

*Municipal Government:  
What It Looks Like  
And  
How It Works*

**A PRIMER  
FOR  
MISSOURI ELECTED OFFICIALS**

Missouri Municipal League

Elected Officials Training Seminar

Thursday, June 6, 2019

Presented by:

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**Appendix: Twenty-Two Commandments, Five Suggestions and a Bogus Certificate!**

## I. POWERS AND DUTIES OF MAYOR AND COUNCIL

Every form of local government in Missouri REQUIRES a **collaborative** process. Authority is dispersed among multiple officials and divided among separate branches.

### A. Classification of Cities

#### 1. Towns and Villages

- < Five or nine members of Board of Trustees, all elected at large
  - < Chairman selected by Trustees annually
  - < Chairman presides at meetings and votes on all questions (except appointment to fill vacancy on Board)
- < Ordinances passed by majority vote of members of Board of Trustees after two readings (by title only if copies made available to the public prior to consideration)
- < Chairman has no veto power

#### 2. Fourth Class Cities

- < Two Aldermen per ward, at least two wards; two year term (four if approved by voters)
- < Mayor elected at large for two or four year term
- < Mayor presides at meetings of Board of Aldermen and votes only in case of a tie
- < Ordinances passed by majority vote of Aldermen after two readings (by title only if copies made available to the public prior to consideration)
- < Mayor has veto power - Aldermen can override by two-thirds vote

#### 3. Third Class Cities

- (a) *Mayor-Council form of government*

- < Not less than four wards, each having one or two Council Members.
- < Mayor elected at large for four year term
- < Mayor presides at Council meetings and votes only in case of a tie
- < Ordinances passed by majority of Council Members after two readings (by title only if copies made available to the public prior to consideration)
- < Mayor has veto power - Council Members can override by two-thirds vote

(b) *Commission form of government*

- < Mayor and two or four Council Members, all elected at large for four year terms
- < Mayor presides at Council meetings and votes on all questions; Mayor has no veto power
- < City divided into five departments and responsibility for each department distributed among Mayor and Council Members

(c) *City Manager form of government*

- < Five Council Members elected at large for three year terms, one of whom is selected by others to serve as Mayor for one year term
- < *Optional Form:* Seven Council Members elected for three year terms, one each from five wards, and two elected at large
- < Mayor presides at Council meetings and votes on all matters, but has no veto power
- < Council employs administrative head of city government as City Manager

4. Charter Cities

All questions of legislative and executive structure, procedure, powers and duties are established and governed by the Charter.

**B. Executive and Legislative Powers**

1. Mayor

- < Required to administer the laws enacted by the legislature
- < May have veto power
- < May appoint administrative officers with approval of legislature
- < Has such other powers as specified by the legislature

2. Legislature

- < Retains ultimate authority to direct actions of the City
- < May remove officials by simple majority with Mayor's consent or by two-thirds majority without Mayor's consent
- < May enact ordinances and override veto

**C. Counting Votes**

"Majority of the *members*" is **not** the same thing as "majority of the *votes*."

On an eight member board, five is a quorum to do business, but a four-to-one vote is not a "majority of the members" sufficient to pass an ordinance.

Members who are asleep, stupid, absent, abstaining, or dead still count in determining whether the necessary votes to adopt an ordinance have been obtained.

**D. Meeting Procedures**

If there is a procedure established by state law, it must be followed *exactly*.

- < "Ayes and nays recorded in the journal" means that the vote of each

member must be recorded or else the measure is not an ordinance.

It is good practice to adopt rules governing the meeting process (e.g. Roberts Rules).

- < Local rules may be "waived" by affirmative action or implicit agreement of the members and will generally not invalidate the action of the body.

## **E. Advisory Bodies**

Most cities have one or more advisory bodies to assist the executive and legislative authorities in performing their duties. There is probably a Planning and Zoning Commission, there may also be any number of additional groups that the City wants to set up to focus on parks, recreation programs, solid waste management, recycling, financial advice, insurance coverage, personnel, traffic, disaster planning, or whatever else may be desired.

Unless there is an ordinance to the contrary, the opinions and actions of these bodies are advisory only. In no event can they enact laws. Generally, they cannot finally establish policy. In almost every instance the legislature can act contrary to the advice of these advisory bodies if they want to.

