

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Case No. 2016-CP-32-263

ORIGINAL

**ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S
MOTION TO DISMISS**

This matter comes before me on Plaintiff's Motion for Summary Judgment and Defendant Rakowsky's Motion to Dismiss the Complaint. Plaintiff's Motion is based upon the argument that Rakowsky was served with the Summons and Complaint and the he failed to answer the complaint within thirty days of service. Rakowsky's Motion to Dismiss was filed on two grounds, including lack of service of pleadings pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5) of the South Carolina Rules of Civil Procedure and the doctrine of judicial immunity. A hearing was held in this matter on June 20, 2016.

On July 24, 2014, Plaintiff Jamaal Gittens ("Gittens"), was issued a Uniform Traffic Ticket and given a summons to appear in the Town of Lexington Municipal Court for trial upon violation of S.C. Code Ann. § 56-5-1520(G)(3), Speeding in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit. He was inside the Town of Lexington city limits when he was cited. Despite receiving notice of the trial date, Gittens did not appear for the trial and was tried in his absence.

REBEKAH GARRISON
CLERK OF COURT
LEXINGTON, SC

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Gittens has now brought suit against John Rakowsky, who was acting as Presiding Judge of the Town of Lexington Municipal Court during the trial, claiming that the court did not have subject matter jurisdiction to hear the case.

I. Gittens' Motion for Summary Judgment

Gittens claims that he served Rakowsky with a copy of the Summons and Complaint. As proof of this, he provided the Court with a "proof of service" dated March 29, 2016 attaching a certified letter receipt addressed to John Rakowsky at the address for the Town of Lexington. The receipt shows that a person named Jay Graham signed for the letter. Rakowsky provided an affidavit to the Court stating that he has never been served with a copy of the Summons and Complaint.

Plaintiff's Motion for Summary Judgment is denied. Plaintiff has failed to serve a copy of the Summons and Complaint upon the Defendant in compliance with South Carolina law. It appears that the certified letter was not sent return receipt requested, restricted delivery to Rakowsky at his address and was not signed for by him. This is not proper service upon an individual pursuant to Rule 4(d)(1) and it is not proper service by mail pursuant to Rule 4(d)(8). In addition, Rakowsky states in his affidavit that he never received service of the summons and complaint.

Furthermore, a review of the court file indicates that an Answer and Motion to Dismiss for failure to properly serve the Summons and Complaint were filed on behalf of the Defendant on April 29, 2016, within thirty days of the letter signed for by Jay Graham.



II. Rakowsky's Motion to Dismiss

For the same reasons addressed above, Rakowsky's Motion to Dismiss is granted for lack of proper service upon Defendant. Plaintiff failed to serve the Summons and Complaint upon Defendant as required by South Carolina law.

Even if the action had been served correctly, Rakowsky, as a municipal court judge, is entitled to judicial immunity from suit as a matter of law. "The grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). "Judicial immunity affords absolute immunity from suit." *Stump v. Sparkman*, 435 U.S. 349, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). "In other words, judicial immunity, if applicable, acts as a bar to suit, not just as an ultimate bar to relief. Therefore, a finding of judicial immunity renders a complaint alleging judicial misconduct meritless." *O'Laughlin v. Windham*, 498 S.E.2d 689 (Ct. App. 1998).

Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances. However, it is not without limitations. The United States Supreme Court has carved out three exceptions. The first exception (and the one cited by Plaintiff) is that no judicial immunity exists if the judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 357, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978); *O'Laughlin v. Windham*, 330 S.C. 379, 498 S.E.2d 689, 1998 S.C. App. LEXIS 40 (S.C. Ct. App. 1998). No immunity is granted if "there is clearly no jurisdiction over the subject-matter . . . [and] the want of jurisdiction is known to the judge . . ." *Stump v. Sparkman*, 435 U.S. 349, 357, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). The question, then, is "whether at the time [the judge] took the challenged action he had jurisdiction over the subject matter before him," and, in

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answering that question, "the scope of the judge's jurisdiction must be construed broadly"

Id.

As a sitting judge, Judge Rakowsky is entitled to Judicial Immunity from suit and dismissal of this action. Judge Rakowsky clearly had subject matter jurisdiction to hear the case against Gittens.

