

MISSOURI PUBLIC HEALTH AUTHORITY TOOLKIT



May 2024



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Introduction

Missouri's 115 local public health agencies (LPHAs) provide key public health functions to Missouri residents, including assessing local health needs and risks, developing policies and planning programs to improve health, and enforcing public health laws and promoting equitable access to basic health care.¹ Like all local health departments across the country, Missouri's LPHAs rely on state-specific legal authority granted via the state constitution, statutes, and regulations to perform these functions.

Access to state-specific legal information is essential for LPHAs to fulfill their responsibilities efficiently and effectively. This toolkit provides four fact sheets designed to aid Missouri LPHAs in better understanding the depth, breadth, and scope of their legal authority and responsibilities, including (1) an overview of formation routes and governance structures for Missouri LPHAs; (2) a summary of local public health legal authority; (3) a review of key court cases affecting local public health legal authority in Missouri; and (4) Frequently Asked Questions for LPHAs.

The legal information provided in this toolkit does not constitute legal advice. For legal advice, please contact an attorney in your jurisdiction.

¹ Public Health Works: A Web-Based Orientation Manual for Public Health Leaders (revised March 2019), Missouri Department of Health and Human Services, <https://health.mo.gov/living/lpha/phworks/publichealthworks.pdf>.



Partnership and Project Background

Governmental public health has a range of tools available to it to protect the public's health; one of those tools can be the use of public health authority. However, governmental public health leaders may need additional support in understanding the legal underpinnings and correct application of that authority. The changes to public health funding and public health authority in recent years have complicated or otherwise challenged the practical application of governmental public health authority.

In response to this new landscape, the [Health Forward Foundation](#) (HFF) awarded the [Missouri Center for Public Health Excellence](#) (MOCPHE) funding to support Missouri's local public health agencies (LPHAs) to address educational and training needs related to public health authority and other legal questions.

With this funding, MOCPHE contracted support from the [Network for Public Health Law](#) (NPHL) to serve as the legal experts needed to conduct this work. MOCPHE engaged with the Network from June 2023 to May 2024 to provide a series of trainings to our members, by-request legal technical assistance, and a public health authority toolkit designed to support continued education around governmental public health authority for public health leaders now and in the future.

The toolkit featured here contains an overview of formation routes and governance structures for Missouri LPHAs, a summary of local public health legal authority, a review of key court cases affecting local public health legal authority in Missouri, and Frequently Asked Questions for LPHAs, drawn from a legal needs survey and questions raised during training sessions.

MOCPHE is truly grateful for the partnership with Colleen Healy Boufides, JD (Co-Director, Mid-States Region), Susan Fleurant, JD, MPH (Staff Attorney, Mid-States Region) and Meghan Hartley Mead, JD (Acting Deputy Director, Mid-States Region).

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Formation Routes and Governance for Local Public Health Agencies

Across the U.S., public health is largely a state and local function; as a result, public health organization and service delivery varies widely by state. In Missouri, the Department of Health and Senior Services (MDHSS) oversees all public health functions within the state,¹ working closely with local public health agencies (LPHAs) to serve local needs.² For example, the Department's Center for Local Public Health Services administers contracts with LPHAs to implement public health functions such as restaurant inspections and communicable disease detection and investigation.³ Because Missouri's LPHAs operate independently of the state health department,⁴ Missouri is generally considered to have a decentralized public health governance structure.⁵ However, the independence of LPHAs is limited by MDHSS rules and regulations, which a county health officer must enforce.

The majority of Missouri’s 115⁶ local public health agencies are “public health centers” formed under Chapter 205 of the Revised Statutes of Missouri and governed by a board of health center trustees.⁷ Alternatively, county health centers may be governed by county commissions and operated as a department of county government⁸ or they may be established and operated in accordance with a county charter.⁹ Counties may, but are not required to, appoint a county health officer.¹⁰ Additionally, cities may establish health departments or appoint health officers in accordance with city charters or ordinances.¹¹ Finally, political subdivisions may establish joint health departments by contract.¹²

This resource details the primary routes through which Missouri’s political subdivisions establish local health departments.

Formation Routes and Governance for Local Public Health Agencies

TYPE OF LOCAL PUBLIC HEALTH AGENCY ¹³	FORMATION ROUTE	LOCAL GOVERNING BODY	LEADERSHIP / HEALTH OFFICIAL ¹⁴ AND JURISDICTION ¹⁵
Public Health Center governed by Board of Trustees	County commission shall submit to voters the question of whether to establish a public health center if the commissioners have received a petition signed by at least ten percent of county voters requesting that an annual property tax be levied to fund a health center. ¹⁶	Governed by board of trustees, which operates independently of county commission. ¹⁷ After establishing a public health center, the county commission appoints the first five trustees. Trustees elected on staggered basis thereafter. ¹⁸	Board of trustees appoints LPHA personnel. ¹⁹ If board of trustees appoints a public health center director, county commission must appoint the director as county health officer. ²⁰ A county health officer must enforce MDHSS regulations throughout the county except in cities that have their own health officer who must enforce MDHSS regulations. ²¹
County Health Department / Unit governed by County Commission	In non-charter first class counties (except those containing part of a city with a population greater than 300,000), county commission may levy property tax to operate county health center as a department of county government. ²²	Governed by county commission and operated as a department of county government.	County commissions are authorized, but not required, to appoint a county health officer. ²³ A county health officer must enforce MDHSS regulations throughout the county except in cities that have their own health officer who must enforce MDHSS regulations. ²⁴
Public Health Agency established by Charter	Public health agency established by terms of county ²⁵ or city ²⁶ charter.	Governing body determined by terms of charter. ²⁷	Health officer appointment process, role, and jurisdiction determined by charter. ²⁸ A charter county’s authority within incorporated areas of the county depends on the charter. ²⁹

TYPE OF LOCAL PUBLIC HEALTH AGENCY ¹³	FORMATION ROUTE	LOCAL GOVERNING BODY	LEADERSHIP / HEALTH OFFICIAL ¹⁴ AND JURISDICTION ¹⁵
Public Health Agency established by Contract among Political Subdivisions	Political subdivisions may contract to provide a common service. ³⁰ Up to 10 contiguous counties are specifically authorized to join to provide common service. ³¹ When 8% of each county’s voters petition to form a joint agency, commission must include on ballot in next municipal election. ³² After voting to participate, county may issue bonds to fund the agency. ³³	Not specified by statute for city-county health agencies, but governance model must fall within each participating subdivision’s powers. ³⁴ For a joint county health agency, the county commissions jointly administer the common function, with each commissioner having one vote. ³⁵	Not specified by statute, but leadership model must fall within each participating subdivision’s powers. ³⁶
Health Officer or	Non-charter cities (i.e., third- and fourth-class cities) have broad power to enact public health	In general, a city council is the local governing body for a third-class city ⁴⁰ and a board of	Health officer role established by city ordinance. ⁴³
Department established by City Ordinance	ordinances ³⁷ and may, by ordinance, authorize appointment of city officers. ³⁸ A third-class city is specifically authorized to appoint a health commissioner and establish a board of health to fulfill duties authorized by ordinance. ³⁹	aldermen is the governing body for a fourth-class city. ⁴¹ Although less common, alternative forms of government are permitted by Missouri law for third- and fourth-class cities. ⁴²	Health officers for cities with population less than 75,000 must enforce MDHSS regulations within the city. ⁴⁴ Health officers for cities with population greater than 75,000 and which maintain a health department are not required to enforce MDHSS regulations in the city but must report designated diseases to MDHSS. ⁴⁵

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The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document do not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.



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¹ [Mo. Rev. Stat. § 192.005.](#)

² Local Public Health Agencies (LPHA), Missouri Dept. of Health and Senior Servs., <https://health.mo.gov/living/lpha/#:~:text=Local%20funding%20for%20those%20agencies,and%20federal%20public%20health%20agencies>. (last visited Mar. 8, 2024).

³ *Id.*

⁴ *Id.*

⁵ State and Local Health Department Governance Classification Map, Ctrs. For Disease Control & Prevention, <https://www.cdc.gov/publichealthgateway/sitesgovernance/index.html> (last visited Mar. 8, 2024).

⁶ Local Public Health Agencies by Governance, Missouri Dept. of Health and Senior Servs., <https://health.mo.gov/living/lpha/pdf/ColorMapLPHA.pdf> (last visited Mar. 8, 2024).

