

The Seymour Board of Alderman met for a regular meeting at 6:00 pm on Monday, April 27, 2015 at Seymour City Hall Board Room, 123 West Market Street.

Meeting called to order by Mayor Dale Bailey.

Roll call: Grady Bennett, Charles Ivy, Dean Rowe, Jim Ashley.

Also present was City Administrator Sam Burt, Supervisor Mitch Plummer, City Attorney Dani Padgett, Police Chief Ron Wright, City Clerk Leslie Houk.

Approval of Minutes

A motion was made by Ivy/Ashley to approve the minutes as written. Ayes: All. Nays: None.

Review Certification Election Results

The Board of Alderman reviewed the certified election results.

For Northward Alderman

Charles (Charlie) Ivy	51 Votes
Mary J. Carpenter	23 Votes
William Pogue	28 Votes

For Southward Alderman

Dean Rowe	76 Votes
Mike Sackett	16 Votes

Ordinance-Apiaries & Beehives

There were citizens present tonight concerned over the proposed ordinance to allow beehives inside city limits. Ivy made a motion to table the ordinance for 45 days. Motion died for a lack of a second. A motion was made by Ivy seconded by Ashley to table the ordinance until the next Board of Alderman meeting. Ayes: All. Nays: None.

City Administrator Report-Sam Burt

See Report

Mayor Report-Dale Bailey

Mayor Bailey had Denzil Young contact him about a grant that would pay for school age kids to work for companies in Webster County. A motion was made by Ashley/Ivy to participate in the grant. Ayes: All. Nays: None.

Alderman's Report

Alderman Jim Ashley has noticed a lot of pot holes. As soon as they start making asphalt we will start patching holes.

Alderman Charlie Ivy handed out a sample ordinance allowing chickens in Seymour.

Alderman Charlie Ivy informed everyone that the Anderson Street Apartments has been listed for sale.

Alderman Charlie Ivy would like to look into the steps to condemnation starting with Anderson Street Apartments.

Alderman Grady Bennett would like trash cans at the cemetery.

Alderman Grady Bennett asked the status of the storm sirens install. Mitch is still waiting for the ground to dry out.

City Attorney Report-Dani Padgett

Dani has been keeping up with HB 103, Mack's Creek Law.

A motion was made by Ivy/Bennett to go into closed session. Ayes: All. Nays: None. The following roll call vote was recorded. Ayes: Bennett, Ivy, Rowe, Ashley. Nays: None.

The reason for closed session is personnel and real estate.

A motion was made by Ivy/Bennett to go back into open session. Ayes: All. Nays: None. The following roll call vote was recorded. Ayes: Bennett, Ivy, Rowe, Ashley. Nays: None.

A motion was made by Ivy/Ashley to go with Sam's recommendation of hiring Shelley Miller to fill the open office position. Ayes: All. Nays: None.

A motion was made by Ashley/Bennett to adjourn. Ayes: All. Nays: None.

Mayor Dale Bailey

City Clerk Leslie Houk

ADMINISTRATOR'S REPORT
APRIL 27, 2015

PARK BOARD MEETING

Completed projects (12) from last meeting

Benches wanted around slides for parents

Plan for new softball and soccer fields

Look at 10 acres available from city

Have Bushong review ball field

MISSOURI PUBLIC UTILITY ALLIANCE

Conference call meeting on 4/14/2015

HB 1119 will designate second Monday of April as Lineworkers Day

Still lots of concern over SB 222 and SB 266

SB 20 creates a sales and exemption for materials and utilities used by commercial laundries

MEETING WITH DAN WADLINGTON

Field Representative for Senator Roy Blunt - Missouri

Talked about Sewer and funding from the Federal coffers

No funds available for our projects

Low income housing and senior housing

MEETING WITH JUSTIN COYAN

Springfield Chamber of Commerce

Regional and International Economic Development Group

Southwest area city administrators

Local meeting in Seymour to follow

REAL FOOD FARMS

Mark and Todd Anderson

Organic Foods Distribution

THE COWBOY PLACE

New business in Old Roosters building

Bar and Grill

TWEETS, SNAPS AND POSTS

Social Media usage for public officials

Notes:

.....

.....

.....

.....

.....

.....

.....

