

Cities Obtain Preliminary Injunction Blocking Two Telecommunications Bills – On Tuesday, August 27, 2013, several Missouri cities (Liberty, Gladstone, Lee's Summit, Butler, Cameron, and Independence) obtained a preliminary injunction from the Circuit Court in Cole County against the State of Missouri enjoining HB331 and HB345 (previously reported in [Reports No. 2013-1](#) and [2013-2](#)) from going into effect and prohibiting the State from enforcing the bills on the grounds that they apparently violate the Missouri Constitution. These bills sought to (1) deprive cities of all zoning authority on collocations and existing structure replacement, (2) severely limit zoning control on all other wireless towers and antennas, (3) eliminate franchises and permits for ROW use for a special class of utilities operating prior to 2001, (4) allow telephone companies to waive rate limits and other PSC regulations, (5) impose unfunded mandates on cities, and (6) severely impact the rights of cities to control their own utility poles as to wired pole attachments as well as other property relating to wireless users, among many more significant impacts on cities and taxpayers. The bills were set to go into effect on August 28, 2013, but are now enjoined until further action of the Court. A copy of the injunction can be [found here](#) so that cities may inform applicants who may be unaware that the law was enjoined before it went into effect. If you have any questions about the lawsuit you may call the City of Liberty or Cunningham, Vogel & Rost, P.C., who represented the plaintiff cities. Additional media coverage can be [found here](#).

TIF Annual Reports Now to be Submitted to Dept. of Revenue – [Executive Order 13-02](#) transferred the Department of Economic Development's responsibilities under the TIF Act to collect and process municipalities' TIF Annual Reports to the Department of Revenue. More information, along with the necessary forms, can be found on [MoDOR's new TIF webpage](#). Under Exec. Order 13-02, this transfer became effective Aug. 28, 2013, despite the fact that [§ 99.865 RSMo.](#) still provides that TIF Annual Reports of municipalities are to be submitted to the Department of Economic Development. TIF Annual Reports are due November 15 this year.

New Laws Cut Cities' Authority over Police Chiefs and First Responders – [HB307 \(2013\)](#) limits cities' authority to remove non-elected police chiefs under new [§ 106.273 RSMo.](#) which mandates strict notice and hearing procedures and authorizes the governing body to remove a non-elected police chief only for "just cause" with a 2/3 vote. The statute also defines just cause very narrowly, see [§ 106.273.1 \(2\)](#). For, example a police chief can only be removed for incompetence if such incompetence is a "result of a mental condition." Note, this section does not apply to elected police chiefs or authority to suspend police chiefs in most cities. The new bill also creates [§ 67.145 RSMo.](#), which prevents a city from prohibiting any first responder (as defined in [§ 192.800](#)) from: (a) engaging in any political activity while off duty and not in uniform, (b) being a candidate for public office, or (c) holding such office unless the political activity or candidacy is prohibited by state or federal law. **This bill is one of many new statutes affecting municipalities that went into effect on August 28. A summary of new laws can be found on the [MML Website](#).**

Lack of Good Faith Leads to FLSA Liquidated Damages Against City – In [Adams v. City of Manchester](#), No. 4:11cv1309 (E.D.Mo. June 18, 2013), police record clerks were awarded more than \$30,000.00 from the City for Fair Labor Standards Act (FLSA) violations when the police chief changed record clerks' shifts from 8-hours to 12-hours, but did not pay overtime for work over 40-hours per week. FLSA generally requires employees to be paid time and a half for any work over 40-hours per week but allows employees engaged in law enforcement or fire protection activities to work 12-hour shifts without overtime, up to a defined limit. See [29 USC § 207\(k\)](#). The violation stemmed from the police chief's mistaken belief that record clerks were engaged in "law enforcement activities" under the FLSA based on the clerks' responsibilities and functions related to law enforcement, despite well-established law to the contrary. While all parties stipulated to an award of \$15,452.71 for unpaid overtime, the City also had to pay a matching amount in liquidated damages under [29 USC § 216\(b\)](#) where there was a lack of "good faith," in that the police chief failed to seek advice or conduct any independent research, despite available resources and wide availability of information. If you have any questions about FLSA or other employment issues, please contact your City Attorney or Dave Streubel at Dave@municipalfirm.com or Erin Seele at Erin@municipalfirm.com.

Missouri Federal Court Rejects § 1983 Claims for Alleged Violation of Federal Telecommunications Act – The United States District Court for Western Missouri dismissed with prejudice a claim against a city for damages and attorney's fees brought under 42 U.S.C. § 1983 for alleged violations of 47 U.S.C. § 253 of the Federal Telecommunications Act. *Spectra Commns. Group LLC v. City of Cameron*, Case No. 2013-CV-06008-DW (June 17, 2013). This decision is consistent with the Eastern District of Missouri's decision in *Level 3 Commns. v. City of St. Louis*, 405 F.Supp.2d 1047 (2005), *rev'd on other grounds*, 477 F.3d 528, holding that § 253 does not create a private right of action that can be enforced through an action under § 1983. Cities that face § 1983 claims for damages and attorney fees for alleged violations of § 253 of the FTA should be aware of this new authority applicable in Missouri.

Municipal Officials Training Academy Presentation: Board of Adjustment - Paul Rost from Cunningham, Vogel & Rost, P.C. will present training on municipal Boards of Adjustment at the next St. Louis County Municipal Officials Training Academy session on **Thursday, September 26, 2013 at 12:00 p.m.** Additional information and forms to register for September's training opportunity will be forthcoming shortly.

Two New Attorneys Join CVR – Cunningham, Vogel & Rost, P.C. is pleased to announce that [Steven R. Kratky](#) has joined the firm and [Margaret C. Eveker](#) will join in late September, both as an Associate Attorney. Steve received his J.D. from Saint Louis University School of Law in 2009 and has previously served as Assistant General Counsel to the Missouri Department of Natural Resources. Maggie received her J.D. from Saint Louis University School of Law in 2012 and joins the firm from a judicial clerkship with Hon. Kathianne Knaup Crane of the Missouri Court of Appeals, Eastern District. Steve and Maggie will be representing the firm's municipal clients in general municipal law and governmental litigation.

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

- **UPCOMING** – *Preparing For and Running a Successful Board of Adjustment Meeting* (St. Louis County Municipal Official Training Academy) – [Paul Rost](#)
- *Selected Best Practices for Municipal Lawyers* (Missouri Municipal Attorneys Association Summer Seminar) – [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](#).

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Upcoming Dates & Deadlines for Missouri Municipalities*

Sept. 15 – Biennial re-adoption of the City's personal financial disclosures policy. (Required every other year for cities with annual operating budgets over \$1M) Send copy of policy to Ethics Comm'n within 10 days of adoption

Mid-late Sept. – Conduct public hearing on property tax rate with 7-day newspaper notice (Cities in charter Counties)

Oct. 1 – Set property tax levy (Cities in charter Counties)

Nov. 15 – TIF annual reports due. Penalty for failing to file report is loss of ability to implement new TIFs for 5 year (for Cities not in charter counties).

*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](#)