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FILED

SEP 27 1999

September 24, 1999

**Missouri Public
Service Commission**

Dale Hardy Roberts, Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

OX-2000-13

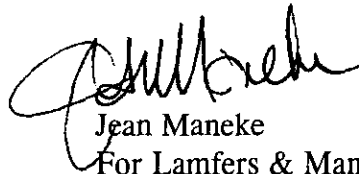
Dear Mr. Roberts:

RE: Proposed Amendments to 4 CSR 240-2.020 and 2.030

Enclosed please find for consideration the comments of the Missouri Press Association to the above-referenced Proposed Amendments involving the Missouri Public Service Commission.

Thank you for your attention to this matter.

Very truly yours,



Jean Maneke
For Lamfers & Maneke, L.C.

JM/kg

Enclosures

cc: Doug Crews, executive Director
Missouri Press Association

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BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In Re: the Proposed Amendment to:)
4 CSR 240-2.030)
Title 4 - Department of Economic Development) Case No. OX-2000-13
Division 240 - Public Service Commission)
Chapter 2 - Practice and Procedure)

FILED
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Missouri Public
Service Commission

COMMENTS BY THE MISSOURI PRESS ASSOCIATION TO THE
ABOVE-CITED MATTER

COMES NOW the Missouri Press Association, by and through counsel, and offers the following comments to the proposed revision to 4 CSR 240-2.030:

Subsection 1 of the proposed amendment

Subsection 1 of the proposed amendment provides that records of the commission "shall be available for public inspection ... during *reasonable business hours*, Monday through Friday, except for legal holidays. The specific hours the records are available shall be posted at the principal office of the commission." (Emphasis added.)

First, we would argue that this **directly conflicts** with the language in Section 386.120 (5), R.S.Mo., which provides that the offices of the commission "shall be open *during business hours*... and one or more responsible persons...shall be on duty at all times...."

"Rules are void if they are beyond the scope of the legislative authority conferred upon the state agency or if they attempt to extend or modify statutes," the court said in Pulitzer Publishing v. Missouri State Employees Retirement System, 927 S.W.2d 477 (Mo. App. 1996), citing Missouri Hosp. Ass'n v. Missouri Dep't of Consumer Affairs, Regulation & Licensing, 731 S.W.2d 262, 264 (Mo. App. 1987). Therefore, clearly this proposed rule is void under existing case law, inasmuch as it attempts to modify a statute.

Secondly, coupled with the notice dated July 1, 1999, from the Records Department

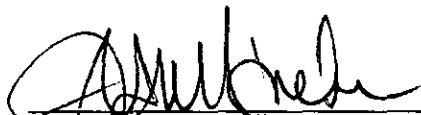
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regarding the change in business hours, it would seem reasonable to assume that the Records Department plans to use this regulatory change to implement the policy of opening during the noon hour and closing at 4 p.m. Clearly, this conflicts with existing law. The statute refers only to "business hours." The agency's business hours are 8 a.m. to 5 p.m., and therefore its records office is mandated by statute to be open for those hours. Any attempt by regulation to change what the state legislature has mandated must fail.

In addition, any attempt to reduce the hours during which the public may access the records department is an effort to restrict public information. When the agency's offices are open, the public has a right to expect access to those records during those hours. Limiting the hours of access to records limits access in general to the records.

WHEREFORE, the Missouri Press Association respectfully offers its opposition to this proposed amendment.

Respectfully submitted,



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