



MICHAEL A. WOLFF
Attorney
100 N. Tucker Blvo.
St. Louis, MO 63101-1930
314-977-2774
mikewolff77@yahoo.com

Hon. Sharon Quigley Carpenter
Recorder of Deeds
City Hall – Room 126
St. Louis, MO 63103

June 25, 2014

Re: Following the Constitution

Dear Sharon:

City Counselor Winston Calvert has conveyed to me your request for an opinion on the question of your duty as a public official to follow the United States Constitution though it may conflict with an explicit provision of the Missouri Constitution.

The oath of office – which embodies your duties – requires obedience to the Constitution of the United States and the State of Missouri. If there appears to be a conflict, the Supremacy Clause of the United States Constitution, Article 6, section 2, makes the U.S. Constitution the “supreme Law of the Land” and the Constitution of the State of Missouri must give way.

The question of whether there is a conflict between the federal and state constitutions ultimately may be resolved by a court, but that does not relieve an official from making her own determination of the question, though a court may later disagree. So the public official should make her own determination with, as in your case, the assistance of the City Counselor, as to what the U.S. Constitution requires.

A public official, or any person for that matter, cannot go to court just because there is a legal question. Unless a public official does an act that creates a controversy between the official and some other person whose interest may be adversely affected, there is no avenue by which to obtain a judicial interpretation. In some cases, if there is not a member of the public who is aggrieved by your action, the Attorney General of the state may be granted standing to seek a judicial opinion that the action you take is contrary to the Constitution.

In the first instance, then, it is up to you to determine what the Constitution requires and to act accordingly. If the Attorney General or a citizen with standing to challenge your action brings suit seeking to declare your action invalid, then you and the public may obtain a judicial determination as to what the Constitution requires.

As you may know, certain public officials may seek an opinion of the Attorney General under RS. MO 27.040 regarding the duties of their offices. Your office is not listed as one of the public offices whose holders are entitled to seek the Attorney General's opinion. Even if the holder of one of the offices listed in section 27.040 seeks an opinion on the question, the Supreme Court of Missouri has held that the opinions of the state's attorney general "are entitled to no more weight than that given the opinion of any other competent attorney." *Gershman Investment Corp. v. Danforth*, 517 S.W.2d 33, 35 (Mo. 1974).

This leads me to conclude that you should seek the guidance of the City Counselor as to the proper interpretation of the two constitutions at issue. If, ultimately, the Constitution of the United States requires what the Missouri Constitution prohibits, then you should treat the Constitution of the United States as the supreme law of the land.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael A. Wolff". The signature is written in dark ink and is positioned below the word "Sincerely,".