CERTIFICATE OF SERVICE 24

TABLE OF AUTHORITIES

Cases

<i>DePaul Health Center</i> , 870 S.W.2d at 822.....	17, 21
<i>Greenbriar Hills Country Club v. Director of Revenue</i> , 47 S.W.3d 346, 352 (Mo.banc 2001)...	14
<i>Hankins v. Smarr</i>	17
<i>Hankins v. Smarr</i> , 137 S.W.2d 499 Mo. 1940).....	16
<i>Id</i> 9	
<i>Id.</i>	9
<i>Id.</i> , citing <i>State ex rel. Nixon v. Estes</i> , 108 S.W.3d 795, 798 (Mo. App. W.D. 2003).....	14
<i>Igoe v. Department of Labor and Industrial Relations</i> , 152 S.W.3d 284, 288 (Mo.banc 2005)..	19
<i>Igoe v. Department. of Labor and Industrial Relations of the State of Missouri</i> , 152 S.W.3d 284, 289 (Mo.banc 2005).....	14
<i>Igoe</i> , 152 S.W.3d at 288.....	14
Rule 51.01	17
Section 386.600.....	passim
<i>Staley v. Missouri Director of Revenue</i> , 623 S.W.2d 246, 250 (Mo.banc 1981).....	15
<i>State ex rel. DePaul Health Center v. Mummert</i> , 870 S.W.2d 820, 822 (Mo.banc 1994)	16
<i>State ex rel. East Carter County R-II School Dist. v. Heller</i> , 977 S.W.2d 958, 959 (Mo. App. S.D. 1998)	9
<i>State ex rel. Elson v. Koehr</i> , 856 S.W.2d 57, 59 (Mo.banc 1993).....	21
<i>State ex rel. Green v. Neill</i> , 127 S.W.3d 677, 678 (Mo.banc 2004)	9
<i>State ex rel. Linthicum v. Calvin</i> , 57 S.W.3d 855, 856-57 (Mo.banc 2001).....	9
<i>State ex rel. McDonald’s Corp. v. Midkiff</i> , 226 S.W.3d 119, 122 (Mo.banc 2007)	9
<i>State ex rel. Minihan v. Aronson</i>	17
<i>State ex rel. Minihan v. Aronson</i> , 165 S.W.2d 404 (Mo. 1942), <i>Yates v. Casteel</i> , 49 S.W.2d 68 (Mo. 1932)	16
<i>State ex rel. Palmer by Palmer v. Goeke</i> , 8 S.W.3d 193, 196-97 (Mo. App. E.D. 1999)	9
<i>State ex rel. Private Nursing Service, Inc. v. Romines</i> , 130 S.W.3d 28, 28 (Mo. App. E.D. 2004)9	
<i>State ex rel. Smith v. Gray</i> , 979 S.W.2d 190, 192 (Mo.banc 1998).....	22
<i>State ex. rel DePaul Health Center v. Mummert</i> , 870 S.W. 2d 820, 822 (Mo. Banc 1994).....	16
<i>State v. Harris</i> , 156 S.W.3d 817, 822 (Mo. App. W.D. 2005)	14
<i>State v. Thompson</i> , 379 S.W.2d 824 (Mo. App. K.C. 1964)	16
<i>Thompson</i>	17, 18
<i>Thompson</i> , 379 S.W.2d at 825	18
<i>Thompson</i> , 379 S.W.2d at 825-26.....	22
<i>Thompson</i> , 379 S.W.2d at 826.....	16
<i>Wollard v. City of Kansas City</i> , 831 S.W.2d 200, 203 (Mo.banc 1992).....	15
<i>Yates v. Casteel</i>	17
Statutes	
386.570.....	20
Section 213.111.....	19
Section 386.570.....	20
SECTION 386.570	19

SECTION 386.570, RSMO	12
SECTION 386.600	13, 21
SECTION 386.600, RSMO	10
Section 506.110.1.....	16
Section 506.110.1(1).....	17
Section 508.010.....	15
Section 508.010, RSMo	14
SECTION 508.010, RSMO	10, 14
Rules	
Rule 55.13(3)	18
Rule 51.01	17