⁷ [Mo. Rev. Stat. § 205.042.](#)

⁸ [Mo. Rev. Stat. § 205.041.](#)

⁹ [Mo. Const. art. VI, § 18.](#)

¹⁰ [Mo. Rev. Stat. § 192.260.](#)

¹¹ [Mo. Const. art. VI, § 19\(a\)](#); [Mo. Rev. Stat. §§ 77.010](#) et seq., [79.010](#) et seq.

¹² [Mo. Const. art. VI, § 16](#); [Mo. Rev. Stat. § 70.220.](#)

¹³ MDHSS regulations provide that a “[l]ocal public health agency is a legally constituted body provided by a city, county or group of counties to protect the public health of the city, county or group of counties.” [19 CSR 20-20.010\(27\)](#) (definitions).

¹⁴ MDHSS communicable disease regulations specify that the “[l]ocal health authority is the city or county health officer, director of an organized health department or of a local board of health within a given jurisdiction. In those counties where a local health authority does not exist, the health officer or administrator of the Department of Health and Senior Services district in which the county is located shall serve as a local health authority.” [19 CSR 20-20.010\(26\)](#) (definitions).

¹⁵ The entire state of Missouri is divided into counties, while cities are located within one or more counties. This chart notes jurisdiction for county health departments because they may or may not have legal authority in “incorporated areas” (i.e., cities or villages) depending on applicable laws.

¹⁶ [Mo. Rev. Stat. § 205.010](#). In two counties, specified in the statute by their classification and population, the county commission may choose by majority vote (rather than voter petition) to submit to voters the question of whether to establish an LPHA. [Mo. Rev. Stat. § 205.010](#).

¹⁷ *State ex rel. Bd. of Health Ctr. Trustees of Clay Cnty v. Cnty. Com'n of Clay Cnty*, 896 S.W.2d 627 (Mo. 1995).

¹⁸ [Mo. Rev. Stat. § 205.031.](#)

¹⁹ [Mo. Rev. Stat. § 205.042\(4\).](#)

²⁰ [Mo. Rev. Stat. § 205.100](#). See also Atty. Gen. Op. No. 306 (Aug. 12, 1963).

²¹ [Mo. Rev. Stat. §§ 192.280.](#)

²² [Mo. Rev. Stat. § 205.141.](#)

- ²³ [Mo. Rev. Stat. § 192.260](#); see also Public Health Works: A Web-Based Orientation Manual for Public Health Leaders (revised March 2019), Missouri Department of Health and Human Services, <https://health.mo.gov/living/lpha/phworks/publichealthworks.pdf> (noting that a county commission may establish a county health unit without appointing a health officer). Some first- and second- class counties are further permitted to appoint deputy or assistant county health officers. [Mo. Rev. Stat. § 192.270](#).
- ²⁴ [Mo. Rev. Stat. § 192.280](#).
- ²⁵ First class counties and counties with a population greater than 85,000 may establish a charter form of government. [Mo. Const. art. VI, § 18\(a\)](#). In a charter county, authority to operate a public health agency comes from the county charter. See, e.g., St. Louis County charter art. IV, § 4.120-155, Jackson County Charter art. IV, § 1.
- ²⁶ Any city with a population greater than 5,000 may adopt a city charter and become a home rule city. [Mo. Const. art. VI, § 19, 19\(a\)](#). In a charter city, authority to operate a public health agency comes from the city charter. See e.g., City of Joplin home rule charter art. III, § 3.05 Kansas City charter art. IV, § 405
- ²⁷ See e.g., City of Joplin home rule charter art. III, § 3.05 (establishing public health and welfare department; governed by city council and city manager; city manager appoints director of public health; city council appoints board of health whose role is advisory; city council appoints city manager); Kansas City charter art. IV, § 405 (establishing health department; city manager appoints director of health; city manager selected jointly by mayor and city council); City of St. Joseph charter art. V, § 5.1 (establishing department of public health and welfare; under St. Joseph admin. code art IV., div. 4, city manager appoints health director; separate city health officer oversees disease prevention and treatment); City of St. Louis charter art. XIII, § 14-C (establishing division of health within department of health and hospitals; health commissioner authorized to enforce public health regulations; health commissioner appointed by director of health and hospitals; director appointed by mayor).
- ²⁸ See e.g., Kansas City charter art. IV, § 405 (establishing health department, led by director of health); St. Louis County charter art. IV, §§ 4.120 (establishing department of public health, led by director of department of public health). Additional examples included in footnote 27, *supra*.
- ²⁹ [Mo. Const. art. VI, § 18\(c\)](#). See also *Readey v. St. Louis County Water Co.*, 352 S.W.2d 622 (1961) (finding that the St. Louis County charter permits health ordinances that apply to the entire county, including incorporated areas, pursuant to the public health legislative authority conferred by the Missouri legislature to all counties under [Mo. Rev. Stat. § 192.300](#)).
- ³⁰ [Mo. Const. art. VI, § 16](#); [Mo. Rev. Stat. § 70.220](#) (permitting political subdivisions to contract with one another to perform a cooperative action that is within each subdivision's powers).
- ³¹ [Mo. Rev. Stat. § 70.010](#).
- ³² [Mo. Rev. Stat. § 70.020](#).
- ³³ [Mo. Rev. Stat. § 70.060](#).
- ³⁴ See [Mo. Rev. Stat. § 70.220](#). We did not locate a specific statute establishing a governance model for a joint city-county LPHA. Possibly, the local governing bodies contracting to establish a joint LPHA would establish a joint governance model by contract.
- ³⁵ [Mo. Rev. Stat. § 70.060](#). For joint county LPHAs, county commissions are further instructed to “administer the delegated powers and allocate the costs among the counties.” [Mo. Rev. Stat. § 70.010](#).
- ³⁶ See [Mo. Rev. Stat. § 70.220](#). We did not locate a specific statute establishing a leadership model for a joint city-county LPHA. Possibly, the local governing bodies contracting to establish a joint LPHA would specify the agency's leader and appointment process within the contract.
- ³⁷ [Mo. Rev. Stat. §§ 77.260, 77.530, 77.560, 77.590](#) (applicable to third-class cities); [79.110, 79.370, 79.380, 79.383](#) (applicable to fourth-class cities).
- ³⁸ [Mo. Rev. Stat. §§ 77.330](#) (third class cities); [79.230](#) (fourth class cities).

³⁹ [Mo. Rev. Stat. § 77.560](#).

⁴⁰ See [Mo. Rev. Stat. § 77.260](#).

⁴¹ See [Mo. Rev. Stat. § 79.110](#).

⁴² See [Mo. Rev. Stat. ch. 77-81](#). See also Forms of Government for Missouri Municipalities, Missouri Municipal League (2007), <https://washmo.gov/wp-content/uploads/2019/04/4-Forms-of-Government.pdf>.

⁴³ [Mo. Rev. Stat. §§ 77.330](#) (third class cities); [79.230](#) (fourth class cities).

⁴⁴ [Mo. Rev. Stat. § 192.280](#).

⁴⁵ [Mo. Rev. Stat. § 192.310](#). It appears that the application of this provision to home rule cities with populations between 64,000 – 71,000 has been called in to question by *Calzone v. Koster, et al.*, Case No. 15AC-CC00247 (Cole County Cir. Ct., Feb. 9, 2016).



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Primary Sources of Local Public Health Authority

Missouri's Department of Health and Senior Services (MDHSS) oversees all public health functions within the state.¹ The state's 115 local public health agencies (LPHAs)² have varying authorities depending in large part on their formation and governance structure.³ Public health agencies in Missouri generally draw their authority from all or some of the following sources: the state Constitution, statutes, regulations, local government charters, local ordinances, and contracts with MDHSS. In Missouri, state statutes do not specify significant authority for local public health agencies, but they do obligate (except in charter cities) LPHAs to enforce state regulations within their jurisdictions. Additionally, specific local authority is often derived from local charters and ordinances.

Statutes in Missouri pertaining to public health are generally found within [Title XII](#) of the Revised Statutes of Missouri, Chapters 188-215.⁴ Regulations promulgated by MDHSS may be found at [Title 19](#) of the Code of State Regulations.⁵ Some local ordinances are available online through [municode](#) or local government websites.⁶

This resource identifies the primary sources of local public health authority in Missouri focused on general authority, communicable disease control, food sanitation, child care facilities, and public health emergencies. This is not an exhaustive compilation of every source of authority or potential action available to public health officials.