The South Carolina General Assembly created the Municipal Court System and provided it with the subject matter jurisdiction to hear and decide traffic cases and certain other misdemeanors. *See*, 1949 S.C. Act (46) 466; 1980 S.C. Act No. 480; 1975 S.C. Act No. (59) 692 and 2012 S.C. Act No. 263; also *Pickens v. Schmitz*, 297 S.C. 253, 376 S.E.2d 271 (1989) (finding that municipal court had proper subject-matter jurisdiction to hear traffic violation case resulting in a DUI conviction). These Acts were then codified as S.C. Code Ann. § 56-5-6150, 5-7-10, S.C. Code Ann. § 5-7-90 and S.C. Code Ann. § 14-25-5 (see legislative history).

S.C. Code Ann. § 56-5-6150, enacted into law by the South Carolina General Assembly, at 1949 S.C. Act No. (46) 466 states,

Trial jurisdiction of municipal courts.

All municipal courts of the State may try and determine criminal cases involving violations of this chapter occurring within the respective limits of such municipalities when the penalty prescribed by this chapter for such violations does not exceed thirty days' imprisonment nor one hundred dollars' fine and may have trial jurisdiction over such criminal cases the same as magistrates.

S.C. Code Ann. § 5-7-10, enacted at 1975 S.C. Act No. (59) 692, states,

The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters. The powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities.

S.C. Code Ann. § 5-7-90, *see*, 1975 S.C. Act No. (59) 692; 2012 S.C. Act No. 263, § 1, states,

Trial of persons charged with violations of ordinances of municipality or laws of State

The municipal judge or judges of a municipality shall speedily try all persons arrested and incarcerated with violations of the ordinances of the municipality or the laws of the State within their jurisdiction in a summary manner without a jury unless jury trial is demanded by the accused. Trial must be held within ten days after the arrest or at a time scheduled by the court, in which event the trial is deferred. The municipal judge shall have the same power as a magistrate to compel the attendance of witnesses and require them to give evidence upon the trial before them of any person for the violation of ordinances of the municipality or the laws of this State subject to Section 5-7-30.

S.C. Code Ann. § 14-25-5, enacted at 1980 S.C. Act No. 480, states,

Establishment of municipal courts by ordinance; facilities for courts; use of magistrate court by municipality

(a) The council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction. The ordinance shall provide for the appointment of one or more full-time or part-time judges and the appointment of a clerk.

(b) Any municipality establishing a municipal court pursuant to the provisions of this chapter shall provide facilities for the use of judicial officers in conducting trials and hearings and shall provide sufficient clerical and nonjudicial support personnel to assist the municipal judge.

(c) Any municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situate upon approval by the governing body of the county.

Furthermore, S.C. Code Ann. § 56-7-10, *see* 2005 S.C. Act No. 68, states,

The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. This ticket will be designed by the department and approved by the Attorney General.


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Despite these clearly crafted code sections vesting Judge Rakowsky with subject matter jurisdiction to dispose of the charge against him, Gittens claims that S.C Code Ann. §5-7-10, §5-7-90 and §14-25-5 56-7-10 have no force and effect because they contain no enacting clause as required by Art. III., sec. 16, of the South Carolina Constitution. Again, Plaintiff's basis for this lawsuit fails. Plaintiff has produced no evidence that the laws passed by the General Assembly creating the relevant code sections did not contain an enacting clause. In fact, the Court has reviewed some of the Acts under which these code sections promulgated and they do contain enacting clauses as required by the South Carolina Constitution. *See*, 1980 S.C. Acts No. 480; 1975 S.C. Acts No. (59) 692, 2012 S.C. Acts 263 and 2005 S.C. Acts 68. There is no requirement in our Constitution or otherwise requiring an enacting clause appear in the text of every code section.

THEREFORE, IT IS ORDERED THAT: Plaintiff's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED THAT: Defendant's Motion to Dismiss is granted and the case is dismissed with prejudice.

AND IT IS SO ORDERED.



Judge Thomas Cooper
Presiding Judge, Eleventh Judicial Circuit

July 21, 2016
Columbia, South Carolina

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CLERK OF COURT
LEXINGTON, SC

ORIGINAL

2016 CP 32 00263

STATE OF SOUTH CAROLINA

IN THE COUNTY OF LEXINGTON

JAMAAL GITTENS _____

PLAINTIFF,

Vs.

