"There she stands, proud in all her glory."

Missouri County Record

Summer 2010

Adair County Courthouse, Kirksville, MO

Out Of Sight
Our View • Delays To Sentencing Reform Come At Costs To Public Safety

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Editor's Note: This editorial appeared May 5, 2010, in the Post-Dispatch, a little over a week before session's end.

Missouri Chief Justice William Ray Price Jr. and state Sen. Matt Bartle, R-Lee's Summit, fell a little short in persuading the Missouri Legislature to reform the state's criminal sentencing laws. Their plan was too much too soon for many lawmakers – and maybe a little too costly up front.

But the issue, which would save millions in the long run, is now on the table. With refinement and collaboration, it could pass next year.

The plan would reserve state prison cells for dangerous and incorrigible convicts serving long sentences. Nonviolent and first-time offenders, meanwhile, would be kept for shorter stays in less expensive county jails, or diverted into close supervision by probation and parole officers and expanded substance abuse courts.

Fully realized, the plan would enable the state to close at least one prison. And it could break the dangerous – and ever costlier – cycle of criminal recidivism. When nonviolent offenders are exposed to lengthy prison stays, they're all but certain to re-offend.

But even the most promising reforms can't get off the ground without investment; you must spend money, at least at first, to save money.

That's the case with sentencing reform, a process that has been stalled by budget cuts. Cash-strapped county governments see the Bartle-Price plan as presenting too great a financial risk.

The legislation, worked out with local prosecutors, would have permitted the state Department of Corrections to turn away lower-level nonviolent offenders. The money the state would save on running prisons would be used to reimburse counties for their increased costs.

But lawmakers sent mixed signals. While promising increased financial support, they would not designate any dedicated funding for that pur-

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516 East Capitol Avenue, PO Box 234, Jefferson City, MO 65102-0234
Telephone: (573) 634-2120 Fax: (573) 634-3549
www.mocounties.com

Dick Burke, *Executive Director*
Bev Cunningham, *Insurance/Business Manager*
Charles Harrison, *Administrative Assistant*
Bob Holthaus, *Loss Prevention Coordinator*
Mary Ellen Brennan, *Assistant Director*
Cindy Wells, *Finance and Operations Manager*
Grace Toebben, *Administrative Assistant*
Jay Shipman, *Communications Assistant*

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.

pose. Then they cut the paltry $22 daily reimbursement rate counties receive for state prisoners to $19.58 per day.

That was too much for county leaders, who began lobbying against the bill. Dick Burke, executive director of the Missouri Association of Counties, said his members feared "a classic shift to the local level of state costs."

Mr. Burke added, "The stakes are too high and the time too short" to win his group's support this session. But he said counties want to be an active part of negotiations that could lead to success next year.

Now, the state bears much of the counties' cost. Smaller, mainly rural counties save money by pushing lower-level nonviolent offenders into state penitentiaries. That leaves less room in prisons for violent offenders; with prisons running near capacity, that compromises public safety for everybody.

The dirty secret in this debate is that even without sentencing reform, prisoners will be diverted, only without the careful assessments that the reform bill would have required at sentencing. The cuts will come quietly as inmates are released to make room for a new round of offenders.

'Round and 'round it goes.

There's talk of amending the reform bill to include only modest, interim steps. Judges who sentence nonviolent offenders to state prisons would be required to justify their decisions in writing. Probation and parole offices would have expanded authority to move prisoners into drug and alcohol courts.

The Department of Corrections, meanwhile, would have to certify how many state penitentiary slots taxpayers are paying for each fiscal year – and publish data on which jurisdictions are overloading them with nonviolent offenders.

Making sure taxpayers know the truth may be the surest path to reform.

The Need For Dialogue About Nonviolent Offenders

By Dick Burke, Executive Director, Missouri Association of Counties

The St. Louis Post-Dispatch's editorial is provided to give readers an overview of some aspects of the debate this past session on SB 1014. Once it left the Senate, the rumors of its being "dead on arrival" in the House of Representatives ultimately proved to be true. Fierce opposition from county officials stopped it "dead in its tracks," and when it was finally referred to a House committee with just a few days remaining, the chairman declined to even have a hearing. SB 1014 died this year, but only after a brief, but highly controversial, existence. Nonetheless, after a fast-track path through the Senate during the week of April 12, its fate was anything but sealed.

Over the weeks that followed an on-going dialogue was taking place with MAC representatives, members of the judiciary, key legislators, and prosecutors, among others. It became readily apparent that one of the biggest obstacles to trying to forge a compromise on SB 1014 was a basic "disconnect" among those involved. Judges, prosecutors, legislators, commissioners, sheriffs, and Department of Corrections' officials were all looking at the impact of holding these offenders from their own vantage points. This was a perfectly natural reaction, but one that "missed the mark" when looking at the many varied aspects of the system.

The editorial states the following: "Now, the state bears much of the counties' cost. Smaller, mainly rural counties save money by pushing lower-level nonviolent offenders into state penitentiaries." This point arose during those discussions and led me to the "disconnect" view stated here. My reaction was "What? My people don't see it that way at all." I assure you there are those that do. It should be noted, however, that county commissioners do not sentence offenders to county jails or the Department of Corrections – judges do.

An amendment to a separate bill in the final days perhaps *would* have hit the mark by creating the "Criminal Justice Review Commission," whose purpose was (1) to study the number of nonviolent offenders who are incarcerated in the Department of Corrections and the cost and effectiveness of their incarceration and (2) to make recommendations regarding nonviolent offender incarceration, sentencing, and diversion programs. The broad-based 13-member commission would have included all those with a stake in the outcome. While there was no controversy here, the bill it was attached to failed on the last day like many others.

Which brings us to the question at hand: Now what?

MAC representatives consistently stressed during the deliberations on SB 1014 that we were certainly willing to sit down during the interim and engage in – what turned out to be – the basic charge set forth under the proposed Criminal Justice Review Commission. There will be no statutory commission, but that doesn't mean those same people can't come together and begin this discussion anew.

The *taxpayers of the state of Missouri* deserve everyone's best efforts in such an endeavor. If we don't, we could very easily end up in exactly the same spot next session, and no one benefits from that.

On page 6: A treatment court facts sheet, as well as a statement by Chief Justice William Ray Price Jr. regarding nonviolent offenders (given during the 2010 Missouri State of the Judiciary Address)

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Treatment Court Facts – *Revised March 19, 2010*
From the Drug Courts Coordinating Commission

Problems Treatment Courts Can Help Address

- In 2008, Missouri led the nation with 1,487 meth lab incidents.
- There were 9,857 persons admitted into state prisons in Fiscal Year 2009. Of these, 5,717 had drug or DWI convictions or an active substance abuse problem.
- During FY 2008, there were 1,916 children removed from their homes as a result of parental drug or alcohol use.

Why Treatment Courts?

- They are a proven cost-effective method for diverting nonviolent offenders from incarceration in prisons.
- Treatment courts lower the recidivism rate of offenders when compared to either incarceration or probation.
- They allow offenders to remain in their communities, to support their families and to pay taxes.
- Treatment courts reduce the number of babies born addicted.
- They reduce crime and the need for foster care, and they help ensure that child support payments are made.

Current Status Of Treatment Courts In Missouri

- As of March 19, 2010, there were 123 operational treatment court programs. Of these, 80 are adult drug courts, 17 are juvenile drug courts, 13 are family drug courts, 10 are DWI courts and 3 are reintegration courts.
- These programs have over 2,900 active participants.
- Since their inception, Missouri treatment courts have had over 8,500 graduates.
- Since treatment courts began, 438 drug-free babies have been born to treatment court participants.
- The graduation rate for all programs is over 50 percent
- The retention rate for all programs is over 60 percent.
- In FY 2010, the state's treatment court programs request more than $10 million in funding while the commission has $5 million to spend.