General Authority – County Health Officers

AUTHORITY / ACTION	LAW	COMMENTS
Authority to Enforce MDHSS Rules and Regulations	Mo. Rev. Stat. § 192.280	County health officers must enforce MDHSS rules and regulations throughout their respective counties, except in incorporated cities which maintain a health officer. If a county health officer fails to fulfill responsibilities under this section, they shall be deemed guilty of a misdemeanor and MDHSS may declare the office of county health officer vacant. ⁷
Duty to Fulfill Contractual Obligations with MDHSS	19 CSR 10-1.010 (4)	County health departments must fulfill any contractual obligations with MDHSS to provide direct public health services.
Authority to Implement and Enforce Local Orders, Ordinances, Rules, and Regulations	Mo. Rev. Stat. § 192.290	Nothing limits the right of local authorities to make ordinances, rules, and regulations not inconsistent with the rules and regulations prescribed by MDHSS which may be necessary for the particular locality.
	Mo. Rev. Stat. § 192.300	County commissions and county health center boards may make and promulgate orders, ordinances, rules, or regulations, as will enhance the public health, and prevent the entrance of infectious, contagious, communicable, or dangerous diseases into the county.
Limits on County Legislative Authority	Mo. Rev. Stat. § 192.300	Any county orders, ordinances, rules, or regulations shall not conflict with any MDHSS rules or regulations.
	Mo. Rev. Stat. § 192.310	A county's public health orders, ordinances, rules, or regulations do not apply to cities with a population greater than 75,000 which maintain their own health department.
	Mo. Rev. Stat. § 67.265	Local public health authority is limited by Mo. Rev. Stat. § 67.265, which sets durational limits and grants local governing bodies authority related to orders that close or place restrictions on places of public or private gathering, including authority to terminate such orders.

General Authority – City Health Officers

AUTHORITY / ACTION	LAW	COMMENTS
Authority to Enforce MDHSS Rules and Regulations	Mo. Rev. Stat. § 192.280	In incorporated cities with population less than 75,000, health officers must enforce MDHSS rules and regulations.
Duty to Fulfill Contractual Obligations with MDHSS	19 CSR 10-1.010 (4)	City health departments must fulfill any contractual obligations with MDHSS to provide direct public health services.
Authority in Cities with Population > 75,000	Mo. Rev. Stat. § 192.310	Health officers for incorporated cities with population greater than 75,000 are not required to enforce MDHSS regulations in their cities but must report designated diseases to MDHSS.
Authority to Act in Accordance with City Charter	City Charter; Mo. Const. art. VI, §19(a)	A health officer's authority and duties are established by the city charter.
	City Charter; Mo. Const. art. VI, § 19(a)	Charter cities have home rule powers and may enact public health ordinances in accordance with their charter.
Authority to Enforce City Health Ordinances	Mo. Rev. Stat. § 77.260 § 77.530 § 77.560 § 77.590 § 79.110 § 79.370 § 79.380 § 79.383 § 71.780	Third- and fourth-class cities have broad power to enact ordinances deemed expedient to the public's health. These may include regulations and ordinances to prevent the introduction of, and to abate, contagious diseases in the city; quarantine laws; and laws providing for nuisance abatement.

Communicable Disease Control

AUTHORITY / ACTION	LAW	COMMENTS
Investigate	19 CSR 20-20.040	Local health officers must investigate after being notified of a reportable disease and examine any person reasonably suspected of being infected or being a source or contact of infection.
Implement Control Measures	19 CSR 20-20.040 ⁸	Local health officers have the authority to issue isolation and quarantine orders and shall require isolation of a patient or animal with a communicable disease, quarantine of contacts, concurrent and terminal disinfection, or modified forms of these procedures.
Issue Isolation and Quarantine Orders	19 CSR 20-20.040 19 CSR 20-20.050	Local health officers have the authority to issue isolation and quarantine orders and shall require isolation of a patient or animal with a communicable disease, quarantine of contacts, concurrent and terminal disinfection, or modified forms of these procedures.
Close Schools and Businesses	19 CSR 20-20.050	Local health officers may close any public or private school or other place of public or private gathering when the closing is necessary to protect public health. Note that during a statewide pandemic only MDHSS has the authority to close schools and places of gathering, in consultation with local health authorities.
Exclude Kids from School	19 CSR 20-20.030	Individuals with a reportable disease must be barred from attending school.
Implement Control Measures for Food Handlers	19 CSR 20-20.060(4)	When there is a suspected possibility of transmission of infection, a local health officer is authorized to require exclusion and medical examination of a food handler.
Institute Proceedings for Commitment of Tuberculosis Patients	Mo. Rev. Stat. § 199.180	If a person with active tuberculosis violates the orders promulgated by MDHSS or an LPHA and is acting in a manner that may expose others to tuberculosis, the local health officer may institute commitment proceedings in the county circuit court.
Local Authority per Charter or Ordinance, Limited by Mo. Rev. Stat. § 67.265	Charter; Ordinance; Limited by Mo. Rev. Stat. § 67.265	Local health officers should look to their charters and/or ordinances in addition to state law for authority to issue public health orders. Note that local public health authority is limited by Mo. Rev. Stat. § 67.265, which sets durational limits and grants local governing bodies authority related to orders that close or place restrictions on places of public or private gathering, including authority to terminate such orders.

Food Sanitation

AUTHORITY / ACTION	LAW	COMMENTS
Adopt a Local Food Ordinance	Mo. Rev. Stat. § 192.300	Counties may adopt a local food ordinance equal to or more stringent than state regulations. ⁹ In counties with a local food ordinance, the ordinance establishes additional authority beyond state law.
Deny an Application for Approval to Open	19 CSR § 20-1.025 , which incorporates by reference the Missouri Food Code, 8-303.20	LPHAs may deny a food establishment's application for approval to open.
Inspect Food Establishments	19 CSR § 20-1.025 , which incorporates by reference the Missouri Food Code, 8-302.20	LPHAs conduct preoperational inspections of food establishments as authorized by the Missouri Food Code. LPHAs conduct routine inspections based on their local work plan in accordance with MDHSS' Environmental Health Operational Guidelines .
Enforcement Actions	19 CSR § 20-1.025 , which incorporates by reference the Missouri Food Code, 8-404.11-15	In counties without a local food ordinance, LPHAs consult with the regional MDHSS Public Health Environmental Specialist regarding work orders and enforcement actions in response to violations found upon inspection. ¹⁰
Maintain a Record of Complaints Against Cottage Food Production Operations	Mo. Rev. Stat. § 196.298	LPHAs cannot regulate the production of food at a cottage food production operation. LPHAs must maintain a record of complaints against cottage food production operations and may conduct investigations of food-borne diseases or outbreaks.

Child Care Facilities

AUTHORITY / ACTION	LAW	COMMENTS
Health and Sanitation Inspections¹¹	Mo. Rev. Stat. § 210.252 5 CSR 25-300.080	MDHSS or LPHA officials designated by the Department of Elementary and Secondary Education must conduct annual health inspections of child care facilities.
Control Measures for Reportable Diseases	5 CSR 25.300.050 5 CSR 25-400.185 5 CSR 25-500.192	When a child care facility reports a reportable disease, the LPHA may recommend control measures that must be implemented by the facility.

Emergency Response

AUTHORITY / ACTION	LAW	COMMENTS
Possibility of Additional Local Authority Under State Emergency Order	Mo. Rev. Stat. § 192.460	MDHSS could potentially issue emergency orders granting emergency authority to LPHAs.
Local Authority per Charter or Ordinance, Limited by Mo. Rev. Stat. § 67.265	Charter; Ordinance; Limited by Mo. Rev. Stat. § 67.265	Local health officers should look to their charters and/or ordinances in addition to state law for emergency powers. Note that local public health authority is limited by Mo. Rev. Stat. § 67.265, which sets durational limits and grants local governing bodies authority related to orders that close or place restrictions on places of public or private gathering.

This document was developed by Susan Fleurant, JD, MPH, Staff Attorney and Colleen Healy Boufides, JD, Co-Director, Network for Public Health Law – Mid-States Region and reviewed by Spring Schmidt, Executive Director, Missouri Center for Public Health Excellence, and Robert Gatter, JD, Professor of Law and Health Management and Policy and Director, Center for Health Law Studies, Saint Louis University.

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¹ [Mo. Rev. Stat. § 192.005.](#)

² Mo. Dep't of Health and Human Servs., Local Public Health Agencies (LPHA), <https://health.mo.gov/living/lpha/>; Missouri Counties by Classification, <https://www.mocounties.com/missouri-county-classifications>.

