Waters Of The United States

In This Issue:
- Election Law Changes
- Missouri's NLC President
- Your ADA Questions Answered
- Red Light Camera Ruling
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WATERS OF THE UNITED STATES
WHAT IN THE WORLD IS WOTUS?
by Ramona Huckstep

On May 27, 2015, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) finalized the Clean Water Rule, also known as the Waters of the United States Rule (WOTUS). This is the most recent amendment to the Clean Water Act (CWA). According to the EPA, “the rule ensures that waters protected under the CWA are more precisely defined and predictably determined.” Supporters claim this new rule is supposed to respond to the public’s demand for greater clarity, consistency and predictability when determining who has authority. Municipalities need the clarity of knowing which waters are protected to administer their clean water programs and to build and maintain their infrastructure, such as roads and ditches, water treatment facilities, and storm water systems. According to the EPA, local governments are the largest providers of clean water in the U.S.

In developing the rule, the agencies held more than 400 meetings with stakeholders across the country, reviewed more than one million public comments, and received various perspectives from the different sides. Ultimately, the Clean Water Rule was published in the Federal Register on June 29, 2015, and the final rule became effective on Aug. 28, 2015. While the work that went into the creation of the WOTUS rule is done, the real work now begins with the implementation and interpretation of the rule. The Missouri Municipal League (MML) is active at many levels in this discussion and working to support and assist the municipalities.

What does this mean for municipalities around the United States and specifically here in Missouri? It starts with the premise that protecting water resources is important. We need clean water to drink and we need it for fishing and recreation. Clean water is vital to agriculture, energy production, manufacturing and businesses. The way we get and keep clean water is through clear and implementable rules. This is where things become clear as mud. What is “clear” and “implementable”? According to the EPA and Corps they have created a rule that is just that. However, many state and local groups and associations across the U.S. disagree. At many levels, groups are pulling together to figure out how this new Clean Water Rule will impact local entities. They are joining together to let the EPA and the Corps know about their concerns and taking action to modify the rule or stop it altogether.
HISTORY OF THE CLEAN WATER ACT

The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. Growing public awareness and concern for controlling water pollution led to sweeping amendments in 1972. As amended in 1972, the law became commonly known as the CWA. The 1972 amendments are as follows:

- Established the basic structure for regulating pollutant discharges into the waters of the U.S.;
- Gave EPA the authority to implement pollution control programs such as setting wastewater standards for industry;
- Maintained existing requirements to set water quality standards for all contaminants in surface waters;
- Made it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained under its provisions;
- Funded the construction of sewage treatment plants under the construction grants program; and
- Recognized the need for planning to address the critical problems posed by nonpoint source pollution.

Subsequent amendments modified some of the earlier CWA provisions. Revisions in 1981 streamlined the municipal construction grants process, improving the capabilities of treatment plants built under the program. Changes in 1987 phased out the construction grants program, replacing it with the State Water Pollution Control Revolving Fund, more commonly known as the Clean Water State Revolving Fund. This new funding strategy addressed water quality needs by building on EPA-state partnerships.

WOTUS AT A NATIONAL LEVEL

According to EPA, the new rule does not create any new permitting requirements. It does reduce economic burdens on communities by simplifying and speeding up the process of determining if a body of water is protected. However, the National League of Cities (NLC) has a different opinion on how this rule will impact municipalities. Since before the proposed rule’s publication, the NLC made EPA aware of the potential impacts of the rule on localities.

At the national level, NLC joined forces with the U.S. Conference of Mayors, the National Association of Counties, and the National Association of Regional Councils to voice their concerns to members of Congress regarding not only the process, but the specific worries about the rule itself.

In a letter to Congress, the group noted that the EPA and the Corps failed to consult states and localities early and often, especially as they relate to forming practicable and workable rules. The group also believes that the analysis used to support the rule was faulty and incomplete. Federal agencies analyzed economic data from only one section of the permit program. However, with the change to the definition of “waters of the United States,” the inference is that it would be applied consistently throughout the Clean Water Act; therefore, it could impact other CWA programs.

In regard to the substance of this rule, this group disagrees with the assumption that the definition in the rule of “Waters of the U.S.” provides the certainty and clarity needed for operations at the local level. The rule also includes undefined and confusing new terms with potential for sweeping impacts across all CWA programs. For example, the rule extends the “Waters of the U.S.” definition by utilizing new terms, such as “tributary,” “uplands,” “significant nexus,” “adjacency,” “riparian areas,” “floodplains” and “neighboring,” that could increase the types of public infrastructure considered jurisdictional under the CWA.

WOTUS AT THE STATE LEVEL

On Aug. 11 of this year, Missouri Attorney General Chris Koster filed a motion on behalf of the state of Missouri for preliminary injunction to block implementation of a new federal rule until the court decides whether the rule violates the U.S. Constitution and other federal laws. In June, Missouri and 12 other states sued the EPA and the Corps over the agencies’ new rule defining “Waters of the United States.” According to the Attorney General’s office, “The new definition expands the scope of clean water regulations to lands that are dry much of the year, and increases the federal government’s authority to control land use in Missouri.” The states allege that EPA and the Corps also failed to follow proper procedure before adopting the rule, which is what the National League of Cities and their group insisted as well. They also allege that the rule violates several provisions of the U.S. Constitution.

Koster said the agencies’ new definition of “Waters of the U.S.” extends the agencies’ regulation far beyond what a reasonable person
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View Project Profiles at www.alliancewater.com

The Missouri Municipal League continues to be part of the discussion of the overall fate of the WOTUS rule. There are a number of strategies under study and refinement. The MML will continue to monitor how the rule is interpreted and will keep its members informed. In the meantime, members need to be aware of the rule and the possible implications that may come from it.