Return On Investment In Drug Courts

- Incarceration: Potential incarceration cost savings or cost avoidance for 2,520 adult offenders diverted from state prisons is about $25 million. FY 2009 incarceration costs were $16,027 per year per person, and treatment courts costs were $6,190 per year per person.
- Probation: Initially, drug courts are more expensive than regular probation. However, due to the higher recidivism rate for probation, savings result in the second year. Based on a City of St. Louis cost-benefit analysis, after two years, the state gains $2.80 for each $1 spent on drug courts. After four years, the state gains $6.32 for each $1 spent on drug courts.
- Foster Care: Potential foster care savings for 313 family drug court participants are nearly $500,000. Foster care costs $7,773 per year per child.
- Youth Services: Potential youth services savings for 172 juvenile offenders are more than $7.3 million. Youth services cost $48,576 per year per youth.

Missouri's Commitment To Treatment Courts

- 2010 marks the 17th anniversary of treatment courts in Missouri – the first treatment court started in 1993 in Jackson County. Missouri is a national leader, with more treatment courts per capita than any other state in the nation.

► Watch a video about drug courts on www.modrugcourts.org! ◄

Chief Justice's Remarks On Nonviolent Offenders During State Of The Judiciary Address

"Perhaps the biggest waste of resources in all of state government is the over-incarceration of nonviolent offenders and our mishandling of drug and alcohol offenders….

"… the simple fact is, we are spending unbelievable sums of money to incarcerate nonviolent offenders, and our prison population of new offenders is going up, not down – with a recidivism rate that guarantees this cycle will continue to worsen at a faster and faster pace, eating tens of millions of dollars in the process….

"Nonviolent offenders need to learn their lesson. I'm not against punishment. Most often, though, they need to be treated for drug and alcohol addiction and given job training. Putting them in a very expensive concrete box with very expensive guards, feeding them, providing them with expensive medical care, surrounding them with hardened criminals for long periods of time, and separating them from their families who need them and could otherwise help them does not work. Proof is in the numbers: 41.6 percent are back within two years.

"One thing we should do immediately is increase our investment in drug courts and expand that effort to DWI courts. Illegal drug use drives crime. Depending upon the study, 60 to 80 percent of crime involves drug use. We also know that simple incarceration, no matter how expensive, does not cure addiction. Treatment combined with strict judicial oversight does."

William Ray Price Jr., Chair, Drug Courts Coordinating Commission

County Appropriations Slashed In FY 2011 State Budget

The Second Regular Session of the 95th General Assembly adjourned at 6:00 p.m. on Friday, May 14, amidst one of the worst fiscal years for Missouri in recent memory. Legislators scrambled to pass a balanced budget more than a week ahead of the deadline, making cuts to virtually every area of the state budget – from economic development to education. State appropriations to county governments to perform mandated services were no exception.

Ultimately, only 105 bills (out of 1,784 proposed) became law, and no proposed constitutional changes (out of 81 joint resolutions) survived. This represents the lowest number of bills passed since 2000 and underscores the tough sledding that lawmakers faced.

Regarding county cuts in appropriations, the state pays a prisoner per diem to counties who are mandated to house state prisoners in local jails. Many of these prisoners are bound for eventual lockup in state prisons. However, if the state prisoner receives a Suspended Imposition of Sentence (SIS) from the judge during trial, the county receives no per diem. No county receives any reimbursement for prisoner medical care.

The average cost statewide to house a state prisoner awaiting sentencing is $45 a day. This year, the House Budget Committee originally kept the current per diem level at $22. However, the Senate Appropriations Committee reduced the amount to $19.58, which unfortunately remained the agreed-upon number by the conference committee.

Statewide, it is estimated that counties will lose $5 million in costs for criminal cases during the state's fiscal year, and the per diem makes up the vast majority of that appropriation. The state's FY '11 year runs from July 1, 2010, to June 30, 2011.

It should also be noted that at one time the Senate was even looking at $15 per day as a reduction. The governor will be making huge withholds in the next few months and even the current $19.58 is not safe.

In a May 3, 2010, Associated Press article titled *"Missouri Counties Do Same Work For Less Pay,"* staff writer Sarah D. Wire interviewed House Budget Committee Chairman Allen Icet.

"I do not disagree that the counties are receiving less revenue for the services they provide," said Icet.

Yet he, who criticized the federal government over unfunded mandates this year, said at least state officials are giving counties a little help.

Federal officials "tend to fund something on a short-term basis and then back out, and then the states are on the hook, whereas the state still has continued to pay some level," Icet said.

The AP writer concluded that "even with partial reimbursements from the state, counties are left in a bind to cover the bills because they cannot make mid-year budget cuts. *(See related article on page 14.)*

Large counties will likely be hurt more by the prisoner reimbursement drop because of the size of their jail populations."

The cuts put county officials in the position of either finding ways to reduce spending or asking taxpayers to make up the loss, said Dick Burke, executive director of the Missouri Association of Counties. On a pickup from the AP article, *The Joplin Globe* reported on May 9 that Burke stated, "No one wants to do that (seek a tax increase), especially now. So when the state doesn't fund an idea, the county either has to come up with the money or something is not going to be funded. They are extremely frustrated that this has been put on their backs."

A $2 per parcel cut in the state reimbursement to counties for property assessments came last October as a result of Gov. Nixon's action. While the Legislature passed a $6 figure in the FY 2010 budget, the $4 per parcel reimbursement remained the status quo and was rolled over into the new FY 2011 budget.

The new state budget takes effect July 1. Counties are estimating large amounts that will have to be taken from general revenue, reserves, or other sources to cover the loss in these two state appropriations for the last half of 2010.

Cass County Presiding Commissioner Gary Mallory said his additional cost this year due to the reduction in the prisoner per diem will be $40,880. His county will take a further "hit" of $96,000 due to the per parcel reduction for assessment maintenance.

Paul Koeper, Cape Girardeau County associate commissioner, said approximately $70,000 will have to be taken from general revenue to cover the per diem loss for the remainder of the year.

Platte County Presiding Commissioner Betty Knight said there are additional problems with the cut in assessment reimbursement. Her county, located north of Kansas City, is a growing county. They now have 41,488 parcels of land, but they only receive reimbursement for 38,113. That's a difference of 3,375 parcels for which they receive absolutely no reimbursement because the state froze all parcel counts at 2006 levels. Even at the new $4 level, $13,500 is totally lost due to the frozen count.

Adding insult to injury, multiplying $4 times Platte County's allotted parcels of 38,113 means an additional loss this year of $72,414 in assessment funding.

Because counties budget on the calendar year, Greene County is anticipating about a $300,000 "hit" after January with the prisoner per diem, plus a reduction of $234,000 in assessment reimbursement for 2011. All of these are estimates are based on the current state of conditions – if the governor, that is, doesn't make further cuts and if the Legislature doesn't continue the downward spiral next session.

MAC Office Building Receives Historic Landmark Award

On May 27, MAC Executive Director Dick Burke accepted a Landmark Award from the City of Jefferson Historic Preservation Commission.

The association's current office building, known as the *Home of Dr. Robert E. Young at 516 East Capitol Avenue*, was one of six structures to receive the prestigious award for 2010. Jefferson City Mayor John Landwehr presented Burke with a bronze plaque for permanent display on the building or property.

"Jefferson City is a community rich in history," the mayor said. "The Landmark Awards give us an opportunity once a year to stop and appreciate just a few of the many historical properties we have throughout the city."

The Landmark Award is an honorary designation which recognizes a property's historical significance and contribution to the community.