JUDGE JOHN R RAKOWSKY _____

DEFENDANT

BETH A. GARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 JAN 25 AM 11:59

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This claim is arising out of derivation of rights which is guaranteed pursuant to the United States Constitution. 42 USC 1983. Judge R Rakowsky made a ruling on a traffic matter when the court lacked subject matter Jurisdiction; his void judgment caused me the loss of professional career, and a great deal of financial difficulties

It is clear that a judge who acts in the absence of subject matter jurisdiction may be held liable for judicial acts *stump v Sparkman* 435 U.S. 349, 98 S CT. 1099 (1978)

Where judge presumes to exercise jurisdiction beyond understood boundaries, judge is not entitled to immunity. *Dykes v Housemann*, 743 F.2d 1488 (11th Cir. 1980)

A judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. [*Cooper v. Aaron*, 358 U.S. 1, 78 S. Ct. 1401 (1958)]

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. *Zeller v. Rankin*, 101 S.Ct. 2020(1980)

A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts s acts Davis V Burris, Ariz (1938)

“When an officer acts under a state law in a manner contrary to the Federal Constitution, he “comes into conflict with the superior authority of that constitution, and he is in that case stripped of his official or representative character and is subject in his person to the consequences of his individual conduct. The state has no power to impart him from immunity from responsibility to the Supreme authority of the United States.” By Law, a judge is an officer. The Judge then acts not as a judge, but a private individual(in his person) The U.S Supreme Court, in Scheuer V Rhodes, 416, US 232, 94 S Ct 1687 (1974)

If the magistrate has not such jurisdiction, then and those advise and act with him, or execute his process, are trespassers Von Kettler et al. v Johnson 57 Ill. 109 (1870)

July 23, 2014 an officer had given me a ticket for speeding; his device needed to be calibrated.
July 26, 2014 I had written Lexington municipal court a motion to challenge subject matter jurisdiction; being that I live in charlotte NC, and I'm constantly on the road. an Attorney name Clifford Koon JR responded and said that section 56-56150 code gives the court jurisdiction over traffic matters.. I responded to inform Clifford Koon that section only pertains to criminal matters, and that it doesn't contain an Enacting Clause. South Carolinas Supreme Court Held that in order for Bills/Statues to “have a force of law”, they must have an enacting clause upon is face, showing the authority by which they are promulgated); Title 56 code doesn't contain that. State v Patterson, 4 SE, 350, 352, 98 660 NC (1887) Smith v Jennings 45 S.E. 821. 67 SC 324, (1903) Supreme Courts have further ruled that any law which lacks a required enacting clause is void on its face... See Joiner v State, 155 S.E.2d 8, 10 223Ga (1967)

Attorney Clifford Koon, Judge John Rakowsky should know that An indictment or complaint in a criminal case is the main means which a court obtains subject matter jurisdiction, and is" the jurisdictional instrument upon which an accused stands trial" State v Chatomon, 671 p2d 531 538 (Kan 1983) The complain is the foundation of the jurisdiction of the magistrate or court thus, if these charging instruments are invalid, there is lack of jurisdiction. Without a formal and sufficient indictment or information, court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime Honomichl v State 333 NW 2d 797,798 (SD 1983) Without a valid complain any judgment or sentence is rendered is "Void ab inito" Ralph v police court of El Cerrito 190 p.2d.632.634.84.Cal App 2d 257(1948)

The United States Constitution established the judicial powers of the courts, Article III sections 2 clause 1 states the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States; courts are limited in jurisdiction. The federal constitution established a common law system, a system of law made not by legislators, but by courts and judges. The supremacy clause in the constitution provides that state courts are bound by the Federal Constitution, "The supreme law of the land" The supreme court stated "When acting to enforce a statute/code, the judge of municipal court is acting as an administrative officer and not in a judicial capacity, courts in administrating or enforcing code/statutes do not act judicially, but merely administratively" Thompson v Smith 155 VA 367. 154. SE. 583, 71 ALR 604.

It's been ruled that an "Appearance Ticket is not accusatory instrument and its filing does not confer jurisdiction over the defendant" "people V Gabby 670.N.Y. S.2d 421 (1997) "traffic infractions are not a crime or public offence" people V battle 202 CAL.App.2d 432 (1975);

"Subject matter jurisdiction is only determined from pleadings" Hall v State, 933 S.W.2d 363,326 AR 1996

Lower courts are bound to the Supreme courts proceedings" Adam v Dept of Juvenile Justice of New York City, 143 F.3d 61, 65 (2nd Cir. 1998) The supreme Court constantly rules that standing is a necessary component of subject matter jurisdiction a "plaintiff must allege personal injury traceable to the defendant" See Allen v Wright 463 US 737, 751, (1984) Subject matter jurisdiction requires a competent witness or notarized affidavit demonstrating injury, and a statutory or common law basis for a remedy for the injury.