³ See Network for Public Health Law, Missouri Public Health Authority Toolkit, Fact Sheet, Formation Routes and Governance for Local Public Health Agencies, March 2024. See also Mo. Dep't of Health and Human Servs., Local Public Health Agencies by Governance, <https://health.mo.gov/living/lpha/pdf/ColorMapLPHA.pdf>.

⁴ [Mo. Rev. Stat. Tit. XII.](#)

⁵ [Mo. CSR, Tit. 19.](#)

⁶ Municode, <https://library.municode.com/mo>.

⁷ This note applies to a county with a health center established under [Mo. Rev. Stat. § 205.010](#). At the annual February meeting, the county commission shall appoint the director of the public health center as county health officer. [Mo. Rev. Stat. § 205.100](#).

⁸ See Robinson v. MDHSS, 672 S.W.3d 224 (Mo. Supreme Court, 2023) (en banc) challenging 19 CSR 20-20.040(2)(G)-(I); 19 CSR 20-20.040(6) and; 19 CSR 20-20.050(3). The Circuit Court of Cole County held that the regulations were invalid, but the Missouri Supreme Court vacated the Circuit Court's judgment. As of April 2024, the authority granted by those regulations remains in place.

⁹ See Mo. Dep't of Health and Senior Servs., Bureau of Environmental Health Services, Environmental Health Operational Guidelines (Aug. 2021), <https://health.mo.gov/atoz/ehog/pdf/ehog-2021.pdf>.

¹⁰ See Mo. Dep't of Health and Senior Servs., Bureau of Environmental Health Services, Environmental Health Operational Guidelines Appendix (Aug. 2021), <https://health.mo.gov/atoz/ehog/pdf/ehog-appendix-2021.pdf>.

¹¹ Under [13 CSR 35-71.020\(C\)](#), LPHAs may conduct inspections for residential care facilities for children and youth for the facilities to obtain licensure.




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Summary of Key Cases Affecting Missouri Local Public Health Legal Authority

In *Jacobson vs. Massachusetts*, 197 U.S. 11 (1905), the seminal federal case on public health legal authority, the U.S. Supreme Court recognized the primary role of states (as opposed to the federal government) in protecting the public's health, the important role of state legislatures in establishing public health regulations, and the propriety of states investing local bodies with public health authority, among other things.

Because public health is primarily a state function, local public health legal authority varies tremendously across the country—not only between states, but sometimes between localities within a state. To operate efficiently, effectively, and lawfully, it is essential that local public health departments fully understand the sources and scope of their authority under state law. Public health authority is defined not only through state constitutions, statutes, and regulations, but also through case law—or court decisions—interpreting that authority.



This toolkit includes fact sheets analyzing various aspects of Missouri local public health legal authority. This fact sheet summarizes key cases interpreting Missouri-specific public health authority, categorized as noted in the table of contents below. This fact sheet does not represent an exhaustive review of all Missouri case law potentially relevant to local public health agencies' authority, but instead highlights cases analyzing key sources of authority. The fact sheet concludes by summarizing three notable Missouri cases emerging from the COVID-19 pandemic.

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Local Public Health Formation, Governance, and General Authority

State ex rel. Bd. of Health Ctr. Trustees of Clay Cnty v. Cnty Comm'n of Clay County, 896 S.W.2d 627 (Mo. Supreme Court, 1995) (en banc)

Summary: The Clay County Health Center was established in 1953 after being approved by county voters in a special election. The health center is operated pursuant to RSMo. § 205.042 and is governed by a five-member Board of Health Center Trustees (“Board”) who are elected by voters of the county. In 1993, the Board voted to increase the property tax levy funding the health center from \$.07 per \$100 of assessed valuation to \$.09 per \$100. Before a tax is placed on property tax bills, the County Commission certifies the amount. The Commission determined that it would not grant the increase and would only approve \$.07 per \$100. The Board filed a petition in mandamus with the Circuit Court of Clay County to compel the Commission to authenticate the increased tax levy. The Supreme Court of Missouri determined that the authority to determine the tax amount (up to the statutory maximum of \$.10 per \$100) lay with the Board of Health because the Health Center was an independent body whose taxing power was granted by RSMo. § 205.042. The Commission’s duty to certify the tax levy was merely ministerial.

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
<ol style="list-style-type: none">Does the Clay County Board of Health Center Trustees have the power to determine the tax levy rate under RSMo. § 205.042 or does the Clay County Commission have that power under RSMo. § 205.141?Does RSMo. § 205.042.8, which authorizes the Board of Health Center Trustees to determine the annual tax levy within a limit authorized by county voters, violate the Missouri Constitution?	<ol style="list-style-type: none">The Clay County Health Center is an independent health center established by a vote of county residents and governed by an independent Board of Health Center Trustees under RSMo. § 205.042. Its organizational structure is different from health centers established as departments of county government for which funding is authorized by a county commission under RSMo. § 205.141. Therefore, in Clay County, the Board of Health Center Trustees has the power to determine the tax levy. The County Commission’s role is ministerial in nature, requiring only certification of the levy amount to the county collector.No. Based on article X, sections 1 and 15, of the Missouri Constitution, political subdivisions have the power to tax when granted that power by the legislature. RSMo. § 205.042.8 grants this authority to independent health centers.	<p>This decision clarifies that for health centers established under RSMo. § 205.042, the Health Center Board of Trustees (not the County Commission) serves as the local governing body and has authority to determine the local tax levy and appoint a health center director.</p>

County Authority to Enact Public Health Ordinances under RSMo. 192.300

Cedar County Comm’n v. Parson, 661 S.W.3d 766 (Mo. Supreme Court, 2023) (en banc)¹

Summary: In May 2016, the Cedar County Commission adopted a public health ordinance regulating controlled animal feeding operations (CAFOs) under the authority of RSMo. § 192.300. In May 2019, the state legislature added RSMo. § 192.300.1(2) which prohibited counties from imposing “standards or requirements on an agricultural operation and its appurtenances . . . that are inconsistent with or more stringent than” specified state laws. In August 2019, Cooper County Public Health Center adopted an ordinance imposing air and water quality standards on CAFOs. Cedar County, Cooper County, and other parties sought an injunction to prevent 192.300.1(2) from being enforced. In May 2021, the state legislature added additional language to § 192.300.1(2) preventing counties from imposing standards or requirements on agricultural operations that are “inconsistent with, in addition to, different from, or more stringent than” the listed statutes (emphasis added). The Missouri Supreme Court ruled that § 192.300.1(2) did not violate the Missouri Constitution’s Right-to-Farm Amendment (which was Cedar County’s main argument), and that Cooper County’s ordinance violated the statute (Cedar County did not contest that its regulation violated the statute).

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
<ol style="list-style-type: none">Does the amended section 192.300.1(2) conflict with the Missouri Constitution’s Right-to-Farm Amendment that reserves the authority to regulate agriculture to counties?Does amended section 192.300.1(2) preempt conflicting ordinances enacted prior to the 2019 and 2021 amendments?Does Cooper County’s ordinance imposing air and water quality standards on CAFOs conflict with amended section 192.300.1(2)?	<ol style="list-style-type: none">No, there is no conflict. The Right-to-Farm Amendment subordinates the individual right to farm to counties’ authority granted by the constitution, but counties’ constitutional “powers are only as broad or as narrow as the General Assembly wants them to be.” The state legislature delegated power to counties to promulgate public health rules in section 192.300, and it can also limit that power.Yes. Any ordinance that conflicts with amended section 192.300.1(2) is void on and after the effective date of the amendment, regardless of when the ordinance was passed.Yes. Section 192.300.1(2) prohibits counties from imposing standards or requirements “inconsistent with,” “in addition to,” or “different from” the listed state statutes. Cooper County’s ordinance imposes standards that are different from state standards (e.g., by including time or frequency elements not present in state law or by applying to additional classes of CAFOs beyond those regulated by state law) and additional to state standards (e.g., by regulating subjects for which there is no state standard).	<p>This decision is relevant to all Missouri non-charter counties that regulate or seek to regulate agricultural operations. The Court went so far as to say that “. . . section 192.300 does not permit counties to regulate in the absence of some comparable state law or regulation because such local ordinances would – at the very least – be ‘in addition to’ the specified state laws or regulations” Thus, it is difficult to imagine a court upholding any non-charter county public health ordinance that regulates agricultural operations by adding new or different requirements.</p>

City of Olivette v. St. Louis County, 507 S.W.3d 637 (Mo. Court of Appeals, 2017)

Summary: St. Louis County enacted an ordinance authorizing the County Executive to establish minimum standards for all municipal police departments in the county. Pursuant to this ordinance, the County Executive issued “requirements for the licensing, training, and hiring of law enforcement officers and for police department accountability and transparency.” Several cities located in St. Louis County filed this lawsuit, asserting the County lacked authority to enact the ordinance. Although the County initially argued that it had authority to issue the ordinance under both its constitutional charter authority and RSMo. § 192.300, the court ultimately focused its analysis on section 192.300, concluding that the county did not have authority to enact the ordinance.

