

IN THE SUPREME COURT OF THE STATE OF MISSOURI

State of Missouri, ex rel. KENNETH ZELLERS)
 Acting Director, MISSOURI DEPARTMENT)
 OF REVENUE,)
 Relator,)
 v.) Cause No. SC97787
) Eastern District No. ED107654
 The Honorable BRENDA STACEY, Judge) 23rd Circuit No. 18JE-CC00805
 Division IV, Circuit Court of Jefferson County,)
 Missouri,)
 Respondent.)

RESPONDENT'S BRIEF

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STATEMENT OF GROUNDS FOR JURISDICTION

Jefferson County 9-1-1 Dispatch (hereinafter referred to as “911 Dispatch”), a properly organized political subdivision filed suit against the Director of the Missouri Department of Revenue (hereinafter referred to as the “Department”) on November 16, 2018 in the Circuit Court of Jefferson County, Missouri. The Department filed a motion to change venue to the Circuit Court of Cole County, Missouri, alleging that venue was improper. On February 12, 2019, the Honorable Brenda Stacey denied the Department’s motion to transfer. The Department applied to the Missouri Court of Appeals, Eastern District, and the Honorable Lisa Page denied the writ. The Missouri Supreme Court now has jurisdiction over this matter under the Missouri Constitution Art. V § 4 and Missouri Supreme Court Rules 84.22, 84.24 and 97.

STATEMENT OF FACTS

The Department has issued direction regarding the implication and implementation of the recently enacted Section 190.460 RSMo. Issues regarding the implication of laws are governed by the specific venue Statute Section 536.050. The Missouri legislature passed RSMo §190.460 which restricted 911 Dispatch from collecting both a tax under RSMo §190.292 or §190.335, and collecting the Prepaid Wireless Emergency Telephone Service Charge (hereinafter referred to as “PWETSC”). In the underlying cause of action 18JE-CC00805, 911 Dispatch seeks an injunction and a Declaratory Judgment based on the Department of Revenue’s (hereinafter referred to as the “Department”) interpretation of the legislation.

On or about February 12, 2019, the Trial Court ruled that venue was proper in Jefferson County, essentially determining that the e-mail produced by the Department on or about October 4, 2018 constituted a rule, which was regulatory in nature. The Missouri Court of Appeals of the Eastern District upheld the determination that venue was proper in Jefferson County, Missouri, on or about March 20, 2019.

Interpretation and implementation of regulation regarding a State Statute is a function of State government, using its authority to govern in a local context. The issue of implementation of a State Statute on a county entity, should be adjudicated in the county in which the entity is located.

POINT RELIED ON

THE DEPARTMENT IS NOT ENTITLED TO A TRANSFER OF VENUE, BECAUSE THE HONORABLE BRENDA STACEY DID NOT ERR IN FINDING THAT VENUE IS PROPER IN JEFFERSON COUNTY, MISSOURI BASED ON RSMo. 536.050 IN WHICH THE DEPARTMENT BECAME REGULATORY IN NATURE.

RSMo. 536.050

Edwards v. Gerstein, 237 S.W.3d 580 (Mo. Banc 2007)

State ex rel. Public Service Com'n v. Joyce, 258 S.W.3d 58 (Mo., 2008)

ARGUMENT

The Department is not entitled to a transfer of venue, because the Honorable Brenda Stacey did not err in finding that venue is proper in Jefferson County, Missouri based on the Section 536.050 in which the Department became regulatory in nature.

STANDARD OF REVIEW

“The standard of review for writs of mandamus and prohibition, including those pertaining to motions to transfer venue, is abuse of discretion, and an abuse of discretion occurs where the circuit court fails to follow applicable statutes”. *State ex rel. Public Service Com’n v. Joyce*, 258 S.W.3d 58, 61, (Mo., 2008). Accordingly, the Honorable Judge Brenda Stacey did not abuse her discretion, as Section 536.050 is the controlling venue statute.

A. Venue is proper in Jefferson County, Missouri

The Department argues that the only proper venue is Cole County pursuant to RSMo §508.010.2, and that RSMo §536.050 is inapplicable. RSMo §508.010.2 is further interpreted by *Edwards v. Gerstein*, 237 S.W.3d 580, 583-584 (Mo. Banc 2007) which states “when a state agency is the sole defendant and there is no otherwise applicable special venue statutes, Section 508.010(1) applies and renders Cole County as the proper venue”.

However, in this case, Section 508.010 is not applicable. The Department took an additional step, which was regulatory in nature. Once the Department took this regulatory step (whether it did so correctly or not), this matter became regulatory in nature. 911

Dispatch sought a Declaratory Judgment and RSMo §536.050 became the controlling venue statute. RSMo §536.050 states in relevant part “the venue of such suits against agencies shall, at the option of the Plaintiff, be in the circuit court of Cole County **or** in the county of the Plaintiff’s residence” (emphasis added). 911 Dispatch, the plaintiff in this matter, has chosen the county of its residence.

A Department representative, Mark Siettmann sent an e-mail on or about October 24, 2018 to an employee of the Department of Public Safety interpreting the legislation described above which is attached to the Appendix being filed herewith. Exhibit A. The e-mail states that it is “the Department of Revenue’s strong interpretation” that “a jurisdiction cannot have both an existing tax under 190.292 or 190.335 and the PWETSC fee”. This e-mail is clearly regulatory in nature, and as a result Section 508.010 is not the governing venue statute and the Honorable Judge Stacey’s ruling should be upheld.

Conclusion

For the above stated reasons, Respondent requests this court quash its preliminary writ of prohibition against the Honorable Brenda Stacey, and find that Jefferson County Circuit Court is the appropriate venue for the underlying cause of action to be adjudicated.

Respectfully submitted,

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RULE 84.06(c) CERTIFICATION AND CERTIFICATE OF SERVICE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 201607 and contains no more than 1003 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure (less than the 27,900 limit in the rules). The font is Times New Roman, proportional spacing, 13-point type. An electronic copy of the full text of this brief has been served on each party separately represented by counsel via the court's electronic filing system.

Respectfully submitted,

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