

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA

DOUGLAS K. PHILLIPS, pro se,

Plaintiff,

Case No. 16-2006-CA-007274

Division CV-E

vs.

JAMES ZINGALE, EXECUTIVE  
DIRECTOR, FLORIDA  
DEPARTMENT OF REVENUE,

Defendant.

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DEFENDANT'S MOTION TO DISMISS OR TRANSFER  
FOR IMPROPER VENUE

Defendant, JAMES ZINGALE, EXECUTIVE DIRECTOR, FLORIDA DEPARTMENT OF REVENUE, by undersigned counsel, hereby moves pursuant to Fla. R. Civ. P. 1.140(b)(3) to dismiss this action for improper venue; or alternatively, transfer this action to the Circuit Court of the Second Judicial Circuit in Tallahassee, Leon County, where the Executive Director has his headquarters.

It is without question that in Florida, governmental defendants have a common law "home venue privilege" to be sued in the county where they maintain their principal headquarters. Unless this venue privilege is waived or an identified exception is established, the home venue privilege appears to be a matter of right. School Board of Osceola County v. State Board of Education, 903 So. 2d 963 (Fla. 5<sup>th</sup> DCA 2005).

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A trial court does not have discretion in its application of the home venue privilege. To the contrary, it must apply this privilege unless one of the exceptions is present. Id. Plaintiff has the burden to demonstrate the application of a recognized exception to the home venue privilege of a governmental defendant.

There are three possible exemptions: (1) where a statute waives this privilege, where a governmental body is sued as a joint tortfeasor, and (3) under the sword-wielder doctrine. Jacksonville Electric Authority v. Clay County Utility Authority, 802 So. 2d 1190 (Fla. 1<sup>st</sup> DCA 2002). There is no waiver statute involved here, and the Executive Director is not being sued as a joint tortfeasor.

The most common exception is the “sword-wielder” exception. However, this exception applies only when a state agency’s action directly threatens an individual’s constitutional rights, and only when the official state action complained of has been, or is being, performed in the county where the suit is filed, or when the threat of such action in that county is both real and imminent. School Board of Osceola County, supra.

Where, however, as is the case here, a statute is being challenged, the issue complained of is statewide in scope and the harm complained of is the same for the plaintiff as is the putative generalized harm suffered by all citizens by the operation and enforcement of an alleged unconstitutional law. Accordingly, under this circumstance

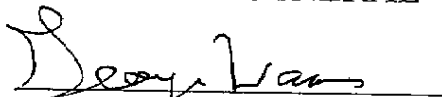
“(t)he policy of orderly and uniform handling of state litigation and the prevention of conflicting rulings from different jurisdictions requires that the litigation be brought at the state agency headquarters.” Dickinson v. Florida National Organization for Women, Inc., 763 So. 2d 1245, 1248 (Fla. 4<sup>th</sup> DCA 2000).<sup>1</sup>

Here, the statute that is challenged was enacted in Tallahassee and is being enforced from the agency’s Tallahassee headquarters—in the same manner as the statute was being enforced in School Board of Osceola County.

Wherefore, for the reasons set out above, the action should be dismissed for improper venue, or the case should be transferred to Second Judicial Circuit located in Tallahassee, Leon County, Florida, the headquarters of both the Department of Revenue and its Executive Director.

Respectfully submitted,

BILL McCOLLUM  
ATTORNEY GENERAL



George Waas

Special Counsel

Office of the Attorney General


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<sup>1</sup>Other cases holding that the proper venue for litigating challenges to statutes is the headquarters of the defending governmental body or official are Worldwide Appraisal Services, Inc. v. Department of Business and Professional Regulation, 905 So. 2d 968 (Fla. 5<sup>th</sup> DCA 2005); Rabin v. Department of Revenue, 884 So. 2d 983 (Fla. 4<sup>th</sup> DCA 2004) and Department of Highway Safety and Motor Vehicles v. Sarnoff, 734 So. 2d 1054 (Fla. 1<sup>st</sup> DCA 1998).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to Douglas K. Phillips, pro se, P. O. Box 37193, Jacksonville, FL 32236-7193, this 12<sup>th</sup> day of February, 2007.

  
George Waas