JURISDICTIONAL STATEMENT

This action is before this Court on Relator's Petition for Writ in Prohibition. Relator seeks a writ in prohibition to prohibit the trial court from granting a motion for change of venue in a case brought pursuant to Section 386.600, RSMo (2000). The Western District Court of Appeals denied Relator's petition for writ in prohibition. This Court issued a preliminary writ in prohibition. Relator seeks to have the preliminary writ made peremptory. This Court has jurisdiction to issue and determine original remedial writs pursuant to Article V, Section 4 of the Missouri Constitution.

STATEMENT OF FACTS

Relator Missouri Public Service Commission (Relator or Commission) is a legislative agency created to oversee the regulation of investor-owned public utilities by the state. (Relators's Exhibit 1, page A1). Suburban Water and Sewer Co. is (Suburban) is a Missouri corporation possessing a certificate of convenience and necessity granted by the Commission to provide water service to residents of the Bon-Gor Lakes subdivision in Boone County, Missouri. (Relator's Exhibit 1, page A2).

The Commission issued its Report and Order in Case No. WC-2007-0452 on August 28, 2007. (Relator's Exhibit 1, page A34). In that Report and Order, the Commission directed its Office of General Counsel to file a penalty petition in circuit court to seek monetary penalties for violations of a 2005 Commission Order. (Relator's Exhibit 1, page A59). The Commission's Office of General Counsel filed a penalty petition in Boone County Circuit Court on September 21, 2007. (Relator's Exhibit 1, page A1).

Suburban filed a Motion to Transfer Venue in Boone County Circuit Court on October 17, 2007. (Relator's Exhibit 3, page A63). Suburban asserted that venue was proper only in Cole County because Suburban's registered agent was located in Cole County. (Relator's Exhibit 3, pages A63-A64). Suburban changed its registered agent to an agent with an address in Jefferson City, Missouri, Cole County, on September 6, 2007. (Relator's Exhibit 3, page A77). Prior to the change made on September 6, 2007, Suburban's registered agent was Bonnie Burnam, with an address in Columbia, Boone County, Missouri. (Relator's Exhibit 3, page A77). Bonnie Burnam was the registered agent with a Columbia address at the time of the company's incorporation. (Relator's Exhibit 9). Bonnie Burnam remained the company's registered agent until September 6, 2007. (Relator's Exhibit 9). The Boone County Sheriff's office obtained service on the company on October 4, 2007. (Relator's Exhibit 2, page A62).

On June 29, 2007, the Honorable Gene Hamilton, presiding judge of the Boone County Circuit Court, held a hearing and entered a preliminary injunction against Suburban and its President Gordon Burnam. (Relator's Exhibit 10). This injunction ordered the Defendants to continue to provide safe and adequate water service until a change was approved by the Public Service Commission. (Relator's Exhibit 10). This preliminary injunction was made permanent upon Relator's motion for summary judgment on March 11, 2008. (Relator's Exhibit 11).

The trial court in the underlying penalty action, the Honorable Gary Oxenhandler, granted Suburban's Motion to Transfer Venue on November 28, 2007. (Relator's Exhibit 7, page A86). Relator's initial Petition for Writ of Prohibition seeking to prohibit the trial

court in Boone County Circuit Court from transferring the case to Cole County Circuit Court was denied by the Western District Court of Appeals without opinion on December 18, 2007. (Realtor’s Exhibit 8, page A87). This Court issued its Preliminary Writ of Prohibition on January 22, 2008. (Relator’s Exhibit 12).

