

2012 SPRING INSTITUTE

~Legal Handout~

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I. Sunshine Law

The law: §610.010 - §610.225 RSMo.

Helpful website: <http://ago.mo.gov/Open-Government.htm>

- Attorney General Opinion No. 129-97:

- (1) The vote by a school board to hire, fire, promote or discipline an employee of the school district which vote must be made available to the public pursuant to Section 610.021(3), RSMo. Supp. 1996, should disclose how each member of the school board cast his or her vote, and
- (2) the school board need not disclose the information which was considered by the board prior to the vote being taken.

- From Attorney General Opinion No. 30-88:

“For a vote to be truly ‘public,’ a citizen examining the records of the public governmental body is entitled to know as much as if he observed the vote being taken in a public meeting. The word “vote,” as used in Section 610.021(1), RSMo. Supp.1987, should be understood to include the proposition voted upon, any matter or material incorporated or referred to within the proposition, and a means of discerning how each member of the public governmental body cast his vote, all of which would be available to someone attending a public meeting.”

- Librach v. Cooper, 778 S.W.2d 351, 356 (Mo. Ct. App. 1989)

“Missouri law properly recognizes the public interest in an open government. That interest may be at its greatest where, as here, public funds are spent. The Act provides for narrow classes of records that may be closed from public inspection. None of these exceptions applies to the Agreement here, a severance contract with no unusual or atypical kinds of terms and conditions.”

- Anderson v. Jacksonville, 103 S.W.3d 190, 196 (Mo. Ct. App. 2003)

- “Although liberal access to public governmental records is the state's expressed policy, one seeking access to public records must communicate a request in language that a reasonably competent custodian of the records would understand. The custodian must be able to identify records with reasonable specificity in order to be able to provide access to them.” (emphasis added).
- “Through his counsel's letter, he requested ‘that the City of Jacksonville provide any proof of ownership of property that is leased by Mr. Anderson.’ The communication does not seek access to any expressed specific record.... The phrase lacks sufficient specificity to expect a reasonably competent custodian of the Village's records to know what public records Mr. Anderson seeks. Such request would require the Village to conduct research in behalf of Mr. Anderson to determine what leases he has entered into and then to determine what public records provide proof of ownership of property leased by him.”
- “The statute does not contemplate such effort by the custodian of the Village's records. The statute does not require that the custodian of public records perform more than to provide access to records for which access is sought.”

- **R.S.Mo. § 610.025.** Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format. The provisions of this section shall only apply to messages sent to two or more members of that body so that, when counting the

sender, a majority of the body's members are copied. Any such message received by the custodian or at the member's office computer shall be a public record subject to the exceptions of section 610.021.

- § 610.021(2) R.S.Mo. Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate;
- *See, e.g., City of St. Louis v. City of Bridgeton, 806 S.W.2d 717 (Mo. App. E.D. 1991)*
 - A public government body purchasing a number of contiguous parcels in a single subdivision is authorized to close records relating to the price paid for one parcel until all the parcels have been acquired.
 - NOTE: “A governmental body must use discretion, however, in determining what is a single transaction. If the parcels to be acquired were not contiguous, for example, the acquisition might not comprise a single transaction.” *Id.* at 719.

II. Contract Requirements

§432.070 RSMo. Contracts.

No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be **expressly authorized by law**, nor unless such contract be made **upon a consideration wholly to be performed or executed subsequent to the making of the contract**; and such contract, including the consideration, shall be **in writing and dated when made**, and shall be subscribed by the parties thereto, or their agents authorized by law and **duly appointed and authorized in writing**. . . .

Generally agreements/contracts must be:

- Dated and in writing
- Signed by person with authority
- Authority and consideration must be in writing
- Executed before any work begins

Division Calvary Brigade v. St. Louis County, 269 S.W.3d 512 (Mo. App. E.D. 2008); *Moynihhan v. City of Manchester*, 265 S.W.3d 350 (Mo. App. E.D. 2008); *Shadowood Development Co., Ltd. v. City of Lake St. Louis*, 668 S.W.2d 647 (Mo. App. 1984).

