

*“There she stands, proud in all her glory.”*

# Missouri County Record

Spring 2016



**Bollinger County Courthouse,  
Marble Hill, Mo.**

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## On The Cover

### Bollinger County

Dennis Weiser

*Missouri Courthouses: Building Memories On The Square*

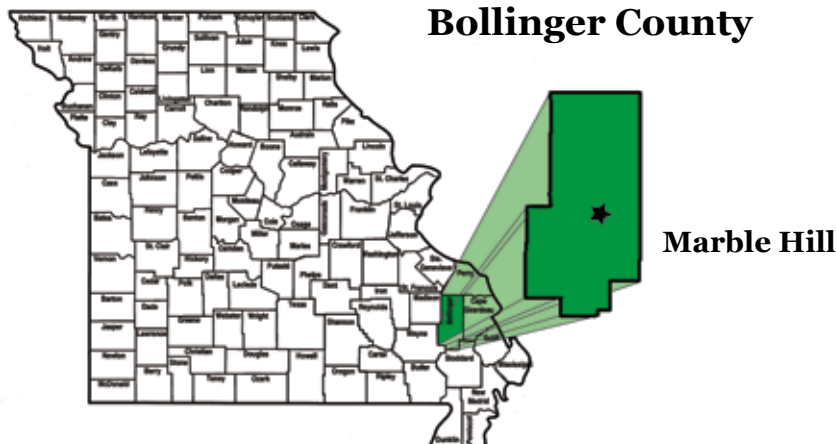
Bollinger County's boundaries were redrawn several times. Before becoming an independent county in 1851, Bollinger was part of Wayne, Cape Girardeau and Stoddard Counties. When the legislature established Bollinger County, the county commissioners decided to name the county seat Dallas, but they later changed the name of the town to Marble Hill.

In 1852, the county officials constructed their first county courthouse, a 30-foot-square, brick, two-story building. That foursquare

courthouse was consumed by fire in 1866.

A wood-frame building, similar in size and configuration to the earlier courthouse, followed in 1867. Seventeen years later, that building was condemned, and after it was abandoned, it was destroyed by fire.

The current courthouse was built in 1885. Originally a 50-by-60-foot building, the courthouse was enlarged with an addition in 1912, and more renovations followed in the 1960s and 70s.



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A Publication Of The Missouri Association Of Counties  
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The Missouri Association of Counties, founded in 1972, is a nonprofit corporation and lobbying alliance of county elected and administrative officials who work to improve services for Missouri taxpayers. The board of directors meets on the third Wednesday of designated months in Jefferson City to promote passage of priority bills and monitor other legislation before the state General Assembly and the United States Congress. The Missouri County Record is produced four times annually by the association staff. Subscription rates for non-association members are \$15 per year prepaid. Rates for association members are included in membership service fees. All articles, photographs and graphics contained herein are the property of the association and may not be reproduced or published without permission. Advertising rates are available upon request.

## 2016 MAC Executive Committee

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*"I have been on the MAC board for all 11 years that I have been a county commissioner. MAC is the one organization that represents ALL elected county officials. We can be a very strong voice at the Capitol when we work together to solve county problems. I am honored to be your MAC President for 2016 as we begin a new year to find solutions to both old and new challenges for county government. With your input and involvement, we will be successful." — "Doc" Kritzer*

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**"Doc" Kritzer,**  
**Callaway County**  
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**Cooper County Clerk**



## 2016 MAC Legislative Priorities

During the annual conference in November, MAC members passed seven resolutions which focus on implementing change during the 2016 session.

### **Upgrade Missouri's 9-1-1 Wireless Emergency Services**

Because Missouri is the only state in the nation without a state wireless recovery fee, the system is behind and outdated. MAC will support legislation to design a complete and detailed plan for upgrading the system. The life of 9-1-1 service equipment is seven years, many of which are already outdated. Without the recovery fee, Missouri will never attain statewide enhanced 9-1-1 services.

### **Support Fully Funding State Mandates On County Government**

MAC respectfully requests that the Missouri General Assembly and Gov. Nixon include in the state's Fiscal Year 2017 budget (1) an increase in the appropriation for prisoner per diem reimbursement authorized under Sec. 221.105, *RSMo*, (2) an appropriation to fully fund state assessment maintenance reimbursements, (3) an appropriation to fully fund any new obligations placed on the election officials of this state, (4) both an appropriation to fully fund the reimbursement for the detention and care of neglected and/or delinquent juveniles and the salaries of juvenile court personnel in single-county circuits, (5) an appropriation that would relieve counties of the cost of providing office space and certain utility expenses for the various state public defenders' offices, and (6) also request that the General Assembly continue to refrain from

implementing the requirements of SB 711 relating to property tax enacted in 2008 until full state funding for the same is authorized. Additionally, recognizing the difficult budgetary constraints that the state of Missouri is experiencing and the dim prospects for additional state appropriations for these programs and, as a partner with the state in the delivery of these services, MAC requests that Gov. Nixon and the Missouri General Assembly hold county governments harmless from any further state budget cuts in these areas.

