

**MISSOURI MUNICIPAL LEAGUE
ELECTED OFFICIALS TRAINING**

Thursday, June 17, 2010 – Friday, June 18, 2010

COUNCIL POWERS AND DUTIES

I. What are your Basic Powers and Duties?

Statutory Cities. Are cities which derive their power from the specific authority given to them by the state legislature in state law.

TOWNS AND VILLAGES Chapter 80 of the Revised Statutes of Missouri.

- Five or nine members of a Board of Trustees, all elected at large.
- Chairperson selected by Trustees.
- Chairperson presides at meetings and votes on all questions (except appointment to fill vacancy on Board.)
- Ordinance passed by majority vote of members of Board of Trustees after reading at regular meeting
- Chairman has no veto power.

FOURTH CLASS CITIES Chapter 79 of the Revised Statutes of Missouri.

- Mayor elected at large for two or four year terms
- Mayor resides at meetings of Board of Aldermen and votes only in case of a tie.
- Ordinance passed by majority vote of Aldermen after two readings (title only if copies made available to public prior to consideration.)
- Mayor has veto power - Aldermen can over ride by two-thirds vote.
- May have City Administrator for Council-Administrator form (Sections 77.042-77.048 RSMo) by passage of ordinance establishing the position. City Administrator is “chief administrative assistant to the mayor and who shall have general superintending control of the administration and management of the government business, officers and employees of the city subject to the direction and supervision of the Mayor.”

THIRD CLASS CITIES Chapters 77 & 78 of the Revised Statutes.

Mayor-Council Form

- Not less than four wards, each having one or two Councilmembers
- Mayor elected at large for four year term.
- Mayor presides at Council meetings and votes only in case of a tie.
- Ordinances passed by majority of Councilmembers after two readings (title only if copies made available prior to consideration.)
- Mayor has veto power - Councilmembers can override by two-thirds vote.

- May have City Administrator for Council-Administrator form (Sections 77.042-77.048 RSMo) by passage of ordinance establishing the position. City Administrator is “chief administrative assistant to the mayor and who shall have general superintending control of the administration and management of the government business, officers and employees of the city subject to the direction and supervision of the Mayor.”

Commission form of government

- Mayor and two or four Councilmembers, all elected at large for four year terms.
- Mayor presides at Council meetings and votes on all questions -- Mayor has no veto power.
- City divided into five departments (Public Affairs, Accounts & Finance, Public Safety, Streets & Public Improvements, Parks and Public Property) and responsibility for each department distributed among Mayor and Councilmembers.

City Manager form of government - Sections 78.430-78.720 RSMo.

- The City Manager form of government is formed by a public election on the question whether to adopt the City Manager form of government.
- Five Councilmembers elected at large for three year terms, one of who is selected by others to serve as Mayor for one year term.
- Optional City Manager Form: Seven Councilmembers elected for three year terms, one each from five wards, and two elected at large.
- Mayor presides at Council meetings and votes on all matters, but has no veto power.
- Council employees administrative head of city government as City Manager. The managers duties are set forth in Section 78.610.

Charter Cities. Are cities which derive their power from (1) a citizen approved document which sets forth the governmental framework for the City, and (2) the exercise of home rule authority, consistent with the State law and the Missouri constitution.

- Special Charter Cities. There are two types of charter cities. The less common is the Legislative (or Special) Charter Cities - (RSMo. Chapter 81). Special Charter Cities are organized under charters specifically granted by the State Legislature.
- Constitutional Charter Cities. The most common form of Charter Cities are cities that have created a form or framework for their government that is adopted by the citizens at a municipal election. (RSMo. Chapter 82). The Charter Cities adopted by election are called Home Rule Charter Cities, also known as Constitutional Charter Cities.

- Pre-1971 charter cities generally have voluminous charters because the previous laws related to Home Rule Charters required the charters to specifically enumerate the authority and powers of the City.
- Post 1971 charter cities is “Any city which adopts ...shall have all powers which the General Assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the Constitution of the Sate and are not limited or denied either by the Charter so adopted or by Statute....” (Missouri Constitution. Article 6, Section 19, 19(a) and 20.)

Authority. The Governing Body of a municipality can only act at an Official Meeting. Acts of Municipal Officers beyond the scope of their authority do not bind a City. An official meeting begins with compliance with the “Sunshine Law”.