III. Collective Bargaining and Labor Issues

The law: Mo. Constitution Article I, § 29; § 105.500 RSMo., *et seq.*

Helpful website: <http://www.labor.mo.gov/sbm/>

- The **Missouri Constitution’s bill of rights** contains the following guarantee: “employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” *Mo. Constitution Article I, section 29.*
- **** Missouri Public Sector Labor Law**, section 105.500, *et seq.*

- § 105.510 RSMo. Employees, **except police**, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and universities, **of any public body** shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing.
- § 105.520 RSMo. Whenever such proposals are presented **by the exclusive bargaining representative to a public body**, the public body or its designated representative or representatives **shall meet, confer and discuss such proposals** relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate. Upon the completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.
 - In the case of *Independence-Nat'l Education Assoc. v. Independence School Dist.*, 223 S.W.3d 131, 136 (Mo. banc 2007), the Missouri Supreme Court held that the right to organize and to bargain collectively applies to all public employees (overruling *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. banc 1947))
 - This area of Missouri labor law is currently in flux as a number of important cases are now pending before the Missouri Supreme Court. The current dispute centers around what procedures, if any, a public employer must follow when approached by public employees, **such as police officers and teachers**, who are explicitly *exempted* from Missouri's Public Sector Labor Laws.
 - At a minimum, a public entity must establish some framework by which it will **meet and confer** with employee representatives.

IV. Unemployment Benefits for Retirees

The law: §288.010 RSMo., *et seq.*

Helpful website: http://www.labor.mo.gov/DES/Employers/info_employers.asp

- **RSMo. § 288.040.4.**
 - (1) A claimant shall be **ineligible** for waiting week credit, **benefits** or shared work benefits **for any week for which he or she is receiving or has received remuneration exceeding his or her weekly benefit amount or shared work benefit amount in the form of:**
 - (a) Compensation for temporary partial disability pursuant to the workers' compensation law of any state or pursuant to a similar law of the United States;
 - (b) A **governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such claimant to the extent that such payment is provided from funds provided by a base period or chargeable employer pursuant to a plan maintained or contributed to by such employer; [with exceptions not here applicable] ...**
 - (2) **If the remuneration referred to in this subsection is less than the benefits which would otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration ...**

- **RSMo. § 288.050. 1.** Notwithstanding the other provisions of this law, a claimant shall be **disqualified** for waiting week credit or **benefits** ... if the deputy finds:
 - (1) That the claimant has left work **voluntarily without good cause** attributable to such work or to the claimant's employer.
- “**Voluntarily**” and “**good cause**” have been specifically defined in case law as follows:
 - **Voluntary:** “A departure is ‘**voluntary**’ when it proceeds from the will or is ‘produced in or by an act of choice.’” (this is a fact-based determination). *Muller v. Div. of Employment Security*, 331 S.W.3d 714, 718 (Mo. App. W.D. 2011) (whether the employee or the employer committed the final act severing the employment relationship may be dispositive of this issue)
 - **Good Cause:** A worker has **good cause** to terminate employment voluntarily when that conduct conforms to what an average person, who acts with **reasonableness** and **good faith**, would do.
 - *Knobbe v. Artco Casket Co.*, 315 S.W.3d 735, 740 (Mo. App. E.D. 2010)
 - “Lack of work” is not a basis to protest an unemployment claim.

V. Election Issues

The law: §115.005 RSMo., *et seq.*
Helpful website: <http://www.sos.mo.gov/elections/lea/>

- **R.S.Mo. § 115.350.** No person shall qualify as a candidate for elective public office in the state of Missouri who has been convicted of or found guilty of or pled guilty to a felony **under the laws of this state.** (L. 2006 H.B. 1900). Effective 1-01-07.
- Missouri statutes seem to be in conflict on this issue, for example:
 - **R.S.Mo. § 115.005.** Notwithstanding any other provision of law to the contrary, **sections 115.001 to 115.641 shall apply to all public elections in the state,** except elections for which ownership of real property is required by law for voting.
 - **R.S.Mo. § 115.305.** This subchapter [consisting of §§ 115.305 to 115.405] shall not apply to candidates for ... city, town and village offices ...
 - Thus, it is unclear whether § 115.348 and § 115.350 which disqualify federal and Missouri felons as candidates for elective public office apply in municipal elections
- There is a case pending before the Supreme Court, *State of Missouri ex. Inf. Hensley v. Young*, that may shed some light on this issue (Case County Presiding Commissioner ousted based on past felony)
 - One issue: whether § 115.350 violates the Equal Protection Clauses of the 14th Amendment to the U.S. Constitution and Article I, Section 2 of the Missouri Constitution
 - That is, the Statute disqualifies felons convicted under Missouri law, but not other felons from seeking elective (but not appointed) public office, so similarly situated individuals are treated differently