Normally there are between 12 and 20 properties which are evaluated by the following criteria:

- The historic, architectural or cultural significance of the property, as those terms are defined under the City's preservation ordinance,
- The type of property involved, including its historic use and its present use,
- The location of the property, including the overall historical context of the area and the property's contribution to the area and surrounding properties,
- The historic architectural integrity of the property, including whether efforts have been made to preserve or restore the property, and
- Whether the property is endangered.

Properties that have received the Landmark Award each year since 1994 represent the full range of Jefferson City's heritage and architectural style. The properties include governmental properties, educational institutions, residences, retail stores, manufacturing properties, houses of worship, and free-standing monuments.

"We are quite honored to receive the Landmark Award," said Burke. "Since we purchased the building in 1990, we have gradually made considerable renovations over the past 20 years – painting, wallpapering, some window replacement, re-carpeting, HVAC work, landscaping – all the while trying to retain the historical integrity of the original building.

"In fact, we have never replaced the first step up from the sidewalk. It is engraved with the original owner's name – Dr. Young. Though considerably weathered, almost beyond distinction, it remains as a significant piece of the building's origin."

Burke went on to say that in 2003, MAC purchased the adjacent, smaller carriage house and began renovation, which entailed cutting through a concrete common wall in the front office.

"What an experience that was! One of our employees sat amidst concrete dust for two weeks. Her entire desk, computer equipment, records, area rug, etc., were covered with plastic tarps.

"To top it all off, we had to re-center a fake fireplace façade to even it up on the wall once the cut-through was made. When we took the top of the mantle off, we found brittle, tattered news clippings dated 1894, an extremely old postcard with a historical

view of Missouri's State Capitol in 1842, a wooden nail, and a No. 3 Scribe pencil. We have no idea what happened to the original fireplace, but it's as if someone left a time capsule of sorts.

"Once the cut-through was finished, we worked again gradually from 2003 to 2010 to refurbish what we call our 'West Wing.' This entailed painting, replacing windows in the original style, refinishing hardwood floors, tiling and updating bathrooms with new fixtures, etc.

"It's been a slow process, but we're nearly complete. We also have a small conference room on the main floor of the new building."

MAC's executive director said that he has no knowledge of when a third floor was added to the "East Wing" of the original building. "That's were we now have a large conference room. Interestingly enough, there's a long church bench up there that's impossible to remove and take down the stairs because of its length."

Another interesting thing he mentioned was that the very large double front doors open in, not out. Back in the late 1800s, funerals were held in the deceased's home – hence, the double doors had to be wide enough to take a coffin in for viewing and out to the cemetery.

The funeral of Dr. Robert E. Young, the original owner who built the MAC office building in 1873, was held in his home.

Dr. Young was born in Jefferson City on Feb. 29, 1840. He married Charlotte McKenna in Philadelphia in 1873 and soon after made their home on Main Street in the structure now addressed as 514 and 516 East Capitol Ave. In his youth and prior to obtaining his medical degree, he served in the Civil War on the Confederate side.

During Dr. Young's career, he served as physician of the Missouri State Penitentiary (located less than two blocks up the street from his home); as superintendent of the Insane Asylum at Nevada, MO; and as the personal medical advisor to numerous state officials, most notably Gov. John S. Marmaduke (a former Missouri Confederate General and the 25th governor of Missouri, who served from 1884 until his death from phneumonia in late 1887).

Dr. Young was the first president of both the Medical Society of Central Missouri and the Cole County Medical Society.

Dr. Young died on Saturday morning, Jan. 9, 1904.

A complete account of his life and times may be found in *Pioneers of High, Water and Main – Reflections of Jefferson City*, which was published in 1997. The book contains the many writings and reminiscences of Dr. Robert E. Young, and it is on display in his home – the MAC office building.

Cole County Also Receives City's Landmark Award

Cole County Presiding Commissioner Marc Ellinger and Associate Commissioner Jeff Hoelscher attended the May 27 ceremony to accept a Landmark Award for the Cole County Jail-Sheriff's House.

This structure is unique because it is one of the few remaining examples of a combined jail and sheriff's residence in the state of Missouri. It was built in 1936 in the Romanesque Revival style to blend with the courthouse, which is attached at the jail's south wall. It was also placed on the National Register of Historic Places in 1972. At the time of construction, it was common for the sheriff and his family to reside in the residential portion of the jail. The building has not been used as a residence for the sheriff since the 1970s. It is currently being used as the county jail.

"Fair Tax" Proposal Pondered By Legislators

Drastic times call for drastic measures -- and some Missourians are calling for just that.

Amidst a dire economic condition over the past two years, some lawmakers are suggesting that a massive structural change to Missouri's tax code would create an engine for economic growth. The primary proposal is to eliminate state taxes on income and businesses and replace them with a retail sales "fair tax."

Proposed Fair Tax amendments saw some movement this session but did not pass. SJR 29 (sponsored by Sen. Chuck Purgason), SJR 37 (sponsored by Sen. Luann Ridgeway) and HJR 56 (sponsored by Rep. Ed Emery), if passed and approved by Missouri voters, would have eliminated the state individual and corporate income taxes and instated in their place a statewide sales and use tax of between 5 and 7 percent on retail sales of new tangible personal property and taxable services. The proposal was structured to be phased in over a 5-year period beginning July 2013.

Proponents of the Fair Tax point to economic growth, and thus revenue growth, as the primary benefit to reform. Rep. Emery spoke at MAC's spring legislative conference in support of the measure. "We are not adding new sales taxes here. We are moving taxes from income to sales," he stated. "Every state that currently has no income tax is doing better than Missouri. They are doing better than the average of the 50 states." Since the proposal would remove taxes on income and businesses, Rep. Emery believes companies would have incentive to move to Missouri. He pointed out that some economic studies anticipate an increase from a 1.2 percent to a 2 percent economic growth rate across the state if the Fair Tax is enacted.

The tax is intended to be revenue neutral. "This has to be revenue neutral at the county level, city level, and all jurisdictional levels where there is a sales tax applied," Rep. Emery stated.

One of the many significant changes that such a proposal would revise in the Missouri tax code is that it would require sales tax to be collected on services, which are currently not taxed. To keep the Fair Tax revenue neutral, local entities would have to roll back their sales and use tax rates by roughly one-half to account for an approximate doubling of the tax base.

Also, virtually all tax credits and exemptions would be done away with, except for the exemptions on motor fuels (due to excise tax collections) and insurance sales (due to the multi-state retaliatory tax agreement). Component parts or ingredients of new tangible personal property to be sold at retail, federal government purchases, and business-to-business transactions (including agriculture) would also be exempt. Education tuition would be treated as an investment, and thus not be taxed.

"We spend $700 million a year in tax credits," Sen. Purgason said at the legislative conference. He referred to tax credits as "trinkets" used by the state to try to grow the economy, which, he said, hasn't been working. "It's the government picking winners and losers in a free market system." Sen Purgason also stated that under the current tax system, Missouri relies on 60 percent of its income from withholdings. In order to increase revenues and grow Missouri's economy, he stated, we have to grow the job market and bring businesses here.

While business growth would be beneficial to counties, many are concerned that the increased sales tax may push consumers across the border and to Internet retailers to purchase goods and services. Platte County Presiding Commissioner Betty Knight finds reason for concern. "The competition from Kansas businesses that would be charging less sales tax would hurt our economy," Knight said. "Our shopping centers, such as Zona Rosa, Tiffany Springs and Shops at Boardwalk, would see their customers shopping at the Legends in Wyandotte County, KS. It is a short drive for people to save on sales taxes." Currently, Missouri's sales tax rate is 1.5 percent lower than Kansas' rate. Once fully implemented, this session's proposed tax reform measure would have raised Missouri's sales tax to approximately 1.5 percent higher than Kansas' rate.

There are a total of 46 border counties in Missouri. Knight cautions that a Fair Tax amendment similar to those proposed this session would hurt businesses and the economy of border communities. "Missouri has eight states that border it," Knight stated. "Why would we want to hurt businesses in Missouri by having them charge more sales taxes than the bordering states? It makes absolutely no sense."

