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Missouri County Record

Summer 2012



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MAC Annual Meeting Features Jeff Smith As Keynote Speaker

In August 2009 Jeff Smith, then a Missouri state senator, pled guilty to two counts of obstruction of justice and resigned his seat. Five months later he went to federal prison and found it bustling with resourceful men with shrewd business instincts.

What follows is an article he wrote for the April 14, 2011, edition of *Inc. Magazine*:



"Starting a business is an excellent option for ex-offenders," says Jeff Smith, former Democratic member of Missouri's Senate.

An Unlikely Place To Nurture The Entrepreneurial Spirit? Jail

B.J. was one of many fellow inmates with big plans for the future. He vowed that upon his release, he'd leave the dope game and fly straight. He'd recently purchased a porn website targeted at men with a fetish for women having sex on top of or inside luxury cars, with a special focus that explained his nickname. For just \$10,000, he had purchased the domain name, the site design, and all of the necessary backend work enabling financial transactions. The only component B.J. needed to supply were the women, and due to his incarceration,

he'd named his 19-year-old son "vice president for personnel and talent development" and charged him with overseeing auditions. Who says a good old-fashioned family business can't make it anymore?

It was my first week in a federal prison, and I was beginning to see that it was far more nuanced than the hotbed of sex, drugs, and violence depicted on television documentaries. It was teeming with ambitious, street-smart men, many who appear to have been very successful drug dealers on the

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The “Use” Tax – It Is Not A New Tax! It Is Not A Tax Increase!

Editor’s Note: Recent court and legislative activity shine the spotlight on 74 counties who have not asked, nor been able to persuade, voters to pass a “use” tax.

In an opinion issued Jan. 31 of this year, the Missouri Supreme Court ruled that local sales taxes cannot be levied on out-of-state purchases of motor vehicles, trailers, boats and motors. Until this ruling, the Missouri Department of Revenue treated all motor vehicle and marine purchases as in-state purchases and collected both the local and state sales taxes at the time of registration. The recent ruling also applies to sales between individuals whether in- or out-of-state.

The ruling went into effect on March 21, and since that date, concerned parties around the state have sought to find a solution. According to figures obtained from the Missouri Department of Revenue, the high court ruling translates into an estimated 21 percent loss of revenue for calendar year 2012 for the 74 counties who, unlike the state, do not have a “use” tax in place.

The Legislature responded on May 16 by passing HB 1329, which included a “fix” for the Supreme Court’s decision. By overwhelming support (a 32-0 vote in the Senate and a 122-21 vote in the House, with 19 House members being absent with leave), the General Assembly passed the “fix” and sent it to Gov. Nixon.

HB 1329 puts things back the way they were and have been for a long time. Simply put, regardless of where motor vehicle or marine purchases take place (either in- or out-of-state), local sales taxes must continue to be imposed and collected upon registration with the Missouri Department of Revenue.

The governor, however, defined the legislative “fix” as a “tax increase” and publicly announced his intention to veto the bill. At press time his intention is unknown.

The entire situation has generated considerable media coverage.

On May 18, Associated Press writers quoted two lawmakers in an article published in the *Jefferson City News Tribune*.

They wrote that Sen. Jason Crowell said local governments could lose millions of dollars if the tax is not reinstated. The senator said also that car dealerships in cities near the state’s borders could lose business, potentially hurting local economies. “Not only is this a shot to our municipalities, but it has long-term ramifications for the employment base,” he said. “I think it’s reasonable to assume if this issue isn’t addressed, those businesses will no longer flourish.”

Sen. Mike Kehoe, former owner of a car dealership in Jefferson City, said Missouri dealerships are already struggling to compete against those in other states, which have an advantage in being able to offer a tax break on purchases. Sen. Kehoe gave members of the media copies of an advertisement run in local St. Louis newspapers telling prospective customers they could save as much as \$810 on the purchase of a \$30,000 car by buying it on the other side of the river.

In a May 30 *St. Louis Post-Dispatch* editorial, columnist Bill McClellan spoke of the Legislature’s taking things back to the way they were. “...it makes sense on two levels. First, cities and counties need the money. Second, if a consumer could escape local sales taxes by buying a car out of state, Missouri car dealerships would be at a disadvantage.”

Members of the Missouri Association of Counties, the Missouri Municipal League, and the Missouri Auto Dealers Association have banded together in an attempt to influence Gov. Nixon’s final decision.

The governor must make that decision by July 14. If he does nothing at all, HB 1329 becomes law.

What does all of this have to do with a “use” tax? Based on the Supreme Court ruling the state of Missouri may continue to collect its taxes on motor vehicle and marine purchases made out-of-state. That’s because Missouri has a state “use” tax.

Forty Missouri counties remain unscathed. Voters in those counties have passed the “use” tax.

What is a “use” tax? Why is it so important? It is not a new tax! It is not a tax increase!

It is a pro-Missouri tax that levels the playing field between hometown merchants and out-of-state sellers or Internet e-tailers.

It would be the same as the current county sales tax rate which is applied to purchases made in-state – in the county.

A “use” tax, in essence, applies to purchases county residents make out-of-state using catalogs, the Internet, or by traveling across state lines. It’s really the same as your local sales tax, but they just gave it another name for these out-of-state purchases. It’s called a “use” tax because the product is purchased across state lines and brought back to use in Missouri.

There isn’t a person who hasn’t heard about the explosion of catalog or online sales with “e-tailers” – not with Missouri hometown retailers. Voters need to know that the local “use” tax levels the playing field between Missouri merchants who must charge local sales tax and out-of-state vendors/catalog companies who won’t charge the local “use” tax if it isn’t approved.

The biggest losers are county retailers and merchants, who are placed at a decisive competitive disadvantage.

The second biggest losers are local governments who need sales/“use” tax proceeds to deliver services.

The biggest winners are out-of-state suppliers, mail-order

companies, and Internet e-tailers who plummet the Missouri marketplace! Millions of business dollars are driven out of Missouri. These people have their own philosophy – “Shop anywhere you can get the best buy, regardless

of what it costs Missouri merchants, manufacturers and retailers!”

New research from the University of Missouri’s Truman School of Public Affairs indicates that the state of Missouri will lose up to \$1.4 billion in uncollected sales tax

revenue over the next 3 years to purchases made online.

Why can’t the property taxes the county collects cover the cost of local government services? Nobody likes to pay taxes, but county government can’t run without a revenue source. Of the property taxes, the county only gets approximately 7.6% on average. Schools receive 73%. The rest goes to cities, libraries, special handicap services, fire districts, and a variety of other different jurisdictions or special funds like TIFs, CIDs, etc.

The property tax revenue a county receives simply doesn’t cover the cost of the services it provides. Sales and “use” tax revenues are “lifeblood” sources!

What governmental entities can put a “use” tax on the ballot and benefit from out-of-state sales revenue? Only counties and cities may put a “use” tax on the ballot. The state has had a “use” tax for a long time. It amounts to 4.225 percent. Only 40 counties in

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Missouri have passed a “use” tax, which equals their local sales tax rates.

Why is it so difficult to get voter approval of a local “use” tax? People don’t understand it and run in the other direction when they hear the word “tax”!

