

**Director of the Manufactured Housing  
and Modular Units Program of the  
Public Service Commission,**

**v.**

**Amega Sales, Inc., d/b/a Quality Preowned  
Homes, Columbia Discount Homes, Mark  
Twain Mobile Home Sales, and Chateau Homes**

<sup>1</sup>All statutory references are to RSMo 2000 unless otherwise noted.

in Section 700.010(2) to be “the standards relating to manufactured homes . . . as adopted by the commission.” In 4 CSR 240-120.100, the Commission adopted the federal standards set forth in 24 CFR Part 3280, known as the HUD Code, as being applicable to manufactured homes in Missouri.

In Counts II, IV and VI, the Director alleges that the violations of Section 700.015 set forth in Counts I, III and V, also constitute a violation of Section 407.020 pursuant to Section 700.115. Accordingly, the Director alleges, the Commission may revoke Amega’s registrations under Section 700.100.3(4), which states that a registration can be revoked for a violation of Section 407.020.

Section 700.115 states that except for certain circumstances not applicable to this situation, “a violation of the provisions of sections 700.010 to 700.115 shall constitute a violation of the provisions of section 407.020, RSMo. In addition to the authority vested in the attorney general to enforce the provisions of that section, he may petition the court and the court may enter an order revoking the registration certificate of the defendant. . . .” Section 700.100.3(4) provides that the Commission may revoke or suspend a registration for “(2) failing to be in compliance with the provisions of section 700.090; . . . (4) Engaging in any conduct which constitutes a violation of the provisions of section 407.020, RSMo; . . . [or] (9) Engaging in conduct in violation of section 700.045 . . . .” Section 700.100.3 specifically identifies two violations of Chapter 700 that are cause for the Commission to revoke or suspend a registration. Contrarily, any other violation of Chapter 700 is not grounds for revocation or suspension under Section 700.100. *See infra* discussion of *State ex rel. Mobile Homes Estates, Inc. v. Public Service Commission of Missouri*, 921 S.W.2d 5 (Mo. Ct. App. 1996).

The Director's prayer for a revocation of Amega's registrations under Section 700.100.3(4) for alleged violations of Section 700.015 is against controlling authority and would be an unlawful order for the Commission.

### **Law and Argument**

#### *Mobile Homes Estates, Inc.*

The theories and arguments set forth in Counts II, IV and VI by the Director have previously been dealt with by the Missouri Court of Appeals, Western District, in *State ex rel. Mobile Home Estates, Inc. V. Public Service Commission of Missouri*, 921 S.W.2d 5 (Mo. Ct. App. 1996). In *Mobile Homes Estates ("MHE")*, the court found that the Commission acted unlawfully in suspending a registration using Section 700.100.3(4), where the violation of Section 407.020 was based on Section 700.115 and a violation of Section 700.015.

MHE constructed a new manufactured home. *Id.* at 7. The home was sold to a dealer, and while en route suffered massive frame damage. *Id.* The home was returned to MHE for repairs. *Id.* MHE placed the home on a new frame, but in doing so damaged the home's electrical system. *Id.* An MHE employee falsely certified that he had tested the electrical system in accordance with federal regulations so the damage was undiscovered. *Id.* The home was then re-sold to another dealer, which sold the home to its ultimate consumer. *Id.* The purchaser contacted the Division of Manufactured Homes, Recreational Vehicles and Modular Units ("Division") regarding the electrical problems. *Id.* Inspections also revealed structural and plumbing problems. *Id.* MHE attempted to repair the home, but the attempts were unsuccessful. *Id.* The Division filed a complaint seeking suspension of MHE's registration. *Id.* The Commission did not allege that MHE had violated the terms of Section 407.020 itself, but rather that Section 407.020 was violated under Section

700.115.1. *Id.* at 8. The Commission found that MHE had violated Section 700.015.1. *Id.* at 7. The Commission did not fine MHE pursuant to Section 700.115.2, nor did it find any criminal violations pursuant to Section 700.045. *Id.* “Instead, relying on Section 700.100.3(4), [the Commission] suspended MHE’s certificate of registration for a period of one year from the effective date of the PSC’s Report and Order.” *Id.* at 8. MHE appealed.

The court found that “the PSC’s suspension of MHE’s license for one year was unlawful.” *Id.* at 12. In finding the suspension unlawful the court noted that Section 700.100.3 specifies only two sections of Chapter 700 that the violation of which is grounds for suspension or revocation. *Id.* at 11. “[T]he legislature is presumed not to have intended that violations of other sections of Chapter 700 form the basis for suspending or revoking a manufacturer’s license.” *Id.* “The PSC’s construction of 700.115.1 to also allow the PSC to suspend or revoke registration for violation of all other provisions of Sections 700.010 through 700.115 ignores this presumption.” *Id.* Additionally, the court noted the Commission’s interpretation would make the inclusion of the specific sections of Chapter 700 in Section 700.100 meaningless, “as that specification would simply be a partial duplication of the implication in subsection (4) that all violations of Sections 700.010 to 700.115 provide a basis for suspension or revocation because they are violations of Section 407.020. The legislature is presumed not to have enacted meaningless provisions.” *Id.*

[A]cceptance of MHE’s interpretation [which is the interpretation being proffered by Amega] of the statutes gives meaning to all provisions of Section 700.100.3 and indeed Chapter 700 *en toto*. Section 700.100.3 is interpreted as it is written; it only allows the PSC to suspend a license for violation of two sections of Chapter 700: Section 700.090 and Section 700.045. While Section 700.115.1 gives a broad grant of authority to revoke a manufacturer’s license for *any* violation of Sections 700.010 to 700.115, the authority to seek such suspension is given to the Attorney General and it is to be sought in circuit court, not before the PSC.