Many also see it as further incentive for Missourians to look to the Internet, since many online retailers are not required to collect sales tax. During a question-and-answer session with Rep. Emery, Ken Lauhoff, Livingston County associate commissioner and small business owner, voiced his concern. "It used to be that your competitor in town or your competitor down the road was your worst competition," he stated. "Now your worst competition is the Internet." Rep. Emery pointed out that he and others supported a measure this year known as the Streamlined Sales and Use Tax Agreement, which is a voluntary agreement between many online retailers and complying states to streamline sales taxation in an effort to simplify and thus increase collections by online retailers. SB 905 (sponsored by Sen. Joan Bray) and HB 2302 (sponsored by Rep. Mike Sutherland) were this session's Streamlined Sales and Use Tax proposals; neither measure passed.

Even though a Fair Tax amendment did not pass the Missouri General Assembly this session, there is still a strong push from proponent groups to add the measure to a future ballot via initiative petition.

Proponents believe that sweeping statewide tax reform is the best way to fuel economic growth. Rep. Emery pointed out, "The state is not funded with taxes; it is funded with prosperity." However, others warn that such drastic, sweeping change may have numerous (possibly negative) unintended consequences that would significantly impact both businesses and political subdivisions alike.

Must Counties Use The State Rate?

State Mileage Rate Down To 37 Cents Per Mile

At press time, the state mileage allowance has been decreased to 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 the severe budget problems in the state of Missouri, the mileage rate has decreased by 10 cents since January. OA reports that the 37-cent per mile figure is extended until June 30. 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 government 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 begin using the new 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. For calendar year 2010, that amount has also been reduced from 55 cents to 50 cents.

In addition, Chap. 50.333.10, *RSMo*, states that officeholders and employees shall be paid at the highest rate allotted to any officer. Thus, in counties where sheriffs use their own vehicles for work purposes, county officials are entitled to the IRS rate of 50 cents.

SB 711 "Fix" Eases Unfunded Mandate Concerns

In 2008, Sen. Michael Gibbons introduced SB 711 to reform property taxation in Missouri. Sen. Gibbons observed that in St. Louis County many taxing jurisdictions were not rolling back their tax levies in reassessment years, resulting in what many considered a "back door" tax increase by these jurisdictions due to higher property valuations.

However, an additional SB 711 provision is of particular concern to county officials. Along with mandatory tax rate rollbacks in reassessment years, the bill requires that assessors in charter counties provide taxpayers with a projected tax liability notice which must accompany a notice of increased assessed value; the same provision is scheduled to go into effect Jan. 1, 2011, for all other counties. This requirement moves up the timetable for assessment procedures, and requires additional duties be carried out by the collectors and clerks as well, without providing for any additional funding or resources.

SB 588, sponsored by Sen. Gary Nodler, addresses these unfunded mandates. The bill extends the effective date for projected tax liability notice requirements for assessors in non-charter counties and Jefferson County to Jan. 1 following the year county assessors receive software from the State Tax Commission necessary to provide such notices. The software provision ensures that counties can calculate such projected liability notices efficiently and correctly per the law's guidelines.

Reps. Mike Parson and Bill Deeken were also instrumental in the passage of the SB 711 fix.

The bill, as originally introduced, would have removed the projected liability notices altogether. However, the language was modified to include the software provision instead. Cooper County Clerk Darryl Kempf, who testified in favor of SB 588, was pleased overall with its passage. "We compliment Sen. Nodler and supporters in the General Assembly for passing this legislation, which removes the workload and mandates on counties that were not feasible under SB 711," Kempf stated. "While we would have liked to have seen the original version of the bill be passed which would have removed the mandates altogether, the final version still protects counties from unfunded burdens on their resources."

Along with the software provision, SB 588 adds that assessors must attach additional information to notices of increased assessed value. The notices are required to include the previous assessed value and any increase, and provide a statement indicating that the change in assessed valued may impact the record owner's tax liability. Assessors must also provide processes and deadlines for appealing determinations of the assessed value. Counties already provide impact notices, however this "spells out" more directly the potential tax increase to taxpayers.

Regarding a fix to SB 711's tax liability notice requirements, many county officials are pleased with the outcome. Kempf stated, "This is a solution to the anticipated mandate, and, without the software, we are not likely to see the projected liability notice requirements implemented anytime soon."

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Commissioners Take "Major Hit" On County Budget Law

Sec. 50.622, *RSMo*, states that "any county may amend the annual budget during any fiscal year in which the county receives additional funds, and such amount or source, including but not limited to, federal or state grants or private donations, could not be estimated when the budget was adopted. The county shall follow the same procedures as required in Sections 50.525 to 50.745 for adoption of the annual budget to amend its budget during a fiscal year."

Receiving "additional funds" translates into receiving increases in revenue. But what about the lack of anticipated funds – decreases in revenue – that could not have been estimated when the annual county budget was adopted?

May a county amend its annual budget during revenue shortfalls? The answer is, "No."

However, the state, cities, schools and virtually every other political subdivision have the authority to do so.

The illogical practice was even upheld in the 45th Judicial Circuit Court in 2009 – Michael Krigbaum v. County Commission of Lincoln County, Missouri, Case No. 09L6-CC00062. David C. Mobley, Ralls County judge from the 10th Judicial Circuit was assigned by the Missouri Supreme Court to hear the case.

The judge's conclusion: "The Court finds the plain reading of the State Statute only allows amendment of an annual budget if the County receives additional funds.

"While this interpretation may not seem logical, it is not the Court's duty or prerogative to second-guess or question the wisdom of legislation approved and adopted by the State Legislature."

At issue was Lincoln County Sheriff Michael Krigbaum's annual budgeted amount of $5.5 million for the calendar year 2009. In April of last year, the Lincoln County Commission delivered a letter to the sheriff's office stating no more than $325,000 per month could be provided for his department's expenses. The letter further stated that the amount may, in the future, be subject to being increased or decreased, dependent upon the course of the county's economy. Effective July 1, the commission amended its 2009 fiscal budget and decreased Sheriff Krigbaum's budget by $1.3 million.

The bottom line is that the sheriff won and the commission lost.

Since last November, Terry W. Nichols, Iron County presiding commissioner and 2010 president of the County Commissioners Association of Missouri, has been working with presidents of MAC's 10 other affiliate associations to reach common ground on the issue – that any county may amend its annual budget during a fiscal year to reflect changes in revenues (both increases and decreases) that were not estimated nor anticipated when the original budget was adopted.

County commissioners strongly believe that they should have the necessary powers needed to perform the jobs for which they are held responsible by the general public.

Consensus was being reached and progress was being made with both affiliates and legislators alike on the issue of amending the County Budgeting Act.

Strong legislative supporters were Sens. Kevin Engler, John Griesheimer and Scott Rupp, as well as Reps. Jason Brown, Steve Hobbs, Chris Molendorp, Brian Stevenson and Steven Tilley.

Throughout the session, language was drafted, amended, and submitted on stand-alone measures and on omnibus bills.

Then the concept of territorial protection crept into the picture. The Missouri Sheriffs' Association strongly opposed the bill citing the commissioners' desire to place a budgetary stranglehold on individual officeholders.

A last-ditch attempt to amend the County Budget Law failed in the final hours of the 2010 session of the Missouri General Assembly.

In a joint letter to Gov. Nixon, Senate Pro Tem Charlie Shields, House Speaker Ron Richard, and Commissioner Nichols asked for the leaderships' help in passing the County Budget Law – particularly since the state-paid per diem for housing state prisoners in county jails has been reduced, effective July 1, 2010, from $22 to $19.58.