- ***State ex rel. Thomas v. Neeley*, 128 S.W.3d 920 (Mo. App. S.D. 2004)**
 - “Considering the statutes and testimony...we come to the conclusion that [the] City Clerk does not have the discretion to decide whose names are placed on the ballot. We do agree that [the] City Clerk has...a ministerial duty to certify the names of candidates ...Where a candidate met his statutory obligations, such as not being in arrears in taxes and timely filing his written, signed, and sworn declaration of candidacy...we find no basis under which City Clerk may make a discretionary decision not to certify the name of that candidate.”

VI. Incompatible Offices

The law: Common law doctrine. Case-by-case determination.

1. Must be a public office:

- *State v. Hawkins*, 257 P. 411 (Mont. 1927) cited by *State ex rel. Pickett v. Truman*, 64 S.W.2d 105 (Mo. 1933).
 - Office must have some degree of permanency and continuity (not occasional or temporal); and
 - Officeholder must take an official oath of office
 - Created by constitution, legislature, or by a municipality or other body through authority conferred by the legislature
 - Must possess a delegation of a portion of the sovereign power of government, exercised for the benefit of the public

2. If both public offices, are they incompatible? –

- Turns on whether duties are “inconsistent, antagonistic, repugnant or conflicting” - *State ex rel. McGaughey v. Grayston*, 163 S.W.2d 335 (Mo. 1942)
- Primary test: whether one office is subordinate to the other in some aspect of performing its functions or duties, as where one has some supervision of the others, is required to deal with, control, or assist him. - *State ex rel. Walker v. Bus*, 36 S.W. 636, 639 (Mo. 1896)

- **Please See Missouri Examples of Compatible and Incompatible Offices Chart at end of this Handout**

VII. Conflict of Interest

The law: See § 105.450-105.467 RSMo., generally

Helpful website: <http://www.mec.mo.gov/EthicsWeb/Compliance/Compliance.aspx>

Additional prohibited acts by certain elected and appointed public officials and employees, exceptions.

105.454. **No elected or appointed official or employee** of the state or any political subdivision thereof, serving in an executive or administrative capacity, shall:

(1) Perform any service for any agency of the state, or for any political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power for receipt or payment of any

compensation, other than of the compensation provided for the performance of his or her official duties, in excess of five hundred dollars per transaction or five thousand dollars per annum, except on transactions made pursuant to an award on a contract let or sale made **after public notice and competitive bidding, provided that the bid or offer is the lowest received;**

(2) Sell, rent or lease any property to any agency of the state, or to any political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power and received consideration therefor in excess of five hundred dollars per transaction or five thousand dollars per year, unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received;

(3) **Participate in any matter, directly or indirectly,** in which he or she attempts to influence any decision of any agency of the state, or political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power, **when he or she knows the result of such decision may be the acceptance** of the performance of a service or the sale, rental, or lease of any property to that agency for consideration **in excess of five hundred dollars' value per transaction or five thousand dollars' value per annum to him or her, to his or her spouse, to a dependent child in his or her custody or to any business with which he or she is associated** unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received;

(4) Perform any services during the time of his or her office or employment for any consideration from any person, firm or corporation, other than the compensation provided for the performance of his or her official duties, by which service he or she attempts to influence a decision of any agency of the state, or of any political subdivision in which he or she is an officer or employee or over which he or she has supervisory power;

(5) Perform any service for consideration, during one year after termination of his or her office or employment, by which performance he or she attempts to influence a decision of any agency of the state, or a decision of any political subdivision in which he or she was an officer or employee or over which he or she had supervisory power, except that this provision shall not be construed to prohibit any person from performing such service and receiving compensation therefor, in any adversary proceeding or in the preparation or filing of any public document or to prohibit an employee of the executive department from being employed by any other department, division or agency of the executive branch of state government. For purposes of this subdivision, within ninety days after assuming office, the governor shall by executive order designate those members of his or her staff who have supervisory authority over each department, division or agency of state government for purposes of application of this subdivision. The executive order shall be amended within ninety days of any change in the supervisory assignments of the governor's staff. The governor shall designate not less than three staff members pursuant to this subdivision;

(6) Perform any service for any consideration for any person, firm or corporation after termination of his or her office or employment in relation to any case, decision, proceeding or application with respect to which he or she was directly concerned or in which he or she personally participated during the period of his or her service or employment.