- < In some instances, the legislative body may be required to have a supermajority (two-thirds) if it disagrees with the Planning and Zoning Commission (road placement and vacation, location of utilities and public facilities, etc.).
- < Board of Zoning Adjustment is different. It is like a court and has exclusive authority to grant or deny variances. Neither mayor nor council can overrule or change decision of Board of Adjustment. Members serve five year terms and can only be removed for cause after written charges and public hearing.

## II. SURE-FIRE WAYS TO GET INTO SERIOUS TROUBLE

### A. Nepotism

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity [*blood relation*] or affinity [*marriage*], shall thereby forfeit his office or employment"

**Constitution of the State of Missouri, Art. VII, § 6**

### B. Conflict of Interests

Neither you, nor your immediate family, nor any business in which you have a substantial interest, should do business with your city.

If you insist on playing with legal and political fire, yours must be the "lowest" bid for the city's business (not the "lowest and best") if value exceeds \$500.00 per transaction or \$5,000.00 per year.

"Abstain" means staying out of the matter completely

- < don't vote
- < don't participate in the discussion
- < don't lobby your fellow officials
- < be sure the clerk includes in the record your statement of abstention and any reasons you give

State "ethics" law requires annual reports of financial interests and disclosure of transactions to be filed with state and local government each year.

- < Applies if "annual operating budget" of city is in excess of One Million Dollars
- < Local ordinances meeting certain minimum requirements will allow you to avoid more extensive state disclosure requirements
- < Reports to be filed by May 1st for prior calendar year

## C. Open Meetings

Missouri "Sunshine Law" applies to all governmental bodies, including Board of Trustees or Aldermen or City Council, committees of such boards, and all other boards or commissions of the city.

Notice must be posted 24 hours in advance and include a tentative agenda.

Meeting can only be closed after a public vote on a motion which states a specific reason listed in the state statute for which the closed meeting will be held. The vote of each member of the body on the motion to hold a closed meeting must be recorded.

The only thing that can be discussed in a closed meeting is the specific subject matter which justified the closure of the meeting. **Stick to only that subject!** Any votes taken in a closed meeting must be by roll call and the vote of each member must be included in the minutes.

*It is the opinion of this author that the state law allowing closed meetings relating to "confidential or privileged communications between a public governmental body and its attorneys" allows a closed meeting in order to consult with an attorney and solicit or receive legal advice. You should, however, be guided by the advice of **your** city attorney on this matter.*

## D. Talking Too Much

### 1. Public Officials Are Not Private Citizens

Private citizens are free to exercise their Freedom of Speech with relative impunity. As a public official, what you say carries greater weight and subjects you and your city to increased risk of being sued if someone takes offense or claims injury because of what you say. Just as the Sunshine law limits public officials "freedom of association", your public duties limit your ability to tell someone off or speak your mind. In general, the less you say, the better off you will be.

### 2. Minutes of Meetings

The law requires cities to keep "journals" of their proceedings. That is not the same thing as a verbatim transcript of every statement made during the meeting. The journal (minutes) should reflect each subject discussed



and all actions taken, including the ayes and nays of each member (or statement of abstention and reasons) on each ordinance. Anything else is generally unnecessary.

- < There are many lawyers who believe that any tape recording the city makes (e.g. by the City Clerk) is a "public record" which may have to be retained and made available on request.
- < Tape recorders preserve not only the brilliant reasoning you expressed during the debate, but also the facetious, intemperate, ignorant or excessive statements made by your fellow officials. If there is a tape recorder going, **proceed with caution**.

### 3. Administrative and Legislative Decisions

City councils commonly deal with two different types of matters: legislative and administrative. It is important to recognize and acknowledge which of these two aspects of your duties you are performing at a given time and how they may be reviewed by a court in the future.

IN GENERAL, WHEN YOU **MAKE** THE RULES YOU ARE ACTING IN A LEGISLATIVE CAPACITY. BUT WHEN YOU **APPLY** THE RULES TO A PARTICULAR SET OF FACTS, YOU ARE ACTING IN AN ADMINISTRATIVE CAPACITY.

