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Elected Officials' Issue

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Roles And Responsibilities Of Elected Officials



years they marked progress by devising new ways of chipping at rocks to make edges for tools and weapons.¹

FEATURE Review

by Kevin O'Keefe

Then, only about 10,000 years ago, mankind adopted a stationary lifestyle enabled by the rise of agriculture. Humans abandoned their small nomadic bands and gathered together to form communities where they could share responsibilities and knowledge and collaborate for their common good. Once these communities formed, the pace of progress accelerated beyond imagining: domestication of animals; the wheel; writing, printing and the preservation and diffusion of knowledge; roads, houses, buildings, tombs and monuments; religion; music, art and entertainment; mining, smelting and metalworking; sailing and navigation; the microscope and biology; the telescope and astronomy; harnessing water, steam, fossil fuels and electricity for power; trains, automobiles and airplanes to take us to every part of the earth; the telegraph, radio, telephone, and instant communication; scientific and medical miracles; exploring and understanding

distant planets and the deepest oceans; the internet and the digital age; and, ultimately, Taylor Swift. All of it was the product of the collaboration and shared responsibility made possible by living together in organized communities.

Those who choose to serve their neighbors and bear the burdens of governance in our cities, towns and villages today are custodians of the most critical, dynamic and productive environment mankind ever devised: the municipal community.

Divided Government

The structure of municipal governance in Missouri is dictated by state law (for villages and 4th and 3rd class cities) or voter-enacted charter (for charter cities.) Though there may be different names for the component parts², there is generally one common thread among the various municipal structures in Missouri: ultimate authority is vested in an elected, multi-member governing body while executive/administrative responsibilities are carried out by a single executive officer (most often an elected mayor, but in some cities there may be a mayor and an appointed city manager.)³

The legislative body, generally speaking, has ultimate and total authority to enact laws, adopt policies, adopt a budget, levy taxes and approve expenditures of public funds. But

that authority can only be exercised collectively. No one member can spend money, make policy or dictate the conduct of public business. ("Get over to Main Street now and fix that pothole." "I told Mrs. Jones she could have that permit." Etc.) If a given course of action has not been properly approved by a majority of the members of the body, it does not matter how good an idea it is or how important anyone thinks it is, it cannot be done

Executive officers need to be mindful that their responsibility is to carry out the laws and policies adopted by the legislative body. If you do not approve of what they want to do, try to reason with them, veto the bill, use your bully pulpit to bring public pressure to bear. But you do not get to go off on your own and act beyond your authority. That path leads to potential liability and removal from office.

This division and dispersion of authority within multi-member bodies and between legislative and executive officers is deliberate and critical. It means that no one official can dictate policy or make laws. The structure forces officials to come to a majority consensus before anything can get done. Elected officials who fail to appreciate the fundamental and structural need to act collaboratively are in for a frustrating and disappointing experience.

Do As You Are Told

There is an old legal principle called Dillon's Rule that is enshrined in Missouri caselaw relating to municipalities.⁴ The effect of the Rule is that cities must look to their authorizing law (state statutes for statutory cities; state statutes and the city charter for charter cities) to determine <u>whether</u> they have power to act with respect to a given subject, and, if so, what limitations there may be as to <u>what</u> the city can do and <u>how</u> the city must go about it.

For instance, Chapter 89 of the Revised Statutes of Missouri (RSMo.) expressly grants cities authority to enact zoning and subdivision regulations. But it also establishes limitations (e.g. zoning ordinances cannot prohibit group homes), and procedures that cities must follow when enacting zoning ordinances: there must be a zoning commission; the zoning commission must adopt a comprehensive plan for the community; there must be a published notice and public hearing before zoning ordinances; can be adopted or amended; if there is a proper protest to a proposed zoning ordinance, a super majority of the governing body may be required in order to adopt it, etc.

Similarly, state law says that before a village or a 3rd or 4th class city can enact any ordinance a majority of all the members of the governing body must vote in favor of it.⁵ Also, the vote of each member on the question of passage must be recorded in the minutes.⁶ The state has laid out not only <u>what</u> the city can do, but <u>how</u> it must do it. If these substantive and procedural mandates are not satisfied, the city's actions are a nullity.⁷

Who Am I?

