

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**ERIK JAMES FOLKEDAH,
RESPONDENT**

vs.

**DIRECTOR OF REVENUE,
APPELLANT**

DOCKET NUMBER WD71046

DATE: APRIL 13, 2010

Appeal from:

Platte County Circuit Court
The Honorable Daniel M. Czamanske, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Victor C. Howard and Zel M. Fischer, JJ.

Attorneys:

Jeremy Webb, for Respondent

Jonathan H. Hale, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ERIK JAMES FOLKEDAHL, RESPONDENT

v.

DIRECTOR OF REVENUE, APPELLANT

WD71046

Platte County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Victor C. Howard and Zel M. Fischer, JJ.

After receiving a notice of suspension or revocation of his driving privilege, Erik Folkedahl filed a timely request for an in-person administrative hearing in the county of his arrest to review the suspension or revocation. Although the arrest occurred in Platte County, a full administrative hearing was held in Clay County without objection from Folkedahl, and Folkedahl's driving privilege was suspended. Folkedahl then filed a petition in Platte County seeking review of the decision pursuant to section 302.311. The trial court sustained the petition for review and set aside the suspension of Folkedahl's driving privilege. The Director of Revenue appeals.

REVERSED AND REMANDED.

Division Two holds:

In order to proceed under section 302.311, Folkedahl was required to show that a procedural error by the Director rendered judicial review under section 302.535 unavailable. While the Director set Folkedahl's hearing in the wrong county, where a full hearing was held without objection from Folkedahl and all statutory prerequisites were met at both the administrative and trial level, the Director's error did not render review under section 302.535 unavailable. Therefore, the trial court did not have authority to reinstate Folkedahl's driving privilege based on a petition for review under section 302.311. The judgment is reversed and remanded to the trial court with directions to enter a judgment dismissing Count II of Folkedahl's petition requesting review pursuant to section 302.311.

Opinion by: Victor C. Howard, Judge

Date: April 13, 2010

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