
MISSOURI MUNICIPAL
ATTORNEYS ASSOCIATION

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Margaritaville, Osage Beach, Missouri

Constitutional Limits to Municipal Authority


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BACKGROUND

The Missouri Constitution

- Missouri Constitution is a limitation on legislative power only
- Unlike federal constitution -- a grant of power from the states
- Power of state legislature is unlimited and practically absolute
- *Americans United v. Rogers*, 538 S.W.2d 711 (Mo. Banc 1976); *Kansas City v. Fishman*, 362 Mo. 352, 241 S.W.2d 377 (1951).



“A municipality derives its governmental powers from the state and exercises generally only such governmental functions as are expressly or impliedly granted it by the state.”

Century 21-Mabel O. Pettus, Inc. v. City of Jennings, 700 S.W.2d 809, 811 (Mo. banc 1985).

Third & Fourth Class Cities

"Statutory cities, acting without a constitutional home rule charter, cannot act without specific grants of power."

- *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 212 (Mo. banc 1986), citing *State ex rel. Mitchell v. City of Sikeston*, 555 S.W.2d 281 (Mo. banc 1977).

Charter Cities

Any city which adopts or has adopted a charter ..., **shall have all powers which the general assembly** of the state of Missouri has authority to confer upon any city, *provided such powers are consistent with the constitution of this state* and are not limited or denied either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have **all powers conferred by law**.

- Article 6, § 19(a) Missouri Constitution



Charter Cities

Art. 6, § 19(a) “clearly grants to a constitutional charter city all power which the legislature is authorized to grant. ... **even in the absence of an express delegation by the people of a home rule municipality in their charter, *the municipality possesses all powers* which are not limited or denied by the constitution, by statute, or by the charter itself.”**

- *City of Cape Girardeau v. Jett*, 851 S.W.2d 114 (Mo. App. 1993)

J. L. Wilson, 1820

CONSTITUTION

DE L'ETAT DU

MISSOURI.

NOUS, le peuple du Missouri, habitant dans les limites ci-après désignées, par nos représentants en Convention assemblés, à St. Louis le Lundi, 12 de Juin, 1820, mutuellement convenons de former et établir une république libre et indépendante, sous le nom d' "ETAT DU MISSOURI," pour le gouvernement duquel nous ordonnons et établissons cette Constitution.

ARTICLE I.

DES LIMITES.

Nous déclarons, établissons, ratifions et confirmons les limites suivantes, comme limites permanentes du dit Etat; savoir: à commencer du milieu du fleuve Mississippi sur la parallèle des trente six degrés de latitude Septentrionale, et delà, en suivant à l'Ouest la même parallèle, jusqu'à la rivière St. Francois; delà, en remontant le cours de la dite rivière, et au milieu du grand canal, jusqu'à la parallèle du trente-troisième degré trente minutes de latitude; delà, en suivant à l'Ouest la même parallèle, jusqu'au point d'intersection de la dite parallèle, avec la méridienne qui passe par le milieu de l'embouchure de la ri-

As to cities,
the Missouri
Constitution
giveth and it
taketh away

(loose paraphrase of **Job
1:21**)

Article 6: Local Government

§ 16. Cooperation by local governments with other governmental units.

“may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law.”



Intergovernmental Cooperation

§70.220.1 RSMO authorizes political subdivisions to contract and cooperate with any other municipality or political subdivision for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; *provided, that* the subject and purposes shall be within the scope of the powers of such political subdivision





Article 6, § 23: Limitation on ownership of corporate stock, use of credit and grants of public funds by local governments

No ... city ... shall own or subscribe for stock in any corporation or association, *or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual*, except as provided in this constitution.



Article 6, § 25. Limitation on use of credit and grant of public funds by local governments—pensions and retirement plans for employees of certain cities and counties.

No ... city ... shall be authorized to *lend its credit or grant public money or property to any private individual, association or corporation* except as provided in Article VI, Section 23(a)...

