

CHAPTER III. - JURISDICTION - VENUE – TIME

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CHAPTER III

JURISDICTION, VENUE, AND TIME COMPUTATIONS

3.1 SCOPE OF CHAPTER

This chapter discusses principles of jurisdiction, venue, and time computations as applied to the municipal courts, with attention to some special problems.

3.2 SOURCE AND DISTRIBUTION OF JUDICIAL POWER

The power vested in the Missouri court system is derived from Article V of the Missouri Constitution. “The judicial power of the state shall be vested in a supreme court, a court of appeals consisting of districts as prescribed by law, and circuit courts,” Mo.Cons. Art. V, Sec. 1. Municipal courts are “... divisions of the circuit court of the circuit in which the municipality, or major geographical portion thereof, is located,” sec. 479.020.5, RSMo. (2000). Rule 37.06 defines “court” as “a division of the circuit court having jurisdiction to hear ordinance violations,” and “municipal division” as “any division of the circuit court presided over by a judge having original jurisdiction to hear and determine municipal ordinance violations.” By statute, municipal judges “...shall have original jurisdiction to hear and determine all violations against the ordinances of the municipality,” sec. 479.020.1, RSMo. (All references are to RSMo 2000 unless otherwise noted.)

JURISDICTION-DEFINITION AND PRINCIPLES

3.3 DEFINITION

“Jurisdiction connotes the power to decide a case on the merits,” Wigglesworth v. Wyrick, 531 S.W.2d 713, 721[5-7] (Mo.banc 1976), (citing 21 C.J.S. “Courts”, sec. 15c). As applied to criminal cases, jurisdiction refers to the power of a court to hear and resolve the case of a criminal offense, to render a valid judgment, and to declare punishment. See Searcy v. State, 981 S.W.2d 597 (Mo.App.W.D. 1998). As divisions of the circuit courts, the jurisdiction of municipal courts is limited to ordinance violations. Mo. Cons. Art. V, Sec. 23; see also sec. 479.020.1, RSMo. “A municipal judge may hear and determine municipal ordinance violation cases of the municipality or municipalities making provision for the particular municipal judge.” Sec. 478.230, RSMo. A municipal judge could also be assigned by the presiding judge of the circuit to hear and determine ordinance violation cases in another municipality within the circuit, so long as the other municipality has made arrangements for the compensation of the assigned judge, pursuant to the provisions of Sec. 478.240.2(1), RSMo. A municipal judge is specifically without jurisdiction to hear cases involving state law violations. City of Kansas City v. May, 760 S.W.2d 534 (Mo.App.W.D. 1988). “If, in the progress of any trial before a municipal judge, it shall appear to the judge that the accused ought to be put upon trial for an offense against the criminal laws of the state and not cognizable before him as municipal judge, he shall immediately stop all further proceedings before him as municipal judge and cause the complaint to be made before some associate circuit judge within the county.” Sec. 479.170, RSMo.

3.4 PRINCIPLES OF JURISDICTION

In order to assert jurisdiction and exercise judicial power to decide a case on the merits, the municipal court must have subject matter jurisdiction, and must acquire jurisdiction over the particular case and over the person of the defendant. See, e.g., Schneider v. Sunset Pools of St. Louis, Inc., 700 S.W.2d 137, 138[1-3] (Mo.App.E.D. 1985). “The term ‘jurisdiction’ may bear one of several different meanings. It may be used with the connotation of jurisdiction over the subject matter. (Citation omitted.) Or, it may be used in the sense of the power to render the particular judgment in question. (Citation omitted.) Or, in the sense of venue. (Citation omitted.) Or, the term may refer to jurisdiction of the person. (Citation omitted.)” Jennings v. State, 631 S.W.2d 361, 363 [2] (Mo.App.S.D. 1982).

