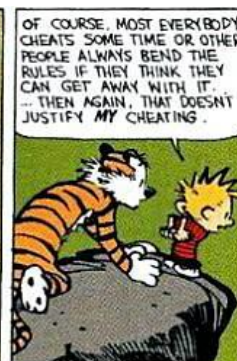


# Council Rules, Ethics, and Conflicts of Interest

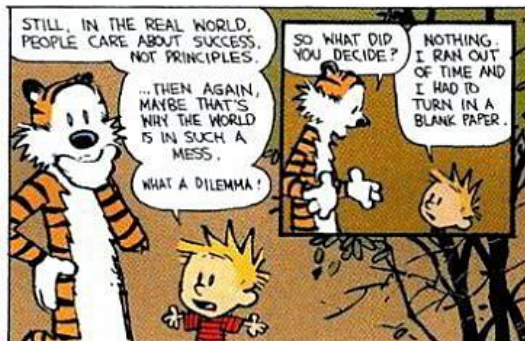
Nancy Thompson, City Counselor  
July 6, 2020  
City of Columbia, Missouri

# calvin and hobbes



THEN I THOUGHT, LOOK, CHEATING ON ONE LITTLE TEST ISN'T SUCH A BIG DEAL. IT DOESN'T HURT ANYONE.

...BUT THEN I WONDERED IF I WAS JUST RATIONALIZING MY UNWILLINGNESS TO ACCEPT THE CONSEQUENCE OF NOT STUDYING.

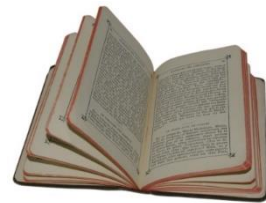


# City of Columbia

## Form of Government

In General, Powers and Duties are Expressly Granted to a Municipality by the General Assembly of the State of Missouri

- Must be Consistent with the Constitution
- Depends on Type of City
- Charter Cities - Cities which derive their power from a special charter written and adopted by the citizens of the municipality



# Columbia City Charter

## Council/Manager Form of Government

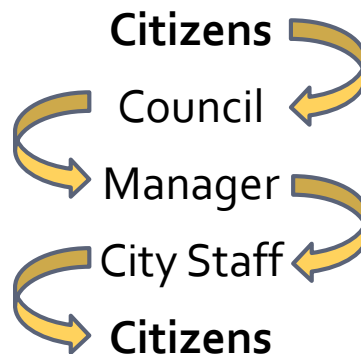
### PREAMBLE

We, the citizens of the City of Columbia, Missouri, in order to secure the benefits of constitutional home rule under the Constitution of the State of Missouri, maintain a democratic form of government, establish the basic governmental structure of the City, maintain an economical city manager form of city administration, provide for full publicity and openness in the conduct of affairs of city government, public meetings and records, provide for equality of citizenship for all Columbians, and promote the common welfare, do ordain and establish this HOME RULE CHARTER FOR THE CITY OF COLUMBIA, MISSOURI.

# Columbia City Charter

## Council/Manager Form of Government

Council-Manager form of government combines the strong political leadership of elected officials with the strong managerial experience of an appointed professional manager



# Columbia City Charter

## Non-Interference Clause

- Charter Section 12
  - Shall not request or interfere with appointment or removal of officers or employees
  - Except for purpose of inquiry, shall deal with administrative officers and services solely through the city manager
  - Shall not give orders to subordinates of the city manager, either publicly or privately
- Penalty – **FORFEITURE OF OFFICE**

# Columbia City Charter

## Conflict of Interest

- Charter Section 156
  - Shall not have any interest in any contract or sale to the city of any land, materials, supplies or services where said interest is in violation of the Constitution of the State of Missouri or ordinance of the City
- Penalty – **FORFEITURE OF OFFICE**

# Columbia City Charter

## Campaign Financing

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- Charter Section 164
  - Must comply with state and local laws related to campaign practices and the financing and conduct of campaigns for elective office
- Penalty
  - Council may **ORDER** the office of any candidate who was elected to be **FORFEITED**



# Nepotism

Missouri Constitution, Article VII, Sec. 6

- **Nepotism**
  - Relative to 4<sup>th</sup> Degree
    - Affinity, or
    - Consanguinity
  - Penalty
    - **FORFEITURE OF OFFICE**