Article 6, § 25...exceptions

...**and except** that general assembly may authorize any county, city or other political corporation or subdivision

- to provide for retirement or pensioning of officers and employees ... and
- provide for periodic cost of living increases in pension and retirement benefits

Article 6, § 23(a)
Cities may acquire and
furnish industrial plants--
indebtedness for

By 2/3 vote, “any county, city or
incorporated town or village ... may
become indebted for and may
purchase, construct, extend or
improve plants to be leased ... to
private persons or corporations for
manufacturing, warehousing and
industrial development purposes,
including the real estate, buildings,
fixtures and machinery...”



Article 3: Limitations on State's use of funds and credit

- Art. 3, § 38(a)
 - The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any *private person, association or corporation, **excepting aid in public calamity** ...*
- Art. 3, § 39
 - The general assembly shall not have power:
 - (1) To give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation...



No Lending of Credit... except where there is a **PUBLIC PURPOSE**

- No violation of §§ 23 or 25 occurs where the expenditure of public funds is for a public purpose. *State ex rel Mitchell v. Sikeston*
- “It has long been recognized in Missouri ... that the constitutional prohibitions noted are not violated when money and property are expended or utilized to accomplish a 'public purpose'.” *Id.*

Public Purpose Exception

- “The public purpose doctrine again applies. This court has held in similar situations that such an exception or qualification to the prohibition does exist...” *Menorah Medical Center v. Health & Educational Facilities Authority*, 584 S.W.2d 73, 79-80 (Mo. 1979)
- “The presence of a legitimate ‘public purpose’ makes society or the people of this state the direct beneficiary of the expenditures.” *Americans United v. Rogers*, 538 S.W.2d 711 (Mo banc 1976)
- “the law is clear in Missouri that an overriding public purpose will not suffer **constitutional death** at the hands of incidental private benefit.” *Id.*





Donations by Local Governments

- Art. 6, § 25 prohibits expenditure of any public funds for a private purpose.
- City can accept gifts and donations but not **donate funds** to any non-public purpose.



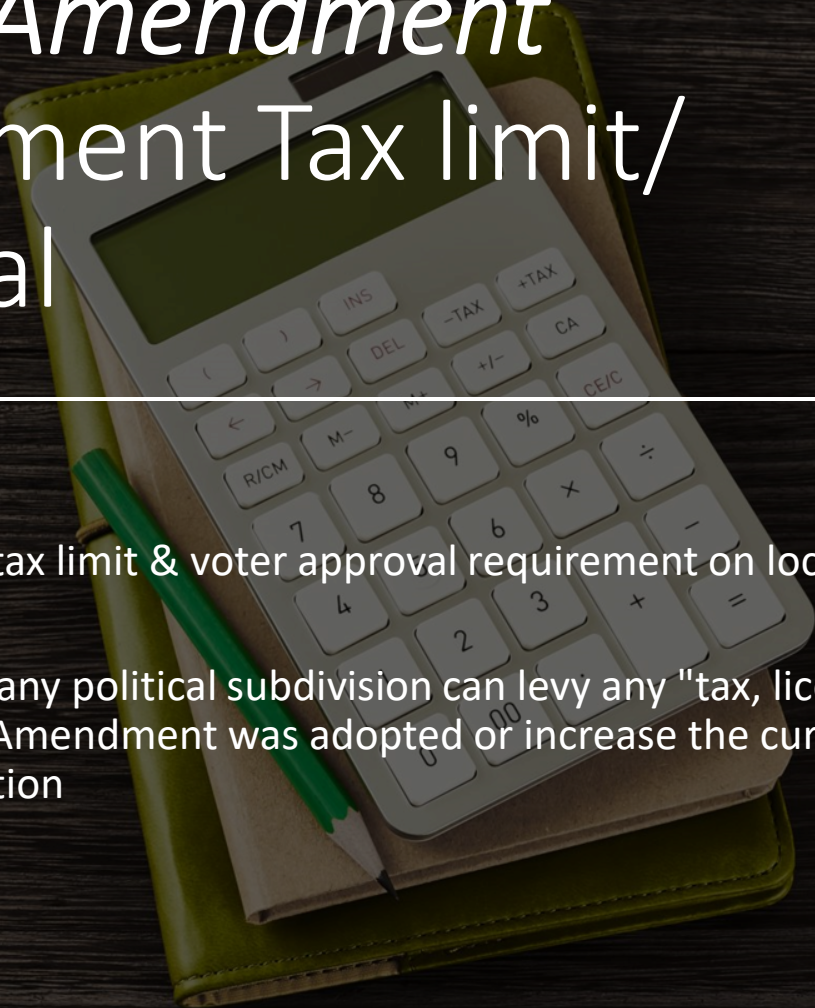
Art. 10, §3: Limitation of Taxation to public purposes

