

Municipal Revenue Sources & the Hancock Amendment



LAUBER MUNICIPAL LAW, LLC

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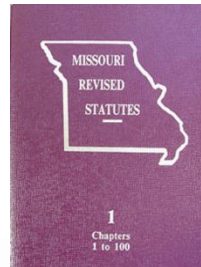
Missouri Municipal League
Elected Officials Training Seminar

Serving those who serve the public

Overview of Topics



Constitution
State of Missouri



- ④ Sources of Authority
 - ④ Missouri Constitution
 - ④ State Statutes
- ④ Municipal Activity Creating Revenue
 - ④ Governmental
 - Taxation
 - Franchise Fees
 - Administrative Fees
 - Municipal fines and penalties
 - ④ Proprietary
 - Use or sale of property
 - Operation of utilities
- ④ Constitutional Limits on Taxation—the Hancock Amendment

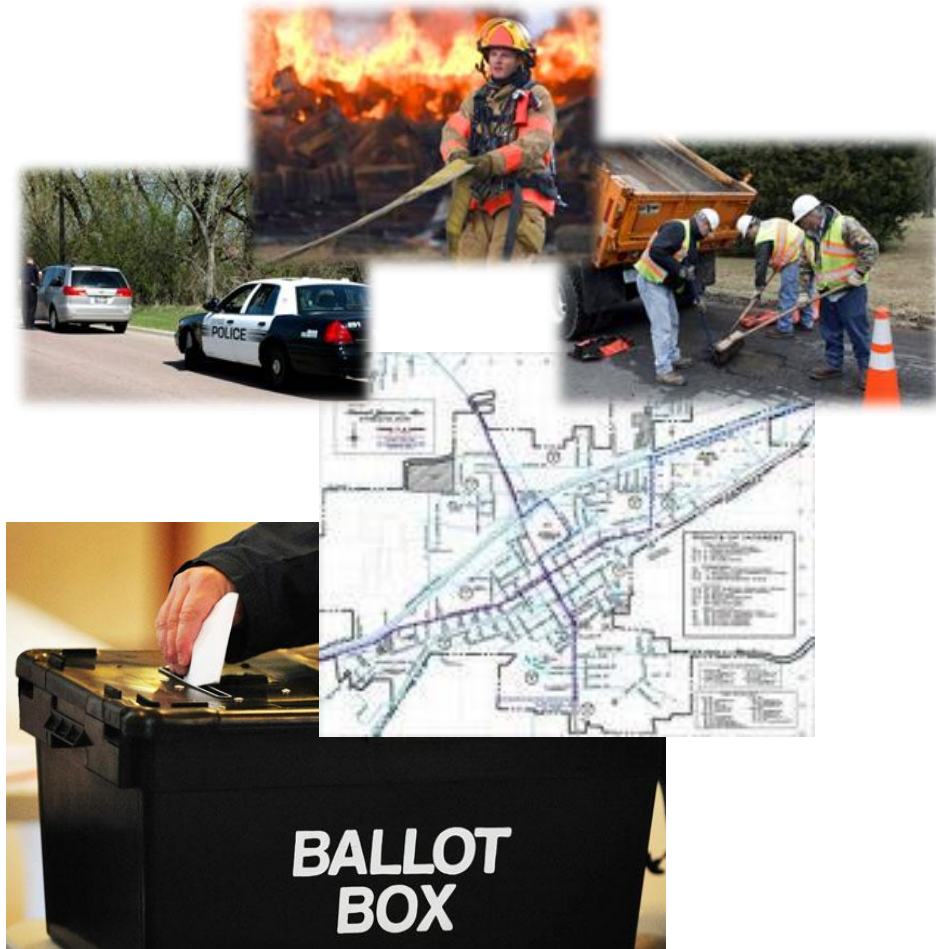
Sources of Authority- the Missouri Constitution

- ④ States have the inherent right to raise revenue by taxation
- ④ The Missouri Constitution serves as a limitation of power (not a grant of power)
- ④ Where no restrictions exist, the State's power to tax is unlimited
- ④ This power is vested in the General Assembly



