

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

LEMAY FIRE PROTECTION DISTRICT,)	No. ED95318
Relator/Appellant,)	Appeal from the Circuit Court
v.)	of St. Louis County
ST. LOUIS COUNTY, MISSOURI,)	Honorable Barbara W. Wallace
Respondent/Respondent,)	Date: April 12, 2011
and)	
CITY OF MARYLAND HEIGHTS,)	
Intervenor/Respondent.)	

A fire protection district filed a petition for writ of mandamus seeking to compel St. Louis County to share with the district the gaming tax revenues that the County receives from a casino pursuant to the gaming tax statute, section 313.822 RSMo (2000). The trial court granted the County's and intervenor's motion to dismiss for failure to state a claim upon which relief can be granted on the ground that section 313.822 did not clearly establish the district's right to receive gaming taxes from the County, and it dismissed the petition with prejudice.

AFFIRMED.

Division Two Holds:

1. The relator seeking mandamus must allege "that he has a clear, unequivocal, specific right to a thing claimed." Mandamus may not be used to establish a legal right, it may only be used to compel performance of a right that already exists. The writ's purpose is to execute, not adjudicate.
2. In this case the fire protection district was attempting to establish a new right to gaming tax revenues from the county, not to compel the performance of a clear, unequivocal and specific right that already existed in section 313.822(1).

Opinion by: Kathianne Knaup Crane, J.
Glenn A. Norton, P.J. and George W. Draper, J., concur.

Attorney for Appellant: Matthew E. Hoffman

Attorney for Respondent: Cynthia Hoemann

Attorneys for Intervenor: Howard Paperner and Lilian H. Doan

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