Missouri Open Meetings and Records Law

- (The Sunshine Law) Five (5) part test to identify potential violation:
 1. Am I part of a public governmental body?
 2. Is a quorum of the public governmental body present?
 3. Is "public business" being discussed?
 4. Was the "public meeting" properly noticed?
 5. Do the "public business" a proper topic for closed session?
- A proper notice of a public meeting has the following five (5) characteristics:
 1. Date
 2. Time
 3. Place
 4. Tentative Agenda
 5. Posting of the meeting notice at the location of the meeting in a place reasonably calculated to notify citizens of the meeting. The notice should be posted at least 24 hours prior to the start time of the meeting, excluding weekends and holidays.

Statutory Conflict of Interest

- What is it?
 - Neither you, nor a member of your IMMEDIATE FAMILY, or any business in which you have a SUBSTANTIAL INTEREST, should do business with your city. Exception: some conflicts can be mitigated by competitive bidding and public notice solicitation of proposals.
 - In land use related decision, be watchful of situations where a decision may have a direct financial gain or loss to you.
- How immediate of family?

- Section 105.450 provides definitions. Generally, immediate family is you, your spouse and dependent children.
- What is substantial interest?
 - “Ownership by the individual, his spouse, or his dependent children, whether singularly or collectively, directly or indirectly, of ten percent or more of any business entity, or of an interest having a value of ten thousand dollars or more, or the receipt by an individual, his spouse or his dependent children, whether singularly or collectively, of a salary, gratuity, or other compensation or remuneration of five thousand dollars, or more, per year from any individual, partnership, organization, or association within any calendar year.” Section 105.450 (10).
- What about contract with company or person I know and may even do business with?
 - DISCLOSE AND VOTE.

Nepotism

- “Any public official or employee in this state who by virtue of his office or employment names or appoints to public office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity (blood relative) or affinity (marriage), shall thereby forfeit his office or employment.” Constitution of the State of Missouri, Art. VII, Section 6.

Financial Disclosure Statement Filings

- State “ethics” law requires annual reports of financial interests and disclosure of transactions to be filed with state and local government each year. (RSMo. 105.483-105.498.)
- Applies if “annual operating budget” of city is in excess of two million dollars.
- Local ordinances meeting certain minimum requirements will allow you to avoid more extensive state disclosure requirements.
- Reports to be filed by May 1 for prior calendar year.

II. What Type of Decision do Municipal Officials Make?

Types of Decision Making

Legislative – When the Governing Body **MAKES** the Rules

Administrative – When the Governing Body **APPLIES** the Rules

Land Development

- Rezoning of Property (RSMo Chapter 89)

- Ordinance regulating property
- Platting Property (RSMo Chapter 445)
- Special Use Permits
- Land Use Regulations/Decisions: REASONABLE REGULATION INTENDED TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE - BALANCE INTERESTS OF PROPERTY OWNER WITH COMMUNITY AT LARGE - PROPERTY OWNER NOT ENTITLED TO “HIGHEST AND BEST USE” SIMPLY REASONABLE USE.

Budget

- Annual adoption of budget by fiscal year, which is not necessarily calendar year. For example, the Federal Government fiscal year is October through September.
- Minimum Requirements for the annual budget (R.S.Mo. 67.010):
 1. A budget message describing the important features of the budget and major changes from preceding year;
 2. Estimated revenues from all sources, with comparative statement for preceding two (2) years;
 3. Proposed expenditures with comparative statement for preceding two (2) years;
 4. The amount required to service any outstanding debt; and
 5. A general budget summary.
- Capital Improvement Plan
- Restrictions on Indebtedness: Section 26(a) of Article VI provides that no city, town or village, school district or other political corporation or political subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years except as otherwise provided in the constitution. The provisions in the constitution permitting borrowing or indebtedness are contained in Sections 26(b), 26(c), 26(d), 26(e) and in 23(a) of Article VI.
- Spending Public Money for Private Benefit: No city or other political subdivision shall “lend its credit or grant public money or property to any private individual”, except for public benefit. Article VI, Sections 23 and 25.

Hancock Amendment. Limitation on Increasing licenses, fees and taxes. Article X, Sections 16-24. Exception: User Fees

- The Keller Factors is used to determine if a charge is a user fee and therefore not subject to the electoral process:
 1. When a fee is paid, if periodic, then vote likely;
 2. Who pays the fee – all or only those who use the service;

3. Whether the amount of fee is affected by the level of goods or services provided; and
4. Whether service is exclusively provided by government

Use of Public Funds

Public Duty to ensure appropriation of funds for public benefit. Incidental private benefit allowed, however, an agreement is required and it is best to have the agreement set forth the service to the public or public benefit received from the use of the funds. The intentional misuse of funds is an area of personal liability, both criminal and civil.