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
Does RSMo. § 192.300 authorize St. Louis County’s ordinance regulating police departments as an ordinance to “enhance the public health” and prevent disease?	No. Section 192.300 does not grant counties the authority to enact an ordinance establishing countywide minimum standards for police. The court interpreted section 192.300 as authorizing only ordinances that both enhance public health and prevent disease. The court concluded that creating police standards is unrelated to disease prevention. The court further noted that public safety is distinct from public health, as evinced by the legislature’s establishment of distinct state departments to address these issues, and that law enforcement falls “squarely within the realm of public safety.”	When considering the validity of public health ordinances enacted under RSMo. § 192.300, courts may require a more traditional connection to disease prevention.

Borron v. Farrenkopf, 5 S.W.3d 618 (Mo. Court of Appeals, 1999)²

Summary: Linn County enacted an ordinance regulating and requiring a permit to operate a concentrated animal feeding operation (CAFO) in the county. The court upheld the ordinance as a valid public health measure under RSMo. § 192.300 and concluded that the ordinance was not preempted by other state statutes. ***Note that this case was decided prior to the enactment of RSMo. § 192.300.1(2) via amendments passed in 2019 and 2021. Although the specific holding in Borron is no longer relevant to local regulation of CAFOs, the court’s analysis relating to general local public health regulatory authority and state preemption is relevant.

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
<ol style="list-style-type: none">1. Is the Linn County CAFO ordinance a permissible health ordinance under § 192.300 or it is an impermissible zoning ordinance under RSMo. § 64.620?2. Is Linn County’s CAFO ordinance preempted by state law because imposing additional requirements beyond state law creates a direct conflict with state law?3. Is Linn County’s CAFO ordinance preempted because it regulates in an area which is fully occupied by state law?	<ol style="list-style-type: none">1. The Linn County CAFO ordinance is a health protection ordinance, not a zoning ordinance, because its purpose is “to regulate for health concerns rather than for a uniform development of real estate.” Even though section 192.300 does not grant specific authority to counties to regulate CAFOs, the Linn County CAFO ordinance “is rationally related to the health problems stemming from livestock facilities, and therefore expressly authorized under § 192.300.”2. No. Although “preemption forbids a conflict with state law, it does not prohibit extra regulations by the locality.” A conflict exists if a local ordinance prohibits what state law permits, but not if the local ordinance is merely regulatory in nature.	This case is no longer relevant specifically to local regulation of CAFOs because the Missouri Legislature amended RSMo. § 192.300.1(2) in 2019 and 2021 to expressly prohibit local regulation of CAFOs under § 192.300. However, the case’s guidance relating to counties’ general regulatory authority under § 192.300 remains relevant. First, the case suggests that an ordinance that has both zoning- and health-related qualities may be permissible under § 192.300 if adequate health-related justification is set forth. Second, there is

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3. No. Although the state regulates CAFOs, the relevant state statutes expressly leave room for additional local regulation.
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not a “direct conflict” between state law and a local health ordinance merely because the local ordinance imposes additional requirements on the same subject.

Avanti Petroleum, Inc. v. St. Louis County, 974 S.W.2d 506 (Mo. Court of Appeals, 1998)

Summary: St. Louis County enacted an ordinance that: (1) required tobacco retailers to be licensed by the St. Louis County Department of Health; (2) prohibited vendors from selling tobacco to minors; (3) established annual fees paid by vendors to offset enforcement costs. Tobacco retailers in incorporated municipalities of the county challenged the ordinance. The court upheld the ordinance as a valid public health measure under section 192.300 but severed the fees provisions as requiring voter approval under the Missouri Constitution’s Hancock Amendment.

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
1. Does St. Louis County’s tobacco ordinance “bear[] a reasonable relation to public health enhancement and disease prevention” such that it is authorized under RSMo. § 192.300?	1. Yes. “Preventing sales of tobacco to minors to reduce or prevent their use of such products bears a reasonable relation to reducing dangerous disease.” The ordinance is authorized and enforceable against vendors in both unincorporated and incorporated areas of St. Louis County.	A valid public health ordinance under RSMo. § 192.300 must be reasonably related to enhancing public health and preventing disease. When imposing licensing fees via a public health ordinance, counties should carefully evaluate whether the fee is subject to the Hancock Amendment and therefore requires voter approval.
2. Is the ordinance’s license fee a “tax, license, or fee” subject to the Missouri Constitution’s Hancock Amendment, such that voter approval is required?	2. Yes, the license fee is a “tax, license, or fee” covered by the Hancock Amendment and therefore may not be imposed without voter approval. The court considered five factors to determine whether a “revenue increase” is subject to the Hancock amendment. ³	
	3. The court severed the license fee provision but found that the County may nevertheless require a license to sell tobacco and may enforce the ordinance’s requirements through compliance checks, revocation or suspension of licenses, and punishment of violations.	

Readey v. St. Louis County Water Co., 352 S.W.2d 622 (Mo. Supreme Court, 1961) (en banc)

Summary: St. Louis County adopted an ordinance requiring fluoridation of the county water supply. Eight county residents, some of whom resided in incorporated areas within the county, challenged the ordinance on federal and state constitutional and state law grounds. First, the residents claimed that the county did not have authority to enact an ordinance affecting the entire county, including incorporated areas, under Mo. Const. art. VI, sec. 18(c). Additionally, the residents claimed that the fluoridation ordinance (1) violated their constitutional rights to bodily autonomy, (2) violated their First Amendment rights by forcing medication contrary to their religious beliefs, and (3) violated Missouri statutes pertaining to misbranding and adulterating non-alcoholic beverages. The Supreme Court concluded the fluoridation ordinance was a valid exercise of the county council's police power to promote public health as conferred by RSMo. § 192.300, finding that the county's authority under section 192.300 applied in both incorporated and unincorporated areas. The court also determined that the ordinance did not violate the federal or state constitutions and did not violate Missouri's law relating to nonalcoholic beverages.

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
1. Does St. Louis County have authority to enact a public health ordinance that affects both incorporated and unincorporated areas of the county?	1. Yes. St. Louis County's public health authority is not limited to powers conferred pursuant to Mo. Const. art. VI, sec. 18(c) and the related provision of the county charter. The charter also provides that the county shall have all powers the state confers upon any county of the first class. Accordingly, under RSMo. § 192.300, St. Louis County "is authorized to enact ordinances tending to enhance the health of all residents of St. Louis County, irrespective of whether they also reside within a municipality."	Public health measures enacted under RSMo. § 192.300 must have a "reasonable relation to public health." Fluoridation of a public water supply is an example of a public health measure satisfying this standard.
2. Does St. Louis County's water fluoridation ordinance bear a "reasonable relation to public health," such that it is authorized under RSMo. § 192.300?	2. Yes. The county council reasonably could have concluded that dental decay is a widespread and serious disease and that fluoridation of water up to one part per million gallons would effectively decrease tooth decay. The ordinance has a reasonable relation to public health and its provisions reasonably will tend to enhance the public health. The ordinance was a valid exercise of the county council's police power to promote public health conferred by section 192.300.	RSMo. § 192.300 generally authorizes counties to enact health ordinances that apply throughout an entire county, including both incorporated and unincorporated areas. However, note that RSMo. § 192.310 excepts cities with population greater than 75,000 and operating their own health department from § 192.300. Furthermore, charter counties should consult their county charter to identify any potential limits placed on countywide authority.

Professional Houndsmen of Mo. v. Cnty. of Boone, 836 S.W.2d 17 (Mo. Court of Appeals, 1992)

Summary: Boone County adopted an animal control ordinance that required owners to register their animals, vaccinate animals against rabies, leash dogs, and confine animals in highly populated areas. A fox hunters' organization challenged the ordinance, arguing, among other things, that the county commission did not have authority to adopt it and that the ordinance violated equal protection rights because it differentiated between parts of the county based on population. The court upheld the ordinance, agreeing that the county had authority under RSMo. § 192.300 to enact the animal control ordinance because it enhanced public health by preventing rabies and animal bites. The court further concluded that the ordinance did not violate equal protection rights because its classifications were "reasonable and rationally related to the stated purpose of the ordinance."