*Id.* (emphasis theirs).

*Application of MHE to Present Case*

In Counts II, IV and VI of the Complaint, the Director seeks to have the Commission find a violation of Section 407.020 sufficient to justify the revocation of Amega's registrations under Section 700.100.3(4). The Director asserts that a violation of Section 700.015 is a violation of Section 407.020 by virtue of Section 700.115.1. The Director does not allege that Amega violated the terms of Section 407.020, but that Section 407.020 has been violated through Section 700.115.1. However, this rationale has been expressly denied by the Court of Appeals, Western District in *MHE, supra*. The Director is trying to use the statutory interplay to create a violation of 700.100.3(4) such that Amega's registrations can be revoked. Courts have previously determined that the Commission does not have this authority, and any decision to the contrary would be unlawful. A copy of the *Mobile Home Estates* opinion is attached hereto for the Commission's convenience.

*Director Without Authority to Bring Action For Violation of Section 407.020*

In Counts II, IV and VI of the Complaint, the Director claims and asserts violations of Section 407.020. That Section, by its express terms, only authorizes the prosecuting attorney, circuit attorney or the Attorney General to commence an action under that section. The Director is not given such authority. Thus, the Director does not have the authority to bring an action for violation of Section 407.020.

*Commission Without Authority to Find Violation of Section 407.020*

Counts II, IV and VI of the Complaint ask the Commission to find a violation of Section 407.020. According to the express language of that statute, only the courts of this state may find a

violation of that Section. Additionally, the case law decided under Section 407.020 uniformly states that the law leaves "it to the court in each particular instance to declare whether fair dealing has been violated." *State ex rel. Webster v. Cornelius*, 729 S.W.2d 60, 64 (Mo. App. 1987) (quoting *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 368 (Mo. App. 1973)).

Section 407.020 does not itself define deceptive practices. The result is that it is left "to the court in each particular instance the determination of whether fair dealing has been violated." *State ex rel. Webster v. Areaco Inv. Co.*, 756 S.W.2d 633 (Mo. App. 1988).

These cases make it clear that it is the function of the judiciary, and not administrative agencies, to interpret Section 407.020 RSMo. and to determine whether that statute has been violated. These cases expressly state that only courts have the power to make this determination. There cannot be any more clear authority that in order to find a violation of this statute, the body making that finding must possess the power to carry out the judicial function. *See State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. Ct. App. 1980).

Additionally, the express language of Section 700.115 states that the Attorney General may bring an action in "court" to revoke the registration of the offender. Section 700.115 is clear that the proceeding shall not be brought before the Commission.

Therefore, if the Commission were to rule on Counts II, IV and VI, it would be exceeding its authority and would be exercising authority it does not have. The Commission is only vested with the powers conferred on it by statute. *See Public Service Commission of Missouri v. St. Louis-San Francisco Railway Co.*, 256 S.W. 226 (Mo. banc 1923). In fact, "[n]either convenience, expediency, or necessity are proper matters for consideration in determination of the issue here submitted. Either or all of these can only be urged in support of an act of the Commission clearly authorized by the

statute. We say clearly authorized because the statutory origin and administrative character of the Commission render it necessary that its power be warranted by the letter of the law or such a clear implication flowing therefrom as is necessary to render the power conferred effective.” *State ex rel. Kansas City v. Public Service Commission of Missouri*, 257 S.W. 462, 462-63 (Mo. banc 1923). No statute has clearly authorized the Commission to rule on criminal violations of Section 407.020 RSMo, and in fact Section 700.115 expressly gives such authority to the courts of Missouri. Therefore, the Commission is without authority to so act.

#### *Director Without Authority to File Complaint*

The Complaint in this case was filed by the Director. There is no statutory, constitutional or other authority giving the Director the power, authority, or jurisdiction to file complaints with the Commission. Accordingly, the Director does not have the authority to file or prosecute the Complaint in this case.

#### *Violation of Certain Constitutional Provisions*

The Director purports to be employed by, part of and a subdivision of the Commission. The finder of fact in this case is the Commission itself. Therefore, both the complaining party and the trier of fact in this cause are essentially one and the same entity and are part of the same governmental agency. Furthermore, the Director has requested that the Commission make a finding that Section 407.020 RSMo. has been violated in this case. If this case is allowed to continue, the same governmental entity or agency will be acting as prosecutor, finder of fact and jury. These facts and these circumstances violate the substantive and procedural due process clauses of the United States Constitution and Missouri Constitution, the equal protection clauses of the Missouri

Constitution and the United States Constitution, and the Doctrine of Separation of Powers found in the United States Constitution and the Missouri Constitution.