- “Taxes may be levied and collected for **public purposes** only ...”
- *Actually uses “Public Purpose”; unlike Art. 6, §§ 23 and 25 which do not*
- “it is universally agreed that an attempt to raise money by taxation for private purposes is unconstitutional; that it is a taking of property without due process of law; that it violates fundamental principles inherent in free government”
Dysart v. St. Louis, 321 Mo. 514, 521 (Mo. 1928)



The Hancock Amendment Local Government Tax limit/ Voter approval

Const. Art.10, §§ 16-24

- Sections 16 and 22 impose the tax limit & voter approval requirement on local governments
 - Voter approval required before any political subdivision can levy any "tax, license or fees" not authorized when the Amendment was adopted or increase the current levy above the level at time of adoption
- 

The image shows the interior of a large Gothic cathedral, likely St. Mark's Basilica in Venice, characterized by its intricate stone arches and columns. The perspective is from the nave, looking down a central aisle towards the altar. The architecture features pointed arches, ribbed vaulting, and large piers. The lighting is warm, highlighting the textures of the stone and wood. In the foreground, rows of wooden pews are visible, some with small blue and yellow cards placed on them. The altar area is ornate, with a golden railing and a large stained-glass window in the background. The text "LIMITATIONS RELATED TO RELIGION" is overlaid in the center in a white, sans-serif font.



