

No Standing News

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

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WHAT BUZ HARVEY IS AFRAID OF

From the Editor's Desk

Buz Harvey, RACC Chairman, is afraid that motel owner Bob Sooter is setting a bad example for other motel owners in Rolla. Sooter, whose business license was recently revoked by an 8-4 vote of the city council, had been refusing to pay the motel tax, which is collected on any motel room within the city. If even one or two did follow his example, it could severely reduce or potentially shut off the river of cash that the Chamber has been feeding from since they convinced 1,538 trusting Rolla voters to vote for their private Tourism Tax in 1993.

In a letter to the city dated 3-12-99, Buz Harvey wrote that he was, "concerned that others in the motel industry may observe Mr. Sooter's behavior and may emulate him if the statutes are not enforced firmly and fairly." He went on to urge that the City of Rolla "enforce the collection of the outstanding amount by any means up to and including revoking his license to do business.
<url #1 >

Why would Buz anticipate a full-blown motel owners tax revolt on the basis of only Bob Sooter's late payments? The answer is that Buz and the Chamber and City Hall know that their Tourism scheme is vulnerable to exactly this kind of challenge. In order to divert public tax money to the Chamber's private use they deceived voters

to get millions in public taxes over the 25-year life of the tax to serve the Chamber/RCDC agenda. After building a little empire on sand, one delinquent taxpayer could destroy it all. Buz had every right be worried.

To comprehend his panic you have to know how the Tourist Tax was born and how the tax was really intended to be spent. In 1993, our state legislators, as a favor to our local 'leaders,' passed a bill permitting Rolla to impose a special tax on tourists if the voters approved it. This type of tax was so special that the law, at that time, allowed only Rolla out of all third class cities to have it. Since then Branson and other third class towns, that actually are tourist areas, have similar legislative permission to have this tax. We label the following as exhibits so you can follow how the scam was set up - the elements leading up to the final "sting", so to speak.

(Exhibit A.) "**RSMo 94.830. 1.** The governing body of any third class city in any county of the third classification which contains a state university whose primary mission is engineering studies and technical research may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels or motels"

No other place in Missouri fits that description but it wasn't intended to apply to any other city. That's bad public policy but not illegal. This monogrammed Rolla law says that this special sales tax can be: "more than two percent, but not more than five percent per occupied room per night."

(Exhibit B.) **RSMo 94.830. cont.** The "proceeds of such tax shall be used by the city **solely for funding a convention and visitors bureau**, which shall be a not for profit organization **with whom the city has contracted**, and which is established for the **purpose of promoting the city as a convention, visitor and tourist center.**" (Emphasis added.) <url #2>

How many not for profit organizations fitting this narrow description do you suppose would be sitting around Rolla with that precise contract freshly signed? The city contract with the Chamber for Tourism Marketing was signed on April 5, 1993, the day before Rolla voters went to the polls. It had to be signed before the tax was approved. Notice that the state law (in the second part of Exhibit B) restricted the contract award only to someone "with whom the city HAS contracted." The winning "bidder" had been arranged even before the state passed the bill. Contriving the award of a public contract so that only one bidder is qualified is an illegal and corrupt practice. < url #1 chamber contract>

Now the last part of that state law (Ex.B) is very clear. The tax could only be used to PROMOTE the city as a CONVENTION, VISITOR and TOURIST CENTER. Not to build, or buy a center or buy the land under the center for them. Not even to passively guarantee the mortgage payments. No permission was given to fund scientific research or to invent give-away programs for industry or for retailing or anything else. Only one activity was allowed - just waste millions promoting tourism in a city, which has no tourist attractions.

The same statute, in section (2) gave the city the form of the question to be put on the ballot and the city actually did that word for word. On February 1, 1993, the Rolla City Council passed the first ordinance to put the Chamber's private Tourism proposition on the ballot. The following text was passed by the Council in Rolla Ordinance #2893 and this is exactly what was on

the April 6, 1993 ballot. Remember that the ballot language and the ballot itself a legal and binding document. Part of a contract between the elected and the electorate.

(Exhibit C) "Shall the City of Rolla levy a tax of 3 percent on each sleeping room occupied and rented by transient guests of hotels and motels located in the city, where the proceeds of which shall be expended for **promotion of tourism?**"

Bad grammar, but within the limits of what the new state law permitted. If the tourist tax passed, its promoters said, the city and the chamber would have a lot of money to promote Rolla as a convention center and visitors bureau. They didn't tell voters that it could be as much as \$4 million plus or minus over the 25 year life of the tax. Chamber Tourism Promotion was billed as another Instant Solution to economic development. "Vote for it," they said, "you won't have to pay it. The people passing through will be the ones taxed, so it doesn't really affect Rolla residents." If you didn't vote (and few did that day), perhaps you recall the pre-election sales pitch and promises of economic miracles if only people would be "positive" and not bring up "negative" questions, such as; "Are you telling the truth? Do you have secret plans? Can you prove that this has ever worked anywhere else? What tourist attractions?" These would, of course, all be negative questions.