### **Support A Transportation Funding Package That Will Address The State's Dire Infrastructure Needs**

Missouri's agricultural industry, a strong economic factor for the state, heavily relies on the state's roads and bridges to transport livestock and crops. However, there is no new state funding besides the

current system, and federal funding is expected to diminish soon. MAC will respectfully request the General Assembly support a new package that will address Missouri's dire infrastructure needs.

### **Support Funding For The County Assessment Maintenance Fund From Additional Withholdings**

MAC supports the state's fully funding the per parcel reimbursement rate at the \$7.00 level allowable by law. In addition, MAC supports legislation to allow additional withholding from local property tax collections to offset the lack of adequate funding from the state of Missouri. Even though the parcel counts were historically frozen at 2009 levels, but were increased to a higher 2013 count in the 2014 legislative session, the reduction in the reimbursement rate from \$6.00 per parcel to the current level of \$3.00 per parcel (with the possibility

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of additional cuts in the future) has put a tremendous budgetary strain on county governments.

### **Allow Local Governments To Be Exempt From Or “Opt-In” To Any Sales Tax Increase Or Sales Tax Exemption**

There is a serious erosion of the local tax base because of the unprecedented growth of uncollected sales and use taxes on Internet purchases. In addition, Missouri’s tax laws are antiquated. Since counties are already on strict budgets and rely on local sales tax, the Missouri Association of Counties requests that the local portion of any state-imposed sales tax exemption be exempt or – at the very least – local governments be given the chance to “opt-in” to the sales tax exemption. Significant tax breaks could result in higher property taxes for Missouri citizens.

### **Support Legislation To Recover Costs For Housing State Prisoners In County Jails**

County governments bear the burden of funding and providing housing, feeding, transportation and healthcare of state prisoners in county jails which takes up a large portion of their budgets. Even though the state reimburses the county, the reimbursement rate paid for housing state prisoners has been grossly insufficient to offset the cost of operating county jails. MAC seeks legislative action to recover costs to counties from the state for housing state prisoners.

### **Oppose Lowering The Current U.S. EPA Ozone Standards**

The EPA’s science advisors have recommended that ozone standards

be lowered to 60 parts per billion, which could result in a 15 percent increase in residential electric rates, up to a 32 percent increase in residential natural gas prices, and the potential shutdown of 78 percent of Missouri’s coal-fired generating capacity. The lower standards could cost 40,000 jobs or job equivalents per year and impact Missouri manufacturers’ current operations.

### **2016 MAC Mission Statements**

The membership also voted to incorporate two mission statements into the 2016 platform: (1) oppose the pre-emption of local authority and (2) oppose measures that erode the local tax base and call upon the Legislature to address Missouri’s antiquated tax structure.

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# Congress Passes A Five-Year Transportation Fix

On Dec. 3, 2015, Congress passed a five-year reauthorization of the federal surface transportation program — called the “Fixing America’s Surface Transportation Act” or FAST Act. The legislation included significant policy and funding provisions for counties and marks the first long-term transportation bill in over a decade.

Counties play a critical role in the nation’s transportation system — owning 45 percent of all public road miles and 39 percent of the National Bridge Inventory, and having involvement in a third of all public transportation systems.

The passage of the FAST Act represents a significant achievement for counties across the country. Not only will it provide states and local governments with the long-term certainty needed to plan and deliver projects, but the legislation also makes more federal funding available for the types of infrastructure owned by counties and addresses additional county priorities.

“Strengthening our transportation network is vital to boosting economic growth, creating jobs, and increasing competitiveness in Missouri, and across the nation,” Missouri Senator Roy Blunt said. “Because Missouri is a hub for our nation’s railways, highways, and waterways, it is imperative that our transportation planners and industry have the long-term certainty they need to promote investment, ensure the safety and reliability of existing infrastructure, and expedite the permitting process for new projects. The bill passed by the Senate represents the longest highway authorization in more than a decade, and I am glad we can finally move forward with infrastructure improvements that will benefit Missouri’s families and small

businesses, and provide a foundation for the 21st century economy.”

The FAST Act represents a compromise between the reauthorization bills that came out of the U.S. House and Senate. The Senate’s version included developing a reliable and innovative vision for

the Economy (DRIVE) Act, a six-year bill with three years of funding. The House’s version included the Surface Transportation Reauthorization and Reform (STRR) Act of 2015, six-year bill and partial funding.

