

2012 MISSOURI CCFOA PRESENTATION – STORY LINE

Slides 1 & 2 - Introduction

Slide 3

It's 5:01 a.m. Wednesday when your alarm goes off. Blaring from the speakers is the theme music from the Rocky IV soundtrack. Although still having blurred eyes from last night's late meeting, you smile knowing today is not a meeting day! You slip on your running shoes and you're off for your daily 10-mile run. City Clerks from Olympic City, after all, always have been overachievers; and as a former Olympic silver medalist in the decathlon, you are no exception. You are trying to focus and get your "eye of the tiger" form just right, but your thoughts keep racing back to last night's Board Meeting.

Slide 4

Last night a properly noticed Closed Meeting of Olympics City's Board of Aldermen was held to discuss whether the Board should accept the resignation of the City's Chief of Police, Pat Poland. The Board considered specific information from Chief Poland's personnel file, including numerous citizen complaints made against Chief Poland. After much discussion, a roll-call vote was held and the Board voted 6 – 0 to accept Chief Poland's resignation. The Board also voted 6 – 0 to approve a severance agreement with Chief Poland that includes a generous benefits package along with a confidentiality clause. After such a heated discussion, you shudder to think about the paperwork and questions that this issue will generate . . .

Slide 5

Still trying to shake the concerns from last night's meeting, at 7:30 you hop into your 4Runner and start your short commute to Olympic City Hall. On the radio you learn that the 2012 summer Olympics are only a little over four months away. Even though the games will be held in London this year, Olympic City is already buzzing with excitement about its namesake event. In fact, Olympic City boasts the largest population of past Olympic athletes in America. You smile from ear to ear at the thought of just how great the parties this summer are going to be.

Slide 6

As you pull into your parking spot at Olympic City Hall, the reality of your busy day sets back in. You affectionately refer to Wednesdays as your "mail day from hell;" with the hectic meeting day passed, a large pile of mail now awaits you. The sun is shining and spring is in the air. As you walk toward your desk a ray of sunlight reflects off of your shiny Olympic souvenir travel mug. Unfortunately, this beautiful beam of light reminds you of one of your least favorite subjects—Sunshine Law—and all of the tasks you have to complete related to this pain-in-your-athletic-butt law.

Slide 7

Sunshine = Pain in the Butt Award

I. THE SUNSHINE LAW: Record Request Requirements

Slide 8

Question 1 (record request):

About five minutes after you first sit down at your desk to check your email, Robbie Russia—a local reporter with the Olympic City “Mud Slinger”—approaches you requesting: (1) a copy of last night’s Closed Meeting minutes, (2) any information the Board considered prior to their vote, and (3) the severance agreement with Chief Poland. Trying to get into the day before being bombarded with Sunshine requests, you tell him you will check the City’s files and get back to him.

Question 1: As the Olympic City Clerk, you are the Custodian of Records. Which, if any, of the information requested by Reporter Russia should be provided to him?

Slide 9

Question 2 (record request):

A little later, while sitting at your desk sifting through your monumental mail pile, you see a letter from Attorney Abe Austria who represents Olympic City resident Ike Italy. The letter states, “pursuant to Missouri’s Sunshine Law, Mr. Italy is requesting that Olympic City provide any proof of ownership of property that is leased by Mr. Italy within the Olympic City limits.” You sigh, wondering how you should respond to this broad request. You decide to put the request aside for now and take a break from the mail, attempting to go get coffee yet again.

Question 2: Attorney Abe Austria wants “proof of ownership of property that is leased by Mr. Italy within the Olympic City limits.” What should you do?

Slide 10

Questions 3-5 (email retention):

On your way to the break room, a co-worker flags you down and fills you in on the latest news: apparently Sam Spain, a member of Olympic City’s Board of Aldermen, couldn’t sleep last night because City business was on his mind. He decided to send an email from his home/personal email address to two other Board Members, Bob Britain and Cindy Czech, discussing a recent development proposal that involves the purchase of five contiguous plots of vacant land by the City. (The Board is comprised of six Members total.) You run back to check your email to see if you missed the email but, of course, you did not receive a copy. Your co-worker knows that you are the Sunshine Law guru so she asks whether you think Alderman Spain’s email is a public record? In your mind you’re thinking, “What is this, a game of stump the chump?” But relying on your better instincts you reply with a smile, “I’m not sure, I’ll have to get back to you on that.”

Question 3: Is Spain’s late-night email regarding possible real estate purchases to 2 other Board Members (six-Member Board) a “public record” under the Sunshine Law?

Question 4: When he sent out his late-night email, what should Spain have done to comply with Missouri Sunshine Law?

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Question 5 (Record Request):

A few minutes later, pesky reporter Robbie Russia comes back to your office (again) saying, “I understand from my sources that a certain Alderman may have been sending out some late-night emails last night regarding the potential purchase of some vacant land. I’d like a copy of those emails ASAP.” Confused how Robbie already knows about the email considering that you just learned about them yourself, you tell him Sunshine does not cover those emails, and you will not honor such a request. Russia responds, “oh yeah, on what grounds? You better get this right or I’ll sue.” You tell him you’ll get back with him before the end of the day.