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
1. Did Boone County have authority under RSMo. § 192.300 to enact an animal control ordinance?	1. Yes. The county commission had authority to adopt the ordinance under § 192.300. The ordinance enhances public health by preventing rabies and animal bites.	RSMo. § 192.300 grants counties authority to adopt public health ordinances which are "reasonably related to the purpose of public health enhancement and disease prevention." Animal control is an example of a public health measure satisfying this standard.
2. Does the existence of RSMo. § 322.125, a separate state statute granting specific authority to certain counties to establish local dog control ordinances, mean that counties not covered by § 322.125 are prohibited from enacting dog control ordinances?	2. No. Sections 322.125 and 192.300 do not conflict, so there is no need to read the specific dog control statute as an exception to the more general public health authority statute.	A public health ordinance may differ in its application without violating equal protection rights if classifications are "reasonable and rationally related to the stated purpose of the ordinance." ⁴ In general, "[s]ection 192.300 does not restrict the means or methods of public health regulations" as long as the chosen method is reasonable and rationally related to its stated purpose.
3. Did Boone County have authority under RSMo. § 192.300 to include a penalty for violating the ordinance?	3. Yes. Section 192.300 states that violations of ordinances passed under that section are misdemeanors.	
4. Is the county's authority to issue ordinances under § 192.300 limited to subjects covered by MDHSS regulations?	4. No. A county may adopt ordinances within § 192.300's scope as long as they do not conflict with MDHSS regulations.	
	5. No. "[C]lassifications established under the exercise of police power [must] be reasonable and rationally related to the stated purpose of the ordinance." It was reasonable and rational for application of the ordinance to differ based on population density.	
5. Did the ordinance violate equal protection rights because application differed according to location in the county?		

Case Law Stemming from the COVID-19 Pandemic

Robinson v. MDHSS, 672 S.W.3d 224 (Mo. Supreme Court, 2023) (en banc)

Summary: A Missouri resident, a restaurant, and a church sued the Department of Health and Senior Services (MDHSS) to challenge state regulations authorizing local health authorities to issue COVID-19-related public health orders that limited gatherings and closed schools and businesses. The Cole County Circuit Court determined that the state regulations were invalid. After the Missouri Attorney General announced he would not appeal the Cole County decision, the Missouri Supreme Court determined that St. Louis County and Jackson County had a right to intervene. In granting the counties' motion to intervene, the Supreme Court vacated the circuit court's original judgment striking MDHSS regulations as well as the circuit court's post-judgment order denying the counties' right to intervene. On October 6, 2023, plaintiffs filed a motion stating they voluntarily dismissed the case; the Cole County Court has not yet stated the effect of this voluntary dismissal on the court's proceedings.

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
Are the following MDHSS regulations valid?: 19 CSR 20-20.040(2)(G)-(I); 19 CSR 20-20.040(6); 19 CSR 20-20.050(3), which authorize the Director of MDHSS or a local health agency director to "establish appropriate control measures" including "the creation and enforcement of adequate orders to prevent the spread" of communicable disease and to close schools or other places of public or private assembly when "necessary to protect the public health."	The circuit court's entire judgment is vacated, including the portion of the circuit court judgment that held that the state regulations were invalid. The circuit court must allow the counties to intervene.	The Missouri Supreme Court vacated the circuit court's judgment that struck the challenged regulations, so it appears the authority granted by those regulations remains in place.

Schmitt v. Lee's Summit R-7 Sch. Dist., Case No. 2216-CV01110 (Jackson County Circuit Court, 2023)

Summary: Missouri Attorney General (AG) Schmitt sent two letters to Lee's Summit R-7 School District directing the district to end its mask mandate and other COVID-19 mitigation measures. The AG then filed a lawsuit against the school district, arguing that the school district did not have authority to enact its mask mandate or to exclude children who may be infectious from school. The AG based his claim on the court's decision in Robinson. The school district filed a counterclaim seeking a declaratory judgment that the AG's letters exceeded his authority and were not binding on the school district.


RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
Did the AG exceed his authority by sending letters to the school district directing them to cease COVID mitigation measures and publicizing those letters on social media?	The AG exceeded his authority. He intended his letters to be perceived by the public as orders to the district, but neither his letters nor the Robinson judgment legally bind school districts.	The Robinson decision does not apply to school districts, which were not parties to Robinson and the authority of which is not based on the regulations challenged in that case.
		School districts' authority to respond to

infectious disease outbreaks and exclude infected children from school is based on RSMo. §§ 162.471, 162.261.1, 171.011, and 167.191.

Schmitt v. St. Louis County (Schmitt II) (Circuit Court of St. Louis County, 2022)

Summary: Missouri Attorney General (AG) Schmitt filed a lawsuit against St. Louis County seeking a declaration that the County’s indoor mask requirement issued on January 5, 2022, was unlawful. The Attorney General argued that (1) the requirement was a “prohibited order” under RSMo. § 67.265; (2) the County had no authority to apply the requirement to school districts; (3) St. Louis County Council did not have authority to pass the mask requirement; (4) the mask requirement was arbitrary and capricious. St. Louis County countered that (1) the requirement was not implicated by § 67.265 because it was not a “prohibited order” under 67.265 and was not issued during a statewide state of emergency; (2) the order does not place obligations on school districts, only on individuals; (3) the order was lawfully issued based on authority granted by St. Louis County ordinances; and (4) the Director of the Department of Public Health has discretion regarding public health orders, with approval by St. Louis County Council. The Court denied the AG’s request for a preliminary injunction and granted the county’s motion to dismiss.

RELEVANT ISSUE(S)	KEY HOLDINGS	TAKEAWAY
1. Is the St. Louis County indoor masking order prohibited by § 67.265?	1. No. The mask order was not prohibited by § 67.265. Among other things, the order was passed by the county council; although § 67.265 limits a health officer’s or agency’s authority to enact certain public health orders indefinitely, the statute does not restrict actions taken by a duly elected legislative body.	This decision is most relevant for its application of RSMo. § 67.265 to a local public health order. Most notably, although § 67.265 limits a health officer’s or agency’s authority to enact certain public health orders indefinitely, the statute does not restrict actions taken by a duly elected legislative body.
2. Should the Court enjoin the county from enforcing the order against school districts?	2. There is no justiciable controversy with regard to enforcing the order against school districts. The order specifically exempted school districts and contained no enforcement mechanisms.	
3. Was the masking order arbitrary and capricious?	3. The Attorney General’s petition is vague and conclusory and fails to identify the facts upon which to state a claim.	



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The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document do not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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¹ A prior case, *Borron v. Farrenkopf*, 5 S.W.3d 618 (Mo. Ct. App. 1999), upheld public health regulation of CAFOs under RSMo. § 192.300, but *Borron* was decided decades prior to enactment of the 2019 and 2021 amendments at issue in *Cedar County Comm'n*. For further discussion of *Borron's* potential ongoing relevance to LPHAs, review the case summary included within this resource.

² Local public health regulation of CAFOs is now expressly disallowed by RSMo. § 192.300.1(2), following amendments to the statute enacted in 2019 and 2021. See *Cedar Cnty. Comm'n v. Parson*, 661 S.W.3d 766 (Mo. Supreme Court, 2023) (en banc).

³ The court identified the following five factors to determine whether a local government revenue increase is a “tax, license, or fee” subject to the Missouri Constitution’s Hancock Amendment, citing *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301, 303 n.10 (Mo. banc 1991):

1) When is the fee paid?—Fees subject to the Hancock Amendment are likely due to be paid on a periodic basis while fees not subject to the Hancock Amendment are likely due to be paid only on or after provision of a good or service to the individual paying the fee.

2) Who pays the fee?—A fee subject to the Hancock Amendment is likely to be blanket-billed to all or almost all of the residents of the political subdivision while a fee not subject to the Hancock Amendment is likely to be charged only to those who actually use the good or service for which the fee is charged.

3) Is the amount of the fee to be paid affected by the level of goods or services provided to the fee payer?—Fees subject to the Hancock Amendment are less likely to be dependent on the level of goods or services provided to the fee payer while fees not subject to the Hancock Amendment are likely to be dependent on the level of goods or services provided to the fee payer.

