

Happy Holidays! The attorneys and staff of Cunningham, Vogel & Rost, P.C. wish everyone a safe and happy holiday season!

CVR Names Erin Seele a Principal – [Erin P. Seele](#) has been named a Principal with CVR effective January 1, 2016. Erin joined the firm in 2010 as an associate attorney and represents numerous municipalities on behalf of the firm, including as the appointed City Attorney of the Cities of Fenton and Ladue, Missouri. Erin is also the Director of the Municipal Officials Training Academy and a frequent speaker/instructor on municipal law issues. Erin received her B.S., summa cum laude, and her Master of Public Administration (M.P.A.) from Missouri State University in Springfield, Missouri and her J.D. degree, cum laude, from the University of Missouri-Columbia, where she served as the Editor-in-Chief for the Missouri Environmental Law & Policy Review. **Please join us in congratulating Erin!**

8th Circuit Affirms No Damages or § 1983 Remedy for Violations of the Telecommunications Act – The City of Cameron has prevailed in the latest in a string of judgments and rulings against CenturyLink and its related companies regarding their failure to pay local taxes and comply with laws and rules regarding the use of public property. [The Eighth Circuit Court of Appeals recently rejected](#) CenturyLink’s attempt to assert a claim for damages against the City of Cameron under § 1983 for an alleged violation of the Telecommunications Act. Cameron, through CVR as counsel, secured dismissal of all of CenturyLink’s claims in the district court, which the Eighth Circuit affirmed. This decision should prevent other telecom companies from attempting to sue Cities for damages for violation of the Telecommunications Act.

Sunshine Law Supersedes Advice of Counsel and Confidentiality Clause – In [Strake v. Robinwood West Community Improvement District, No. SC94842 \(Mo. Nov. 10, 2015\)](#), the Missouri Supreme Court reversed the trial court’s determination that a Community Improvement District could not have knowingly or purposely violated the Sunshine Law because it followed the advice of counsel and was subject to “two mutually conflicting obligations.” A District resident made a Sunshine request for documents relating to the District’s settlement of a personal injury lawsuit. [Section 610.021 RSMo.](#) expressly provides that “settlement agreements” are open records unless closed by court order, however, the settlement agreement contained a confidentiality clause. The District’s counsel advised that the records were open but that the District should deny the Sunshine request to avoid a breach of the settlement’s confidentiality provision. The Court ruled that the District’s knowledge of its Sunshine Law obligations was not negated by its contractual obligations. Additionally, the District’s decision to withhold the requested documents to avoid potential contractual liability amounted to “purposely” violating the Sunshine Law.

New “Micro-Cell” Pole Use Requests Arrive in ROW – Numerous Cities in Missouri and Illinois have recently received requests from companies, such as Mobilitie or Extenet, to install “micro” or “small” cell tower antennas on existing or new poles located in the City ROW. Some requests have also come with assertions that new law prohibits cities from prohibiting or regulating these uses. Many of these types of companies pay compensation to cities for the use and are subject to telephone taxes to the extent their equipment is used to provide “telephone” or other services subject to compensation or taxes (the status depends by state, specific use, and circumstance). While new Missouri laws have imposed numerous limitations on cities’ control over their ROW and zoning, microcell uses of city property are still subject to leases or ROW agreements, such as if the city has implemented authorizing ordinances establishing such requirements. While new state and federal limitations are complex, a few basic protections for cities should be considered as a starting point to control the location, appearance and risks to the public of any new infrastructure in the ROW:

- Locate or enact basic authority requiring a lease or ROW agreement for any new user;
- Ensure zoning applies to ROW to provide supplemental authority;
- Require execution of a lease or ROW agreement as a condition of the proposed use;
- Ensure that any agreement requires insurance, indemnification and protection of other uses as a condition;
- Provide for compensation of use of city facilities where lawful and appropriate;
- Ensure payment of applicable taxes, such as gross receipts telephone taxes (where applicable); and
- Include self-preemption provisions in agreements or ordinances to ensure that any imposition of even basic requirements is not applicable where new laws preempt City authority.

While numerous other concerns and possible legal limitations may apply, cities should not assume that these new uses are wholly preempted from regulation as may be suggested by some aggressive inquiries. While an overall strategy may be complicated to ensure against inappropriate design, locations or public risk from such uses, there do remain several mechanisms to ensure that such uses, if advantageous to the public, can be permitted while retaining at least some city control over its ROW, appearances, and community development.