How do you sell it to voters? What about individual consumers who simply want a tax break? They probably won’t be affected very much. It’s a “hit & miss” thing. It depends on whom they’re buying from (on whether or not the out-of-state vendor has a physical location in Missouri). It also depends on their buying habits (on whether or not they purchase a lot of stuff online). The individual consumer is required to file a “use” tax return with the MO Department of Revenue only if he has more than \$2,000 in out-of-state purchases in a calendar year.

What about local merchants? Why should they get behind a campaign?

Take Woolrich as an example. If a county resident goes to www.woolrich.com or orders a \$79 Edgewood sweater from their catalog, he pays no Missouri state or county “use” tax. That’s because Woolrich does not have a physical location/storefront (known as a nexus) in Missouri.

But guess what? Your local Dillard’s store sells the same Woolrich sweater! If you don’t buy it at Dillard’s where you have to pay state and local sales taxes, their profits go down. If Dillard’s keeps on losing money to catalog orders or Internet orders, they close down and move out of the county. There is probably nothing in that department store that can’t be ordered online!

Then use the example of Cabela’s. They have a nexus or physical presence in Hazelwood, MO, in St. Louis County. If you go to www.cabelas.com and order a \$200 Avid Series Spinning Rod, they must

collect Missouri’s state “use” tax and send it back to the state. On the other hand, St. Louis County loses out because they don’t have a “use” tax. Remember, we said the transaction in this example is done online, not by physically going into the store in Hazelwood.

And then, there’s the huge example of www.amazon.com! Because they have no nexus nor physical presence (an actual storefront) in any state, they can sell everything tax-free! They only have warehouses where they house their goods. Even the state of Missouri cannot collect its use tax. On amazon.com, whatever price you see is the price you pay!

What about big business and industry in your county? Will they get behind your ballot issue? They are the large-scale purchasers. However, big business and industry do not pay a “use” tax on raw materials which they use to manufacture products for resale. If they buy steel to erect a new facility, 250 pairs of safety glasses, or 75 computers – that’s another story!

A good example is a steel fabricator in Jefferson City, MO. When an out-of-state steel company, a competitor, sells to someone in Missouri and does not have to charge a local “use” tax, the competitor enjoys a price advantage.

What about your local Chamber of Commerce? Will they get behind your campaign? If any group would, they would. That’s their job – to sell the viability of your community! Also talk to civic groups like Rotary, Kiwanis and Lions Clubs. Ask well-known community leaders to give testimonials as to why your county’s attempt to pass the “use” tax is extremely worthwhile.

Who should be your strongest supporters? It should be your neighboring counties that have not passed a “use” tax. By banding together on a regional basis, it could

bring the importance of passing a local “use” tax to the forefront.

Based on Gov. Nixon’s decision, the Supreme Court ruling could trigger huge revenue losses for Missouri counties and cities regarding motor vehicle and marine purchases. But we still have to focus on the larger problem – the escalating and enormous revenue losses to catalog companies and online e-tailers that do not have a physical presence (a nexus) in our state and “get off scott-free” by not having to collect our state and local taxes and send them back to us!

Is Missouri the only state trying to keep business at home and level the playing field between Missouri merchants who must tax and out-of-state vendors who sell goods tax-free?

No. Most all of the states are struggling to find ways to eliminate the incentive to purchase goods from out-of-state catalog companies or online e-tailers (Internet sellers).

There is a multi-state agreement called the Streamlined Sales & Use Tax Agreement (SSUTA). See www.streamlinedsalestax.org. Their purpose is to assist states as they administer a simpler and more uniform sales and use tax system. As of August 2011, only 24 states of 44 states have passed legislation to enter into the agreement. The Missouri Legislature has not yet done so.

If enough states sign on as members, it will hopefully encourage the United States Congress to mandate that out-of-state catalog companies and Internet sellers must collect all state and local sales taxes. Congress is the only body with the across-the-board authority to do this!

The Agreement encourages “remote sellers” selling over the Internet and by mail order to collect tax on sales to customers living in the Streamlined states. It levels the playing field so that local “brick-and-mortar” stores and remote sellers operate under the same rules. This Agreement ensures that all re-



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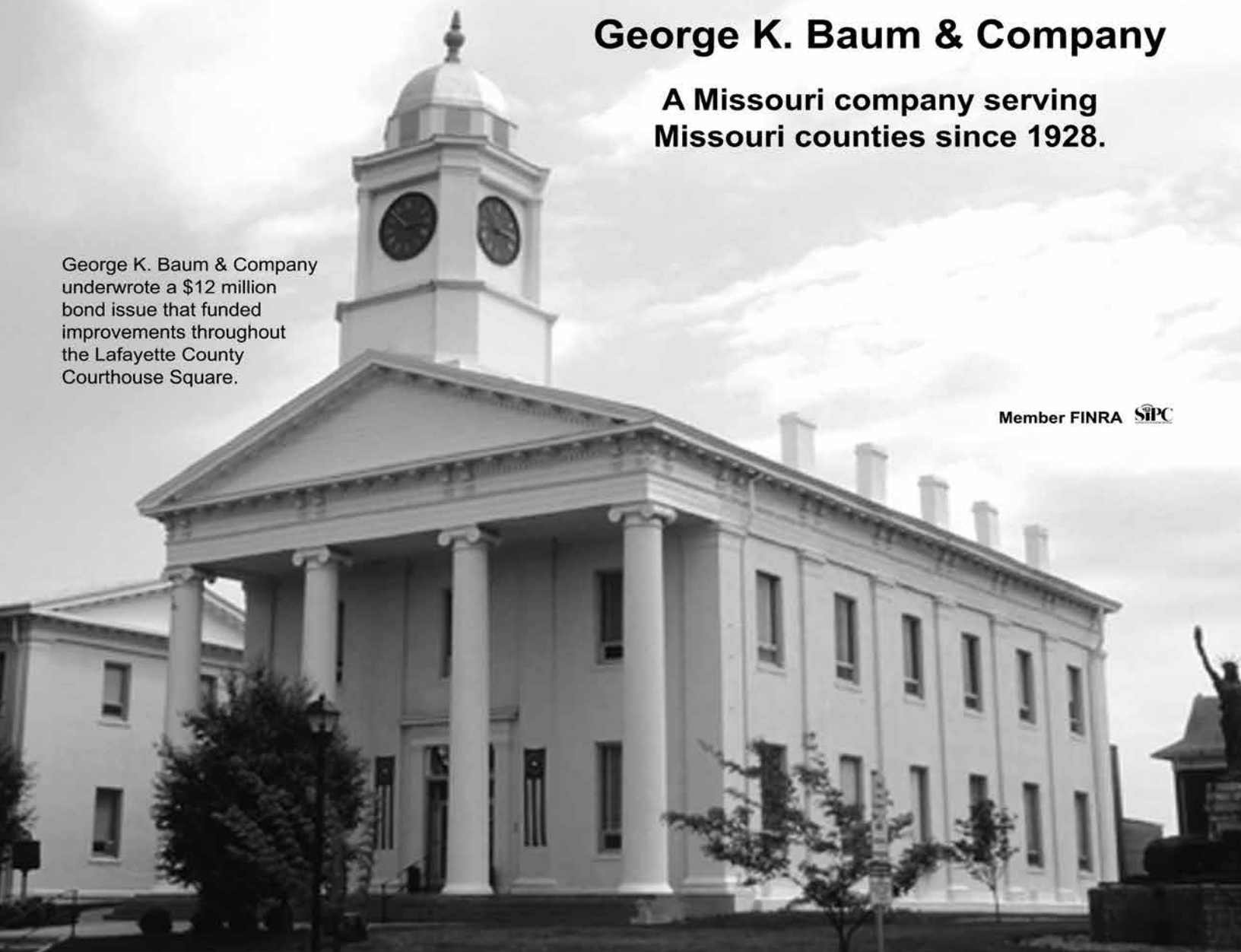
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Dunklin County passed its “use” tax on June 5 by a vote of 714 to 378. Presiding Commissioner Don Collins told *The Daily Dunklin Democrat* that the “use” tax will put the county’s budget back on track. “Basically there’s no change,” he said. It puts us back to where we were. We had already spent this money in our budget.”