Elected officials need to be aware of their role and stay within their lane. Elected officials are not street or parks workers; they are not building inspectors, code enforcement officers or zoning officials; they are not police officers, prosecutors or judges; they are not department directors or HR managers. Nor are they trained or authorized to perform any of those duties. And (warning!) they may not be insured if they do them. Moreover, if the elected officials usurp those hired to manage or carry out those duties, they may (and probably will) have a real problem holding employees accountable.³

The person elected to govern is responsible for making rules and policies that best serve the community. Elected officials select the professional leadership hired to carry out those rules and policies, and adopt a budget to allocate the resources necessary for employees to succeed. The role of the elected official is to enable and manage those who oversee and deliver services to constituents. Manage the managers, not front-line employees.

What Am I Doing?

During the course of a given meeting you may be asked to play several distinct roles at different times. Sometimes you will be exercising broad legislative discretion and making laws and policies.⁹

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Designed for Technology, Engineered to Last

At other times, you will be administering the laws and policies already made.¹⁰ Officials need to be sensitive to what exactly it is they are being asked to do in each instance, and to adjust their thinking and what they say and do to align with the nature of that particular process.

When a city governing body acts legislatively, the courts must defer to the city's right to exercise broad discretion, to select a course of action from among any number of reasonable alternative policies or laws (the speed limit could be 20, 25 or 30 depending on a lot of factors and legitimate considerations, but you have to pick only one speed limit for a given location.) A court reviewing a legislative decision starts with the assumption that the city was right. A challenger has to convince the court that the city council's determination was irrational, and that it was not even fairly debatable for the city to have made that choice. The court will hear evidence about the process used and context bearing on the decision and will decide the case based on the evidence presented in the courtroom.

But when a city acts administratively (for example, deciding whether a given applicant meets the established criteria to get the license or permit sought), the decision has to be based on those

previously established criteria, and it has to be based on evidence presented to the city council that bears on those criteria (and no others.) When an administrative decision is challenged in court, the court does not defer to the city or presume the city was correct. Both sides start even. In reviewing "contested" administrative cases the court reviews the evidence presented to the city that is in the record of the proceedings at the time the decision was made. Depending on the formality and rules under which the city proceedings were conducted,¹¹ an "uncontested" administrative proceeding before the city does allow the challenger to present new evidence to the court and not be bound just by the record made at the city.

The differences in how a court approaches these cases depends on the nature of the decision (legislative versus administrative.) And the level of process afforded by the city in administrative proceedings (contested administrative case versus non-contested administrative case) can make a huge difference in the outcome. These distinctions should influence how you conduct yourself when the matter is before you. Your lawyer should be able to orient you to what kind of situation each matter is and what that means for what you say and how you make a decision.

Who Are Those People?

Every city has the benefit of sever advisory boards and commissions volunteer residents who develop subje matter expertise in one of the city's are: of operation. With a few exceptions, all these bodies are advisory onl The governing body is free to accep modify or reject recommendation they make. Their opinions have weigh because of their expertise and dee dive on issues. But they do not have th broad perspective the governing bod has, or the need to prioritize, balanc and fund multiple departments and services like the governing body has Give the advisory bodies deference and respect. However, elected officials ar the people selected by the residents to make decisions

The End

Serving your neighbors by holding elected municipal office can be ar extremely rewarding experience Those who make a real mark or their community, and take the most satisfaction from their service, tend to be those who best adapt to the collegial and collaborative environment local government requires. Those who are always trying to "win" against colleagues with whom they may disagree from time to time, or micromanage city employees or city services, tend to be frustrated and burn out.

Collaboration is the core of local governance. So, next time you go to a city council meeting, pick one of your colleagues and collabor them right to their face. They just might collabor you back!

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Contact MML for endnotes at (573) 635-9134 or info@mocities.com.

Parliamentary Procedure For Everyday Meetings



Parliamentary procedure is a valuable tool for running efficient meetings but is often overlooked and misunderstood. We all use it in some form' or fashion in our meetings even if we are not fully aware of how it works.

Parliamentary procedure was developed to run meetings smoothly while ensuring all members have a voice. By using a structured approach to conducting meetings, all parties have an opportunity to be heard in an orderly fashion. Parliamentary procedure is the same for all organizations and is typically adopted as their preferred procedure for conducting meetings. Robert's Rules of Order is the most popular format but there are other similar formats available.