ALLIANCE INSIDE

Keeping you informed on municipal issues from inside the Capitol



An MPUA Publication



CITY SERVICES BILL MOVES CLOSER TO DEBATE – CALL YOUR SENATORS...AGAIN!

With less than a month left in the 2015 session, lawmakers could debate and pass some of the year's top priorities this week. Efforts this week are expected to be directed at budget, municipal court, and student transfer issues. However, there are a few utility issues on MPUA's watch list that have recently or will see action.

Last week, the House passed HB 923 requiring approval from the General Assembly for any state energy plan developed by the Division of Energy. In 2014, Gov. Nixon issued Executive Order 14-06 directing the Division to compile a comprehensive energy plan without legislative input. A 55-

member steering committee, including municipal and coop leaders, was created to facilitate the process. However, much of the inputs of not-for-profit members were ignored. As a result, a joint letter by MPUA and rural cooperatives recently objected to a draft of the state energy plan as being riddled with errors and ignoring the fundamental difference between IOUs and municipal and cooperative utilities. HB 923 now moves to the Senate. MPUA supports this effort.

In the Senate, SB 266 was placed on the perfection calendar in one of last week's final actions. This allows the bill to be available for debate at any

time in the coming week. SB 266, promoted by CenturyLink and other providers, limits city governments in out-state areas from increasing broadband connectivity, fostering public-private partnerships, and increasing consumer-friendly services in broadband. The bill also limits city utilities for trash, sewer, water, electric, and natural gas. Even if you have called before, it will be important to call again this week to reinforce our collective position. Please review our talking points and press release on the issue for help in framing your conversations with Senators. Your contacts this week will be very important!

Volume 4, Issue 12
April 20, 2015

LINKS

[Find Your Legislator](#)
[House Session Dates](#)
[Senate Session Dates](#)
[MPUA Website](#)

MPUA CALENDAR

5/05 Legislative Committee Meeting
10am
315 Governor's Office Building & Conf. Call

6/03 Joint Operating & Executive Committee Meeting
1pm
MPUA Office

6/04 Board of Directors Meeting
8am
Holiday Inn Executive Center

ANNUAL CONFERENCE

September 16-18
Branson, MO



MPUA

1808 I-70 Dr. SW
Columbia, MO 65203
573-445-3279
www.mpua.org

IN THE NEWS THIS WEEK . . .

Utility Dive: Utilities, solar advocates at odds over Missouri net metering bill

St. Louis Post-Dispatch: PSC sounds open to slight rate cut for Noranda

Hannibal Courier-Post: House Bill 1027 sets sights on eminent domain and out-of-state utilities

Missourian: Columbia City Council members take on state lawmakers' proposals

STL Public Radio: MO lawmakers to tackle budget, student transfers, and Macks Creek fix this week

MEET YOUR LEGISLATOR

Senator Jeanie Riddle
R - District 10

Elected to Senate:
2014

Committees:

Commerce, Consumer Protection, Energy and the Environment and Financial and Governmental Organizations and Elections

Lives in: Fulton

MPUA Cities: Centralia, Fulton, Holts Summit, Madison, Monroe City, New Florence, Paris, Vandalia

Tidbit: Prior to her senate victory, Senator Riddle served for six years in the Missouri House.



BILL BITES: A quick look at bills being tracked by MPUA

HB 92 Miller(R) & Kehoe(R)

Changes the definition of "waters of the state"

HB 119 Lichtenegger(R)

Requires a public water system to notify the Department of Natural Resources, the Department of Health and Senior Services, and its customers at least 30 days prior to a vote to cease fluoridation. **NOTE:** Hearing April 21, 2pm in Senate Lounge.

HB 1175 Remole(R)

Prevents use of electronic records from smart meter as evidence in criminal prosecution & imposes civil penalty on utility for transferring these records for any other purpose. **NOTE:** Hearing April 22, 5pm in HR6.

SB 222 Schatz(R)

Relating to communication service provider infrastructure

SB 266 Schaefer(R)

Prohibits municipalities from providing a service that is being provided by at least one private business within the boundaries of the municipality without a vote of the people.