**MAJOR ISSUES WITH WOTUS**

The three main overarching concerns that seem to permeate throughout the various levels of government (federal, state and local) as it relates to WOTUS are:

1. Insufficient stakeholder engagement by EPA and the Corps;
2. Lack of clarity and increased regulatory uncertainty; and
3. The overreach of the federal government’s authority on land in Missouri.

The WOTUS Rule will bring with it a host of additional environmental regulations and requirements that will impact municipalities of all sizes. There could be increased permitting requirements. For example, a temporary stream might now be under the jurisdiction of the EPA and will have to meet water quality standards that were not previously in place.

With the increased permitting requirements, there are increased costs. Trying to determine if a water body falls under EPA jurisdiction can be costly and take years. There is a predicted increase for mitigation requirements that, in turn, stresses an already strained mitigation banking system and makes it very expensive to preserve or create sites. Also, there is a potential for increased risk in general to project proponents and landowners due to the WOTUS permit process that may be difficult to obtain and keep. There is an increased risk of citizen lawsuits when it comes to challenging jurisdictional determinations and unpermitted discharges. Finally, with WOTUS there is an increased regulatory uncertainty and implementation challenge.

Although an aim of the rule is to provide increased regulatory certainty, the WOTUS rule does not achieve this goal. Instead, it may lead to: further...
confusion that could lead to landowners not knowing their obligations under the law; citizen lawsuits; inconsistent regulatory application; businesses halting their operations to ensure compliance; and an increase need to ask the Corps for a jurisdictional determination before using a piece of land.

It appears what started out as a federal rule with positive intentions by the EPA and the Corps has caused a firestorm of concern from many local and state agencies and associations. We all want clean drinking water and safe places to swim and fish. The question is, what is the best way to make this happen and is the WOTUS rule the way to accomplish this?

Ramona Huckstep is a Policy and Membership Associate with the Missouri Municipal League. Prior to MML, she worked for the Missouri Department of Natural Resources in the Hazardous Waste Program. Her position as an Environmental Specialist/Community Involvement Coordinator for more than 16 years allowed her to work with communities impacted by hazardous and radioactive waste. In coordination with the Department of Defense and the Department of Energy, she informed and provided opportunities for communities to be part of the decision-making process. Contact Ramona at (573) 635-9134 or Rhuckstep@mocities.com.

References:
ELECTION LAW CHANGES
by Kevin O'Keefe

With the passage of House Bill 63 and Senate Bill 104, the 2015 Missouri General Assembly tried to resolve some of the election process confusion generated by legislation passed in 2014. For the most part they seem to have succeeded.

NO PRIMARY ELECTIONS REQUIRED

The most important “correction” the bills accomplished is the enactment of a new provision in the Elections chapter of the Revised Statutes, Sec. 115.308, that again exempts elections for all city, town and village offices as well as special district offices, from the primary election process and partisan candidate filing procedures set out in Sections 115.307 through 115.405. Last year’s legislation had generated some concern that municipal elections could be challenged for failure to follow the candidate filing and primary election requirements applicable to state and county offices because the law previously exempting municipal and special district elections was repealed.

Senate Bill 104 also enacted four other provisions that will have a bearing on municipal elections.

UNPAID TAXES

Newly enacted Sec. 115.306.2 says 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 they are “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 they are an officer of a fee office that owes any taxes to the state.

The disqualification for delinquency in any of the specified taxes seems straightforward. Note that delinquency in state or municipal user fees or other non-tax obligations is not a disqualification as had been the case under Sec. 115.346 prior to its repeal last year. Likewise, the municipal clerk is no longer obligated to enforce this qualification since the language that prohibited candidates from being certified for the ballot is not in the new legislation. It appears that enforcement of this disqualification will be left in the first instance to opposing candidates who can file a disqualification action in court under Sec. 115.526.1.

DOR AFFIDAVIT

The new statute also requires each candidate for any public office to file an affidavit with the Missouri Department of Revenue affirming that they are not delinquent in any of the listed taxes. The candidate is also to include a copy of that affidavit “with” his or her “declaration of candidacy” required under section 115.349. Since Sec. 115.349 only applies to filing declarations of candidacy for state and county offices, it is uncertain whether a court would view the requirement to file a copy of the DOR affidavit as applicable to municipal candidates.

But the safest course may be to notify candidates that the law appears to require them to do so. That, of course, means that the candidate would have to have prepared and sent the affidavit to the DOR before filing for office. Municipal clerks should consult their city attorney about whether to accept declarations of candidacy that are not accompanied by a copy of the candidate’s DOR affidavit filing.

DOR INVESTIGATION

The new statute also establishes a process for people to file a “complaint” if a candidate is delinquent in one or more of the specified taxes. The complaint is to be filed with the Department of Revenue and it is the responsibility of the DOR to investigate and verify the complaint. If the DOR determines that a candidate’s affidavit was false, they are to notify the municipal clerk and send notice to the candidate, giving them 30 days to pay any outstanding tax owed. If the candidate fails to pay the tax before the 30 days have expired, they will then be disqualified from participating in the current election and barred from filing for “an entire election cycle” thereafter.

NO FELONS

Newly enacted Sec. 115.306.1 now provides that anyone who has been “found guilty of or pled guilty to a felony or misdemeanor under the federal laws of the United States 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” cannot “qualify as a candidate

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Taking steps to be sure all candidates are notified of the qualification requirements right from the beginning would appear to be the best protection against things going awry.

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for elective public office” in Missouri. This statute appears to be applicable to municipal offices and would result in the disqualification of any candidate who has pled guilty to or been convicted of any felony or a federal misdemeanor. Again, the primary process to enforce this disqualification would appear to be a court action by an opposing candidate under Sec. 115.526.1.

While municipal clerks seem to no longer have to be responsible for enforcing candidate disqualifications for unpaid taxes or criminal convictions, questions will almost certainly arise when other candidates or interested parties call on the clerk to act or raise the question of candidate qualification after the election. Taking steps to be sure all candidates are notified of the qualification requirements right from the beginning would appear to be the best protection against things going awry.