"Without standing, there is no actual or justifiable controversy, and courts will not entertain such cases." Clifford S. v. Superior Court, 45 CalRptr.2d 333,335.

Standing is perhaps the most important of [the jurisdictional] doctrines... Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation..." NOW, Inc. v. Scheidler, 510 US 249.

Only congress can make an act a crime affix punishment to it, and declare court shall have jurisdiction "US Hudson 11 US 32(1812) see US v Beckford (1997) 966F.Supp 1415(1997)

CONCLUSION

October, 2014 My Employer specialty logistic let me go because there insurance wouldn't cover because of this speeding violation, after I left specialty logistics, I applied for a company called Global express, they wouldn't hire me, in fact, they sent me my MVR, it shows a 47mph in a 30mph Zone., January 31 2015 my car was reposed because I no longer had a truck driver's income; I had to settle for a warehouse job making 8.hr, my CDL is currently suspended,

REMEDY SOUGHT

Judge John Rakowsky void judgment deprived me from pleasurable lifestyle; the salary I'm making now doesn't compare to what I was making as a professional truck driver. When my car was repossessed January 31 2015, it damaged my credit report as well; it shows repossession. This void judgment has caused me a great deal of stress; it affected my social life with friends and family; I wasn't able to routinely provide for my family throughout the holiday's seasons the way I usually do. For the great deal of unnecessary stress, I accumulated thought this whole ordeal. I'm seeking one hundred thousand dollars in damages

JUDICIAL NOTICE

A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law that supports his claim" Liebowitz v Amexco CO 1983 see western United Reality Inc v Isaacs 1984 "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can proof no set of facts in support of claim which would entitle him relief Conley V Gibson" 355 US 41, 45-46, 78 S CT (1957) Burden to show legal insufficiency of petition is on the party moving for dismissal, and motion to dismiss for failure to state a claim must separately state each omission or defect in petition. Indiana Nat. Bank V state Dept of Human services Okla. (1994)

Respectfully submitted

Jamaal A Gittens

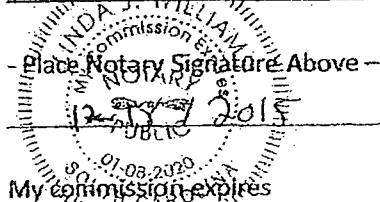


Jamaal A Gittens

Linda Williams

Type or printed notary name

Linda J. Williams Seal



01-08-2020 Date

CHAPTER 112.

An act supplemental to an act to incorporate the town of Charleston in Swain County.

The General Assembly of North Carolina do enact:

SECTION 1. That after the authorities of the town of Charleston shall have prepared suitable and convenient places for hitching horses, that hitching horses to gates and fences belonging to individuals in said town shall be construed a nuisance, and the authorities of said town are authorized to abate such nuisance, and are authorized to impose such fines and penalties as will abate them. Hogs running at large shall also be construed a nuisance.

SEC. 2. This act shall be in force from and after its ratification.

In the general assembly read three times, and ratified this the 7th day of March, A. D. 1887.

CHAPTER 113.

An act to incorporate the town of Forest Hill.

SECTION 1. That the town of Forest Hill, in Cabarrus county, be and the same is hereby incorporated, by the name and style of the town of Forest Hill, and it shall enjoy all the rights and privileges of incorporated towns and be subject to all the provisions of law now existing in reference to incorporated towns.

SEC. 2. That the corporate limits of said town shall be as follows: beginning opposite the old cotton mill on the line of Concord corporate line, and running north with said line fifty-three and one half degrees east one half mile to a stone, thence north forty-eight and one-half degrees west one half mile to a stake, thence south fifty-three and one-half degrees west one mile to a stone, thence south fifty-three and one half degrees east one half mile to a stone, thence north fifty-three and one-half degrees east to the beginning.

SEC. 3. That the officers of said town shall consist of a mayor, four commissioners and a constable, and the commissioners shall have power to elect a secretary and treasurer, and to elect the constable.

Fig. 6.—Excerpt from, *Laws and Resolutions of the State of North Carolina, 1887*. Chapter 113 (below) was published with no enacting clause, and thus was "void," *State v. Patterson*, 98 N.C. 660. The preceding law, Chapter 112, was published with an enacting clause.

ACT No. 303.

House Bill No. 872.

By Mr. Fernandez, Chairman of Committee on Public Health and Quarantine (Substitute for House Bill No. 405 by Messrs. Fernandez and Landry).