*Incorporation of Prior or Contemporaneously Filed Defenses, Claims and Motions*

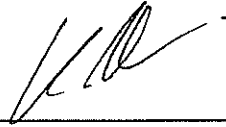
All prior defenses, claims, motions to dismiss, motions to strike and all other motions previously or contemporaneously filed in this cause by Respondent are incorporated herein by reference and are not waived or abandoned by the filing of this Motion. By filing this Motion, Respondent does not waive or abandon any defense, claim or other matter previously asserted by Respondent in this cause.

*Notice of Intent to Seek Attorneys' Fees Pursuant to Section 536.087*

Pursuant to Section 536.087.1, Amega will be seeking reimbursement of its expenses, including attorneys' fees. Section 536.087 states that a "party that prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust." The fact that there is controlling precedent on this matter against the position of the Director indicates that the state, through the Director, is not "substantially justified" such that an award of costs and expenses should not be granted.

*Prayer for Relief*

WHEREFORE, Respondent prays that the Counts II, IV and VI of the Complaint in this cause be dismissed, that costs in this cause be taxed to Complainant, and for such other and further relief as the Commission deems just and proper.



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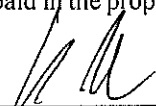
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Attorney for Amega Sales, Inc.

The undersigned certifies that a complete and conformed copy of the foregoing document was faxed and mailed to each attorney who represents any party to the foregoing action, by U.S. Mail, postage prepaid in the proper amount, at said attorney's business address.



Dated: January 18, 2008

**H**State ex rel. Mobile Home Estates, Inc. v. Public Service Com'n of Missouri  
 Mo.App. W.D. 1996.

Missouri Court of Appeals, Western District.  
 STATE of Missouri ex rel. MOBILE HOME  
 ESTATES, INC., Appellant,  
 v.

PUBLIC SERVICE COMMISSION OF MISSOURI,  
 Respondent.  
**No. WD 50805.**

Jan. 30, 1996.


Motion for Rehearing and/or Transfer to Supreme  
 Court Denied April 2, 1996.

Application to Transfer Denied May 28, 1996.

Mobile home manufacturer appealed Public Service Commission (PSC) order suspending for one year manufacturer's mobile home sales registration certificate to do business in state. On further appeal from the Circuit Court, Cole County, Thomas J. Brown, J., the Court of Appeals, Laura Denvir Stith, J., held that Commission acted beyond its authority in suspending manufacturer's certificate for violation of statute prohibiting sale of manufactured home which is not in compliance with governing code, by selling mobile home with defective electrical system and structural and plumbing problems, as manufacturer had not violated specific statutory provisions referenced in another statute as basis for revocation of certificate.

Reversed and remanded.

West Headnotes

**[1] Administrative Law and Procedure 15A**  
 **683**

**15A** Administrative Law and Procedure

**15AV** Judicial Review of Administrative  
 Decisions

**15AV(A)** In General

**15Ak681** Further Review

**15Ak683** k. Scope. Most Cited Cases

On appeal from circuit court in review of administrative agency decision, Court of Appeals reviews findings and decisions of agency, not judgment of circuit court.

**[2] Administrative Law and Procedure 15A**  
 **749**

**15A** Administrative Law and Procedure

**15AV** Judicial Review of Administrative  
 Decisions

**15AV(D)** Scope of Review in General

**15Ak749** k. Presumptions. Most Cited  
 Cases

**Administrative Law and Procedure 15A**  **750**

**15A** Administrative Law and Procedure

**15AV** Judicial Review of Administrative  
 Decisions

**15AV(D)** Scope of Review in General

**15Ak750** k. Burden of Showing Error.  
Most Cited Cases

**Public Utilities 317A**  **195**


**317A** Public Utilities

**317AIII** Public Service Commissions or Boards

**317AIII(C)** Judicial Review or Intervention

**317Ak188** Appeal from Orders of  
 Commission

**317Ak195** k. Presumptions in Favor of  
 Order or Findings of Commission. Most Cited Cases  
 Public Service Commission (PSC) order has  
 presumption of validity and burden is on those  
 attacking it to prove its invalidity.

**[3] Administrative Law and Procedure 15A**  
 **763**

**15A** Administrative Law and Procedure

**15AV** Judicial Review of Administrative  
 Decisions

**15AV(D)** Scope of Review in General

**15Ak763** k. Arbitrary, Unreasonable or  
 Capricious Action; Illegality. Most Cited Cases

**Public Utilities 317A**  **194**

**317A** Public Utilities

**317AIII** Public Service Commissions or Boards

**317AIII(C)** Judicial Review or Intervention

**317Ak188** Appeal from Orders of

Commission

317Ak194 k. Review and Determination in General. Most Cited Cases  
In reviewing decision of Public Service Commission (PSC), Court of Appeals analyzes two issues; first, Court must determine whether Commission's order is lawful and, if so, Court must then determine whether it is reasonable. V.A.M.S. Const. Art. 5, § 18.

**[4] Administrative Law and Procedure 15A**  
**⚡763**

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak763 k. Arbitrary, Unreasonable or Capricious Action; Illegality. Most Cited Cases

**Public Utilities 317A ⚡194**

317A Public Utilities

317AIII Public Service Commissions or Boards

317AIII(C) Judicial Review or Intervention

317Ak188 Appeal from Orders of Commission

317Ak194 k. Review and Determination in General. Most Cited Cases  
For purposes of Court of Appeals' review of Public Service Commission (PSC) order, order's lawfulness turns on whether Commission had statutory authority to act as it did. V.A.M.S. Const. Art. 5, § 18.