Kevin O’Keefe is a Principal with Curtis, Heinz, Garrett and O’Keefe, P.C. Contact him at kokeefe@chglaw.com.
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Melodee Colbert-Kean To Serve As President of the National League of Cities

In November 2015, Joplin Councilmember Melodee Colbert-Kean will begin her one-year term as President of the National League of Cities (NLC). Colbert-Kean is the first Missouri city official to be named to this top leadership position with NLC in more than 50 years. In her role, she will have the opportunity to represent Missouri while meeting with national leaders in Congress and abroad. In this issue of the MML Review, Colbert-Kean shares her background, inspiration for local government, and highlights her priorities as she takes on a top leadership role in local government.

Please Tell Us About Your Family And Your Background.

I am a lifelong resident of Joplin, where I attended Joplin schools and graduated from Missouri Southern State University with a marketing degree. I am married to William Kean and we have four children: Tyler, Typhanee, Amber and Alissa. We are active members of Unity Baptist Church.

What Do You Like To Do In Your Free Time?

What “free” time? I love music! It is my favorite way to escape, along with completing jigsaw puzzles (at least 1000 pieces) and reading books and hanging with family and friends.

Who Are Your Role Models?

My dad was my best example of the person I wanted to emulate. He was the most loving and caring man, and would help anyone who asked or was in need. He didn’t know a stranger, and was kind to all. I also had a favorite high school teacher who made sure that I knew I could be whatever I wanted. Marilyn Dishman instilled confidence in my leadership abilities, when I didn’t know I had those abilities, and she uncovered a part of me that wanted to be something in life!

Growing up, I really don’t remember ever saying I wanted to be president, much less a mayor, or any of those careers you hear kids say today. Our role models were hourly working moms and dads, aunts and uncles and teachers who were also family friends. Nothing lacked in these portrayals, and we were happy as could be as long as we could walk and play with our large group of friends; we just were not heavily exposed to top leadership roles.

How Does Missouri Benefit From A Missouri Local Official Serving In This Top Role?

Serving as NLC president will bring awareness of Missouri on a national level. This position is able to interact directly with the representatives and key administration officials concerning the needs of cities. We have a major opportunity to showcase our state in a positive light by highlighting some of the great works each city has been doing.

What Is Your Background As An Elected Official?

I became involved with city government in 2005 when there were a number of seats coming open in 2006, and a small group of black residents had a meeting to see if anyone wanted to run to have council representation. I was the lone volunteer aside from Jim West, who had previously been on the council and was running again. With community support, I ran against an incumbent and have been on the Council since 2006 to present. My council peers elected me to Vice Mayor in 2010-2012, and to Mayor in 2012.
I have also had the opportunity to serve with state and national level organizations, such as the Missouri Municipal League (MML) as chair of a policy committee and the National League of Cities, serving or chairing committees. I am honored to take a lead role with NLC as president in November 2015.

**What Advice Would You Offer A New Local Government Official?**

Now that I have been in this position for more than nine years, I have learned that it is a major time commitment. Your family and everyone has to have buy-in or it won’t work! It is vital to have your support team in place to balance out the required load.

Also, if you want to become involved in public service, don’t always take it personal! There are going to be people that will criticize everything you do and every decision you make, good, bad or otherwise. Understand that you can’t please everybody, so don’t try. Make the most informed decisions you can based on the most relevant and fact-based information you can obtain, and be at peace with your decisions. Stay positive and continue to do your best.

**What Is Your Proudest Accomplishment?**

My proudest accomplishment is raising my children. Starting out as a single mother with my oldest two was a challenge, but with God’s help and the support of my family and friends, we made it through fears, tears, smiles, frowns, ups, downs, sports, various activities, honor societies, trips, jobs and graduations. I am so proud of the young adults that our children have become, and it gives me a warm fuzzy to actually be friends with them, as well as parents, as they continue to develop into adulthood.

**What Is Your Best Volunteer Experience?**

Whenever I can spend time helping someone, it gives me a great feeling. It may be something small such as donating clothing or toys, or as involved as donating my time or money, but giving has never hurt me as much as it has helped someone else!

While Mayor, I was proud to speak at the Crosslines Ministry anniversary and share remarks about when I was a recipient of their wonderful, worthwhile services. I am not ashamed of circumstances from which the Lord has brought me; it lets others know they can accomplish the same thing and more.

**In May 2011, A Catastrophic Tornado Struck Your City. How Did The Devastation Affect Your Family?**

While my family wasn’t directly impacted by the tornado of 2011, we were, as well as the rest of the city, affected by the devastation. When you have one-third of your city leveled, creating never-imagined mountains and miles of debris, you can’t help but feel the major impact. When you travel through desolated areas that were once vibrant streets and homes to so many, or inch your way along a road that suddenly has you traveling through someone’s yard, because the road has disappeared into chunks of concrete, trees, autos and debris, you are affected. When you hear

Colbert-Kean participated in honoring Pastor Harry Givens as a Montford Point Marine, the first African Americans to serve in the U.S. Marine Corp. Givens served as a Corporal in the Pacific Theater during World War II, from 1944-1946.

**NLC By The Numbers**

10... State municipal leagues founded the American Municipal Association (later named the National League of Cities) in 1924 upon seeing a need for a national organization to strengthen local government.

19,000... Cities and towns represented through the state municipal league network. NLC represents more than 218 million Americans.

55... Years since Missouri has been represented in NLC Leadership as President. Missouri has had two other mayors who served in this role: Mayor Raymond R. Tucker, St. Louis, served as president in 1960 and Mayor W.F. Kemp, Kansas City, was president in 1954.
about the bravery and selflessness of so many who sacrificed their lives to save others; the countless numbers who came to provide aid to our city, and those who are still coming; or just the way the city came together in our time of need, you will always be affected.