Interest in measure, bill, or ordinance to be recorded--financial interest statement.

105.461. 1. The governor, lieutenant governor, any member of the general assembly, or any member of the **governing body of a political subdivision** who has a **substantial personal or private interest** in any measure, bill, order or ordinance proposed or pending before the general assembly or such governing body, shall, before such official passes on the measure, bill, order or ordinance, **file a written report** of the nature of the interest with the chief clerk of the house of representatives or the secretary of the senate **or clerk of**

such governing body and such statement shall be recorded in the appropriate journal or other record of proceedings of the governing body. The governor shall make the governor's written report along with the governor's approval or disapproval of any bill or act of the general assembly describing the nature of the interest and such report shall be recorded in the journal of the house of representatives or of the senate.

2. The governor, lieutenant governor, any member of the general assembly, or any member of the governing body of a political subdivision shall be deemed to have complied with the requirements of this section if such official has filed, at any time before the official passes on such measure, bill, order or ordinance, a financial interest statement pursuant to sections 105.483 to 105.492 which discloses the basis for the official's substantial personal or private interest or interests that the official may have therein. Any such person may amend the person's financial interest statement to disclose any subsequently acquired substantial interest at any time before the person passes on any measure, bill, order or ordinance, and shall be relieved of the provisions of subsection 1 of this section.

Neptism Bonus

The law: Art. VII, §6 Mo. Const.

Art. VII, §6 Mo. Const. Any public officer or employee in this state who *by virtue of his office or employment names or appoints* to public office or employment any relative within the fourth degree, by consanguinity or affinity, **shall thereby forfeit his office or employment.**

Notes:

- Applies equally to officers AND employees
- Does not have to be a paid appointment
 - *State ex rel. Attorney Gen. v. Shull*, 887 S.W.2d 397 (Mo. banc 1994)
- Even if the vote was unnecessary in order to make the appointment, if the official takes any action to make the appointment, it's a forfeiture
 - *State ex rel. Attorney Gen. v. Shull*, 887 S.W.2d 397 (Mo. banc 1994)
- You can't retroactively "fix" the violation
 - Rescinding the appointment doesn't cure violation
 - Can't resign and be reappointed either
 - *State ex rel. Nixon v. Wakeman*, 271 S.W.3d 28 (Mo. App. W.D. 2008)
- Intent (or ignorance) is irrelevant
 - *State ex rel. Attorney Gen. v. Shull*, 887 S.W.2d 397 (Mo. banc 1994)
- Self-executing v. self-enforcing
 - Only self-enforcing if voluntarily resign
 - Otherwise entitled to due process thru judicial determination (quo warranto)
 - Cases say "automatically lose right to hold office" and constitution itself says it is "forfeited" – but SC has said if they don't voluntarily resign, they have be judicially removed
 - *State ex rel. Nixon v. Wakeman*, 271 S.W.3d 28 (Mo. App. W.D. 2008); *State ex rel. Attorney Gen. v. Shull*, 887 S.W.2d 397 (Mo. banc 1994)

Degrees of family relation explanation:

- A husband is related by marriage (affinity) to his wife's relatives in the same way that she is related to them by blood (consanguinity) and she to his family in the same way, but the kindred of the spouses

are not related to one another (e.g., a brother of the husband is **not** related to a brother of the wife).

- Half relationship is the same as a whole relationship; step relationship is the same as a blood relationship.
- A relationship by marriage (affinity) terminates if death or divorce occurs.

First Degree

Child Parents

Second Degree

Grandchild Brother/Sister Grandparents

Third Degree

Great Grandchild Niece/Nephew Aunt/Uncle
Great Grandparents

Fourth Degree

Great Great Grandchild Grand Niece/Nephew
First Cousin Great Aunt/Uncle
Great Great Grandparents

VIII. Utility Shut-off and Rights

The law: See Chapters 247, 249, & 250 RSMo., generally

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (U.S. 1978).