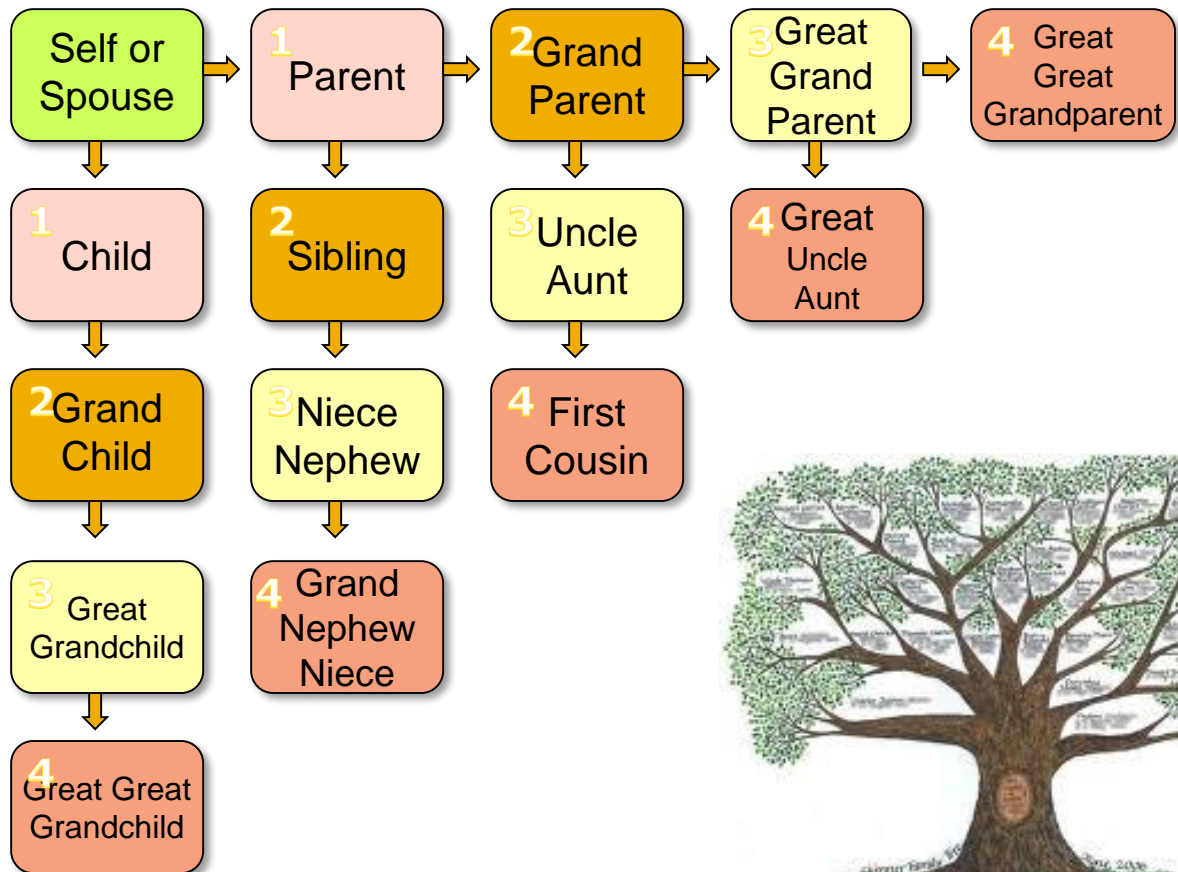


And one more thing; don't call me "Uncle" while we are in the office!

# Nepotism

## Special Considerations

- A husband is related by marriage (affinity) to his wife's relatives in the same way that she is related to them by blood (consanguinity) and she to his in the same way
- Half relationship is the same as whole
- Step relationship is the same as blood relationship
- Relation by marriage (affinity) terminates if death or divorce
- "Employment" is broadly interpreted
- Appointment does not have to be a paid position
- You can't retroactively "fix" the violation
- Intent (or ignorance) is irrelevant



# Decision Making

## Nature of Action Taken

- Legislative
  - When City MAKES the Rules
    - Presumed to be Correct
    - Judicial Review for Arbitrary & Unreasonable
- Administrative
  - When City APPLIES the Rules
    - No Presumption of Validity
    - Judicial Review on the Record Made of the Proceedings
    - Upheld Only if Supported by Competent and Substantial Evidence Included in the Record

# Decision Making

## Levels of Discretionary Authority

- Discretionary Acts
- Ministerial Acts
- Quasi-Judicial Acts
  - Statutorily mandated public hearing
  - Decision affects property rights
  - Invokes procedural and substantive due process
    - Notice
    - Opportunity to be Heard
    - Impartial decision-making body
    - Decision based upon facts – not political pressure or vocal opposition
    - Full disclosure of facts considered by decision making body