The new bill includes the following major provisions:



*Seated, left to right: James C. Bowers, Jr., Michael T. White, Aaron G. March, Standing, left to right: Ferdinand E. Niemann IV, Kimberley S. Spies, William B. Moore, Mark S. Bryant, Brian E. Engel, Patricia R. Jensen*

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- County-owned bridges make up 52 percent of Missouri's bridges, and 30 percent of them are structurally deficient or obsolete. The bill protects the dedicated revenue stream for off-system bridges established in the 2012 highway bill, and it makes more funding available for all bridges.

- The Track, Railroad, and Infrastructure Network (TRAIN) Act reforms and streamlines the environmental permitting process for rail projects. The measure promotes additional investment in rail systems without compromising environmental quality.

- The Emergency Route Working Group creates a working group at the Department of Transportation to address delays caused by state-by-state permitting requirements for special vehicles needed for emergency infrastructure response.

- The Competition in Passenger Rail promotes more competition in passenger rail service.

- The Grid Reliability Bill Act improves the reliability of the electric power grid and protects electricity

providers from conflicting federal regulations.

### **Significant Reforms For Counties In The FAST Act**

- **Long-term certainty:** The FAST Act is a fully funded five-year bill that will provide counties the long-term certainty needed to plan, fund and deliver transformative transportation projects.

- **Funding for locally owned infrastructure:** The FAST Act increases the amount of funding available for locally-owned infrastructure by increasing funding for the Surface Transportation Program and making an additional \$116 billion available for county-owned highway bridges. This additional funding more than repairs the 30 percent reduction in funding for locally owned infrastructure that occurred under MAP-21.

- **Local decision-making:** The FAST Act acknowledges and utilizes the value of local decision-making by suballocating a greater share (up to 55 percent) – or roughly \$28 billion – of the Surface Transportation Program to local areas and local governments.

- **Off-system bridges:** The FAST Act protects set-aside funding for off-system bridges, which provides over \$776 million annually for bridges that are primarily owned by counties and other local governments.



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## Voters Prove Trust In Local Government At The Polls

Local government is closest to the people. On April 5, Missouri voters demonstrated their support for government closest to the people with widespread approval of local ballot issues to keep their communities strong and vibrant.

Local election results gathered by the Missouri Municipal League (MML), the Missouri School Boards' Association (MSBA) and the Missouri Association of Counties (MAC) showed voters overwhelmingly supported various city, county and school ballot proposals. These three organizations are allied in the Missouri Local Leaders Partnership (MoLLP), together representing more than 9,000 local leaders across the state.

"Citizens across the state placed their trust in municipal government by approving continued tax authority and authorizing bonds for capital

improvement projects," said Dan Ross, executive director of MML. "The real winners from Tuesday's elections are the citizens, who demonstrated continued confidence in their local government to deliver the products and services citizens want and need."

"The vast majority of proposals put forth by counties were approved by voters on Tuesday," said Dick Burke, executive director of MAC. "We are very pleased to see the trust that voters put in their local governments' accountability and stewardship of taxpayer resources."

One issue receiving resounding support was the continuation of various counties and cities' motor vehicle sales tax. Voters need to approve continuing this local tax by November 2016 in order to keep a level playing field for local dealerships. For example, without the continued tax, a consumer can cross state lines

to purchase a vehicle out of state after November, thereby avoiding the local sales tax and keeping money away from their local community.

More than 100 cities placed this on the ballot and were authorized by voters to continue this tax. At this time, only one city is known to have rejected the tax continuation. At least 12 counties were successful as well.

Voters continue to trust local governments more than state and federal levels of government. In 2014, a Gallup poll showed that 72 percent of Americans trust their local government, while 62 percent trusted state government.

A 2013 Pew Research Center survey indicated Americans give the best marks to local governments, at 63 percent, while state governments earn 57 percent and the federal government only 28 percent.



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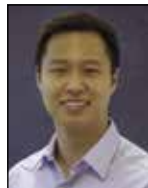
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## A Visit To Our Nation's Capitol

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**Above:** MAC President "Doc" Kritzer and MAC Executive Director Dick Burke at the White House

**Left:** NACo officers join state association presidents and executive directors for a White House briefing at the Eisenhower Executive Office Building



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## MAC Trust Appoints New Board Member

Howard County Clerk Kathryne Harper was recently named to serve on the MAC Workers' Comp Trust board of directors.

Harper was appointed to fill a vacancy on the board after the recent passing of Texas County Clerk Don Troutman. She must run for re-election November 2016 at MAC's Annual Conference for an unexpired term on the 5-member board of directors.

"I am thankful for this opportunity to serve the members of the MAC Trust," said Harper. "Don Troutman was an asset to the Trust, and I am truly humbled to be appointed to the board. I look forward to working to further MAC Trust's mission."

Harper has a 12-year background in county government— one term as county treasurer and three terms as county clerk. She currently serves as the secretary for the Missouri Association of County Clerks and Election Authorities. Furthermore, Harper worked as a CPA and an insurance controller for many years.

