



CURTIS, HEINZ,
GARRETT & O'KEEFE P.C.

ELECTION LAW 101

Muni Law 101 Program
Missouri Municipal Attorneys Annual Conference
Lake of the Ozarks
July 16, 2016

Kevin M. O'Keefe
Curtis, Heinz, Garrett & O'Keefe, P.C.
130 South Bemiston, Suite 200
Clayton, MO. 63105
(314) 725-8788
kokeefe@chgolaw.com

WHEN

General election, when held--primary election, when held--general municipal election day, when held.

115.121

1. The general election day shall be the first Tuesday after the first Monday in November of even-numbered years.
2. The primary election day shall be the first Tuesday after the first Monday in August of even-numbered years.
3. The election day for the election of political subdivision and special district officers shall be the first Tuesday after the first Monday in April each year, and shall be known as the general municipal election day.

WHEN ELSE

Public elections to be held on certain Tuesdays, exceptions--presidential primary, when held--exemptions.

115.123

1. All public elections shall be held on Tuesday. Except as provided in subsections 2 and 3 of this section, and section 247.180, all public elections shall be held on the general election day, the primary election day, the general municipal election day, the first Tuesday after the first Monday in November, or on another day expressly provided by city or county charter, and in nonprimary years on the first Tuesday after the first Monday in August. Bond elections may be held on the first Tuesday after the first Monday in February but no other issue shall be included on the ballot for such election.

AND MAYBE . . .

115.123

* * *

3. The following elections shall be exempt from the provisions of subsection 1 of this section:

(1) Bond elections necessitated by fire, vandalism or natural disaster;

(2) Elections for which ownership of real property is required by law for voting;

(3) Special elections to fill vacancies and to decide tie votes or election contests; and

(4) Tax elections necessitated by a financial hardship due to a five percent or greater decline in per-pupil state revenue to a school district from the previous year.

4. Nothing in this section prohibits a charter city or county from having its primary election in March if the charter provided for a March primary before August 28, 1999.

SIZE MATTERS. SO DO DATES.

Missouri Constitution - **Article VI** . LOCAL GOVERNMENT (Emphasis added)

Section 26(b). Any county, city, incorporated town or village or other political corporation or subdivision of the state, by vote of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five percent of the value of taxable tangible property therein as shown by the last completed assessment for state or county purposes, except that a school district by a vote of the qualified electors voting thereon may become indebted in an amount not to exceed fifteen percent of the value of such taxable tangible property. For elections referred to in this section the vote required shall be four-sevenths at the general municipal election day, primary or general elections and two-thirds at all other elections.

AND . . .

Missouri Constitution - **Article VI** . LOCAL GOVERNMENT (Emphasis added)
Section 26(c). Any county or city, by vote of the qualified electors thereof voting thereon, may incur an additional indebtedness for county or city purposes not to exceed five percent of the taxable tangible property shown as provided in section 26(b). For elections referred to in this section the vote required shall be four-sevenths at the general municipal election day, primary or general elections and two-thirds at all other elections.

AND . . .

Missouri Constitution - **Article VI** . LOCAL GOVERNMENT (Emphasis added)

Section 26(d). Any city, by vote of the qualified electors thereof voting thereon, may become indebted not exceeding in the aggregate an additional ten percent of the value of the taxable tangible property shown as provided in section 26(b), for the purpose of acquiring rights-of-way, constructing, extending and improving the streets and avenues and acquiring rights-of-way, constructing, extending and improving sanitary or storm sewer systems. The governing body of the city may provide that any portion or all of the cost of any such improvement be levied and assessed by the governing body on property benefited by such improvement, and the city shall collect any special assessments so levied and shall use the same to reimburse the city for the amount paid or to be paid by it on the bonds of the city issued for such improvement. For elections referred to in this section the vote required shall be four-sevenths at the general municipal election day, primary or general elections and two-thirds at all other elections.

STOLEN SHAMELESSLY FROM GILMORE & BELL

(It is easier to get forgiveness than permission.)

Election Date (1st Tuesday after the 1st Monday)	Voter Approval Requirements for General Obligation Bonds
February	2/3-majority in all years
April	4/7-majority in all years
June	2/3-majority in all years
August	4/7-majority in even-numbered years 2/3-majority in odd-numbered years
November	4/7-majority in even-numbered years 2/3-majority in odd-numbered years

WHERE

Tax-supported buildings must be made available as polling places--may rent private polling place, when.

115.117. 1. The election authority may designate tax-supported public buildings or buildings owned by any political subdivision or special district to be used as polling places for any election, and no official in charge or control of any such public building shall refuse to permit the use of the building for election purposes. The election authority shall have the right to choose the location of the polling place within such buildings.