3.5 SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is defined as the type or class of cases that a court has been empowered to hear. Bass v. Director of Revenue, 793 S.W.2d 923, 926 (Mo.App.S.D. 1990); Farrar v. Moore, 416 S.W.2d 711, 713 (Mo.App.S.D. 1967). By constitutional provision, the class or type of cases the municipal courts have been empowered to hear is limited to adjudication of ordinance violations only. “A municipal judge shall hear and determine violations of municipal ordinances in one or more municipalities,” Mo. Cons. Art. V, Sec. 23. An ordinance is “... a law enacted by a municipality or county,” Rule 37.06. Municipal judges have original jurisdiction to hear and determine all violations against the ordinances of the municipality pursuant to sec. 479.040.1, RSMo. Subject matter jurisdiction cannot be conferred on the court by agreement of the parties and cannot be waived. Fitzgibbons v. Director of Revenue, 891 S.W.2d 566, 568[2-4] (Mo.App. E.D. 1995). It should be noted that the court is under a continuing obligation to notice lack of jurisdiction at any point during the pendency of a case. “Lack of jurisdiction or the failure of the information to charge an ordinance violation shall be noticed by the court at any time during pendency of the proceeding.” Rule 37.51(b)(2). Specifically, a defendant cannot be found to have waived lack of subject matter jurisdiction where no information has been filed by the prosecuting authority. Brown v. State, 3 S.W.3d 676, 678-79[4-6] (Mo.App.S.D. 2000).

3.6 JURISDICTION OVER THE CASE

The municipal court acquires jurisdiction over a case upon the filing of an information by the prosecuting authority for the municipality. “All prosecutions for the violation of municipal ordinances shall be instituted by information and may be based upon a complaint.” Sec. 479.090 RSMo. See also Rules 37.34-37.41 regarding the filing of an information in municipal court. As provided in Rule 37.34, “The information shall be supported by a violation notice as prescribed by Rule 37.33.”

3.7 JURISDICTION OVER THE PERSON

The most common method of acquiring jurisdiction over the person of the defendant is by service of a summons on defendant by any of the means authorized in Rules 37.42-37.44. As provided in Rule 37.42, the summons must be in writing and in the name of the prosecuting county or municipality; must state the name of the person summoned and his/her address if known; must describe the ordinance violation charged; must be signed by the judge or the clerk;

and must command the person to appear at a specified date and time. Rule 37.43 requires that, where an information has been filed, a summons shall be issued. Rule 37.44 permits service of the summons by mail addressed to defendant's last known address, or by an officer. The court also acquires jurisdiction over the defendant upon defendant's arrest for an ordinance violation, whether the arrest is accomplished with or without an arrest warrant provided that an information has been filed. Regarding arrest warrants, see Rules 37.45 and 37.46.

In the circumstance in which the person named in a violation notice, information, summons, or warrant appears in court to assert his innocence and to claim that another person, known or unknown, has wrongfully used his name, the court has thereby obtained jurisdiction over the person of the named defendant, notwithstanding his asserted defense of identity theft. Where the defendant has neither been served with a summons or violation notice, nor taken into custody, the defendant may nonetheless submit his person to the jurisdiction of the court by entering an appearance in a pending case either in person or by authorized representative, or by filing pleadings, motions, or other documents that submit defendant to the jurisdiction of the court. For a more detailed discussion of this topic, see Chapter IV of this deskbook.

SPECIAL PROBLEMS INVOLVING JURISDICTIONAL ISSUES

3.8 DEFECTS IN THE INFORMATION

It has been held that certain defects in the information deprive the trial court of jurisdiction. See, e.g., City of Joplin v. Graham, 679 S.W.2d 897, 899 (Mo.App.S.D. 1984) (lack of prosecutor's signature on information held to deprive trial court of jurisdiction); City of Cool Valley v. LeBeau, 824 S.W.2d 512 (Mo.App.E.D. 1992) (held that trial court acquired no jurisdiction because information was insufficient). However, the precedential value of these cases is now suspect for a number of reasons. In State v. Parkhurst, 845 S.W.2d 31, at 34-35 (Mo.banc 1992), the Missouri Supreme Court noted that "Subject matter jurisdiction of the circuit court and sufficiency of the information or indictment are two distinct concepts. *** Cases stating that jurisdiction is dependent upon the sufficiency of the indictment or information mix separate questions." The implication of Parkhurst is that the municipal court is not deprived of jurisdiction over a case merely because the information is found to be insufficient. Later appellate decisions have specifically held that insufficiency of the information does not deprive the trial court of subject matter jurisdiction. See State v. Sparks, 916 S.W.2d 234 (Mo.App.E.D. 1995); Wright-El v. State, 890 S.W.2d 644 (Mo.App.E.D. 1994); and State v. Patrick, 920 S.W.2d 633 (Mo.App.S.D. 1996). See also Rule 37.41: "An information shall not be invalid, nor shall the trial, judgment, or other proceedings on the information be stayed, because of any defect that does not prejudice the substantial rights of the defendant."