For the purposes of this article, I will focus on Roberts Rules of Order.

A key point to understand is that the chair or the person running the meeting is in control of the procedures. If a member wants to speak on an item, they should be recognized by the chair. An agenda or order of business should be followed to take care of the business at hand. If there is a change to the order of business, a motion should be made to amend the agenda and voted on by the body.

During a meeting, there are a few tools in the toolbox for getting things back on track if things are veering off topic. The first and most often recognized is "point of order." Point of order is used when someone is speaking on a specific item and begins to discuss something unrelated to the matter at hand. Any member of the board can call for a point of order, at which time, all discussion should cease, and the chair determines if they need to bring the speaker back onto the relevant topic or not. If the chair agrees, they will tell the speaker to speak only to the matter at hand.

The other tool in the toolbox for keeping things on track is "call for the orders of the day." This motion is used if the agenda, rather than a specific topic, is not being followed. Any member can call for the orders of the day and again, discussion should cease for the chair to decide. If the chair agrees, it is up to them to put the meeting back on track.

Another common misconception is that "tabling" and "postponing" an item is interchangeable. These are actually two very different actions. Tabling is intended for use within the same meeting. For example, an item comes up for discussion and the presenter for that topic is late to the



meeting. This would be a case where a member of the board would move to "lay the item on the table" until the presenter arrives later in the meeting. When the presenter arrives, a motion would then need to be made to "take the item from the table" and proceed with discussion.

Alternately, "postponing" an item moves the item to another meeting. If the board does not provide a specific date, the item will be placed on the agenda for the very next meeting.

Often times, the board will vote and pass an item but then a member of the board wants to change their vote. This would be a motion to "reconsider." This can be done, but there are some rules about how it is handled. A vote to reconsider can be made in the same meeting or the very next scheduled meeting only. To add to that, the motion can only be made by a member who was on the prevailing side. For example, in a 4-3 vote that passes, only the 4 members who voted yes could move to reconsider their vote. If the motion to reconsider receives a second, the item that was previously passed comes back to the floor for a final vote of all members. So a member on the prevailing side is required to bring it back to the floor but all members get to cast their vote again.

Situations arise during meetings where the board needs to veer from the orders of the day because, as we all know, the best laid plans do not always play out the way we would like. Perhaps there is a need to hear from someone in the audien who is not set up to speak. In this case, a board member ca move to "suspend the rules." This motion requires a secor and a vote of the board but allows for a temporary change i the orders of the day for a particular purpose. Readers shoul be cautious before suspending the rules to be sure it would no conflict with the Missouri Sunshine Law that requires publiposting of all agenda items. Consult with your city attorne with questions about Sunshine Law requirements.

For a municipality, the main motion, or the motion t approve an item on the agenda is most prevalent. Typically a bill is introduced by a board member and read for the firstime, a board member would then move to read the bill for second time, seconded by another board member and now the bill is on the floor for discussion. After the discussion takes place, the chair calls for a roll call vote of the board fo final passage of the bill to become an ordinance.

Parliamentary procedure, which includes Roberts Rules o Order, can be a somewhat mundane topic, but in reality, it i an essential tool for efficient and effective meetings. Althougl it is used by organizations worldwide, our municipa governments are the most visible and accessible examples o why it is important.

Karen Goodwin, MPPA, MMC, MRCC, is the city clerk for the city o Florissant.



FEATURE Review by Sheila Shockey

Navigating The Social Media Landscape:

Why Elected Officials Should Steer Clear Of Online Spats



In the digital age, social media has become a double-edged sword for elected officials. While it offers an unparalleled platform for communication and engagement with constituents, it also presents pitfalls, especially when officials get drawn into online disputes. There are compelling reasons why elected officials should avoid engaging in tit-for-tat exchanges on social media and instead focus on disseminating information professionally.

1. Preserving Professionalism and Decorum: Public office demands a high standard of conduct. Engaging in social media spats can quickly spiral into unprofessional exchanges, reflecting poorly on the official and the office they hold. It is crucial to maintain decorum and a level of professionalism befitting their position.