CANDIDATE FILING

**Declaration of candidacy required prior to name appearing on ballot--
fraudulent declaration a class one offense.**

115.347. 1. No candidate's name shall be printed on any official ballot unless his written, signed and sworn declaration of candidacy has been filed in the office of the appropriate election official as provided in this subchapter.

2. Any person filing a declaration of candidacy containing a false or forged signature or containing the name of a nonexistent or fictitious person shall be guilty of a class one election offense.

WHO MAY FILE

Declarations of candidacy to be filed in person by candidate, exceptions.

115.355. 1. Except as provided in subsections 2 and 5 of this section and in section 115.377, each declaration of candidacy for nomination in a primary election shall be filed by the candidate in person in the office of the appropriate election official.

OR MAYBE NOT . . .

115.355

2. A candidate may file his declaration of candidacy by certified mail if he is:

(1) Unable to appear in person because of physical disability, and the declaration is accompanied by a sworn statement of a licensed physician so stating; or

(2) A member of the Armed Forces of the United States on active duty, and the declaration is accompanied by a sworn statement of the candidate's commanding officer so stating.

3. Except as provided in section 115.377, no election official shall accept for filing any declaration of candidacy for nomination in a primary election not presented to him by the candidate in person or which, if sent by certified mail pursuant to subsection 2 of this section, is not accompanied by the statement required in the same subsection.

4. Election officials shall require proof of identity of persons when filing declarations of candidacy in person and when filing by mail as provided in subsection 2 or 5 of this section.

BEFORE FILING OPENS . . .

115.127.5

. . . The political subdivision or special district calling an election shall, before the sixteenth Tuesday, or the fifteenth Tuesday for any home rule city with more than four hundred thousand inhabitants and located in more than one county or any political subdivision or special district located in such city, prior to any election at which offices are to be filled, notify the general public of the opening filing date, the office or offices to be filled, the proper place for filing and the closing filing date of the election. Such notification may be accomplished by legal notice published in at least one newspaper of general circulation in the political subdivision or special district.

WHEN FILING OPENS

115.127.5

If the opening date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the opening filing date shall be 8:00 a.m., the sixteenth Tuesday prior to the election, except that for any home rule city with more than four hundred thousand inhabitants and located in more than one county and any political subdivision or special district located in such city, the opening filing date shall be 8:00 a.m., the fifteenth Tuesday prior to the election. If the closing date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the closing filing date shall be 5:00 p.m., the eleventh Tuesday prior to the election.

OMG . . . WHAT HAVE I DONE?

115.127.6

Except as provided for in sections 115.247 and 115.359, if there is no additional cost for the printing or reprinting of ballots or if the candidate agrees to pay any printing or reprinting costs, a candidate who has filed for an office or who has been duly nominated for an office may, at any time after the certification required in section 115.125 but no later than 5:00 p.m. on the sixth Tuesday before the election, withdraw as a candidate pursuant to a court order, which, except for good cause shown by the election authority in opposition thereto, shall be freely given upon application by the candidate to the circuit court of the area of such candidate's residence.

WHERE TO FILE

115.124.2

The election authority or political subdivision responsible for the oversight of the filing of candidates in any nonpartisan election in any political subdivision or special district shall clearly designate where candidates shall form a line to effectuate such filings and determine the order of such filings; except that, in the case of candidates who file a declaration of candidacy with the election authority or political subdivision prior to 5:00 p.m. on the first day for filing, the election authority or political subdivision may determine by random drawing the order in which such candidates' names shall appear on the ballot. If a drawing is conducted pursuant to this subsection, it shall be conducted so that each candidate, or candidate's representative if the candidate filed under subsection 2 of section 115.355, may draw a number at random at the time of filing. If such drawing is conducted, the election authority or political subdivision shall record the number drawn with the candidate's declaration of candidacy. If such drawing is conducted, the names of candidates filing on the first day of filing for each office on each ballot shall be listed in ascending order of the numbers so drawn.

I CAN DO BETTER THAN THAT BUNCH!

115.453(4)

Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate for election to office with the proper election authority, who shall then notify the proper filing officer of the write-in candidate prior to 5:00 p.m. on the second Friday immediately preceding the election day The election authority shall furnish a list to the election judges and counting teams prior to election day of all write-in candidates who have filed such declaration.

BUT THERE'S A LOOPHOLE:

This subdivision shall not apply to elections wherein candidates are being elected to an office for which no candidate has filed.

TO HELL WITH ALL THAT . . .