3.9 STATUTE OF LIMITATIONS

There is no prescribed statute of limitations for commencement of prosecution of ordinance violations. However, sec. 556.036.2(2), RSMo establishes a one-year statute of limitations for prosecution of misdemeanors. In St. Louis County v. Corse, 913 S.W.2d 79 (Mo.App.E.D. 1995), the court considered a St. Louis County zoning code penalty provision which authorized the imposition of up to a five hundred dollar fine and up to six months in jail for a zoning violation. In determining whether the statute of limitations for institution of a prosecution under the zoning code was six months or one year, the court concluded "We hold the limitation for

filing a charge for an ordinance violation, punishable by fine and jail time, is one year.” Id. at 81. But see City of Chesterfield v. DeShetler Homes, Inc., 938 S.W.2d 671, (Mo.App.E.D. 1997), in which the court held that the applicable statute of limitations for filing a zoning violation case in municipal court under Chesterfield city ordinances was five years, where the defendant corporation had “...sought, and was granted, removal to circuit court,” id. at 674[10,11]. The court purported to distinguish DeShetler from Corse, supra, on the grounds that Corse involved a county ordinance and DeShetler involved a city ordinance.

3.10 DISQUALIFICATION OF JUDGE AND WAIVER OF DISQUALIFICATION

“A change of judge shall be ordered upon the filing of a written application therefore by any party. The applicant need not allege or prove any reason for such change. The application need not be verified and may be signed by any party or an attorney for any party. *** No party shall be allowed more than one change of judge pursuant to this Rule 37.53©.” See also sec. 479.220, RSMo. It has been held that a judge who has been disqualified may nonetheless rule on matters that were under submission at the time of the disqualification, but after that point the judge may then exercise no further jurisdiction over the case. See, e.g., State ex rel. Johnson v. Mehan, 731 S.W.2d 887, 888 (Mo.App.E.D. 1987). However, disqualification of a judge can be waived by the parties, thereby reestablishing that judge’s jurisdiction over the case. In State v. Purdy, 766 S.W.2d 476, 478 (Mo.App.E.D. 1989), the court held that disqualification of a judge can be waived by the parties either expressly or by conduct. Thus, when neither party objected to trial by the judge who had been disqualified on the case nearly a year earlier, both parties were held to have waived the disqualification by their conduct and the result of the trial was allowed to stand. See also Ferguson v. Pony Express Courier Corp., 898 S.W.2d 128, 130 (Mo.App.W.D. 1995); Holly v. State, 924 S.W.2d 868, 869-70 (Mo.App.S.D. 1996); State v. Baller, 949 S.W.2d 269, 274 (Mo.App.E.D. 1997). For further discussion of this topic, see Chapter VII of this deskbook.

3.11 LIMITATION OF PROBATIONARY PERIOD; REVOCATION OF PROBATION

Rule 37.64(e) provides “If authorized by law, the judge may suspend the imposition or execution of sentence and place the defendant on probation or parole for a term not to exceed two years.” Sec. 479.190.1, RSMo authorizes the municipal court to grant probation or parole but does not place a time limit on the period of probation. Sec. 479.140.4, RSMo authorizes the court to modify or enlarge the conditions of probation at any time prior to expiration or termination of the probation term. Rule 37.70 “Revocation of Probation or Parole” provides that “A judge may revoke probation or parole upon compliance with section 559.036, RSMo but not otherwise, except that notice of the hearing may be mailed in the same manner as a summons.”

Courts examining questions about the extension and revocation of probation have held that where a maximum period of probation is prescribed by law, the probationary court cannot extend the period beyond the maximum, nor initiate action to terminate probation once the maximum period of probation has been reached. In the misdemeanor case of Jordan v. Flynn, 903 S.W.2d 261 (Mo.App.E.D. 1995), the court held that by operation of law, the trial court lost jurisdiction to revoke probation and impose sentence after the maximum two-year period of probation was reached, even though the trial court had entered orders during the two-year period which purported to “suspend” the running of the probationary period. However, with respect to state law violations, sec. 559.036.3, RSMo as amended in 1995 now authorizes state trial courts to

impose an entirely new maximum period of probation in cases where the defendant initially received a suspended imposition of sentence and is subsequently sentenced for violating conditions of probation. Does this mean municipal courts have the same power? In this regard, the reasoning in State ex rel. Musick v. Dickerson, 813 S.W.2d 75 (Mo.App.S.D. 1991) is persuasive: "...the basic limitation on probation is the classification of the crime for which probation is granted." Id. at 77. Rule 37.64 establishes a two-year limitation on the maximum period of probation allowable for an ordinance violation, without exception. Your author concludes that two years is the maximum period of probation that can be imposed for an ordinance violation without regard to whether defendant initially received an SIS or SES.