# Decision Making

## Quasi-Judicial Actions

- No ex parte communications
  - Decision makers should make decision based only on what is included in the record
  - Potential for real or perceived bias/influence
  - Public perception of fairness
  - No undue influence by one party
- If ex parte communication occurs...
  - Disclose on the record BEFORE vote

# Ethics and Use of Public Resources

Missouri Constitution, Article VI, Sec. 23 and 25



- **Public Funds - Public Benefit**
  - Incidental Private Benefit Allowed
  - No Charitable Contributions
- No public funds to advocate, support or oppose any ballot measure or candidate for public office
  - Public appearances and press releases of an informative basis are permitted
  - Public funds include staff time and public resources

# Ethics and Personnel Matters

- Council has three employees and may not interfere in the appointment or removal of any employee or give direction to any city employee other than the following:
  - City Manager
  - City Clerk
  - Municipal Judge
- Sole Exception:
  - City Counselor – Charter Section 65
    - Appointed by City Manager with consent of Council
    - Removed by City Manager with advice and consent of Council



# Ethics and Land Use

- Legislative Land Use Decisions
  - Annexation
  - Zoning
  - Adoption of New/Amended Development Code Provisions
- Administrative Land Use Decisions
  - Platting
    - Planned Development – elements outside of standard platting requirements are akin to zoning and may be legislative in nature
  - Application of Existing Development Code Provisions

# Ethics and Land Use

## Annexation

- Consider the following:
  - Whether the area to be annexed must be "contiguous and compact";
  - Whether the annexation is reasonable and necessary to the proper development of the city; and
  - Whether the city has the ability to furnish normal municipal services to the area to be annexed within a reasonable time.

# Ethics and Land Use

## Zoning

- Zoning regulations govern the use of land and location, size and height of buildings. Zoning divides the city into multiple districts with each district containing a distinct set of regulations that are uniformly applied to all property within the district.
  - Text specifying the regulations
  - Map defining the location of the districts
- Limits on Zoning
  - Procedural Due Process
  - Substantive Due Process



# Ethics and Land Use

## Zoning

- Purpose
  - Protect health safety and morals
  - Protect historical, cultural and architectural areas
- Relationship to Subdivision Regulation
  - Zoning regulates use, lot size, setbacks and heights
  - Plats regulate street and lot layout, infrastructure, etc.

# Ethics and Land Use

## Zoning

- Consider the following:
  - Character of the neighborhood;
  - The zoning and uses of surrounding/nearby property;
  - Detrimental effect that any change in zoning would have on other property in the area;
  - The adaptability of the property for the current permitted use;
  - Traffic congestion;
  - Public Safety – to secure safety from fire, panic and other dangers; to promote health and the general welfare;

# Ethics and Land Use

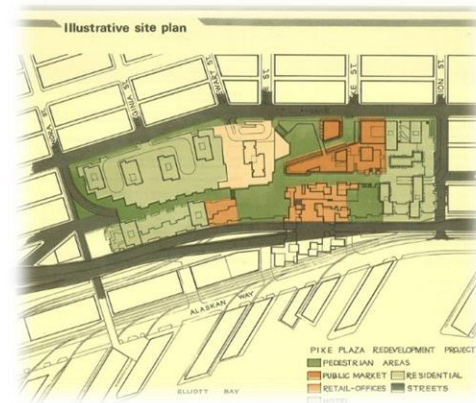
## Zoning (con't)

- Density – to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population;
- Preservation of features of historical significance;
- Existence of adequate infrastructure to support the proposed use, including transportation, water, sewerage, schools, parks, and other public requirements;
- Property values with a view to conserving the values of buildings;
- Consistency with Comprehensive Plan adopted by the city; and
- Reasonable use of the property

# Ethics and Land Use

## Site Plan Review

- Consider the following:
  - Building placement
  - Architectural standards
  - Building appearance
  - Landscaping buffer
  - Vehicle and pedestrian circulation
  - Parking location
  - Signage
  - Refuse location/access



# Ethics and Land Use

## Platting and Subdivision

- Subdivision regulations govern the division of land into two or more parts
  - Governed by criteria set forth in development code and may only consider those requirements
    - Lot configuration
    - Street pattern
    - Public spaces and common areas
    - Easements
  - Ministerial Act