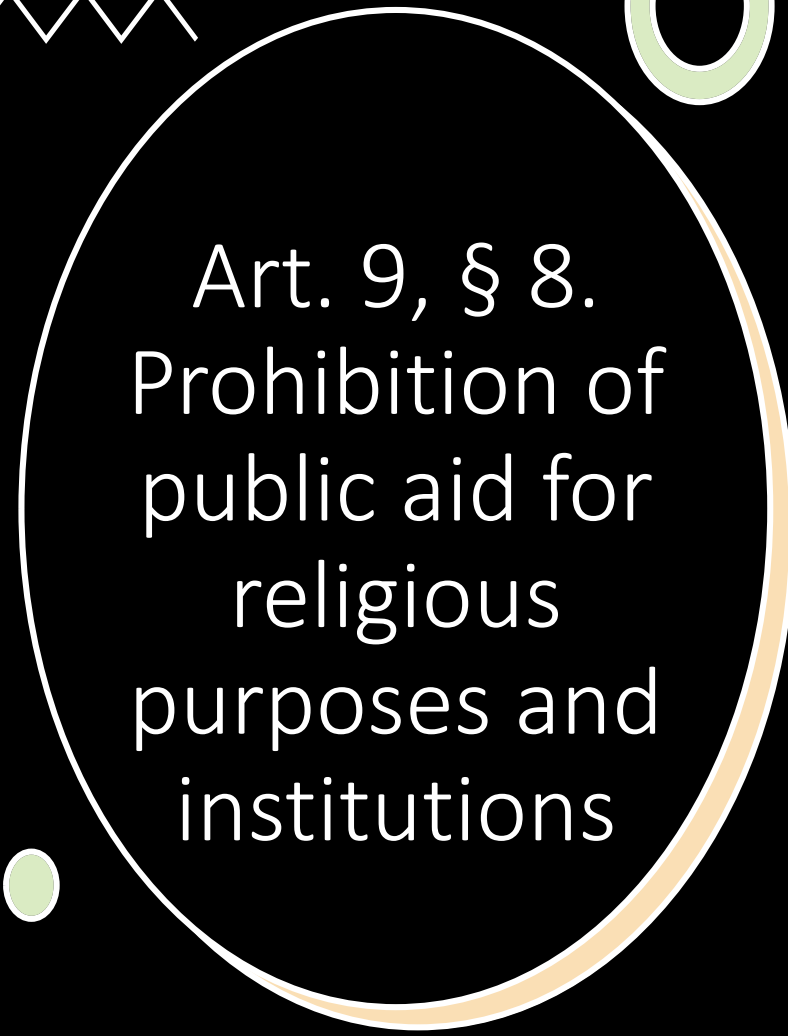

LIMITATIONS RELATED TO RELIGION



Art. 1, § 7. Public aid for religious purposes--preferences and discriminations on religious grounds

That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any **church, sect or denomination of religion**, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.





Art. 9, § 8.
Prohibition of
public aid for
religious
purposes and
institutions

No city shall ever make an appropriation for or pay from any public fund anything

- **in aid of any religious creed, church or sectarian purpose**
- or to help to **support or sustain any private or public school, academy, seminary, college, university, or other institution of learning *controlled by any religious creed, church or sectarian denomination*** whatever

nor **grant or donate personal property or real estate for any religious creed, church, or sectarian purpose** whatever. **Mo. Const. Art. IX, § 8**



A pair of silver scissors is shown cutting a vibrant red ribbon. The ribbon is being cut from the left side of the frame, and the cut edge is jagged and irregular, resembling torn paper. The background is a stark white, which contrasts sharply with the red ribbon and the dark shadow of the scissors. The overall composition is simple and symbolic, representing the act of separation.

Separation of Church & State

- Missouri constitution is **more restrictive** than the First Amendment in prohibiting expenditures of public funds
- Long established constitutional policy of Missouri insists upon a degree of separation of church and state to probably a higher degree than that required by the First Amendment

Lutkemeyer et al. v. Kaufmann et al., 364 F.Supp. 376 (W.D.Mo.1973), affirmed, 419 U.S. 888, 95 S.Ct. 167, 42 L.Ed.2d 134 (1974).

