

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

Missouri County Record

Summer 2013



Gentry County Courthouse, Albany, MO

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Gentry County

Dennis Weiser

Missouri Courthouses: Building Memories On The Square

The increase in the number of new railroad lines into Missouri during the 1870s had a significant impact on the state's northern tier of counties. Only 40 years earlier, Native Americans hunted buffalo on this land. The railroad lines opened new markets for cattle and grain farmers living in these relatively remote prairie communities, encouraging a new migration of settlers to the region and increasing the wealth of those already on the land.

A spur of the Chicago, Burlington and Quincy Railroad reached Albany in 1879, and a second branch line was built

at a point about two miles west of the town in 1881. These rail connections linked the county seat with major grain and cattle markets in the East, and Gentry County developed into a trading center for farming communities in northwestern Missouri. In 1884, Gentry County built its current courthouse. This attractive building incorporates elements of Second Empire style of architecture, making good use of a design style that was popular for public buildings during the latter half of the nineteenth century.

The courthouse is listed on the National Register of Historic Places.

GENTRY COUNTY



ALBANY, Mo.



The Missouri County Record Vol. 19, No. 2

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.

Overall Session Outcome? It Was A Good Year!

Overall, the 2013 session of the state Legislature was highly successful for Missouri counties. Several priorities passed; most all of our affiliate organizations had something to put in the “win” column; and we helped to “pull the plug” on some very dangerous legislation.

There were no cuts to our state appropriations for FY 2014.

At press time, the Missouri Association of Counties is awaiting the governor’s signature on the acts mentioned below. Gov. Nixon has until July 14 to act on these “Truly Agreed” bills.

GOOD LEGISLATION THAT PASSED

Assessors

One of the most significant things was that funding for assessment maintenance remained at \$3 per parcel, but it will be based on a higher 2011 parcel count. Also of importance to assessors is the repeal of the Dec. 31, 2015, expiration date of their Technology Fund in HB 1035, as well as SB 23.

Clerks

County clerks/election authorities were happy with the passage of SB 99. Currently, when a candidate has originally filed for a recount if he/she was defeated by less than 1 percent of the votes, the recount is allowed. This act changes that requirement to a defeat of less than ½ of 1 percent in order to qualify for a recount. The act further contains partial clean-up language for outdated election laws in Chap. 115.

Conversely, HB 199 failed. It was the main vehicle for Chap. 115 clean-up provisions. County clerks were happy to see it go down because the Senate version changed the August primary to June and the overall measure got loaded up with some unusual amendments – one being that if Passover fell on Election Day, the county clerk/election authority could reschedule the election to any other day of the year

that he/she wanted.

Collectors

County collectors won needed changes in HB 175 and SB 248. The former changes the laws regarding the collection of special assessments and delinquent property taxes. Much of it pertains to special assessments in Neighborhood Improvement Districts (NIDs), as well as Community Improvement Districts (CIDs). Containing similar provisions, the Senate bill modifies provisions relating to property taxes and updates delinquent tax sale laws.

Commissioners

Commissioners finally gained authority in HB 451 and HB 116 to be able to amend the county budget twice during any fiscal year when there is a verifiable decline in funds of at least 2 percent that could not have been estimated nor anticipated when the budget was adopted. Now counties are on somewhat of an equal footing with the state and its cities, which have had the authority all along to amend their budgets in times of revenue declines.

The cost of housing state prisoners in county jails is of huge concern to commissioners and sheriffs. This year, passage of SB 327 offers a bit of relief, in that it provides that a person (a non-violent offender) may be placed on electronic monitoring if the person can afford the costs or the county commission agrees to pay the cost of the monitoring from its general revenue. The average daily cost for counties to house one state prisoner is \$45.00 for providing room, board and medical care. Compare that to an approximate \$7.00 cost per day for electronic monitoring – all at the same time when the state prisoner per diem appropriation is only \$19.58.

Last summer brought excessive and dangerous drought to Missouri. County commissioners had no authority to issue burn-ban orders in their locales. Thanks to passage of HB 28 (literally in the last 10 minutes of the session), commissioners

now have the authority to do so regarding emergency management functions as they relate to a natural or man-made disaster.

County budgets took a tremendous “hit” with last year’s Supreme Court *Street* decision that prohibited collection of local sales tax on motor vehicle and marine purchases made out-of-state. At that time, 39 counties with a “use” tax in place were safe. Those 75 without – particularly border counties – experienced dramatic revenue declines of almost 21 percent of their sales tax distributions. Attempts to change that in the 2012 session were unsuccessful.

Hopefully this year, the “tide has turned.” SB 182 made it through the process early on, but it was vetoed by Gov. Nixon.

Two other attempts, however, in SB 99 and SB 23 passed the General Assembly and currently await the governor’s signature.

The acts eliminate both state and local use taxes on the storage, use or consumption of motor vehicles, trailers, boats, or outboard motors. They specify that a sales tax is to be collected for the titling of such property. The rate of tax associated with titling will be the sum of state sales tax and the local sales tax rate in effect at the address of the owner of the property.

All local taxing jurisdictions that have not previously approved a local “use” tax must put to a vote of the people whether to discontinue collecting sales tax on the titling of motor vehicles purchased from a source other than a licensed Missouri dealer. If a taxing jurisdiction does not hold such a vote before November 2016, the taxing jurisdiction must cease collecting the sales tax. Taxing jurisdictions may at any time hold a vote to repeal the tax. Language repealing the tax must also be put to a vote of the people any time 15 percent of the registered voters in a taxing jurisdiction sign a petition requesting such.

Missouri currently has 56 counties who have passed a "use" tax, and this totally alleviates all of their problems.

Along similar lines, HB 253 establishes the Streamlined Sales and Use Tax Agreement Act which requires the director of the Department of Revenue to enter into the multi-state Streamlined Sales and Use Tax Agreement (SSUTA) to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and types of commerce.

SSUTA was formed to put the pressure on Congress to pass the Marketplace Fairness Act, which will level the playing field for Internet e-tailers who don't tax and hometown merchants who must. If Congress acts, it will then be up to the states to collect sales tax on purchases made out-of-state. Only Missouri counties that have passed a "use" tax will reap the benefits of

increased local revenues.