NEWS FROM THE BENCH

by Tayleur A. Blaylock

U.S. Supreme Court Clarifies Whether Social Media Posts By Public Officials Are "State Action"

"To misuse power ... one must possess it in the first place."

Lindke v. Freed - In a unanimous decision on March 15, 2024, the United States Supreme Court provided a test to determine whether public official's social media posts are considered "state action" for purposes of the First Amendment.

At issue was the Facebook account of a city manager, Freed. Freed had originally created a private Facebook profile and subsequently converted his account to a public "page" where anyone could view his posts and leave comments. Upon his appointment as city manager, Freed updated his Facebook page with a photo of himself in a suit with a city lapel pin, and added his title, the city's website, and the city's general email address to the "About" section of his page. Freed continued to run the page himself, posting primarily about his personal life but also posting job-related content. Freed frequently received and replied to comments from city residents and would occasionally delete unwelcome comments.

Following the COVID-19 pandemic, one user, Lindke, began commenting on Freed's posts expressing his unhappiness with the city's pandemic response. Freed removed the comments and eventually blocked Lindke, leaving him able to view but unable to comment on Freed's page. In response, Lindke brought an action under 42 U.S.C. § 1983 for violation of his First Amendment rights arguing that Freed's Facebook page was a public forum, and deleting unfavorable comments and blocking users who made them was impermissible viewpoint discrimination.

The District Court granted summary judgment to Freed, based on the "prevailing personal quality" of his posts and lack of "government involvement" in his account. The Sixth Circuit agreed, explaining that an official's activity is considered a state activity if the official is required to maintain a social media account under state law, the official uses state resources or staff to run the account, or the account belongs to an office, rather than an individual officeholder. However, in a separate case involving a similar question, the Ninth Circuit had held that the determination of whether public officials' social media accounts were state action depends on the "appearance and content" of the pages.

Examining the Sixth and Ninth Circuit approaches to the issue, the

2. Avoiding Misinformation: Social media is rife with misinformation and rapidly spreading rumors. Elected officials engaging in back-and-forth arguments might inadvertently spread or lend credibility to false information. Staying out of online disputes helps maintain the integrity of the information shared.

3. Focusing on Constructive Communication: Social media should be a tool for constructive communication and public service announcements, not a battleground for personal or political feuds. Officials should use these platforms to inform, educate and engage in meaningful dialogue with their constituents.

4. Focus on Transparency and Accountability: Encourage your government to use social media to provide insights into decision-making processes or to explain policies. This transparency builds trust and helps constituents understand the complexities of governance.

Supreme Court rejected the Ninth Circuit's "appearance and content" standard and determined that for a public official's posts to be attributable to the state, the public official (1) must possess actual authority to speak on the state's behalf; and (2) must have purported to exercise that authority when making the social media post.

The Court explained that the public official's state authority "must be real, not a mirage" and must come from a statute, ordinance, regulation, custom or usage. The Court further noted that the "appearance and function of the socialmedia activity are relevant at the second of state authority at the first." The Court Amendment rights - including the cautioned against using "excessively behalf of the government, explaining that the relevant inquiry is whether making the social media page is personal or one official announcements "is actually part that purports to speak on behalf of the of the job that the state entrusted the government. However, the Court noted official to do," and not whether it could that such disclaimers cannot be used fit within the job description. The Court to insulate government business from



for consideration under this new test.

This decision provides some clarity on the use of social media that public officials should keep in mind.

The Court acknowledged that the line between private and state action can be blurry but emphasized that step, but they cannot make up for a lack public officials have their own First right to speak about their employment broad job descriptions" to conclude the in a personal capacity. Disclaimers and public official has authority to speak on designations – either personal or official - may help to provide clarity on whether remanded the case to the Sixth Circuit scrutiny by posting on a personal page.

For ambiguous or mixed-use pages, like Freed's, courts must conduct a fact-specific analysis of the content and function of the posts to determine whether they are state action. Similarly, because Freed deleted comments and blocked Lindke, both actions must be examined. The Court cautioned that blocking on a mixed-use page requires consideration of whether each post the blocked user wishes to comment on is state action - which may increase the chance of liability. For deleted comments, the only relevant posts for the First Amendment analysis are those from which the comments were removed.