**[5] Administrative Law and Procedure 15A**  
**⚡763**

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak763 k. Arbitrary, Unreasonable or Capricious Action; Illegality. Most Cited Cases

**Administrative Law and Procedure 15A ⚡796**

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(E) Particular Questions, Review of

15Ak796 k. Law Questions in General. Most Cited Cases

**Public Utilities 317A ⚡194**

317A Public Utilities

317AIII Public Service Commissions or Boards

317AIII(C) Judicial Review or Intervention

317Ak188 Appeal from Orders of Commission

317Ak194 k. Review and Determination in General. Most Cited Cases  
When determining whether Public Service Commission's (PSC) order is lawful, appellate courts exercise unrestricted, independent judgment and must correct erroneous interpretations of the law. V.A.M.S. Const. Art. 5, § 18.

**[6] Administrative Law and Procedure 15A**  
**⚡754.1**

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak754 Discretion of Administrative Agency

15Ak754.1 k. In General. Most Cited Cases

**Administrative Law and Procedure 15A ⚡763**

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak763 k. Arbitrary, Unreasonable or Capricious Action; Illegality. Most Cited Cases

**Administrative Law and Procedure 15A ⚡791**

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(E) Particular Questions, Review of

15Ak784 Fact Questions

15Ak791 k. Substantial Evidence. Most Cited Cases

**Public Utilities 317A ⚡194**

317A Public Utilities

317AIII Public Service Commissions or Boards

317AIII(C) Judicial Review or Intervention  
317Ak188 Appeal from Orders of  
Commission

317Ak194 k. Review and  
Determination in General. Most Cited Cases  
In determining on review whether Public Service  
Commission (PSC) order is reasonable, Court of  
Appeals determines whether order was supported by  
substantial and competent evidence on the whole  
record, whether decision was arbitrary, capricious, or  
unreasonable, or whether Commission abused its  
discretion. V.A.M.S. § 536.140, subd. 2.

**[7] Administrative Law and Procedure 15A**  
**☞791**

15A Administrative Law and Procedure  
15AV Judicial Review of Administrative  
Decisions  
15AV(E) Particular Questions, Review of  
15Ak784 Fact Questions  
15Ak791 k. Substantial Evidence. Most  
Cited Cases

**Public Utilities 317A ☞194**

317A Public Utilities  
317AIII Public Service Commissions or Boards  
317AIII(C) Judicial Review or Intervention  
317Ak188 Appeal from Orders of  
Commission  
317Ak194 k. Review and  
Determination in General. Most Cited Cases  
For purposes of determining on review by Court of  
Appeals whether Public Service Commission (PSC)  
order was supported by substantial and competent  
evidence on the whole record, "substantial evidence"  
means evidence which, if true, would have probative  
force upon issues, and necessarily implies and  
comprehends competent, not incompetent, evidence.  
V.A.M.S. § 536.140, subd. 2.

**[8] Administrative Law and Procedure 15A**  
**☞749**

15A Administrative Law and Procedure  
15AV Judicial Review of Administrative  
Decisions  
15AV(D) Scope of Review in General  
15Ak749 k. Presumptions. Most Cited  
Cases

**Public Utilities 317A ☞194**

317A Public Utilities  
317AIII Public Service Commissions or Boards  
317AIII(C) Judicial Review or Intervention  
317Ak188 Appeal from Orders of  
Commission  
317Ak194 k. Review and  
Determination in General. Most Cited Cases  
In reviewing reasonableness of Public Service  
Commission (PSC) order, Court of Appeals considers  
evidence in light most favorable to agency together  
with all reasonable supporting inferences.

**[9] Administrative Law and Procedure 15A**  
**☞789**

15A Administrative Law and Procedure  
15AV Judicial Review of Administrative  
Decisions  
15AV(E) Particular Questions, Review of  
15Ak784 Fact Questions  
15Ak789 k. Inferences or Conclusions  
from Evidence in General. Most Cited Cases

**Public Utilities 317A ☞194**

317A Public Utilities  
317AIII Public Service Commissions or Boards  
317AIII(C) Judicial Review or Intervention  
317Ak188 Appeal from Orders of  
Commission  
317Ak194 k. Review and  
Determination in General. Most Cited Cases  
For purposes of Court of Appeals' review of Public  
Service Commission (PSC) order, if evidence permits  
either of two opposite findings, Court must defer to  
findings of Public Service Commission (PSC).

**[10] Administrative Law and Procedure 15A**  
**☞793**

15A Administrative Law and Procedure  
15AV Judicial Review of Administrative  
Decisions  
15AV(E) Particular Questions, Review of  
15Ak784 Fact Questions  
15Ak793 k. Weight of Evidence. Most  
Cited Cases

**Public Utilities 317A ☞194**

317A Public Utilities

317AIII Public Service Commissions or Boards

317AIII(C) Judicial Review or Intervention

317Ak188 Appeal from Orders of Commission

317Ak194 k. Review and Determination in General. Most Cited Cases  
For purposes of reviewing reasonableness of Public Service Commission (PSC) order, only when order is clearly contrary to overwhelming weight of the evidence may court set it aside.