The fix was in, the steamroller of "Positive People;" the Positive Chamber, the Positive Rolla Bankers, the Positive RCDC, the Positive media – all the Positive community 'leaders' were pushing real hard on this one. Just enough Right Thinking, Positive Voters bought the pitch, and the "Lodging Tax," as it came to be called, was passed. The Chamber must have been thrilled with their sales campaign and with their Positive trusting voters. The Chamber now would get 90% of all the Lodging taxes - the city would keep 10% for being the Chamber's tax collector.

The next legal, and usually routine, step after any voter approval is for the city to adopt what is called an "enacting" ordinance. This time it wasn't just routine, it was very risky. This was where the secret had to be quietly slipped into a public law and where the whole plan could be killed if the wrong (or right) questions were asked. Whenever a new tax or a change in the tax rate is voter approved, the legislative body must follow up by adopting an ordinance legally establishing the new tax or changed tax rate. The ordinance must clearly define terms used, identify who has to pay the tax, when and how to pay, penalties for failing to pay and so forth. Most important of all, and this was the tricky part, the ordinance is limited to enacting **ONLY** to the activity and purpose the voters and the state specifically approved. Only after this final ordinance is approved by the city council and certified by the city clerk is it legal to actually receive and use the tax.

The enacting ordinance, #2929, was passed on July 6, 1993, three months after the voters approved the tax. This is how two sections of Rolla's final "Lodging Tax" ordinance read. You can see the entire ordinance in Chapter 37, the chapter on city taxation. <url #3>

Section 37-54. Convention, visitors and tourist promotion funding. All revenues received from the three (3) percent Lodging Tax shall be utilized by the City for *promoting the City as a convention, visitor and tourist center*. (Emphasis added.)

Section 37-55. Use of Fund. The Lodging Tax funds shall be used exclusively to promote tourism, conventions *and other related activities, and programs for the fostering and development of manufacturing, industrial, retail, scientific, educational and business enterprise, and economic development in the City*. The city of Rolla reserves the right to collect and retain ten (10) percent of all proceeds of the Lodging Tax for operation and

maintenance of the Lodging Tax collection process. (Emphasis added.)

Look at the added text that wasn't on the ballot or in the state law...."*and other related activities, and programs for the fostering and development of manufacturing, industrial, retail, scientific, educational and business enterprise, and economic development.*" What do all those things have to do with promoting tourism? The Missouri Supreme Court has voided statewide referendums for less - sometimes just for accidentally leaving out a single word. There is a big disconnect here and it's not an accident. A long list of "other-things-we-ALWAYS-intended-to-spend-t-his-money-on" was slipped into section 37-55 the minute voters turned their backs.

Why did they do this? Why not? It's only breaking another law – another contract with voters. Now they have the loophole they need to spend money on practically anything they want. The Chamber violated their contract immediately by not submitting any of the annual audits, budgets or reports as the contract required. Since the state forced them to finally come up with one financial statement they have reluctantly handed over other fragmentary, and not very clear, bits of information about how they're using the money. After seeing how far they would go to get this money and how little a contract means to them would anyone trust what their reports say anyway?

You may be thinking, "But we can't watch everything they do." Or, "Aren't our own council members there to protect us from this kind of thing? Can't we trust them to do anything right? How could they enact an ordinance where our express but limited permission was so flagrantly tampered with?" The answer to those questions is, no we can't, yes they are, no you can't, and they did it the way they always do these things - when our backs were turned. This is the method. At the council meeting, when this particular dirty

ordinance was passed, probably only a select few knew what was really going on. We have pointed out before how handy it is to have timid or lazy people who ask no questions sitting in our local legislative seats. Council packets go out as late as possible before the meeting to make sure they have little time to read or question anything ahead of time. The council could stop this practice, of course, but they never have. The council, well conditioned to voting on ordinances by the

"I-move-we-suspend-the-rules-and-read-three-times-real-quick-and-vote-before-anyone-catches-on" method, either didn't notice or knew not to question the obvious discrepancy. The "suspend the rules" motion is usually a signal that something has to be disposed of quickly before citizens have time to find out and react. No public council discussion was wanted nor would any be encouraged. The last vote had been taken and the tax pipeline was open. Ex-Mayor Floyd Ferrell signed both of these ordinances. Pat King, the late and unlamented city prosecutor/county prosecutor/city counselor also signed and presumably wrote them.

So for the last three years motel operators have obediently collected the illegal tax from their customers. A tax based on an illegal ordinance which is based on lies to voters which is based on a state law designed to violate public bidding laws to unconstitutionally give the Chamber and RCDC direct access to more public money. All this sneaking and plotting and lying and violating public trust just to implement another of the Rolla Chamber and RCDC's outdated, quick-fix schemes for instant economic development. Paid for, naturally, with the tax payer's money.