10 QUESTIONS ADDRESSING THE PROS AND CONS OF SOCIAL MEDIA USAGE FOR PUBLIC OFFICIALS

me climb into the passenger's seat of your social media-mobile and attempt to provide some further instruction to keep you headed in the right direction in this new territory.

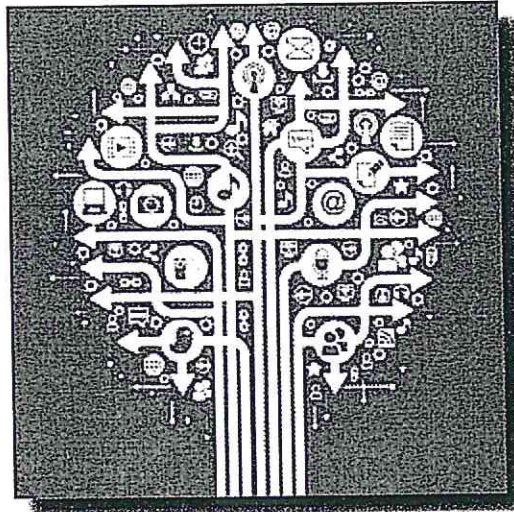
Is everything I write on social media governed by the Sunshine Law?

No. The matters that are controlled by the Sunshine Law are any writings or videos that an official posts about their office (i.e., a councilmember commenting on proposed legislation or actions that the member wants the public body to take, such as terminating or disciplining staff.) The test of determining "public" versus "private" documents involves comparing the nature and purpose of a document with a government official's or agency's activities to determine whether the documents constitute a record of the "performance of official functions that are or should be carried out by a public official or employee," thereby making them public records⁸. To the extent that the post or message in question does not meet the test stated above, the message would be private and not subject to the Sunshine Law.

The above standard is the majority view of courts and agencies that have addressed the question. There are a minority of courts that still hold that if a public computer or cell-phone is used, or if public funds are paying for the computer or phone, then it is the public's property and the elected official has no ability to claim that he or she is entitled to claim privacy for any message or post originating from the device.⁹ Even these decisions still recognize that not all messages are "public"¹⁰.

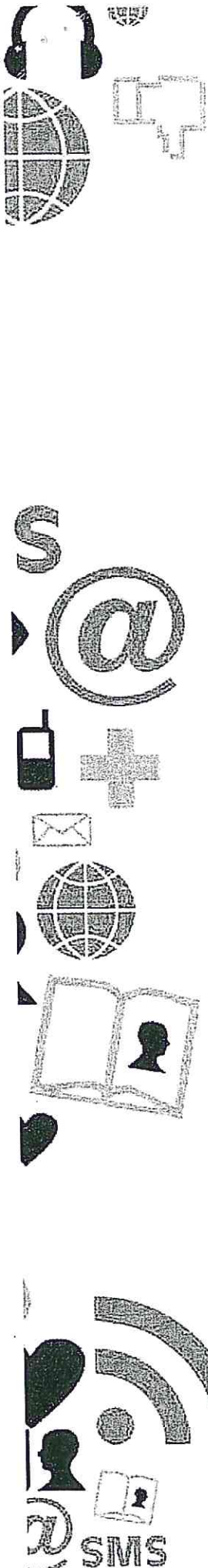
If I post information about city

While it seems as though social media has been in use for a long time, well-established sites like Facebook and LinkedIn are all less than 12 years old, launching in 2003-2004¹. YouTube launched in 2005, and Twitter is a relative “new kid in town,” not launched until 2009². New social media sites like Instagram, Vine, and Snapchat are growing in popularity, especially among younger users, as the “traditional” social media venues like Facebook and Twitter become populated by their parents and grandparents. By 2014, 85 percent of the world’s population had access to the Internet, there were 200 million social media users in the U.S., and millions of people have “liked” a brand on Facebook³. Major retailers have begun to use traditional media to drive customers to their Facebook and Twitter streams⁴ to take advantage of the easy access to potential customers. It is not surprising that a public official would be interested in utilizing the low-cost



Research shows that social media users are more engaged citizens. Sixty-nine percent (69 percent) of social media users will volunteer for a community organization versus 49 percent for non-social media users.⁵ Similarly, 57 percent of social media users participated in a community issue versus 43 percent of non-users⁶. Finally, 60 percent of all Americans believe the Internet has made it easier for them to be well-informed consumers, while 47 percent of all Americans believe that the Internet and social media has made them more active in the political sphere.⁷

Since social media is such a ubiquitous presence in many people's lives, anyone who wishes to communicate effectively with his or her constituents must be ready to use such tools. The fact that using them requires very little training is both a blessing and a curse. The closest analogy this writer can convey is that using social media without a guide is like watching one's child start to drive immediately after passing their driving test. Yes, the person has the right to drive, but do they have the ability to safely do so without additional instruction? Let



business on my personal Facebook account, is that post subject to a Sunshine Request?

