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Missouri Municipal Entities Must Follow Statutorily-Required Steps Before Executing Settlement Agreements, Consent Orders.

An often overlooked legal issue can cause significant adverse consequences for clients and lawyers alike when dealing with municipal entities. Missouri law requires municipalities to follow certain statutorily-required procedures before entering into any contract, including settlement agreements and certain consent orders. See § 432.070, RSMo. (2007). If the requisite procedure is not followed, the agreement with the municipal entity is void, not merely voidable. See *Moynihan v. City of Manchester*, 265 S.W.3d 350, 354 (Mo. App. E.D. 2008).

In the environmental context, it is important to keep the requirements of section 432.070 in mind when entering into a settlement agreement or consent order involving a municipal entity. If the mandatory procedure is not followed, the municipal act, settlement agreement, or consent order potentially can be declared null and void. That could mean that clients will not be paid for work or that the settlement will cease to exist.

Pursuant to Section 432.070, an agreement entered into by a municipal entity must be:

- (1) within the scope of the municipal entity's powers or expressly authorized by law;
- (2) made upon a consideration wholly to be performed or executed subsequent to the making of the contract;
- (3) in writing, including consideration;
- (4) dated when made;
- (5) subscribed by the parties thereto, or their agents authorized by law and duly appointed; and
- (6) authorized in writing (i.e., the authority to sign the contract must be in writing).

Whether a municipal action meets these criteria has been litigated. It is unlawful for a Missouri municipality to incur a liability in the nature of a contractual obligation that is not within the scope of its corporate powers. *City of Kansas City v. Southwest Tracor Inc.*, 71 S.W.3d 211, 215-16 (Mo. App. W.D. 2002); see, e.g., *Riney v. City of Hannibal*, 712 S.W.2d 49 (Mo. App. E.D. 1986) (violation of city charter made contract void). The written authority allowing a public official (often the mayor) to execute the contract cannot be "vague and uncertain" but must be "specific and definite, and must include an outline of the terms of the proposed contract." *Moynihan*, 265 S.W.3d at 355.

To avoid problems, prior to the execution of any agreement or consent order with a municipal entity, great care should be taken. Counsel should be engaged to ensure that the municipality passes specific ordinances/resolutions and memorializes its approval in recorded minutes. The best approach will be dependent upon the municipal entity involved and the proposed action to be taken.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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