Then at the April 5, 1999, council meeting we learn that Bob Sooter did a simple thing that could have brought the whole house of cards crashing around their ears. He just didn't pay up. If other motel owners – as Buz Harvey plainly fears – do the same, what would the city and the Chamber do? Close down more motels?

Prosecute motel owners for a \$500 misdemeanor violation? Any of those reactions might shut off, or sharply reduce the annual "take" of hundreds of thousands of dollars. If the illegal cash stopped flowing, how would the Chamber make the payments on their Tourism building? How would they pay salaries and expenses and printers to send tourists to Branson? If the cash stopped flowing, would they be able to get the city council members to violate the Missouri Constitution* once again to bail them out? Would one more bail-out for the Chamber keep the scheme from collapsing or would it be one too many?

It was plainly urgent that Sooter be brought to heel quickly and in a way that would send a message to the other motel owners. If Bob Sooter got stubborn and demanded a jury trial in circuit court (which he had the right to do), all the dirty details might spill out during his trial. Even if he lost, if he used his appeals, (just as the city is still stalling Judge Mayberry's tiny pension) his business couldn't be permanently shut down until after he was found guilty or gave up. What was their worst nightmare? Years from now Sooter's business could still be open, other motel owners could be following his example and the questioned taxes tied up until a final verdict in court. In the process, all the nasty details of the manipulation have been exposed in open court. Once that process starts anything might happen - including having the entire tax stricken. To avert this disaster, Councilman Magdits quickly led the uncharacteristically decisive council vote to close Sooter's business immediately if he did not pay the \$8,500 penalty remaining on the delinquent \$24,000 taxes. They bluffed, he folded, Sooter paid up, case closed.

The Chamber has had a close call but the point has been driven home. Now motel owners know that if they don't toe the line the Chamber only has to lift a finger and the council will shut them down. Now they know that the usual delays, and compromises, which are typical of council

enforcement of other business and zoning ordinance violations, won't apply to them. This tax money is different from all other tax money. This tax money belongs to the Chamber. The city will enforce this ordinance quickly and harshly on the order of the very organization the motel owners pay dues to. As much as we would like to see someone expose this racket it's unlikely that motel owners will be the ones to do it. Harvey, the Chamber and RCDC can relax knowing their worst nightmare hasn't come true. Yet.

It's ironic that the Rolla Chamber, a business organization that locally and nationally complains that government should stay out of business, is the biggest sow to line up at our public trough. In the case of the Lodging Tax, they don't just feed from it – they've arranged to own the whole trough. If their view of government interference was more than just empty talk they would have paid for the Chamber Clubhouse without public tax money.

Links: _____

- <url #1- >
<http://www.rollanet.org/~rwnash/documents.html>
- <url #2- >
<http://www.moga.state.mo.us/statutes/C000-099/0940830.HTM>
- <url #3- >
<http://www.rollanet.org/~muncourt/Ordinances/toc/c37.html>

· *As reported in NSN previously, the Rolla Council has violated Missouri Constitution Article 6, Sec. 23, so many times with the support of their legal counsel, John Beger, that it is almost routine city practice. This Consittutional Article prohibits any "county, city or other political corporation" from giving money, or lending it's 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." Sooter isn't the biggest scofflaw in this story and he certainly isn't the worst.

· **Elected officials have no personal immunity from repeated illegal acts. Sovereign immunity for public officials was eliminated or restricted decades ago and any person, even unpaid appointed officials may be sued and held accountable for their votes and decisions in public matters. We don't know what soothing story council members have been told about their liability but they would be smart to get advice from their personal attorney.

It's ironic that the Rolla Chamber, a business organization that locally and nationally complains that government should stay out of business, is the biggest sow to line up at our public trough. In the case of the Lodging Tax, they don't just feed from it – they've arranged to exclusively own the whole trough. If their view of government interference was more than just empty talk they would have paid for the Chamber Clubhouse without public tax money.

There is a curious thing though about the final act of this scam. The council voted the ordinance to put it on the ballot in February, the public voted in April, the tax was effective immediately after passage in April, but the corrupted ordinance listing all the things VOTERS DIDN'T VOTE FOR wasn't passed by the council until July – three months later. Why the delay? Just sloppy staff work by All-Purpose Murphy or was there a problem figuring out how to cut everybody in on the money that voters were told was just for promoting tourism? Did too many people want a piece of the action? Can we hope that someone who wasn't willing to go along with another Chamber/City fraud caused the delay? The last is

the least likely possibility. Whatever the reason for that last small delay, for the last three years motel operators have obediently collected the illegal tax from their customers. A tax which is based on an illegal ordinance which is based on lies to voters which is based on a state law designed to violate public bidding laws to unconstitutionally give the Chamber and RCDC direct access to more public money. All this sneaking and plotting and lying and violating public trust just to implement another of the Rolla Chamber and RCDC's outdated, quick-fix schemes for instant economic development with taxpayers money.

In fact, we were just treated to another RDN front page overfull of pictures of Rep. Joanne Emerson blessing yet another public project for Brewer Science – very likely a result of this money.

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