Question 5: Regarding Reporter Russia’s new request for Alderman Spain’s late-night email, as the Custodian of Records you should ...?

II. CONTRACT REQUIREMENTS – 432.070 R.S.Mo.

Slide 12

Questions 6-7 (reminder on the requirements of a valid contract):

After taking two sips of your now lukewarm coffee, the Mayor calls you into his office seeking your astute advice. Diving Dan, a local contractor, executed a contract with the City two years ago to provide the City with a state-of-the-art Diving Center. Because of the coming Olympic qualifying events, though, the Diving Center has been packed with over-capacity crowds. Citizens are starting to complain that the Center must be enlarged. This topic was brought up at a recent Board meeting by citizens, and the Board instructed the Mayor to investigate solutions to the problem.

The Mayor called Diving Dan to discuss enlarging the Diving Center ASAP because of the citizen complaints and nearing qualifying events. Diving Dan stated that only if he starts immediately would he be able to complete the expansion before the qualifying events begin. Because the Mayor was authorized to investigate solutions and the City has entered into a contract with Diving Dan before, the Mayor instructed Diving Dan to begin work immediately.

Diving Dan would prefer to have a signed contract before he starts work and tells the Mayor he will send over a contract and start work once the Mayor signs. Because this topic was discussed at the last Board Meeting, and because he was granted authority to investigate solutions, the Mayor plans on signing the agreement, but he asks for your input first. Grateful the Mayor asked you in advance, you tell him that he does not have authority to sign the contract and that you will put it on the next meeting’s agenda.

Question 6: Were you correct that the Mayor does not have authority to sign the contract making this an enforceable contract?

Question 7: Could Diving Dan have started work immediately and just waited until the next Board meeting to get a valid contract signed?

III. COLLECTIVE BARGAINING AND LABOR ISSUES

Slide 13

Questions 8 - 9:

During your lunch break you open a letter from Ken “the body” Kenya, an attorney who represents Public Works Employees United, Lodge 67 (“Lodge 67”). Ken is known as a true pain-in-the-butt attorney. The letter states, “Lodge 67 has recently received support from a majority of Olympic City’s public works employees. Please confirm within fourteen (14) days of the date of this letter how Olympic City will proceed with the recognition of Lodge 67 as the exclusive bargaining agent for these public works employees.” You’re not sure what to do with the letter so you continue eating lunch, but then you begin to wonder ... “in Missouri, do public employees even have the right to collective bargaining; and, does Olympic City even have any procedures in place for this?” You roll your eyes and think, “whatever Ken...” But then you suddenly remember Ken’s foreboding physical stature and you wonder, “what if Ken comes in to City Hall and he has ...”

Slide 14 (Humor/Comic Relief Slide)

In light of this last thought, you resolve to find an answer for Ken before the end of the day

Question 8 (Public Sector Labor Law): In Missouri, do public employees have the constitutional right to collective bargaining with their employers?

Question 9: You find out later that Olympic City does not currently have any collective bargaining framework established for public sector employees, and the current state of Missouri law is in flux. As such, what should you do with Mr. Kenya’s letter?

IV. UNEMPLOYMENT BENEFITS FOR RETIREES

Slide 15

Questions 10 – 12:

Next up in your slowly dwindling pile of mail are three Notices from the Division of Employment Security. The first Notice is regarding Renee Romania, a former Olympic City employee of fifteen (15) years who took a voluntary, early retirement about ten (10) months ago. You think to yourself, “surely someone who is drawing retirement from the City can’t qualify for unemployment benefits at the same time? Talk about double dipping. Surely this isn’t allowed?”

Question 10: Ten months after Mrs. Romania retired, you now receive a Notice of a Claim filed for Unemployment Benefits from the Division of Employment Security. How, if at all, should you respond?

Question 11:

The second Notice is in regard to Sammy Slovenia. Mr. Slovenia walked off the job after receiving a total of four (4) disciplinary write-ups because he believed (incorrectly) that, in accordance with the City’s employee handbook, he was effectively terminated after three (3) write-

ups. You're pretty certain that someone who left under these circumstances won't qualify for any benefits.

Question 11: Mr. Slovenia walked off the job after receiving a total of four (4) disciplinary write-ups. When filing its protest, should Olympic City include any of the factual details surrounding Mr. Slovenia's discharge?

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Question 12:

The final unemployment notice is in regard to a seasonal employee, Eric Egypt, who was hired by Olympic City in May to help run its summer youth programs at the recreational complex. In September, Mr. Egypt was laid off due to a lack of work caused by the summer programs ending. You have received from the Division of Employment Security a "Notice to Base Period Employer of Claim Filed for Unemployment Benefits." You think, "well, bad news always comes in threes and these @#!\$ Notices are no exception." For now, you put the Notices aside in your ever expanding "to do" pile.