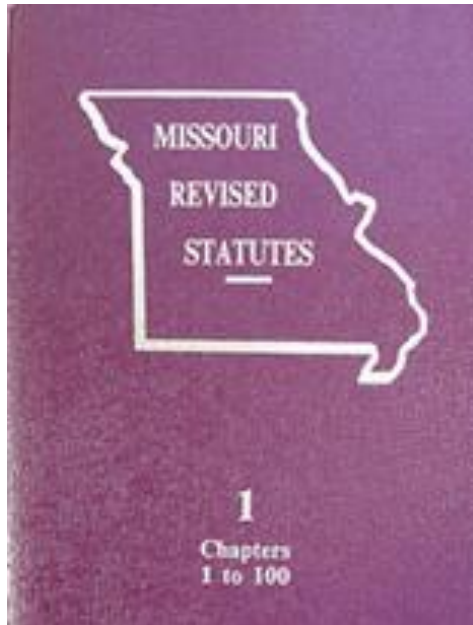
Constitution
State of Missouri

Constitutional Limitations



- Ⓜ Must be for public purposes
- Ⓜ Must be uniform on the same class of subjects within the territorial limits of the taxing entity
- Ⓜ Is a vote of the people required?

Sources of Authority- the Revised Statutes of Missouri



- ④ Cities have no inherent power to impose taxes
- ④ Dillon's Rule- cities possess only those powers:
 - ④ expressly granted
 - ④ necessarily or fairly implied in or incidental to express grants
 - ④ essential to the declared objects of the municipality
- ④ Home rule exception
- ④ General Assembly grants powers to tax through state statutes– the Revised Statutes of Missouri (RSMo)