(Continued On Page 19)

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MAC's 2010 Legislative Conference Highlights














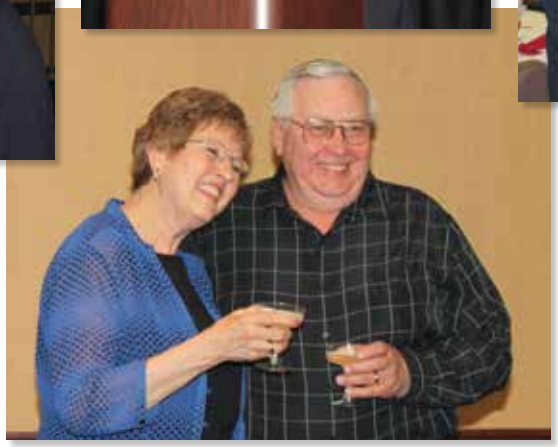


MAC Workers' Comp Trust Rewards Good Performers

There are currently 101 entities enrolled in MAC's Self-Insured Workers' Compensation Trust.

In April at the association's Legislative Conference, 79 of those entities received recognition for substantial performance-driven credits on their 2010 premiums that totaled nearly $1.4 million.

Performance-Driven Credits

"As I prepare for my visits to our members, I am amazed at the discounts received in the 2010 policy year. Premiums in some of the larger entities, for example, dropped considerably," said MAC's Loss Prevention Coordinator Bob Holthaus. "This is due to both improved loss performance and our revised pricing."

Holthaus explained that in past years, all trust members received what, in essence, amounted to annual dividends that were applied toward the next year's premiums.

Last year (2009), however, he explained that the trust's board of directors decided to reward good performance – performance that reflected low loss ratios. The number of claim dollars divided by the gross premium paid equals a county's loss ratio.

Don Troutman, Texas County clerk and the trust's chairman, said the board's decision to revise pricing to reward good performers meant some counties realized between 20-25 percent discounts on their 2010 premiums. Jefferson County, for instance, received a 2010 credit of $186,478. Franklin County received $102,626 and Buchanan County got $75,009. In the last situation, for example, this means that Buchanan County got a discount of 25 percent knocked off their 2010 premium.

Other board members who are very pleased with the switch to the incentive-based, performance-driven method of rewarding good performers and placing a surcharge on poor performers include Eva Danner, Livingston County presiding commissioner and vice chair; Carol Green, Phelps County treasurer and 2nd vice chair; Gary Mallory, Cass County presiding commissioner; and Mark Abel, Jefferson County treasurer.

"Overall, a whopping 41 percent reduction in premium could be realized. I don't know of any other insurance product that is more incentive-based," explained Holthaus. "You can go accident free for many years on homeowner's or auto insurance, and I'll almost guarantee you'll never see discounts in the 41 percent range."

Also at the Legislative Conference, a number of the trust members received safety award and/or "no claim" award checks resulting in an additional $124,405 that was distributed.

Safety Awards

Fifty-one members took home safety award checks. For the first year, counties who are willing to maintain an effective loss prevention or safety program receive a 2 percent dividend on the next year's premium. Continuing a successful program for a second and third year means an additional 2 percent for each year – up to a total of 6 percent.

The top receivers were Lincoln and Crawford Counties who took home checks of $13,762 and $10,104, respectively.

To qualify for the Certified Safety Program, counties must undertake the following:

(1) Be a current member of the MAC Workers' Comp Trust with one full year of membership.

(2) Fully commit to changes in regard to safety.

(3) Implement and follow requirements of a safety program.

(4) Maintain a frequency rate (number of claims) that is 30 percent better than the pool at large.

(5) Maintain a severity rate (cost of claims) that is 50 percent less than the county's total yearly premium.

"No-Claims" Awards

Thirteen entities took home "no claims" awards. Any fund member that has successfully had three consecutive years of no claims is eligible for the "no claims" award. Successful counties receive checks amounting to 10 percent of their annual premium. If they keep up the pattern and have no claims for the fourth year, it stays at 10 percent until the string is broken.

What Does The Trust Want In Return?

"As I've traveled to visit trust members I've received many thank yous from county officials across the state for the 'Christmas gift' MAC provided them in the form of reduced premiums. Gifts sometimes come with a price-tag, and sometimes there's a payback involved," said Holthaus.

"What do we want from you in return? We're asking for something that can cost very little or nothing. It may only take some time, organization, and leadership. We're asking for you to lend more attention and add positive improvement to your safety awareness and safety programs. This is a win/win situation for you and your employees, but most of all for your employees. Better safety performance will cause less sadness, suffering and hardship, and make you more popular leaders."

He said we all have limited amounts of time, so we want to spend it in the places that it can get the most gain.

Looking back at some of the trust's past claims can lend valuable insight as to where counties should spend their time and effort in a program to prevent future accidents.

"I'm convinced that a strongly enforced rule could have had the potential to have prevented a death and a severe brain injury and nearly $5.3 million dollars of losses to the trust and its re-insurance provider – for just one claim!

"That rule is to have written requirements that all of your employees wear seat belts while driving vehicles on county business, make sure they are aware that it is Missouri law, enforce it with a good disciplinary policy, and keep good written records of enforcement."

Holthaus continued with other suggestions for loss prevention.

"Do every thing that you can in your policies and powers to cause county employees to pay attention to their driving and not drive distracted." According to the National Safety Council, 80 percent of crashes are related to a driver's not paying attention to his driving. Studies show that driving while talking on a cell phone is extremely dangerous and puts drivers at a four-time greater risk of a crash. Among member businesses that responded to the National Safety Council survey, 45 percent cited policies prohibiting on-road cell phone use. Holthaus said text messaging is the next thing to tackle.

"Good written job descriptions with the maximum physical exertion requirements and the do's and don'ts of the job listed are great tools for screening potential job applicants, sharing with medical personnel in the event of a job-related injury, and exercising discipline in the event of an employee's not following the requirements of the job," he added.

"The good news about safety is that most accidents are up to 97-98 percent preventable, and you're in a position to 'make it happen!' "

County Budget Law

(Continued From Page 14)

Nichols noted in his letter that "the proposed decrease in prisoner per diem passed by the General Assembly is a good example of revenue reductions beyond our control. We anticipated the revenue of $22 per day when setting our budgets, but we are unable to adjust the expenditures downward until the next calendar year. These reductions will affect every office in county government during the budget cycles of the future."

Commissioners are now left with no authority to amend their annual budgets in times of revenue declines, and questions and ideas abound.