The Osage County Commission decided to try it on the August ballot. Associate Commissioner Vince Samson told the *Unterrified Democrat* that the new Highway 50 expansion and railroad track and tie replacements would also generate revenue through a “use” tax if those goods were purchased outside the state. “This would level the playing for suppliers in the state who are forced to collect sales taxes.” Samson said one county in northern Missouri collected more than \$400,000 in “use” tax revenue from materials used in a pipeline that went through the county.

Holt County greatly benefited from the local-option “use” tax following the flood of 2011. Receipts climbed the last quarter of 2011 that were related to disaster construction and have stayed well above average for 2012. Over \$200,000 of additional “use” tax proceeds entered the county coffers at a time when county sales taxes were down, crops were wiped out, and the overall economic picture was bleak. “The local-option ‘use’ tax on out-of-state purchases brought in for railroad and other construction provided a wind-fall that helped fill the gap when traditional sources of income were suffering,” said Kathy Kunkel, Holt County clerk.

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Frequently Asked Questions About The Prevailing Wage

Editor's Note: This article was prepared by the staff of the Missouri Municipal League. It appeared in the May 2012 edition of The Missouri Municipal Review and is reprinted with permission.

This column focuses on prevailing wage questions. Many of the answers stem directly from information available on the Missouri Department of Labor's (DOL's) website. As with all legal matters, municipal/county officials are urged to consult with counsel for guidance in the specific problems faced by their cities/counties. Answers provided in this column should serve only as a general reference.

Q. What Is The Prevailing Wage?

The prevailing wage is the minimum wage amount that workers on Missouri public works construction projects must be paid. It is required by law and determined through surveys conducted by the Division of Labor Standards. The prevailing wage law applies to all public works projects that include fixed works constructed for public use or benefit, or paid for wholly or in part out of public funds. It also includes work done directly by any public utility company performed under the order of the Public Service Commission or other public authority.

Q. How Are Prevailing Wage Rates Set?

Each year the Missouri Department of Labor conducts surveys on the wage rates paid on construction projects. Contractors, public bodies and others submit wage information to the department. The information includes actual hours worked on construction projects. The Department of Labor then tabulates the prevailing wage based on the highest number of hours received for a rate paid that becomes the prevailing wage rate (per individual county). This statistical methodology is called the mode method and can produce significantly different results from the more customary average method. Typically not enough contractors will supply wage rate information for particular counties. In this situation, the department will substitute the prevailing wage determinations from other counties for use in counties that did not supply enough wage rate information.

Q. What Are The Basic Prevailing Wage Law Procedures And Steps For Public Entities To Follow For Compliance?

(1) Submit a request form (PW-3) to the Division of Labor Standards to receive the Annual Wage Order. (2) Incorporate a complete copy of the most current Annual Wage Order in all bid specs. (3) After awarding the contract, submit a project notification form (PW-2) to the Division of Labor Standards. (4) During the course of the project, review all payroll records to ensure

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prevailing wage law requirements are being met. (5) At the completion of a project, acquire a completed Affidavit of Compliance form from the contractor(s) before making final payment. (6) Send a copy to the Division of Labor Standards.

Q. Where Can I Get Detailed Information Regarding The Prevailing Wage Law?

County staff and legal counsel may be excellent sources for information regarding the Missouri prevailing wage law. The Missouri Department of Labor provides a very detailed guide to complying with the law. This guide is online at <http://labor.mo.gov/DLS/Forms/LS-62-AI.pdf>.

Q. Is There A Minimum Dollar Amount Or Square Footage Before A Project Is Considered A Public Works Project?

No, the Law has no dollar nor size threshold. Essentially any public works project that entails construction, reconstruction, or major repair is subject to prevailing wage.

Q. What If County Employees Do The Work? Are They Still Subject To The Prevailing Wage?

No, the prevailing wage requirement only applies to private employers doing public works projects on behalf of a public body.

Q. What If Individuals Volunteer To Do The Work? Would They Be Subject To Prevailing Wage Requirements?

As long as the individuals receive no compensation for their work, the prevailing wage law would not apply.

Q. What If A Contractor Offers To Build A Project Prior To The County Taking Ownership? Wouldn't This Be A Way Around The Law?

No. In a 2001 Missouri Supreme Court case, *DOL vs. Friends of the Zoo of Springfield (SC82858)*, the court found that a public body constructing public works may not circumvent the prevailing wage law by a legal façade. Where a private entity and a public body create a façade behind which the public body engages in public works, the workers are employed on behalf of the county.

Q. What About An Owner/Operator Contractor Where The Business Owner Will Actually Do The Work? Aren't They Exempt From Prevailing Wage?

No. An owner/operator business must still be paid the prevailing wage and must comply with all the standard documentation.

Q. What Is The Difference Between Major Repair And Maintenance?

RSMo 290.210 defines "Construction" to include "construction, reconstruction, improvement, enlarge-

ment, alteration, painting and decorating, or major repair." The statute further defines "Maintenance Work" as "the repair, but not the replacement, of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased." *RSMo* 290.230 requires the prevailing wage be paid on all "construction" work, but it exempts "maintenance work." The Missouri Department of Labor applies a very strict interpretation of what qualifies as maintenance. For instance, changing out the bulbs in a fluorescent light fixture may be considered maintenance. However, changing out a broken ballast on the light fixture itself would be considered a major repair by DOL and subject to the prevailing wage.

Q. What About Painting? Isn't Painting Just Maintenance Work?

No. Painting is subject to the prevailing wage law. In a recent Missouri Supreme Court case involving the repainting of a water tower in Monroe City, the court ruled that workers doing the painting must be paid the prevailing wage rate. Part of the case hinged on the language used in the definition of "construction" as defined in the prevailing wage law. This definition includes the word "painting."

Q. Have There Been Any Legislative Attempts To Lessen The Application Of The Prevailing Wage Law?

Numerous bills have been filed over the years to either set a minimum threshold for the application of prevailing wage or to modify the circumstances under which the law is applied. None of these legislative attempts has passed.