Types of Revenue-Generating Municipal Activity

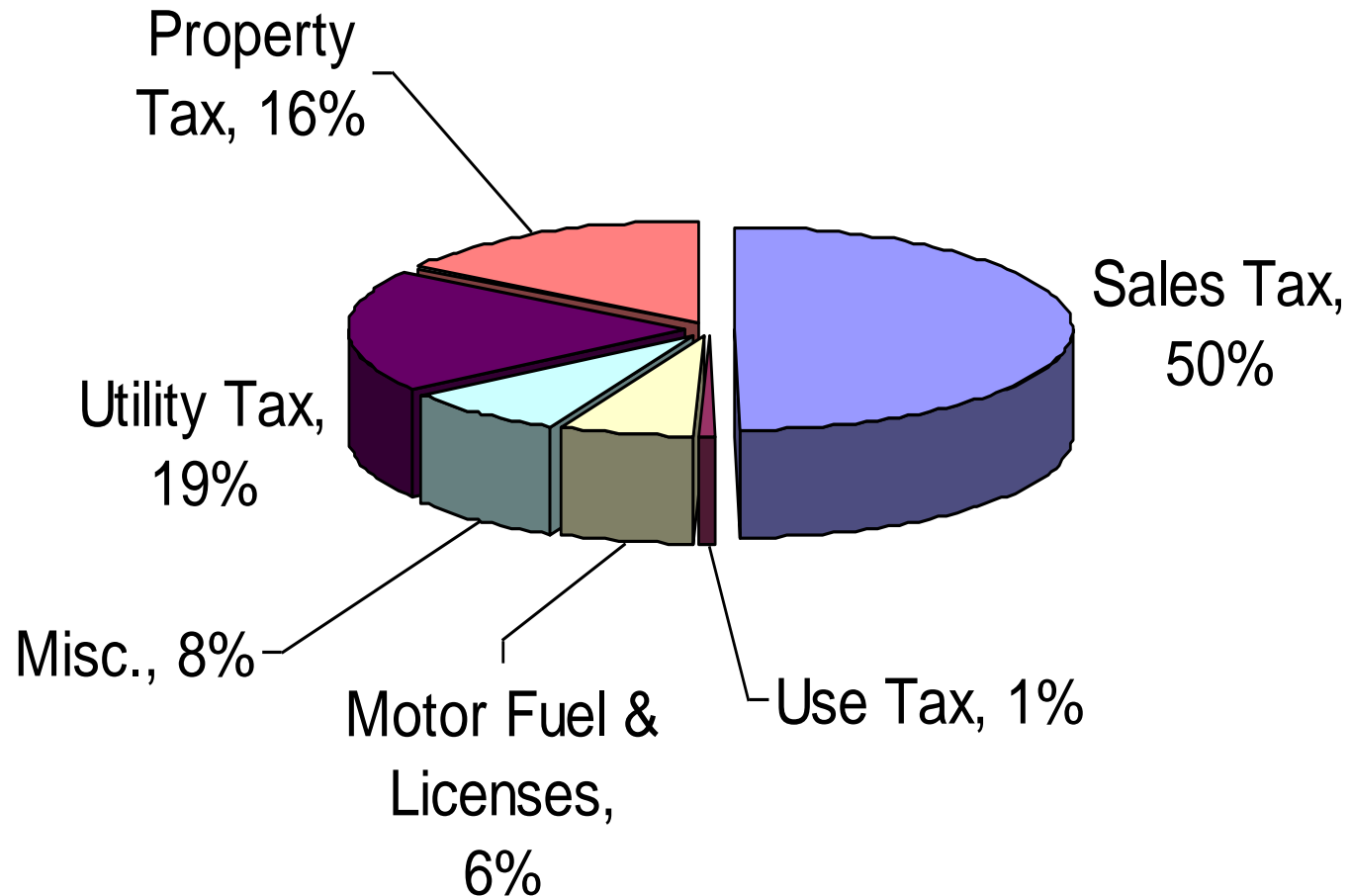
Governmental

- Ⓜ Taxation
 - Ⓜ Sales/use
 - Ⓜ Property
 - Ⓜ Licenses
 - Ⓜ Franchises
 - Ⓜ Other
- Ⓜ Fines and penalties
- Ⓜ Administrative service fees
- Ⓜ Impact fees

Proprietary

- Ⓜ Enterprise Funds
 - Ⓜ Water & sewer
 - Ⓜ Electricity
 - Ⓜ Solid waste disposal
- Ⓜ Use or Sale of Municipal Property
 - Ⓜ Community Center
 - Ⓜ Parks
 - Ⓜ Investments

Municipal Revenue Sources 2007



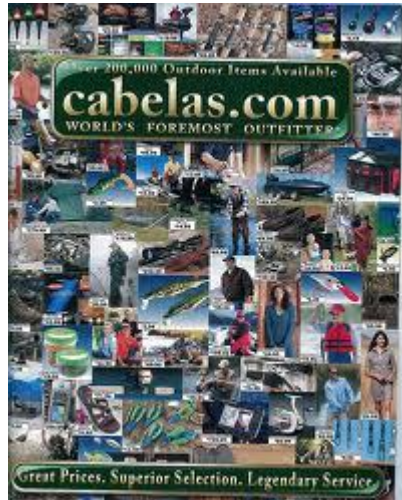
Taxation– Sales Tax



Types of Sales Taxes

General 94.500 to 94.550, RSMo	1/2, 7/8, 1 cent
Capital Improvements 94.577, RSMo	1/8, 1/4, 3/8, or 1/2 cent
Transportation 94.700 to 94.755, RSMo	Not to exceed 1/2 cent
Parks & Rec. / Storm Water 644.032 & 644.033, RSMo	Not to exceed 1/2 cent
Fire Protection 321.242, RSMo	Not to exceed 1/4 cent
Economic Development 67.1305, RSMo	Not to exceed 1/2 cent

Taxation– Use Tax



- ④ Tax on purchases made through out-of-state vendors
- ④ Rate of tax equals sales tax
- ④ Companies with a nexus in Missouri are required to remit tax
- ④ Other purchases on honor system

Taxation- Property Tax

- ④ Cities are limited to \$1 per \$100 of assessed valuation
- ④ Villages are limited \$.50 per \$100 of assessed valuation
- ④ Special provision allows \$.30 over the above limits but only for 4 years and only with 2/3 voter approval
- ④ Other property tax levies
 - ④ Park
 - ④ Library
 - ④ Hospital
 - ④ Public Health
 - ④ Museums



Utility Taxes



- Ⓜ On average makes up 19% of city discretionary revenue
- Ⓜ Generally set at 5 percent of gross revenue
- Ⓜ PILOTs – Payment In Lieu Of Taxes – transfer on city owned utilities