Purchases

- Competitive Bidding
 - Health Insurance
 - Special Assessment
 - City Official Selling to City
 - Grants, if applicable
- Lowest and Best
- State and Local Procedures

Construction Contracts

- Competitive Bidding
- Engineers and Architects (RFQ)
- Prevailing Wage (This concept can be remembered with the catch phrase “public funds for public works”. Then ask whether the project is new construction or maintenance.)
- Performance / Payment Bonds
- Immigration Law Compliance

Other Contracting Concerns

- No Individual Liability Unless it is Clear That the Officer Intended to Bind Himself Personally
- May Have Liability if Officer Exceeds the Authority Given
- Ensure that contracts contain requirements for bonding and liability insurance

III. How Do I Make Decisions?

Official acts by which decisions are made come in several forms, primary, among them is the passage of Ordinances. In addition governing bodies act through the passage of resolutions and motions. The Mayor or Chairman of the Board of Trustees may also act by proclamation.

Ordinances

- Content
 - The subject of the ordinance must be WITHIN THE SCOPE OF THE POWERS of the governing body.
 - The Primary purpose of the ordinance must be for a PUBLIC PURPOSE.
 - The ordinance must CONFORM WITH STATE LAW.
 - Ordinances must be written in CLEAR AND CONCISE LANGUAGE.

- Form
 - An ordinance should have a title, or caption and a subject.
 - An ordinance should contain preambles which describe reasons or purposes of ordinance.
 - An ordinance should be an order to DO or NOT TO DO certain thing.
 - An ordinance should have an effective date.

- Enactment Process
 - PUBLICATION of the Ordinance by placement on meeting agenda and if a public hearing is required with 15 days published public notice.
 - Introduction of proposed ordinance in the form of a BILL.
 - The Bill is READ TWICE.
 - Generally MAJORITY of Council affirmatively votes in Favor.
 - Votes are RECORDED.

Robert's Rules of Order

- Decisions are made and recorded at public meetings. Most public meetings are conducted in accordance with ROBERT'S RULES OF ORDER.
- National Association of Parliamentarians, 6601 Winchester Avenue, Suite 260, Kansas City, Missouri 64133-4657 Phone: 816-356-5604

Public Hearing

- Often required as a part of "due process". Due process requires NOTICE and OPPORTUNITY TO BE HEARD before a decision is made.
- Sample Procedure for Public Hearing
 - Staff Report Presented
 - Applicant
 - Those in Favor of Application
 - Those Opposed to Application
 - Applicant Given Opportunity to Respond
- Hearing body – NOT Investigative body.
- Ex Parte Contacts are private discussions with only one of the interested parties. It is advisable to maintain an open mind until the hearing is

completed and to make available on the record any information gained in the contact that is used for a basis of your decision.

Minutes and Voting

Recording Decisions

- State law dictates that “ayes and nays recorded in the journal” means that vote of each member must be recorded. A journal of minutes does not require verbatim minutes.
- A majority of the membership must be present to create a quorum in order to conduct meeting.

Counting Votes

- A favorable vote of a majority of the membership is required to pass an ordinance regardless of how many members are actually present at the meeting. (RSMo. 77.080, 79.130, and 80.110)
- A simple majority of those members present at the meeting is required to pass a resolution or motion, unless otherwise provided in the city charter or ordinances.
- In some land development decision, a protest petition may be filed to force the approval vote requirement to go to 2/3 thirds for passage. (RSMo. 89.060: 30%, either by land area included in proposed change or within area drawn parallel 185 feet from boundary of proposed change.)

Abstention. An abstention vote DOES NOT count as a “yes” or “no” when a threshold number of votes are required to pass an item. For example passage of an ordinance requires affirmative vote of a majority of the governing body. Missouri caselaw.

If you are going to abstain from voting:

- Don’t participate in discussion on the item and remove self from meeting table.
- Don’t lobby your fellow officials.
- Present in record reason for abstention.
- Don’t vote and make sure record reflects the abstention.

IV. Keys to Successful Decision Making

- Do not form opinion too fast.
- Listen, ask questions, evaluate and form opinion.
- Disclose, if appropriate.
- AND VOTE

LIABILITY AND RISK

V. Criminal Liability

Subject to Laws Applicable to Public Generally

Subject to Particular Laws Related to Duty in Public Office

- Chapter 576 RSMo.
 - Bribing a Public Servant
 - Public Servant Acceding to Corruption
 - Obstructing Government Operations
 - Official Misconduct
 - Misuse of Official Information
 - Failure to Give Tax List
- Conflict of Interest

Penalty: Fine or Imprisonment, or both depending upon the charge.