- < Establishing personnel rules, requiring special use permits for fast food restaurants, and enacting a building code are examples of legislative decisions.
- < The decisions that an employee has violated the personnel rules and should be disciplined, or to grant or deny a special use permit for a particular fast food restaurant, or to issue or deny a building permit are examples of administrative decisions.

*Legislative* actions are entitled to a presumption that they are correct and are reviewed by a court primarily to determine if they are arbitrary or capricious. The record of proceedings at the city is generally not an issue in these matters.

*Administrative* actions are not entitled to a similar presumption of validity. They are reviewed by the court on the record made of the proceedings before the city and are upheld only if they are supported by competent and

substantial evidence which is included in that record.

- < Rule of thumb: the less you say when acting in a legislative capacity the better - but when you act in an administrative capacity, be sure all the facts and reasons in support of your decision are in the record.

## E. Employment Actions

In most cities, most employees are *employees at will*. That means they can be terminated for any reason or no reason - **but not for the wrong reason**, such as race, gender, age or disability discrimination. (There are exceptions to this rule for certain third class and charter cities and for certain elected or appointed officials who enjoy a specific term of office.) Frequently, public officials who rely heavily on the "employment at will" doctrine to justify firing employees are called "DEFENDANTS".

- < Employment decisions can and should be made in closed meetings.
- < If a pre-disciplinary hearing is granted to the employee, be sure the record contains all the reasons supporting your decision and that they will hold up to scrutiny later.
- < If an employment action is taken, shut up! If the city or any of its officials make derogatory statements about a former employee you will give that employee additional constitutional rights and remedies they do not otherwise have.

## F. Zoning Decisions

The city may establish reasonable rules for land use if they are intended to protect the public health, safety or welfare of the community. Courts routinely overturn zoning decisions based only on a desire to protect or placate adjoining property owners.

- < Frame your land use decisions in broad terms rather than focusing just on the vocal *nimby* ("not in my back yard") who lives next to the property.
- < There is a growing trend to allow property owners who are turned down on a rezoning request to seek relief in the federal court on a theory that the government has "taken" the owners' property.
- < The best defense is to seek and follow expert planning advice when dealing with potentially controversial land use proposals.

## G. Civil Rights Actions

Federal law (42 USC § 1983) allows citizens to file suits for actual and punitive damages against a city and its officials. Recent changes in these laws give plaintiffs the right to a jury trial in such cases. Remember: **everybody loves to sue the government**.

The potential for "1983" litigation arises in employment matters, zoning decisions, use of force by police, denial of permits, and almost every other action taken by local governments.

- < In 1983 cases you can (and will) be sued in both your official and private capacities.
- < Your best defense may be that you sought and followed legal and/or other expert advice. If you get such advice and decide not to follow it, you act at your own peril.
- < The city's insurance may not always cover your exposure in 1983 cases.

#### H. **Public Works -- Payment Bond; Prevailing Wage; Immigration Compliance**

§ 107.170, RSMo. requires public entities to have any contractor performing public works the cost of which is estimated to exceed \$50,000.00 post a bond with adequate security to insure payment for all materials and labor used in that project and all insurance premiums, including worker's compensation insurance, necessary for the project. If the necessary bond is not provided the public entity and its officials may be liable to pay for any unpaid materials or labor costs and, possibly, any claim for which there should have been insurance.

There is also a specific provision which says that **school board members** cannot be held liable for violating this statute if a contractor presents a bond which later turns out to be bogus, as long as the board members had no reason to know the bonding company was insolvent or the bond invalid. The statute also allows governmental bodies to indemnify officials who are sued for violating the performance bond statute except in cases of willful or wanton neglect.

§§ 290.210 - 290.340, RSMo. require elaborate steps to insure that the "prevailing hourly rate of wages" is paid to all "workmen employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work." This

requirement is not applicable to employees of the public body. In general the process requires the public body to obtain a schedule of “prevailing wages” from the Missouri Department of Labor and Industrial Relations **before advertising for bids** for any construction project. Any contract eventually awarded must also contain clauses requiring the contractor and all subcontractors to pay the determined prevailing wage and to incorporate the wage determination as a part of the contract. Final payment of the contract amount is prohibited until the contractor files an affidavit of compliance with the prevailing wage rates for all workers on the project.