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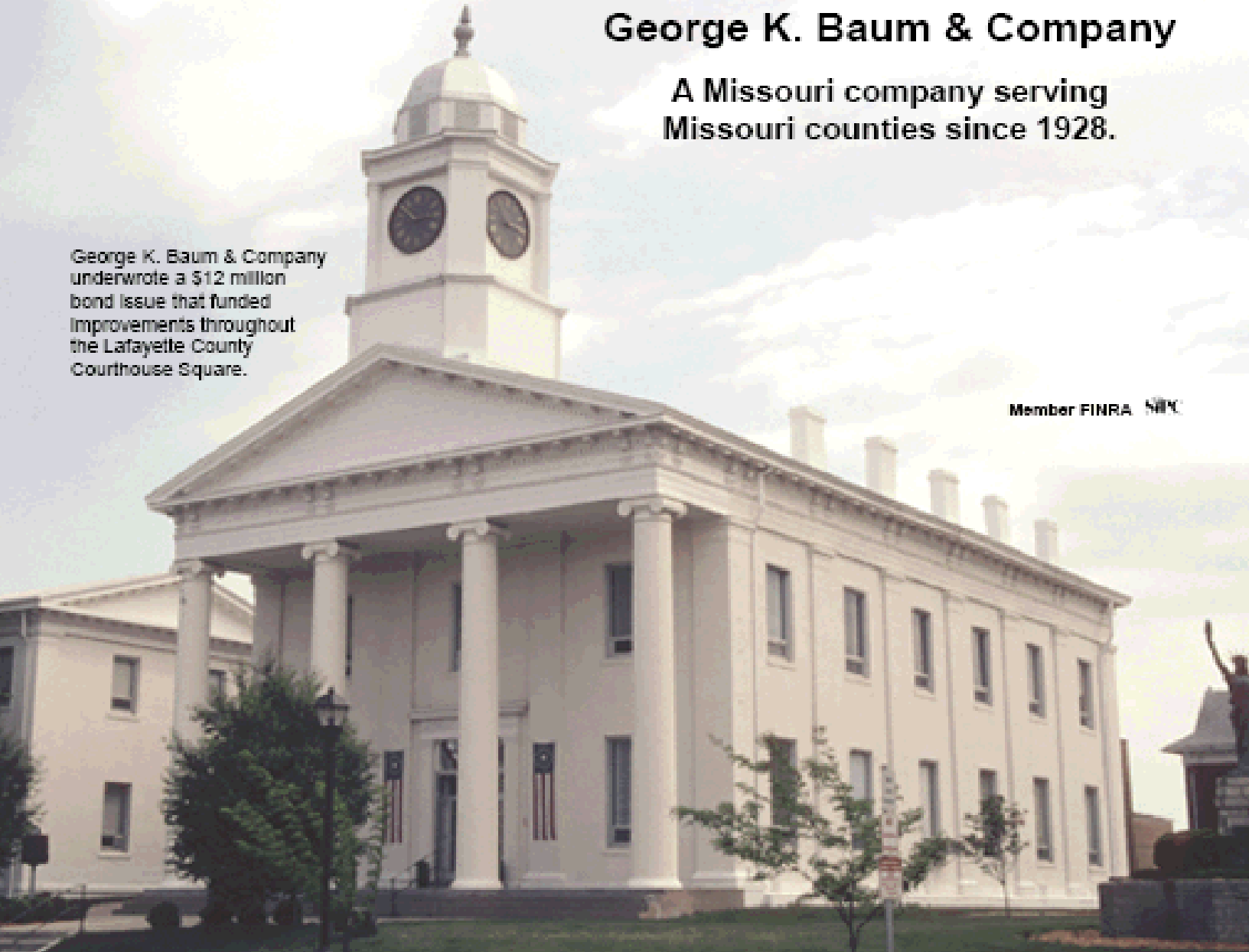

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Pre-Tax Sale Notice: The Newest Requirement For County Collectors

By Betsy Blake[1]

On Dec. 8, 2009, the Missouri Court of Appeals (Eastern District) handed down a decision (*Investment Corporation of the Virginias, Inc., v. Acquaviva*, 302 S.W.3d 195 (Mo. App. E.D. 2009)), which held that county collectors must give pre-tax sale notice that complies with due process. This decision requires not only that county collectors send pre-tax sale notice to owner(s) and interest-holder(s), but it also requires collectors to take reasonable follow-up measure to provide such notice if the original notice is returned. *Acquaviva* gives new ammunition to taxpayers who are seeking to invalidate collectors' deeds (and potentially recover their attorney's fees from the county).

On May 13, 2010, the Missouri General Assembly passed HB 1316, which adopted several amendments to Chapter 140, *RSMo*, all of which will not take effect until Aug. 28, 2010 (about five days after the 2010 tax lien sale).[2] One of HB 1316's amendments included an addition to Section 140.150, *RSMo,* to require that collectors provide certain pre-tax sale notice before they publish notice of the tax sale. However, the requirements of HB 1316 may not always satisfy the collector's duty to provide pre-tax sale notice that satisfies due process. This article will (1) give an overview of the *Acquaviva* case, (2) outline the pre-tax sale notice requirements of HB 1316, (3) propose language for pre-tax sale notice, and (4) suggest ways that collectors can satisfy Section 140.150, *RSMo,* and due process.

Overview Of *Acquaviva*

Acquaviva concerned a tax sale of three parcels of land (which altogether totaled nearly 100 acres) in Washington County. The county collector sent pre-tax sale notice to the properties' owners, notifying them that their taxes were delinquent and that the properties would be sold at the 2006 tax sale if they remained unpaid. These notices were retuned to the collector marked "undelivered." The only other notice that the collector provided was published notice prior to the tax sale.

The properties were sold at the 2006 tax lien sale to Mr. Acquaviva who later obtained collector's deeds to the properties. The former owners then sued Mr. Acquaviva and the Washington County collector, asking the court to void the collector's deeds because, they claimed, they never received notice of the tax sale.

The Court of Appeals (siding with the former owners) held that the county collector was required to give the owners constitutionally adequate *pre-tax sale* notice. The Court remanded the case to the trial court to determine whether there were reasonable follow-up steps available to the collector to provide such notice after his original pre-tax sale notices were returned "undelivered."

The *Acquaviva* decision essentially requires collectors to comply with the principles articulated in *Jones v. Flowers* (547 U.S. 220 (2006)) and *Schlereth v. Hardy* (280 S.W.3d 47 (Mo. banc 2009)). Many believed that *Flowers* and *Schlereth* applied only to unclaimed redemption notices, sent in accordance with Section 140.405, *RSMo*. However, *Acquaviva* interpreted those cases to mean that due process must be satisfied twice: once prior to the tax sale and then again, prior to the end of the redemption period.

Thus, to satisfy due process, the pre-tax sale notice should be mailed to the owner/interest-holder's last known available address. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983) and *Lohr v. Cobur Corp.*, 654 S.W.2d 833 (Mo. banc 1983). If the collector learns that the recipient did not receive the notice (e.g., the notice is returned "unclaimed" or "undeliverable"), the collector must take, "additional reasonable steps to attempt to provide notice…, if it is practicable to do so." *See Flowers* at 547 U.S. at 225 and *Schlereth* at 280 S.W.3d at 50. "What steps are reasonable in response to new information depends upon what the new information reveals." *Flowers*, 547 U.S. at 234. Some reasonable follow-up measures based on the facts of those two cases included, sending the notice via regular mail, addressing it to "or occupant," posting notice on the property, or personal service (e.g., via a private process server).

HB 1316

On May 13, 2010, the General Assembly passed HB 1316, which makes several amendments to Chapter 140, *RSMo*, including amending Section 140.150, *RSMo,* to require that collectors send pre-tax sale notice to the property's record owner(s). This amendment will not take effect until Aug. 28, 2010 (after the 2010 tax lien sale), and, therefore, collectors will not have to comply with its pre-tax sale notice requirement until 2011.

Section 140.150's amendments require collectors to send notice of the tax sale to the owner(s) of public record via first-class mail prior to publishing notice of such sale. If the property's assessed value is greater than $1,000, the collector must also send such notice via certified mail, return receipt requested. If the certified mail is returned unsigned, the collector must send a third notice via first-class mail addressed to both the record owner and "or occupant." The amendment also allows the collector to recover the cost

of such notice as a cost of the tax sale.

Compliance with Section 140.150's amendments are mandatory (starting in 2011), but such compliance will not necessarily satisfy due process in accordance with the *Acquaviva* decision. For example, Section 140.150's amendments only require notice to the record owner(s). However, courts have held that other interest-holders of record (e.g., the holders of deeds of trust) are entitled to notice that satisfies due process. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983) and *Lohr v. Cobur Corp.*, 654 S.W.2d 833 (Mo. banc 1983). What is more, the amendments do not address what follow-up steps should be taken when all of the pre-tax sale notices are returned "undeliverable," nor do they address what the content of the pre-tax sale notice should include.