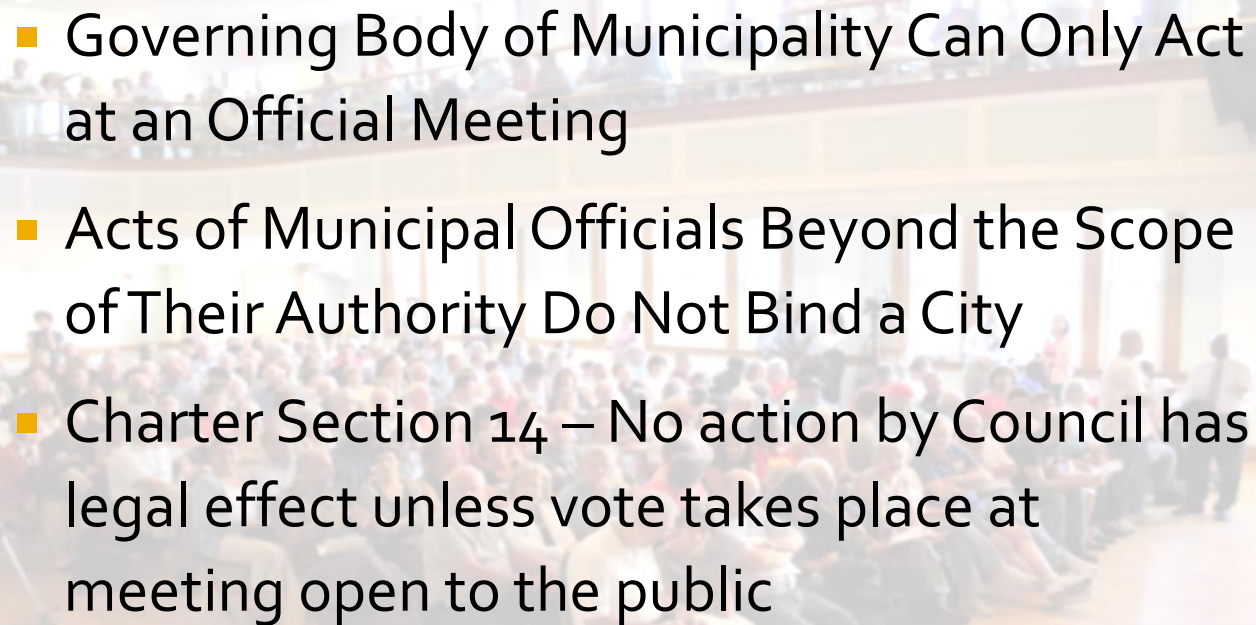


# Ethics and Land Use

## Exactions

- An exaction is a requirement to dedicate land to construct public improvements or payments of fees in lieu as a condition of development approval
- Authority is derived from general police powers and specific statutory authority
  - Imposed by local ordinance
- The law requires a reasonable relationship exist between the exaction demanded and the proposed activity of the landowner
  - Rational Nexus
  - Rough Proportionality
- Greater latitude exists with regard to a "planned development" because there is give and take in the strict adherence to the subdivision regulations in order to create the development plan

# Authority

- 
- Governing Body of Municipality Can Only Act at an Official Meeting
  - Acts of Municipal Officials Beyond the Scope of Their Authority Do Not Bind a City
  - Charter Section 14 – No action by Council has legal effect unless vote takes place at meeting open to the public

# Sunshine Law



- Am I part of a "public governmental body"?
- Is a quorum of the public governmental body present?
- Is "public business" being discussed?
- Is the "public business" a proper topic for closed session?
- Was the "public meeting" properly noticed?
- (Date, Time, Place, & Tentative Agenda posted 24 hours in advance)

# Meetings

## Sunshine Law

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A proper notice of a public meeting must include:

1. Date
2. Time
3. Place
4. Tentative Agenda
5. Posting notice 24 hours in advance in a place reasonably calculated to notify citizens of the meeting

\* Exception for Emergency

# Statutory Requirements

- Subject to Laws Applicable to Public Generally
- Subject to Particular Laws Related to Duty in Public Office
  - Chapter 576 RSMo.
    - Bribing a Public Servant
    - Public Servant Acceding to Corruption
    - Obstructing Government Operations
    - Official Misconduct
    - Misuse of Official Information
- Conflict of Interest – Ch. 105 RSMo.