VENUE

3.12 DEFINITION

"[V]enue denotes locality, the place where the suit should be heard." Wigglesworth v. Wyrick, supra, 531 S.W.2d at 721. "Violations of municipal ordinances shall be tried only before divisions of the circuit court as hereinafter provided in this chapter." Sec. 479.010, RSMo. Venue for an ordinance violation case lies in the municipal court of the municipality within which the offense occurred, sec. 479.020.1, RSMo unless the municipality has elected to have such cases heard and determined by an associate circuit judge, sec. 479.040.1, RSMo. In the latter instance, venue lies in the associate division of the circuit within which the municipality is located. Id.

3.13. PROOF OF VENUE AND SUBJECT MATTER JURISDICTION

In felony and misdemeanor cases, "... venue is not an integral part of a criminal offense and need not be proven beyond a reasonable doubt or by direct evidence, but it may be inferred from all the evidence." State v. Valentine, 506 S.W.2d 406, 410 (Mo. 1974). In ordinance cases, however, the fact that a violation was committed within the city limits is an integral part of the offense and must be proven to show that the municipal court is the proper venue and that the court has subject matter jurisdiction. "We note that it is basic to any criminal or quasi-criminal prosecution that the offense has to occur within the jurisdiction of the court hearing the case." City of Cool Valley v. LeBeau, supra, 824 S.W.2d at 513[2-4]. "A court has jurisdiction if it has judicial authority over the subject matter and parties." City of Springfield v. Waddell, 904 S.W.2d 499, 505[12,13] (Mo.App.S.D. 1995). Because the police power of a municipality is geographically limited to the area within its boundaries, the judicial power of the municipal court is likewise limited to adjudication of ordinance violations that occur within the corporate limits of the municipality. Proof that an offense occurred at a place located within the city limits may be established by direct evidence, or by circumstantial evidence such as by taking judicial notice of matters within the common knowledge of the residents of the municipality such as the location of particular landmarks or streets. See State v. Spain, 759 S.W.2d 871, 874 (Mo.App.E.D. 1988).

TIME COMPUTATIONS

3.14 RULE

Rule 37.09 establishes the manner in which time periods are to be computed, and should be

referred to for any specific questions about computation. The day on which a specified period begins to run is not to be included in the total count of that period, and the final day of a period is never deemed to fall on a Saturday, Sunday, or legal holiday; Rule 37.09(a).

3.15 TOLLING

The expiration of any period of time prescribed or allowed by Rule 37, by statute, or by order of the court is tolled until the next regular business day if the expiration date falls on a Saturday, Sunday, or legal holiday. If the period of time prescribed or allowed is less than seven days, intervening weekends and legal holidays are excluded from the count. Rule 37.09(a).

3.16 ENLARGEMENT OF TIME

Pursuant to Rule 37.09(b) the court has discretion to expand the period of time for completion of an act, with the exception that the court may not order an extension of time for filing and perfection of an application for trial de novo; Rule 37.09(b), Rule 37.71(a). It should be noted that effective January 1, 2000, Rule 37.71(a) was amended to read, "An application for trial de novo shall be filed as provided by law." The applicable law is found in sec. 479.200.2, RSMo, which provides in relevant part "An application for a trial de novo shall be filed within ten days after judgment and shall be filed in such form and perfected in such manner as provided by supreme court rule." If a timely request for an extension of time is filed in an appropriate case, no motion or notice is required for the court in its discretion to grant the extension; Rule 37.09(b). If the request for an extension of time is made by motion and notice filed after the expiration of the period, the court may enlarge the period upon finding that the failure to act was the result of excusable neglect; Rule 37.09(b). When a party is notified by mail of an obligation or right to take some action within a specified period of time after service of the notice, three days must be added to the total period; Rule 37.09(b).

3.17 COURT DEEMED ALWAYS OPEN

"The court shall be deemed always open for the purpose of filing proper papers, the issuance and return of process, and for the making of motions, applications, and orders." Rule 37.10(a).