**HOW HAS THE TORNADO CHANGED THE CITY OF JOPLIN?**

As a community, we are more focused on what matters in redeveloping our city and helping to grow it into a community shaped by citizen’s needs and visions. We are more attuned to implementing safety aspects in construction, increasing economic growth and enhancing educational opportunities, as well as developing recreational and entertainment avenues for residents.

**HOW DOES A MEMBER GET INVOLVED IN NLC LEADERSHIP?**

As an elected official, you have to first want to take part in the many different leadership development opportunities offered to elected government officials. Cities pay a membership fee based on their population, and council members can choose to become involved to develop their leadership skills. While attending the conferences and leadership seminars, officials are encouraged by peers, staff and leadership to become more deeply involved in the organization; officials can help shape policy, provide meaningful input and be an overall advocate for all of America’s cities and towns.

NLC gives you an opportunity to get directly involved in helping to shape communities by placing you in direct contact with key administrative officials and congressional representatives through conferences and leadership seminars.

**WHAT ARE YOUR GOALS AS PRESIDENT OF NLC OVER THE COMING YEAR?**

I plan to continue focusing on NLC’s top three challenges for cities; crumbling infrastructure, e-fairness/marketplace fairness and continuing tax-exempt municipal bonds.

I also want to expand partnerships, small business growth and job creation in cities. Many cities are taking the lead on shaping growth with creative partnerships. These help to keep a city’s infrastructure, recreational needs and employment base strong. I also want to increase youth mentorship programs and provide avenues for youth to succeed in our communities. Once we are in a position to lead, it is each of our duties to help someone else along their journey.

**DO YOU HAVE A KEY MESSAGE OR PLATFORM FOR THIS TERM?**

Encouragement, relationship building, developing partnerships and positive collaboration are all necessary tools to open doors to growth and development to better our citizens, thus bettering our cities.

Leaders will work together towards the goals of cities and being bold when it comes to getting key city messages to Congress. Once the goal of an organization is achieving the vision and not focusing on who gets the credit, there is greater success for the whole organization.

Join Melodee, MML members and local government leaders from around the nation at the NLC Congress of Cities, Nov. 4-7, 2015, in Nashville, Tennessee. A celebration of her role as president is planned for Nov. 6. Learn more at www.mocities.com.
SEVEN SIGNIFICANT SUPREME COURT CASES FOR LOCAL GOVERNMENTS

by Lisa Soronen

That same-sex couples have a constitutional right to marry and the Affordable Care Act remains intact will forever outshine every other decision from this Supreme Court term. However, local governments will ignore the rest of this term at their peril. The Court issued many decisions affecting local governments — most of which had unfavorable outcomes. From upsetting sign codes to allowing disparate treatment claims under the Fair Housing Act, this is a term for local governments to remember. Below is a summary of the top seven cases.

CONTENT-BASED SIGN CODES UNCONSTITUTIONAL

In Reed v. Town of Gilbert, the Court held unanimously that Gilbert’s sign code, that treats various categories of signs differently based on the information they convey, violates the First Amendment.

Gilbert’s sign code treated temporary directional signs less favorably (in terms of size, location, duration, etc.) than political signs and ideological signs.

Content-based laws are only constitutional if they pass strict scrutiny; that is, if they are narrowly tailored to serve a compelling government interest.

While the SLLC argued in its amicus brief that Gilbert’s sign categories are based on function, the Court concluded they are based on content.

Gilbert’s sign code failed strict scrutiny because its two asserted compelling interests, preserving aesthetic and traffic safety, were “hopelessly under inclusive.”

Temporary directional signs are “no greater an eyesore” and pose no greater threat to public safety than ideological or political signs.

Many, if not most communities like Gilbert, regulate some categories of signs in a way the Supreme Court has defined as content-based. Communities will need to change these ordinances.

HOTEL REGISTRY SEARCHES NEED SUBPOENAS

In City of Los Angeles v. Patel, the Court held 5-4 that a Los Angeles ordinance requiring hotel and motel operators to make their guest registries available for police inspection without, at least, a subpoena violates the Fourth Amendment.

The purpose of hotel registry ordinances is to deter crime, such as drug dealing, prostitution, and human trafficking, on the theory that criminals will not commit crimes in hotels if they have to provide identifying information.

According to the Court, searches permitted by the City’s ordinance are done to ensure compliance with recordkeeping requirements. While such administrative searches do not require warrants, they do require “pre-compliance review before a neutral decision maker.” Absent at least a subpoena, “the ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests.”

In dissent, Justice Scalia cited the SLLC’s amicus brief that notes local governments in at least 41 states have adopted similar ordinances. Eight states also have hotel registry statutes: Indiana, Florida, Massachusetts, Maine, New Hampshire, New Jersey, Wisconsin, and the District of Columbia.

It is likely following this decision that other record inspections done by governments outside the hotel registry context will also require subpoenas.

FAIR HOUSING ACT DISPARATE IMPACT CLAIMS RECOGNIZED

In Texas Department of Housing and Community Affairs v. Inclusive Communities Project, the Court held 5-4 that disparate-impact claims may be brought under the Fair Housing Act (FHA).

In a disparate-impact case, a plaintiff is claiming that a particular practice isn’t intentionally discriminatory, but instead has a disproportionately adverse impact on a particular group.

The Inclusive Communities Project claimed the Texas housing department’s selection criteria for federal low-income tax credits in Dallas had a disparate impact on minorities.

In prior cases the Court held that disparate-impact claims are possible under Title VII (prohibiting race, etc. discrimination in employment) and the Age Discrimination in Employment Act relying on the statutes’ “otherwise adversely affect” language. The FHA uses similar language, “otherwise make unavailable,” in prohibiting race, etc. discrimination in housing.