Q. What Is The Annual Wage Order?

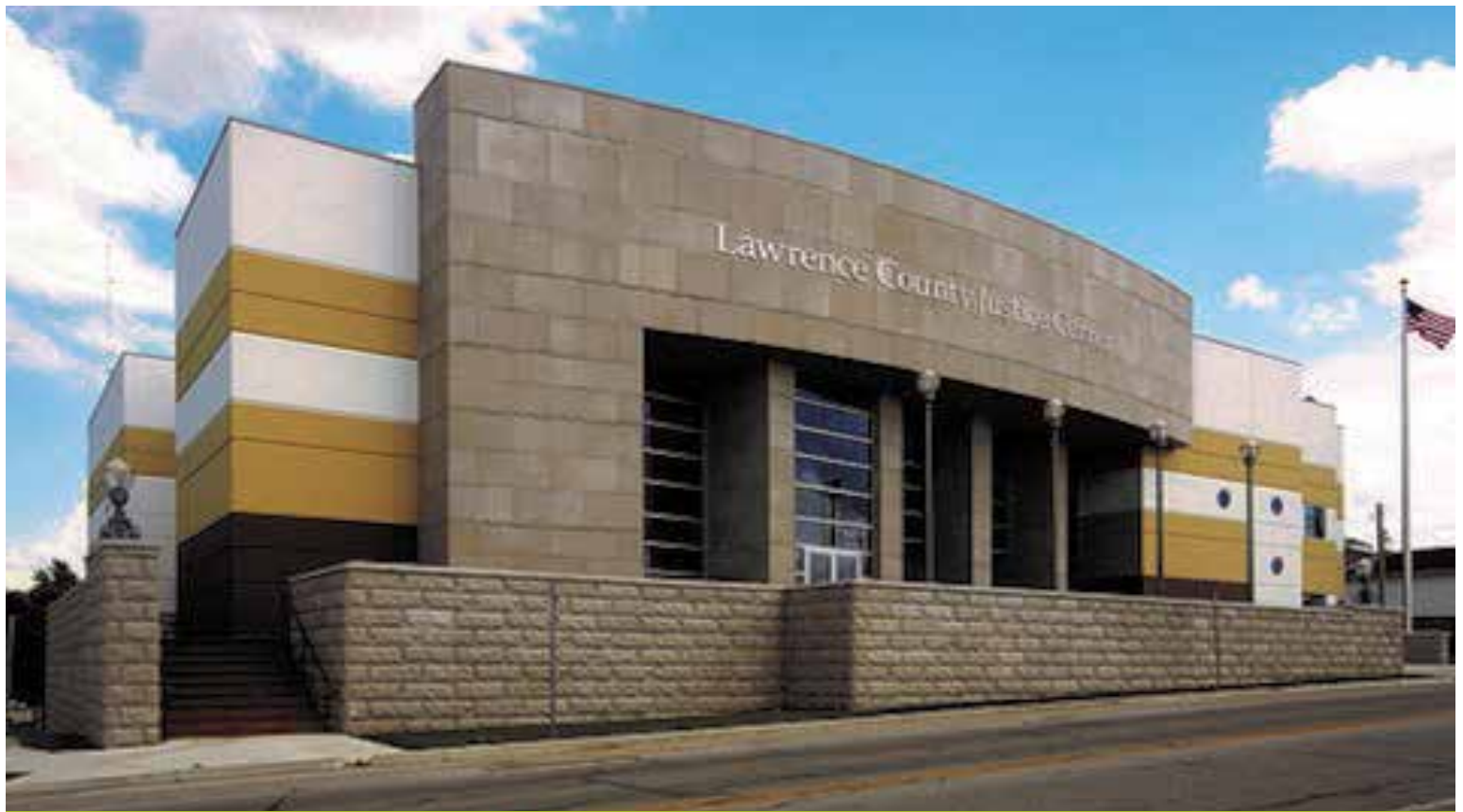
The Division of Labor Standards issues the Annual Wage Order each year. It contains the proper hourly wage rates, overtime and holiday wage rates, and creates schedules for workers on prevailing wage projects.

Q. As A Public Body, How Do We Obtain A Copy Of The Annual Wage Order?

Submit a request form (PW-3) to the Division of Labor Standards to receive the Annual Wage Order. This form can be found online at <http://labor.mo.gov/DLS/Forms/PW-3-AI.pdf>. Or, send your request in writing to the Division of Labor Standards, PO Box 449, Jefferson City, MO 65102.

Q. Are Foremen, Superintendents Or Salaried Employees Subject To Prevailing Wage Rates?

Employees performing construction on public works projects are required to receive at least the prevailing rate of pay for the type of work they performed. This is regardless of their title or salary status. Employees who only perform supervisory tasks are not covered by prevailing wage.



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Staying “Tough” On Crime, But Getting “Smart” On Crime

The Missouri General Assembly, in a rare bipartisan effort this session, passed a bill modifying laws relating to probation, parole and conditional release.

HB 1525, sponsored by Rep. Gary Fuhr (St. Louis County), is known as the Justice Reinvestment Act.

Its intent is to reduce Missouri's prison population and corrections costs, improve public safety by reinvesting a portion of the savings in strategies that reduce crime and recidivism, and hold offenders accountable by strengthening community-based supervision, sanctions and services.

The bill was an outgrowth of a year-long study by the Missouri Working Group on Sentencing and Corrections. It was an overriding concern of then Missouri Supreme Court Chief Justice Ray Price.

From June through December 2011, the working group and its local task force (which was chaired by MAC Executive Director Dick Burke) conducted extensive analysis of Missouri's sentencing and corrections system.

They were assisted by the Pew Center on the States, a Washington-based think-tank that provides nonpartisan research and technical assistance to help states deliver better results and achieve long-term fiscal health by investing in programs that provide the strongest returns.

Data-driven research focused on admissions to Missouri's state penitentiaries. It was found that 71 percent of “new” admissions were violators of probation and parole.

These people, incidentally, are held in county jails until their revocation hearings are scheduled, and this places an obvious burden on county budgets, as well. Counties only receive \$19.58 in per diem reimbursement from the state to hold a state prisoner. The actual per diem cost averages \$40 for counties.

Digging deeper into the state numbers, it was found that more

than 7,800 individuals were incarcerated for violations of probation and parole and would spend an average of 10 months behind bars in state penitentiaries.

At the heart of the measure is an attempt to reserve limited prison space for the most serious offenders.

The New Justice Reinvestment Act creates earned compliance credits for nonviolent offenders who are placed on probation, parole, or conditional release for a class C or D felony or a violation of a drug crime in Chap. 195, *RSMo*.

Earned compliance credits must



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reduce the term of probation, parole, or conditional release by 30 days for each full calendar month of compliance with all terms of supervision, but may be suspended or rescinded if the offender violates the conditions of supervision.

Further, the law allows, in lieu of

the revocation proceeding, a probation or parole officer to place an offender in the county jail for a short period of time (at a \$30 per diem rate) when the officer believes the offender has violated a condition of probation or parole, unless the court has otherwise required detention to

be a condition of probation.

The Department of Corrections must certify that there are enough funds available for the per diem reimbursement. If the funds are not available, or if the jail does not have the capacity, the county may refuse to house the offender.

If a continuation, modification, enlargement, or extension of the probation period is not appropriate, the court must order certain offenders to be placed in one of the department's 120-day programs when the offender violates a condition of probation.

The law establishes a 13-member Sentencing and Corrections Oversight Commission (with one member representing MAC) to monitor and assist in the implementation of these provisions and to determine ways to reinvest any cost-savings into research, reducing recidivism, and examining restitution for crime victims.

