

No Standing News

Since we have no standing, we stand with those left standing.

Volume I

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THE RECURRENT IPSO FACTO NIGHTMARE

A Second RMU Board Member was also "Present and Voting Illegally"

From the Editor's Desk

Despite careful NSN editorial staff review of the NSN Issue #21, "The Geese that Laid 18 Million Golden Eggs," we overlooked something important. Well, you can hardly blame us. Figuring out the incestuous scheme, the morass of interlocking board memberships and rampant conflict-of-interest in the city was like planning the Normandy landing. The fact we missed was this. The "ipso facto" disqualification for RMU board members applies not only to Dain Ward but also to another RMU board member - BILL JENKS, III. This makes the problem much worse than first thought.

(for URL #1 link to the article see footnotes)

When William Jenks III, was appointed to the RMU board in 1996, he was already holding a 1993 appointment to the city Industrial Development Authority (IDA). Therefore, his seat on the RMU board was "ipso facto," vacant from the very beginning! He wasn't, from that time or since, a legitimate voting member of the RMU board. The fact that Jenks declined the mayor's recent reappointment to the IDA does not cleanse his prior four years of illegal votes on the RMU board, or make his present RMU attendance legitimate. As reported in NSN # 21,

this "present and voting illegally" condition also applies to Dain Ward, who was appointed to the Rolla Economic Development Committee (REDC) some years ago. Jenks did decline an attempt by Mayor Morgan to reappoint him to the IDA board last month but the damage has already been done. (URL #2)

The "ipso facto" Factor: This provision in Rolla city ordinance number 35-151, requires that when any RMU board member accepts a second appointment to any city board or commission, his RMU seat is "ipso facto" vacated. "Ipso facto" means: "By the fact itself; by the mere fact. By the mere effect of an act or a fact." The definition is from Black's Law Dictionary. In other words, the fact that second city appointments existed for each of these men means their RMU seats were AUTOMATICALLY AND INDISPUTABLY VACANT. No action needs to be taken, no debate or excuses apply, it is done and they aren't RMU board members.

Keep the "Ipso Facto": Under no circumstances should the council delete the "ipso facto" condition from the utility board member ordinance. We have no doubt that this is the instant cure being cooked up in city hall. An amendment to city code 35-151 will be hastily shoved in front of the council. A certain RCDC officer and councilman will move for a fast "emergency" vote, the "ipso facto" will be deleted from the ordinance and everyone will pretend that the problem is solved. In 1945, when the utility ordinances were originally passed, the '45 council failed to impose all normal democratic accountability, like rate hearings, on the RMU board. But just as deliberately, they wisely

included this unusual clause because they intended RMU appointees to devote themselves exclusively to operating and building the most vital lifeline in the city. Like being on the council, the hospital board or the school board, if members work hard at doing a very good job - they don't have time for much else anyway. (URL #3)

The Depth of the "Doodoo": The situation is simply this. The RMU board has for years, and still has, only TWO (2) legal voting members, Alfermann and Stoffer. With only four members on the RMU board, two is not enough to have a legal quorum for taking action at any meeting. It appears that ALL RMU meetings and votes have taken place in the absence of a quorum! This makes all RMU board actions during these years null and void. Bills and payrolls, contracts signed, "donations" of millions to the city and RCDC's private projects, all rate increases during this period as well as the recent "donation" of \$200,000* to RTI, a school tax district, has been merely the unilateral and personal decision of two board members, Stoffer and Alfermann. As the only legal RMU board members, they are left holding the bag for the consequences of all the decisions made during those years.

Don't Cry for Them.... Stoffer and Alfermann are not exempt from their share of the blame. As grown-ups and board members they each are legally responsible for their own actions. As is common among elected and appointed officials in this community, they didn't take that responsibility seriously either for their personal protection or to protect the city utilities. Every elected and appointed official's legal obligation is to find out what the law and the rules are relative to their duties and protest anything that is not done in a legal and sustainable manner. Ignorance of the law is no excuse. "But nobody told me!" just doesn't wash for any member of the RMU board or for the mayor and council. Ironically, Councilman DeFriese's much criticized caution

and his "no" votes may exempt him from suffering the consequences with the rest of them.

Who Gets to Clean Out the Litter Box?