This decision more or less continues the status quo for local governments. Nine federal circuit courts of appeals had previously reached the same conclusion. But, Justice Kennedy’s majority opinion contains a number of limits on when and how disparate impact housing claims may be brought.

REASONS FOR CELL TOWER DENIALS MUST BE IN WRITING

In T-Mobile South v. City of Roswell, the Court held 6-3 that the Telecommunications Act (TCA) requires local governments to provide reasons when denying an application to build a cell phone tower.

The reasons do not have to be stated in the denial letter, but must be articulated “with sufficient clarity in some other written record issued essentially contemporaneously with the denial” that can include council meeting minutes.

The TCA requires that a local
government’s decision denying a cell tower construction permit be “in writing and supported by substantial evidence contained in a written record.”

Local governments must provide reasons for why they are denying a cell tower application so that courts can determine whether the denial was supported by substantial evidence. Council meeting minutes are sufficient. But, because wireless providers have only 30 days after a denial to sue, minutes must be issued at the same time as the denial.

Following this decision, local governments should not issue any written denial of a wireless siting application until they (1) set forth the reasons for the denial in that written decision, or (2) make available to the wireless provider the final council meeting minutes or transcript of the meeting.

**NO DOG SNIFFS AFTER TRAFFIC STOPS**

In a 6-3 decision in *Rodriguez v. United States*, the Court held that a dog sniff conducted after a completed traffic stop violates the Fourth Amendment.

In *Illinois v. Caballes*, the Court upheld a suspicionless dog search conducted during a lawful traffic stop stating that a seizure for a traffic stop “become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission” of issuing a ticket for the violation. Officers may lengthen stops to make sure vehicles are operating safely or for an officer’s safety. A dog sniff, however, is aimed at discovering illegal drugs, not at an officer or highway safety.

In dissent, Justice Alito suggests savvy police officers can skirt the Court’s ruling by learning “the prescribed sequence of events even if they cannot fathom the reason for that requirement.”

**OBJECTIVELY UNREASONABLE IS THE STANDARD FOR PRETRIAL DETAINEE EXCESSIVE FORCE CLAIMS**

In *Kingsley v. Hendrickson*, the Court held 5-4 that to prove an excessive force claim, a pretrial detainee must show that the officer’s force was objectively unreasonable, rejecting the subjectively unreasonable standard that is more deferential to law enforcement.

Pretrial detainee Michael Kingsley claimed officers used excessive force in transferring him between jail cells to remove a piece of paper covering a light fixture that Kingsley refused to remove.

The objective standard applies to excessive force claims brought by pretrial detainees because in a previous case involving prison conditions affecting pretrial detainees, the Court used the objective standard to evaluate a prison’s practice of double bunking. And, the objective standard applies to those who, like Kingsley, have been accused but not convicted of a crime, but who, unlike Kingsley, are free on bail.

A standard more deferential to law enforcement applies to post-conviction detainees, who are housed with pretrial detainees, making this ruling difficult for jails to comply with. Following this decision, it will be easier for pretrial detainees to bring successful excessive force claims against corrections officers.

**TAX ON INTERNET PURCHASES**

In *Direct Marketing Association v. Brohl*, Justice Kennedy wrote a concurring opinion stating that the “legal system should find an appropriate case for this Court to reexamine Quill.”

In 1992, in *Quill Corp. v. North Dakota*, the Court held that states cannot require retailers with no in-state physical presence to collect use tax.

To improve tax collection, Colorado began requiring remote sellers to inform Colorado purchasers annually of their purchases and send the same information to the Colorado Department of Revenue. The Direct Marketing Association sued Colorado in federal court claiming that the notice and reporting requirements are unconstitutional under *Quill*.

The question the Court decided was whether this case could be heard in federal court (as opposed to state court). The Court held yes unanimously. This case is significant for local governments because the Court’s most influential Justice expressed skepticism about whether *Quill* should remain the law of the land.

**CONCLUSION**

While this article ends on a high note, overall, this Supreme Court term will require many, if not most, local governments to make some changes to keep in compliance with the law.

Lisa Soronen is the executive director of the State and Local Legal Center and a regular contributor to CitiesSpeak, the blog of the National League of Cities.

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Each day your Missouri Municipal League staff answers dozens of questions on municipal issues. This column reviews some of the most common questions the League staff receives. This issue’s column is the first in a two-part series focusing on the Americans with Disabilities Act, commonly referred to as ADA. Most information stems directly from information available on the Great Plains ADA center website (gpadacenter.org). As with all legal matters, municipal officials are urged to consult their city attorney for guidance in the specific problems faced by their municipality. Answers provided in this column should serve only as a general reference.

Q. WHAT EMPLOYERS ARE COVERED BY TITLE I OF THE ADA?

The title I employment provisions apply to private employers, state and local governments, employment agencies and labor unions. Employers with 15 or more employees are covered by the ADA.

Q. WHAT PRACTICES AND ACTIVITIES ARE COVERED BY THE EMPLOYMENT NONDISCRIMINATION REQUIREMENTS?

The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training and other terms, conditions and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits and all other employment-related activities.

Q. WHO IS PROTECTED FROM EMPLOYMENT DISCRIMINATION?

Employment discrimination is prohibited against “qualified individuals with disabilities.” This includes applicants for employment and employees. An individual is considered to have a “disability” if she/he has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

The first part of the definition makes clear that the ADA applies to persons who have impairments and that these must substantially limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself and working. An individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered. An individual with a minor, non-chronic condition of short duration, such as a sprain, broken limb or the flu generally would not be covered.

The second part of the definition protects individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness.

The third part of the definition protects individuals who are regarded as having a substantially limiting impairment, even though they may not have such an impairment. For example, this provision would protect a qualified individual with a severe facial disfigurement from being denied employment because an employer feared the “negative reactions” of customers or co-workers.