In addition to Harper, Trust board members include Cape Girardeau County Associate Commissioner Paul Koeper (chair), Phelps County Treasurer Carol Green (1st vice chair), Jasper County Associate Commissioner Darieus Adams (2nd vice chair), and Audrain County Presiding Commissioner Steve Hobbs.



### MAC Trust Online University - Quarter 2 Course List *April 1, 2016 - June 30, 2016*

#### Safety & Human Resources

- Back Injury Prevention
- Distracted Driving for Local Governments
- Ethical Behaviors for Elected Officials
- Microsoft Excel Basics
- Power Tool Safety
- Sexual Harassment – Harassment Awareness
- Sexual Harassment Awareness for Managers (2 Hour)
- Trench Safety

#### Law Enforcement

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## **Missouri State Museum Works To Save Flags Commemorating Counties' Veterans Of WWI**

.....

**Michelle Brooks**

*Jefferson City News Tribune*

The heavy, cotton flag's corners fall over the edges of the Missouri State Museum's work table. For about the last six months, staff members and interns have been tediously caring for the 15-foot-long flag, created in Montgomery County following World War I.

The flag features a blue star for each soldier who served, silver stars for those wounded, gold stars for those who were lost/killed in action and even four red crosses for nurses. Each hand-sewn emblem also carried a name, which is what the museum staff currently is working on.

Eventually, the staff hopes to have a database and detailed photos

available for genealogical use.

The museum still is researching the origin of this flag. However, it mirrors the request made by the Missouri Assembly in 1919 for each of the 114 counties to make blue and gold star service flags, said Curator of Collections Katherine Owens.

The collection of county flags, requested to be no more than 3 by 5 feet in size, was displayed for many decades in the museum.

"Given its size, we're not sure if (the newest flag) ever was exhibited at the Capitol," Owens said. "This could be an offshoot; we're still scratching the surface of this flag."

Inside the museum's Riverside

facility, the counties' World War I honorary flags are stored either in secure frames or safely rolled away.

Some of the other county World War I banners have ribbons or booklets accompanying them with the list of names of those who died and sometimes all who served, Owens said. That the Montgomery County flag had the names on each star makes it unique, she said.

The Cole County banner says it was prepared under the direction of the Cole County Court, noting 1,286 individuals served. It memorializes 56 gold stars and one red cross for those who died in service to their country.



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"It was one of the first to be conserved," Owens said.

Other area counties represented in this collection are Morgan, Miller, Maries, Osage, Moniteau and Boone.

The Montgomery County flag is the first artifact purchased for the museum by its Friends of the Missouri State Museum, incorporated in 2012.

Before this, the friends group had helped with more short-term needs, such as a pavilion for outdoor events, public address equipment for tour guides, and signage to help visitors find the museum, said President Sarah Kliethermes.

The large flag was noticed in a local antique store, Kliethermes said. She commended the local businessman for his concern to see the historic item housed in a Missouri museum.

"We were able to respond quickly," Kliethermes said. "That's our role; we can step in and fill a

need.

"The museum has had a push to conserve flags; so we knew others were floating around.... What we didn't expect was to find a flag of that size in the museum's backyard."

The museum has focused attention on its flag collection, more than 450 in all, for restoration and incorporation in rotating museum displays.

Many counties may not know these flags are held by the museum, Owens said.

With the approach of the 100th anniversary of the United States entering World War I (April 2017), the museum hopes to spread that word.

"It's a really cool thing that the Legislature decided to do that," Owens said of the World War I county banners.

A ceremony was held in the House of Representatives chamber April 23, 1919; afterward the initial



Photo used with permission from the Missouri State Museum.

68 county banners hung around the Capitol's balcony, Owens said.

*The Daily Capital News* reported the next day that the Clinton County flag was the most valuable on display, with each of its 22 gold stars made



Individual names are stamped on the stars of the Montgomery County World War I veterans banner held by Archives staff. Photo by Julie Smith.





Photos used with permission from the Missouri State Museum.

from solid gold. The museum also has conserved that banner.

Later, these World War I commemorative flags were displayed in vertical, hinged frames. And, finally, they were stored away.

The state museum holds 92 of the 114 county flags, Owens said.

These flags can be seen online at [missourioverthere.org](http://missourioverthere.org), privately created as a virtual museum preserving Missourians' role in World War I. Brian Grubbs with the Springfield-Greene County library district leads the Missouri Over There project, which began in 2012.

The state museum's county banners collection, as well as its World War I regimental flags collection, are both featured on this website, which also includes 12,000 pages of primary-source materials to benefit both classroom teachers and future scholarly publications.

"In the post-war years, Missouri was a flurry of commemorative activities," Grubbs said.

Many communities erected statues, plaques, halls or markers to remember the service immediately following 1919.

"This is a piece of that," Grubbs said. "Different organizations created these banners to reflect on their county as a whole."