115.124. 1. Notwithstanding any other law to the contrary, in a nonpartisan election in any political subdivision or special district including municipal elections in any city, town, or village with one thousand or fewer inhabitants that have adopted a proposal pursuant to subsection 3 of this section but excluding municipal elections in any city, town, or village with more than one thousand inhabitants, if the notice provided for in subsection 5 of section 115.127 has been published in at least one newspaper of general circulation as defined in section 493.050 in the district, and if the number of candidates who have filed for a particular office is equal to the number of positions in that office to be filled by the election, no election shall be held for such office, and the candidates shall assume the responsibilities of their offices at the same time and in the same manner as if they had been elected. If no election is held for such office as provided in this section, the election authority shall publish a notice containing the names of the candidates that shall assume the responsibilities of office under this section. Such notice shall be published in at least one newspaper of general circulation as defined in section 493.050 in such political subdivision or district by the first of the month in which the election would have occurred, had it been contested. Notwithstanding any other provision of law to the contrary, if at any election the number of candidates filing for a particular office exceeds the number of positions to be filled at such election, the election authority shall hold the election as scheduled, even if a sufficient number of candidates withdraw from such contest for that office so that the number of candidates remaining after the filing deadline is equal to the number of positions to be filled.

HOW TO SAY “TO HELL WITH ALL THAT”

115.124

3. The governing body of any city, town, or village with one thousand or fewer inhabitants may submit to the voters at any available election, a question to adopt the provisions of subsection 1 of this section for municipal elections. If a majority of the votes cast by the qualified voters voting thereon are in favor of the question, then the city, town, or village shall conduct nonpartisan municipal elections as provided in subsection 1 of this section for all nonpartisan elections remaining in the year in which the proposal was adopted and for the six calendar years immediately following such approval. At the end of such six-year period, each such city, town, or village shall be prohibited from conducting such elections in such a manner unless such a question is again adopted by the majority of qualified voters as provided in this subsection.

TELL THE PEOPLE WHO DO THE WORK

115.125. 1. Not later than 5:00 p.m. on the tenth Tuesday prior to any election, except . . . the officer or agency calling the election shall notify the election authorities responsible for conducting the election. The notice shall be in writing, shall specify the name of the officer or agency calling the election and shall include a certified copy of the legal notice to be published pursuant to subsection 2 of section 115.127. The notice and any other information required by this section may, with the prior notification to the election authority receiving the notice, be accepted by facsimile transmission prior to 5:00 p.m. on the tenth Tuesday prior to the election, provided that the original copy of the notice and a certified copy of the legal notice to be published shall be received in the office of the election authority within three business days from the date of the facsimile transmission. In lieu of a certified copy of the legal notice to be published pursuant to subsection 2 of section 115.127, each notice of a special election to fill a vacancy shall include the name of the office to be filled, the date of the election and the date by which candidates must be selected or filed for the office. Not later than the fourth Tuesday prior to any special election to fill a vacancy called by a political subdivision or special district, the officer or agency calling the election shall certify a sample ballot to the election authorities responsible for conducting the election.

WHAT IF THE CLERK OVERSLEEPS?

115.125.2 (emphasis added)

Except as provided for in sections 115.247 and 115.359, if there is no additional cost for the printing or reprinting of ballots or if the political subdivision or special district calling for the election agrees to pay any printing or reprinting costs, a political subdivision or special district may, at any time after certification required in subsection 1 of this section, but no later than 5:00 p.m. on the sixth Tuesday before the election, be permitted to make late notification to the election authority pursuant to court order, which, except for good cause shown by the election authority in opposition thereto, shall be freely given upon application by the political subdivision or special district to the circuit court of the area of such subdivision or district. No court shall have the authority to order an individual or issue be placed on the ballot less than six weeks before the date of the election, except as provided in sections 115.361 and 115.379.

WHO SHALL LEAD US?

115.306

1. No person shall qualify as a candidate for elective public office in the state of Missouri who has been found guilty of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America or to a felony under the laws of this state or an offense committed in another state that would be considered a felony in this state.

WHO ELSE SHALL LEAD US?

115.306.2(1)

Any person who files as a candidate for election to a public office shall be disqualified from participation in the election for which the candidate has filed if such person is delinquent in the payment of any state income taxes, personal property taxes, municipal taxes, real property taxes on the place of residence, as stated on the declaration of candidacy, or if the person is a past or present corporate officer of any fee office that owes any taxes to the state.

REALLY. I SWEAR IT.

