

# No Standing News

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

Volume I

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## Rolla - The Ex Post Facto City

By Phil (People Helping Individuals Learn)

We didn't seriously think that our prediction that Rolla would become the "Outlaw City of the Ozarks" would come true so quickly. What can we say about a mayor and seven council members who care so little, or know so little, about the legal conduct of city business that they didn't even flinch when they passed an Ex Post Facto sales tax? *The United States Constitution, Article I, Sec. 10, forbids states to pass ex post facto (retroactive) laws of any kind.* The Missouri Constitution also forbids the passage of ex post facto laws by the state or any municipality. An Ex Post Facto law is one which provides for the infliction of punishment upon a person for an act which, when it was done, was innocent. An Ex Post Facto law was born in Rolla when the Council passed a sales tax ordinance on September 7, 1999 falsely backdated to January 1, 1999! It was an ugly moment in Rolla's history.

Before the council meeting, Administrator Butz, interviewed in a Rolla Daily News puff piece, agreed to prepare what he considered to be the "unnecessary" sales tax ordinance for the council, but only as a gesture to "maintain consistency" with historic practice. When forced to actually look at the codebook, Butz admitted that he

found ordinances for all of Rolla's other voter-approved taxes. He appears to view these laws as merely a quaint local custom. Butz then announced that he would prepare a "**retroactive**" ordinance to present to the council. And so, on Tuesday, September 7th seven members of the council made history by passing an ordinance that falsely backdated the tax to January 1, 1999. In fact, Councilman Barklage felt it was so urgent that he moved to suspend the rules so they could have all three readings and make it law that very night. It may well have been an emergency. Had they waited two more weeks for the final reading and vote there was a risk (but only a slight one) that one or two of those seven council members might actually read the Missouri Constitution and discover the truth.

Our compliments to **Councilpersons Sheffield, DeFriese and Eudaly** who voted NO to this sham. Councilman Owsley, who voted YES to pass the illegal ordinance, said it was "totally unnecessary." Councilman Magdits, the only other council member to vote against the ordinance, echoed the sentiment of Owsley by voting NO. In other words, he agreed with Butz that it is not necessary to have a sales tax ordinance for enforcement.

There are two serious issues here. The first was their intention to have a secret law. Remember that they did not intend to have an ordinance at all and hadn't given it a thought for an entire year. The fact that they believe it isn't necessary to have the city laws legally passed and on the public record should be very alarming. History is

full of stories about small men with power and their secret laws.

The second issue is about the practical necessity of having enforceable laws. As Robert Sooter learned this spring, just hold out some taxes due the Chamber of Tourism and City Hall and they'll revoke your business license and prosecute at the drop of a hat. We wonder what **Municipal Judge Hickle** and **City Prosecutor Crump** would have done **last month** if they had gotten an order from the Mayor to prosecute some merchant for failure to pay this tax before there was an ordinance? We're very interested in what they will do when this unconstitutional ordinance lands on their desks like the ticking time bomb it is. Will they give the Mayor the bad news or will they play ball and pray that no one will default on this sales tax while they're in office? This is an ethics test for our Municipal Judge and Prosecutor and they have Morgan and Butz to thank for it.

This isn't the first time the city has shown a reckless disregard for the law, so what won't they hesitate to do now? Now that the council has set a precedent any banana republic would be proud of, consider the implications. When they run short of cash now all they have to do is back date another sales tax, garbage or license fee and send out bills. If you refuse to pay, you risk getting a \$500 fine or 90 days in jail or both. The Chamber of Commerce has an insatiable appetite for tax money so why not backdate the Tourist Tax a year or two to cover their next spending binge? Now that the city has started down this slippery slope they can make almost anything you did last year or several years ago an ordinance violation. One backdated ordinance and "Presto" you're in jail for doing something that wasn't against the law when you did it. Think about the financial and political abuses possible with this corrupt third-world practice, and it's easy to see why it's forbidden by both constitutions. Can they really not see this, or does it suit their purposes to pretend not to see it?

