

Two Bills Drastically Alter Local Regulations Over Telecommunications – The General Assembly approved [HB311](#) and [HB345](#) (previously reported in [Report 2013-1](#)), which impact cities' ability to regulate wireless telecommunications antennas, utility users in public rights-of-way, and telecommunications attachments to municipally-owned utility poles. While much attention has been given to deadlines for wireless applications provided in these bills, more impactful changes include:

- Further eliminates municipal authority to regulate numerous aspects use of City's own streets and rights-of-way by utilities, including a prohibition on certain agreements, permits and franchises for many existing utilities and eliminates significant areas of public cost recovery.
- Severe restrictions of regulations that seek to curb proliferation of new wireless towers, including prohibition of tower collocation requirements.
- Significantly strips municipal authority to regulate negative visual impacts imposed on communities by unsightly cell towers and antennas, whether on private or public property;
- Transfers power to set rental rates of public property to third parties; mandates use of public property (including municipal utility poles) upon request of telecommunication companies.
- Bills waive or exempt telecommunications companies from rate and other State regulation requirements at their option.

With these bills, Missouri Legislators appear to have taken the unprecedented policy position that rapid and unfettered deployment of anything by any private utility outweighs property values, taxpayer cost recovery, and safety goals of local government control within its own local jurisdiction. Efforts to encourage a veto of these bills by the Governor have been taken up by the MML, but more opposition from cities and citizens alike is likely needed to overcome the strong industry interests that support these bills. [A recent newspaper editorial about this may be viewed here.](#)

IRS Ruling Substantially Limits the Ability of Developer-Controlled Special Purpose Entity to Issue Tax-Exempt Bonds – The IRS has issued a determination, [Tech. Adv. Mem. 127670-12 \(May 9, 2013\)](#), concerning a community development district in Florida that may ultimately have the effect of limiting the issuance of tax-exempt bonds by similar districts in Missouri, such as community improvement districts (CIDs) or transportation development districts (TDDs). The IRS found that the Village Center Community Development District could not issue tax-exempt bonds because the board of supervisors of the district was controlled by developers, rather than by a governmental body. Although the IRS determination only applies to the Florida district, the ruling serves as a warning that the IRS could take the position that special purpose entities in other states that are entirely controlled by developers will not be able to issue tax-exempt bonds. Municipalities should consider steps to ensure that districts such as CIDs and TDDs are controlled by a governmental body, for example through requiring the Boards of Directors to include a majority consisting of municipal representatives. While there have always been good reasons to ensure limitation or municipal control of special purpose districts, this ruling provides yet another reason for municipalities to set up entities controlled by the municipality, both to avoid creating entities that could become adverse to the municipality and to avoid setting up an economic development incentive that ultimately might not provide a benefit developers typically seek--tax-exempt financing.

Top Court Strikes Down Condemnation for Economic Development - The Supreme Court of Missouri in [State ex rel. Jackson v. Dolan, No. SC 92717 \(May 28, 2013\)](#), held that takings for the sole purpose of economic development are constitutionally valid, however they violate § 523.271 RSMo. It is the condemning authority that bears the burden of proving that the taking is not solely for economic development. The Southeast Missouri Regional Port Authority failed to prove its condemnation to create a loop track to expand the Port Authority's transportation facilities and improve river commerce was not solely for economic development. The court defined economic development as being an increase in all four factors listed in § 523.271 RSMo. – tax base, tax revenues, employment, and general economic health. Based on testimony from the Port Authority's executive director, the court found that the additional rail facilities were for the purpose of creating growth in jobs and commerce, or solely part of the Port Authority's economic development plan. This case appears to be the first application of § 523.271 since its enactment in 2008 and is a must-read for cities looking to use condemnation in projects that have an economic development component.

Municipal Officials Training Academy Presentation: Affordable Care Act - Please join us for the St. Louis County Municipal Officials Training Academy's June training session either via live webinar access or in-person attendance on **Thursday, June 27, 2013 at 12:00 p.m.** Ron Present from Brown Smith Wallace LLC will present training on the Affordable Care Act including explanation of key terms and breakdown of employee coverage. The Training Academy presents training programs specifically designed to present relevant information to assist municipal officials throughout Missouri.

The June 2013 presentation, [Affordable Care Act: What Cities Need to Know](#), will focus on:

- Current requirements of the Affordable Care Act (ACA) and discussion of applicability of the ACA to different-sized municipalities;
- Discussion of penalty risks and strategies for compliance; and
- Discussion of key terms and identification of key questions to ask in order to identify the best approach to comply with the ACA for your municipalities make-up.

The presentation will also provide useable timetables, identification of reliable resources, and a decision tree to help municipalities plan for implementation of the ACA. This presentation has been approved for 1.2 MCLE hours and certificates of attendance will be provided to all attendees in order to self-report continuing education hours.

To register for June's training opportunity or for more information, please see the attached flyer or you may click [here](#). If there is a specific topic or question concerning the ACA that you would like discussed, we encourage you to email Ron Present at rpresent@bswllc.com in order to ensure that your topic will be covered during the presentation.

Presentations by CVR Attorneys – The following upcoming and recent educational presentations and resources from CVR attorneys are available for your review:

- **UPCOMING** – Selected Best Practices for Municipal Lawyers (Missouri Municipal Attorneys Association Summer Seminar) – [Erin Seele](#)
- Funding Municipal Improvements and Economic Development (Missouri Municipal League Elected Officials Conference) – [Kristen Erickson](#)
- Public Works Contracts: Streamlining a Complicated Process (Municipal Officials Training Academy) – [Ryan Moehlman](#)

If you need further assistance on any of these matters, please consult your City Attorney or Legal Department for particularized guidance or contact us at:

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To access previous reports on our website: [CLICK HERE.](#)

Upcoming Dates & Deadlines for Missouri Municipalities*

Between one and four weeks before July City Council meeting (Third Class Cities): Publish newspaper notice that bids for City depository will be received.

June 18 (45 days before 1st Friday in Aug.): Notify Dept. of Revenue of ordinance *opting out* of Back to School Sales Tax Holiday (at option of City).

June 30: Annual liquor licenses expire.

July Meeting of City Council (Third Class Cities): Select depository for one year term.

Mid-Late August: Conduct Public Hearing on property tax rate with 7-day newspaper notice (for Cities not in charter counties).

August 28: New state statutes go into effect (unless passed as emergency legislation or later date is provided in statute).

Sept. 1: Set property tax levy (for Cities not in charter counties).

*This list is not exhaustive. For the complete **Calendar of Procedural Deadlines for Missouri Municipalities**, click below:

[Jan. 1–Dec. 31 Fiscal Year](#)

[July 1–June 30 Fiscal Year](#)

Also see CVR's

[Annual Requirements for Missouri Municipal Special Purpose Entities](#)

Municipal Links

[Missouri Municipal League](#)

[St. Louis County Municipal League](#)

[Mid-America Regional Council \(KC Area\)](#)

[East-West Gateway Council of Governments](#)

For more, visit CVR's [Resources Page](#)