Pre-Tax Sale Notice – Content

Neither HB 1316 nor the *Acquaviva* case outlines what information the pre-tax sale notice should include. The Eastern District simply stated that the notice must "apprise [interested parties] of the pendency of the action." *Acquaviva* at 200 (*quoting Schwartz v. Dey*, 665 S.W.2d 933 (Mo. banc 1984)). Although this statement seems to require simply notice of the tax sale, it is prudent for collectors to include additional information such as the owner's name(s), the property's common street address, the property's legal description, a statement that the taxes are delinquent and subject to the tax sale if not paid before the tax sale, the date, time and location of the tax sale, the current amount owed (inclusive of interest, penalties, and costs), and a statement instructing the interest-holder to contact the collector for further instructions on avoiding the tax sale.

Satisfying Section 140.150 *And* Due Process

As discussed above, to satisfy due process, collectors must send pre-tax sale notice to the owner(s) and all interest-holders of record (e.g., deed of trust holders, holders of recorded judgment liens, etc.). Collectors will want to request an ownership and encumbrance report (which lists the lienholders' names and addresses) prior to providing such pre-tax sale notice.

As Section 140.150's amendments require, pre-tax sale notice should be sent by both certified mail and regular mail.[3] If the certified mail notice is returned signed, this is generally sufficient to satisfy due process. If the certified mail is not claimed but the regular mail is not returned, the presumption is that the recipient received the mail.[4] However, this presumption can be rebutted. If both mailings are returned, the collector should consider personally serving the recipient (either via a private process server or the sheriff). The collector may want to also post notice of the tax sale on the subject property prior to the sale.[5]

Conclusion

Collectors should pay heed to the *Acquaviva* decision to avoid issuing invalid collectors' deeds (and the costly litigation that often ensues). What is more, the former property owner's attorney may seek (and be awarded) attorney's fees from the county for the cost of the action. Although such fees are not allowed under Chapter 140, *RSMo*, they may be awarded under various other theories (such as collateral litigation, equitable principles, or pursuant to a lawful Section 1983 claim, whereby the former property owner claims the collector violated its due process rights and, therefore, wrongfully deprived it of property).

(Endnotes)

[1] **Ms. Blake is an attorney with the firm of Williams & Campo, P.C., located in Lee's Summit Missouri. Ms. Blake received a B.A. (English) from the University of Kansas in 2002 and her J.D. from the University of Kansas Law School in 2005.**

[2] See www.house.mo.gov/content.aspx?info=/bills101/bills/HB1316.htm for more information on HB 1316.

[3] The collector may want to request that the regular mailed notice also have Delivery Confirmation, which will indicate when and where the mail was delivered. More information about Delivery Confirmation is available at usps.com/shipping/deliveryconfirm.htm.

[4] This presumption may be bolstered if there is proof of delivery via Delivery Confirmation (noted in the footnote above).

[5] Collectors may want to attempt personal service before resorting to posting notice. This is because (1) there is no guidance from the State of when posting notice in constitutionally sufficient and (2) the Missouri Supreme Court has given a strong endorsement to personal service stating that "the gold standard of notice is service of process by the sheriff or other process server, as provided for in civil actions by Rule 54.01." *Schlereth*, 280 S.W.3d at footnote 4. If the collector chooses to use personal service, he should request an affidavit from the server describing the details of the service.

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New Law Changes County Organizational Scheme

HB 1806, which carried an emergency clause and was signed by Gov. Nixon on May 25, increases the assessed valuation thresholds for a county to move into a higher classification.

Supporters of the legislation say bumping up in class usually requires additional costs and potential losses of revenue.

HB 1806 particularly helps three counties who were scheduled to change classification in 2011 and, in essence, accommodates their desires to change class or remain where they are.

As a result, Butler and Newton Counties will not move to a higher class in 2011 as previously scheduled. However, Christian County is still expected to move to Class 1 next year. Also, New Madrid County will revert to 3rd-class from 2nd-class after being in a five-year holding pattern. The new law did not affect them as they would have changed class regardless in 2011.

Another eight counties were scheduled to change class in 2013.

It should be known that Sec. 48.030.1, *RSMo,* states that " … no county shall move from a lower class to a higher class or from a higher class to a lower class until the assessed valuation of the county is such as to place it in [a holding pattern for] the other class for five successive years."

Sec. 48.030.3, *RSMo*, allows a county to become a 1st-class county at any time after the assessed valuation of the county is such as to be a 1st-class county and the governing body of the county elects to change classification without waiting for five successive years.

Also, according to the *1945 Missouri Constitution*, there must be four classes of counties, with 1st being the largest and having the highest assessed valuations. While it is difficult to understand, 3rd are the smallest in assessed valuation. The four 4th-class counties (Johnson, Lafayette, Pettis and Saline) are actually large counties, but due to a change in the law passed in 1988, they were thrown into 4th-class. It was a "transition receptacle," a special case deviance, because they were too large to go back to Class 3, yet too small to move up to Class 2. Therefore, the 4th-classification was created, thereby allowing them to operate under 2nd classification law indefinitely, unless that statute would ever change. For this reason, Johnson, Lafayette, Pettis and Saline Counties are not impacted by HB 1806.

New County Classification Levels

In HB 1806 the minimum assessed valuation threshold for 1st-class counties is increased from $600 million to $900 million.

The minimum assessed valuation threshold for 2nd-class counties is increased from $450 million to $600 million.

All counties with an assessed valuation of less than $600 million will be 3rd-class counties.

The new law specifies further that counties of the 2nd classification, which on Aug. 28, 2010, have had an assessed valuation of at least $600 million for at least one year may, by resolution of the governing body, instead choose to be a 1st-class county after it has maintained that valuation for the period of time required under Sec. 48.030, *RSMo*. Currently, this applies only to the counties of Christian, Lincoln, Newton, and St. Francois.

The required assessed valuation for each classification shall be increased annually by an amount equal to any percentage change in the annual average of the Consumer Price Index for all urban consumers or zero, whichever is greater. The State Tax Commission shall calculate and publish this amount so that it is available to all counties.

Taking The Lead: What County Leaders Need To Know Now For An Effective County Sewer Plan

By Alliance Water Resources

This is the optimal time for Missouri county officials to take the lead in bringing an organized, efficient and fiscally responsible sewer solution to their home counties. This two-part article will provide basic information to serve as a jumping-off point to help commissioners, sewer board representatives, and other county leaders take stock in their own local sewer situation.

The following article is part one of two.

It's hard to miss the headlines lately: "on-site" wastewater treatment systems (serving a single household, i.e. septic tanks) and small "package plant" sewer treatment systems are failing, and these failures are causing harsh consequences for folks in rural Missouri. Homeowners and small system owners – usually a homeowners' association (HOA) that has adopted its treatment system after the builder moves on – are beginning to recognize that the true costs associated with turning a blind eye to what happens after waste leaves their homes is much higher than they thought.

"These Systems Have Been In Place For So Long, Why Should I Be Concerned?"

> "My proposal represents an important step forward in improving water quality at the Lake of the Ozarks and other waterways because the status quo simply is not good enough," Gov. Nixon said. "This legislation is about giving us tools to limit the pollutants and waste that flow into our waters so they have the time they need to cleanse and renew themselves naturally…"
>
> Office of Missouri Governor Jay Nixon. *Legislative proposal would provide enhanced authority to stop new pollution from flowing when water quality is distressed.* 29 Dec. 2009. Web.

The latest headlines are about one area of the state, but the message could apply anywhere in Missouri – water quality is essential to public health, and a priority to protect.

It's too easy for county officials to assume that a similar story won't be repeated in their county. But even if no one is complaining today, the issue of unkempt sewage is literally percolating under the surface in many areas of the State.

"But No One's Complaining In My County…"

"Out of sight, out of mind" seems to be the biggest reason that systems are failing. County leaders have so many obligations; it's difficult to turn attention to something like a county-wide sewer plan if constituents are not focused on the issue. But waiting to form a plan means that when the issue comes into view, county leaders may be caught unprepared and face pressure to react quickly at a time when careful planning is too important to neglect.