Question 12: Regarding the seasonal employee, Eric Egypt, how, if at all, should you respond?

V. ELECTION ISSUES

Slide 17

Questions 13-14:

Just when you've finally gotten through all your mail, Harry Horsey walks in to register as a candidate for Mayor in the upcoming election. You happen to know from the news, as well as from personal knowledge, that Mr. Horsey was convicted of a felony in Illinois about five years ago. Nevertheless, the rest of his application is in order, and you are very cautious about not certifying candidates for election. As such, you decide to certify Mr. Horsey and you tell him, "good luck, and stay out of trouble."

Question 13: Assuming that the rest of his application is in order, were you correct when you certified Mr. Horsey as a candidate?

Question 14: Would it make any difference if Mr. Horsey's felony conviction was in Missouri instead?

VI. INCOMPATIBLE OFFICES

Slide 18

Questions 15 – 17:

You next decide to tackle a subject that will require great strength and flexibility on your part. Olympic City has a huge population in love with gymnastics. Bela Karolyi has served on the Olympic City Artistic Gymnastic Committee for five years and knows everything there is to know about artistic gymnastics. The Artistic Gymnastic Committee is appointed by the Mayor and

approved by the Board of Aldermen and serves at the will of the Board of Aldermen advising on gymnastic issues. You overheard the Mayor ask Bela to run for a position on the Board of Aldermen because of Bela's great leadership and passion for Olympic City, but you're not sure whether that's going to fly.

Question 15: May Bela run for Board of Aldermen while serving on the Olympic City Artistic Committee?

Question 16: If Bela wins, may he serve in both positions?

Question 17: Real life examples – Are these incompatible?

VII. 105 CONFLICT OF INTEREST

Slide 19

Questions 18-20:

Just then, Bob Roadster from Best Cycling, which happens to be Alderman Robert Cycling's company, comes into city hall. Last month at the regular meeting, the Board of Aldermen took a vote and unanimously authorized the City Clerk to advertise and hand out bid packages for a sidewalk and bicycle project Olympic City is undertaking. The project is expected to cost in excess of \$50,000 but will be a great benefit to the City's bicycling community. There are still two (2) weeks before the bid time closes. Bob asks for the bid packet so his company Best Cycling can place a bid. Thankful finally for no drama or yelling, you hand him the bid package and wish him good luck.

Question 18: Robert's company places its bid and is the second lowest bid, but unlike the lowest bidder is known for its quality of work and ability to always finish on time. May the City award the bid contract to Robert Cycling's company?

Question 19: Pretend instead, it was Robert's step-son's company. Could the City award the bid to Robert's step-son's company?

Question 20: Could Robert Cycling vote on the issue of awarding the bid to his step-son?

Slide 20

Questions 21-22:

Near the end of your marathon day, Gossiper Biker comes into your office to file the proper paper work and pay the filing fee to be placed on the ballot for the open Ward 1 spot on the Board of Aldermen. You know her husband already serves in Ward 1 and his term does not end for another two (2) years. Although having a husband and wife on the Board together terrifies you—especially these two together—because she has all the proper filings, you certify her name for the ballot.

Question 21: Is there a conflict of interest prohibiting a husband and wife from serving on the Board of Aldermen together?

Question 22: But what about nepotism – does it apply to this situation?

VIII. UTILITY SHUT-OFF

Slide 21

Questions 23-24:

Finally finished with all of your email related tasks, you start to shut off your computer and leave for the day. But then, at 4:59 p.m. Spike Nigeria comes into your office and demands you get the water shut off on Susan Volleyball's rental property NOW because the Tenant's water bill has not been paid for 4 months. You wonder how he even knows that, but you have learned not to ask about or delve too deeply into those questions. You know that Susan's property is a rental house with its own private water and sewer line and that you have an ordinance that authorizes water shut-off for nonpayment, but you have not done that before. So, with the day winding down, you tell him you will contact the bill collector and see what you can do – but that he can wait until tomorrow.

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But before he will let you go, Spike also informs you that he knows that Susan Volleyball is in London City training for the Olympics and has been there the last four (4) months. He demands that you immediately get payment for the four (4) months and suggests sending it to Susan Volleyball in London City because he knows “she is good for it.” You tell him you will look into the City's options and have an answer to him by tomorrow.

Question 23: Can the City immediately shut off Susan Volleyball's water for delinquent bills?

Question 24: Can the City demand that Susan Volleyball pay the entire 4-month delinquent bill when Tenant is the one living at the property?

Closing

Wow, it's been one incredibly busy day in Olympic City and you are sore from your brain down to your toes! It's time to head home for an energy shake and a quick workout at the gym. That's about the only way you can clear your head and wind down after a day like today. Well, it's either that or eat an entire box of Girl Scout cookies in one sitting. Mmmm, which option will you choose? But for now, it's time to ...

Slide 23

Let the Games Begin (Olympic Theme Music)

Slides 24 - 90 = QUESTIONS & ANSWERS