115.306.2(2)

Each potential candidate for election to a public office shall file an affidavit with the department of revenue and include a copy of the affidavit with the declaration of candidacy required under section 115.349. Such affidavit shall be in substantially the following form:

AFFIRMATION OF TAX PAYMENTS AND BONDING REQUIREMENTS:

I hereby declare under penalties of perjury that I am not currently aware of any delinquency in the filing or payment of any state income taxes, personal property taxes, municipal taxes, real property taxes on the place of residence, as stated on the declaration of candidacy, or that I am a past or present corporate officer of any fee office that owes any taxes to the state, other than those taxes which may be in dispute. I declare under penalties of perjury that I am not aware of any information that would prohibit me from fulfilling any bonding requirements for the office for which I am filing.

- Candidate's Signature
- Printed Name of Candidate

LIAR, LIAR, PANTS ON FIRE

115.306.2(3)

Upon receipt of a complaint alleging a delinquency of the candidate in the filing or payment of any state income taxes, personal property taxes, municipal taxes, real property taxes on the place of residence, as stated on the declaration of candidacy, or if the person is a past or present corporate officer of any fee office that owes any taxes to the state, the department of revenue shall investigate such potential candidate to verify the claim contained in the complaint. If the department of revenue finds a positive affirmation to be false, the department shall contact the secretary of state, or the election official who accepted such candidate's declaration of candidacy, and the potential candidate. The department shall notify the candidate of the outstanding tax owed and give the candidate thirty days to remit any such outstanding taxes owed which are not the subject of dispute between the department and the candidate. If the candidate fails to remit such amounts in full within thirty days, the candidate shall be disqualified from participating in the current election and barred from refiling for an entire election cycle even if the individual pays all of the outstanding taxes that were the subject of the complaint.

GOTTCHA!

15.526.1

Any candidate . . . for election to an office at a general or special election may challenge the declaration of candidacy or qualifications of any other candidate for election to the same office to seek or hold such office or to have his name printed on the ballot. . . . [C]hallenges shall be made by filing a verified petition with the appropriate court as is provided for in case of a contest of election for such office in sections 115.527 to 115.601. The petition shall set forth the points on which the challenger wishes to challenge the declaration of candidacy or qualifications of the candidate and the facts he will prove in support of such points, and shall pray leave to produce his proof.

NOW ISN'T THAT INTERESTING!

71.005. No person shall be a candidate for municipal office unless such person complies with the provisions of section **115.346** regarding payment of municipal taxes or user fees.

AND

115.453(4) (Regarding write-in candidates):

. . . No person shall file a declaration of intent to be a write-in candidate for election to any municipal office unless such person is qualified to be certified as a candidate under section **115.346**.

BUT

Section: **115.346** (Repealed L. 2014 H.B. 1136 § A)

NO DOUBLE DIPPING?

115.351

. . . No person shall file for one office and, without withdrawing, file for another office to be filled at the same election. . . .

115.308

Sections 115.307 to 115.405 shall not apply to candidates for special district offices; township offices in township organization counties; or city, town, and village offices.

WHO WON?

115.507

1. Not later than the second Tuesday after the election, the verification board shall issue a statement announcing the results of each election held within its jurisdiction and shall certify the returns to each political subdivision and special district submitting a candidate or question at the election. The statement shall include a categorization of the number of regular and absentee votes cast in the election, and how those votes were cast
2. The verification board shall prepare the returns by drawing an abstract of the votes cast for each candidate and on each question submitted to a vote of people in its jurisdiction by the state and by each political subdivision and special district at the election. The abstract of votes drawn by the verification board shall be the official returns of the election.

WE BOTH WON?

115.517.3

If two or more persons receive an equal number of votes for nomination or election to any office not otherwise provided for in section 115.515 or this section, and a higher number of votes than any other candidate for nomination or election to the same office, the officer with whom such candidates filed their declarations of candidacy shall, immediately after the results of the election have been certified, issue a proclamation stating the fact and ordering a special election to determine which candidate is elected to the office. The proclamation shall set the date of the election and shall be sent by the officer to each election authority responsible for conducting the special election. In his proclamation, the officer shall specify the name of each candidate for the office to be voted on at the election, and the special election shall be conducted and the votes counted as in other elections.

ROCK, PAPER, SCISSORS PERHAPS?

115.517.4

As an alternative to the procedure prescribed in subsections 1, 2, and 3 of this section, if the candidates who received an equal number of votes in such election agree to the procedure prescribed in this subsection, the officer with whom such candidates filed their declarations of candidacy may, after notification of the time and place of such drawing given to each such candidate at least five days before such drawing, determine the winner of such election by lot. Any candidate who received an equal number of votes may decline to have his name put into such drawing.

I WAS SO CLOSE!