U.S. Constitution

First Amendment

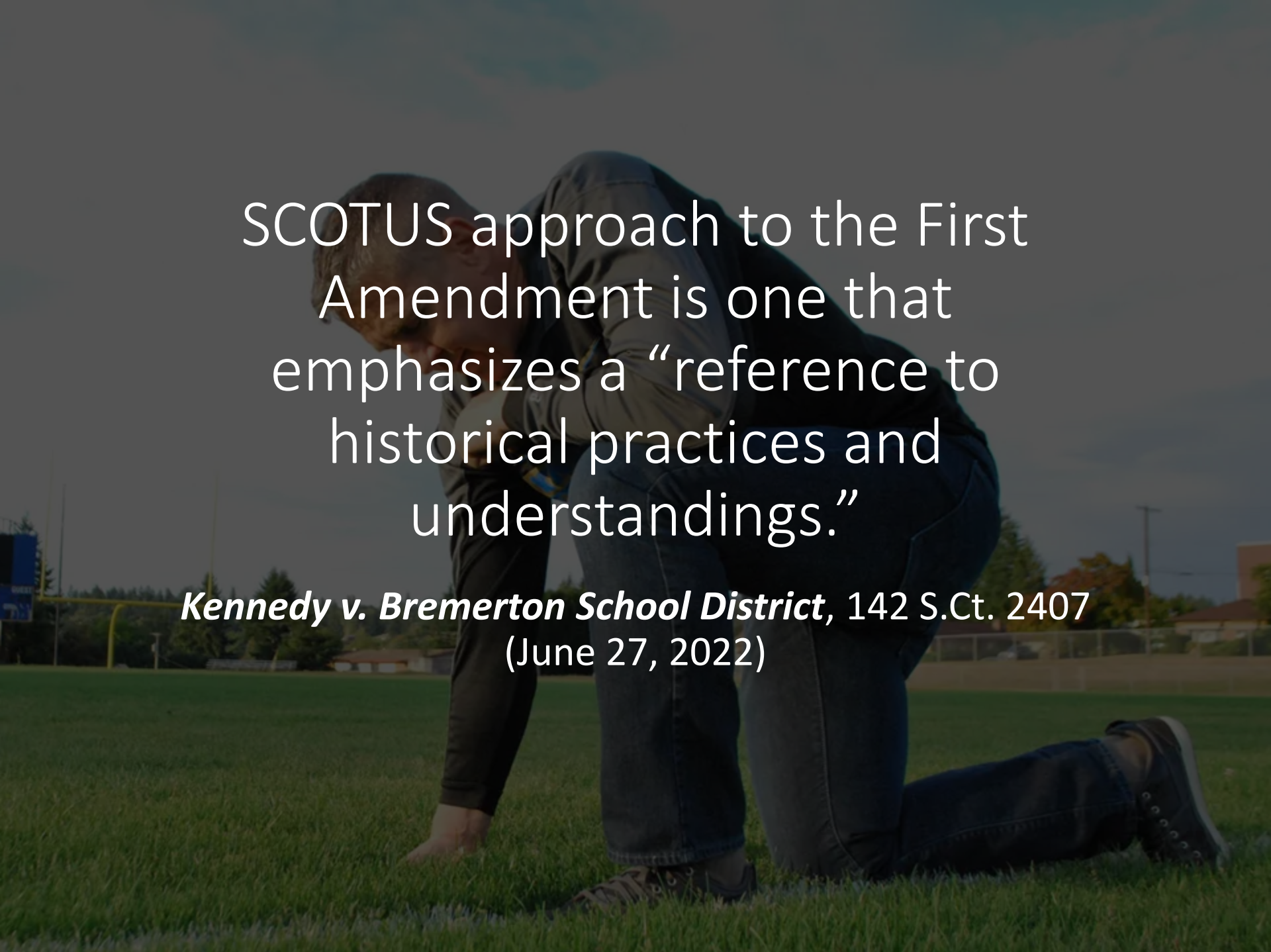
Congress shall make no law
respecting an establishment
of religion ...

First Amendment
Congress shall make no law respect
of religion, or prohibiti
of; or abridging the freedo
ls, or the right of the peop
and to petition the Gove
of grievances.

Religion: Establishing or Prohibiting?

It is “a strange world in which local governments have sometimes violated the First Amendment in the name of protecting it ...”

Shurtleff v. City of Boston, 142 S.Ct. 1583 at 1606 (2022), (Gorsuch, J., concurring)

A person is kneeling on a grassy field, looking down at the ground. The person is wearing a dark jacket and jeans. The background shows a grassy field with some trees and a fence in the distance. The text is overlaid on the image.

SCOTUS approach to the First Amendment is one that emphasizes a “reference to historical practices and understandings.”

Kennedy v. Bremerton School District, 142 S.Ct. 2407
(June 27, 2022)



Article 6, § 26(a) Limitation on indebtedness of local governments without popular vote

- No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution.