STANDARD OF REVIEW¹

“Prohibition is an original proceeding brought to confine a lower court to the proper exercise of its jurisdiction.” *State ex rel. McDonald’s Corp. v. Midkiff*, 226 S.W.3d 119, 122 (Mo.banc 2007) citing *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855, 856-57 (Mo.banc 2001). “When venue is improper, prohibition lies to bar the trial court from taking any action, except to transfer the case to a proper venue.” *Id.*, citing *State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo.banc 2004). “A writ of prohibition is appropriate when a trial court improperly transfers venue.” *State ex rel. Private Nursing Service, Inc. v. Romines*, 130 S.W.3d 28, 28 (Mo. App. E.D. 2004), citing *State ex rel. East Carter County R-II School Dist. v. Heller*, 977 S.W.2d 958, 959 (Mo. App. S.D. 1998). “While it is true, as a general principle, that prohibition will not lie when an act has already been done, this principle has its exceptions. *State ex rel. Palmer by Palmer v. Goeke*, 8 S.W.3d 193, 196-97 (Mo. App. E.D. 1999). Prohibition will lie to undo acts done in excess of a court's jurisdiction, and to restrain the further enforcement of orders that are beyond or in excess of the authority of the judge. *Id.*” *Id.*

¹ This standard of review is applicable to each Point Relied On and each corresponding argument.

POINTS RELIED ON

- I. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE SECTION 386.600, RSMO CONTAINS A SPECIFIC VENUE PROVISION, IN THAT THE SPECIFIC VENUE PROVISION IN SECTION 386.600 SUPERSEDES THE GENERAL VENUE PROVISIONS OF SECTION 508.010, RSMO.**

Cases

Igoe v. Department of Labor and Industrial Relations of the State of Missouri, 152 S.W.3d 284 (Mo.banc 2005)

State v. Harris, 156 S.W.3d 817 (Mo. App. W.D. 2005)

Staley v. Missouri Director of Revenue, 623 S.W.2d 246 (Mo.banc 1981)

Wollard v. City of Kansas City, 831 S.W.2d 200 (Mo.banc 1992)

Statutes

Section 386.600, RSMo (2000)

Section 508.010, RSMo (2000)

- II. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THE TRIAL COURT RELIED ON THE THOMPSON CASE AND THAT CASE SHOULD NO LONGER BE FOLLOWED, IN THAT THE LINE OF CASES ON WHICH THE THOMPSON CASE RELIED HAVE BEEN EXPRESSLY OVERRULED.**

Cases

State v. Thompson, 379 S.W.2d 824 (Mo. App. K.C. 1964)

State ex rel. DePaul Health Center v. Mummert, 870 S.W.2d 820 (Mo. banc 1994)

Statutes

Section 386.600, RSMo (2000)

Missouri Supreme Court Rule 51.01

III. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THE *THOMPSON* CASE IS INAPPLICABLE, IN THAT THE FACTS OF THAT CASE ARE DISTINGUISHABLE FROM THE FACTS IN THIS CASE.

Cases

State v. Thompson, 379 S.W.2d 824 (Mo. App. K.C. 1964)

Statutes

Section 386.600, RSMo (2000)

Missouri Supreme Court Rule 55.13

IV. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE RECENT COURTS HAVE NOT FOLLOWED THE REASONING OF THE *THOMPSON* CASE, IN THAT SPECIFIC VENUE PROVISIONS HAVE BEEN UPHeld IN THE ABSENCE OF SERVICE OF PROCESS

PROVISIONS IN STATUTES CONTAINING SPECIFIC VENUE PROVISIONS.

Cases

Igoe v. Department of Labor and Industrial Relations, 152 S.W.3d 284

(Mo.banc 2005)

Statutes

Section 213.111, RSMo (2000)

- V. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THIS CASE WAS NOT BROUGHT PURSUANT TO SECTION 386.570, RSMO, IN THAT SECTION 386.570 IS MERELY A STATUTE THAT SETS OUT THE APPLICABLE PENALTY RANGE FOR VIOLATION OF COMMISSION ORDERS AND SECTION 386.570 DOES NOT PROVIDE FOR AN INDEPENDENT CAUSE OF ACTION.**

Statutes

Section 386.570, RSMo (2000)

Section 386.600, RSMo (2000)

- VI. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE BOONE COUNTY IS A CONVENIENT AND LOGICAL FORUM FOR ADJUDICATION AS REQUIRED BY CASE LAW, IN THAT SUBURBAN'S ONLY BUSINESS OPERATIONS AND ITS ENTIRE**

CUSTOMER BASE ARE LOCATED IN BOONE COUNTY AND SUBURBAN'S REGISTERED AGENT WAS LOCATED IN BOONE COUNTY UNTIL TWO WEEKS PRIOR TO THE FILING OF THE UNDERLYING PENALTY ACTION.