Homeowners with septic systems sometimes don't understand their obligation and responsibility to upkeep and maintain their systems, or not realizing the damage they may be causing to the environment, purposefully put off needed maintenance in order to save money. But replacing a septic that is too far gone can cost several thousand dollars, leaving those same homeowners deeper in debt or unable to sell their homes.

No one really knows just how bad the septic problem is. Keeping track of these on-site treatment systems simply wasn't a priority until relatively recent history. According to its website, the Missouri Department of Health and Senior Services (DHSS) estimates that 25 percent of households throughout the State use an on-site system. That's one out of every four households in Missouri.

The state has only had standards in place since 1996, and currently sets just minimal requirements for the installation of these systems (counties can set more stringent standards). Add to that the fact that certain properties – usually those over three acres – are not obligated under the restrictions, and that officials only investigate on-site sewage in the instance of a complaint. Gathering anecdotal evidence is the only way to grasp the true number of on-site systems.

In the case of small "package plant" systems (regulated through Missouri Department of Natural Resources, or DNR), builders looking out for their own bottom line will often choose systems that meet only minimum requirements. When construction is complete, the system is handed over to the HOA that is then obligated to sustain daily or weekly operations and maintenance, comply with permit requirements, and keep up with new governmental regulations. Some HOA's are savvy enough to keep up with requirements themselves or hire professional contract operations, but many miss their obligations because they don't register the importance of upkeep or understand the requirements.

When a problem does arise, it's frequently a group of citizens fed up with their own sewer situation who take the first step toward establishing a sewer district. While county leaders may commend these groups for their efforts, officials should also consider the possible future consequences: several disconnected, non-communicating sewer districts dotting the county, with pockets of on-site treatment scattered in between.

"Why Should I Take The Lead On A County-Wide Plan?"

Even a small sewer district organized by citizens is likely to be better than taking a chance on on-site treatment systems or package plants with uninvolved owners. But county leaders have the power to make a real impact on the future of their county by taking the lead in establishing a county-wide sewer plan.

There are many options to consider, and county leaders who take their time to bring together a plan that keeps the whole county in mind can shape a county-wide plan and form a sewer district that is highly successful. In fact, "regionalization" is a favored route among state and federal officials because managing wastewater operations on a regional basis is more efficient with energy and supplies, easier to maintain, and tends to be the most cost effective option.

"How Do I Figure Out The Status In My Own County?"

Every county situation is different. There's no direct A-Z plan to follow, but it's important to take a look around to assess not only the current sewer set-up within the county, but also the perspective of experts and officials who can help organize a county-wide solution.

State organizations are a great first stop to gather basic statistics such as number and type of wastewater permits in the county (DNR), and the number of permits issued since 1996 for on-site systems, including septic systems (DHHS). Local boards of health are a resource for counties with more stringent on-site permitting requirements. Pinning down the true number of package plants and on-site systems vs. sewer districts already active in the county can be essential information when it comes to citizen education down the road.

Getting a feel for the number and condition of sewer setups that exist outside of county requirements (and are therefore older or undocumented) is an easier task. Working

the subject into informal conversation with just about anyone in the county is a great way to gather information; sharing this article is a sure means to get other folks talking about the condition of local sewer systems. Beyond the basic coffee house conversations, county leaders should be sure to visit with rural and municipal business leaders, city officials, rural water boards, and any existing sewer boards within the county.

"Who Can I Count On For Help?"

Taking on a county-wide sewer plan is a big project. As with almost any large project, it's best to break the process down into smaller parts and set thoughtful objectives along the way. One way for county officials to accomplish this and gain control of the process from the beginning is to carefully select a steering committee for the project. This core group can work together to come to some consensus about what needs to be done, drive the process and direction, and keep the project moving.

Steering committee members can establish a preliminary plan before presenting to a larger group of stakeholders – those who will be affected and asked to support the plan. County leaders will want to lead the steering group through multiple considerations such as preliminary cost factors, location considerations, treatment options, build vs. maintenance costs of various treatment systems, and upcoming regulations that can effect treatment down the road. A sample steering committee could include county commissioners, the county's engineer, and a professional wastewater operations firm.

Once the core plan is in place, it's a good idea to rally a team of stakeholders who will be instrumental in supporting a successful county-wide plan. This group could include: local city officials, a financial advisor, a consulting engineer and attorney, bond counsel and state regulatory officials.

"There's So Much To Think About, Where Do I Begin?"

With a general understanding of the issues in place, officials can decide to take the first step: examining the exact conditions that exist within their own county borders. But it's important to understand that no one action is an express ticket to a county-wide sewer hook-up. "There are as many solutions as there are situations," notes Jeremy Lay, P.E. for the architectural, engineering and consulting firm HDR.

Lay stresses that a properly designed scope of services is key to crafting an engineering report (a required step in establishing a sewer district) that can serve double-duty as a tool to bring stakeholders together and head off common protests. Lay advises that an initial report to evaluate the feasibility of a county-wide system – in addition to standard engineering report elements – can also explore:

- A ballpark feel for economic impact and benefits within the affected area
- Money that municipalities can save by participating on various levels with the county-wide effort
- Savings that currently separated systems can realize even without an official county sewer system (One example is sharing expensive de-watering equipment that dries out sludge – a sewer treatment plant by-product. Transportation and application costs can be significantly reduced because the dried sludge weighs just a fraction of the original by-product.)
- General pros and cons of regionalization for the affected area
- Other areas that are of special concern to stakeholders

The process of establishing a county-wide sewer district, or even simply regionalizing current efforts, is a long one. Because stakeholders vary and so many options exist, county leaders can expect a timeline that runs from many months to several years before a final plan is put in place.

For information on funding and other realities of maintaining a county-wide system, please look for part two of this article in the fall edition of the Missouri County Record.

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Term Limits Mean New Legislative Players

Missouri is one of only 15 states that currently has term limits for legislators. In six states, term limits have been repealed by the Legislatures or court action. In 1992, Missouri voters approved by a margin of 75 percent an amendment to the state's Constitution limiting the years a legislator may serve in the General Assembly. Both House and Senate members may serve a maximum of eight years in each chamber. In the November 2010 election, 10 senators and 52 representatives are ineligible to run for office again in their respective chambers.

Candidates For 2010 County Elections On MAC's Website

Upon request from the County Clerks' Association, MAC surveyed 113 counties in May in an effort to find out who is running for county office in the 2010 elections and who is bowing out from local government service.

Only St. Charles County was excluded from the survey because it is not a member of the Missouri Association of Counties.

The complete lists of candidates are posted by county on MAC's homepage – www.mocounties.com.

Those up for election in August's primary and November's general election include presiding commissioners, circuit clerks, county clerks/election authorities, recorders of deeds, treasurers, prosecuting attorneys, auditors, and collectors.

In all 22 township counties, the offices of the collector/treasurer are combined. They are on a different election cycle and will not appear on the 2010 ballots.

The same goes for 1st-class county treasurers, who are also on a different election cycle.

It should also be noted that Sec. 59.042, *RSMo,* states that in any county where the offices of the recorder and circuit clerk are combined, the county has the option of having a separate recorder.
Only 1st-, 2nd- and 4th-class counties have auditors. Third-class counties are audited once every four years by the Office of the State Auditor. Those 3rd-class counties who have received $500,000 in federal dollars (like HAVA money) must conduct an interim audit.

At final count, there will be a total of 151 new county government officials in November – 31 presiding commissioners, 20 circuit clerks, 21 county clerks/election authorities, 22 recorders of deeds, 16 treasurers, 28 prosecuting attorneys, 2 auditors, and 11 collectors.

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