AN ACT

To provide for the discovery and treatment of mental disorders; to define and interpret certain terms used herein; to designate institutions and places for mental patients; to provide for the examination, admission, commitment and detention of mental patients and their transfer, discharge, leave of absence, boarding out, return of escaped patients and interstate rendition and deportation; to provide for the assessment, imposition and collection of costs, fees and expenses incidental to carrying out the provisions of this Act; to grant certain rights to patients committed under this Act.

ARTICLE I.

Short Title, Interpretations and Definitions.

Section 1. Short Title; This Act shall be known as the Mental Health Act of 1944.

ACT No. 284.

House Bill No. 670.

By Messrs. Martinez and Picciola.

AN ACT

To amend and re-enact the Title and Sections 1, 2 and 3 of Act 309 of 1938, entitled: "To create and establish a trades school for the education of white people of the State of Louisiana, in Thibodaux, Lafourche Parish, Louisiana, under the supervision of the State Board of Education, and to provide for the building, equipping and maintenance of said institution."

Section 1. Be it enacted by the Legislature of Louisiana, That the title of Act 309 of 1938 is hereby amended and re-enacted so as to read as follows:

Fig. 7.—Excerpt from, *Acts passed by the Legislature of the State of Louisiana, 1944*. Act 303 (above) was held "defective" as it had no enacting clause. *O'Rourke v. O'Rourke*, 69 So.2d 567. Act 284 (below) has an enacting clause in Section 1 where the body of the law starts.

AN ACT

To amend and reenact Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session, to provide with respect to teaching French and the culture of Louisiana in the public elementary and high schools in the state.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session is hereby amended and reenacted to read as follows:

§ 272. French language and culture; teaching in public schools

A. The French language and the culture and history of French populations in Louisiana and elsewhere in the Americas shall be taught for a sequence of years in the public elementary and high school systems of the state, in accordance with the following general provisions:

(1) As expeditiously as possible but not later than the beginning of the 1972-1973 school year, all public elementary schools shall offer at least five years of French instruction starting with oral French in the first grade; except that any parish or city school board, upon request to the State Board of Education, shall be excluded from this requirement, and such request shall not be denied. Requests already received from school boards for exclusion from the provisions of Act 408 of 1968 shall also be valid for exclusion from the provisions of this Act unless individual school boards deem otherwise. School boards which have not already requested exclusion may do so at any time between July 1, 1971, and the beginning of the 1972-1973 school year. The fact that any board is excluded, as here provided, from participation in the program established by this section shall in no case be construed to prohibit such school board from offering and conducting French courses in the curriculum of the schools it administers. In any school where the program provided for herein has been adopted the parent or other person legally

AN ACT

To regulate loans and advances of credit by banks under revolving loan plans and to provide for interest and other charges thereunder; to provide for penalties; and to repeal all conflicting laws.

TITLE I - REVOLVING LOAN PLANS

Section 1. Definitions:

(a) The term "revolving loan" means an arrangement, including by means of a credit card, between a lender and a debtor pursuant to which it is contemplated or provided that the lender may from time to time make loans or advances to or for the account of the debtor (1) through the means of checks, drafts, items, invoices for the purchase of goods, orders for the payment of money, evidence of debt or similar written instruments or requests whether or not negotiable, endorsed or signed by the debtor or by any person authorized or permitted to do so on behalf of the debtor or (2) through the means of any other direction to pay by the debtor for loans or advances or charges to an account in respect of which account the lender is to render bills or statements to the debtor at regular intervals (hereinafter sometimes referred to as the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or at the debtor's option may be payable by the debtor in installments.

(b) Credit cards - The term "credit card" as used herein means an identification card, credit number, credit device or other credit document issued to a person, firm or corporation by a lender which permits such persons, firm or corporation to purchase or obtain money, goods, property, or services on the credit of the issuer.

(c) "Lender" means a bank chartered or licensed by state or federal authorities and authorized to do business and doing business in this state.

Section 2. Revolving Loan Interest Charge, Separate Charge Statement

Fig. 8 — An excerpt from, *Louisiana Acts 1968, Extra Session, 1968* (bound in "*Acts of the Legislature*" Regular Session, 1969). Act 24 (right) was declared to be "null" and without effect because of the manner in which it was printed or reported in the statute book without an enacting clause, *First Nat. Bank of Commerce, New Orleans v. Eaves*, 282 So.2d 741. A preceding law, Act 21 (left), shows proper use of the enacting clause on the face of the law.