Cases

State ex rel. DePaul Health Center v. Mummert, 870 S.W.2d 820 (Mo.banc 1994)

VII. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THE SPECIFIC VENUE PROVISIONS OF SECTION 386.600 SHOULD BE GIVEN EFFECT, IN THAT IF THE PROVISION IS NOT GIVEN EFFECT ANY CORPORATION SUBJECT TO THE JURISDICTION OF THE COMMISSION WOULD BE ABLE TO AVOID HAVING TO DEFEND A PENALTY ACTION IN THE SAME COUNTY AS ITS BUSINESS OPERATIONS SIMPLY BY CHANGING ITS REGISTERED AGENT AS HAPPENED IN THIS CASE

Cases

State v. Thompson, 379 S.W.2d 824 (Mo. App. K.C. 1964)

State ex. rel Smith v. Gray, 979 S.W.2d 190 (Mo.banc 1998)

Statutes

Section 351.375, RSMo (2000)

Section 386.600, RSMo (2000)

ARGUMENT

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE SECTION 386.600, RSMO CONTAINS A SPECIFIC VENUE PROVISION, IN THAT THE SPECIFIC VENUE PROVISION IN SECTION 386.600 SUPERSEDES THE GENERAL VENUE PROVISIONS OF SECTION 508.010, RSMO.

Proper venue in Missouri is determined solely by statute. *Igoe v. Department of Labor and Industrial Relations of the State of Missouri*, 152 S.W.3d 284, 289 (Mo.banc 2005). Section 386.600 provides in relevant part “[a]n action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission.” A specific venue provision in a statute supersedes the general venue provisions of Section 508.010, RSMo. *Igoe*, 152 S.W.3d at 288. Similarly, where there is a repugnancy between a specific statute and a general statute, the specific statute is controlling. *Greenbriar Hills Country Club v. Director of Revenue*, 47 S.W.3d 346, 352 (Mo.banc 2001).

Courts interpreting a statute attempt to ascertain the meaning of the legislature. *State v. Harris*, 156 S.W.3d 817, 822 (Mo. App. W.D. 2005). Courts must also “consider and give meaning to all of the terms used in a statute.” *Id.*, citing *State ex rel. Nixon v. Estes*, 108 S.W.3d 795, 798 (Mo. App. W.D. 2003). Unless the legislature has provided an alternate definition, words in a statute are given their plain and ordinary meaning. *Id.*

“All provisions of a statute must be harmonized and every word, clause, sentence, and section thereof must be given some meaning.” *Staley v. Missouri Director of Revenue*, 623 S.W.2d 246, 250 (Mo.banc 1981). “The legislature is presumed not to enact meaningless provisions.” *Wollard v. City of Kansas City*, 831 S.W.2d 200, 203 (Mo.banc 1992).

Section 386.600 contains a specific venue provision. This specific venue provision supersedes the general venue provisions of Section 508.010. According to the specific venue provision of Section 386.600, this action could have been instituted in any circuit court in the state. Venue is therefore proper in Boone County.

Additionally, the Court should give effect to the specific venue provisions of Section 386.600 because it is more specific than the general revenue provision of Section 508.010. Requiring the general counsel to follow the general venue provisions of Section 508.010 when instituting a penalty action pursuant to Section 386.600 would render the specific venue provision of Section 386.600 meaningless. This Court must not presume that the legislature intended to enact a meaningless provision when it enacted the specific venue provision of Section 386.600.

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THE TRIAL COURT RELIED ON THE *THOMPSON* CASE AND THAT CASE SHOULD NO LONGER BE FOLLOWED, IN THAT THE LINE OF CASES ON WHICH THE *THOMPSON* CASE RELIED HAVE BEEN EXPRESSLY OVERRULED.