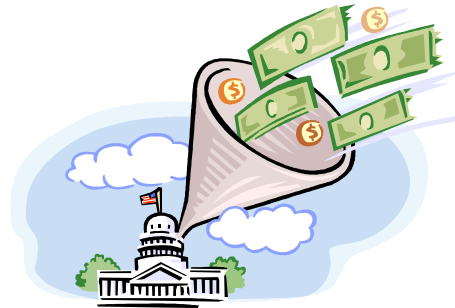


# Conflict of Interest

Section 105.450 RSMo. et seq.

**Conflict of Interest** - Generally, Official is Prohibited From Participating **Directly** or **Indirectly** in an Action That Would Result in a Financial Gain to Self, Spouse, or Dependent Children

- Requirement: Official Must Affirmatively Report Conflict
- Penalty



# Prohibited Acts

## Members of Governing Body, Elected and Appt Officials

Sections 105.454 and 105.458 RSMo.

- Perform any service to city for additional compensation
- Sell, rent or lease property to city
  - For pay of more than \$500 per transaction or \$5000 per year
  - UNLESS there is a public **BID** and the official is the LOWEST bidder
- Participate directly or indirectly to influence decision resulting in financial gain to self, spouse, dependent child or **business with which person is associated**

# What is a “Business with which a person is associated”?

Section 105.450 RSMo.

- Business in which the person is an officer or director
- Business or trust in which official, spouse or dependent child (singularly or collectively) own 10% interest



# What is “Dependent Child”?

Section 105.450(7) RSMo.

- Applies to:
  - Children
  - Stepchildren
  - Foster children
  - Wards
- Who are:
  - Under age of 18
  - Residing in household
  - AND receive in excess of 50% of support from official

# Prohibited Acts

Section 105.452.1(2) RSMo.

- **USE confidential information**
- Obtained in official capacity
- With intent to result in financial gain for self, spouse, dependent child or business with which associated

# Prohibited Acts

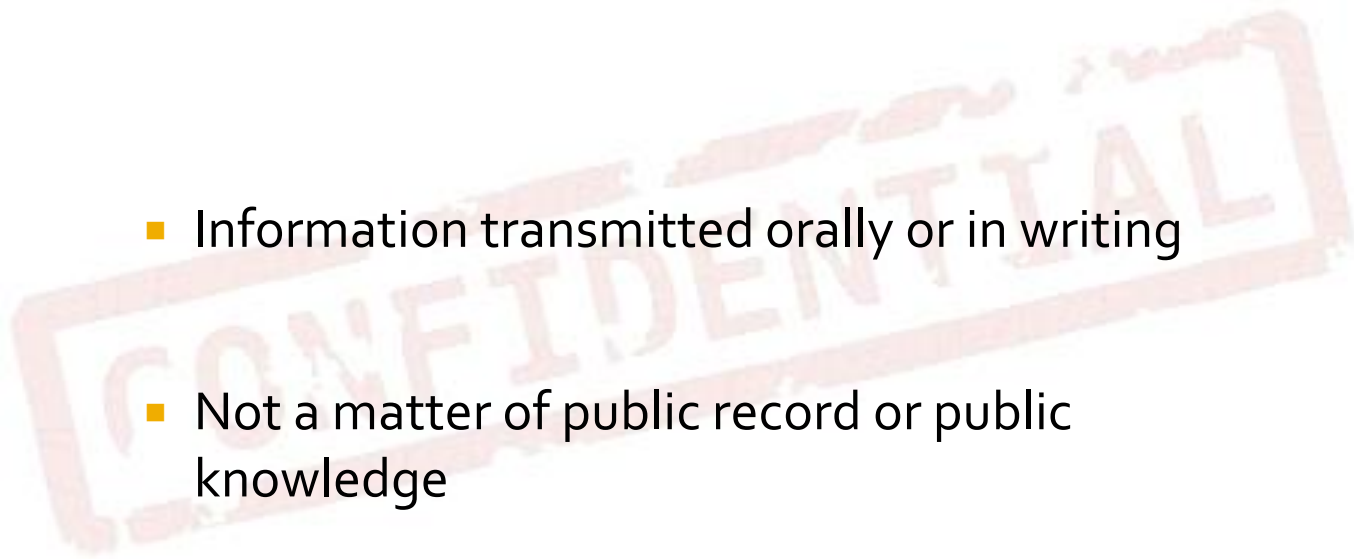
Section 105.452.1(3) RSMo.

- **DISCLOSE** confidential information
- Obtained in official capacity
- With intent to result in financial gain for self OR **ANY OTHER PERSON**

# What is “Confidential Information”?

Section 105.450(5) RSMo.

- Information transmitted orally or in writing
- Not a matter of public record or public knowledge



# Prohibited Acts

Section 105.452.1(4) RSMo.