Prosecutors

County prosecutors won a MAC legislative priority with passage of HB 215. The act establishes a uniform and consistent system of crime victim restitution collection that is centralized with the prosecuting attorneys and that will generate necessary local revenue to counties through the prosecuting attorneys' discretionary funds.

Sheriffs

County sheriffs walked away with significant legislation.

SB 42 modifies provisions relating to county sheriffs and creates procedures and policies for unpaid debts to county jails. It requires any person filing for the office of sheriff to have a valid peace officer license at the time of filing. The act further provides that a sheriff in any county, except charter counties, may employ an attorney to aid and advise him in the discharge of his duties and to represent him

in court. The sheriff shall set the compensation for an attorney hired within the allocation made by the county commission to the sheriff's department for compensation of employees to be paid out of the general revenue fund of the county.

SB 75 was a huge success for sheriffs. Many of its provisions are similar SB 42, but it also modifies provisions relating to firearms, sheriffs, intruder training and gun safety in public schools, source documents for drivers' licenses, knives and concealed carry permits. Every sheriff must maintain, house, and issue concealed carry permits beginning Jan. 1, 2014. An approximate \$2 million in state budget appropriations was earmarked for implementation of the act.

Treasurers

HB 235 was a big "plus" for county treasurers. It changes the law regarding candidate qualifications. It requires a candidate for the office of county treasurer or

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county collector-treasurer to provide the election authority with a signed affidavit from a surety company authorized to do business in Missouri indicating that the candidate meets the minimum \$20,000 bond requirements for the office.

UNFAVORABLE MEASURES THAT WERE ALTERED OR DEFEATED

Although SB 342 passed, a dangerous provision relating to county health ordinance-making authority (and aimed particularly at those

ordinances pertaining to Concentrated Animal Feeding Operations) was removed from the bill. The language that was removed stated that beginning Aug. 28, 2013, in any county where there is both a county commission and a county health center board, both entities were required to be in agreement when passing orders, ordinances, rules or regulations relating to public health and the prevention of infectious, contagious, communicable or dangerous diseases in the county. Each entity had to pass, by recorded majority vote, identical orders, ordinances, rules or regulations. Either entity could have initiated prosecution of violations of such jointly passed orders.

Thwarting passage of SB 122 goes in MAC's "win" column. This bill modified provisions of the state's Open Meetings & Records Law. The definition of a "public record" was modified to include any lease, sublease, or similar rental instrument entered into by a public body, or any other agreement for the rental, construction, or renovation of a facility.

It required the public body to provide notice of meetings to any member of the public who requested it. The act changed the time from 24 hours' notice to 48 hours, with the exception of the General Assembly which was allowed to continue to provide 24 hours' notice. Minutes of meetings were to reflect the closed meeting discussions, but the disclosure of properly closed records was not required.

And finally, the demise of SB 13 was looked upon favorably by the Missouri Association of Counties. The act eliminated solid waste management districts and the Solid Waste Management Advisory Committee. An approximate 10 percent reduction in grant funding was approved in the final state budget. The Senate is expected to study the issue in the interim.



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MAC Board Votes To Sign On As “A Friend Of The Court” In An Amicus Brief

Scotland County Appeals Court Decision On Its Health Ordinance-Making Authority & CAFOs

On Feb. 6, 2013, a judgment was entered in Scotland County Circuit Court which essentially struck down a part of the county's health ordinance on Concentrated Animal Feeding Operations (CAFOs) in the case of *Gavin Hauk v. the Scotland County Commission*.

The case dates all the way back to a petition filed in April 2012 by Mr. Hauk alleging the county's denial of a health permit for a proposed hog operation is “unconstitutional, unreasonable, arbitrary, capricious and constituted an abuse of discretion.”

Hauk wanted to construct a hog finishing operation involving 4,960 head of swine on his property, a 327-acre farm located east of Memphis.

The county commission denied the request for a health permit for Hauk's proposed CAFO based on its proximity to a “populated area.”

In his lawsuit, the rancher said he was initially told by commissioners that his application met the required setbacks, only to have that opinion changed following public opposition to the proposed site.

Two issues dominated the legal battle.

One had to do with the health ordinance's definition of a “populated area,” and the other focused on the fact that the sections of the ordinance had not been enforced uniformly on four previous applications.

Also of interest is the fact that Scotland County originally adopted a health ordinance regulating CAFOs in 2004 and repealed it in 2008. While another one was passed in 2009, there was period from September 2008 to August 2009 when Scotland County had no health ordinance in effect. The provisions of each ordinance likewise came under court scrutiny. Of the 19 CAFOs currently operating in

Scotland County, four are subject to the regulations of the 2009 ordinance and 15 are not. Those 15 are subject only to state health regulations.

Additionally, the court ordered Scotland County to pay Hauk \$178,566 in damages based on lost income from the CAFO, as well as rising costs for constructing his facility, which would have been built in the winter of 2011. Hauk also incurred costs for fertilizer, which

he would have been able to replace with manure produced by his hog confinement.

Following Presiding Commissioner Chipper Harris' appeal for assistance, the MAC board of directors voted during its April meeting to sign on as “a friend of the court.”

The case was filed in the Eastern District Court of Appeals in mid-June and, hopefully, the lower court decision will be overturned.



MAC Trust, a self-insurance program, began in 1987 when MAC formed its Workers' Compensation Fund. The Trust was created to provide a service tailor-made for the needs of counties that would save millions of dollars in premiums, compared to the cost for similar workers' comp coverage on the commercial market.

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With this philanthropic effort in mind, local government officials in Columbia recently offered their facilities (the Roger B. Wilson Boone County Government Center, along with the Daniel Boone City Building) to serve as host sites for Cansculptures' April 27 event. County employees were proud to work alongside and watch the realistic "Food Pyramid" (not pictured) and the 8-foot tall "Dewey the Bookworm" take shape. It was Dewey's objective to "Close the Book on Hunger." The structure won the Jurors Favorite Award in the mid-Missouri competition.