The flags also will be featured in an upcoming exhibit for the Soldiers and Sailors' Hall on the first floor of the Capitol, which will open Nov. 4, 2016, to remember the impacts

of World War I on the Missouri homefront, Owens said.

"World War I is sort of a forgotten war," Owens said. "Hopefully, we can recapture some of that interest as the centennial approaches."

On the web: [missourioverthere.org/explore/collections/missouri-county-banners](http://missourioverthere.org/explore/collections/missouri-county-banners)

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# Platte County Provides Best Quality Of Life In Missouri

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Platte County ranked #1 out of 114 counties in Missouri for quality of life in a new report from the Robert Wood Johnson Foundation. Platte County ranked second highest for health factors.

The 2016 County Health Rankings compare differences on a broad range of indicators that affect quality of life and health among almost every county throughout the U.S. Platte County's top ranking reflects residents' high priority on health as evidenced by their support for parks, schools, roads, alternate transportation, and safe neighborhoods where they live and work.

Over the past 15 years, Platte County implemented a comprehensive Parks System Master Plan to create six new parks, over 30 miles of trails, programming at all locations to engage the widest community participation, as well as two indoor community centers operated through a unique partnership with the YMCA.

"As a charitable nonprofit organization dedicated to healthy living, the Y is grateful to partner with Platte County to operate our two community centers and provide a variety of programs that help improve quality of life for residents of all ages," said David Byrd, president and CEO of the YMCA of Greater Kansas City. Platte County residents support the YMCAs with a membership density that surpasses any others in the Kansas City area. "From chronic disease prevention and management to social activities, our programs impact quality of life not only by improving physical health, but also by enriching the quality of mental and social well-being."

Platte County also supports an informal and friendly economic environment that results in safe neighborhoods and healthy business sectors - retail, office, and industrial - including the Kansas City Midcontinent International Airport. Public investment in a reliable

transportation network contributes directly to private investment that results in resident happiness.

"Platte County's unique quality of life provides the perfect complement to excellent business opportunities," noted Alicia Stephens, executive director of the Platte County Economic Development Council. "It's all about choices – the choice of a competitive location for business AND a choice place that provides a unique work-life balance. Platte County's quality of life ranking equates to accessibility, amenities, education, safety and most important – working together toward the common goal of making Platte County a premier location."

The County Health Rankings, a collaboration between the Robert Wood Johnson Foundation (RWJF) and the University of Wisconsin Population Health Institute (UWPHI), compares counties within each state on more than 30 factors impacting health such as education, jobs, housing, exercise, commuting



**Platte County Line Creek Trail**



**Platte County Missouri Riverfront Trail**

***"Thanks to our taxpayers who voted for parks and roads sales taxes, Platte County residents enjoy the #1 quality of life in Missouri. As county commissioner, it's my job to listen to the citizens when they tell us what type of community they want to live in. They tell us that safe roads and well-maintained parks and trails are a big reason they call Platte County home." — Platte County Commissioner Beverlee Roper***



times, and more. Over the past seven years, the rankings, available at [www.countyhealthrankings.org](http://www.countyhealthrankings.org), have become an important tool for local communities working to build a Culture of Health.

#### **About Platte County Parks & Recreation—**

With a commitment to improve the quality of life for all citizens, Platte County has made significant improvements in the area of parks and recreation over the past fifteen years. In 2000, the county owned only one 18-acre park for its residents. Since then, by collaborating with every city, school district, and numerous nonprofit organizations, the county has been able to leverage its resources to provide a wide variety of parks and amenities while avoiding duplication of services. More information on the county's long-range Park Master Plan is available at [www.platteparks.com](http://www.platteparks.com).

#### **About the Robert Wood Johnson Foundation—**



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# Declaring Blight: A Guide For Government Officials

Michael T. White, White Goss, a Professional Corporation  
Ferd E. Niemann, IV, White Goss, a Professional Corporation

County and city governments regularly implement economic development programs that require the governing authority's declaration of blight. For counties, the blight determination is important even when a city is granting the incentive, especially if the county opposes an economic development project and the blight determination is suspect.

Definitions of blight are found in various programs such as Tax Increment Financing (§99.805(1) *RSMo*), the tax abatement programs through the Land Clearance for Redevelopment (§99.320(3) *RSMo*), the Urban Redevelopment Corporation law (§353.020(2) *RSMo*), and the Planned Industrial Expansion Authority law (§100.310 *RSMo*). Governing authorities have a great deal of discretion regarding a declaration of blight. Absent

arbitrariness, collusion, bad faith or fraud, a blight determination will not be questioned by a court. However, recent decisions have used fact-based tests set forth in legislative definitions. Although economic underutilization is not mentioned in the PIEA or urban redevelopment laws, the Supreme Court and at least one Court of Appeals have indicated in *dicta* that it might be a basis for blight under those statutes. This article will attempt to explain the law surrounding blight determination in an effort to serve as a guideline for government officials on the dos and don'ts when declaring blight.\*

## Is a determination of blight a pre-requisite to the use of condemnation and tax abatement?

Yes. Condemnation and tax abatement are allowed by the

*Missouri Constitution* provided that the property is found to be blighted.