State v. Thompson, 379 S.W.2d 824 (Mo. App. K.C. 1964) should no longer be followed. The *Thompson* court held that because Section 386.600, RSMo does not contain specific service of process language, the general venue statutes were applicable. *Thompson*, 379 S.W.2d at 826. The *Thompson* court reasoned that Section 386.600 did not confer personal jurisdiction on a court beyond that court’s territorial limits. *Id.* In other words, the venue provision of Section 386.600 did not apply because the statute did not give the courts expanded personal jurisdiction, making service ineffective. *Id.* The *Thompson* court relied on a line of cases including *State ex rel. Minihan v. Aronson*, 165 S.W.2d 404 (Mo. 1942), *Yates v. Casteel*, 49 S.W.2d 68 (Mo. 1932), and *Hankins v. Smarr*, 137 S.W.2d 499 Mo. 1940).² The reasoning in these cases united the concepts of venue and personal jurisdiction by finding that a specific venue provision did not apply because the statute made no provision for service of process. Service of process is a jurisdictional issue, not a venue issue. As discussed, *infra*, Missouri courts and the legislature have decoupled the concepts of venue and personal jurisdiction.

The Missouri Supreme Court explicitly addressed the legislature’s intention to separate venue and jurisdiction in *State ex rel. DePaul Health Center v. Mummert*, 870 S.W.2d 820, 822 (Mo.banc 1994). The Court stated “[v]enue and personal jurisdiction address entirely different concerns, the coupling of which was the product of the use of the word ‘proper’ in Section 506.110.1. By removing ‘proper’ from Section

² As discussed below, these cases were expressly overruled in 1994. *See State ex. rel DePaul Health Center v. Mummert*, 870 S.W. 2d 820, 822 (Mo. Banc 1994).

506.110.1(1), the legislature severed the two concepts. A summons can now issue from a court in which venue is not proper. Assuming the summons is not itself defective for some other reason, proper service of that summons results in personal jurisdiction over the defendant served.” *DePaul Health Center*, 870 S.W.2d at 822. The Court went on to overrule the holdings of a long line of cases that had held otherwise, including *State ex rel. Minihan v. Aronson*, *Yates v. Casteel*, and *Hankins v. Smarr*. *Id.* Because the reasoning followed by the *Thompson* court is the result of the coupling of venue and personal jurisdiction and because both the legislature and the courts have since repudiated that line of reasoning, the holding in *Thompson* should no longer be followed and the decision in *Thompson* should be overturned by this Court.

In 1973, nine years after the *Thompson* case was decided, the Missouri Supreme Court promulgated Rule 51.01. That Rule provides: “These rules shall not be construed to extend or limit the jurisdiction of the courts of Missouri, or the venue of civil actions therein.” By adopting this Rule, the Missouri Supreme Court was making clear that venue and jurisdiction are separate concepts.

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THE THOMPSON CASE IS INAPPLICABLE, IN THAT THE FACTS OF THAT CASE ARE DISTINGUISHABLE FROM THE FACTS IN THIS CASE.

The facts of this case are distinguishable from the facts in *Thompson*. In *Thompson*, the Commission was asserting venue in Cole County, but the defendant resided in

Livingston County and service was had in Livingston County. *Thompson*, 379 S.W.2d at 825. The basis of the court's holding in *Thompson* was that the Circuit Court of Cole County did not have personal jurisdiction over the defendant and that the special venue provision of Section 386.600 did not confer personal jurisdiction over the defendant on the Circuit Court of Cole County. *Id.* at 825-826. As discussed *supra*, this line of reasoning is no longer followed in Missouri. However, even if venue and personal jurisdiction were still related as they were by the *Thompson* court, in this case service of process pursuant to Rule 55.13(3) was had on the Secretary³ of the defendant corporation in Boone County, the same county where venue is being asserted. There is no question that service of process was proper and that the Circuit Court of Boone County has jurisdiction over the defendant corporation.⁴ Thus, the problem addressed by the court in *Thompson*—the lack of personal jurisdiction in the county where venue is asserted—is not present in this case.