- Homeowners were entitled to a certain amount of due process before turning off their utility service.
- Customer’s expectation of continued service was a “property right” **based on Tennessee law**
- Plaintiffs were not provided adequate notice because they were not informed of the procedures available to resolve their disputes with defendant.

Services deemed furnished both to occupant and owner of premises--payment delinquency, notice of termination sent to both occupant and owner of premises--applicability--unapplied-for utility services, defined.

250.140. 1. Sewerage services, water services, or water and sewerage services combined **shall be deemed to be furnished to both the occupant and owner of the premises receiving such service** and, except as otherwise provided in subsection 2 of this section, the city, town, village, or sewer district or water supply district organized and incorporated under chapter 247 rendering such services **shall have power to sue the occupant or owner**, or both, of such real estate in a civil action to **recover any sums due for such services** less any deposit that is held by the city, town, village, or sewer district or water supply district organized and incorporated under chapter 247 for such services, **plus a reasonable attorney's fee** to be fixed by the court.

2. **When the occupant is delinquent in payment for thirty days**, the city, town, village, sewer district, or water supply district **shall make a good faith effort to notify the owner** of the premises receiving such service of the delinquency and the amount thereof. Notwithstanding any other provision of this section to the contrary, **when an occupant is delinquent more than ninety days, the owner shall not be liable for sums due for more than ninety days of service**; provided, however, that in any city not within a county and any home rule city with more than four hundred thousand inhabitants and located in more than one

county, until January 1, 2007, when an occupant is delinquent more than one hundred twenty days the owner shall not be liable for sums due for more than one hundred twenty days of service, and after January 1, 2007, when an occupant is delinquent more than ninety days the owner shall not be liable for sums due for more than ninety days. **Any notice of termination of service shall be sent to both the occupant and owner of the premises receiving such service.**

3. **The provisions of this section shall apply only to residences that have their own private water and sewer lines.** In instances where several residences share a common water or sewer line, the owner of the real property upon which the residences sit shall be liable for water and sewer expenses.

4. Notwithstanding any other provision of law to the contrary, **any water provider who terminates service due to delinquency of payment by a consumer shall not be liable for any civil or criminal damages.**

5. **The provisions of this section shall not apply to unapplied-for utility services.** As used in this subsection, "unapplied-for utility services" means services requiring application by the property owner and acceptance of such application by the utility prior to the establishment of an account. The property owner is billed directly for the services provided, and as a result, any delinquent payment of a bill becomes the responsibility of the property owner rather than the occupant.

Termination of water services for nonpayment of sewer charges, allowed when.

250.236. 1. Any city, town or village may contract with a private or public water company to terminate water services, at the direction of the city, because a customer fails to pay his sewer bill. **When charges for sewer services are in arrears for more than three months and after the city sends notice to the customer, the city may disconnect the customer's sewer line or request in writing that the private or public water company discontinue water service** until such time as the sewer charges and all related costs are paid. . .

Sewer company may contract with water company to terminate water services for nonpayment of sewer bill--procedure--immunity--costs, reimbursement.

393.015. 1. Notwithstanding any other provision of law to the contrary, **any sewer corporation, municipality or sewer district** established under the provisions of chapter 249 or 250, or sections 204.250 to 204.470, or any sewer district created and organized pursuant to constitutional authority, **may contract with any water corporation to terminate water services to any customer premises for nonpayment of a sewer bill.** No such termination of water service may ***occur until thirty days*** after the sewer corporation, municipality or statutory sewer district or sewer district created and organized pursuant to constitutional authority ***sends a written notice to the customer, except*** that if the water corporation is performing a ***combined water and sewer*** billing service for the sewer corporation, municipality or sewer district, ***no additional notice or any additional waiting period shall be required other than the notice and waiting period already used by the water corporation to disconnect water service for nonpayment of the water bill.*** Acting pursuant to a contract, the water corporation shall discontinue water service until such time as the sewer charges and all related costs of termination and reestablishment of sewer and water services are paid by the customer. . .

Charges for sewer service, how computed--notice, hearing--delinquency, interest from due date--lien on land authorized--priority of lien--discontinuance of service.