Q. WHO IS A “QUALIFIED INDIVIDUAL WITH A DISABILITY”?

A qualified individual with a disability is a person who meets legitimate skill, experience, education or other requirements of an employment position that she/he holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation. Requiring the ability to perform “essential” functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job.

Q. DOES AN EMPLOYER HAVE TO GIVE PREFERENCE TO A QUALIFIED APPLICANT WITH A DISABILITY OVER OTHER APPLICANTS?

No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has no disability accurately types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. WHAT LIMITATIONS DOES THE ADA IMPOSE ON MEDICAL EXAMINATIONS AND INQUIRIES ABOUT DISABILITY?

An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-employment inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how she/he would perform these functions.

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer examination or inquiry does not have to be job-related and consistent with business necessity.

However, if an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. The employer also must show that no reasonable accommodation was available that would enable the individual to perform the essential job functions, or that accommodation would impose an undue hardship. A post-offer medical examination may disqualify an individual if the employer can...
demonstrate that the individual would pose a “direct threat” in the workplace (i.e., a significant risk of substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the direct threat level through reasonable accommodation. Such a disqualification is job-related and consistent with business necessity. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation that the disability may cause a risk of future injury.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, examinations required by other federal laws, examinations to determine current fitness to perform a particular job, and voluntary examinations that are part of employee health programs.

Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.

Tests for illegal use of drugs are not medical examinations under the ADA and are not subject to the restrictions of such examinations.

Q. Does the ADA Require Employers to Develop Written Job Descriptions?

No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function.

Q. What Is “Reasonable Accommodation”?

Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Q. What Are Some Of The Accommodations Applicants And Employees May Need?

The decision as to the appropriate accommodation must be based on the particular facts of each case. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training or other programs. Employers are not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.

Q. When Is An Employer Required To Make A Reasonable Accommodation?

An employer is only required to accommodate a “known” disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one except where an individual’s known disability impairs hishe/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

Q. What Are The Limitations On The Obligation To Make A Reasonable Accommodation?

The individual with a disability requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an “undue hardship” on the operation of the employer’s business. “Undue hardship” is defined as an “action requiring significant difficulty or expense” when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer’s operation. Undue hardship is determined on a case-by-case basis. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources. If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship.

Also, if the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would constitute an undue hardship for providing the accommodation.

Q. Must An Employer Modify Existing Facilities To Make Them Accessible?

The employer’s obligation under Title I is to provide access for an individual applicant to participate in the job application process, and for an individual employee with a disability to perform the essential functions of hishe/her job, including access to a building, to the work site, to needed equipment and to all facilities used by employees. For example, if an employee lounge is located in a place inaccessible to an employee using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break.
with co-workers. The employer must provide such access unless it would cause an undue hardship.

Under Title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual’s work needs. However, employers should consider initiating changes that will provide general accessibility, particularly for job applicants, since it is likely that people with disabilities will be applying for jobs. The employer does not have to make changes to provide access in places or facilities that will not be used by that individual for employment-related activities or benefits.

Q. CAN AN EMPLOYER BE REQUIRED TO REALLOCATE AN ESSENTIAL FUNCTION OF A JOB TO ANOTHER EMPLOYEE AS A REASONABLE ACCOMMODATION?

No. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.

Q. CAN AN EMPLOYER BE REQUIRED TO MODIFY, ADJUST OR MAKE OTHER REASONABLE ACCOMMODATIONS IN THE WAY A TEST IS GIVEN TO A QUALIFIED APPLICANT OR EMPLOYEE WITH A DISABILITY?

Yes. Accommodations may be needed to assure that tests or examinations measure the actual ability of an individual to perform job functions rather than reflect limitations caused by the disability. Tests should be given to people who have sensory, speaking or manual impairments in a format that does not require the use of the impaired skill, unless it is a job-related skill that the test is designed to measure.

Q. CAN AN EMPLOYER MAINTAIN EXISTING PRODUCTION/PERFORMANCE STANDARDS FOR AN EMPLOYEE WITH A DISABILITY?

An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the disability affects the person’s ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a job’s essential functions.

Q. ARE APPLICANTS OR EMPLOYEES WHO ARE CURRENTLY ILLEGALLY USING DRUGS COVERED BY THE ADA?

No. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a “qualified individual with a disability” protected by the ADA when the employer takes action on the basis of their drug use.

Q. IS TESTING FOR THE ILLEGAL USE OF DRUGS PERMISSIBLE UNDER THE ADA?

Yes, but a test for illegal use of drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

If the results of a drug test reveal the presence of a lawfully prescribed drug or other medical information, such information must be treated as a confidential medical record.

Q. ARE ALCOHOLICS COVERED BY THE ADA?

Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if she/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

Q. DOES THE ADA OVERRIDE FEDERAL AND STATE HEALTH AND SAFETY LAWS?

The ADA does not override health and safety requirements established under other federal laws even if a standard adversely affects the employment of an individual with a disability. If a standard is required by another federal law, an employer must comply with it and does not have to show that the standard is job related.
and consistent with business necessity. For example, employers must conform to health and safety requirements of the U.S. Occupational Safety and Health Administration. However, an employer still has the obligation under the ADA to consider whether there is a reasonable accommodation, consistent with the standards of other Federal laws that will prevent exclusion of qualified individuals with disabilities who can perform jobs without violating the standards of those laws. If an employer can comply with both the ADA and another federal law, then the employer must do so.

The ADA does not override state or local laws designed to protect public health and safety, except where such laws conflict with the ADA requirements. If there is a state or local law that would exclude an individual with a disability from a particular job or profession because of a health or safety risk, the employer still must assess whether a particular individual would pose a “direct threat” to health or safety under the ADA standard. If such a “direct threat” exists, the employer must consider whether it could be eliminated or reduced below the level of a “direct threat” by reasonable accommodation. An employer cannot rely on a state or local law that conflicts with ADA requirements as a defense to a charge of discrimination.