This year's theme was "Brain Food," meaning that the structures were modeled to represent education, learning or wisdom. The top local winner goes on to compete internationally through submission of slide photography to an international panel of jurors that convenes in the spring of each year.

Dewey was designed and built by a team from Peckham & Wright Architects in Columbia. They were

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one of five teams of mid-Missouri architects, engineers, designers, and contractors who built structures and competed in this international design/build competition.

Arrangements were made with the three Hy-Vee grocery stores in Columbia for the Canstruction teams to purchase their canned goods in bulk at wholesale prices.

Kim Trabue of PWAarchitects spoke of this competition as “a good deed on steroids.” She said, “If you do business within the local community and the business gives back to the community, it shows the firm cares about the people in our area.” She said many of the professional A/E/C companies practice a corporate social responsibility that gives back to the communities they help build.

This year, PWAarchitects took part in its 15th year of competition. Trabue explained that their architects use the same software that is used to design roads and

bridges. Between some levels of cans, the architects used a ¼-inch or thinner piece of chipboard. A thin dowel rod was also used in Dewey’s

full, unopened, and with labels intact and legible. No pet food or alcoholic beverages were allowed. The use of soda or junk food was discouraged. No permanent

adhesives could be used on the cans.

Fund-raising is the responsibility of the entrant. In this case, the Central Missouri Chapter of the Construction Specifications Institute (CSI) took the lead in finding local sponsors.

Trabue said over \$6,000 was raised and shared for the Canstruction Mid-Missouri event, and all money was divided among the five participating teams by providing

(Continued On Page 12)



Boone County Commissioners Karen Miller, Dan Atwill and Janet Thompson

head. Seven different types of food were used (including a lot of sauerkraut), which totaled 4,500 cans to complete the construction. The cans had to be

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Must Counties Use The State Rate?

State Mileage Rate Remains At 37 Cents Per Mile

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

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

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

Just as county governments may continue using the 37-cent per mile rate authorized by the state or establish their own rates,

this same rate will apply when determining the rate for workers' comp cases (for an injured employee's reimbursement for travel expenses for medical treatment), as well as for witness reimbursement.

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

According to Chap. 57.280.1, *RSMo*, sheriffs who use their own vehicles for work purposes shall receive the mileage rate allotted by the IRS. Until June 30, 2013, that amount is 56.5 cents per mile.

In addition, Chap. 50.333.10, *RSMo*, states that officeholders and employees shall be paid at the highest rate allotted to any officer. In counties where sheriffs use their own vehicles for work purposes, county officials are entitled to the IRS rate of 56.5 cents.



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(Continued From Page 9)
credit at Hy-Vee. PWArchitects paid the balance of the bill for "Dewey the Bookworm."

Boone County came into play by offering its facility which had

the required 10-foot by 10-foot by 8-foot high secure public space for a plywood base to protect the floor at the host site. Only five people at one time were permitted within the boundaries to actually build the

structure. Each team was able to "tag-team" its workers in/out of the project area. Donation barrels were also placed around each entry for the visiting public to donate canned goods of their own.

In addition to mid-Missouri, both St. Louis and Kansas City hold events in our state.

The five structures in this local event were made with nearly seven tons of food.

They competed against award-winning structures in approximately 100 other cities worldwide (like New York City, Atlanta, Dallas and Vancouver).

Top international honors this year, however, went to a Cansculpture built by school children in Portugal.

And why was all of this done?

The recent Mid-Missouri event showcased the creativity of the professionals who were giving back to their community while helping the Food Bank for Central and Northeast Missouri, which serves 32 counties.

Begun in 1981, the Food Bank is the only one in the state and one of five in the nation that does not charge for the food it provides. It goes to soup kitchens, emergency food pantries, shelters for the abused and homeless, programs for low income children and senior citizens, and rehabilitation centers. More than 8,000 kids have food to eat on weekends with their Buddy Packs program. Their Mobile Pantry for rural families distributes 1 million pounds of food annually. Over 100,000 people are helped each month by the Food Bank, which distributes to 131 agencies and 130 schools throughout 32 counties.

For Canstruction, giant sculptures made of nothing but canned food and a bit of ingenuity are designed and built to be displayed as public art. This event brings attention to the hunger issue

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and offers a unique opportunity to do something about it. Additional pictures for the mid-Missouri event can be found at www.midmocan.com.

The Boone County Commission would like to challenge other areas of the state to partner with the architectural/engineering/construction firms in their communities to organize and participate in an event like this. By being part of creative solutions, we all become part of an improved community.

Canstruction's success can not only be measured by the pounds of food raised, but also by its impact on hunger issues. Each year, over 30,000 volunteers come together to make these Canstruction events a success. That's 30,000 hunger relief ambassadors released into their respective communities with heightened awareness of the consequences of hunger and malnutrition. Canstruction is not an end, but a beginning of a larger, ambitious effort to relieve hunger.

The creative and design communities play a pivotal role in this larger endeavor, such as developing new ways to broadly communicate quality nutritional practices and seeking and nurturing partnerships with organizations and individuals who propose and advocate innovative hunger relief strategies.

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-John Wesley,

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Cooper County Clerk Aids In Election In Macedonia

Cooper County Clerk Darryl Kempf was recently selected as an international short-term observer (STO) for the, March 24, 2013, municipal elections in Macedonia.

Macedonia, officially the Republic of Macedonia, is located in the central Balkan Peninsula in southeast Europe. It is one of the successor states of the former Yugoslavia, from which it declared independence in 1991. As a result of a dispute with Greece over its name, it was admitted under the provisional reference of the Former Yugoslav Republic of Macedonia, sometimes abbreviated as FYROM.

The presence of the international observers is to witness the conduct of elections as a way of strengthening the election process founded on democratic principles. The 150 international observers are sent out in teams of two accompanied with an interpreter and driver. Kempf was teamed up with Dr. Claudia Schulze. Schulze, from Germany, has a doctorate degree in biology and has participated in



Kempf with Schulze at the Rostusa polling location on election day. These are NOT campaign posters. These are information posters for voters.

numerous observation missions over a time span of several years.