- Favorably act on any matter
- To provide a special monetary benefit to self, spouse or dependent children



# What is “Special Monetary Benefit”?

Section 105.452.1(4) RSMo.

- Being materially affected
- In a substantially different manner
- Than the general public OR a class of individuals

# Misuse of Public Position

Section 105.452.1(1) RSMo.

- Act or refrain from acting
- By reason of any payment or receipt of anything of pecuniary value
- To self or any third person
- Includes gift or campaign contribution made as a condition of the performance of an official act

# Misuse of Public Position

Section 105.452.1(5) RSMo.

- Use decision-making authority
- To obtain financial gain
- Which **materially enriches** self, spouse or dependent children
- By acting or refraining to act
- For the purpose of coercing or extorting from another anything of pecuniary value



# Misuse of Public Position

Section 105.452.2 RSMo.

- Offer, promote or advocate
- For a **political appointment**
- In exchange for anything of value to the city

# Personal Financial Disclosure

Section 105.483 RSMo. et seq.

- Public officials are REQUIRED to file personal financial disclosure statements with the Missouri Ethics Commission if:
  - Official or spouse or business of official does business with City in excess of \$500 per transaction; or
  - Conflict of interest ordinance adopted by subdivision specifically requires the filing of the statement.
- Applies to employees who are authorized to serve as chief administrative officer, chief purchasing officer, general counsel or adopt rules and regulations

# Reporting Requirement

Section 105.461 RSMo.

- Official with a substantial personal or private interest in any measure proposed
- Shall file a written report of the nature of the interest with the Clerk before such official passes on the measure
- Statement must be recorded in record of proceedings
- City Code Section 2-53: Affirmative Duty to Vote
  - Consent of Council required to abstain
  - Reasons for abstention stated on the record

# What is “Substantial Interest”?

Section 105.450(10) RSMo.

- Ownership by individual, spouse or dependent children
- Singularly or collectively
- Directly or indirectly
- 10% or more of business
- Interest having value of \$10,000
- Receipt of \$5,000 during calendar year from person or business

# Campaign Finance Disclosure

## Chapter 130 RSMo.

- Applies only to candidates who are required to file Campaign Finance Disclosure
  - Exempt Candidates
- Candidate not to take office or file for subsequent elections until disclosure reports are filed
  - Section 130.071 RSMo
  - Includes the 30 day after election report, if required – which must be filed BEFORE taking office
  - Includes April quarterly report if not sworn in before report due

# Incompatibility of Office

- Under common law, an individual may hold more than one office only if the offices are compatible
  - Four factors:
    - One office is subordinate to the other
    - One office has supervisory powers over the other
    - One office audits the other's accounts
    - One office has power of appointment or removal over the other
- **Acceptance of second office operates as a resignation of the first**

# Violations of Law

Section 105.472 RSMo.

- All complaints made in writing to Missouri Ethics Commission
  - Name of alleged violator
  - Nature of violation
  - Date of violation
  - Signed by complainant under oath
- Penalty (Section 105.478 RSMo)
  - First offense – class B misdemeanor
  - Second offense – class D felony

# Protections for Complainant

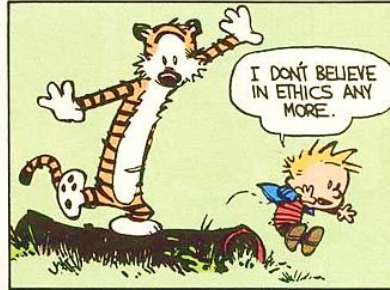
Section 105.467 RSMo.

- No discrimination or discharge of employee for
  - Reporting suspected violation, or
  - Participating in investigation
- Civil action for injunctive relief and damages authorized
  - Reinstatement
  - Back wages
  - Costs of litigation

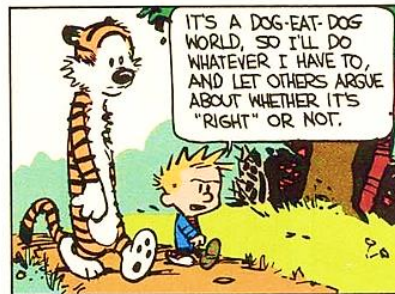


# calvin and Hobbes

by WATKINSON



GET WHAT YOU CAN WHILE THE GETTING'S GOOD - THAT'S WHAT I SAY! MIGHT MAKES RIGHT! THE WINNERS WRITE THE HISTORY BOOKS!



# Questions

