

Filed
APR 18 2016
Missouri Ethics
Commission

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)
)
 Petitioner,)
)
 v.)
)
 BRIAN POLK,) Case No. 15-0061-I
)
 CHAD HENSON,)
)
 JAMES "BILL" HOVIS,)
)
 AND)
)
 BRENDA SEAL,)
)
 Respondents.)

CONSENT ORDER

The parties have filed a Joint Stipulation of Facts, Waiver of Hearing, and Proposed Consent Order with the Missouri Ethics Commission. Accordingly, the Missouri Ethics Commission accepts as true the facts stipulated and finds that Respondents violated Sections 115.646, 130.047 and 130.031.8, RSMo.

The Commission directs that the Joint Stipulation be adopted.

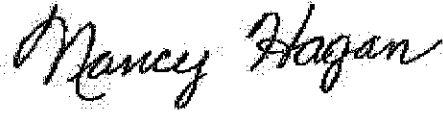
1. Respondents shall comply with all relevant sections of Chapters 115 and 130, RSMo.
2. It is the order of the Missouri Ethics Commission that Respondents repay the full amount spent on the use tax flyer, \$1,748.49, to Wayne County. The amount shall be paid at the time of settlement.
3. It is also the Order of the Missouri Ethics Commission that a fee is imposed against Respondents for Count III in the amount of \$100, pursuant to Section 105.961.4(6),

RSMo. The fee shall be paid at the time of settlement by check or money order made payable to the Missouri Ethics Commission.

4. Respondents shall be jointly and severally liable for all fees imposed under this order.

SO ORDERED this 10th day of April, 2016

By:



Nancy Hagan, Chair
Missouri Ethics Commission

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BRIAN POLK,) Case No. 15-0061-I
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CHAD HENSON,)
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JAMES "BILL" HOVIS,)
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and)
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BRENDA SEAL,)
Respondents.)

**JOINT STIPULATION OF FACTS, WAIVER OF HEARING
BEFORE THE MISSOURI ETHICS COMMISSION, AND
CONSENT ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The undersigned parties jointly stipulate to the facts and consent to the action set forth below.

The undersigned Respondents, Brian Polk, Chad Henson, James "Bill" Hovis and Brenda Seal, acknowledge that they have received and reviewed a copy of the Complaint filed by the Petitioner in this case, and the parties submit to the jurisdiction of the Missouri Ethics Commission.

The undersigned Respondents further acknowledge that they are aware of the various rights and privileges afforded by law, including but not limited to: the right to appear and be represented by counsel; the right to have all allegations against Respondents be proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Respondents; the right to present evidence on Respondents' behalf at the hearing; and the right to a decision upon the record of the hearing. Being aware of these rights provided to

Respondents by operation of law, the undersigned Respondents knowingly and voluntarily waive each and every one of these rights and freely enter into this Joint Stipulation of Facts, Waiver of Hearing before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law, and agree to abide by the terms of this document.

I.

Based upon the foregoing, the Petitioner and the undersigned Respondents jointly stipulate to the following and request that the Missouri Ethics Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law, as follows:

JOINT PROPOSED FINDINGS OF FACT

1. The Missouri Ethics Commission is an agency of the State of Missouri established pursuant to Section 105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 130 and Section 115.646, RSMo.
2. Respondent Polk was the Presiding Commissioner for Wayne County, Missouri, at all times relevant to this complaint.
3. Respondent Henson was a Commissioner for Wayne County, Missouri, at all times relevant to this complaint.
4. Respondent Hovis was a Commissioner for Wayne County, Missouri, at all times relevant to this complaint.
5. Respondent Seal was the County Clerk for Wayne County, Missouri, at all times relevant to this complaint.
6. Wayne County, Missouri, is a third-class county in southeast Missouri with a population of approximately 13,500 residents.

7. On July 28, 2015, the Wayne County Commission placed a ballot measure relating to a use tax on the November 3, 2015, ballot.

COUNT I

Use of Public Funds

8. In September 2015, Respondents met and decided to issue a flier related to the use tax ballot measure, and Respondents Polk, Henson, and Hovis, asked Respondent Seal to gather information to include for the flyer.

9. In October 2015, Respondent Seal presented information she had gathered, and Respondents decided what to include on the flyer and agreed that Respondent Seal should draft a flyer.

10. Respondent Seal drafted a flyer, and on or about October 20, 2015, Respondents Polk, Henson, and Hovis approved the wording and directed Respondent Seal to produce it.

11. On October 20, 2015, Respondent Seal placed an order for thirty-one packages of green card stock, at a cost of \$308.76.

12. Between October 23 and 24, 2015, approximately 8,000 flyers were printed, at a cost of approximately \$25.14, on a Wayne County copier. Approximately 5,600 of those were printed on the green card stock purchased by Respondent Seal.

13. On October 26, 2015, \$1,414.59 from Wayne County's general revenue fund was used to purchase postage for the flyers.

14. The flyers were mailed to all registered households within Wayne County and given out at local events.

15. For materials, printing, and postage, Respondents Polk, Henson, Hovis, and Seal caused to be made over \$1,700 in expenditures to print and mail the flyer.