Kempf and Schulze were assigned to an area on the western region of the Republic of Macedonia. At the briefing, Kempf learned that the area he was assigned to was a very controversial area in the 2002 municipal election. One of the team members from that time shared that he and his partner had to call NATO security to get them out of the area when the Muslim influence tried to overrun the election process.

“Prior to leaving for the observation mission, I visited with Ambassador Geert-Hinrich Ahrens (Germany),” said Kempf. “He agreed that the area had an Albanian influence contrasting with the local Turkish Muslims. Also, he felt the controversy of 2002 had settled down to a tolerable level between the ethnicity of the two groups.”

Kempf and his team partner spent one day surveying the better part of the 34 polling stations in the Mavrovo National Park region that they were

(Continued On Page 19)



Kempf and the interpreter, Asim, looked over observation forms as the polls open on election day.



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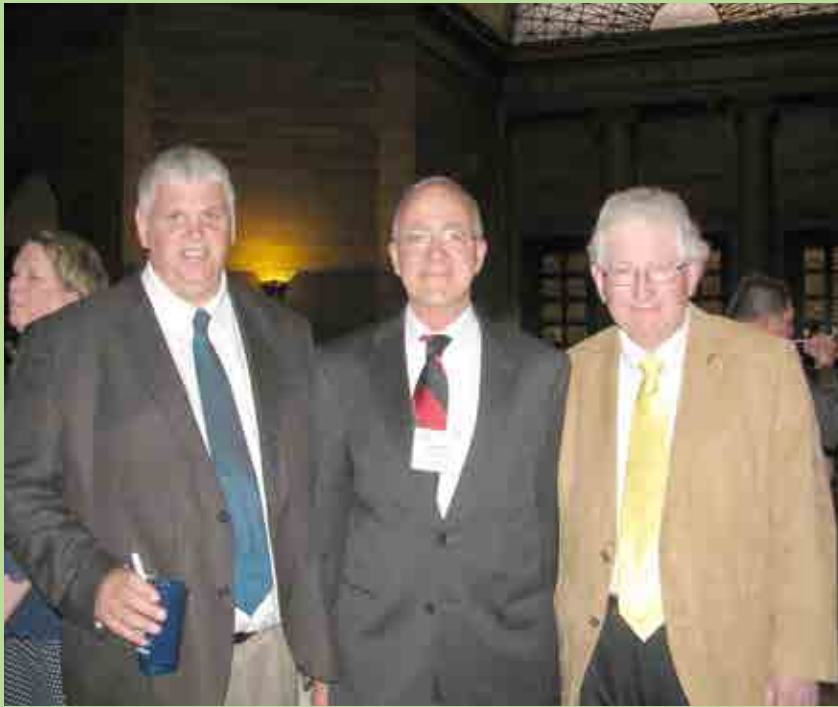


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Missouri state legislators who spoke at the 2013 MAC Legislative Conference included the following:

- **Transportation & Motor Vehicle Sales Tax --** Sen. Mike Kehoe & Rep. Dave Hinson
- **9-1-1 Legislation --** Rep. Jeanie Lauer
- **Local Control & Authority --** Sen. Mike Parson & Rep. Donna Lichtenegger
- **Early Voting Commission & Voting Issues --**

Secretary of State Jason Kander

- **Remarks from the House --** Speaker Tim Jones
- **Wireless Communication Authority --** Rick Germinder, Chief Of Staff For Sen. Brad Lager
- **Streamlined Sales & Use Tax Agreement & "Nexus" Redefined --** Rep. Doug Funderburk
- **Remarks from the Senate --** President Pro Tem Sen. Tom Dempsey





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(Continued From Page 15)

assigned to. Their driver, who was local to the area, pointed out many landmarks including Mount Korab, the highest mountain of Albania and the Republic of Macedonia. Its peak forms a frontier between the two countries and lies adjacent to the Sar Mountains.

On Election Day, which happened to be on a Sunday, polls opened at 7:00 a.m. and closed at 7:00 p.m., similar to the polling hours in Missouri. Kempf and Schulze were present when the first polling station was set up by the local election board for opening and made ready for voters to arrive.

Not only are the observers to witness the election process, they have a set of election related questions to inquire of the local election board. The observations and interviews are recorded on a prescribed set of forms.

"Dr. Schulze didn't waste any time in putting me to work," said Kempf. "We interviewed the election board at the first polling station when they opened. When the team of observers with driver and interpreter arrived at the second polling station, Dr. Schulze turned the interview over to me. We spent the entire day observing the election process in numerous

polling stations, making observation of occurrences in each station before reporting on to others."

Just as the elections held in the U.S., the election judges in Rostusa and Mavrovo were represented by various political parties. They had five election board members working in each polling station. The judges were very conscientious of performing the election in an orderly and democratic process.

"It's very similar to the way it is in the U.S., and individuals discuss and talk candidates while enjoying their Turkish coffee at the local outdoor coffee shops," said Kempf. "In Missouri, we have provisions in statute for challengers and watchers being in the election location; however, usually they are not at every election and not at every polling place. In the Mavrovo and Rostusa area, EVERY polling station had upwards of five or six local observers representing the various political parties."

Unlike the U.S., election board members in Macedonia were not allowed to start counting ballots until the polling stations were closed at 7:00 p.m. The election board members drew lots to see who would read aloud the name of the person who was selected on each and every ballot. The same election

board member would display each and every ballot in order that all observers could agree as to how the ballot was voted. Following the procedure, it took the election board two hours to count 500 ballots for one Mayor's race.

"In the U.S., winning candidates and their supporters hold parties celebrating their victories," said Kempf. "In the region we were in, once the political party had enough votes come in to calculate they had won, they held a victory party out in the school court yard in front of the voting polling station. The crowd was waving the flag of their party and circling the court yard while beating on drums and blowing on horns and trumpets."

During Kempf's visit he was also able socialize with numerous observers from the U.S. As each day progressed, Kempf met and visited with individuals from all over the world and became friends with observers from Germany, Finland, Sweden, The United Kingdom and Romania.