The anticipated outgrowth of this move to get "smart" on crime is the opening up of additional resources to target high-risk offenders who truly need to be incarcerated for long periods of time.

MAC Says Farewell To Valued Employee



After eight years of employment, MAC's Communications Director Jay Shipman left the association to pursue other endeavors. His departure became effective on June 1.

Those of you who knew him personally realize what talents he contributed to our day-to-day operations. Jay was an excellent writer, graphic artist, as well as an IT guru. Not only that, he had an insatiable interest in politics.

We wish him well in his new position.

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(Continued From Page 2)

outside, and some of whom possess business instincts as sharp as those of the CEOs who wined and dined me six months before

But very little drug-dealing actually went on in the confines of the Manchester, Kentucky, prison where I spent most of 2010. Instead, in an institution where approximately 90 percent of the population had committed drug-related offenses, most of the people were focused on trying to survive on sub-poverty wages (my salary started at \$5.25/month for a 40-hr/week warehouse job). So, except for those who had a sugar daddy on the outside, inmates focused on (1) how to make money to buy hygiene products, writing materials, stamps, haircuts, and any snacks outside institution food; and (2) how to make a living on the outside, since for most of the offenders, this was the final stop on a multi-facility tour as a guest of the United States of America.

“Hustles”

There were a myriad of “hustles” inmates created to help themselves live more comfortably, and every hustle fell somewhere different on the spectrum of acceptability to the administration. Some hustles were perfectly legal and could be done in front of the COs (guards), such as washing and ironing another inmate’s jumpsuit before a family visit, or the jailhouse lawyers who wrote legal briefs and cop-outs for other inmates. Others, such as the in-cell stores reselling food items from the commissary or one-man barbershops that operated most evenings, were technically illegal, but the COs looked the other way. The next level on the continuum were the tattoo artists, poker dealers, and bookies, whose businesses were frowned upon and often busted up by COs. The most risky businesses – which were also, of course, the most profitable, as even prison walls can’t destroy the rules of risk-reward or the entrepreneurial spirit – were the smugglers of

contraband: cigarettes, steroids, pornographic movies, cell phones, etc. With cigarettes going for about \$3 a piece and some of the other goods running into the hundreds of dollars, the guys who ran these businesses could become quite wealthy by prison standards

Wealth, however, was measured not in dollars but in stamps, which were the regular currency since the prohibition of cigarettes at all federal prisons. But since some inmates had loaded up their commissary accounts with tens of thousands of dollars on their way in or asked their relatives to do so, there was a lot of money floating around the prison, although most of it was in 37- and 39-cent stamps (which, incidentally, were worth exactly as much as 44-cent ones). Books of stamps went for a discounted price – \$6 instead of \$8.80 – and before going home, inmates who had accumulated hundreds of books of stamps sold them to other inmates, whose relatives on the street would wire thousands of dollars to the account of the seller.

The black market and the entrepreneurial drive of those who operated within it fascinated me. Want a cell phone? In prison it cost \$250, thanks to the revenue stream it afforded its owner, who sold or bartered minutes to other inmates. Want dirty pictures? The price depended on the women’s measurements and how brazenly she displayed them. But one issue of *Hustler* could fetch up to \$200, largely due to the recurring revenue stream possible from copying the pictures and selling them individually, and from renting the magazine (once it’s been laminated in plastic). How did the contraband get here? According to the veteran inmates, there were always prison guards who would help for the right price. But that wasn’t necessary at our facility, since like most minimum-security facilities, we were surrounded only by natural barriers – in our case, a rocky ridge. There was a known “drop” site over the ridge near a winding

road where friends on the outside could drop things for inmates to fetch in the middle of the night – or sometimes immediately after the daily 4 p.m. count while the COs were still occupied. The going rate for fetching something was \$250, I found out one night after a basketball game during which my speed apparently made a fellow inmate think I would be the ideal candidate to be a “hill-runner.”

I wasn’t the least bit tempted, since anyone caught bringing in contraband was immediately sent “up the hill” to the medium-security prison packed with violent offenders doing 20- to 30-year bids. Since there was snow on the ground for weeks after I arrived, the price of contraband had risen and the “delivery fee” had skyrocketed. No one wanted to risk the treacherous route when the untrammelled snow rendered footprints easily visible to the guards.

The Prison Warehouse

Two weeks after my arrival, I was assigned to work at the prison warehouse, where seven of us unloaded all the food that came in to both prisons, feeding 2,000 inmates plus several hundred staff. My boss, a hard-nosed Bureau of Prisons veteran, told us on our first day that as long as we didn’t steal any food, she would feed us adequately, and we wouldn’t have any trouble. Both of my first-day colleagues left that afternoon with a dozen frozen chicken patties and several pieces of produce. They quickly followed the lead of the veterans, taking as much as possible at day’s end, Saran-wrapping food around their chest and stuffing produce into every available pocket and crevice to be sold upon our return to the compound. (I often wondered how much demand would fall if the customers knew the conditions of transit.)

I’d vowed to my girlfriend, my family, and myself that I wouldn’t break any rules, but then after a week, a friendly inmate approached

(Continued On Page 27)





Missouri Association of Counties 2012

Legislative Conference Highlights



Counties Have Access To Low-Interest Loans When They Partner With Local Lenders

By State Treasurer Clint Zweifel



As I stop and visit with county leaders throughout Missouri, we often discuss the visions they have for their counties. These conversations inevitably turn to how to finance these visions, and the key is often access to capital. Sometimes that access comes through the bond market, and sometimes counties just need a loan. When they need a loan, I can save them money by providing low-interest loans through the Missouri Linked Deposit Program.

The Missouri Linked Deposit Program is a partnership between Missouri's community lenders and my administration. The lender determines if you, the county, is creditworthy and takes all of the credit risk. Then I lower the loan's interest rate – up to 30 percent. In the end, taxpayers and local communities win through interest savings.

The loan program has been around since 1985, and counties have been eligible since I expanded the program in 2009. The response has been great. Local governments have taken advantage by buying

new ambulances and upgrading local sports fields. All told, we have seen nearly \$2 million in loans for local government projects.

The good news for local officials looking to make investments is the Missouri Linked Deposit Program is flexible. Loans may be used for a variety of reasons, including significant public projects such as sewer upgrades, road enhancements, and public safety technology improvements.

If you are interested in a Missouri Linked Deposit Program loan for your community project, all you need to do is get in touch with a participating lender who can help walk you through the process. I have worked hard to develop a network of 350 lender branches throughout the state, so chances are you can find a local lender easily at www.treasurer.mo.gov/LinkedDeposit.

I am always excited to talk about projects, new businesses, and farm expansion made possible by the Missouri Linked Deposit Program. These loans are exactly why I sought changes to the program in 2009. Communities are helping young people, protecting their citizens, and saving their taxpayers money. I encourage all counties to consider the Missouri Linked Deposit Program when they are looking at new projects just like the Audrain County Ambulance District.

In February 2010, the ambulance district used a Missouri Linked Deposit Program loan to purchase a new ambulance and duty vehicle. With the \$158,000 loan, the Audrain County Ambulance District was estimated to save \$15,000 over five years if it chose to participate in the program the full time allowed.