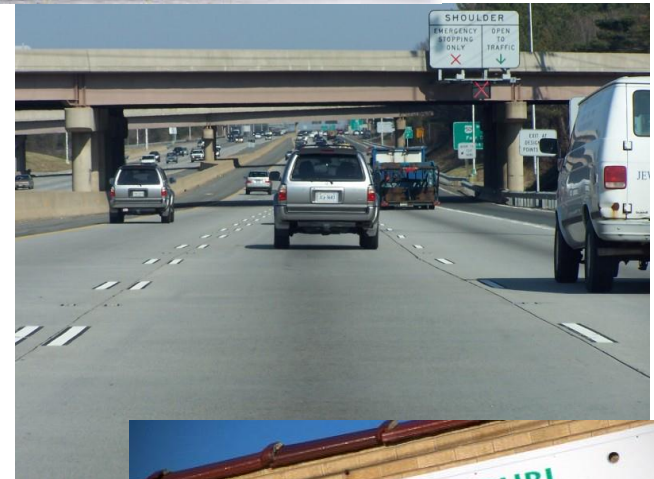
Municipal Motor Vehicle License Tax

- Ⓜ Was used as a means for cities to insure collection of property tax
- Ⓜ Often implemented as a “sticker” program
- Ⓜ Most cities have since abolished— now contract with the county to collect personal property taxes
- Ⓜ Tax may be a flat fee or based on horsepower



Motor Fuel and Vehicle Registration Funds

- Ⓜ Funds from the gasoline tax and license/registration fees based on city population
- Ⓜ Must be used for transportation purposes
 - Ⓜ Those include: construction, reconstruction, maintenance, repair, policing, signing, lighting and cleaning as well as bond repayment



Other Taxes

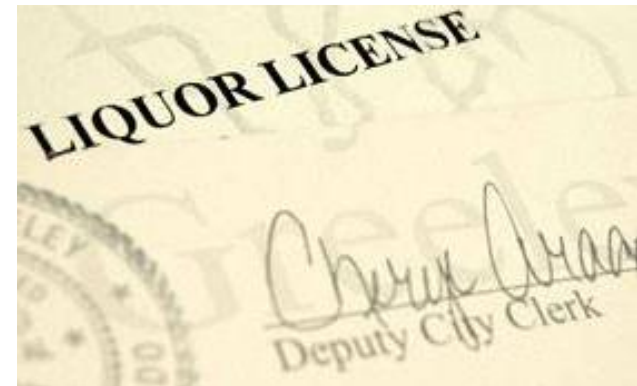
Business Licenses

- ④ Section 71.610, RSMo
 - ④ Restricts municipalities from imposing business license taxes unless the business is specifically named in the city's charter or a state statute
- ④ Section 94.270, RSMo (4th Class)
- ④ Section 94.110, RSMo (3rd Class)



Liquor Licenses

- ④ Municipalities authorized to charge up to 1 and ½ times the state rate (RSMo 311.220)
- ④ License fees vary based upon the type of license – be it restaurant, beer tavern, retail sales etc...set by State
- ④ Can be also be used merely to regulate
 - ④ Many cities limit number of licenses on the basis of population



Other Taxes

Cigarette Tax

- Ⓜ Cigarette Taxes are preempted by 149.192, RSMo
- Ⓜ Municipalities cannot impose new taxes on cigarettes and tobacco products
- Ⓜ If you had one when this was adopted, you cannot raise the amount of the tax now
- Ⓜ Any tax levied by a municipality shall not exceed the amount of tax levied on September 30, 1993



Motel Tax

- Ⓜ Used for efforts to promote tourism and/or economic development.
- Ⓜ Requires either specific statute or charter
- Ⓜ Remember Dillon's rule



Municipal Court Revenue

- Ⓜ Fines must be \$500 or less
- Ⓜ If ordinance and state statute have a penalty for the same offense, city must set “same penalty”
- Ⓜ 302.341, RSMo, sets limit on revenue produced from fines for traffic violations on state highways
 - Ⓜ If revenue from fines on state highways exceeds 35 percent of the city’s annual general operating revenue, the excess fees will be paid to the Mo Dept. of Revenue to be distributed to the schools located in the county



Service and Impact Fees

Service Fees

- ④ Fees often charged to and paid by individuals, but benefit the public
 - ④ Inspection fees
 - ④ Certifications
 - ④ Fees to offset the cost of individual requests of city resources

Impact Fees

- ④ Fees designed to ensure that new development pay its fair share of infrastructure needs it creates
 - ④ Must be a connection between the use and the fee
 - ④ Must be a proportional fee based on the impact of the development

Enterprise Funds

- ④ Operation of City Utilities
 - ④ Water
 - ④ Sewer
 - ④ Electricity
 - ④ Gas
- ④ City pool/water park
- ④ Landfill
- ④ Community Center



CITY  UTILITIES
Bringing Power Home.