In addition to other remedies for violation, any “officer, official . . . or representative of any public body . . . who willfully violates and omits to comply with [the prevailing wage law] shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each day such violation or omission continues shall constitute a separate offense . . .” Sec. 290.340, RSMo.

Finally, state laws require municipalities in Missouri to obtain lawful immigration status of all newly hired municipal employees, and to require documentation of lawful immigration status for employees working on public projects pursuant to contracts worth \$5,000 or more between the municipality and any contractor:

**Section 285.530. Employment of unauthorized aliens prohibited--federal work authorization program, requirements for participation in--liability of contractors and subcontractors.**

1. No business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.
2. As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.
3. All public employers shall enroll and actively participate in a federal work authorization program.

**I. Think Quickly - Act Slowly**

Throughout your public service friends, constituents, city employees and people doing business with the city will be generous with their advice, ideas, rumors,

complaints and observations. Some ideas will be good, some rumors will be true, and some gripes will be valid. Many times, however, what you are told may be the product of imagination, ignorance or intentional misinformation.

Be willing to listen to that which seems valid or well intentioned, but **THINK QUICKLY** -- always remember you will be perceived as representing your government in everything you say and do. Be careful not to speak before you are fully informed, and don't commit yourself to a position before you have had a chance to investigate the issue. Your duty is to represent **all** the people, not just the person you are talking to at the moment.

After getting the facts, **ACT SLOWLY** -- talk it over and give those with whom you serve and your city staff a reasonable opportunity to explore and consider the matter before you take action. There may be a very good reason for the circumstances which lead to the complaint or the process which is at issue. If you act before that information has a chance to come out you risk fixing what isn't broken. If corrective action is necessary it will generally be better if it is thought through and well reasoned.

### III. THE GOOD SIDE

Most of what has been said here conveys the message that the mayor doesn't have nearly as much power as he or she thought, and that all the council members are going to get sued every time they turn around. But there are also great rewards which attach to your public service, such as the **BIG BUCKS** you get paid!

You have the rare privilege of directing the course of your community for years to come. You will have a direct and substantial opportunity to impact the daily lives of your neighbors in hundreds of ways.

You enter office because you have earned the trust and respect of your fellow citizens. You can keep their confidence and earn their appreciation if you approach your duties with a healthy measure of common sense.

Enjoy the experience!

## Council-Staff Relations Are They Good for You?

Presented before the Missouri Municipal League

by

Douglas J. Harms, Mark M. Levin,  
Kevin O'Keefe, Howard Paperner

As we all learned in school, the legislative branch of government makes policy; the executive branch administers the programs. Part-time elected officials often must depend on full-time paid staff. Our system of local government begins with built-in tension.

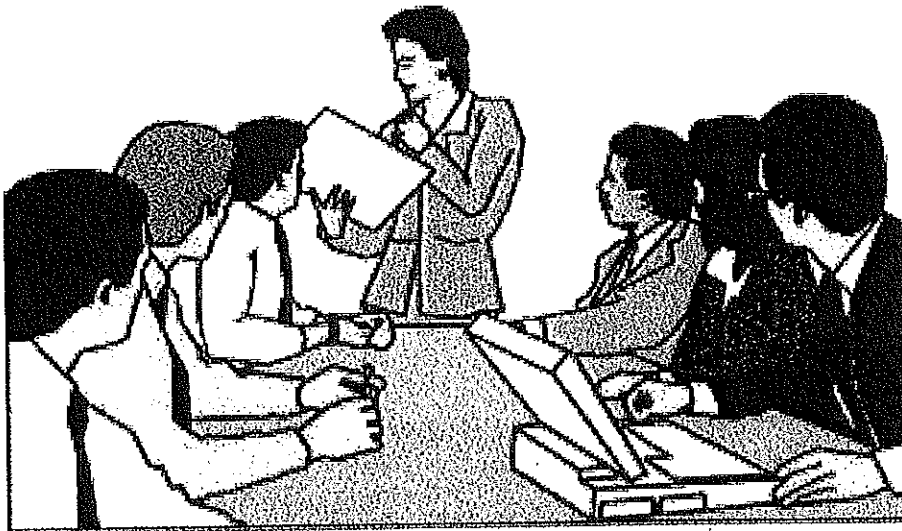
Elected officials, the Attorney, Engineer, Planner, City Administrator, and other members of the professional staff are in partnership in the process of governing our Cities. By strengthening council-staff relations, the process will be improved, the public will be better served, and everyone involved in local government will feel better.