**[11] Administrative Law and Procedure 15A**  
759

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak754 Discretion of Administrative Agency

15Ak759 k. Technical Questions. Most Cited Cases

**Public Utilities 317A** 194

317A Public Utilities

317AIII Public Service Commissions or Boards

317AIII(C) Judicial Review or Intervention

317Ak188 Appeal from Orders of Commission

317Ak194 k. Review and Determination in General. Most Cited Cases  
Reviewing court will not substitute its judgment for that of Public Service Commission (PSC) on issues within realm of agency's expertise.

**[12] Statutes 361** 205

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k205 k. In General. Most Cited Cases

**Statutes 361** 206

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k206 k. Giving Effect to Entire Statute. Most Cited Cases

All provisions of legislative act must be construed together and the provisions must be harmonized, if possible, and every clause given some meaning.

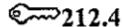
**[13] Licenses 238** 38

238 Licenses

238I For Occupations and Privileges

238k38 k. Revocation, Suspension, or Forfeiture. Most Cited Cases

Public Service Commission (PSC) acted beyond its authority in suspending mobile home manufacturer's mobile home sales registration certificate to do business in state for violation of statute prohibiting sale of manufactured home which is not in compliance with governing code, by selling mobile home with defective electrical system and structural and plumbing problems, as manufacturer had not violated specific statutory provisions referenced in another statute as basis for revocation of certificate. V.A.M.S. §§ 407.020, 700.015, subd. 1, 700.045, 700.090, 700.100, subd. 3(4, 9).

**[14] Statutes 361** 212.4

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k212 Presumptions to Aid Construction

361k212.4 k. Useless or Meaningless Legislation. Most Cited Cases

Legislature is presumed not to have enacted meaningless provisions.

\*7James F. Ralls, Jr., Feldhausen & Ralls, P.C., Kansas City, for appellant.

David L. Woodsmall, Assistant General Counsel, Mo. Public Service Com'n, Jefferson City, for respondent.

Before BRECKENRIDGE, P.J., and ULRICH and LAURA DENVIR STITH, JJ.

LAURA DENVIR STITH, Judge.

Appellant Mobile Home Estates, Inc. (MHE), a manufacturer of mobile homes, appeals the Public Service Commission's (PSC) suspension of its

certificate of registration to do business in the state of Missouri for a period of one year. MHE asserts that the PSC's suspension was not authorized by Missouri law and that the length of the suspension constituted an abuse of discretion on the part of the PSC. We find that the PSC did not have authority to suspend MHE's license for the violation at issue, and reverse and remand.

### ***I. FACTUAL AND PROCEDURAL BACKGROUND***

MHE constructed the home in question in this case in October, 1991 at MHE's factory in Bryan, Ohio. Following construction, the home was placed on MHE's display lot in Ohio. Approximately four months later, the home was sold to American Homes in Murphysboro, Illinois. While en route to the dealership in Illinois, the home suffered massive frame damage. It was rejected by the dealership in Illinois and was returned to the factory in Bryan for repairs.

In an attempt to correct the damaged frame under the home, MHE lifted the home off the frame and placed it on a new frame. In so doing, however, a portion of the home's electrical system was damaged. Because an MHE employee falsely certified that he had retested the manufactured home's electrical system in accordance with federal regulations, whereas he had not in fact retested that system, the damage was not discovered. MHE management also stated that it was unaware the employee had failed to retest the electrical system and terminated the employee after learning of the failure.

Following the frame repair, the home was sold to DeHart Mobile Home Sales in Hollister, Missouri. The latter eventually resold the home to the Senf family in July, 1992. Five days after the Senfs bought the home, they contacted the Division of Manufactured Homes, Recreational Vehicles and Modular Units (Division of Manufactured Homes) of the PSC regarding electrical problems they were experiencing with the home, the most threatening of which was the supply of 220 volt electricity to several of the 110 volt outlets in the home. Inspections by the Division of Manufactured Homes also revealed structural and plumbing problems with the Senfs' manufactured home.

MHE made some attempts to repair the home and

address the problems raised by the Senfs, but these attempts failed.

The Division of Manufactured Homes filed a complaint with the PSC in August, 1992 seeking suspension of MHE's registration in Missouri. At some point after the filing of the complaint and prior to a factual hearing held before the PSC in April, 1994, MHE resolved the Senfs' claim by repayment of their entire purchase price and an additional payment to the Senfs for other incidental damages which the Senfs indicated they had suffered.

In September, 1994, the PSC found that MHE had violated Section 700.015.1.<sup>FN1</sup> That section states that "[n]o person shall rent, lease, sell or offer for sale any manufactured home ... unless such manufactured home ... complies with the code." Under Section \*8 700.115.2, this violation makes the violator "liable to the state of Missouri for a civil penalty in an amount which shall not exceed one thousand dollars for each such violation." Moreover, Section 700.045(5) states that it is a misdemeanor:

FN1. All statutory references are to RSMo 1986 unless otherwise noted.

To fail to correct a code violation in a manufactured home ... owned, manufactured or sold within a reasonable time not to exceed ninety days after being ordered to do so in writing by an authorized representative of the commission ... [.]