New Affordability Criteria for SRF Grants in FY-2016 – The Water Resources Reform and Development Act of 2014 (WRRDA) amended the Federal Water Pollution Control Act (FWPCA), and required States to adopt a regulation or policy establishing affordability criteria for “additional subsidization” using FWPCA capitalization grant funds. In Missouri, the Missouri Department of Natural Resources (DNR) administers FWPCA additional subsidization, which includes grants, principal forgiveness, and negative interest loans through Missouri’s Clean Water State Revolving Fund. In order to continue offering additional subsidization, on September 21, 2015 the Missouri Department of Natural Resources (DNR) adopted an Additional Subsidization Affordability Analysis (ASSA) policy to be implemented for the first time in FY-2016. Under the ASSA policy, only communities that have a designated “high” financial burden are eligible to receive additional subsidization. To designate a high burden, DNR must determine that the cost of sewer service in a community is at least 1% of median household income. While household cost to income is not the only affordability criteria, it is the threshold criteria for additional subsidization. Additionally, under the new law States can provide additional subsidization only if the nationwide appropriation of FWPCA capitalization grants is at least \$1,000,000,000 in that year. Missouri’s final ASSA policy and complete guidelines for communities can be found [here](#).

Panhandling Ordinances Under Attack – Panhandling ordinances remain the subject of lawsuits and judicial scrutiny, as CVR has [previously reported](#). The ACLU recently filed suit against two Missouri cities, seeking to invalidate the cities’ panhandling ordinances. These suits come after the Seventh Circuit Court of Appeals invalidated the City of Springfield, Illinois’ panhandling ordinance in August. Cities should consult their city attorney and review their panhandling ordinances to ensure compliance with the First Amendment.

Municipal Officials Training Academy Enters its 4th Year – The [Municipal Officials Training Academy](#), co-founded by CVR and the St. Louis County Municipal League, provides low-cost training directly to Missouri municipalities on Missouri local government topics that are chosen based on your comments. The Academy offers convenient viewing options with webinar access and in-person attendance. **Please [contact us](#) to suggest topics for future training seminars and stayed tuned for an announcement of the schedule of presentations for the Training Academy’s fourth year.**

Presentations by CVR Attorneys – The following recent and upcoming educational presentations and resources from CVR attorneys are available for your review:

- [Legalities of Planning and Zoning](#) (APA/UMSL Chancellor’s Certificate Program in Planning and Zoning) – [Dan Vogel](#)

Feedback – Your comments are greatly appreciated. If you have suggestions for improving these Municipal Issue Reports, please let us know at the contacts below.

Upcoming Dates & Deadlines for Missouri Municipalities*

- Dec. 15** – Opening of candidate filing period for Municipal General Election.
- Jan. 1** – Furnish State Auditor report of bonds and coupons retired since the previous report.
- Jan. 19** – End of candidate filing for Municipal General Election.
- Jan. 31** – File report with DED on previous year’s revenue bond and general obligation bond issuances for Industrial Development Projects.
- Jan. 31** – Send W-2s and 1099s to IRS; distribute to employees and service providers.
- Feb. 28** – Report to DOR businesses that have relocated within past year to TIF area or Downtown and Rural Economic Stimulus Act development area.
- Mar. 5** – Notify DOR of ordinance opting-in to “Show Me Green” Appliance Sales Tax Holiday (at option of City).

*This list is not exhaustive. For the complete **Calendar of Procedural Deadlines for Missouri Municipalities**, click below:

- [Jan. 1–Dec. 31 Fiscal Year](#)
- [July 1–June 30 Fiscal Year](#)

Also see CVR’s [Annual Requirements for Missouri Municipal Special Purpose Entities](#)

Municipal Links

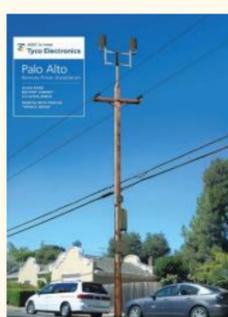
[Missouri Municipal League](#)

[St. Louis County Municipal League](#)

[Mid-America Regional Council \(KC Area\)](#)

[East-West Gateway Council of Governments](#)

For more, visit CVR’s [Resources Page](#)



If you need further assistance on any of these matters, please consult your City Attorney or Legal Department for particularized guidance or contact us at:

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