ANSWER:

Yes. Any post that concerns a person's status as an elected official is subject to a Sunshine request regardless of whether the person tries to keep such post "private"¹¹. It is irrelevant whether you post as "Alderman X" or "private citizen X". The content of the message controls.¹² For example, a councilperson posts under his personal Facebook account: "I am appalled by the city manager's conduct and I think she needs to be fired." Even if this post does not identify the councilperson as such or state that it is written in an official capacity, courts have held that since the content involved that person's office, the post was subject to a Sunshine request.

QUESTION:

I have Facebook and Twitter accounts that show that at least a majority of my fellow elected officials have "friended," or follow me. Are there any Sunshine concerns having my fellow elected officials as friends or followers?

ANSWER:

Possibly. If an elected official posts about issues that the elected body may consider, or is considering, AND the other elected officials comment on the post, an un-posted "public meeting" probably has just occurred.¹³ Remember that 610.020 RSMo requires that any meeting of the public body requires a notice, given at least 24 hours in advance, of the time date and place of such meeting. A tentative agenda is also required. Once an elected body (or a majority thereof) engages in a discussion of public business without giving the requisite notice and agenda, a violation has occurred subjecting those involved to penalties under 610.027, RSMo.

QUESTION:

If I do post information that I realize will create a "public record" under the Sunshine Law, what are my obligations?

ANSWER:

You must be able to produce the information if a request is made. You are also responsible for the cost of producing the information. Finally, you are obligated to keep the information for as long as is required under the Missouri Secretary of State's archiving schedule. This is a requirement imposed under Chapter 109, RSMo. NOTE: You cannot rely on the actual social media site to be your "archive." You are the person that must take the steps to keep and preserve the post(s). If you fail to do so, you face penalties under both the Sunshine Law and Chapter 109. This can be a very costly proposition for you.

QUESTION:

During council or board meetings, I tweet and post my thoughts about the discussion taking place during the actual meeting. Sometimes, I answer questions that citizens pose back after I post, or other members of the council or board post replies to my comments while the meeting is occurring. Are these exchanges subject to the Sunshine Law?

ANSWER:

Yes. What is really taking place by your actions is public comment and debate among the elected body. This is no different than having an oral discussion at the meeting. The posts are subject to disclosure. More importantly, you are engaging in an unposted meeting in violation of 610.020, RSMo.

QUESTION:

Are there any guidelines that I can review to help me in dealing with social media use as a public official?

ANSWER:

Yes. The Secretary of State has published guidelines that can be found at <http://www.sos.mo.gov/archives/pubs/SocialMedia.pdf>. Highlights of Policy:

1. Designate who is responsible for content;
2. Policy should outline ramifications for those who fail to follow policy;
3. Identify who owns the account and content;
4. Limit access;
5. Have a policy about forwarding 3rd party broadcasts;
6. Make sure confidentiality is addressed;
7. Understand copyright issues;
8. Have a disclaimer on opinions posted on the site;
9. Do not rely on third-party vendors to keep messages or archive. This is the responsibility of the agency with the account;
10. Have a plan in place to be able to archive and retrieve information in the event of a system crash, change in user terms by the provider or discontinuance of the media.

QUESTION:

Are there guidelines for e-mail and electronic document management published by the Secretary of State?

ANSWER:

Yes. See <http://sos.mo.gov/records/recmgmt/E-MailGuidelines.pdf>. This document provides tremendous information on types of electronic documents and their treatment under the applicable state law. This should be required reading.

