

NOTE: This format, with subpoints, is acceptable but less preferred

IN THE SUPREME COURT OF MISSOURI

No. 92-420

CITY OF CHAPELTON, a
Municipal Corporation, et al
Appellant,

v.

EDDIE'S INC., a Missouri
Corporation dba PURE PLEASURE
BOOK AND VIDEO,
Respondent.

ATTORNEY FOR RESPONDENT
Name
Issue 1 – Validity of Ordinance

I. THE TRIAL COURT WAS CORRECT IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND DECLARING ORDINANCE 23.001 INVALID AND VOID BECAUSE ORDINANCE 23.001 IS ULTRA VIRES IN THAT:

A. An ordinance may not prohibit that which the state permits or permit that which the state prohibits and ordinance 23.001 prohibits persons between 18 and 21 years of age from entering book store containing sexually explicit material while such conduct is implicitly permitted by the provisions of Chapter 573.

National Advertising Co. v. Missouri State Highway and Trans. Comm'n, 862 S.W.2d 953 (Mo. Ct. App. 1993)

Page Western, Inc. v. Community fire Protection Dist. of St. Louis County, 636 S.W.2d 65 (Mo. 1982)

B. Section 573.080 specifically indicates intent to standardize state pornography laws and Ordinance 23.001 defeats the legislative purpose of standardization by denying effect to the legislative definition of "minor" in Section 573.010(6).

Mo. Rev. Stat. § 573.080 (1994)

Mo. Rev. Stat. § 573.010(6) (1994)

Jones v. Director of Revenue, 832 S.W.2d 516 (Mo. 1992)

C. The state legislature is presumed to intend that statutes reach logical and reasonable results, and Ordinance 23.001 creates an absurd and unreasonable result by denying persons between 18 and 21 years of age access to book stores containing sexually explicit material while Section 573.020 would allow wholesale promotion of such material for those same persons.

Breeze v. Goldberg, 595 S.W.2d 381 (Mo. Ct. App. 1980)

Mo. Rev. Stat. § 573.020 (1994)

SUMMARY OF ARGUMENT

The trial court was correct in declaring Ordinance 23.001 invalid and void because the ordinance is ultra vires in that it defeats the legislative purpose of standardization stated in Section 573.080 and attempts to prohibit or penalize conduct implicitly allowed under Chapter 573. The legislature clearly defines a "minor" as a person under the age of eighteen" in Section 573.010(6), and Ordinance 23.001 denies effect to this legislative definition by attempting to apply a different age of majority. In addition, Section 573.080 allows cities to enact laws prohibiting and penalizing conduct already subject to criminal or civil sanctions under Chapter

573, but this section does not grant cities authority to prohibit or penalize conduct that is implicitly allowed under Chapter 573. Ordinance 23.001 attempts to prohibit and penalize conduct of persons between 18 and 21 years of age that is implicitly allowed under Chapter 573, and thus contradicts the limitations and intended purpose of Section 573.080.

The trial court was also correct in declaring Ordinance 23.001 invalid and void because the ordinance is ultra vires in that the ordinance conflicts with a state statute. An ordinance is in conflict with a state statute if it permits that which the state prohibits or prohibits that which the state permits. Ordinance 23.001 attempts to prohibit persons between 18 and 21 years of age from entering book stores containing sexually explicit material, while such conduct is implicitly permitted under Chapter 573. Because Ordinance 23.001 attempts to prohibit that which the state implicitly permits, the ordinance is ultra vires and should be considered invalid and void.

Finally, the trial court was correct in declaring Ordinance 23.001 invalid and void because the ordinance is ultra vires in that the state legislature is presumed to intend logical and reasonable results for statutes and Ordinance 23.001 would create an absurd and unreasonable application of state pornography laws. If Section 573.080 is interpreted as allowing passage of Ordinance 23.001, persons between 18 and 21 years of age could be prohibited from entering book stores in Missouri that contain sexually explicit material. However, Section 573.020 allows wholesale promotion of such material to persons between 18 and 21 years of age. Thus, minors could be sold or provided such material for purposes of resale or redistribution, but they could not enter a bookstore containing those same materials. This is an absurd and unreasonable result. Because the legislature is presumed to intend only reasonable results of statutes, and an interpretation of 573.080 that allows passage of Ordinance 23.001 would reach an unreasonable result, the legislature should be presumed to have intended Section 573.080 to preempt passage of an ordinance such as Ordinance 23.001.