Q. What Is Discrimination Based On “Relationship Or Association” Under The ADA?

The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person whose spouse has a disability from being denied employment because of an employer’s unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

Q. How Are The Employment Provisions Enforced?

The employment provisions of the ADA are enforced under the same procedures now applicable to race, color, sex, national origin and religious discrimination under Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991. Complaints regarding actions that occurred on or after July 26, 1992, may be filed with the Equal Employment Opportunity Commission or designated state human rights agencies. Available remedies will include hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys’ fees, expert witness fees and court costs. Compensatory and punitive damages also may be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation.

Q. What Are An Employer’s Recordkeeping Requirements Under The Employment Provisions Of The ADA?

An employer must maintain records such as application forms submitted by applicants and other records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship for one year after making the record or taking the action described (whichever occurs later). If a charge of discrimination is filed or an action is brought by EEOC, an employer must save all personnel records related to the charge until final disposition of the charge.

Q. Does The ADA Require That An Employer Post A Notice Explaining Its Requirements?

A. The ADA requires that employers post a notice describing the provisions of the ADA. It must be made accessible, as needed, to individuals with disabilities. A poster is available from EEOC summarizing the requirements of the ADA and other federal legal requirements for nondiscrimination for which EEOC has enforcement responsibility. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

Q. How Are The ADA’s Requirements For State And Local Governments Enforced?

Private individuals may bring lawsuits to enforce their rights under Title II and may receive the same remedies as those provided under Section 504 of the Rehabilitation Act of 1973, including reasonable attorney’s fees. Individuals also may file complaints with eight designated Federal agencies, including the Department of Justice and the Department of Transportation. [1]
COMMUNICATION, COMMUNICATION, COMMUNICATION

by Bob Jean

In real estate or economic development discussions, we hear it’s all about location, location, location. When it comes to good governance, whether in council-manager or mayor-council-administrator forms of local government, it’s all about communication, communication, communication.

Since I retired in 2005 from full-time city management, I’ve completed five different interim assignments, some where the manager/administrator moved to take a new position and some where they were asked to leave. The successful managers/administrators spent about one-third of their time with members of their council, whether in council meetings, with committees or one-on-one meetings. And, while emails are a good source of quick updates and information sharing, they do not replace the one-third face-to-face communications time.

As fewer assistant city manager positions are available due to budget cuts, so too are the opportunities for future managers/administrators to engage with councilmembers in the way successful city managers/administrators do. When I first started as a city administrator in the mid-70’s in Troutdale, Oregon, I thought my job was to manage the City’s business effectively. I quickly learned that while good management is part of the job, without good ongoing council-manager/administrator communications I missed things, such as the nuances of decision-making; without good council communications I quickly got into trouble. Fortunately for me, my first mayor in Troutdale liked a sip of single malt scotch after work. I soon learned that was a good time to update the mayor on events and get his feedback.

It is critical to find a meeting time that fits the mayor’s or councilmember’s schedule – office, breakfast, lunch, dinner, or after work. Remember, for the most part, your councilmembers are volunteers and give up time away from their business and families to serve the community. Whenever there is time, meet.

For those just coming into the city management profession, perhaps from the business community or military, remember “job one is communication.” The artificial line between policy and administration is not a demilitarized zone not to be crossed, but rather a way of recognizing that good two-way communications lead to better decisions and better clarity on who’s responsible for the actual decisions on the policy side and the administration side.

Some ground rules for good governance and good council-manager/administrator communications can help. One rule is “no surprises.” Very few good decisions occur at the last minute and with little preparation or discussion. That’s not to say new ideas can’t pop up, but they generally should be continued to a next meeting when there’s been time to study the idea and then continue the conversation.

Another communications ground rule is, “seek first to understand, then be understood.” Ask clarifying questions and don’t assume motives, other than that everyone wants the best for the community. A good council-manager/administrator team seeks to represent a real cross-section of community opinions, not power-based factions. If information and ideas are shared openly, better decisions are made.

When communicating with the community – especially in today’s media blitzed and tech-obsessed world – I like to emphasize the 10-5-1 guideline. You need to send someone a message 10 times, expect that they see it five times, and hope they understand it once. That means consistently communicating the same message multiple times in different media. When formulating a communications plan, I like to emphasize message, messenger, and media. Using a council-staff team is how I like to brainstorm and test messages. Shaping a clear, clean message is not easy. Once the message is sharp, decide who is the most effective voice or messenger, and don’t default to the mayor or manager/administrator. Let the mayor and council spread the good news. I usually saved the tough love or hard messages for myself to deliver, but always as a champion for the community.

Finally, remember the 80/20 rule – “20 percent of a group usually leads the other 80 percent.” Find your opinion leaders in the community and get to them early and often, starting with your council. Communicate, communicate, communicate.

Bob Jean writes for the Municipal Research and Services Center blog, as a council commission advisor. He has more than 35 years of city and county management experience. He currently serves as an advisor to cities and counties as a range rider for the Washington City/County Management Association.

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n Aug. 18, 2015, the Missouri Supreme Court issued three long-awaited decisions, limiting the use of traffic cameras by the cities in those cases. Most municipalities suspended using traffic cameras after decisions from the Court of Appeals that had held that the attempts of municipalities to use traffic cameras as a public safety solution at city intersections, and on city streets, conflicts with state statutes. The Supreme Court heard arguments on several of these cases in December 2014.

In Moline Acres v. Brennan, the only case involving speed cameras, the trial court found that the ordinance conflicted with state law, specifically Sections 304.009 and 304.010 RSMo pertaining to speeding by vehicle operators. The Supreme Court found the trial court erred in so dismissing because there was no conflict; however, the decision splintered into three directions on other issues, with several lengthy opinions.