The Missouri Linked Deposit Program is also here to help communities impacted by storms and their

aftermath in the past year. In April of 2011, I created the Harmed-area Emergency Loan Priority system, or HELP, to assist community rebuilding. HELP ensures farmers, local governments and small business owners 24-hour approvals of completed Missouri Linked Deposit Program applications. Normal loan approval time is 10 days.

I determine HELP-eligible counties using executive orders, disaster requests, State Emergency Management Agency and Federal Emergency Management Agency information, and Agricultural Disaster Designations and Declarations. A list of HELP eligible counties is on my website.

In the end, this is an effort to save taxpayers money. I have issued more than \$1 billion in loans, impacting 18,300 farmers and jobs just since January 2009. It is my sincere hope that more counties in our state will take advantage of this money-saving loan program as soon as possible. It is a good deal for government, Missouri's economy, and for taxpayers.

It is important to remember the Missouri Linked Deposit Program is not a grant or loan guarantee program. Since the state takes on no default risk for the underlying loan, the applicant must still qualify for the loan under the lender's credit criteria. The maximum term for a Missouri Linked Deposit Program loan is five years, and the loan must be from a qualifying Missouri financial institution such as a bank, credit union, or farm credit services office with a branch in Missouri.

Counties interested in the Linked Deposit Program can go to www.treasurer.mo.gov/LinkedDeposit or call (573) 751-2372. A list of participating lenders is also available here.

Must Counties Use The State Rate?

State Mileage Rate Remains At 37 Cents Per Mile

At press time, the state mileage allowance remains at 37 cents per mile for privately owned automobiles on state business. Chap. 33.095, *RSMo*, permits any county (with the exception of 1st-class charter who have their own authority) to pay a mileage allowance at the rate authorized by the state Commissioner of Administration.

Due to Missouri's severe budget problems, the state rate (one of the lowest in the nation) has remained at 37 cents since May 2010. For continued updated information, log on to oa.mo.gov/acct/mileage/.

Most counties do follow the state rate.

However, MAC Legal Counsel Ivan Schraeder believes that the county commission can set the rate at whatever level it chooses.

"I think that when Chap. 50.333.10 is read in light of the other statute [the one cited above], the county commission can set the rate at whatever level it chooses, especially in light of the introductory wording 'notwithstanding any other law,'" said Schraeder.

"Even though there is a potential conflict, usually courts read the laws in light of compatibility, rather than conflict. Also, Chap. 33 is primarily the administrative power of OA over state agencies and state budget administration, not regulation of other

governmental entities. As such, the rate would be applicable to state moneys reimbursed to county governments under grants, etc., where vehicles are used for activity. I see no reason to change my opinion, even though it may be subject to more than one interpretation since neither statute has been interpreted by the courts."

Just as county governments may continue using the 37-cent per mile rate authorized by the state or establish their own rates, this same rate will apply when determining the rate for workers' comp cases (for an injured employee's reimbursement for travel expenses for medical treatment), as well as for witness reimbursement.

However, two new mandates have been passed subsequent to Chap. 33.095.

According to Chap. 57.280.1, *RSMo*, sheriffs who use their own vehicles for work purposes shall receive the mileage rate allotted by the IRS. Until June 30, 2013, that amount is 55.5 cents per mile.

In addition, Chap. 50.333.10, *RSMo*, states that officeholders and employees shall be paid at the highest rate allotted to any officer. In counties where sheriffs use their own vehicles for work purposes, county officials are entitled to the IRS rate of 55.5 cents.

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Association Celebrates *Milestone Anniversaries* In 2012

This year marks some milestone anniversaries for the Missouri Association of Counties.

Founded in 1972, MAC is celebrating 40 years of service to Missouri county governments. Its mission is to provide a conduit of service for its member counties in matters that pertain to local, state and federal government activities.

Oddly enough, prior to MAC's being established as a nonprofit corporation and electing officers and a board of directors, the founding founders held an annual conference to get the "start-up" ball rolling. That's why our November 18-20, 2012, Annual Conference & Expo at Tan-Tar-A is our 41st annual meeting. An annual conference preceded the 1972 beginnings.

The MAC Self-Insured Workers' Compensation Trust is celebrating its 25th anniversary. The Trust was formed in 1987 and had 27 participating counties.

Now with 99 members and a board of directors composed of county government elected officials, the Trust is specialized to workers' compensation only, so there is no division of effort. Its loyalty to its members has provided a stable presence through market fluctuations.

Please join us at Tan-Tar-A this November and help us celebrate these important milestones! It's you, the members, who are the driving force of our success!



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Official Immunity & Negligent Operation Of A Motor Vehicle

By Pat Keck, Attorney At Law
Keck & Austin LLC, Springfield, MO



Consider whether these county employees would be personally responsible for causing the deaths of the drivers in the following two scenarios:

First, a county snowplow operator is operating his snowplow to clear county roads after a 5-inch snowfall. This job can admittedly be dangerous and is necessary for public health and safety. While performing his job, the operator's snowblade doubles over without warning causing the truck to jerk to the left impacting and causing the death of the driver of an oncoming vehicle. The parties agree that the snowplow operator cannot control when the blade will double over, and when the blade doubles over the operator cannot control the truck.

Second, a volunteer firefighter is responding to a fire call and runs a stop sign and collides with another vehicle, killing the driver. In running the stop sign, the firefighter violated department policy and his training by failing to come to a complete stop, make eye contact with the other driver, and waiting two seconds. Had the firefighter followed department policy, the accident would not have happened.

Which public employee would you guess would be released and which could be liable? In one of these two scenarios Missouri law releases the public employee of any personal liability to the other driver; in the other scenario the law is unclear whether the employee is personally liable to the deceased driver's family.

What Is Official Immunity?

Immunity does not mean the employee did not do anything wrong; it simply means there is no civil liability for the act. Official immunity protects the individual public official, while sovereign immunity protects the county as an entity. As it relates to counties, sovereign immunity is a statutory rule and the immunity is

waived primarily in two situations: operation of a motor vehicle or motorized vehicle and dangerous conditions on public property. In these two situations where the county's sovereign immunity is waived, there is a *statutory damage cap* which applies to any judgment that is entered against the county; the 2012 sovereign immunity cap is \$392,734 per person and \$2,618,230 per accident.

Therefore, in the two scenarios, the county may be required to pay up to the damages cap if the public employee was liable, but no more. However, there is *no cap* to protect the public employee if official immunity does not apply. For that reason, the breadth of official immunity is obviously very important as it applies to operators of motorized vehicles such as police cars, fire trucks, road graders, snowplows, street sweepers, backhoes, mowers, trimmers and other motorized vehicles used as tools to perform the public employee's job function.

Does Official Immunity Apply To Me?

While operating a motor vehicle, Missouri courts have examined official immunity as it relates to prison transport officers, police officers, and firefighters. Even though the analysis is on a case-by-case basis, as it relates to police officers and firefighters, the law is fairly clear that if these employees are operating a motor vehicle in an emergency situation they are not personally liable. This is true even if they are not following department policy, and, at times, even if they are not operating with their lights and sirens on. No appeals cases have addressed whether the road grader or snowplow operator would be immune from liability. Their jobs are important functions of county maintenance and often times are dangerous jobs considering the conditions in which they operate and the hills and curves of our rural counties. These heavy pieces of equipment are often the tools of the job we ask these employees to perform. Should they be given immunity from personal liability?

