

Bill on governor's desk patently unconstitutional

Constitutions say speech 'shall not' be impaired

Most of the readers of this column have spent their lives writing for a living. To all of us, the written word is of great significance. We understand the beauty in a well-crafted sentence, the confusion that can result from a misplaced or misspelled word and the discouragement that results when a mistake creeps into our writing.

Unfortunately, we are in the minority. Few members of the public have ever stewed for hours over which word to use to describe a scene. Indeed, the haste in which words are written today in tweets and Twitter have created a whole new language for young people, who know far better than us the meaning of phrases like LOL, ICYMI, tyts and others.

But for many of us, precision in language is more than an art. It's almost a science. Especially for folks like me who realize the critical importance in the law a word may have.

An obvious example probably clear to any member of the public is the use of the word "shall," which has a totally different meaning in the law than the word "may." This understanding is key when you are deciding whether, for example, a statement that a fine for a ticket "shall" be paid on a certain date is the same as saying that fine "may" be paid on a certain date.

A few years ago the Missouri Bar made a push to get more lawyers in the Missouri legislature. The Bar completed a study of professions of those elected to serve in the legislature, and the results showed lawyers made up a significant minority of persons serving this function.

I suppose the expectation is that the lawyers who work in the area of legisla-

tive research and who otherwise serve to assist elected officials would fill that gap. And probably there are a lot of folks familiar with the activity in Jefferson City who would dryly observe there are too darned many lawyers running around in that community.

But still, activity toward the end of the legislative session can get frantic.

The most important question that always goes unanswered is how many pages of the large bills being passed at the last minute have actually been read by a legislator who is voting on that bill. Even the fastest speed-reader in the world would be challenged by that task.

So the end result is that bills are passed with language that has missed being weighed carefully

and vetted for the precision in language that would ensure the law says what it should say.

Doug Crews, MPA's executive director, has one example of this in a bill passed this past session.

House Bill 436 approved by the General Assembly on May 8 relates to protecting the public's right to own a firearm in the State of Missouri. Unfortunately, the language in that bill, as it finally passed, begins by saying "No person or entity shall publish the name, address, or other identifying information of any individual who owns a firearm or who is an applicant for or holder of any license, certificate, permit or endorsement which allows such individual to own, acquire, possess, or carry a firearm."

In short, this law prohibits anyone from publishing the name of someone who owns a firearm. Now, exactly what was it the First Amendment says? Something about "Congress shall make no

law... abridging the freedom of speech, or of the press...."?

And the Missouri Constitution echoes that when it says, in Article I, Section 8, "In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare: That no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject...."

In short, this bill is unconstitutional, both federally and on the state level. One of the lawyers in our state Capitol should have caught this before it was passed this last session.

A similar bill, Senate Bill 75, simply says records of ownership of a firearm shall not be open records, clearly a solution to the same problem, but it doesn't violate the public's First Amendment freedoms.

We can only hope that Missouri's governor, who is taxed with signing bills, finds a way to either veto the offending bill or to ensure that the bill with the correct language ultimately becomes law.

In a similar vein, I have a summer law clerk who is reviewing all the laws in the state that relate to publication of legal notices. She and I have had several discussions about the uses of the term "publish," which generally means publish a legal notice, and other words sometimes used, including, for example, the word "advertise."

Already, she is concluding that the language used in Missouri's statutes is not precise and, indeed, is simply confusing at times.

Perhaps what we need in Jefferson City is fewer lawyers and more editors!



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One bill says names of gun owners and gun carry permit holders can't be published; other bill would close gun records.