The city claims that because the Department of Revenue is collecting the recreation sales tax for Rolla with all other taxes, there is no need to pass an ordinance legally establishing this sales tax. When the absence of a recreation sales tax ordinance was brought to the city's attention at the August City Council meeting, Administrator Butz supported his "not necessary" theory by quoting Pat Gifford, a Department of Revenue employee. Gifford had told Butz, "everything looks fine from here" - an ambiguous opinion at best. It "looked fine" from Gifford's lofty perch in Jefferson City because the only thing DOR does is **collect** the tax. The question was about having an ordinance to **enforce** the local tax which, on occasion, some people do fail to pay.

Morgan and Butz have naïve confidence in the Department of Revenue. They seem to believe that DOR was created just to baby sit Rolla and that the department's prime mission is to prosecute anyone who doesn't pay our local taxes. Their confidence is totally unsupported by the facts, practice or the limited statutory powers of the Department of Revenue. DOR's enforcement limitations are set out very clearly in *RSMo 32.087, section 16*. "*In the event any person fails or refuses to pay the amount of any local sales tax due, the director of revenue shall promptly notify the taxing entity (that's Rolla) to which the tax would be due so that appropriate action may be taken by the taxing entity.*" The taxing entity that has to "take action" is Rolla, not the state. The statute didn't point out that if the "taxing entity" didn't pass an ordinance establishing the tax and making it a municipal violation not to pay it, the local "taxing entity" will be flat out of luck. That's so elementary it was assumed that anyone holding elected office, and with lawyers to advise them, would know that. Rolla does have the option to join in the state suit to prosecute if **both** state and local taxes are delinquent. That is, Rolla can join the state suit if Rolla has adopted a local tax ordinance first. No ordinance, no joint suit. If the only ordinance Rolla can come up with is

unconstitutional it will be the first thing the judge throws out - after he quits laughing. There is a big problem with taking the second option, hanging onto the coattails of a state prosecution. If the state recovers any money, they first pay off all state taxes, interest and penalties due and their own legal expenses! The local's get whatever is left, if anything is left. *That's a very practical reason for having our own ordinances, collecting our own delinquent taxes and doing it quickly before the state cleans out the tax defaulter.* That's what other cities do, but not Rolla. Our administration is "comfortable" and will just hang around and wait for whatever crumbs might be left on the state plate.

Rolla could be a vibrant model community. We have everything it takes: a beautiful area, intelligent and talented people and plenty of resources at our fingertips. But we will never make it unless we quit buying the superficial images and self-serving excuses peddled by a small handful of arrogant, self-anointed "leaders." We must demand that accountability be restored in every part of government and we must set high ethical standards for ourselves and for those we elect to represent us. They must accept diversity, encourage open community dialog, respect the opinions of others and quit trying to suppress freedom of speech. Community consensus and creative solutions start with open dialog and even controversy. But in Rolla, controversy is called unhealthy or NEGATIVE because they fear opposition will destroy the illusion that they have carefully constructed. Meanwhile, either out of ignorance or by design, they dismantle vital governmental checks and balances and dismiss the accountability they owe the public. In the view of "those in authority," the constraints of the Constitution, the demands of accountability and the rights of citizens just interfere with their "business" methods of running this town.

If you tell this uniquely Rolla story to someone from a city where the level of civic practice meets a much higher standard - the reaction will be total

disbelief. The listener simply will not find it credible that such a piece of appallingly bad legislation could get past any city attorney. After watching it happen live, and again on tape, we still can't believe it. This is probably the only living example of Ex Post Facto legislation in the state, and it's all ours. The existence of this piece of legislative folly on our public records declares to the world that we are a community of ignorant hayseeds. Morgan, Butz and seven council members, too lazy to read one sentence in the Constitution, have turned us into Dogpatch U.S.A., Home of L'il Abner and Mayor Dawgmeat - the very image that city people just love to lay on us.

**Attachments: 2****THE BALLOT ORDINANCE BUTZ IS "COMFORTABLE" WITH:**

A. The first ordinance below is the one which was submitted to the voters on August 4, 1998 to get an answer to the question of whether or not Rolla voters would agree to be taxed for the purposes stated. Notice that neither the ballot question nor the ordinance introduction in all caps at the top give a date for when the new tax will go into effect. This is the ordinance that Administrator Butz sent to the state along with the City Clerk's certification of the election results. He claims this is all that is needed. With no declaration in a following ordinance that this tax is "hereby imposed on all sales of".... and the what, when and where, how can the prosecutor know who may be in violation? With no starting date for collection appearing in this ordinance how did the Department of Revenue know when they were to start collecting the tax? A ballot question and verbal date from John Butz or Murphy is not sufficient authority for DOR to act on. Looks like we have a State Department of Revenue as sloppy as the Rolla City Administration!