The PSC did not fine MHE pursuant to Section 700.115.2, nor did it find that MHE failed to correct the code violations within a reasonable time after being ordered to do so in writing in violation of Section 700.045(5). Instead, relying on Section 700.100.3(4), it suspended MHE's certificate of registration for a period of one year from the effective date of the PSC's Report and Order. This had the effect of denying MHE the right to sell homes in Missouri for one year because, pursuant to Section 700.090, a manufacturer must be registered with the PSC in order to sell mobile homes in this state.

Section 700.100.3 sets out the parameters of the PSC's authority to suspend or revoke a mobile home manufacturer's registration as follows:

The following specifications shall constitute grounds for the suspension, revocation or placing on

probation of a manufacturer's or dealer's registration:

(1) If required, failure to comply with the provisions of section 301.250, RSMo, or section 301.280, RSMo;

(2) **Failing to be in compliance with the provisions of section 700.090;**

(3) If a corporation, failing to file all franchise or sales tax forms required by Missouri law;

(4) **Engaging in any conduct which constitutes a violation of the provisions of section 407.020, RSMo;**

(5) Failing to comply with the provisions of section 2301-2312 of Title 15 of the United States Code (Magnuson-Moss Warranty Act);

....

(9) **Engaging in conduct in violation of section 700.045;**

(10) Failing to comply with the provisions of section 301.210, RSMo.

§ 700.100.3 (emphasis added).

The only provision of Section 700.100.3 which the PSC alleges MHE violated is subsection (4), "[e]ngaging in any conduct which constitutes a violation of the provisions of section 407.020." Section 407.020 is not a part of the Manufactured Homes Standards, which are set out solely in Sections 700.010 through 700.115. Rather, it is one of the provisions relating to Merchandising Practices.

The PSC does not assert that MHE violated any of the terms of Section 407.020 itself.<sup>FN2</sup> Rather, the PSC argues that the compass of \*9Section 407.020 is extended by Section 700.115.1, which states:

FN2. Section 407.020 states:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, ... in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, ... in or from the state of Missouri of the fact that the attorney general has approved any filing

required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

....

3. Any person who willfully and knowingly engages in any act, use, employment or practice declared to be unlawful by this section with the intent to defraud shall be guilty of a class D felony.

4. It shall be the duty of each prosecuting attorney and circuit attorney in their respective jurisdictions to commence any criminal actions under this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where such violations have occurred.

§ 407.020.

Except as otherwise provided in subsections 2 and 3 of this section, *a violation of the provisions of sections 700.010 to 700.115 shall constitute a violation of the provisions of section 407.020, RSMo*. In addition to the authority vested in the attorney general to enforce the provisions of that section, *he may petition the court* and the court may enter an order revoking the registration certificate of the defendant or defendants issued pursuant to the provisions of section 700.090.

§ 700.115.1 (emphasis added).

As is evident, Section 700.115.1 states that every violation of any provision of Sections 700.010 to 700.115 shall also be considered a violation of Section 407.020. It explicitly gives the Attorney General of Missouri the authority to prosecute such violations and, in addition, explicitly gives the Attorney General the discretion to ask the circuit court to revoke the violator's mobile home sales registration certificate. Such certificates are issued pursuant to Section 700.090.

The issue before us is whether Section 700.115.1, when read in conjunction with Section 700.100.3, also gives the PSC the authority to suspend or revoke a manufacturer's license for any violation of any of the Manufactured Home Standards as set out in Sections 700.010 to 700.115.

## II. STANDARD OF REVIEW

[1][2] Although this matter is appealed from the circuit court, we review the findings and decisions of the agency, not the judgment of the circuit court. Branson R-IV Sch. Dist. v. Labor & Indus. Relations Comm'n, 888 S.W.2d 717, 720 (Mo.App.1994). The PSC's order has a presumption of validity and the burden is on those attacking it to prove its invalidity. State ex rel. Dyer v. Public Service Comm'n, 341 S.W.2d 795, 800 (Mo.1960), *cert. denied*, 366 U.S. 924, 81 S.Ct. 1351, 6 L.Ed.2d 384 (1961).

[3][4][5] In reviewing a decision of the PSC we analyze two issues. First, we must determine whether the PSC's order is lawful. State ex rel. Utility Consumers Council, Inc. v. Public Service Comm'n, 585 S.W.2d 41, 47 (Mo. banc 1979); Mo. Const. Art. V, § 18. An order's lawfulness turns on whether the PSC had the statutory authority to act as it did. State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d 216, 217 (Mo.App.1973). When determining whether the PSC's order is lawful, the appellate courts exercise unrestricted, independent judgment and must correct erroneous interpretations of the law. Burlington N. R.R. v. Director of Revenue, 785 S.W.2d 272, 273 (Mo. banc 1990); Branson R-IV Sch. Dist., 888 S.W.2d at 720.

[6][7] If we find that the order is lawful, we must then determine whether it is reasonable. State ex rel. Utility Consumers Council, Inc. v. Public Service Comm'n, 585 S.W.2d 41, 47 (Mo. banc 1979). In so doing, this Court determines whether the order was supported by substantial and competent evidence on the whole record, whether the decision was arbitrary, capricious, or unreasonable, or whether the PSC abused its discretion. State ex rel. Chicago, Rock Island & Pac. R.R. Co. v. Public Service Comm'n, 312 S.W.2d 791, 794 (Mo. banc 1958); § 536.140.2. "Substantial evidence" means evidence which, if true, would have a probative force upon the issues, and necessarily implies and comprehends competent, not incompetent, evidence. State ex rel. Rice v. Public Service Comm'n, 359 Mo. 109, 220 S.W.2d 61 (1949).