³ The Secretary of the corporation, Bonnie Burnam, was also the registered agent of the company until September 6, 2007. Bonnie Burnam had been the registered agent of the company since the corporation was created in 1972.

⁴ Boone County is the only county in Missouri where defendant operates. Defendant is a certificated water company providing water service to residents in the Bon Gor Estates subdivision in northeast Columbia. Defendant's principal place of business is in Boone County.

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE RECENT COURTS HAVE NOT FOLLOWED THE REASONING OF THE THOMPSON CASE, IN THAT SPECIFIC VENUE PROVISIONS HAVE BEEN UPHELD IN THE ABSENCE OF SERVICE OF PROCESS PROVISIONS IN STATUTES CONTAINING SPECIFIC VENUE PROVISIONS.

A specific venue provision in a statute supersedes the general venue statutes. *Igoe v. Department of Labor and Industrial Relations*, 152 S.W.3d 284, 288 (Mo.banc 2005). *Igoe* involved a case brought under Section 213.111. *Id.* Section 213.111 provides that suit may be brought in any county where unlawful discrimination is alleged to have occurred. Section 213.111 does not contain any provision for service of process. However, the *Igoe* court did not even discuss the lack of personal service provisions in upholding the specific venue provision. The *Igoe* case demonstrates that the reasoning of the *Thompson* case is no longer applicable in Missouri and the holding in *Thompson* should be overturned by this Court.

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THIS CASE WAS NOT BROUGHT PURSUANT TO SECTION 386.570, RSMO, IN THAT SECTION 386.570 IS MERELY A STATUTE THAT SETS OUT THE APPLICABLE PENALTY RANGE FOR VIOLATION OF COMMISSION ORDERS AND SECTION 386.570 DOES NOT PROVIDE FOR AN INDEPENDENT CAUSE OF ACTION.

Section 386.570 sets out the applicable penalty range for violations of law or Commission orders. Section 386.570 was referenced in Relator's Petition in the underlying Petition for Penalties in order to inform the court below of the penalties applicable to the violations alleged. Section 386.570 does not contain a venue provision because it does not provide for a cause of action. The cause of action and authority to proceed to circuit court based on alleged violations of law or Commission orders is found in Section 386.600. It is on Section 386.600 that Relator relied in bringing its Petition for Penalties in the underlying case. In the underlying penalty case, Relator bears the burden of establishing that the violations alleged occurred pursuant to Section 386.600. If and when the Relator meets its burden in the court below, Suburban will be subject to the penalties set forth in Section 386.570 and the court below will have to abide by the penalty range contained in Section 386.570 in rendering its decision.

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE BOONE COUNTY IS A CONVENIENT AND LOGICAL FORUM FOR ADJUDICATION AS REQUIRED BY CASE LAW, IN THAT SUBURBAN'S ONLY BUSINESS OPERATIONS AND ITS ENTIRE CUSTOMER BASE ARE LOCATED IN BOONE COUNTY AND SUBURBAN'S REGISTERED AGENT WAS LOCATED IN BOONE COUNTY UNTIL TWO WEEKS PRIOR TO THE FILING OF THE UNDERLYING PENALTY ACTION.

“[T]he propriety of venue is prescribed by statute.” *DePaul Health Center*, 870 S.W.2d at 822. “The primary purpose of Missouri’s venue statutes is to provide a convenient, logical, and orderly forum for the resolution of disputes.” *Id.*, citing *State ex rel. Elson v. Koehr*, 856 S.W.2d 57, 59 (Mo.banc 1993).

Boone County is a convenient, logical, and orderly venue in this case. The Defendant’s principal office is located in Boone County, as is the site of Defendant’s business operation. All of Defendant’s customers are located in Boone County. Defendant’s attorneys have their offices in Boone County. Defendant will not be inconvenienced by having to defend this case in Boone County. The company’s registered agent was located in Boone County until two weeks prior to the filing of the underlying penalty action. Defendant should not be allowed to defeat Relator’s choice of forum solely by a change of agent when it becomes apparent that a penalty action is imminent. This is particularly true when the chosen forum is also the most convenient and logical forum for the defendant and where previous litigation involving the same parties has already occurred.

