

**Vacated and Dismissed, Opinion filed October 28, 1999.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-98-00847-CV**

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**CITY OF HOUSTON, Appellant**

**V.**

**JOE ALDACO, Appellee**

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**On Appeal from the 190<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 96-55348**

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**O P I N I O N**

Appellant, the City of Houston, appeals from a grant of summary judgment in a district court appeal from the Civil Service Commission. We conclude that the district court lacked jurisdiction, and order the case dismissed.

On December 17, 1995, Houston police officers Joe Aldaco and Louis Jones investigated an automobile accident. Later, one of the parties to the accident complained that the officers falsified portions of the report. A departmental investigation concluded that the officers had not followed policy and were untruthful during the department's investigation. As a result, Aldaco was suspended for four days. As with all suspensions, Aldaco was told how to appeal the suspension to the Civil Service Commission. Included

in the instructions was the general notice that anyone who failed to appear at docket call would, in accordance with local rules, have their appeal deemed withdrawn.

Aldaco appealed the temporary suspension to the Civil Service Commission, which held a hearing on August 29, 1996. Officer Jones, Aldaco's partner, answered docket call; Aldaco did not. In his summary judgment motion, Aldaco claimed that he was present when both names were called, but gave no explanation why he did not answer. Nonetheless, Aldaco's attorney attempted to have Aldaco's hearing addressed with Jones'. The Commission rejected the attempt; ruling that, because Aldaco did not answer to his name at docket call, his appeal was deemed withdrawn.

On September 12, 1996, the Commission issued the "Final Order of the Commission," stating that Aldaco's appeal was withdrawn. Aldaco appealed the dismissal to district court. The City, as defendant, responded with a general denial and a plea to the jurisdiction, claiming the ten days allotted for Aldaco to file his petition to district court had expired. Both parties moved for summary judgment. Aldaco claimed his procedural due process rights were violated and that his petition was timely filed.<sup>1</sup> The court granted Aldaco's motion for summary judgment and remanded the case to the Commission for a full hearing.

### **Jurisdiction of the Trial Court**

Appellant's first issue is whether or not the District Court had subject matter jurisdiction to hear Aldaco's appeal from the civil service commission. The pertinent statute says in part:

If a fire fighter or police officer is dissatisfied with any commission decision, the fire fighter or police officer may file a petition in district court asking that the decision be set aside. The petition *must be filed* within 10 days after the date the final commission decision:

- (1) is sent to the fire fighter or police officer by certified mail; or
- (2) is personally received by the fire fighter or police officer or by that person's designee.

TEX. LOC. GOV'T. CODE ANN. § 143.015(a) (Vernon 1997) (emphasis added).

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<sup>1</sup> In his argument to the district court, appellee incorrectly quotes § 143.015 as giving a window of "10 working days."

It is undisputed that the Commission's decision was sent by certified mail. If the decision is sent by certified mail, then the time line in (a)(1) controls. *See City of Houston v. Morris*, 949 S.W.2d 474 (Tex. App.–Houston [14<sup>th</sup> Dist.] 1997, pet. denied) (holding that a petition filed on September 20 was untimely where the Commission's decision was sent by certified mail on September 2, even though it was not received until September 10). To hold otherwise would render (a)(1) meaningless. It would be impossible for a decision to be received before it is sent, so (a)(2) would necessarily give an equal or greater amount of time than (a)(1). This would render (a)(1) superfluous. *See Chevron Corp. v. Redmon*, 745 S.W.2d 314, 316 (Tex.1987) (holding that if possible, courts must give effect to all of the words of the statute and not treat any statutory language as surplusage); *Nootsie v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex.1996) (holding that courts must reject an interpretation of a statute that defeats the purpose of the legislation so long as another reasonable interpretation exists).

Appellee argues that this issue is moot because the City failed to include in the record the receipt showing the date the decision was sent by certified mail. However, the plaintiff bears the burden of alleging facts affirmatively showing that the trial court has subject-matter jurisdiction. *See Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 446 (Tex.1993). “A court's subject matter jurisdiction is initially invoked simply by pleading the requisite ‘jurisdictional facts.’” *Matter of A.D.D.*, 974 S.W.2d 299, 303 (Tex. App.–San Antonio 1998, no pet.). When deciding whether to grant a plea to the jurisdiction, the trial court must look solely to the allegations in the petition. *See Liberty Mut. Ins. Co. v. Sharp*, 874 S.W.2d 736, 739 (Tex. App.–Austin, writ denied). The court takes allegations in the pleadings as true and construes them in favor of the pleader. *See Texas Ass'n of Business*, 852 S.W.2d at 446.

Here, appellee did not allege any facts showing the trial court had subject-matter jurisdiction. It would not have been difficult to do so; appellee admits receiving the decision on September 23, 1996. Appellee had the envelope containing the Commission's decision, which presumably bore a postmark date. To establish jurisdiction, appellee could have simply alleged that the Commission's decision was sent by certified mail not more than ten days previously. “Jurisdictional allegations are an integral and necessary part of the case, without the statement of which there is no cause of action.” *Mingus v. Wadley*, 285 S.W.2d 1084, 1089 (Tex. 1926). Thus, we must conclude that appellee failed to properly invoke the

subject matter jurisdiction of the district court. Accordingly, we vacate the ruling of the lower court and order the cause dismissed.

/s/ J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed October 28, 1999.

Panel consists of Chief Justice Murphy and Justices Yates and Hudson.

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