

# MISSOURI

## MISSOURI COURT OF APPEALS EASTERN DISTRICT AFFIRMS DISMISSAL OF LAWSUIT IN FAVOR OF A MUNICIPAL CLIENT ACCUSED OF USING PUBLIC FUNDS FOR ADVOCACY IN WATERSHED CASE ON SECTION 115.646, RSMO.



**WATTERS WOLF  
BUB HANSMANN**

**T**im Wolf, Joe Krispin, and Christine Lesicko recently obtained an affirmance in the Missouri appellate court upholding the dismissal of a lawsuit with prejudice against their client, University City and its council. In the underlying civil case, two citizens sued University City, its mayor, and members of the city council asserting that they violated section 115.646, RSMo, which prohibits public officials from expending public funds to advocate for or against any ballot measure, by mailing out information about a ballot measure seeking to increase a local sales tax to support the firefighter's retirement fund. The ballot measure was ultimately defeated in the election. Tim quickly filed a motion to dismiss with prejudice on the grounds that the plaintiffs had failed to state a claim on which relief could be granted, which was granted by the trial court.

Plaintiffs appealed the case to the Missouri Court of Appeals Eastern District. In their brief and at oral argument, Tim, Joe, and Christine asserted that the case was properly dismissed because the statute does not include a private right of action, the case was moot following the defeat of the ballot measure, their client did not violate the statute, and the case was properly dismissed with prejudice because plaintiffs were legally unable to state a claim under that statute. Soon after oral argument of the appeal, the appellate court agreed, holding that section 115.646, RSMo does not provide for a private cause of action and, thus, the declaratory judgment action against the city and its council was properly dismissed with prejudice. It is anticipated this reported decision by the Eastern District will be routinely cited in the future in municipal litigation related to section 115.646, RSMo.



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