QUESTION:

I have been informed that I, in my capacity as an elected official, have been sued for voting in favor of an ordinance that a citizen's group claims violates their civil rights. I have also been told that I need to produce all documents that reference the subject of the lawsuit. I think I may have posted information on my Facebook and Twitter accounts about the issue. What do I need to do?

ANSWER:

First, take immediate action to preserve the documents. Once a party reasonably anticipates litigation, it has duty to suspend, as to documents that may be relevant to anticipated litigation, any routine document purging system that might be in effect, and the failure to do so constitutes spoliation. Such a party has a duty to put in place a litigation hold to ensure the preservation of relevant documents; the failure to do this constitutes spoliation. A document retention policy adopted or utilized to justify the destruction of relevant evidence is not a valid document retention policy and implementing such a policy in advance of reasonably foreseeable litigation would not be proper and could constitute spoliation.

It is critical that you plan, in advance, to have a document retention system in place for your social media. While this issue has not been heavily litigated, those courts that have addressed the matter have imposed serious sanctions, ranging from monetary penalties to default judgment against the party that failed to retain the required electronic communications. Please consult with your attorney for a more in-depth discussion of this aspect of the law.

QUESTION:

What is "spoliation"?

ANSWER:

Spoliation is the destruction of evidence. Destruction of electronic documents can occur in two general ways: 1) actively deleting or altering records and 2) allowing electronic information to be deleted through lapse of time via a records retention policy.

Counsel is advised that the key elements in avoiding spoliation issues are making sure that clients have a clearly established record retention policy and to make sure to institute a litigation hold with the client or



- Water
- Wastewater
- Environmental
- Transportation
- All Engineering Design

Qualifications-Based Selection (QBS) -

is a partnership between the public agency and consultant

Select your Engineering Firm using QBS!

For more information on implementing QBS, contact ACEC/MO.

ACEC Missouri

American Council of Engineering Companies of Missouri

200 E. McCarty Street, Suite 201

Jefferson City, MO 65101

1-888-881-4080 (toll free) • Website: www.acecma.org

issue preservation notices to parties with relevant information as soon as litigation appears likely. Instigating a litigation hold as soon as litigation appears likely is especially important today where one study of sanctions for e-discovery noted, "In the 230 cases in which sanctions were awarded, the most common misconduct was failure to preserve electronic information, which was the sole basis for sanctions in 90 cases."

QUESTION:

Is using social media to conduct public business worth the risk?

ANSWER:

That is a question each person should address with their city attorney and city clerk as these two individuals will be the ones who are tasked with making sure their bosses do not violate the law. As demonstrated above, only the particular elected official will be able to determine if the benefits outweigh the risks. Just keep in mind the old adage, "caveat emptor," or "let the buyer beware," when taking the social media plunge. □

Dan Wichmer is the city attorney for the city of Springfield, Missouri. Cora Scott is the director of public information for the City. Contact the city of Springfield at www.springfieldmo.gov or (417) 864-1000.

(Endnotes)

1 See, Dr. Anthony Curtis—The Brief History of Social Media, 2013. <http://www2.uncp.edu/home/acurtis/NewMedia/SocialMedia/SocialMediaHistory.html>

2 Id.

3 Id.

4 Id.

5 Quarterly Allstate and National Journal Heartland Monitor Poll, June 13, 2012.

6 Id.

7 Id.

8 Pulaski County v. Arkansas Democrat-Gazette, Inc., 260 S.W.3d 718 (Ark. 2007).

9 Detroit Free Press v. City of Detroit, 2008 WL 701227 (Mich. Cir. Ct. Jan. 25, 2008).

10 Michigan Federation of Teachers & School Related Personnel, AFT, AFL-CIO v. University of Michigan, 753 N.W.2d 28 (Mich. 2008).

11 Wick Communications Co. v. Montrose County Bd. Of Commissioners, 81 P. 3d 360 (Co. 2003).

12 Bent v. State, 46 So.3d 1047 (Fla. App. 4 Dist., 2010); Easton Area School Dist. v. Baxter, 35 A.3d 1259 (Pa. Cmwlth. 2012); Schill v. Wisconsin Rapids School Dist., 327 Wis.2d 572, 786 N.W.2d 177 (WI. 2010).

13 Kansas City Star Co. v. Shields, 771 S.W.2d 101 (Mo. App. 1989) (public body conducting business).