249.645. 1. Any public sewer district created under the provisions of sections 249.430 to 249.660 or established pursuant to article VI, section 30(a) of the Missouri Constitution may establish, make and collect charges for sewage services, including tap-on fees. The charges may be set as a flat fee or based upon the amount of water supplied to the premises and shall be in addition to those charges which may be levied and collected for maintenance, repair and administration expenses as provided for in section 249.640. Any private water company, public water supply district, or municipality supplying water to the premises located within a

sewer district shall, upon reasonable request, make available to such sewer district its records and books so that such sewer district may obtain therefrom such data as may be necessary to calculate the charges for sewer service. ***Prior to establishing any such sewer charges, public hearings shall be held thereon and at least thirty days' notice shall be given thereof.***

2. Any charges made under this section shall be due at such time or times as specified by the county commission, ***and shall, if not paid by the due date,*** become delinquent and shall bear interest from the date of delinquency until paid. ***If such charges become delinquent, they shall be a lien upon the land charged,*** upon the county commission filing with the recorder of deeds in the county where the land is situated a notice of delinquency. The county commission shall file with the recorder of deeds a similar notice when the delinquent amounts, plus interest and any recording fees or attorney's fees, have been paid in full. The lien hereby created may be enforced by suit or foreclosure. . .

4. **Should the sewer charges remain unpaid for a period in excess of three months,** the district, after notice to the customer by certified mail, **shall have the authority at its discretion to disconnect the customer's sewer line from the district's line or request any private water company, public water supply district, or any municipality supplying water to the premises to discontinue service to the customer** until such time as the sewer charges and all related costs of this section are paid.

Delinquent payment for sewer service, interest due, when--lien against land authorized.

250.234. Any user charges, connection fees, or other charges levied by any city, town or village shall be due at such time or times as specified by the governing board of the city, town or village and shall, ***if not paid by the due date, become delinquent and shall bear interest from the date of delinquency until paid.*** If such charges become delinquent they shall be a ***lien upon any land*** within the corporate limits of the city, town or village so charged, upon the governing board filing with the recorder of deeds in the county where the land is situated a notice of delinquency. The governing board shall file with the recorder of deeds a similar notice when the delinquent amounts, plus interest and any recording fees or attorneys' fees, have been paid in full. The lien hereby created may be enforced by suit or foreclosure.

Board to fix rates and charges--delinquencies to create lien, when--procedure.

247.110. 1. Subject to such regulation and control as may now exist in or may hereafter be conferred upon the public service commission of the state of Missouri, the fixing of rates or charges for water or water service furnished by a district incorporated under sections 247.010 to 247.220 is hereby vested in its board of directors. . .

2. Any charge for water or water services levied by the board of directors of a water district ***shall be due at such time or times as specified by the board and may be considered delinquent if not paid by the due date.*** The board may assess penalties on delinquent payments owed to the district. These penalties shall not exceed a reasonable amount.

3. ***Upon ten days prior notice to the person to whom water service was delivered,*** the board of directors of a water district may cause to be filed with the recorder of deeds in the county where the land is located a legal description of the property on which ***water charges are thirty days or more delinquent,*** the names and addresses of the title owners and the amount due, provided the person who owns the property is the same person who owes for the water service delivered, which ***shall constitute a lien upon the land so charged.*** . .

MISSOURI EXAMPLES RE COMPATIBLE AND INCOMPATIBLE OFFICES

Compatible When Same Person in Same Municipality:

- City Counselor and City Judge - Op. Attorney General No. 85, 1977
- City Marshal and Commissioner of Water and Sewer Department - Op. Attorney General No. 241, 1973
- City Collector and City Assessor - Op. Attorney General No. 323, 1970 (Danforth)
- Marshal and Deputy Constable - Op. Attorney General No. 349, 1967
- City Assessor and City Clerk - Op. Attorney General No. 38, 1960

Compatible When Same Individual in Two Different Corporations:

- County Commissioner and Member of School District Board - Op. Attorney General No. 118-2004 (Nixon)
- Circuit Clerk and Member of School Board - Op. Attorney General No. 84-2001 (Nixon)
- Treasurer of County Ambulance District and County Public Administrator - Op. Attorney General No. 108-92 (Webster)
- Supervisor of a Levee District organized by Circuit Court and County Commissioner in the same County - Op. Attorney General No. 145-91 (Webster)
- Superintendent of school and office in a political party - Op. Attorney General No. 29-79 (Ashcroft)
- Chairman of a Village Board of Trustees and office in a political party - Op. Attorney General No. 29-79 (Ashcroft)
- County Clerk and Superintendant of Schools - Op. Attorney General No. 337-66
- County Administrator and Member of School Board - Op. Attorney General No. 397-64
- City Assessor and Township Clerk - Op. Attorney General No. 188, 1963
- Mayor and Trustee of County Hospital – Op. Attorney General No. 2, 1961
- City Clerk and Trustee of County Hospital – Op. Attorney General No. 2, 1961
- Mayor of Third Class City and County Collector – Op. Attorney General No. 33, 1958
- Township and City Collector- Op. Attorney General No. 53, 1957 (Dalton)
- Water, Street, and Sewer Commissioner and City Collector - Op. Attorney General No. 24, 1955 (Dalton)
- Special Road Commissioner of County not under township organization and City Councilman or Alderman - Op. Attorney General No. 40, 1952 (Taylor)
- Party Central Committee Member and County or Municipal Office UNLESS specifically prohibited by statute - Op. Attorney General No. 40, 1952 (Taylor)
- Clerk of Board of Public Works and Deputy Sherriff – *State ex rel. Langford v. Kansas City*, 261 S.W. 115 (Mo. 1924)
- Member of Board of Education and Deputy Sheriff – *State ex rel. Walker v. Bus*, 36 S.W. 636 (Mo. 1896)
- Circuit Court and County Clerk – *State ex rel. Moore v. Lusk*, 48 Mo. 242 (1871)

Incompatible Same Individual in Same Corp:

- Member of Emergency Service Board and Employee of that Board - Op. Attorney General No. 109-99 (Nixon)
- Alderman and Special Police Officer - Op. Attorney General No. 404, 1967 (Anderson)
- Alderman and City Collector – Op. Attorney General No. 167, 1963 (Eagleton)
- City Councilman and City Assessor – Op. Attorney General No. 188, 1963
- Any two of City Clerk, City Treasurer, and City Collector - Op. Attorney General No. 24, 1955 (Dalton)
- County Deputy Collector and County Treasurer – *State ex rel. McAllister v. Dunn*, 209 S.W. 110, (Mo. 1919)
- Councilman and City Clerk when Council responsible for appointing City Clerk – *State Ex Rel. Smith v. Bowman*, 170 S.W. 700 (Mo. App. 1914) (cannot appoint self to paid position)

Incompatible Same Individual in Different Corp:

- County Auditor of 1st class county and City Council Member within that county - Op. Attorney General No. 63-2002 (Nixon)
- County Emergency Planning Coordinator and City Council - Op. Attorney General No. 84-2001 (Nixon)
- County Emergency Planning Coordinator and Member of School Board - Op. Attorney General No. 84-2001 (Nixon)
- County Emergency Planning Coordinator and City Clerk - Op. Attorney General No. 84-2001 (Nixon)
- County Commissioner and School Board Member - Op. Attorney General No. 84-2001 (Nixon)
- Director of Fire Protection District and Trustee of Village located in same District - Op. Attorney General No. 42-90 (Webster)
- Presiding Commissioner of County and Alderman of City within said County - Op. Attorney General No. 121-88 (Webster)
- Clark County Elected Official and Clark County Ambulance District - Op. Attorney General No. 25-88 (Webster)
- Public Employee and Fire Protection District Director – *State ex inf. Gavin v. Gill*, 688 S.W.2d 370 (Mo. 1985)(Prohibition by statute – court found statute not in violation of 1st Amendment nor Equal Protection)
- Presiding Judge of County Court of Third Class County and Mayor of Fourth Class City within the same County - Op. Attorney General No. 64-76 (Danforth)
- County Court Judge and Mayor – Op. Attorney General No. 64, 1976
- County Deputy Sherriff and County Coroner - Op. Attorney General No. 104-68 (Anderson)
- Police Judge and Deputy Sherriff - Op. Attorney General No. 46, 1955
- State legislature and Judge – *State Ex Rel. Owens v. Draper*, 45 Mo. 355 (Mo. 1870) (when judge took state legislature seat, impliedly vacated his judge position)