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**ORDINANCE NO. 3244**

**AN ORDINANCE CALLING FOR A SPECIAL ELECTION TO BE HELD IN THE CITY OF ROLLA, MISSOURI ON THE FOURTH DAY OF AUGUST 1998, FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF THE CITY OF ROLLA, MISSOURI, THE PROPOSITION OF IMPOSING A SALES TAX OF ONE-HALF CENT FOR FUNDING FOR LOCAL PARKS OF THE CITY, INCLUDING AN OUTDOOR AQUATIC FACILITY AND A COMMUNITY HEALTH AND RECREATION CENTER.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:**

Section 1: That at the special election day to be held in the City of Rolla, Missouri, on the fourth day of August 1998, at which time the qualified voters of the City of Rolla, Missouri, will be presented with the proposition of whether or not to impose a sales tax of one-half (1/2) cent for funding for local parks of the city, including an Outdoor Aquatic Facility and a Community Health and Recreation Center.

Section 2: The form of the ballot shall be as follows: Shall the City of Rolla, Missouri, for the purpose of providing local park funds to accomplish at minimum an Indoor Walking Track, Indoor Swimming Pool/Aquatic Center, Outdoor Aquatic Facility, and an Indoor Recreation Center impose a sales tax of 1/2 of one percent for 15 years.

- Yes
- No

If you are in favor of the question, place an "x" in the box opposite "Yes." If you are opposed to the question, place an "x" in the box opposite "No."

Section 3 The City Clerk shall be directed to provide the election authority for Phelps County, Missouri, with a copy of this Ordinance and to provide such notice of the aforesaid election as may be by law required.

Section 4 This Ordinance shall be in full force and effect from and after the date of its passage and approval.

**PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 4th DAY OF MAY, 1998.**

**THE ILLEGAL EX POST FACTO SALES TAX ORDINANCE:**

B. The next one is the ordinance passed on September 7, 1999, which was backdated to January 1, 1999. It has a starting date but it's an illegal one. The effective date of a new law can never be earlier than the actual date of passage.

**ORDINANCE NO. 3333**

**AN ORDINANCE ENACTING A 1/2 CENT SALES TAX FOR LOCAL PARKS TO ACCOMPLISH, AT MINIMUM, AN INDOOR WALKING TRACK, INDOOR SWIMMING POOL/AQUATIC CENTER, OUTDOOR AQUATIC FACILITY AND AN INDOOR RECREATION CENTER.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:**

**Sec. 37-23. 1/2 Cent Local Parks Sales Tax**

(a) **That effective January 1, 1999**, and continuing for fifteen (15) years there is hereby imposed upon all persons in the City of Rolla, Missouri, who are engaged in the business of selling tangible personal property and taxable services subject to sales tax under the provisions of Sections 144.010 to 144.510 and 94.577 RSMo (revised statutes of Missouri) and the rules and regulations of the Director of Revenue of the State of Missouri issued pursuant thereto.

(b) The sales tax hereby imposed shall be at the rate of 1/2 of one percent on the receipts from the sale at retail of all tangible personal property or taxable services at retail which are subject to sales tax under the provisions of Sections 644.32, 144.010 to 144.510 and 94.577 RSMo. (revised statutes of Missouri) within the City of Rolla, Missouri.

(C) That the city clerk is hereby directed to forward a certified copy of this ordinance to the Director of Revenue of the State of Missouri within ten (10) days of the effective date of this ordinance together with a map of the City of Rolla that clearly shows the boundaries thereof.

**PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED  
BY THE MAYOR THIS 7th DAY OF SEPTEMBER 1999**

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**FREE JUDGE MAYBERRY!!!**

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Views expressed do not necessarily reflect those of No Standing News, nor of its Editor-in-Chief.

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