

Missouri Public Utility Alliance

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Hancock Amendment

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- These slides contain my opinions and observations, and should not be construed as legal advice or any official position of MAMU, MJMEUC, or MGCM.

Hancock Amendment

- What is the Hancock Amendment?
 - Constitutional Amendment passed by the voters of Missouri on November 4, 1980.
 - Named after Mel Hancock, conservative politician from Springfield, MO

Purpose

- Purpose of the Hancock Amendment is to prevent state and local government expenditures from outpacing increases in income.
- Purpose of section 22 of the Hancock Amendment is to prevent local government from passing a new tax or increasing a tax including broadening the base without a majority vote of the electorate.
- Missouri is one of 23 states that have similar Tax and Expenditure Limits (TEL) statutes or constitutional amendments.

Hancock Amendment

- Missouri Constitution, Article X
 - Sections 16 to 24
 - Section 16 is the limiting Amendment, Section 22 is the Section most oft litigated in regards to utility rates.
 - Sections 17 – 24 are implementation of Section 16.

Hancock Amendment

Taxes and state spending to be limited--state to support certain local activities--emergency spending and bond payments to be authorized.

- Section 16. Property **taxes** and other local **taxes** and state **taxation** and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution. The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the **tax** burden to counties and other political subdivisions. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in sections 17 through 24, inclusive, of this article.

Hancock Amendment

- Section 22. Political subdivisions are prohibited from levying **any tax, license or fees**, not authorized by law, charter or self-enforcing provisions of the constitution or from increasing the current levy of an existing tax, license or fees, above that current levy without the approval of the required majority of the qualified voters. If the definition of the base is broadened, the maximum authorized current levy on the new base shall be reduced to yield the same estimated gross revenue as on the prior base.

Hancock Amendment

- As you can tell, the Hancock Amendment is about **TAXES**.
- Under Keller vs. Marion County, it does **NOT** apply to fees for government services...provided the charge is truly a fee.
- When is a charge a **tax** versus a **fee**?
- The Missouri Supreme Court has helped define that.

Hancock Amendment

- Keller Test

- Keller vs. Marion County Ambulance District

- (1991 Mo. Sup. Ct.)

- Five Point Test. No one point determines whether a charge is a fee or a tax, but overall weight of the answers is considered.

Hancock Amendment

- Five Tests are as follows:
 - When is the charge paid?
 - before or after services provided?
 - Who pays the charge?
 - Everyone, or just those who use the service?
 - Is the charge affected by the levels of goods or services?
 - Is the government providing a good or service?
 - Has the activity historically been provided by the government? If so, more likely to be a tax.

Hancock Amendment

- Now we know the test to determine what a tax versus a user fee is, but what does it all mean?
- New or increased taxes **require** direct voter approval to raise
- User fees **do not require** direct voter approval

Arbor Investment Co. vs. City of Hermann

- Trial court granted City of Hermann's Motion for Summary Judgment.
- Applied Keller test, found that utility charges were fees, not taxes, and therefore the Hancock Amendment did not apply.

Arbor Investment Co. vs. City of Hermann

- Eastern District disagreed, found that two of the Keller points were in favor of Hermann, three others were not clear enough from the record to rule upon, and remanded the case back to state court.
- The opinion if allowed to stand would put in question any transfer of funds from the utility to the city general fund for general operations of the city.

Arbor Investment Co. vs. City of Hermann

- MJMEUC , MGCM and MML filed Amicus Curiae in favor of transfer.
- Missouri Supreme Court granted transfer
- This effectively vacates the Eastern District opinion, as the Supreme Court will examine the record to see if the evidence and law supports the trial courts ruling in favor of Hermann.

Hancock Amendment

- Reasonable PILOTS have been found to NOT be taxes
 - See Pace vs. Hannibal (Mo. Sup. Ct.)
 - See US vs. Columbia (8th Cir.)
- Let's see what the Missouri Supreme Court says in the case of Arbor Investments vs. City of Hermann.

Hancock Amendment

- Recommended operations
 - Transfers based on ordinances, procedures or policies that began prior to November 4, 1980.
 - PILOT payments that are set at a reasonable rate by the appropriate governing board to compensate the city for the utilities use of city property, services, facilities, loss of tax revenue, etc.
 - Be consistent year to year.

Hancock Amendments

- Operations that are more difficult to defend:
 - Transfers not based on loss of tax revenue or costs associated with utility operations.
 - Transfers that appear random in nature, and not based upon a PILOT or grandfathered methodology.

Hancock Amendment

- What can you do help your city avoid potential lawsuits?
 - Make sure your city council and/or utility board is educated on the Hancock Amendment.
 - Prepare a budget/cost of service contemplating any transfers based solely upon existing PILOT.
 - Adopt an ordinance requiring anyone who is objecting to the payment of a fee, tax or charge for any reason to file a written protest within two weeks after paying.
 - Be able to demonstrate why your utility needs operational reserves as part of prudent management.

Hancock Amendment

- Common Questions:
 - What is the cost of service?
 - Everything that is required to provide safe and reliable delivery of the commodity. Be aware of RSMo §67.042.
 - At what costs does utility receive city services? Use of city property?
 - Cost of service is NOT part of the Keller test.
 - What about the State Auditor?
 - Not a legal authority
 - Highly critical of all transfers to general funds
 - Explain the city/utility side, otherwise citizens only hear one side and city/utility is on the defense from the start.
 - Always be prepared to demonstrate the nature of the costs imposed on the municipality, and why the PILOT is necessary to defray those costs.

Hancock Amendment

- Conclusion
 - Utility bills have repeatedly been held in Missouri to be user fees that are not subject to the Hancock Amendment.
 - However, precedents and laws change to fit bad facts.
 - **Good utility practice is any municipalities best defense.**