## Is the blight determination a legislative decision?

Yes, the existence of blight is a legislative determination.

## If reviewed by Missouri courts, what standard of judicial review applies?

Missouri courts will use a deferential standard when reviewing legislative decisions. In deference to the separation of powers commanded by the *Missouri Constitution*, a court will not interfere with the local legislature's discretion as to what constitutes blight in the absence of fraud, collusion, bad faith or clear arbitrariness. While continuing to embrace the deference to legislative findings, courts would



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occasionally mention that substantial evidence supported a finding of blight.

### **Have Missouri courts ever reversed a finding of blight? Does this shift the test applied by the courts?**

Yes. The Supreme Court handed down its first reversal of a finding of blight in the *Centene* case, finding that the evidence in the record did not support a finding that the property was a social liability under the law's blight definition.

Missouri courts have long said that the test on judicial review only requires that the defendant show the matter is debatable, with legislative findings of blight accepted as conclusive evidence of public purpose (absent clear proof that finding is arbitrary, or induced by fraud, collusion or bad faith). However, in 2006, the Missouri Legislature adopted HB 1944, which provides in relevant part with respect to the use of eminent domain "that an area is blighted, substandard, or unsanitary shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith and shall be supported by substantial evidence...."

The problem with this new law is that it adds a "substantial evidence" requirement to the court's standard of review. This addition infringes on the powers of local legislatures, and therefore is probably unconstitutional. Legislatures do not have to have evidence to pass laws.

In *Great Rivers*, a property owner sued to invalidate the city's TIF plan. The appellate court, in ruling for the city, examined the definition of blight in the TIF statute:

*"Blighted area," an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or*

*property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.*

In addressing this definition, the court stated:

"We, therefore, read the definition to explain that if any of the first five factors predominate, our analysis of the first half of this definition is complete, and the necessary conditions are met.

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If, however, various factors are present without 'predominating' in the area, the question must be answered whether those factors, when combined, predominate to such an extent that the resulting circumstances, described in the second half of the definition, are present.

"Turning to the second half of the definition, we learn that a predominance of factors listed in the first half of the definition will result in blight if it:

- (1) retards the provision of housing accommodations, or
- (2) constitutes an economic or social liability, or
- (3) [constitutes] a menace to the public health, safety, morals, or welfare [.]

"Like the factors in the first half of the definition, these resulting circumstances are joined by the conjunction 'or.' Thus, if a predominance of factors listed in the first half of the definition leads to any resulting circumstance listed in the second half of the definition, an area may properly be declared to be a 'blighted area.'"

The appeals court ultimately reaffirmed that the standard for review of a legislative determination of blight is the fairly debatable test, and is limited to whether the decision is arbitrary, induced by fraud, collusion or bad faith or whether the city exceeded its powers. (In the interest of full disclosure, it should be noted that White Goss argued both cases before the Court of Appeals).

**Does economic underutilization satisfy the necessary requirements and justify a blight determination?**

Not likely. The phrase "economic underutilization" has resulted in a great deal of confusion with respect to the definition of blight, but it is not apparent that economic underutilization satisfies

the necessary requirements for a blight determination. The phrase first appeared in the *Tierney* case, where the appellants attacked it as an improper basis for condemnation and the court used it as a broad rationalization for redevelopment laws in general. It is not clear from the opinion how the phrase became an issue, considering the only cite in justifying it was to *Atkinson*, but it appears nowhere in that case. It was later cited in informal discussions, after the trial, as a basis for declaring an area blighted in *Crestwood*, where the court stated that blight can be found in areas beyond slums and the concept of economic underutilization is a valid one.

Despite the court's informal discussion, economic underutilization is not a test by itself for blight in any redevelopment statute. Therefore, it is unlikely that blight can be declared simply because a property's current use is below its economic potential. Still, for some (Ch. 353) tax abatement, "blighted area" is defined as "that portion of the city within which the legislative authority of such city determines

that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes." This may leave the door open to economic underutilization as a justifiable reason to declare blight; however, this is far from convincing for a blight declaration under Missouri's economic development programs.

