

MUNICIPAL STATUTE OF FRAUDS

OR HOW I LEARNED TO STOP WORRYING AND LOVE § 432.070

RSMo § 432.070

No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract including the consideration shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing.

Essential requirements

- ⦿ Contract must be within the scope of powers OR be expressly authorized by law
- ⦿ Subsequent performed consideration in writing
- ⦿ Contract in writing, dated, subscribed by the parties or their agents (authorization must be in writing)

General Considerations

- Requirements of § 432.070 are mandatory, not directory
- Courts should “unhesitatingly” enforce compliance with § 432.070
- “Section 432.070 is given a strict and literal interpretation . . . unrelieved by considerations of equity which relieve against hardship and unjust enrichment of private persons whose contracts might fall short of strict legal requirements.”

General Considerations

- Applies to proprietary and governmental
- Equitable estoppel cannot be employed
- Implied contract cannot be employed

General Considerations

- Contract which fails to satisfy an element of § 432.070 is “outside the object of its creation . . . and therefore beyond the powers conferred upon it by the Legislature”
- “Not voidable only, but wholly void, and of no legal effect”

§ 432.070: Who

- ⦿ Counties, cities, towns, villages, school districts, or “other municipal corporations”
- ⦿ “Exercising public and essential governmental functions”

§ 432.070: Who

- ⦿ Housing authorities (Chapter 99)
- ⦿ Redevelopment authorities (Chapter 353)
- ⦿ Economic development corps (Chapter 355)
- ⦿ Industrial development authorities (Chapter 349)
- ⦿ Fire protection districts (Chapter 321)
- ⦿ County hospitals (Chapter 205)
- ⦿ Sewer districts (Chapter 204)
- ⦿ Port authorities (Chapter 68)

Starting list in Rail Switching Services v. Marquis-Missouri Terminal, 533 S.W.3d 245 (ED 2017)

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Within Scope of Powers

- ⦿ “Under the statutes it is . . . ultra vires for a Missouri municipality to incur . . . A liability not within the scope of its corporate powers or one not expressly authorized by law.” *Donovan v. Kansas City*, 175 S.W.2d 874, 882 (1943).
- ⦿ *The Lamar Company v. City of Columbia*, 512 S.W.3d 774 (WD 2016)

Lamar v. Columbia



Lamar v. Columbia



Lamar v. Columbia

“The Agreement prevented City from diminishing and decreasing nonconforming billboards by relieving applications to rebuild or relocate any of the forty-two signs identified in the Agreement from the obligation to abide by City’s then existing billboard ordinance.”

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- *The Lamar Company v. City of Columbia*, 512 S.W.3d 774 (WD 2016)
- *Howard County Ambulance Dist. v. City of Fayette*, 2018 WL 941800 (2/20/18)

Howard County Ambulance



Howard County Ambulance

- ◎ Ambulance District says:
 - 190.060 gives us the authority to collect reasonable fees for the use of ambulance services.
 - Our Ordinance No. 2 provides that a law enforcement entity shall be liable for ambulance service charges incurred for care for individuals detained by the entity.

Howard County Ambulance

- ◎ Court says:
 - The City did not enter into a written contract for services
 - At most the statute and ordinance “could lead to the preparation of a written contract”
 - Ordinance does not contain contract terms including cost of the services

Within Scope of Powers

- ◎ Cannot bind future councils
 - City of St. Louis v. Cavanaugh, 207 S.W.2 449 (1946)
 - “The members of the Board of Aldermen could not bind their successors in office....”
 - “Whether the proposed bridge should be and remain forever a free bridge could not be determined in advance and irrevocably, because the matter . . . Involved legislative discretion and the police power, as granted to the City”

Within Scope of Powers

- ◎ Must follow the "law of the organization"
 - "A contract is void where the public agency fails to follow proper procedures and exceeds its statutory authority." St. Charles County v. A Joint Board or Commission, 184 S.W.3d 161 (ED 2006).
 - A contract of a corporation which is ultra vires, in the proper sense – that is to say, outside the object of its creation as defined by the law of its organization, and therefore beyond the powers conferred upon it by the Legislature – is not voidable only, but wholly void, and of no legal effect." Donovan v. Kansas City, 175 S.W.2d 874 (Mo banc 1943).

Contract in Writing

- ◎ Oral contracts are never acceptable
 - Withers v. City of Lake Saint Louis, 318 S.W.3d 256 (ED 2010)



Authorization in Writing

- ◎ Rail Switching Services, 533 S.W.3d 245 (ED 2017)
- ◎ "[N]o writing exists to establish [the executive director's] authority to enter into the [RSSI] Agreement."
- ◎ Substantial compliance???
- ◎ "The mere fact that [the executive director] informed the Board of his negotiations and the existence of an agreement does not establish the requisite authorization . . ."

Authorization in Writing

- ⦿ Ballman v. O'Fallon Fire Protection District, 459 S.W.3d 465 (ED 2015)
- ⦿ “[T]he fatal fact remains that the board neglected to duly appoint and authorize the chairman *in writing* as required by § 432.070”
- ⦿ “This is so even where, as here, other evidence establishes actual consensus.”

Authorization in Writing

- ⦿ City of Dardenne Prairie v. Adams Concrete, 529 S.W.3d 12 (ED 2017)
- ⦿ WARNING: can be a sword in addition to a shield for municipalities
- ⦿ The court:
 - Board’s approval must sufficiently identify the subject matter . . . with reasonable exactitude and specificity.”
 - No ordinance authorized the Parks building.

What May Be To Come

- ⦿ Sophian Plaza v. City of Kansas City, Missouri, WD80678
 - Contract away police powers
 - Bind future councils
 - Authorization of signatory
 - Law of the organization
 - Third-party standing to assert contractual rights

Ways Around § 432.070

- ⦿ Contract of law required by other statutes
- ⦿ Two writing contracts
- ⦿ Nature of the contract does not require the municipality to subscribe
- ⦿ Ambiguity in the contract will allow the presentation of parol evidence to establish intent of the parties

Best Practices

- ⦿ Clear, written authority for how contracts must be executed
- ⦿ Examine all writings to determine if they are a "contract"
- ⦿ Properly execute all contracts
- ⦿ Don't let the client wiggle out of compliance because of "industry standard"

Tara M. Kelly
Assistant City Attorney
City of Kansas City, Missouri
Tara.kelly@kcmo.org
816.513.3117
