

Municipal Issue Report

Minimum Contract Requirements For Cities, Report No. 2008-3

The following is a **Municipal Issue Report** from Cunningham, Vogel & Rost, P.C. relating to recent caselaw affecting municipalities.

Court Enforces Minimum Contract Requirements For Cities

The recent court ruling in *Moynihan v. City of Manchester, et al.*, (Mo. App. E.D., Sept. 30, 2008), provides a reminder to public officials that local governments have greater obligations than the private sector to document written authority to enter into a contract on behalf of the City. The court struck down the city's attempt to authorize a severance agreement between the City and the City's former City Administrator because the Board failed to approve the specific terms of the contract as required by § 432.070 RSMo. That section prohibits contracts by local governments unless, among other things, the contract is (1) in writing, (2) contains the consideration, (3) is dated, (4) signed by both parties, and (5) the authority to sign on behalf of the government is authorized in writing.

Section 432.070 RSMo. provides:

No county, city, town, village, school township, school district or other municipal corporation shall make ***any*** contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and *such contract*, including the consideration, *shall be in writing* and dated when made, *and shall be* subscribed by the parties thereto, or their agents authorized by law and duly appointed and *authorized in writing*.

In *Moynihan*, the Board of Aldermen voted to terminate an appointed employee. Subsequent to the closed session vote, each alderman individually communicated to the City Attorney their approval of a severance agreement that the Board asserted accomplished their original vote. The Court found that this "authority" did not meet the requirements of Section 432.070 because there was no clear written authorization of the contract nor was there anything in writing that approved even its basic terms. No writing (minutes, ordinance, resolution, etc.) existed showing that the actual contract itself was ever voted on by the Board. The Court held that a written authorization cannot be "vague and uncertain...[and]...broad in scope," and must "***specifically authorize certain terms...***, be ***specific and definite***, and must include an ***outline of the terms of the proposed contract.***" The Court also held that such a written authorization cannot be obtained by gathering consent to execute the Agreement from the individual members of the Board outside an official meeting, holding that "[t]he individual acts of a board's members, or the unofficial act of all its members, are of no force," and "[t]he Board can only act as a body at a duly authorized or official meeting." Finally, the Court held that just because the Agreement

itself stated that it had been “signed with the full authority of the [Board]” does not make it actually so.

This case reaffirms the need for local governments to meet certain minimum standards in municipal contracts, including:

- ❖ The contract itself should be approved by the governing body (usually by ordinance or resolution), at a duly authorized or official meeting; but at a minimum, some written authority must exist wherein the governing body approves the essential terms of the contract.
- ❖ Written authority for the specific official to sign the contract must also exist by some governing body action.
- ❖ The contract must also be dated, signed by all parties, and contain the consideration received.

This case summary is not exhaustive and is intended only to highlight the significant aspects of the case as it effects local governments generally. Each municipality should contact their legal counsel to ensure compliance with the law in their individual circumstances.

Further questions may be directed to:

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