**Does every parcel included in an area that is declared blighted need to be in poor condition or blighted?**

No. The fact that an individual property is well-maintained will not prevent its inclusion in a declaration of blight. Blight need not exist on every single parcel and a blighted area may include parcels not blighted if inclusion is necessary to assemble a tract of sufficient size to attract developers, and an existing blighted area may be expanded to include non-blighted parcels. The *Kelo* case examined the use of eminent domain



The image is a dark rectangular graphic with a light gray diagonal stripe running from the bottom left to the top right. On the left side, in white, is the logo for Horner Shifrin, which consists of a stylized 'H' inside a circle followed by the text 'HORNER SHIFRIN'. Below the logo is the website 'www.HornerShifrin.com'. Further down, in a lighter gray font, is the text 'Engineering Design Solutions Since 1933'. On the right side, following the diagonal stripe, is a list of services in white text: Water, Wastewater, Stormwater, Highways, Streets, Roads, Bridges, Structural, Health Care, Mechanical, Electrical, Plumbing, Fire Protection, GIS, and Construction Services.





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by a private entity to revitalize an area declared "distressed" by the state. The plaintiffs' properties were not blighted, but were condemned to assemble the larger property. The U.S. Supreme Court held 5-4 that a public purpose is a public use and that further, economic development is a valid public purpose.

### **Is there a minimum requirement for a blighted area?**

No, even a single parcel can be declared blighted.

### **Can vacant land be deemed blighted?**

Yes, vacant land may be declared blighted. In *Parking Sys., Inc.*, the Supreme Court approved a declaration of blight on ground that was 49 percent vacant, 4 percent parking, and where 82 percent of the improved portion was not deteriorated. In addition to vacant land, streets and parking lots may also be blighted.

### **Can farm land be deemed blighted?**

Yes, under some circumstances. In 2006, the Missouri Legislature adopted HB 1944 which provides "No condemning authority shall declare farm land blighted for the purpose of exercising eminent domain." However, in *Great Rivers*, the court found that substantial development had occurred in the construction of farm levees and roads. As a result, it is apparent that farm land, at least when "substantially developed," can be declared blighted.

### **Can virgin land be deemed blighted?**

Not likely. It is hard to imagine how virgin land could be blighted, perhaps barring an oil spill. Even then the *Constitution*, as earlier noted, speaks of redevelopment. The court in *Atkinson* took pains to note that "undeveloped industrial areas" under the PIEA Act do not include virgin territory or pristine

wilderness, making virgin land less likely to be deemed blighted than vacant land or farm land.

### **May an entire area be declared blighted, regardless of the impact on individual parcels?**

Yes, if the condemning authority finds a preponderance of the defined redevelopment area is blighted, it may proceed with condemnation of any parcels in such area. The condemning authority is required to "consider" each parcel individually, but it is not obligated to find each parcel to be blighted; furthermore, "preponderance" means that the total square footage of blighted property is greater than the square footage of the area not blighted. A condemning authority may use a blight study that is older than five years, but is prohibited from commencing a condemnation action later than five years from the date of the ordinance finding blight.

### **Does a determination of blight constitute a taking?**

No, with limited exceptions. While the announcement of blight may cause a property owner to seek a declaration that his property has been taken, the Missouri Supreme Court has held that a declaration of blight does not constitute a taking of property. The decline in value which may occur in the period between the declaration of blight and the actual condemnation is not normally compensable. The general rule has always been that a land owner may not recover for loss of value caused by an impending condemnation. A petition to have an area declared blighted does not create a cause of action for lowering property values. But, in 2008, the Missouri Supreme Court recognized the theory of "condemnation blight" and held for the first time that a property owner could assert a claim for inverse condemnation against a dilatory condemnor. (It is worth noting that,

after some delay, the condemnation was never completed.)

It is worth noting that many blight declarations are accompanied by a threat of eminent domain as part of a redevelopment plan under one of Missouri's economic development statutes.

### **What should governments do when evaluating a blight declaration?**

As can be seen from the myriad of circumstances mentioned above, city and county governments should closely examine the particular circumstances surrounding a proposed project. In the absence of pertinent precedent, city and county officials should attempt to act within the closest applicable guidelines, while recognizing the deference often given to legislative bodies.

*Mike White, former Jackson County executive, and Ferd Niemann, former Jackson County assessor, are members of the public law group at the White Goss law firm. Mr. White is the author of Missouri Land Use Law and Missouri Economic Development Law, both published by the School of Law, University of Missouri at Kansas City, CLE. Mr. Niemann assists as the associate editor of the same publications, which total over 2,000 pages of relevant material. White Goss serves municipal clients throughout Missouri, with a team of attorneys that include several former city attorneys, a former county assessor, and a former county executive. For more information and attorney bios please visit [www.whitegoss.com](http://www.whitegoss.com).*

*\*This article has been compressed, and its citations removed, in the interest of editing and available space. Please contact the MAC office for a copy of the full article, which includes more in-depth answers and the appropriate legal citations.*