The Hancock Amendment



Former Congressman
Melton D. "Mel" Hancock

- ④ Missouri Constitution Article X, §§ 16-24
- ④ Added by Missouri voters in 1980 through initiative petition process
- ④ Intended as a means to limit state and local government spending and taxation
- ④ Primary limitations applicable to cities:
 - ④ No windfalls due to market conditions
 - ④ Prohibition of unfunded state mandates
 - ④ Local government tax limit and voter approval provision

Adjustments to Property Tax Levy

- Ⓜ If the assessed valuation of property within the municipality increases faster than inflation the city must reduce its maximum authorized current levy
 - Ⓜ City must yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value
 - Ⓜ No windfalls for rapidly increasing property values



Redefining the Tax Base

- ④ Municipality can't just change the definition of subject of the tax to increase revenues
 - If the definition of the existing tax base is broadened
 - the maximum authorized current levy of taxes on the revised tax base must be reduced
 - so that the municipality realizes the same estimated gross revenue as it did on the prior tax base



Prohibition of Unfunded Mandates

- ④ State may not reduce the proportion of its funding for local activities from 1980 level
- ④ State may not require local governments to provide new or additional activities or services unless the State is responsible for paying the additional costs of providing the new services
- ④ State must make an appropriation that expressly funds the costs of any state-mandated program



- ④ If funds aren't appropriated, the local government may sue for relief from its duty to provide the state-mandated program
- ④ A violation occurs when:
 - ④ The State has required a political subdivision to undertake a new or increased level of activity; and
 - ④ The political subdivision actually experiences increased costs as a result of this new or increased activity

Local Government Tax Limit and Voter Approval Provision



CITY OF PECULIAR

QUESTION:

Shall the City of Peculiar, Missouri impose a motor vehicle fuel tax, including both gasoline and diesel fuel, at a rate of one cent (\$0.01) per gallon to be used to fund the construction, reconstruction, maintenance, repair, and lighting, of roads and/or streets, and for the payment of principal and interest on bonded indebtedness incurred for road and street purposes, the use thereof being subject to such other provisions and restrictions as provided by law?

- YES
 NO



- Ⓜ A local government entity may not levy any “tax, license or fee” that was not already in existence at the time the Hancock Amendment was adopted
- Ⓜ Nor may it increase the levy of a tax beyond the level that was in effect at the time that the Hancock Amendment was adopted
- Ⓜ **Unless approved by the voters**

Taxes vs. Fees– the Keller Test

- ④ “Tax, license or fee” interpreted very broadly by Missouri Courts at first
- ④ Made it very difficult for municipalities to be flexible in the pricing of user fees and services in the face of market conditions
- ④ In 1991 the Courts reversed their earlier decision and adopted the “Keller Test” to determine whether a charge is subject to the public vote requirement
- ④ Court reinterpreted the definition of ‘license, tax or fee’
- ④ The Keller Test involves the application of five criteria
 - ④ When is the fee paid?
 - ④ Who pays the fee?
 - ④ Is the level of fee affected by the level of goods or services received?
 - ④ Is a good or service provided?
 - ④ Has government historically and exclusively provided the good or service?





LAUBER MUNICIPAL LAW, LLC

Economic Development Financing Tools

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About the Firm

I established Lauber Municipal Law, LLC, for the purpose of serving local governmental entities of all types and sizes. I have dedicated my entire career to the representation of municipal clients— I have excelled in my practice as a public law attorney starting with “big firm” experience in the public law practice group at one of Kansas City’s largest law firms, then a practice focused exclusively on Missouri economic development law at the region’s busiest bond firm, before returning to a general municipal practice at a boutique municipal law firm in the Kansas City metro area. I can serve your community as its general counsel (City Attorney) or as special counsel for technical issues like economic development incentive approvals, annexation, elections, impeachments, and appellate work.

My goal through Lauber Municipal Law, LLC, is to meld my previous experience together to provide a high-quality, “big firm” work product, while providing the flexibility, personal responsiveness, and cost effectiveness of a small firm. I completely understand public entities’ needs to obtain the most effective representation possible while considering the fact that these services are compensated from a budget made up of public funds. As the motto for Lauber Municipal Law, LLC, states: I am proud to serve those who serve others. My sincere desire is to make that job easier and less stressful for the elected officials and administrative staffs of these entities.