"Being selected was truly a fulfilling experience to witness the democratic election process on an international scale," said Kempf.



German Ambassador Ahrens poses with Kempf.



Campaign posters plaster a building in Rostusa Mavrovo, Macedonia.

What's Next For 911 In Missouri?

"Doc" Kritzer,
Callaway County Associate Commissioner

Unfortunately, the Legislature ended the 2013 session in the same position as it began regarding 911. Missouri is *still* the only remaining state with *no* fee on wireless communications to help pay for 911 emergency services.

The good news for this year is that we gained a very strong ally in Rep. Jeanie Lauer, who was willing to take the lead as sponsor of HB 653. The 911 Directors Association also hired an aggressive consultant in Scott Penman and his assistant Maggie Thiel (Penman & Winton Consulting Group), who worked tirelessly in finding adequate wording for counter proposals for the substitute bills the telecoms and others kept coming up with.

What Did The Bill Propose?

- It enabled counties to go to their voters and, upon approval,

apply a fee to all devices – wireless and wireline – to fund 911 services.

- It proposed a fee up to a maximum of \$1.50 per device.
- This enabling legislation was comparable to the motel lodging tax.

Why Is It Necessary?

- Changes in technology and wireless substitution have reduced funding from land lines.

- Over time, Missouri counties have established a variety of funding sources for 911 centers, making it difficult to create and pass a single statewide initiative.

- Creating an "individual county approach" allows counties that have adequate local financing to retain their present funding source (45 counties have a dedicated 911 sales tax, for example).

- Creating an "individual coun-

ty approach" allows for a stronger focus on matching local financial needs with the best funding method.

- Creating an "individual county approach" allows for flexibility in consolidating PSAPs (Public Safety Answering Points) within a county and among counties, as well as in seeking local funding.

If this legislation had passed, it would have given counties the authority to ask their voters for permission to assess this fee. All revenue generated from the fee would have stayed in the county, and this is similar to the revenue generated from a dedicated 911 sales tax or from the surcharge on land phones.

Prepaid Wireless Problems

Because nearly 30 percent of wireless devices are from prepaid
(Continued On Page 23)

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(Continued From Page 20)

calling plans and not contracts with carriers, the bill also assessed a 3 percent fee at the point of sale when these prepaid phones or cards are purchased. The percentage of this market is rising rapidly as more consumers are dropping contract plans and switching to prepaid phones and calling cards. If this issue had not been addressed in the bill, we would have had another funding shortfall in a few short years. It's comparable to the way consumers are dropping landlines for wirelines and the surcharge revenues are declining.

At an average purchase cost of \$50 per card, the 3 percent fee would have been \$1.50 per transaction, and would have generated approximately \$8 million per year. This revenue would have gone into a statewide grant pool managed by a special 911 Oversight Board to assist the 16 counties that currently have *no* 911 service at all, to upgrade equipment within a 911 center, to certify telecommunication operators (call takers and dispatchers), to consolidating PSAPs, to mapping and addressing, to obtaining technical advice, as well as to statewide coordination. This fee would have been assessed upon passage of the bill and without voter approval (a provision that some legislators did not like, even though Missouri's 911 problem is viewed as a public safety issue among most all of the lawmakers). Currently 22 states already have fees on prepaid devices.

The four charter counties in the St. Louis and Kansas City areas protested this point and requested they be excluded from the bill and, therefore, from paying this fee because they believe they have adequate 911 service in their areas and did not want to fund the rest of the state. Excluding the charter counties, this 3 percent fee on prepaid cards would still have generated ap-

proximately \$5 million from across the state. Counties that exempted themselves from paying into this fund would not have been eligible to receive money from the grant pool.

Another concern with the bill centered on designating 10 percent of the grant funding (not to exceed \$1 million annually) for the Missouri Poison Control Center. Some recognize the Poison Control Center as another emergency services agency where calls come into a 911 center and are transferred to them for handling. Others did not feel they warranted receiving 10 percent of the funding. Perhaps some additional education or a compromise is needed among 911 centers, legislators, the Poison Control Center, and the general public regarding the value of the Poison Control Center

and its direct involvement from a 911 emergency call for assistance.

I hope this information helps to explain some of the problems encountered this year in dealing with HB 653. There was a good group of stakeholders representing 911 directors, Police Chiefs, the Sheriffs' Association, MAC, Emergency Medical Services, the Poison Control Center, MOAPCO (Missouri Association of Public Safety Communications Officials), MONENA (Missouri National Emergency Number Association), and the telecommunications industry. Anyone wanting more information or wanting to get involved may contact "Doc" Kritzer, Callaway County commissioner, at 573-642-0737 or by email at comish@callawaycounty.org.

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Marketplace Fairness Act Would Bring Fairness To Sales Tax

The Internet has grown to be one of the leading sales avenues for today's business. Consumers spend billions of dollars in sales every year, but local and state governments are not able to keep up with the rapid growth of technology resulting in millions of lost tax dollars.

However, legislation to fix the loophole was passed in the U.S. Senate on May 6. The Marketplace Fairness Act would allow counties to enforce their existing sales tax laws regardless of whether a purchase is made in a store, online or through a catalog.

"This bill will help to level the playing field for Main Street retailers in Missouri and across America," said co-sponsor Missouri Sen. Roy Blunt. "It does not create a new tax – it simply allows states to collect sales taxes they are already owed from out-of-state and online businesses, if they choose to do so."

The act won't raise tax rates; it just ensures all taxes are collected. It also includes an exemption for online sellers who generate \$1 million or less in annual gross receipts. Additionally, any seller, including remote sellers, could easily rely on free services available on the Internet to manage their sales tax management needs.

"This is very important to local businesses who have become a 'show room' for shoppers to look and even try on items and then go back and purchase something over the Internet for possibly a better price and no tax," said MAC President and Phelps County Treasurer Carol Green. "This is a competitive disadvantage to our brick and mortar stores who bear the cost of having a physical location. We are losing millions of tax dollars that provide services and this legislation would enable states to collect the taxes they are already owed."