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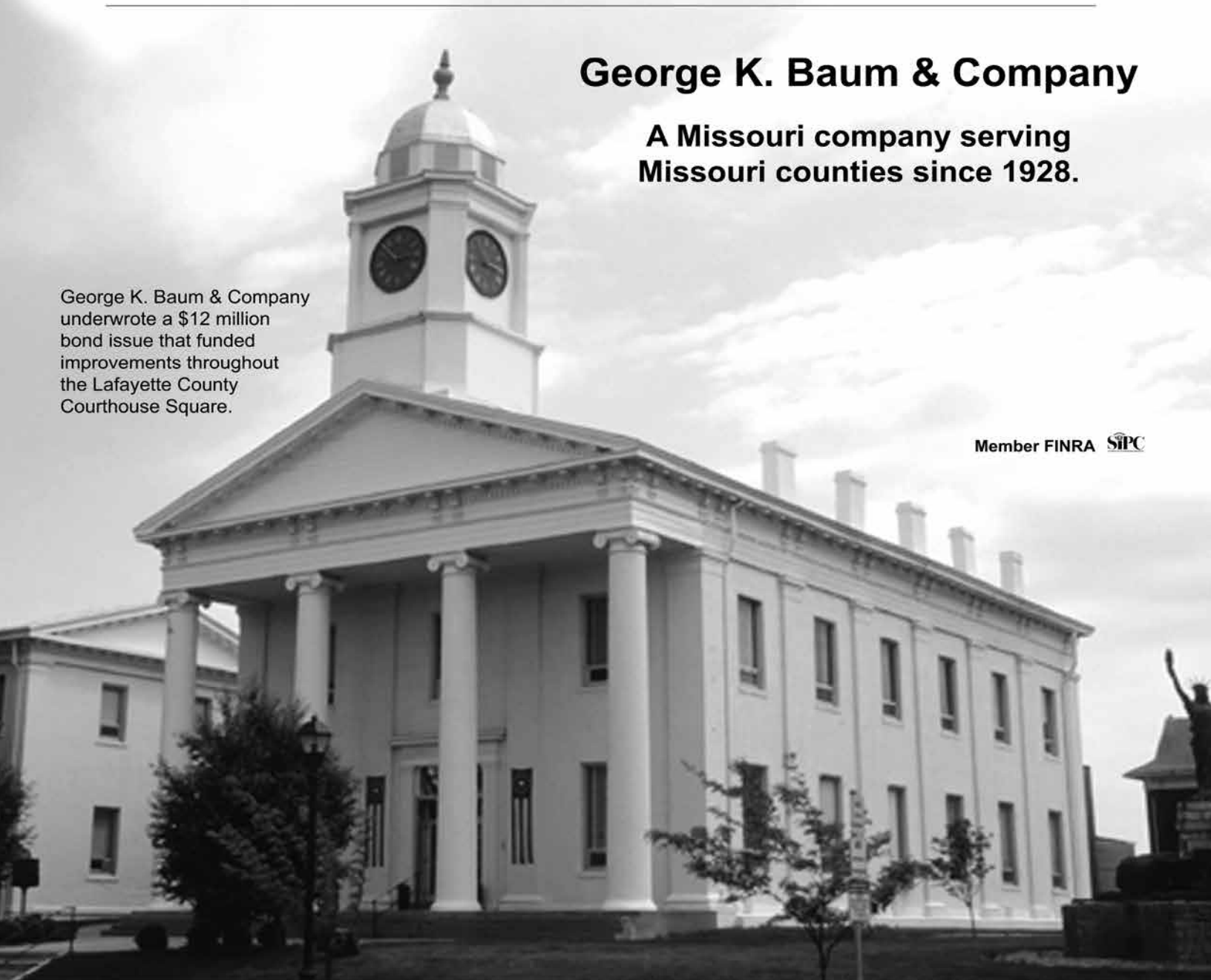
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## Boone County Commissioner Named To Missouri Workforce Development Board

Boone County Presiding Commissioner Dan Atwill was recently named to the Missouri Workforce Development Board. Atwill has served as presiding county commissioner for seven years.

The board represents a wide variety of individuals, businesses, and organizations in Missouri. The Workforce Innovation and Opportunity Act (WIOA) is designed to help job seekers and workers access employment, education, training, and support services needed to succeed in the labor market, and match employers with the skilled workers needed to compete in the global economy.

"A qualified, properly trained workforce is a crucial component in

attracting and retaining sustainable businesses in Missouri," said Atwill.

The board's goal is to engage employers, education providers, economic development, and other stakeholders to help the workforce development system achieve the purpose of WIOA and the state's strategic and operational vision and goals.

Atwill served on active duty with the U.S. Air Force as a captain in the JAG Corps as Chief of Military Justice at Nellis AFB, Nev., and later as an attorney at the Headquarters of the USAF Communications Command at Richards Gebaur AFB, in Belton, Mo. After completing four years in the Air Force, he returned to Columbia to practice law with the firm of Knight

and Ford. In 2000, Atwill and Rick Montgomery opened the law firm of Atwill & Montgomery.



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