These guidelines are intended to improve that partnership.

1. Don't Shoot the Messenger. Create an environment in which you will receive the best professional advice, including bad news. Encourage creative thinking. Don't embarrass the staff. Blame the staff if you must, but remember, sometimes the emperor is naked.
2. Ask the Right Person. While many professionals may be knowledgeable about a wide range of issues, the staff are not interchangeable parts. (Ever wonder why the Administrator gets upset when you ask the attorney about personnel issues?)
3. There are Technical Issues and Policy Issues. Many issues involve questions of "Should we?" not "Can we?" The staff is there to advise elected officials on how to accomplish goals.
4. Sometimes It's ALL Policy. Not every issue requires professional analysis in order to arrive at the best solution. (Except for the accuracy of the numbers, budget decisions are all questions of city policy.)
5. Sometimes "No" Just Means No. Not everything is negotiable. (See guideline #1.)
6. Expect Professional Work from Professionals. A technical report or legal opinion should be persuasive and the conclusions should be logical, based on the information presented. (See guideline #3.)
7. They're Your Experts. You hired them, you asked for their advice, and you got it. If you don't possess independent expertise, the court (and your constituency) will expect you to follow your professional staff's advice on technical matters.

8. *The Staff Has a Stake in the City, Too.* Careers can be made or broken on the basis of actions taken by elected officials. And employees who live in the city are also constituents.
9. *"Outside Influences" Exist.* Codes of ethics, peer pressure, the public interest, and national professional organizations all contribute to the development of professional opinion.
10. *You Get What You Pay For.* Professionals bring to the job training and experience. Cities are in a competitive market for professional services. If you can't afford to hire someone with twenty years of experience, invest in staff training and encourage professional development.
11. *There are Generalists and Specialists.* The issues facing cities get more complex everyday. Sometimes the input of an outside expert may help clarify a difficult choice or the staff may need help. But don't shop for someone who agrees with you.
12. *Play by the Rules.* The charter, ordinances, and state statutes define the authority and responsibility of the staff; no one can relieve them of these legal responsibilities. (The City Engineer can get another job; he can't get another seal.)

Maintaining and improving Council-staff relations requires the effort and attention of all of us. Start today!





## WHAT PART OF NO DIDN'T YOU UNDERSTAND? Things your City Attorney Tried to Tell You.

Presented before the Missouri Municipal League

by

Mark M. Levin

Kevin O'Keefe

Howard Paperner

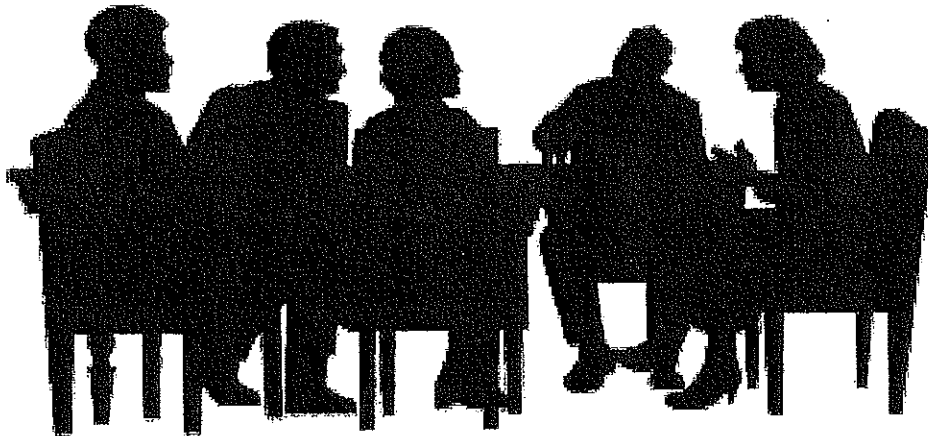
How many times during a public discussion have you asked your City Attorney his opinion on an issue and received an answer you didn't quite follow but couldn't get him to explain? Perhaps the attorney did answer your question as best he could, given the circumstances.