Currently, it is "the luck of the draw" as to whether a circuit judge will find operators of non-emergency vehicles immune from civil suit.

A better approach would be for the Legislature to weigh-in and codify this important immunity to protect both the public entity and the public employee that is charged with performing these important public functions

I assume you have guessed by now that it is the firefighter who will have no personal exposure for running the stop sign in violation of department policy and his training.

It is the snowplow operator who is performing a dangerous job, who had no control over the snowblade doubling over or his truck going into the oncoming lane that will face the large personal judgment.

Ms. Austin may be reached at pat@keckasutin.com or by calling 417-890-8989.

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Strategies For Navigating A Low-Interest Environment

For years, local governments have used investment income as an important source of revenue that can offset the need for tax increases. As short-term interest rates approach zero, there are several best practices investors should consider:

Seek Safety First

Remember that the FDIC insures up to \$250,000 of interest-bearing deposits. Any amount of public funds invested above \$250,000 must be collateralized.

Understand All Investment Terms

Banks may only pay interest or earnings credit on 90 percent of the public funds deposited. Banks may choose to pass along the interest they receive on the 10 percent reserve requirement.

Adjust Expectations To Meet Commitments

Local governments should distinguish between projects that are critical to their function and those that can be postponed.

Don't Chase Yields

An investment's return should be judged on whether the investment meets liquidity needs, instead of solely on the highest yield.

Investing advice provided by Maria Altomare, managing director, PFM Asset Management LLC.

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Missouri's air, land and water resources vary from the rolling farmlands of the north to the Ozark hills of the south and from the Mississippi River bottoms of the east to the open prairies of the west. Its fresh air and flowing waterways, from the Missouri River to its crystal clear spring-fed streams, are lifelines of the state's health and well-being. The Department of Natural Resources (DNR) works to ensure clean air, land and water by cleaning up pollution from the past, addressing pollution problems of today, and identifying potential pollution issues of the future.

We work with citizens, including landowners, local governments, small businesses and industry, to protect Missouri's environment. Monitoring, partnerships, technical assistance and training allow the department the opportunity to help Missourians and to protect their natural resources.

Missouri Air Quality

Missouri's air sustains us in everything we do. Whether working in a garden, waiting for a bus or hitting home runs, clean air is essential to our health and very existence. Ozone, fine particulate matter and lead are the primary airborne pollutants of concern in Missouri. Federal and state standards set clear limits on those pollutants so that human health is not adversely affected. If concentrations in the air are above those limits, the standards are not met and our quality of life and health can be compromised.

Missouri's air quality has steadily improved, but tightening air quality standards are requiring additional controls to protect our air resources. To reach these standards, Missouri must balance the needs of many di-



Photo Credit: MoDNR File Photo

verse groups and federal, state and local interests to provide clean air for all Missouri citizens.

Missouri's Land Resources

From the forested Ozarks and rolling hills to the plains and prairies full of life, our land is an asset the Department of Natural Resources is committed to protecting and enhancing. This effort includes conserving agricultural land; managing and distributing land survey records; and overseeing mining activity so minerals are properly extracted and surface reclamation is completed.

Improper solid and hazardous waste management can cause or contribute to health and environmental problems. The total amount of waste disposed of by Missourians averages 1.22 tons per person per year. The department offers assistance to individuals, communities and businesses on composting, reducing, reusing and recycling.

The department also regulates hazardous waste management.

Proper cleanup returns the land to productive use and encourages economic redevelopment of the site by owners, operators or prospective buyers. Proper hazardous waste management and reduction or reuse of the amount of waste generated can decrease the threat to human health and the environment.

Agricultural landowners' efforts to reduce topsoil loss also are supported by the department. Agriculture is one of Missouri's most important industries. Since the passage of the parks, soils and water sales tax in 1984, Missouri's soil erosion rates have dropped by more than half. The tax funds soil conservation programs that decrease erosion and improve water quality across the state.

Through geologic and soil mapping, the department interprets complicated bedrock and surface deposits of Missouri. These maps serve as the foundation for all types of land-use decisions and aid in the development of mineral and fossil fuel resources. The department

also helps assess, evaluate and report geologic hazards and the many risks associated with earthquakes, sinkholes and landslides. Missouri's land survey data extends back to 1800 and is available to anyone needing assistance with boundary issues.

Missouri State Parks & Historic Sites

Missouri's state park system offers something for everyone. The mission of the state park system is to preserve the state's most outstanding natural and cultural features while providing compatible recreational opportunities.

The system includes the homes of famous Missourians, reminders of yesterday such as gristmills and covered bridges, and sites that tell the story of our heritage from American Indians to French and German settlers. The state's most outstanding landscapes are preserved here for everyone to enjoy. Within these parks and sites, visitors can camp, picnic, swim, fish, hike, learn about nature and explore the past. Programs and tours provide opportunities for doing everything from learning to identify wildflowers to watching grain ground into meal.

Missouri contains some of the most outstanding state parks and historic sites that provide the public with more than 200,000 acres to discover, explore, learn and enjoy. Our state park system offers something to suit everyone's taste – outdoor adventure, great scenery and a bit of history. The department also coordinates federal grant programs that provide financial assistance in the areas of outdoor recreation and trails development.

Three-fourths of the funding for Missouri's 86 state parks and historic sites comes from the parks, soils and water sales tax.

Missouri's Water Resources

The department takes a holistic approach to protecting water quality. Working with citizen stakeholder groups, streamlining our permitting process, and providing financial assistance to communities making water and wastewater infrastructure improvements are just some of the many tools used to effectively manage our watersheds.

The department works to protect our aquifers. Groundwater levels are monitored and well installers are regulated to assure abundant, high-quality groundwater for

Missouri. Dams are inspected to ensure they are constructed properly and that people and property are protected. In addition to flood protection, the department helps Missourians plan for and respond to droughts and protect and restore wetlands.

Maintaining a clean supply of public drinking water also is critical for Missouri's health and its future. The department helps meet this goal by regulating all public water systems and monitoring about 90 contaminants that can cause long-term health problems.

Missouri's rivers and lakes are an important recreational feature, highly prized by floaters, anglers and tourists around the world. The wide variety and quality of water draws thousands to the state each year for fishing, floating and photography, making this resource an important economic component of our state.

Energy Use In Missouri

Energy use plays a central role in Missouri's economic prosperity and protection of our environment. Using energy more efficiently and using cleaner fuels help both the environment and the economy. The Department of Natural Resources serves Missourians by helping citizens make their homes and businesses more energy efficient and by helping schools, local governments, colleges and universities invest in energy-efficiency projects that save tax dollars for other essential needs.

The department provides services that help Missourians make our energy use more efficient and diversify our resources. The savings stay within the state to bolster Missouri's economy, while lower energy consumption reduces power plant and vehicle emissions.

For More Information

These are just a few of the services and support DNR provides to ensure Missouri is a great place to live, work and play. To learn more about the department, visit the Web at dnr.mo.gov or call 800-361-4827.

