

No Standing News

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

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"IT'S NOT A TAX IF IT'S NOT IN THE TAX CHAPTER"

-said Mrs. Marler to Mayor Morgan

By PHIL (People Helping Individuals Learn)

NSN NUTSHELL: At the August 16, 1999 City Council Work Session, Lois Marler revealed to the council that because the enacting ordinance for the 1/2 cent recreation sales tax was never passed, the council had no legal basis for imposing, collecting or spending the tax. The city tried to spin the issue but eventually conceded. NSN research has found more missing city ordinances which pose a greater potential for municipal headaches.

AND THE 1999 "IGNORANCE OF THE LAW AWARD" GOES TO(drum roll).....Mayor Morgan, Administrator Butz and Lawyer Beger for spending \$150,000 of the Recreation Tax without bothering to prepare the ordinance establishing the legal right of the city to levy, spend and enforce the tax! Lois Marler had to point out to them that for the last twelve months they have had no authority to collect, spend or enforce their coveted Recreation Tax because they haven't passed a simple ordinance necessary to make the tax legitimate. This is sixth grade civics - any legislative body must first ENACT laws to

ENABLE the police and courts to ENFORCE those laws.

Marler explained this gaping hole in their legal system to the Rolla City Council at their meeting on Monday, August 16th. In front of her were ten elected officials (DeFreise and Rothwell were absent) whose primary occupation is passing laws (ordinances), one blustering mayor who hasn't bothered to learn his job, one 'expert' city administrator and one lawyer who is paid to make sure all city actions are within their jurisdiction and authority. One of their simpler tasks is to make sure things like tax collection ordinances are passed into law BEFORE the taxes are collected. Marler not only had to tell them what they had failed to do; she also had to explain to them why they had to do it. (By the way, the Rolla Daily News did not report one word of this critical issue. News is still news even if they don't like the newsmaker.)

Why They Have to Do It. Last August, when a majority of voters answered "yes" to the Recreation Tax question on their ballots, voters only gave their consent to be taxed; they were not asked about collection, spending or enforcement of the tax. That first ordinance (step one) only asked a question and that, by itself, is not enough. Failure to follow-up voter approval with the second, enacting law which establishes city jurisdiction to tax and authority to spend and enforce the tax, means that the city has only our consent to be taxed - nothing else. If merchants don't collect the tax, the mayor, who has as one of his statutory duties the enforcement of all city ordinances, can do nothing about it! The city can't arrest, prosecute, convict, fine or imprison

anyone for that particular act of civil disobedience because the municipal prosecutor and judge won't be able to find the law (city ordinance) that has been violated. Rolla doesn't have one.

The Butz Bluff. City Administrator John Butz had already admitted to her that the lack of this tax ordinance was not just an oversight. As he explained to Marler before the council meeting - he just didn't believe a local ordinance was necessary because the state, under a contract with the city, was already collecting the tax. When, during the council meeting, the mayor asked Butz to respond to Marler, Butz had the nerve to pass the bluff on to the council and the public! Surely he was bluffing because the Rolla ordinance book is full of examples of tax ordinances. Just four months ago Butz used one of them to enforce payment of over \$24,000 in delinquent motel taxes Robert Sooter owed the city. An action he couldn't have taken without a tax ordinance! **If he wasn't just bluffing, what explains his behavior in the face of both legal precedent and his own experience?**

His "Comfort" Level is Too Low. The morning after the council meeting, Butz e-mailed Lois a grudging admission that they did have to pass the ordinance but he said, "Technically, I am comfortable with the ordinance calling for the sales tax, the voters approval of same, and Council acceptance of the election results...." Butz is "comfortable." Does it matter what Butz is "technically, comfortable" with? No, but it does matter a great deal that when Police Chief Pikka and City Prosecutor Crump are asked to arrest and charge someone for not paying the tax that they have an ordinance that allows them to legally take those actions. This missing law is not a trivial matter. It is the only thing that will make legitimate and legal ALL future council and court actions taken to execute the purpose of this tax. This incident should make you wonder how many other legally necessary functions of government are being dumped because Butz is "comfortable"

without them. It should also make you worry what price we may pay the next time for his remarkably low "comfort" threshold.

Going "Bare". Spending public money without the authority conferred by law wasn't just a one-time fluke - this isn't the only ordinance they have failed to pass. The council, several years ago, hired Daniel Murphy to be the director of a new City Finance Department, a department, which has no legitimate authority because it too was never established by ordinance.

Now they have compounded their mess by **inventing another position - Director of Community Development - and hiring John Petersen to fill it.** Once again, the council has passed no ordinance authorizing the position of Community Development Director and therefore cannot fill the position. The council must have ordinances establishing the position of each city officer. The state law they are violating in this case **commands:** "The duties, powers and privileges of officers of every character in any way connected with the city government, not herein defined, SHALL be prescribed by ordinance; and bonds may be required of any such officers for faithfulness in office." The term "officer" includes any person holding any situation under the city government or any of its departments, with an annual salary or for a definite term of office, other than clerical or professional staff. **Clerical and professional staff are persons either paid by the hour or hired under a contract such as auditors and architects.** Only when this state law has been followed will it be a legitimate act of government to allocate public funds for salaries, overhead, additional hourly staff and other expenses.