Generally, municipalities are authorized to adopt ordinances that supplement state law, but may not pass ordinances that create an irreconcilable conflict with state statutes. The test for determining if a conflict exists is whether the ordinance permits what the statute prohibits or prohibits what the statute permits. Usually a state law does not expressly state what an irreconcilable conflict is.

Unlike state speeding statutes, the Moline Acres ordinance establishes a mechanism for placing responsibility upon the owners of motor vehicles for the unsafe manner in which their vehicles are operated. The fact that it involves vehicles travelling at excessive speeds does not place it in conflict with speeding statutes. An ordinance holding the owner of a vehicle liable for unsafe operation by another does not conflict with a statute holding a vehicle driver responsible for the manner in which he/she operates the vehicle.

Traffic ordinances are enacted pursuant to a city’s police powers. Courts presume that an ordinance enacted pursuant to a municipality’s police power is valid, and the party contesting the ordinance bears the burden of proving its invalidity.

Cities have the authority to “enact and make all such ordinances and rules, not inconsistent with the laws of the state, as may be expedient for maintaining the peace and good government and welfare of the city . . .” and to “enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order ... and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect . . .” Sections 546.902 and 79.110 RSMO.

While the majority of the Court found that the trial court had erred in dismissing the case on the ground that the ordinance conflicted with state statutes regarding speeding, the majority then proceeded to examine several other issues. The majority considered whether the ordinance was invalid for not requiring points to be assessed due to an infraction. The Court said that while points would have had to be assessed, it found no invalidity on this ground because it was not up to the City to assess the points and the City’s ordinance was silent on this issue.

The majority then examined whether the ordinance unconstitutionally shifted the burden of proof of a violation. The majority stated that allowing the finder of fact to presume a violation because of ownership alone is unconstitutional. The majority distinguished this case from decisions that impose strict liability on owners due to parking violations. The Court, however, agreed that the City could still charge a violation if it did not rely on such a presumption at trial.

Finally, the majority decision examined the notice sent to the defendant and found that it was deficient because it did not include the information in Supreme Court Rule 37.
The majority distinguished the traffic camera notice from a traffic violations bureau. The Court rejected the City’s argument that the notice was irrelevant because the defendant “thwarted the Notice process” by hiring counsel and contesting the ordinance.

The trial court’s dismissal of the City’s charges was affirmed with prejudice. A concurring opinion stated that the ordinance was merely a “blatant money grab by the City,” even though there had been no trial or evidence on this issue. The concurrence relied on allegations made against cities in other cases.

A dissenting opinion authored by the chief justice agreed with the majority that the ordinance did not conflict with state law but disagreed with the balance of the majority opinion because she believed the majority “ignored the standard of review” and went beyond the grounds for dismissal by the circuit court. She pointed out that practice of the Court in other cases “is to exercise judicial restraint.” She also observed that the defendant suffered no prejudice from any defects in the notice, and that even if there were defects in the notice, the dismissal should not have been with prejudice.

In two other decisions issued the same day as the Moline Acres decision, the Court also ruled against the cities of St. Louis and St. Peters on red light camera ordinances. Tupper v. City of St. Louis (Mo. Banc 2015), and City of St. Peters v. Roeder (Mo. Banc 2015). All decisions are subject to Motions for Rehearing for 15 days.

In the Moline Acres case, the Supreme Court upheld the power of cities to enact ordinances for public safety, while finding the ordinance invalid. Cities contemplating use of traffic cameras must be careful, however, to write such ordinances to comply in all respects with the Supreme Court Rules on Notice, assessment of points, and may not be able to rely on presumptions stemming from vehicle ownership. A driver may have to be identified by facial recognition or some other method in order for these types of charges to be upheld, rather than just identify the vehicle. Further legal analysis would be required.

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MML CALENDAR OF EVENTS

2015

September
7  MML Office Closed — Labor Day Observed
15  Financial Disclosure Ordinance Deadline
20-23  MML Annual Conference, Kansas City, Missouri

October

November
3  Election Day
4-7  National League of Cities Congress of Cities, Nashville, Tennessee
11  MML Office Closes -- Veterans Day Observed

December
15  First Day for Candidate Filing

For more events, visit the events calendar at www.mocities.com.

CERTIFIED MUNICIPAL CLERKS

The following Missouri city clerks have earned the prestigious Certified Municipal Clerk (CMC) designation from the International Institute of Municipal Clerks (IIMC): Dale Duvall, city of Willard; Vickie Hass, city of Chesterfield; and Jaime Rehmesmeyer, city of Grain Valley.

To earn the CMC designation, a municipal clerk must attend extensive education programs and have pertinent experience in a municipality. The program prepares participants to meet the challenges of the complex role of the municipal clerks by providing them with quality education in partnership with 47 institutions of higher learning.

MASTER MUNICIPAL CLERK

Lisa Westfall, city clerk with the city of Branson, has earned the prestigious Master Municipal Clerk (MMC) designation from the International Institute of Municipal Clerks (IIMC). Recipients must first earn the Certified Municipal Clerk designation, then participate in advanced continuing education while demonstrating professional and social contributions.

KELLY NAMED ST. LOUIS COUNTY MUNICIPAL LEAGUE DIRECTOR

The St. Louis County Municipal League Executive Board has appointed Pat Kelly as the League’s executive director. Kelly is filling the position following the retirement of Tim Fischesser in January 2015. Kelly has 22 years experience in municipal government, serving eight years as Alderman and 14 years as Mayor for the City of Brentwood, Missouri. He previously worked as the Village Administrator for the Village of Twin Oaks and most recently was Vice President of Business and Community Development for Eagle Bank & Trust. Kelly served on both the St. Louis County and Missouri Municipal Leagues’ Executive Boards.
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they all look
THE SAME TO ME.”

{ Apprentice to Galileo Galilei, 1636 }

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BOND COUNSEL

The choice of a lawyer is an important decision and should not be based solely on advertisements.