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TRANSFERRING VENUE BECAUSE THE SPECIFIC VENUE PROVISIONS OF SECTION 386.600 SHOULD BE GIVEN EFFECT, IN THAT IF THE PROVISION IS NOT GIVEN EFFECT ANY CORPORATION SUBJECT TO THE JURISDICTION OF THE COMMISSION WOULD BE ABLE TO AVOID HAVING TO DEFEND A PENALTY ACTION IN THE SAME COUNTY

AS ITS BUSINESS OPERATIONS SIMPLY BY CHANGING ITS REGISTERED AGENT AS HAPPENED IN THIS CASE.

Section 386.600, RSMo contains a specific venue provision that allows the Commission's general counsel to bring a penalty action in any circuit court of the state. This provision allows the general counsel to bring the action in the county that has been most affected by the violations alleged in the petition and where the customers served by the defendant reside. However, the *Thompson* case prevents this logical result by its holding that the general venue provisions apply. *Thompson*, 379 S.W.2d at 825-26. Under Section 351.375.3, a corporation defendant resides where it keeps its registered office. *State ex rel. Smith v. Gray*, 979 S.W.2d 190, 192 (Mo.banc 1998).

In this case, all of Suburban's business operations occur in Boone County and all of their customers are located there. The Commission obtained injunctions in Boone County Circuit Court to ensure that Suburban complies with its statutory duty to provide safe and adequate water service. The harm arising from the violations alleged by the Commission in the underlying case accrued in Boone County. Since its incorporation in 1972, Suburban had maintained a registered agent in Boone County. Following an adverse finding by the Commission in a case occurring at the Commission level, Suburban was aware that a penalty action would likely be commenced against it. By the simple expedient of changing its registered agent to an agent in Cole County, Suburban is attempting to avoid having to defend a penalty action in the county where the harm alleged in the petition for penalties occurred and where injunctions are currently in place to maintain water service to residents residing only in Boone County. Such a result is not

only unjust in this case, it could lead to unjust results in other cases as well. The Commission's office of the general counsel often chooses to bring penalty actions in the county that has been most harmed by the alleged violations. Corporations would be able to avoid having to defend penalty actions in the county where that corporation is alleged to have committed violations by doing nothing more than filing for a change of registered agent. This result would work an injustice on Missouri residents who are harmed by companies who are subject to the jurisdiction of the Public Service Commission. This Court should give effect to the specific venue provision in Section 386.600 and should overturn the holding in *Thompson* to avoid this result.

CONCLUSION

WHEREFORE, Relator respectfully requests that this Court make its preliminary Writ of Prohibition peremptory, that this Court make a finding that venue is proper in Boone County, that this Court enter an Order prohibiting the Honorable Gary Oxenhandler from transferring this case to Cole County for trial and grant such other relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that copies of the foregoing document has been served by overnight delivery to the Honorable Gary Oxenhandler at the Boone County Circuit Court in Columbia, Missouri, and to Tom Harrison and Matt Volkert, VanMatre, Harrison, Volkert & Hollis, 1103 E Broadway, P.O. Box 1017, Columbia, Missouri and hand delivered to Christina Baker, Office of Public Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri, prior to or on the date of filing this 21st day of March, 2008.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief of Respondent Missouri Public Service Commission complies with the limitations contained in Rule 84.06 and that:

- (1) The signature block above contains the information required by Rule 55.03;
- (2) The brief complies with the limitations contained in Rule 84.06(b);
- (3) The brief contains 4,403 words, as determined by the word count feature of Microsoft Word;
- (4) I am filing with this brief a computer disk which contains a copy of the above and foregoing brief in the Microsoft Word format; and
- (5) That the attached computer disk has been scanned for viruses and that it is virus free.

I further certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the service list the 21st day of March, 2008.

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