There are ordinances authorizing the employment of most* other salaried department directors and there are ordinances authorizing the hiring of hourly wage support staff for those departments. But there is no legal authorization for Murphy and Petersen. Murphy and Petersen are,

allegedly, both salaried officers (officers - not hourly employees) of the city and as such are just as liable as the elected mayor and council for their official acts. John Petersen's first paycheck, which will be rubber stamped by the council with all the other monthly bills, will be another illegal council act just as all council approvals of Murphy's pay and expenses have been. Our Legislative branch of government (the council), unfortunately, believes that the Executive branch (Morgan, Butz, Murphy et al) know what they are doing. How much more proof does the council need that their 'experts' are often just operating by the seat of their pants?

The problem goes further than just the council's misplaced trust and their continuing illegal acts of hiring, paying and budgeting where they have no legal authority to do so. The absence of an ordinance gets intensely personal for illegal 'employees' like Petersen and Murphy. Here is just a sample of how messy this can be. If, for instance, another employee sued one of these men for harassment - it has happened - they will find that because their employment isn't covered by a city ordinance, they also aren't covered by the city's liability insurance! This applies to all other benefits and protections they assume they have. Petersen and Murphy are, as they say in the insurance industry, "going bare." (Welcome to Rolla, John Petersen.) On the flip side, if these so-called city 'officers' commit a breach of trust in the commission of their duties, the city can't fire them for cause or recover damages. Those officers cannot be found to have failed to perform their duties if those duties were never spelled out in an ordinance.

John Beger - the Invisible City Counselor.

When Butz grudgingly conceded that Marler was right he told her that he would ask Dan Murphy, Finance Director, to draft the tax ordinance for council consideration. Did you catch that? The FINANCE DIRECTOR will write legislation for the council to vote into law! It isn't the first time Murphy and other staff members have written

Rolla's laws. So what does John Beger get paid to do? Beger's contract with the city provides for a monthly retainer specifically to be available to city officials just to "provide assistance" He is paid by the hour for everything else. Beger attends most council meetings, but except for occasionally reading ordinances out loud, (something the City Clerk can do) he is rarely asked a question. He volunteers no advice and on the few occasions when he is asked a direct question he responds with obvious reluctance. This is "providing assistance?" We have noticed that when anyone asks the Mayor a legal question the Mayor asks the administrator - not the lawyer - to answer it. What is worse, Administrator Butz gives them his 'legal' opinion! There must be some compelling reason why they avoid asking legal questions of the only lawyer in the room. We would like to hear what it is.

This weird charade was played out once again when Marler dropped the bombshell about the recreation tax. The mayor again asked Butz - not Beger - to explain to Marler why they didn't have the tax ordinance. Butz gave his 'legal' opinion that the tax ordinance wasn't necessary. Beger, the real lawyer, said nothing - something Butz should learn to do. Now Butz has admitted that they do need an ordinance so he is going to have Murphy the bookkeeper write it! Will these people never get it right? They don't ask Beger for legal advice even when they need it - and boy, do they need it, the city administrator gives legal opinions and the bookkeeper writes their laws. Beger sits right beside the mayor but doesn't volunteer help even when they are impaling themselves right before his eyes. Why doesn't the council hire a lawyer who will prepare their legal documents and speak up in time to help them avoid mistakes? Timely and prudent legal advice would do a lot to keep city meetings and methods from looking and sounding like the Mad Hatter's Tea Party.

The Egg on the Council's Face. The lack of an ordinance also means that the city council can't

legally approve the payment or expenditure of a single penny of the recreation tax. But, for the last eight months the council have, in blissful ignorance, illegally approved over \$150,000 to pay miscellaneous bills from this tax. Council members have an obligation to understand at least enough about constitutional basics and the legislative process to catch major errors like this. Council members must start learning their jobs, keep their own "to do" lists and quit assuming the 'experts' in Administration have it all covered. If they care about their public integrity and the oath they took, they should start voting NO on everything unless Morgan, Butz and Beger can prove that it is legal and legitimate. How can council members now be certain that the smallest act, vote, contract, recommendation, ordinance or resolution is safe for them to act on? How much longer will WE be safe with this kind of careless government? The mayor doesn't know, the lawyer doesn't speak, the bookkeeper does the lawyer's job and the administrator has a dangerously low "comfort" threshold.

Our purpose in bringing this to your attention is not to score another "gotcha" on City Hall, but as long as they keep committing egregious legal errors they beg for our attention. We think this issue is worth your careful attention because it illustrates three important "**nevers**" every citizen should keep in mind. **Never assume** that elected and appointed officials are as smart as you hope they are; they usually only meet the standards we set for them and we've been letting them get by with meeting very low standards. **Never assume** that so-called 'experts' can't be wrong, the bigger the 'expert' the more costly their errors. **Never assume** that someone else will keep an eye on your government for you. We caught this one, but how many others have we missed?

* There also are no ordinances for the now-appointed offices of City Collector, City Treasurer and City Assessor but that's another NSN story.

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