16. A true and accurate copy of the flyer is attached hereto and incorporated by reference as Exhibit 1.

17. The flyer supported the local use tax ballot measure by stating (emphasis original):

The biggest losers are your county retailers and merchants, who are placed at a decisive competitive disadvantage.

The second biggest loser is your local government who needs sales/use tax proceeds to deliver services to the citizens of Wayne County.

The biggest winners are out-of-state suppliers, mail-order companies, and internet e-tailers who plummet the Missouri marketplace!

18. Pursuant to Sections 105.957 and 105.961, RSMo, the Commission's staff investigated a complaint filed with the Commission and reported the investigation findings to the Commission.

19. Based on the investigation report, the Commission determined that there were reasonable grounds to believe that violations of law occurred, and it therefore authorized a hearing in this matter pursuant to Section 105.961.3, RSMo.

COUNT II

Non-committee expenditure report

20. For Wayne County, Missouri, the local election authority is the county clerk. § 130.026.1, RSMo.

21. Respondents, as County Commissioners and Clerk, made a total of \$1,748.49 in expenditures for a flyer supporting a ballot measure in the November 5, 2015, election.

22. Respondents, as County Commissioners and Clerk, did not file with the Wayne County Clerk a non-committee expenditure report disclosing \$1,748.49 in expenditures.

COUNT III

"Paid for by" disclosure

23. Respondents published, circulated and distributed a flyer relating to a ballot measure on the November 5, 2015, ballot.

24. The flyer did not contain a "paid for by" disclosure.

JOINT PROPOSED CONCLUSIONS OF LAW

COUNT I

Use of Public Funds

25. "No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure." § 115.646, RSMo.

26. There is probable cause to believe that Respondents Polk, Henson, Hovis, and Seal violated Section 115.646, RSMo, by making expenditures of public funds from Wayne County, Missouri; for flyers that supported a ballot measure in the November 5, 2015, election, and that Respondents did so knowingly.

COUNT II

Non-committee expenditure report

27. "Any person who is not a defined committee who makes an expenditure or expenditures aggregating five hundred dollars or more . . . in support of, or in opposition to, the qualification or passage of one or more ballot measures, other than a contribution made directly to a candidate or committee, shall file a report signed by the person making the expenditures, or that person's authorized agent." § 130.047, RSMo.

28. The non-committee expenditure report must include “the name and address of the person making the expenditure, the date and amount of the expenditure or expenditures, the name and address of the payee, and a description of the nature and purpose of each expenditure.” § 130.047, RSMo.

29. The non-committee expenditure report must be filed with the “appropriate officer having jurisdiction over the election of the . . . ballot measure in question as set forth in section 130.026.” § 130.047, RSMo.

30. The report is due “no later than fourteen days after the date of making an expenditure which by itself or when added to all other such expenditures during the same campaign equals five hundred dollars or more.” § 130.047, RSMo.

31. For purposes of Chapter 130, RSMo, “person” includes “any department, agency, board, institution or other entity of the state or any of its political subdivisions.” § 130.011(22), RSMo.

32. For purposes of Chapter 130, RSMo, an expenditure is “a payment, advance, conveyance, deposit, donation or contribution of money or anything of value for the purpose of supporting or opposing . . . the qualification or passage of any ballot measure . . . ; a payment, or an agreement or promise to pay, money or anything of value . . . for the purchase of goods, services, property, facilities or anything of value for the purpose of supporting or opposing . . . the qualification or passage of any ballot measure.” § 130.011(16), RSMo.

33. Under Section 130.026, the “appropriate officer” for a county ballot measure is the local election authority. § 130.026.2(5)(b), RSMo.

34. There is probable cause to believe Respondents Polk, Henson, Hovis, and Seal violated Section 130.047, RSMo, by causing \$1,748.49 in expenditures to be made in support of a

ballot measure, and thereafter not filing with the Wayne County Clerk a non-committee expenditure report disclosing those expenditures.

COUNT III

"Paid for by" disclosure

35. "Any person publishing, circulating, or distributing any printed matter relative to ... any ballot measure shall on the face of the printed matter identify in a clear and conspicuous manner the person who paid for the printed matter with the words 'Paid for by' followed by the proper identification of the sponsor pursuant to this section." § 130.031.8, RSMo.

36. "'[P]rinted matter' shall be defined to include any pamphlet, circular, handbill, sample ballot, advertisement, including advertisements in any newspaper or other periodical, sign, including signs for display on motor vehicles, or other imprinted or lettered material." § 130.031.8, RSMo.

37. "In regard to any printed matter paid for by ... any other organization not defined to be a committee by subdivision (9) of section 130.011 and not organized especially for influencing one or more elections, it shall be sufficient identification to print the name of the entity, the name of the principal officer of the entity, by whatever title known, and the mailing address of the entity, or if the entity has no mailing address, the mailing address of the principal officer." §130.031.8(3), RSMo.