[8][9][10] In reviewing the reasonableness of an order of the PSC, the Court considers the evidence in the light most favorable to the agency together with all reasonable supporting inferences. If the evidence

permits either of two opposite findings, this Court must defer to the findings of the PSC. Fleming Foods of Missouri, Inc. v. Runyan, 634 S.W.2d 183, 192 (Mo. banc 1982). Only when a PSC order is clearly contrary to the overwhelming weight of the evidence may a court set it aside. State ex rel. St. Louis San Francisco Ry. Co. v. Public Service Comm'n, 439 S.W.2d 556, 559 (Mo.App.1969).

[11] Finally, where a decision involves the exercise of PSC regulatory discretion, Missouri courts have long recognized that the Public Service Commission Law delegates\*10 a large area of discretion to the PSC and "many of its decisions necessarily rest largely in the exercise of a sound judgment." State ex rel. Dyer v. Public Service Comm'n, 341 S.W.2d 795, 802 (Mo.1960), *cert. denied*, 366 U.S. 924, 81 S.Ct. 1351, 6 L.Ed.2d 384 (1961). Under these circumstances, the reviewing court will not substitute its judgment for that of the PSC on issues within the realm of the agency's expertise. State ex rel. Missouri Public Service Comm'n v. Pierce, 604 S.W.2d 623, 625 (Mo.App.1980).

## III. THE PSC'S ORDER WAS UNLAWFUL IN THAT IT LACKED AUTHORITY TO SUSPEND MHE'S LICENSE FOR VIOLATION OF SECTION 700.015.1

### A. The Contentions of the Parties.

The following discussion is somewhat technically complex because it requires simultaneous consideration of cross-references and inferences drawn from a number of statutes. Reference to the provisions of Section 700.100.3, which was quoted in the Factual Statement above and which is again set out in footnote 3 below, may be helpful in understanding the discussion.<sup>FN3</sup>

FN3. As noted earlier, Section 700.100.3 states in relevant part:

The following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer's or dealer's registration:

- (1) If required, failure to comply with the provisions of section 301.250, RSMo, or section 301.280, RSMo;
- (2) **Failing to be in compliance with the provisions of section 700.090;**
- (3) If a corporation, failing to file all

franchise or sales tax forms required by Missouri law;

(4) Engaging in any conduct which constitutes a violation of the provisions of section 407.020, RSMo;

(5) Failing to comply with the provisions of section 2301-2312 of Title 15 of the United States Code (Magnuson-Moss Warranty Act);

....

(9) Engaging in conduct in violation of section 700.045;

(10) Failing to comply with the provisions of section 301.210, RSMo,  
§ 700.100.3 (emphasis added).

MHE contends that the PSC's suspension order was unlawful because the PSC had no authority under Section 700.100.3(4) to suspend its license for one year simply because it had violated Section 700.015.1 by selling a manufactured home which was not in compliance with code requirements.

The PSC argues that, to the contrary, Section 700.115 gives it, and not just the Attorney General, the authority to revoke or suspend a mobile home manufacturer's license for violation of *any* provision of Sections 700.010 to 700.115. The PSC recognizes that Section 700.115.1 does not explicitly so state, nor does it even mention the PSC. However, the PSC points to the fact that Section 700.100.3 permits the PSC to suspend a manufacturer's license for violation of Section 407.020. Because Section 700.115 also states that *any* violation of Sections 700.010 to 700.115 is a violation of Section 407.020, it follows, the PSC says, that the PSC can suspend a manufacturer's license for *any* violation of the Manufactured Homes Standards set out in Sections 700.010 to 700.115.

While the PSC's argument has surface appeal, MHE argues that its adoption would ignore the fact that Section 700.100.3 explicitly lists violations of only two sections of Chapter 700-Section 700.045 and Section 700.090-as providing a basis for suspension of a manufacturer's license. MHE is not accused of violating either Section 700.090, which requires that manufacturers and dealers of manufactured homes register with the PSC, or Section 700.045, which sets out certain acts which constitute misdemeanors. MHE argues that by listing only those two provisions as a basis for a suspension order by the PSC, the statute excludes violation of other sections of Chapter

700 as a basis for suspension.

#### ***B. The Applicable Statutes Must Be Read Together.***

[12] In determining whether the PSC's or MHE's interpretation of the interrelationship of the many relevant statutory provisions is correct, we are necessarily guided by the principle that all provisions of a legislative act must be construed together and the \*11 provisions must be harmonized, if possible, and every clause given some meaning. Wollard v. City of Kansas City, 831 S.W.2d 200, 203 (Mo. banc 1992). Thus, we must interpret this portion of Chapter 700, if possible, in such a way as to give meaning to each provision.

[13] In so doing, we find that the PSC acted beyond its authority in suspending MHE's license. As MHE argues, by specifying violation of only two sections in Section 700.100.3 as grounds for suspending or revoking a certificate, the legislature is presumed not to have intended that violations of other sections of Chapter 700 form the basis for suspending or revoking a manufacturer's license. *See Harrison v. MFA Mut. Ins. Co.*, 607 S.W.2d 137, 146 (Mo. banc 1980); Board of Registration for Healing Arts v. Levine, 808 S.W.2d 440 (Mo.App.1991). The PSC's construction of Section 700.115.1 to also allow the PSC to suspend or revoke registration for violation of all other provisions of Sections 700.010 through 700.115 ignores this presumption.