Debt Limits

- Expenditure < Revenues of current year + any previous surplus
- Unless there is a **vote**
 - Long-term contracts (more than 1 year) usually contain "annual appropriation" clauses or other provisions that allow cancellation or otherwise satisfy the debt limitations

Debt Limits - Article 6, §26(a)

- Does NOT require political subdivision to measure entire contract obligation as a current expenditure if paid over time
- Only payments due in a particular fiscal year are considered expenditures for determining whether expenditure limitation is exceeded



Debt Limits

- City of Licking issued **\$ 595,000** of Certificates of Participation
- **\$ 55,130** annual payments for 15 years.
- Not required to measure entire \$ 595,000 as a current expenditure -- only \$ 55,130 payment was expenditure for current fiscal year
- “Therefore, by only considering the first year's payment as an expenditure, it is clear that Licking did not exceed the expenditure limitation”

*Burks v. City of Licking**, 980 S.W.2d 109, 115 (Mo. Ct. App. 1998)

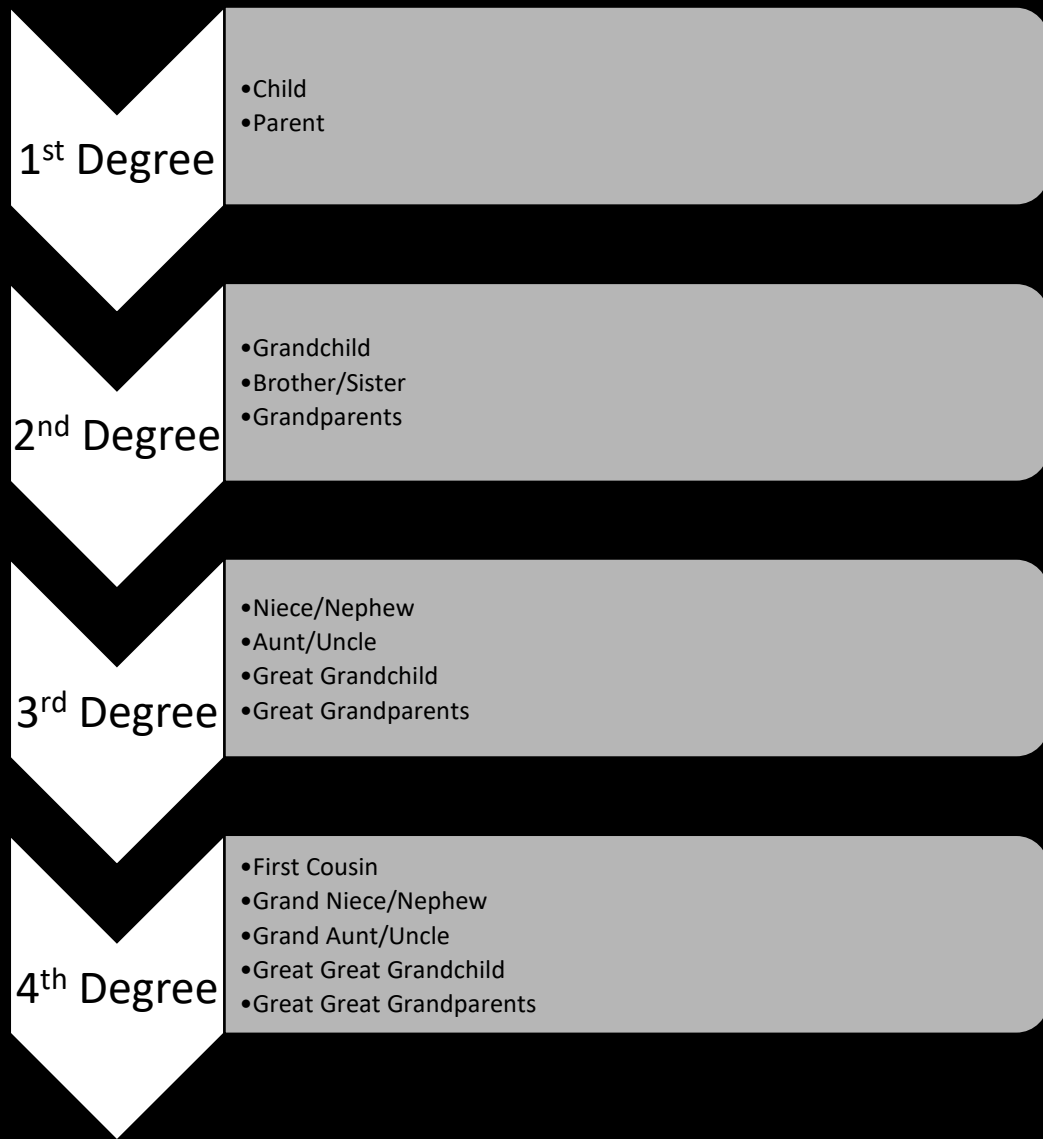


Nepotism

Article VII, Section 6. Penalty for nepotism.

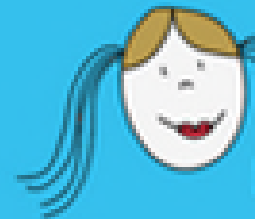
Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby **forfeit** his office or employment.

Relations to the 4th Degree (Self or Spouse)



Nepotism Art. VII, §6

1. A husband is related by marriage (affinity) to his wife's relatives in the same way that she is related to them by blood (consanguinity) and she to his family in the same way, but the kindred of the spouses are not related to one another (*e.g.*, a brother of the husband is not related to a brother of the wife, etc.).
2. Half relationship is the same as a whole relationship.
3. Step relationship is the same as a blood relationship.
4. A relationship by marriage (affinity) terminates if death or divorce occurs.



Right to hold office

Article VII, Section 12. Tenure of office.

Except as provided in this constitution, and subject to the right of resignation, all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified.

Compensation

Article VII, Section 13.
**Limitation on increase of
compensation and extension
of terms of office.**

The compensation of state,
county and municipal officers
shall not be increased during
the term of office; nor shall the
term of any officer be
extended.



Specific Statutory Limitation

- **3rd Class -- Compensation of officers and employees.** §77.440 RSMo.