115.601

1. Any contestant in . . . [an] election contest who was defeated by less than one percent of the votes cast for the office and any contestant who received the second highest number of votes cast for that office if two or more are to be elected and who was defeated by less than one percent of the votes cast, or any person whose position on a question was defeated by less than one percent of the votes cast on the question, shall have the right to a recount of the votes cast for the office or on the question.
2. In cases where the candidate filed or the ballot question was originally filed with an election authority as defined in section 115.015, such recount shall be requested in accordance with the provisions of section 115.531 or 115.577 and conducted under the direction of the court or the commissioner representing the court trying the contest according to the provisions of this subchapter.

* * *

5. For purposes of this section, "recount" means one additional counting of all votes counted for the office or on the question with respect to which the recount is requested.

I WAS CHEATED!

115.553

1. Any candidate for election to any office may challenge the correctness of the returns for the office, charging that irregularities occurred in the election.
2. The result of any election on any question may be contested by one or more registered voters from the area in which the election was held. The petitioning voter or voters shall be considered the contestant and the officer or election authority responsible for issuing the statement setting forth the result of the election shall be considered the contestee. In any such contest, the proponents and opponents of the ballot question shall have the right to engage counsel to represent and act for them in all matters involved in and pertaining to the contest.

I'LL SEE YOU IN COURT!

115.577

Not later than thirty days after the official announcement of the election result by the election authority, any person authorized by section 115.553 who wishes to contest the election for any office or on any question provided in section 115.575 shall file a verified petition in the office of the clerk of the appropriate circuit court. The contestant shall only be required to file one petition with the circuit court for each election contest regardless of the number of counties within the court's jurisdiction. The petition shall set forth the points on which the contestant wishes to contest the election and the facts he will prove in support of such points, and shall pray leave to produce his proof. The circuit court in which the petition is filed shall have exclusive jurisdiction over all matters relating to the contest and may issue appropriate orders to all election authorities in the area in which the contested election was held.

IN THE MEANTIME . . .

115.595

1. In each case of a pending election contest for an office, the person holding the certificate of election may qualify and take the office at the time specified by law and exercise the duties of the office until the contest has been decided. If the contest is decided against the contestee, the court or legislative body trying the contest shall make an order for him to give up the office to the person determined to be entitled to the office and to deliver to such person all books, records, papers, property and effects pertaining to the office. The court or legislative body trying the contest may enforce the order by attachment or other proper process. If for any reason the person determined to be entitled to the office does not or cannot take office, a vacancy shall exist to be filled in the manner provided by law.

2. In each case of a pending election contest on a question, the question shall be deemed approved or disapproved as shown by the official returns of the election until the contest is decided. When the contest is decided, the question shall be deemed approved or disapproved in accordance with the decision as of the day the contest is decided, or as of the day it would otherwise have been deemed approved or disapproved, whichever is later.

SORRY, BOSS. I GOTTA DO MY DUTY.

115.639

1. Any person entitled to vote at any election held within this state shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of three hours between the time of opening and the time of closing the polls for the purpose of voting, and any such absence for such purpose shall not be reason for the discharge of or the threat to discharge any such person from such services or employment; and such employee, if he votes, shall not, because of so absenting himself, be liable to any penalty or discipline, nor shall any deduction be made on account of such absence from his usual salary or wages; provided, however, that request shall be made for such leave of absence prior to the day of election, and provided further, that this section shall not apply to a voter on the day of election if there are three successive hours while the polls are open in which he is not in the service of his employer. The employer may specify any three hours between the time of opening and the time of closing the polls during which such employee may absent himself.

2. Any employer violating this section shall be deemed guilty of a class four election offense.

EDUCATE. DON'T ADVOCATE

Public funds expenditure by political subdivision officer or employee, prohibited--personal appearances permitted.

115.646. No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office. This section shall not be construed to prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure.

OWN IT!

130.031.8

Any person publishing, circulating, or distributing any printed matter relative to any ballot measure shall on the face of the printed matter identify in a clear and conspicuous manner the person who paid for the printed matter with the words "Paid for by" followed by the proper identification of the sponsor pursuant to this section. For the purposes of this section, "printed matter" shall be defined to include any pamphlet, circular, handbill, sample ballot, advertisement, including advertisements in any newspaper or other periodical, sign, including signs for display on motor vehicles, or other imprinted or lettered material

* * *

(3) In regard to any printed matter paid for by a corporation or other business entity, labor organization, or any other organization not defined to be a committee by subdivision (9) of section 130.011 and not organized especially for influencing one or more elections, it shall be sufficient identification to print the name of the entity, the name of the principal officer of the entity, by whatever title known, and the mailing address of the entity, or if the entity has no mailing address, the mailing address of the principal officer.