

CVR Celebrates 10 years! – 2012 marks the 10-year anniversary of the founding of Cunningham, Vogel & Rost, P.C., the first law firm in Missouri formed to serve exclusively the interests of local governments. We would like to thank our many municipal clients for a decade of trust and support. With your support this unique firm has grown to eight lawyers, additional support staff, and representing more than 100 municipalities and related local government entities across Missouri, Illinois and elsewhere. Please mark your calendar for the firm's 10th Anniversary Open House on May 3. [Click here for details on the Open House.](#)

Supreme Court Denies Rehearing on Utility Relocation Case

– As reported in [Municipal Issue Report No. 2011-3](#), the Missouri Supreme Court held in [St. Charles County v. Laclede Gas Co., No. SC91539 \(Mo. Aug. 30, 2011\)](#), that St. Charles County was required to pay the relocation costs of Laclede Gas in conjunction with a County street widening project. The Court held that a subdivision plat that included language granting a utility easement created a private property interest in Laclede Gas that was subject to a "taking" even though located directly in the public right-of-way. The County's request for rehearing was denied on January 31, and the Court's decision now stands as a major shift in law regarding local government control over rights-of-way.

- Municipalities should consider affirmative steps to minimize the impact of this case in the future. Possible steps may include:
- Amending subdivision regulations to prohibit plats from dedicating "private utility easements" in public rights-of-way.
- Requiring dedications of rights-of-way to be free and clear of private easements that now may be subject to taking before approving plats.
- Requiring companies with facilities in the rights-of-way to obtain franchises or rights-of-way agreements that includes provisions for relocation of utility facilities.
- Obtaining deeds and/or title insurance to protect against competing interests in dedicated rights-of-way.

You should discuss this issue with legal counsel to address the impacts of this case and help protect the public from the private interests of utility companies delaying or blocking necessary public street projects.

New Federal Law Limits Municipal Authority to Deny Certain Wireless Facilities Siting Requests

– As part of the [Middle Class Tax Relief and Job Creation Act of 2012 \(H.R. 3630\)](#) a new federal statute was approved on Feb. 22 that impacts state and local governments' authority to deny certain applications related to siting of wireless communications facilities (cell towers). Section 6409(a) of the Act provides:

Notwithstanding [47 U.S.C. 322] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

An "eligible facilities request" is defined as:

[R]equest for modification of an existing wireless tower or base station that involves (A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment.

Municipalities rarely exercise discretion to deny these types of requests where they comply with applicable codes. However, local wireless facilities siting codes should be reviewed to ensure compliance with the new federal statute, and cities should be wary of new wireless industry claims that cities may have no authority to even review collocation requests. For more information, [here is an article on the new law](#) posted by the International Municipal Lawyers Association.

Supreme Court Strikes Down Statute Prohibiting Municipal Class Actions

– Missouri municipalities are no longer prohibited from participating as class representatives in certain class action lawsuits. In [State ex rel. Collector of Winchester v. Jamison, No. SC91631 \(Mo. Jan. 17, 2012\)](#), the Missouri Supreme Court struck down a state statute that prohibited cities and towns in Missouri from bringing actions as representatives of a class in class action lawsuits related to business license taxes on telecommunications companies. The circuit court had dismissed the City of Winchester's class action suit on behalf of itself and other municipalities against Charter Communications to enforce the municipalities' business license taxes, relying on [§ 71.675, R.S.Mo.](#), which prohibited municipalities from acting as class representatives in suits of that nature. The Supreme Court held [§ 71.675](#) unconstitutional because the statute conflicted with procedural court rules that lay out the requirements for serving as a class representative, which have the force and effect of law under the Missouri Constitution.

Municipal Financing Districts and Entities Deadlines

– Many municipalities use special purpose districts, boards and corporations to achieve specific goals vital to local interests, especially in the area of economic and community development. Common entities include Community Improvement Districts (CID), Transportation Development Districts (TDD), Chapter 353 Urban Redevelopment Corporations, and Industrial Development Authorities (IDA), among many others. These entities are required to meet several filing deadlines unique to the entity or otherwise not applicable to municipalities generally, and recent activity suggests that officials like the Attorney General and State Auditor have stepped up scrutiny of these entities. To help municipalities meet the obligations unique to these special entities, CVR has prepared its list of [Annual Requirements for Missouri Municipal Special Purpose Entities](#), available at CVR's website, [municipalfirm.com](#).

Senior Litigation Attorney Joins CVR

– Cunningham, Vogel & Rost, P.C. is pleased to announce that [David S. Davis](#) has joined the firm as a Senior Attorney. Dave received his J.D., *cum laude*, from Creighton University School of Law in 1997 and has more than a decade of experience as a municipal litigation attorney. Dave will be representing the firm's municipal clients in governmental litigation, land use and zoning, employment law, and general municipal law.

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](#).

Upcoming Dates & Deadlines for Missouri Municipalities*

Mar. 5 - Notify DOR of ordinance opting-in to "Show Me Green" Appliance Sales Tax Holiday (at option of City).

1st meeting of April – Collector makes out and governing body approves delinquent tax list.

Apr. 3 – Municipal Election Day.

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

May 1 – Financial disclosure reports due to Ethics Comm'n. (for certain public officials for cities with over \$1M annual operating budget that do not adopt own biennial financial disclosure policy).

June 1 – City Clerk must 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](#)