[14] The PSC's construction would also make Section 700.100.3's specification of violations of Sections 700.090 and 700.045 as grounds for suspending or revoking a registration meaningless, as that specification would simply be a partial duplication of the implication in subsection (4) that all violations of Sections 700.010 to 700.115 provide a basis for suspension or revocation because they are violations of Section 407.020. The legislature is presumed not to have enacted meaningless provisions. Wollard v. City of Kansas City, 831 S.W.2d 200, 203 (Mo. banc 1992); Stiffelman v. Abrams, 655 S.W.2d 522, 531-32 (Mo. banc 1983).

Our conclusion is buttressed by the fact that the statute gives the PSC a variety of other ways to punish violations of Chapter 700, generally, and violation of Section 700.015(1), such as is alleged here, in particular. As noted previously, Section 700.115.2 provides that "whosoever violates any

provision of this chapter shall be liable to the state of Missouri for a civil penalty in an amount which shall not exceed one thousand dollars for each such violation." As also noted, Section 700.045(5) states that it shall be a misdemeanor:

To fail to correct a code violation in a manufactured home ... owned, manufactured or sold within a reasonable time not to exceed ninety days after being ordered to do so in writing by an authorized representative of the commission ... [.]

§ 700.045(5).

As just discussed, a violation of Section 700.045(5) is *itself* one of the two bases for suspension for violation of a provision of Chapter 700 specifically set out in Section 700.100.3. Thus, if the PSC wanted to suspend MHE's license because of its failure to correct the code violations, it could have ordered in writing that MHE correct the violations. If MHE failed to do so within a reasonable time, not to exceed 90 days, MHE would have been guilty of a misdemeanor, under Section 700.045(5), and this would have permitted the PSC to suspend its registration under Section 700.100.3(9).

MHE apparently corrected the violations before the PSC issued a written order or before a reasonable time had passed after such an order. Thus, so far as the record shows, MHE did not violate Section 700.045(5). The PSC's interpretation of the statute would mean it nonetheless has the power to suspend MHE's registration. This would flout the requirement just noted that it is only if MHE failed to correct the violations within a reasonable time after notice that this failure can be used as a basis for suspension.

By contrast, acceptance of MHE's interpretation of the statutes gives meaning to all provisions of Section 700.100.3 and indeed to Chapter 700 *en toto*. Section 700.100.3 is interpreted as it is written; it only allows the PSC to suspend a license for violation of two sections of Chapter 700: Section 700.090 and Section 700.045. While Section 700.115.1 gives a broad grant of authority to revoke a manufacturer's license for *any* violation of Sections 700.010 to 700.115, the authority to seek such a suspension is given to the Attorney General and it is to be sought in circuit court, not before the PSC.

This interpretation of the relevant provisions is supported by the legislative history \*12 of what is

now codified as Section 700.115.1. An earlier, unenacted version of that section provided that:

*Any violation of any provision of this act shall constitute a violation of section 407.020, RSMo, subjecting the offender to an injunction suit pursuant to section 407.100, RSMo, by the attorney general or the prosecuting attorney of the county in which the violation occurred. In any proceeding brought by the attorney general or prosecuting attorney for a violation of that section, the court *may grant*, in addition to the remedies provided for in an action brought for violation of that section, *revocation of the registration certificate* of the defendant or defendants in such action. Any person violating the terms of an injunction obtained hereunder shall be subject to the penalties provided in section 407.110, RSMo, and may be prosecuted for contempt.*

H.B. No. 1393, 78th Leg., 2d Sess. (1976) (emphasis added).

The unenacted version of this provision can solely be interpreted to give only the Attorney General the right to seek suspension of a manufacturer's license for violation of *any* provision of what is now Chapter 700. The PSC suggests that the fact that the text of this section was modified and condensed prior to passage indicates an intent not to limit its scope to the Attorney General.

We see no indication, however, that by its modifications the legislature intended to enlarge the scope of those permitted to seek such suspension for violation of Section 407.020 to include the PSC. Indeed, the contrary is true: the provision as previously written permitted either the Attorney General or local prosecutors to bring suit; as enacted it gives only the Attorney General that authority, and it further deletes any reference to the Attorney General's authority to seek an injunction. The primary purpose of the provision has not been changed, however, just narrowed. In both versions, Section 700.115.1 gives the Attorney General the power to charge a violator of Sections 700.010 to 700.115 with a merchandising practices violation and to use this as a basis to seek revocation of the violator's certificate, in addition to the other penalties permitted to be sought under Section 407.020. Section 700.115.1 does not suggest that the PSC is to have such authority and we find that it does not.

Because of our determination that the PSC's suspension of MHE's license for one year was

unlawful, we need not reach the issue whether the PSC's decision that the suspension be for a one year period was reasonable. For the reasons stated above, we reverse the order of the PSC suspending MHE's license for one year and remand for further consideration of what sanctions should be imposed for MHE's violation of Section 700.015.1.

All concur.  
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State ex rel. Mobile Home Estates, Inc. v. Public  
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