 - The council shall have power to fix the compensation of all officers and employees of the city.
- **4th Class -- Salaries fixed by ordinance.** §79.270 RSMo.
 - The board of aldermen shall have power to fix the compensation of all the officers and employees of the city, by ordinance. *But the salary of an officer shall not be **changed** during the time for which he was elected or appointed.*
- **Villages -- Trustees--power of appointment.** §80.240 RSMo.
 - Such board of trustees shall have power to appoint an assessor, collector, marshal, treasurer, and such other officers, servants and agents as may be necessary, remove them from office, prescribe their duties and fix their compensation.



What about bonuses?

Article III, Sec. 39(3) prohibiting retroactive “extra” compensation.

- prohibits the grant of “any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part”



Right to Farm

Art I, Section 35

- That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.



Article X, Section 25. Sale or transfer of homes or other real estate, prohibition on imposition of any new taxes, when.

After the effective date of this section, the state, counties, and other political subdivisions are hereby prevented from imposing any new tax, including a sales tax, on the sale or transfer of homes or any other real estate.



Article XIV, Section 1 & 2 of the Missouri Constitution

- Created a constitutional “right” to “access medical marijuana” and to “make marijuana legal under state and local law for adults twenty-one years of age or older”

Medical & Adult-Use Marijuana

MO Const. Art. 14, § 2

§ 2. Marijuana legalization, regulation, and taxation

5. Local Control

(5) Except as otherwise provided in this subsection, no local government shall prohibit marijuana facilities or entities with a transportation certification either expressly or through the enactment of ordinances or regulations that make their operation unduly burdensome in the jurisdiction. However, local governments may enact ordinances or regulations not in conflict with this section, or with regulations enacted pursuant to this section, governing the time, place, and manner of operation of such facilities in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of operation of a marijuana facility or entity holding a transportation certification that may operate in such locality.

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