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(Continued From Page 15)

me and told me that I'd better start stealing, because if I didn't start soon, one of my warehouse colleagues was going to plant raw meat in my coat, which if discovered would get me sent to the "hole" (isolation), and then to the medium-security prison. (Because I wasn't taking anything, they feared I would rat them out.) So, I started taking some fruits here and there, but never sold them back on the compound, just gave them away to people I liked and to try to build some strategic alliances. My colleagues would probably tell you that watching me try to stuff a dozen tortilla shells down my pants on a truck home, and having them fall down my pants leg just before our boss opened the back of the truck, was their favorite memory of me. I never lived that one down.

Ingenuity

Perhaps the defining characteristic of prison life is ingenuity. Whether it meant concocting delicious meals from scraps liberated from the kitchen and warehouse, or cutting hair with toenail clippers, or cooking grilled cheese with an iron, or making weights out of boulders placed in laundry bags and tied around a bar when the weight pile was shut down, inmates figured out how to do more with less. Many of the inmates then planned to put the ingenuity they learned in prison to good use on the outside, by starting barbershops, or restaurants, or personal training businesses based on the way prisoners treat their bodies as temples and sculpt them.

Sadly, though, there was almost no preparation for inmates to bring their ideas to reality. No one to help them write business plans, no one to help translate their intuitive grasp of business concepts into other (legal) industries, not even an Internet connection to help them learn more or begin looking for jobs. Leaving prison after a decade or more, with few if any practical

skills, and not even knowing how to point and click, helps explain why nearly three of four U.S. prisoners re-offend. As Inc.com editor Mike Hofman suggested in his 2009 article *Some Good Earners*, these barriers are only exacerbated by employers that are reluctant to take a chance on convicted felons – especially in a tight labor market – another reason that starting businesses is an excellent option for ex-offenders. But as Inc.com grasped and as I saw first-hand, until governments and private citizens team up on a broader level to help nurture the entrepreneurial spirit of inmates, they won't learn any new business skills on the inside that will help them get back on their feet upon release. They'll only learn new hustles.

© 2011 Jeff Smith, as first published in Inc.com by Mansueto Ventures LLC. Reprinted with permission. Jeff Smith, a Democratic member of the Missouri Senate from 2007 to 2009, has a Ph.D in political science from Washington University in St. Louis and has taught there and at Dartmouth College. He's now consulting on affordable housing policy and writing a book about politics and prison.

Grant Management Training In Kansas City – Aug. 2-3, 2012

Mid-America Regional Council and Grant Writing USA are presenting a 2-day grant management workshop in Kansas City, Aug. 2-3, at 600 Broadway Street, Suite 200.

This training is for grant recipient organizations across all disciplines. Attend this class and learn how to administer government grants and stay in compliance with applicable rules and regulations, particularly when managing federal funds.

Tuition is \$595 and includes Grant Writing USA's 400-page grant management workbook and reference guide. Tuition payment is not required at the time of enrollment.

Seating is limited and online reservations are necessary.

For more information contact either of the following: The Client Services Team, Grant Writing USA, 800.814.8191, cs@grantwritingusa.com or John Staples, seminar & event manager, Government Training Institute, Mid-America Regional Council, 816.701.8306, jstaples@marc.org.



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Insurance & Employee Benefits:

Arthur J. Gallagher & Co. - St. Louis, MO 314-965-4346

Nationwide Retirement Solutions - Denver, CO 303-452-8051

Missouri Public Entity Risk Management Fund (MOPERM) - Jefferson City, MO 573-751-1837

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Government Supplies/Services:

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Meramec Regional Planning Commission - St. James, MO 573-265-2993

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Missouri Vocational Enterprises - Jefferson City, MO 800-392-8486

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Stuff You Didn't Know You Didn't Know!

- Men can read smaller print than women can; women can hear better.
- Coca-Cola was originally green.
- It is impossible to lick your elbow.
- The state with the highest percentage of people who walk to work: Alaska.
- The percentage of Africa that is wilderness: 28% (now get this ...)
- The percentage of North America that is wilderness: 38%.
- The cost of raising a medium-size dog to the age of 11: \$16,400.
- The average number of people airborne over the U.S. in any given hour: 61,000.
- Intelligent people have more zinc and copper in their hair.
- The first novel ever written on a typewriter: *Tom Sawyer*.
- The San Francisco cable cars are the only mobile national monuments.
- Each king in a deck of playing cards represents a great king from history: Spades – King David; Hearts – Charlemagne; Clubs – Alexander, the Great; Diamonds – Julius Caesar.
- $111,111,111 \times 111,111,111 = 12,345,678,987,654,321$
- If a statue in the park of a person on a horse has both front legs in the air, the person died in battle. If the horse has one front leg in the air, the person died because of wounds received in battle. If the horse has all four legs on the ground, the person died of natural causes.
- Only two people signed the *Declaration of Independence* on July 4 – John Hancock and Charles Thomson. Most of the rest signed on Aug. 2, but the last signature wasn't added until five years later.
- Half of all Americans live within 50 miles of what? Their birthplace.
- Most boat owners name their boats. What is the most popular boat name requested? Obsession.
- If you were to spell out numbers, how far would you have to go until you would find the letter "A"? One thousand.
- What do bulletproof vests, fire escapes, windshield wipers and laser printers have in common? All were invented by women.
- What is the only food that doesn't spoil? Honey.
- Which day are there more collect calls than any other day of the year? Father's Day.
- In Shakespeare's time, mattresses were secured on bed frames by ropes. When you pulled on the ropes, the mattress tightened, making the bed firmer to sleep on. Hence, the phrase ... "Goodnight, sleep tight."

- It was the accepted practice in Babylon 4,000 years ago that for a month after the wedding, the bride's father would supply his son-in-law with all the mead he could drink. Mead is a honey beer and because their calendar was lunar-based, this period was called the "honey month," which we know today as the "honeymoon."
- In English pubs, ale is ordered by pints and quarts. So in old England, when customers got unruly, the bartender would yell at them "Mind your pints and quarts, and settle down!" It's where we get the phrase "mind your Ps and Qs."
- Many years ago in England, pub frequenters had a whistle baked into the rim, or handle, of their ceramic cups. When they needed a refill, they used the whistle to get some service. "Wet your whistle" is the phrase inspired by this practice.
- At least 75% of people who read this will try to lick their elbows!

YOU KNOW YOU ARE LIVING IN 2012 when ...

1. You accidentally enter your PIN on the microwave.
2. You haven't played solitaire with real cards in years.
3. You have a list of 15 phone numbers to reach your family of three.
4. You e-mail the person who works at the desk next to you.
5. Your reason for not staying in touch with friends and family is that they don't have e-mail addresses.
6. You pull up in your own driveway and use your cell phone to see if anyone is home to help you carry in the groceries.
7. Every commercial on television has a web site at the bottom of the screen.
8. Leaving the house without your cell phone, which you didn't even have the first 20 or 30 (or 60) years of your life, is now a cause for panic and you turn around to go and get it!
10. You get up in the morning and go on line before getting your coffee.
11. You start tilting your head sideways to smile.
12. You're reading this and nodding and laughing.
13. Even worse, you know exactly to whom you are going to show this message.
14. You are too busy to notice there was no #9 on this list.
15. You actually went back up to check that there wasn't a #9 on this list.

AND FINALLY ... NOW you're LAUGHING at yourself!

"Blessed are they who can laugh at themselves, for they shall never cease to be amused!" (Unknown Author)

Go on, you know you want to try it. Lick your elbow!



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