Consumers can be audited and

charged with penalties for failing to pay sales and use taxes, but it is difficult for states to enforce this requirement. The act will provide a uniform sales and use tax base within a state. The act would create certification procedures for software providers to create the programs necessary to calculate sales and use taxes.

"It will be especially beneficial to counties with little or no major retailers in their jurisdictions," said MAC President-Elect and Audrain County Clerk Shelley Harvey. "Living in Mexico, MO, we have little shopping choices so I do a lot of online shopping, not to avoid the sales tax, but simply because I don't always have time to go out of town. I think with busy lifestyles this is the case for many people."

Whatever the reason shoppers buy online, the act could bring tax legislation up-to-date with 21st century technology.

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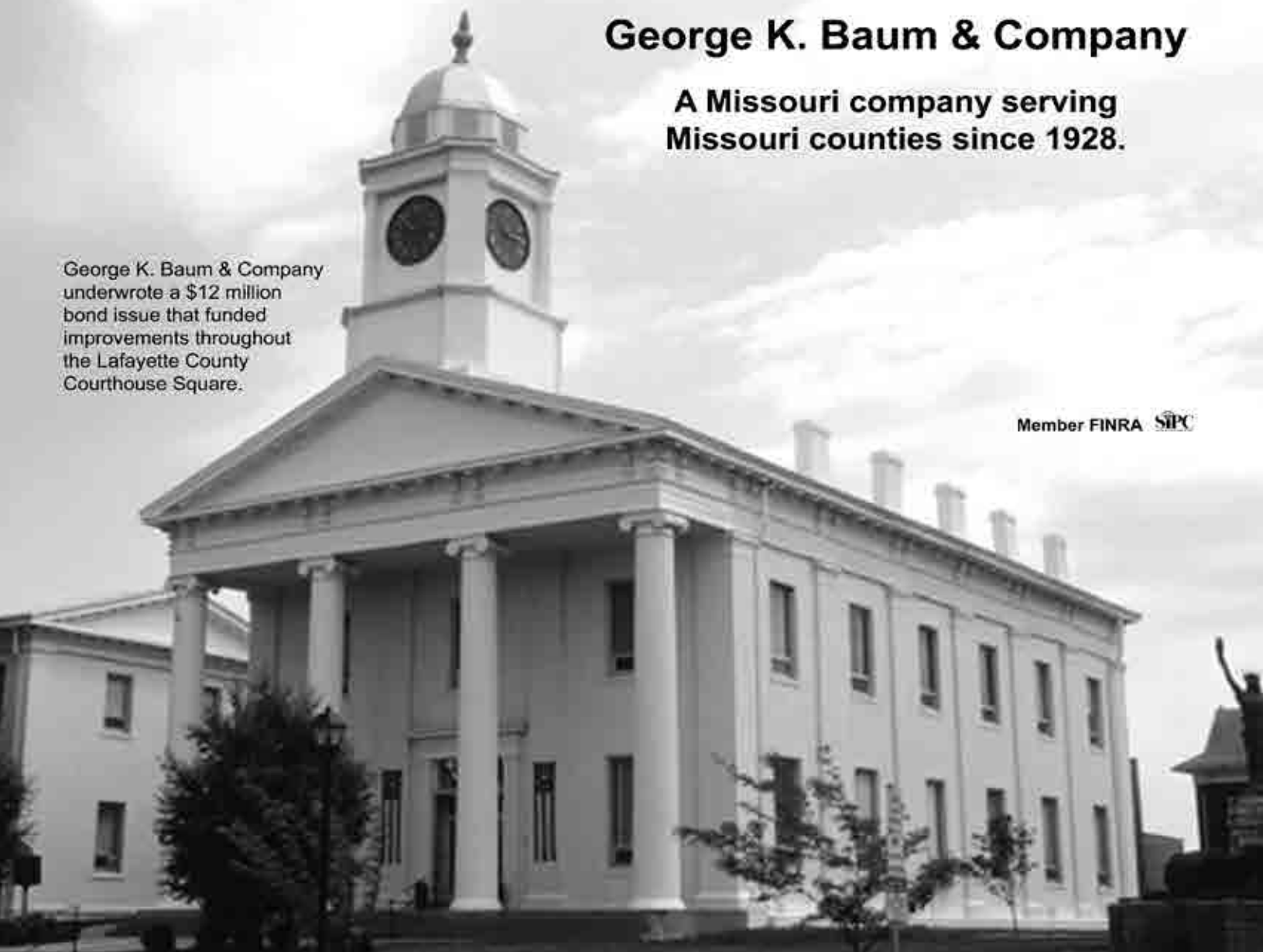
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Engaging In Nepotism Means Automatic Removal From Office

Editor's Note: In February at the County Commissioners Annual Training Session, Roy L. Richter, judge of the Eastern District Court of Appeals, and Joe Dandurand, deputy attorney general, presented a session on the hazards of engaging in nepotism. The following article, compiled by Judge Richter, was distributed to assist commissioners in understanding the law pertaining to nepotism. The accompanying chart was provided by the Missouri Ethics Commission.

Art. VII, § 6, of the *Missouri Constitution* sets forth the penalty for engaging in nepotism: "Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment

any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment." By way of explanation, the term "consanguinity" pertains to a blood relative and the term "affinity" pertains to kinship by marriage, not by blood.