4) Is the government providing a service or good?—If the government is providing a good or a service, or permission to use government property, the fee is less likely to be subject to the Hancock Amendment. If there is no good or service being provided, or someone unconnected with the government is providing the good or service, then any charge required by and paid to a local government is probably subject to the Hancock Amendment.

5) Has the activity historically and exclusively been provided by the government?—If the government has historically and exclusively provided the good, service, permission or activity, the fee is likely subject to the Hancock Amendment. If the government has not historically and exclusively provided the good, service, permission or activity, then any charge is probably not subject to the Hancock Amendment.

⁴ See also *Craig v. City of Macon*, 543 S.W.2d 772, 775 (1976), which similarly found that “[t]he equal protection clause as it applies to the exercise of the police power only requires that classifications ... be reasonable and bear a rational relation to the ends of the enactment. Mathematical nicety is not required.”




MISSOURI PUBLIC HEALTH AUTHORITY TOOLKIT Fact Sheet

Frequently Asked Questions

What is the role of Missouri's state health department?

The Missouri Constitution establishes the Department of Health and Senior Services (DHSS) as a department of state government, recognizing that “[t]he health and general welfare of the people are matters of primary public concern.”¹ The Missouri legislature has tasked MDHSS with “supervis[ing] and manag[ing] all public health functions and programs” in the state.² The department is comprised of six divisions, including the divisions of Administration, Cannabis Regulation, Community and Public Health, Regulation and Licensure, and Senior and Disability Services, and the State Public Health Laboratory.³

It is DHSS’s “general duty and responsibility ... to safeguard the health of the people in the state and all its subdivisions.”⁴ For example, DHSS must monitor environmental health threats,⁵ designate communicable diseases and enforce orders to prevent their spread,⁶ collect public health data,⁷ enforce food and drug laws,⁸ and educate the public on health issues and diseases.⁹ DHSS is authorized to adopt regulations to fulfill its responsibility



to protect the public's health.¹⁰ Accordingly, DHSS has adopted regulations relating to food protection,¹¹ general sanitation,¹² lead poisoning prevention,¹³ communicable disease prevention,¹⁴ and immunization,¹⁵ in addition to many other areas.¹⁶

What role do local public health agencies (LPHAs) play in Missouri's public health legal framework?

In addition to establishing DHSS as the state agency dedicated to promoting health among Missouri citizens, the Missouri Constitution also authorizes the state legislature to grant public health authority to counties, cities, and other political subdivisions.¹⁷ In turn, the Missouri legislature has authorized counties and cities to establish LPHAs through several different mechanisms, including as an independent county public health center,¹⁸ as a department of county government,¹⁹ as a non-charter city health department,²⁰ or through contractual agreements.²¹ The Missouri Constitution also permits many cities and highly-populated counties to adopt a charter form of government, enabling these political subdivisions to establish local public health governance through their charters.²² The various types of LPHAs are described in greater detail in our fact sheet documenting LPHA formation routes, governance structures, and jurisdiction.

Most LPHAs are authorized and required to observe and enforce DHSS rules and regulations within their jurisdiction.²³ For example, county health officers must enforce DHSS rules throughout their counties *except* in cities that have their own health officer, and a county health officer who refuses or fails to perform these duties may be deemed guilty of a misdemeanor and his or her office declared vacant.²⁴ Likewise, the health officer for a city with a population less than 75,000 must enforce DHSS rules and regulations within the city.²⁵ Local governing bodies may supplement this statutory authority by enacting local public health laws²⁶ which, in most cases, may not conflict with state law.²⁷ Health officers for large city health departments (population greater than 75,000) are not required to enforce DHSS rules and regulations within their jurisdictions, but must report notifiable diseases to the state.²⁸

DHSS's Center for Local Public Health Services supports local public health service delivery via DHSS district offices as well as contractual agreements with LPHAs.²⁹ However, Missouri is generally considered to have a decentralized public health governance structure because LPHAs operate independently of the state government.³⁰ Nevertheless, the structure described above demonstrates that for much of the state (i.e., outside of large cities), DHSS retains a measure of control over local operations because (1) most health officers are legally required to enforce DHSS rules and regulations throughout their jurisdiction; (2) DHSS may declare a county health officer's role vacant if it determines that the county health officer is neglecting or refusing to fulfill his or her responsibilities; and (3) in most cases DHSS rules and regulations preempt local ordinances to the extent they conflict. Furthermore, most specific local public health authority comes from state regulations or local ordinances rather than from state statute; thus, the state's public health legal framework relies heavily on DHSS to establish via regulation an adequate baseline level of local authority to protect the public's health. For further examination of the intersection between Missouri's state and local public health agencies, review Professor Rob Gatter and Dean Thomas Burroughs' amicus brief in *Missouri Restaurant Association, Inc. v. Lasater*.



What is the role of a county public health agency's governing body (e.g., county commissioners or health center boards of trustees)?


The governing body of an LPHA is determined by the agency's formation route. LPHAs operate independently of DHSS and each other. The various types of LPHAs are described in greater detail in our fact sheet documenting LPHA formation routes, governance structures, and jurisdiction. Most of Missouri's 115 LPHAs³¹ are "public health centers" formed under Chapter 205 of the Missouri Revised Statutes and governed by a board of trustees.³²

The county commission appoints the first five trustees and trustees are then elected on a staggered basis thereafter.³³ The board of trustees operates independently of the county commission.³⁴ If the board of trustees appoints a public health center director, the county commission must appoint the director as the county health officer.³⁵ The role of the health center board of trustees includes the following: to adopt bylaws, rules, and regulations to govern the county health center; exclusively control expenditures; appoint and remove personnel and establish their compensation; annually determine the rate of the tax levy; meet at least once a month and maintain a record of its proceedings; and enter into contracts with other governments or entities for the furtherance of health activities.³⁶

In non-charter first-class counties (except those containing part of a city with a population greater than 300,000), the elected county commission may establish a county health center and govern the health center as a department of county government.³⁷ In such counties, county commissions are authorized, but not required, to appoint a county health officer.³⁸

Alternatively, a county charter may establish a public health agency, in which case the governing body is determined by the terms of the charter.³⁹

Note that Missouri Revised Statutes section 67.265, effective June 15, 2021, sets durational limits and grants local governing bodies, such as a county commission, authority related to orders that close or place restrictions on places of public or private gathering, including authority to terminate such orders.⁴⁰ This statute grants authority to the governing body of the political subdivision (e.g., a school district, an independent public health center, a city, a county) to oversee some orders issued by a public health authority for the purpose of preventing the spread of contagious disease.



What is the Hancock Amendment and why does it matter to LPHAs?

The Missouri General Assembly amended the state constitution in 1980 to include what is known as the Hancock Amendment.⁴¹ The Hancock Amendment limits state and local taxation and requires voter approval for proposals that would exceed the established limits. Sections 16 and 22 of the Hancock Amendment impose limits on local governments.⁴² Generally, voter approval is required before a local government can levy any “tax, license or fees.”⁴³ State law carves out an exception for adjustments to the level of a license or fee necessary to maintain funding of a service, program, or activity which was in existence on November 4, 1980 or approved by a public vote prior to that date.⁴⁴ What amounts to a tax, license, or fee under the Amendment is further explained below.

LPHAs may seek to implement licensing, permitting, or fee schemes to regulate certain types of businesses or otherwise promote public health. In *Avanti Petroleum v. St. Louis County*, the court found that St. Louis County’s licensing fee for local tobacco retailers was subject to the Missouri Constitution’s Hancock Amendment (meaning voter approval was required) based on five factors, which were first set forth by the Missouri Supreme Court in *Keller v. Marion County Ambulance District*.⁴⁵

- 1) When is the fee paid?—Fees subject to the Hancock Amendment are likely due to be paid on a periodic basis while fees not subject to the Hancock Amendment are likely due to be paid only on or after provision of a good or service to the individual paying the fee.
- 2) Who pays the fee?—A fee subject to the Hancock Amendment is likely to be blanket-billed to all or almost all of the residents of the political subdivision while a fee not subject to the Hancock Amendment is likely to be charged only to those who actually use the good or service for which the fee is charged.
- 3) Is the amount of the fee to be paid affected by the level of goods or services provided to the fee payer?—Fees subject to the Hancock Amendment are less likely to be dependent on the level of goods or services provided to the fee payer while fees not subject to the Hancock Amendment are likely to be dependent on the level of goods or services provided to the fee payer.
- 4) Is the government providing a service or good?—If the government is providing a good or a service, or permission to use government property, the fee is less likely to be subject to the Hancock Amendment. If there is no good or service being provided, or someone unconnected with the government is providing the good or service, then any charge required by and paid to a local government is probably subject to the Hancock Amendment.