Appointments to RMU and any other city board may be proposed by the mayor but they must be voted on by the city council. Since this mess involves more than one mayor, the city attorney and two city administrators, at least five people or more have had a hand in creating this debacle when preparing Mayoral nominations for the council to vote on. They were so eager to get the right cronies on the RMU board to keep the money flowing in the "development" pipeline that none of them bothered to check to see if they were breaking state laws or city ordinances. But we could be wrong. Maybe they DID know exactly what they were doing. "The end justifies the means" is a philosophy that has dominated local decision making for many years particularly among the small group of men who have manipulated millions of public dollars through their network of multiple appointments.

The "Rubber Stamp" Reward: The reward for the council's (almost unanimous) rubber-stamping of appointees is that now the burden is on them to unsnarl this legal and financial mess. The only way to do this credibly is to appoint an untainted and impartial, citizens audit committee to research every RMU board action and transaction made while these two members held dual appointments. "Untainted" auditors doesn't mean the Mayor, Murphy, Beger or the "tame" audit firm the city uses. The city audit firm is already suspect, and the other three are part of the problem. Beger is, after all a lawyer, and he is paid a lot of money to know the law and keep the city out of this kind of trouble. Why hasn't the expensive private city audit firm, Davis, Lynn and Moots, who annually pick up a fat fee for providing the city with the much touted "clean" audit, ever discovered this mess? An investigation and report must be done by parties who cannot be accused of having any reason to provide the city with a convenient cover-up. Cosmetic

half-measures or the so-called "internal investigations" will not erase the "litigators delight" this carelessness has already exposed the taxpayers to.

Damage Control: The council's second task will be to decide how to reverse the complicated financial damage created by the "spoiled" RMU decisions. Rate rollbacks from the date of the Jenks and Ward duplicate appointments are inevitable. Rate rollbacks automatically mandate reimbursement to the citizens who paid those illegal rates. Contracts may have to be re-drawn, re-voted and re-signed. All other purchases and disbursements made with years of tainted RMU votes are suspect. Big cash utility rebates to "certain" businesses in the RCDC industrial park were probably among those illegal RMU votes. Will that cash be returned? Will Briggs & Stratton's title to the Switzer building, already questionable because of the unconstitutional use of city tax money, stand up to a court challenge when you add up all the infected votes that produced the free million dollar building to B&S?

Filling the Vacancies: This time the council should be very, very careful when they consider who will fill these two vacancies. They will need to find and appoint citizens who are dedicated ONLY to rebuilding the critical utility infrastructure, which has suffered from years of single-minded focus on serving as a "cash cow" for the city and RCDC. They should ask themselves why only a small handful of men in a population of 14,000 citizens are eligible for these civic duties. There are thousands of intelligent, creative Rolla residents and voters who would serve without being tainted by conflict-of-interest, or for greedy opportunistic motives.

When we have 10 hour, city-wide, "inconveniences" and when our firemen can't get enough water pressure to fight fires - something is very wrong with the utility system. Every

citizen with a scanner is aware of this dangerous "secret."

Do you think Mayor Morgan and the council realize the gravity of this situation?

Do you think they realize that raising electric and water rates just to give away money to the City, RCDC, RTI and all the other examples of squandering of the utility capital, has been illegal?

Will they ever understand that there are valid, time-tested reasons for following laws, rules and legal procedures? Or will they continue to make hasty, ill-considered decisions just to avoid long "brain mushing" council meetings?

I don't know about you, but I see BIG trouble in "River City." At the March 15th council "workshop" they had better throw out the agenda and actually work on this mess before the subpoenas start raining down.

Links: _____

URL 1:

http://www.rollanet.org/~rwnash/NSN_1_21.htm
1 (NSN article 21)

URL 2:

<http://www.rollanet.org/~city/boards.html> (City Page of Appointments)

URL 3:

<http://www.rollanet.org/~muncourt/Ordinances/c35s151.html> (Rolla Ordinance # 35-151)

* confirmation of RMU's gift of \$200,000 to Rolla Technical Institute, is in the private audit report just submitted by the city's tame audit firm Davis, Lynn and Moots. We don't have the city's private audit copied on the NSN site because we're not sure it's worth the trouble.

FREE MAYBERRY NOW!!!

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