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CREATING IMPACT AS A NEW LOCAL GOVERNMENT OFFICIAL

By Sheila Shockey & Stephen Arbo

Welcome to the challenging yet rewarding world of local government leadership. As a newly elected official, you're brimming with the desire to make a meaningful difference in your community. However, it's easy to find yourself mired in the day-to-day issues that constituents face, such as potholes, peeling paint, and barking dogs. While these issues are important, they can lead to a sense of problemsolving paralysis, preventing you from focusing on the bigger picture.

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REDEFINE YOUR ROLE

Firstly, understand that your role isn't just to be a problem-solver; it's to be a visionary. Your community elected you not only to address the immediate issues but to guide them towards a better future. This requires a shift in perspective from reactive to proactive leadership.

EMBRACE BIG IDEAS

Think about what made you run for office. What are the larger issues and opportunities in your community that you are passionate about? Maybe it's improving local

service delivery, supporting economic development, or enhancing community engagement. These big ideas should be the core of your agenda.

BALANCE IS KEY

This doesn't mean you should ignore the small stuff. Constituent concerns are valid and need attention. The trick is in finding a balance. Know your role as an individual local official. Empower staff to use technology and streamline responses to everyday issues. This frees up time and energy so elected officials and staff can focus on larger projects.

ENGAGE AND INSPIRE

Big ideas become reality through collective effort. Engage with your community, local businesses, your fellow elected officials, and other stakeholders. Share your vision and listen to their input. When people feel heard and included, they become your allies in bringing about change.

MEASURE AND CELEBRATE SUCCESS

Set clear, achievable goals for your big ideas. Celebrate small victories along the way to keep the momentum going. This not only keeps your team motivated but also shows your constituents that you're making progress.

Remember, your legacy as a local government official will be defined by the big ideas you champion and the positive changes you bring about. Break free from the problem-solving paralysis and focus on what truly matters

"As elected officials, we need to constantly evolve and improve. Leadership training and honing our people skills are not just optional, they are essential tools for us to become more effective leaders throughout our careers. Staying static is not an option if we aim to truly serve and represent our communities effectively."

Maxine Weil, Former Mayor and Current City Council Member, Olivette, MO

- transforming your community and inspiring those around you.

LET'S BUILD STRONGER LEADERS TOGETHER!

Learn more about how to make your vision a reality by attending our Elected Officials Masterclass. Our Masterclass helps new and veteran elected officials learn how to govern effectively and efficiently, improving the communities they serve. Learn more at shockeyconsulting.com/masterclass



Tips for Managing Social Media:

- Establish Clear Social Media Policies: Develop and adhere to clear social media policies that outline what is appropriate to post. These guidelines should emphasize the importance of maintaining a professional tone and avoiding engagement in controversial or divisive discussions.
- Repost Official Information and Delegate to Professionals: Elected officials should primarily use their social media to repost information from the official city public information officer (PIO). This ensures the information is accurate, vetted and relevant. It is beneficial to delegate the management of social media accounts to communications professionals. They are trained to handle online communication effectively, helping to avoid gaffes and ensuring that the content aligns with the official messaging. Employ the skills of professional content creators to ensure that the material shared is not only accurate but also engaging and accessible. This might include well-produced videos, infographics or other multimedia content that effectively communicates key messages.
- Engage Constructively: When engaging on social media, focus on constructive and informative discussions. Again, use official information from the PIO. Avoid responding to provocations and maintain a tone that is respectful and dignified. Instead of engaging in disputes, use these platforms for direct interaction with constituents. Host Q&A sessions, share updates on local

projects or gather feedback on community issues. This approach encourages a more positive and constructive online community.

• **Regular Training:** Elected officials and their staff should undergo regular training on best practices for social media use, including understanding the nuances of digital communication and the importance of maintaining a professional online presence. Regular training sessions on digital literacy and ethics for officials and staff are crucial. Understanding the impact of digital footprints and the ethical consideration of online behavior is essential in today's interconnected world.

By incorporating these tips, elected officials can navigate the challenges of social media, using it as a powerful tool for effective communication and engagement, while avoiding the pitfalls of online disputes.

While social media is an invaluable tool for elected officials, engaging in online disputes can be detrimental to their reputation and effectiveness. By focusing on professional, informative and constructive communication, and leaving the management of these platforms to trained professionals, elected officials can leverage social media positively and responsibly.

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