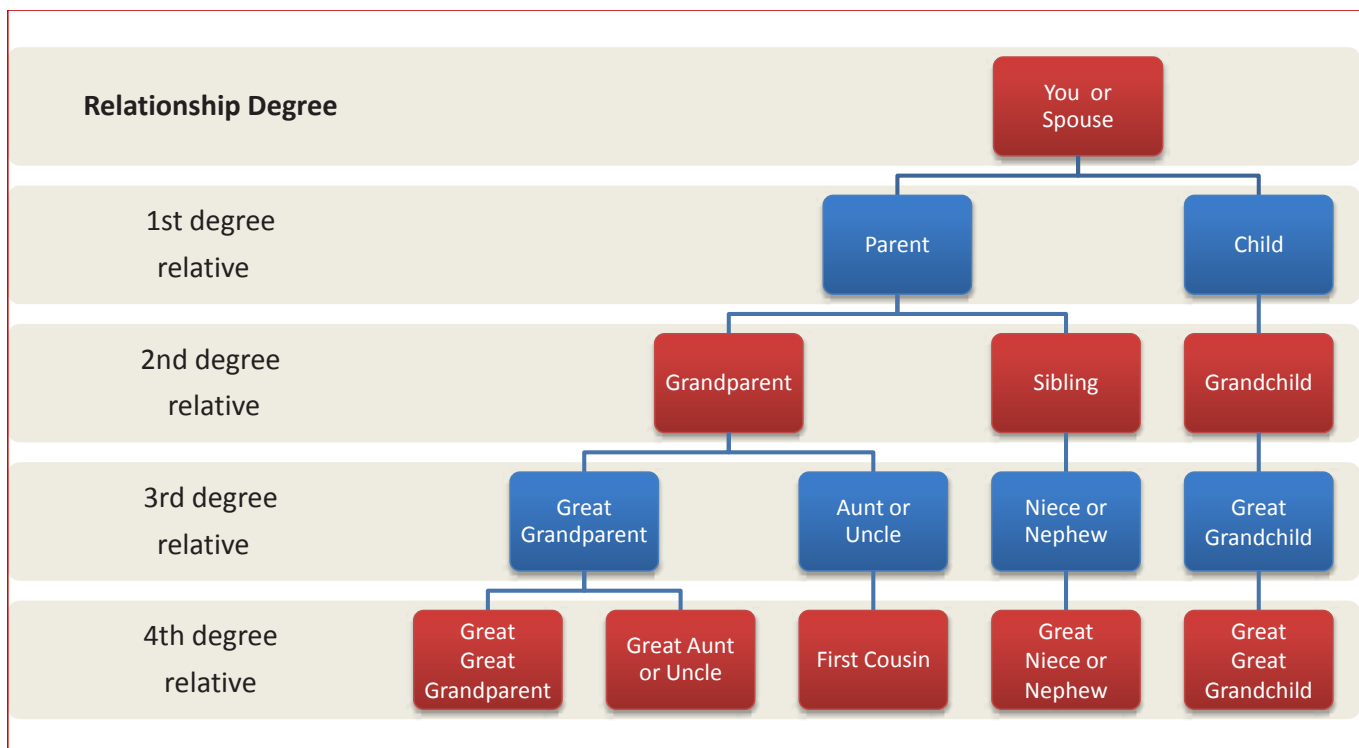
During the session, both Judge Richter and Joe Dandurand summarized two court cases (one from long ago and the other a more recent case) which exemplify the problems of engaging in nepotism. Their summaries of the cases follow.

State ex inf Attorney General v. Shull, 887 SW 2nd 397 – Mo: Supreme Court 1994 (Note: This decision came from the "Ashcroft Court," in that all

7 members were appointed by John Ashcroft – Robertson, Covington, Holstein, Benton, Thomas, Price and Limbaugh – and all concurred.)

On July 11, 1991, the commissioners decided to fill Clay County vacancies on the Board of Trustees of the Clay-Platte-Ray Mental Health Tax Levy Board. The western district commissioner, Rick Moore, moved to appoint two individuals to the Board of Trustees, one of whom, Norma Thomas, was Presiding Commissioner Shull's sister-in-law. Moore and the eastern district commissioner, Jay Larson, voted in favor of the appointments. Shull cast the last vote, making the
(Continued on Page 29)

Relationship Chart
Missouri Ethics Commission
Rev 09/2011



Consanguinity relationships are relatives by blood. Affinity relationships are relatives by marriage or adoption.

This document is intended only as a guide to aid in understanding the duties and responsibilities of the Missouri Ethics Commission. For the Law's complete requirements, consult the law itself, codified at Chapter 105 and 130 of the Revised Statutes of Missouri.



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(Continued From Page 26)
appointments unanimous. The parties agree that a sister-in-law is a relative within the fourth degree of affinity.

Shull first argues that she did not violate Art. VII, § 6, because the two other commissioners had already cast a sufficient number of votes to assure the appointment of Thomas prior to Shull's casting her vote. Thus, Shull's argument proceeds, she did not "appoint" Thomas and could not have violated the anti-nepotism provisions of the Constitution.

The Constitution does not predicate the forfeiture of office on whether the public officer cast a deciding or necessary vote. Instead, a public officer violates the Constitution when he or she appoints, by participating in the appointing process, a relative who is within the forbidden degree of relationship to public office. Shull participated in the appointment of her sister-in-law by virtue of her office. In doing so, she violated Art. VII, § 6.

Next, Shull argues that the policy behind the Constitution's anti-nepotism provision does not support her ouster, in that her sister-in-law was both competent and qualified to hold the position and did not receive any compensation for her work on the board.

"We [the MO Supreme Court] disagree."

The Constitution's words make no exception for public officials who appoint competent and qualified relatives to serve in public office without pay. Instead, the Constitution makes the appointment of any relative within the prohibited relationship the basis for a forfeiture of office. That Norma Thomas was competent to hold her public office or received no compensation for her work is irrelevant to the constitutional inquiry.

Shull next contends that a

judgment of ouster requires a showing of willful intent to violate the provisions of the Constitution. She claims that she did not know that the Constitution forbade her actions. Absent the intent to violate the Constitution, she claims she cannot now be ousted.

We turn again to the clear language of the Constitution. Art. VII, § 6, contains no scienter [knowingly] element. Instead, it renders a public official who, by virtue of her office, participates in the appointment of a relative within the prohibited degree of relationship strictly liable for that act and requires forfeiture of her office. That a public official is not aware of the consequences of participating in the appointment of a relative to public office is of no constitutional significance.

Shull argues that she cannot be ousted from office because she is the target of selective enforcement of the anti-nepotism provision of the Constitution by the Attorney General. For its premise, Shull's argument claims that technical violations of the anti-nepotism provision are commonplace throughout the state; she proceeds along her syllogism to argue that she is a Republican and a female, that the Attorney General is a Democrat and a male, and therefore that the Attorney General's decision to target her from among a plethora of violators is the product of politics and gender discrimination.