These guidelines should help you better understand your attorney.

1. *There is only one City Attorney.* The opinions of lawyers who are members of the audience, members of the City Council or representatives of a petitioner may be brilliantly reasoned, articulately argued and supportive of your own position on an issue, but theirs is not the opinion which the City is expected to follow. You may ignore the City Attorney's legal advice, but you do so at your own peril. Acting in good faith by following your lawyer's advice may be your only defense.
2. *The answer is only as good as the question.* The City Attorney's opinion is based on his understanding of your question and his understanding of the law. Few attorneys can accurately recall all relevant statutes and cases. If you don't provide all the facts or if you insist on receiving an unresearched opinion, you may receive a less than complete response.
3. *The City and its citizens aren't the same thing.* The City Attorney's client is the municipal corporation; it is not the public, and it is not an individual official. Members of the public are not entitled to receive legal advice from the City Attorney.
4. *There are no "take-backs."* The record is the record; a public meeting is a public meeting. The attorney has a responsibility to protect the public record from testimony which could damage the city. Statements of elected officials and informal opinions of the City Attorney can be misinterpreted, misquoted or misused by an aggrieved petitioner. After the fact your attorney may be able to salvage the situation by restating for clarification and for the record what you meant to say.
5. *There may not be an answer.* The law governing the actions of cities is complex, changing and incomplete. Missouri municipal statutes are poorly written, archaic, sometimes internally inconsistent, and incomplete. Sometimes a lawyer can only guess what the courts will say about an issue.

6. Don't blind side your lawyer. You will get a more complete and satisfactory answer if you warn your attorney, in advance, of an issue that might come up at a Council meeting.
7. Sometimes you just shouldn't ask. Don't ask a question in public if you don't already know the answer and you don't really want to hear it answered; the city may have to live with the answer.
8. Not all opinions are legal. Don't confuse your lawyer's opinion on a subject with his legal opinion. Your lawyer's observations may be political judgment or personal preference. The recommendation you receive may be appropriate and helpful, but it may not be based on any legal principles because no legal issues were raised in the question.
9. It's OK to blame the attorney; that's why you pay him. Sometimes it's appropriate for city officials to explain to residents that they would like to help them but the attorney has explained that what is being requested is illegal.
10. Call a "time out." If you have a question regarding the legal aspects of an issue and you don't want to discuss it in public, call a recess to confer with your lawyer.

Find a way to communicate with your attorney; recognize the signals and subtle warnings; convene a workshop to discuss these issues.



## Five Not So Easy Ways to Avoid Trouble

By Kevin O'Keefe

*The following List is intended simply as a road map to the high road for avoiding some common pitfalls that may be encountered by those in public service.*

- ✓ **Shut up.** Don't take the bait, and don't waste your time arguing with zealots and wackos.
- ✓ **Shut up.** Don't commit too soon. There is more than one side to every story. Don't take a position or make a promise till you've heard all sides (especially the staff's).
- ✓ **Shut up.** The argument at the last Council meeting was then. This is now; and the next meeting is a new day. Keeping yesterday's fight alive interferes with the next discussion.
- ✓ **Shut up.** Everything you say is important. It can and will be used against you, and the city. Generally, the less you say the better. Think carefully before you speak.
- ✓ **Speak up.** Call and speak to your fellow officials and staff members instead of e-mail.

# CERTIFICATE

This document will attest that:

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did NOT spend Thursday morning, June 6, 2019, playing golf or tennis or recovering from a hangover with the usual collection of reprobates attending the Missouri Municipal League's Elected Officials Training Seminar in Columbia, Missouri.

No Siree! This dedicated public servant unselfishly sat through an excruciatingly boring lecture on "*Municipal Government: What It Looks Like and How It Works*" by some bloviating, long-winded, self-anointed "expert" just so he/she/it could bring the benefit of this critical information to bear for the benefit of his/her/it's constituents who do not appreciate him/her/it nearly enough.

Anyone who says otherwise is a damned liar!



*Erin M. O'Keefe*  
(Self-Anointed Expert)