VI. Civil Liability

Civil Actions

- Sued in Official Capacity as a Municipal Officer
- Sued in Private and Individual Capacity
- Individual is liable for gross negligence and or willful acts or inaction - or if act is outside the scope of official duties.
- Defense May Be Provided by Public Entity if Public Entity Has Adopted a Policy to Defend All or Specified Actions Brought or Maintained Against Its Employees Arising Out of the Performance of Their Duties

Liability for Tortious Acts (Negligence)

- Not liable for Acts Involving the Negligent Exercise of Discretion
- Liable for Tortious Ministerial Acts
- Liable for Ultra Vires Acts

VII. Immunity from Civil Liability (Affirmative Defenses)

Sovereign Immunity

- Protects Against Most Suits Filed Against Government Itself
- Governmental vs. Proprietary Functions

- Example: Police and Fire Protection
- Exceptions to Sovereign Immunity:
 - Negligent Operation of Motor Vehicle by Public Employee
 - Damages Caused by Dangerous Conditions
- Dangerous Conditions
 - Exceptions: Inherent Risks and Obvious Dangers
 - Regular Facilities Surveys can assist in identifying hazards
 - Ongoing Facilities Maintenance Programs should reduce dangerous conditions

Official Immunity

- Where Public Official Has Discretion in Performing Governmental Act and Acts in Good Faith
- Does Not Apply When Official Performing Ministerial Duties
- Example - Issuance of Special Use Permit

Public Duty Doctrine

- Ordinances Exist for the Benefit of the Entire Public and Do Not Exist for the Benefit of the Individual Served by It on a Specific Occasion
- Example - Building Inspector Is Not Liable to Individual Homeowner

VIII. Employment Liability

Personnel, Generally

- Missouri employees are generally employees at will. However, be mindful of public policy exception, ie. whistle-blowers.
- Do not discriminate. Race, gender, age and disability. These issues may arise in discipline situations and termination.
- Document performance.
- No collective bargaining in Missouri only Meet and Confer Requirement, except for police officers and administrative employees, HOWEVER, a recent 2007 Missouri Supreme Court case involving teachers may have rewritten the labor laws for public employees in Missouri.

Sexual Harassment

- Definition - Conduct Based on Sex or Gender That Affects a Term or a Condition of Employment
- A “Condition” of Employment Can Include the Environment of the Workplace

Employment Discrimination

- Age (over age 40)
- Sex

- Race
- Religion
- Disability – Mental or Physical as defined by the Americans with Disabilities Act (Federal Law)

Employee Training

- Establish a Regular and Ongoing Program to Train Employees
- Use a thorough and Comprehensive Interview Process
- Screen Employees Placed in a Supervisory Position over Children
- Encourage Employees to Report Areas of Concern and TAKE ACTION

IX. Punitive Damages and Personal Liability

Punitive Damages

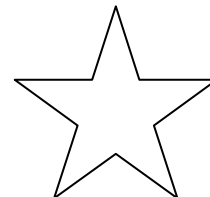
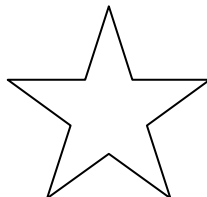
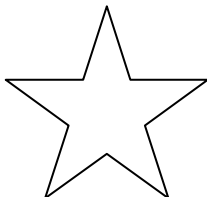
- A City is Immune From Punitive Damages Under Any Circumstances
- Official May Be Liable for Punitive Damages When Actions Are Intentional, Malicious or With Willful and Conscious Disregard to the Rights of the Plaintiff.

Elements Usually Found in Personal Liability Cases

- Maliciousness
- Conspiracy
- Intentional Misrepresentation
- Willful Disregard
- False Representations
- Confidential Relationship
- Bad Faith

X. Keys to Avoid Liability and Minimize Risks

- When you are unsure of your authority,
- Use your common sense,
- Examine your own motives,
- And act prudently.



WHERE TO GET MORE INFORMATION

Call your City Attorney

Missouri Municipal League (MML)
Telephone: 1-573-635-9134
Website: www.mocities.com

Missouri Ethics Commission
Telephone: 1-573-751-2020
Website: www.moethics.mo.us

Missouri Attorney General's Office
Telephone: 1-573-751-3321
Website: www.ago.mo.us

ENJOY THE EXPERIENCE OF PUBLIC SERVICE.

Speakers: Christine Treat Bushyhead
White Goss Bowers March
Schulte & Weisenfels
City Attorney, Belton, Missouri

Nancy Thompson
City Attorney, Riverside, Missouri