

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

Still No Legal Standing for Unsuccessful Bidder – In *Byrne and Jones Enterprises, Inc. D/B/A/ Byrne and Jones Construction, v. Monroe City R-1 School District*, ED101588 (November 12, 2014) the Eastern District Court of Appeals issued a strong opinion again confirming that competitive bidding statutes are for “the benefit of the public only” and rejection of a bid “creates no vested interest or property right in the rejected bidder.” The court, therefore, dismissed for lack of standing the losing bidder’s suit seeking to enjoin the school from entering into a construction contract with the winning bidder. The Court also rejected the losing bidder’s request for his bid-preparation costs because awarding such costs “would thus only add to the public’s cost for the project... [and] runs completely counter to the purpose and underlying policy of the bidding statutes.”

New FCC Rule on Wireless Facilities – The Federal Communications Commission (“FCC”) released a “Wireless Infrastructure Order,” setting forth new rules regarding wireless facilities, including how cities can review such facilities. While the order preserves public safety laws, cities may need to reevaluate their procedures as this continues to limit municipal authority. See [FCC Rule 14-153](#).

Updated Best Practices for Investment of Bond Proceeds Released by GFOA – The Government Finance Officers Association (GFOA) has provided updated best practices for investment of bond proceeds with specific recommendations on how to engage investment brokers. See [GFOA Investment of Bond Proceeds](#). The updated best practices take into account the new rules that have recently been released by the SEC to govern the practices of municipal financial advisors. Under the new SEC rule, to act as a municipal advisor, a person or firm must be registered with the SEC. If a municipality chooses to hire a municipal advisor, that municipal advisor owes a fiduciary duty to the municipality and can provide specific investment advice. On the other hand, those underwriters or other professionals that are not registered municipal advisors do not owe a fiduciary duty to municipalities and therefore generally cannot provide specific investment advice to the governmental entity (unless some limited exemptions are met). GFOA’s Best Practices on Investment of Bond Proceeds recommends that governments “have in place policies and procedures for when they will engage the use of an investment adviser or municipal advisor.” In addition, municipalities that do not have specific staff tasked with monitoring markets and their investments “are strongly encouraged to use a municipal advisor or investment adviser.” For questions please contact [Kim Diamond](#) or [Kristen Erickson](#).

Best Practice Reminders for Collateralization of Public Deposits – Missouri law is clear that banks must pledge securities to collateralize all public deposits to the extent the deposit is not covered by FDIC insurance. Less clear, however, is what type of legal interest the city must have in pledged securities. [Section 110.010.2](#) RSMo. allows a party other than the city to hold securities as collateral for city deposits. Under this law, there are only two permissible options when a third party holds securities as collateral for the city: 1. A bank holds securities in the city’s name, or 2. A trustee holds securities in the city’s name. In both options, the city’s name must be on the securities, including on uncertificated securities. A few basic best practices to remember include:

1. Have a policy requiring contracts with all financial institutions. Such contracts will help ensure that the city complies with and can enforce Missouri laws securing the deposit of public funds.
2. Select a bank or trustee that has an office in Missouri. This will make enforcement easier if the city must take legal action to liquidate securities held as collateral.
3. Collateral securities may *not* be held in a brokerage account, even if the account is titled in the city’s name.

No Court Filing Fee for Government Attorneys Using E-Filing – As more Missouri courts implement electronic filing for court documents, cities should be aware that government attorneys are now exempt from filing fees on new cases when using e-filing. [Court Operating Rule 27.02\(b\)](#) defines a “government attorney” as one who is using the e-filing system in his or her capacity “as a lawyer for the state of Missouri or one of its political subdivisions.”

Municipal Officials Training Academy Enters its 3rd Year – The Training Academy, co-founded by CVR and the St. Louis Municipal League, provides low-cost training directly to Missouri municipalities on Missouri local government topics that are chosen based on your comments and is entering its third year. The Academy offers convenient viewing options with webinar access and in-person attendance. [Click here](#) for more information about the Training Academy. Please contact us to suggest topics for future training seminars as well as other comments to constantly improve the Training Academy.

All 9 seminars (and related handouts) from 2014 and the past 9 seminars offered in 2013 may be viewed at the Training Academy’s [webpage](#). Register [here](#) if you are new to the Academy. Below is the 2015 tentative seminar topic schedule:

<u>Date*</u>	<u>Topic</u>
January	Police Cameras
February	Budgets
March	Telecom
April	Grant Writing
May	Handling Public Funds
June	Municipal Procedures
July	No program
August	Sunshine
September	Audit
October	Contracts
November	Public Works Contracts
December	No program

*4th Thursday of the Month from 12:00-1:15 p.m.

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

- [The 15 Critical Court Cases Every Missouri Municipal Official Must Know](#) (Missouri Municipal League Annual Conference) – [Paul Rost](#)
- [Sunshine Law: Understanding the Nuances and Developing Best Practices](#) (Missouri Association for Court Administration Fall Conference) – [Dave Streubel](#)
- [50 Ways to Stay Out of Trouble: Ethics and Mandates for Public Officials](#) (Municipal Official Training Academy) – [Erin Seele](#) and [Maggie Evek](#)
- [Legalities of Planning and Zoning](#) (APA/UMSL Chancellor’s Certificate Program in Planning and Zoning) – [Dan Vogel](#)
- **UPCOMING – Planning and Zoning and Board of Adjustment Training** (Meramec Regional Planning Commission at the Centre of Rolla) – [Paul Rost](#) and [Erin Seele](#)

Feedback – Please let us know how we are doing. 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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To access previous reports on our website: [CLICK HERE](#).

Updated 2015 Municipal Calendar Links Below

Upcoming Dates & Deadlines for Missouri Municipalities*

Dec. 16 – 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. 20 – End of candidate filing for Municipal General Election.

Jan. 27 – Closing for receiving certification of election forms for the General Municipal 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](#)

Municipal Issue Reports are not intended to provide legal advice and should not be understood to create an attorney-client relationship. These Reports are provided as an educational courtesy to municipalities and related local government officials to promote the public sector interests on which our law firm was founded. If you do not wish to receive these Reports, or would like them directed to other or additional persons within your municipality or organization, please respond to this email with appropriate instructions.