

Political Subdivisions Must Continuously Meet Population Requirements for Applicable Statutes, Absent an Express Grandfather Provision – The Missouri Court of Appeals, *In the Matter of the Petition of Missouri-American Water Company for Approval To Change Its Infrastructure System Replacement Surcharge (ISRS) v. Office of Public Counsel*, No. WD78792 (Mo. App. Mar. 8, 2016), recently held that a statute no longer applies once the population of a political subdivision drops under the minimum required for original application of that statute. The court reversed Missouri-American Water Company's ("MAWC's") petition for an increase in customer surcharges, because the petition was available only to "water corporation[s] providing water service in a county...with more than one million inhabitants," and St. Louis County, where MAWC operates, had fallen to less than one million inhabitants. See [Section 393.1003.1 RSMo](#). Missouri Courts rely only on the ten-year United States Census for population determinations, which showed St. Louis County to be below one million. The Court rejected the argument that [Section 393.1003.1 RSMo](#) acted as a grandfathering clause despite a drop in population, citing other statutes which clearly referred to a "grandfather" clause when this was intended. Without a grandfathering provision, the County's drop in population meant that the statute was no longer applicable. **As the Court itself acknowledged, "this ruling has wide reaching" consequences. The legislature has already introduced two bills attempting to solve this problem, [HB 2258](#) and [SB 949](#). In the meantime, cities relying on statutes with population requirements should evaluate whether those statutes still apply.**

Election Season Reminder: Public Funds May Not be Used to Advocate For or Support a Candidate or Ballot Measure

– Cities must be cognizant not to use public funds to "advocate, support or oppose" a candidate or ballot measure. See [Section 115.646 RSMo](#). If this statute is violated, fines may be imposed and, in some circumstances, the election may even be declared void. The "[d]issemination of purely factual information which does not 'advocate,' 'support' or 'oppose' a ballot measure. . ." does not violate this statutory provision, and courts and the Missouri Ethics Commission will look to factors including the style, tenor, and timing of the communication in determining whether the prohibition is violated. See *State v. Campbell*, 938 S.W.2d 640, 644 (Mo. App. 1997). The Missouri Ethics Commission recently ruled that the statute was violated where public funds were used to publish newspaper ads with phrases that characterized a "yes" vote on a ballot proposition as "fair" and a "no" vote as "unfair." The Commission concluded those phrases supported the ballot measure. The Commission also found that a brochure impermissibly "urged voter action" by using phrases such as "keep business" in the city, and "support" the city's economy by voting for the proposition. The [Missouri Ethics Commission](#) found all of these expenditures to be improper.

Supreme Court Municipal Division Work Group Report

– The Report of the Supreme Court Municipal Division Work Group was submitted to the Missouri Supreme Court on March 1, 2016. The Work Group was instructed to review procedures in municipal courts around the state and "make recommendations concerning any appropriate changes to court rules or practices..." The report outlines the findings of the Work Group and provides suggested changes, which the Missouri Supreme Court will take under consideration. The report can be found [here](#).

"Private Property" Does Not Include "Public Property" – In *Metropolitan St. Louis Sewer District v. City of Bellefontaine Neighbors*, 476 S.W.3d 913 (Mo. 2016) the Missouri Supreme Court affirmed the trial court's dismissal of claims for inverse condemnation against a city. The City of Bellefontaine Neighbors allegedly damaged the Metropolitan St. Louis Sewer District's ("MSD's") sewer lines in the course of a street improvement project. [Article I, Section 26](#) of the Missouri Constitution provides protection against the taking of "private" property without just compensation. MSD made a claim for inverse condemnation alleging the City unintentionally took its property without just compensation. As a matter of first impression, the Court determined Article I, Section 26 does not give a public entity, like MSD, a constitutional right to just compensation for the taking of its property because the plain meaning of the word "private" does not include the word "public." Further, the Court rejected MSD's argument that sovereign immunity does not shield a public entity from liability for torts committed against another public entity and held, in the absence of a specific waiver or exception (such as the proprietary function exception), sovereign immunity applies between public entities, for it is the rule – not the exception.

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

- [Funding Municipal Improvements and Economic Development \(Municipal Officials Training Academy\)](#) – [Kim Diamond](#) and [Dan Manning](#)
- [Body Camera Panel Discussion, Missouri Sunshine Coalition \(Sunshine Week 2016\)](#) – [Dave Streubel](#)

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

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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Upcoming Dates & Deadlines for Missouri Municipalities*

April 5 – Municipal Election Day.

1st Meeting of April – Collector prepares and governing body approves delinquent tax list.

May 1 – Applications for renewal of liquor licenses due from licensees.

May 1 – Financial disclosure reports due to Ethics Comm'n (Cities with \$1M+ annual operating budget, if City does not adopt its own biennial financial disclosure policy).

June 1 – City Clerk deliver to collector special tax bills for weed and trash removal for inclusion on current year's tax bill.

*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](#)