Though not deciding the scope of the defense or its applicability in criminal or civil cases in this state, we nevertheless hold that selective enforcement is not a defense in a quo warranto action seeking to enforce sanctions for violations of constitutional prohibitions by public officials.

State ex rel. Nixon v Wakeman, 271 SW 3d 28 – Mo: Court of Appeals, Western Dist. 2008

Mr. Wakeman was appointed mayor of Holden, MO, to serve a

four-year term. At the beginning of his term, he appointed his brother-in-law, Larry Miller, to replace him as the chief firefighter. Upon discovering that this appointment violated the anti-nepotism clause of the Missouri Constitution, [1] he requested Mr. Miller's resignation. Mr. Miller resigned and the city council accepted his resignation.

Subsequently, a complaint was filed with the Missouri Ethics Commission concerning Mr. Wakeman's appointment of his brother-in-law. The Attorney General notified Mr. Wakeman in writing that it would file a petition for quo warranto to remove him from office if he did not immediately resign. Consequently, Mr. Wakeman resigned. The city council initially refused, but then accepted his resignation. Thereafter, the city council unanimously voted to appoint Mr. Wakeman as mayor to serve the remainder of the term.

We [then-Chief Judge Thomas H. Newton, Judge Victor C. Howard, and Judge Alok Ahuja] understand the hardship that the anti-nepotism clause imposes upon leaders of small municipalities. We also commend Mr. Wakeman in his efforts to cure the 31*31 violation without judicial intervention. However, the Constitution does not provide any exceptions to the penalty for nepotism, and we are without authority to amend it. The circuit court properly granted the petition for quo warranto and removed Mr. Wakeman from the office of mayor.

[1] Article VII, §6, of the Missouri Constitution provides: Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.

Are You Up-To-Date On The Latest Changes To The Family And Medical Leave Act?

David S. Davis

Davis Law, LLC

During the first three months of 2013, the U.S. Department of Labor (DOL) issued new guidance regarding when an eligible employee is entitled to leave under the Family and Medical Leave Act (FMLA) to care for an adult child. It also issued new regulations with enhanced FMLA leave for military members and their families. The changes require action by employers to ensure compliance with the new rules in granting leave, posting of a new FMLA poster, and the use of new FMLA forms.

Leave To Care For An Adult Child

The FMLA generally allows an eligible employee to take up to

12 weeks of unpaid leave during a 12-month period to care for a “son or daughter.” The FMLA defines “son or daughter” as a “biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of the parents, who is: (i) under 18 years of age; or (ii) 18 years of age or older and incapable of self-care due to a mental or physical disability.”

Under the FMLA, a disability is a mental or physical impairment that substantially limits one or more major life activities of an individual. The onset of the disability occurring at any age must be considered when analyzing whether the adult child meets the definition of “son or daughter.”

If the eligible employee’s son

or daughter has a disability at the time the requested leave commences and is incapable of self-care due to the disability, then he or she meets the definition of a “son or daughter” for purposes of the FMLA.

In order for the eligible employee to be entitled to take leave to care for an adult child, the son or daughter also must have a serious health condition and need care as a result of the serious health condition. A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider. While the same condition may satisfy both the definition of disability and serious

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health condition, disability may be satisfied by one condition while serious health condition is satisfied by a separate condition.

Therefore, an eligible employee may take FMLA leave to care for an adult son or daughter if the son or daughter has a disability, is incapable of self-care due to the disability, has a serious health condition, and is in need of care due to the serious health condition. All four requirements must be met for an eligible employee to be entitled to FMLA leave to care for his or her adult son or daughter. For more information related to FMLA leave to care for an adult child go to <http://www.dol.gov/whd/regs/compliance/whdfs28k.htm>.

New FMLA Regulations For Military Members And Their Families

Generally, an eligible employee who is the spouse, son, daughter or parent of a military member may take up to 12 weeks of FMLA leave during any 12-month period to address certain exigencies that arise when a military member is deployed to a foreign country. Additionally, an eligible employee may take up to 26 weeks of FMLA leave during a single 12-month period to care for a service member in certain circumstances.

On March 8, 2013, new regulations expanding FMLA coverage for military members and their families went into effect. The regulations extended coverage to members of the National Guard and Reserves, as well as regular Armed Forces.

Also, it added an additional qualifying exigency for parental care that entitles eligible employees to FMLA leave. Eligible employees may take leave to care for a military member's parent who is incapable of self-care when

the care is necessitated by the member's covered active duty. Parent care may include arranging for alternative care, providing immediate care, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

The new regulation also allows an eligible employee to take leave to care for a veteran undergoing medical treatment, recuperation or therapy for a serious injury or illness. A veteran includes a "military member" discharged or released under conditions other than dishonorable at anytime during the five-year period before the eligible employee takes FMLA leave to care for a veteran.

The definition of serious injury or illness for service members has been expanded to include a pre-existing injury or illness that was aggravated by the service member in the line of duty, as well as an injury or illness suffered in the line of duty. The regulation also increases the amount of time that an eligible family member can spend with a military member on rest and recuperation leave from five to 15 days.

Conclusion

Make sure you are in compliance with the new regulations, including posting the new FMLA poster reflecting the new regulations which was required beginning March 8, 2013. The updated poster can be found at <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>. Additionally, the DOL has updated its FMLA forms to reflect the changes to the regulations. The new forms can be found at <http://www.dol.gov/whd/fmla/>. Finally, make sure you understand the changes made to the FMLA regulation. The DOL prepared

a side-by-side comparison chart to help employers understand the changes made to the FMLA regulations. You can find the chart at <http://www.dol.gov/whd/fmla/2013rule/comparison.htm>.

Dave Davis is an attorney, founding member of Davis Law, LLC and author of the Missouri Local Government Employment Law Handbook. Davis counsels and defends local government and businesses in the areas of employment law, civil rights and general litigation. Contact Davis at 314-863-6868 or ddavis@davis-law-llc.com. Follow him on Twitter @DavisLawLLC. Download a free copy of the Missouri Local Government Employment Law Handbook from the firm's website, www.davis-law-llc.com.

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