5) Has the activity historically and exclusively been provided by the government?—If the government has historically and exclusively provided the good, service, permission or activity, the fee is likely subject to the Hancock Amendment. If the government has not historically and exclusively provided the good, service, permission or activity, then any charge is probably not subject to the Hancock Amendment.

Whether any proposal to increase revenue will implicate the Hancock Amendment requires an individualized assessment considering each of the five factors above. LPHAs should carefully evaluate in partnership with legal counsel whether a new or increased tax, license, or fee is subject to the Hancock Amendment and therefore requires voter approval.⁴⁶

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The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document do not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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¹ [Mo. Const. art IV, § 37.](#)

² [Mo. Rev. Stat. § 192.005.](#)

³ Missouri Dept. of Health & Senior Servs., Directory of Services (2023), <https://health.mo.gov/about/pdf/directory.pdf>.

⁴ [Mo. Rev. Stat. § 192.020.](#)

⁵ [Mo. Rev. Stat. § 192.011.](#)

⁶ [Mo. Rev. Stat. § 192.020.](#)

⁷ [Mo. Rev. Stat. §§ 192.060, 192.020.](#)

⁸ [Mo. Rev. Stat. § 192.080.](#)

⁹ See, e.g., [Mo. Rev. Stat. §§ 192.031-036, 192.040, 192.070, 192.072.](#)

¹⁰ [Mo. Rev. Stat. § 192.006.](#) See also [Mo. Rev. Stat. § 536.023\(3\).](#)

¹¹ [19 CSR 20-1.010 et seq.](#)

¹² [19 CSR 20-2.010 et seq.](#)

¹³ [19 CSR 20-8.010 et seq.](#)

¹⁴ [19 CSR 20-20.010 et seq.](#)

¹⁵ [19 CSR 20-28.010 et seq.](#)

¹⁶ See Missouri Secretary of State, Title 19 – Department of Health and Senior Services (last visited Mar. 25, 2024), <https://www.sos.mo.gov/adrules/csr/current/19csr/19csr>.

¹⁷ [Mo. Const. art IV, § 37.](#)

¹⁸ [Mo. Rev. Stat. § 205.010.](#)

¹⁹ [Mo. Rev. Stat. § 205.141.](#)

²⁰ [Mo. Rev. Stat. §§ 77.330, 77.560](#) (third class cities); [79.230](#) (fourth class cities).

²¹ [Mo. Const. art. VI, § 16](#); [Mo. Rev. Stat. §§ 70.220, 70.010.](#)


²² [Mo. Const. art VI, §§ 18\(a\), 19, 19\(a\).](#)


²³ [Mo. Rev. Stat. § 192.290.](#)

²⁴ [Mo. Rev. Stat. § 192.280.](#)

²⁵ [Mo. Rev. Stat. § 192.280.](#)

²⁶ Counties are authorized to enact public health orders, ordinances, rules, and regulations under [Mo. Rev. Stat. § 192.300](#). See also [Mo. Rev. Stat. § 192.290](#) (“Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the department of health and human services which may be necessary for the particular locality under the jurisdiction of such local authorities”). Cities with a population greater than 5,000 may adopt a city charter under [Mo. Const. art. VI, § 19](#); a charter city may establish authority within its charter allowing the local governing body to enact public health ordinances. [Mo. Const. art. VI, § 19\(a\)](#). Non-charter cities (i.e., third- and fourth-class cities) have broad statutory power to enact public health ordinances. [Mo. Rev. Stat. §§ 77.260, 77.530, 77.560, 77.590](#) (applicable to third-class cities); [79.110, 79.370, 79.380, 79.383](#) (applicable to fourth-class cities).

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- ²⁷ [Mo. Rev. Stat. §§ 192.300](#) (granting authority to counties to enact local public health laws, but providing that such laws may not conflict with DHSS rules or regulations); [192.290](#) (affirming local authorities' right to enact additional public health laws beyond those prescribed by DHSS, as long as the local laws are not inconsistent with state laws); [71.010](#) (providing that unless specifically authorized by charter, city ordinances must conform to state laws governing the same subject); [Mo. Const. art. VI, § 19\(a\)](#) (providing that a charter city has all powers which the state legislature is authorized to confer, as long as such powers are constitutional and are not limited by charter or statute). See also [Mo. Rev. Stat. §§ 77.260, 77.590, 79.110](#).
- ²⁸ [Mo. Rev. Stat. § 192.310](#) provides that cities with population greater than 75,000 that maintain their own health department are not subject to Mo. Rev. Stat. §§ 192.260 through 192.320, which require county and smaller city health departments to enforce DHSS rules and regulations. However, these larger city health departments must still report notifiable disease data and other statistical information to DHSS.
- ²⁹ [19 CSR 10-1.010\(4\)](#). See also Missouri Dept. of Health & Senior Servs., Directory of Services 14 (2023), <https://health.mo.gov/about/pdf/directory.pdf>.
- ³⁰ State and Local Health Department Governance Classification Map, Ctrs. For Disease Control & Prevention, <https://www.cdc.gov/publichealthgateway/sites/governance/index.html> (last visited Mar. 8, 2024).
- ³¹ Local Public Health Agencies by Governance, Missouri Dept. of Health and Senior Servs., <https://health.mo.gov/living/lpha/pdf/ColorMapLPHA.pdf>.
- ³² [Mo. Rev. Stat. § 205.042](#).
- ³³ [Mo. Rev. Stat. § 205.031](#).
- ³⁴ State ex rel. Bd. of Health Ctr. Trustees of Clay Cnty v. Cnty. Com'n of Clay Cnty, 896 S.W.2d 627 (Mo. 1995).
- ³⁵ [Mo. Rev. Stat. § 205.042\(4\)](#); [Mo. Rev. Stat. § 205.100](#). See also Atty. Gen. Op. No. 306 (Aug. 12, 1963).
- ³⁶ [Mo. Rev. Stat. § 205.042](#).
- ³⁷ [Mo. Rev. Stat. § 205.141](#).
- ³⁸ [Mo. Rev. Stat. § 192.260](#); see also Public Health Works: A Web-Based Orientation Manual for Public Health Leaders (revised March 2019), Missouri Department of Health and Human Services, <https://health.mo.gov/living/lpha/phworks/publichealthworks.pdf> (noting that a county commission may establish a county health unit without appointing a health officer). Some first- and second- class counties are further permitted to appoint deputy or assistant county health officers. [Mo. Rev. Stat. § 192.270](#).
- ³⁹ See e.g., City of Joplin home rule charter art. III, § 3.05 (establishing public health and welfare department; governed by city council and city manager; city manager appoints director of public health; city council appoints board of health whose role is advisory; city council appoints city manager); Kansas City charter art. IV, § 405



(establishing health department; city manager appoints director of health; city manager selected jointly by mayor and city council); City of St. Joseph charter art. V, § 5.1 (establishing department of public health and welfare; under St. Joseph admin. code art IV., div. 4, city manager appoints health director; separate city health officer oversees disease prevention and treatment); City of St. Louis charter art. XIII, § 14-C (establishing division of health within department of health and hospitals; health commissioner authorized to enforce public health regulations; health commissioner appointed by director of health and hospitals; director appointed by mayor).

⁴⁰ [Mo. Rev. Stat. § 67.265.](#)

⁴¹ [Mo. Const. art. X, § 16-24.](#)

⁴² [Mo. Const. art. X, §§ 16, 22.](#)

⁴³ [Mo. Const. art. X, § 22.](#)

⁴⁴ [Mo. Rev. Stat. § 67.042.](#)

⁴⁵ *Avanti Petroleum, Inc. v. St. Louis County*, 974 S.W.2d 506 (Mo. Court of Appeals, 1998); *Keller v. Marion County Ambulance District*, 820 S.W.2d 301 (Mo. banc 1991).

⁴⁶ See generally Bridget Kevin-Myers and Russ Hembree, *The Hancock Amendment: Missouri's Tax Limitation Measure* pp. 5-7 (Nov. 2012), <https://truman.missouri.edu/sites/default/files/publication/17-2012-hancock-amendment.pdf>.