38. There is probable cause to believe that Respondents Polk, Henson, Hovis, and Seal violated Section 130.031.8, RSMo, by publishing, circulating, and distributing a flyer relating to a ballot measure without including the proper paid for by disclosure.

II.

Based on the foregoing, the parties hereto mutually agree and stipulate that the following shall constitute the order entered by the Missouri Ethics Commission in this matter. This order will be effective immediately upon the issuance of the Consent Order of the Missouri Ethics Commission without further action by any party:

1. The parties understand that the Petitioner will maintain this Joint Stipulation as an open and public record of the Missouri Ethics Commission.
2. The Commission shall issue its Consent Order in the form attached hereto as Exhibit A.
 - a. Respondents shall comply with all relevant sections of Chapter 130, RSMo.
 - b. For Count 1, the parties agree that in lieu of a fee pursuant to Section 105.961.4(6), that \$1,748.49 shall be repaid to Wayne County. Respondents shall provide to the Ethics Commission documentation that confirms the repayment.
 - c. For Count 3, it is the Order of the Missouri Ethics Commission that a fee is imposed against Respondents in the amount of \$100, pursuant to Section 105.961.4(6), RSMo. The fee will shall be paid at the time of settlement by check or money order made payable to the Missouri Ethics Commission.
3. The parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the Complaint filed by the Petitioner in the above action.
4. Respondents, together with their heirs, successors, and assigns, do hereby waive, release, acquit and forever discharge the Missouri Ethics Commission and its attorneys of or from any liability, claim, actions, causes of action, fees, costs and expenses, and compensation,

including but not limited to, a claim for attorney's fees whatsoever which Respondents or Respondents' attorney may now have or which they may hereafter have, which are based upon or arise out of the above cases.

SO AGREED:

RESPONDENT BRIAN POLK

By: Brian Polk 3-22-16
Brian Polk Date

PETITIONER MISSOURI ETHICS
COMMISSION

By: James H. Klahr 4/18/16
James Klahr Date
Executive Director

RESPONDENT CHAD HENSON

By: Chad Henson 3-22-16
Chad Henson Date

By: Curtis R. Stokes 4/18/16
Curtis R. Stokes Date
Attorney for Petitioner

RESPONDENT JAMES HOVIS

By: James W. Hovis 3-22-16
James Hovis Date

RESPONDENT BRENDA SEAL

By: Brenda Seal 3/22/16
Brenda Seal Date

By: Michael Jackson 3/22/16
Michael Jackson Date
Attorney for Respondents

PRSRT STD
ECRWSS
U S POSTAGE
PAID
EDDM

LOCAL POSTAL CUSTOMER
WAPPAPELLO, MO 63966

VOTE! VOTE! VOTE! VOTE! VOTE! VOTE! VOTE! VOTE!

November 3, 2015

THIS IS NOT A NEW TAX! DOESN'T RAISE LOCAL TAX!

Shall the County of Wayne place a local use tax on out of state purchases to eliminate the current sales tax advantage that non-Missouri vendors have over Missouri vendors at the same rate as the total local sales tax rate, currently one and one half percent (1.5%), provided that if the local sales tax rate is reduced or raised by voter approval, the local use tax rate shall also be reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out of state vendors do not in total exceed two thousand dollars in a calendar year.

Yes _____

No _____

Q. *What is a use tax?*

A. It is a sales tax which is applied to purchases made from out-of-state vendors & retailers.

Q. *Will the county sales tax increase if this issue is approved by the voters?*

A. NO! The use tax will not have any impact on the local sales tax rate in Wayne County nor will it affect the county's property tax levies.

Q. *Is this a new tax?*

A. NO! The local use tax was implemented by the state legislature in 1992. A blanket use tax was collected statewide and prorated to cities and counties. In 1996 a Missouri Supreme Court decision determined that the blanket use tax was unconstitutional due to the varying tax rates of the cities and counties, and required each city and county to adopt its own use tax through the voters.

Q. *Who pays the use tax?*

A. The local use tax will be collected by major out-of-state mail order companies which do business in Missouri for all mail order purchases from Wayne County.

Q. *How do we know if we pay a use tax?*

A. The out-of-state mail order companies have built this tax into the price of their products. In fact, you are paying the tax and the out-of-state mail order company is keeping the revenue.

Q. *Has anyone passed the use tax?*

A. Yes, approximately 60 counties have passed a local use tax including Bollinger, Cape Girardeau and Scott counties.

Q. *Will this rate ever change?*

A. It may. The use tax will remain the same as the county sales tax, currently 1½%, or 15 cents on a \$10.00 purchase.

Q. *Why did the county place the use tax on the ballot?*

A. To help support local merchants and to keep from losing \$30,000 to \$40,000 of revenue per year already being collected.

The biggest losers are your county retailers and merchants, who are placed at a decisive competitive disadvantage.

The second biggest loser is your local government who needs sales/use tax proceeds to deliver services to the citizens of Wayne County.

The biggest winners are out-of-state suppliers, mail-order companies, and internet e-tailers who plummet the Missouri marketplace!