



October 8, 2014

Ozark Fire District
c/o Todd A. Johnson
Ellis, Ellis, Hammons & Johnson, P.C.
901 East St. Louis
Suite 600
Springfield, Missouri 65806

By First-Class Mail and Facsimile to (417) 866-1064

Re: Spousal Benefits

Mr. Johnson:

I am writing to inform you that Ozark Fire District is now required to offer spousal benefits to its married employees, regardless of their sexual orientation. I had hoped to discuss this matter with you; however, you have not yet had the opportunity to return my telephone call.

As you may already know, on October 3, 2014, sections 451.022 and 104.012 of the Revised Statutes of Missouri, and Article I, section 33 of the Missouri Constitution, were declared unconstitutional to the extent that they prohibit the recognition of marriages of same-sex couples married in jurisdictions where same-sex marriage is lawful. *See Barrier v. Vasterling*, No. 1416-CV03892, 2014 WL 4966467 (Mo. Cir. Oct. 3, 2014). Furthermore, Missouri has been enjoined “from refusing in any way to recognize ... the marriages of any same-sex couples entered into in any jurisdiction in which same-sex couples may lawfully marry.” As a result, for purposes of Missouri law, a “spouse” is now a “spouse” without regard to the sexual orientation of either spouse.

“A **‘fire protection district’** is a political subdivision[.]” and, thus, must comply with Missouri law. Mo. Rev. Stat. § 321.010. This obligation includes the statute that authorizes the district “[t]o provide for health, accident, disability and pension benefits for the salaried members of its organized fire department of the district and such other benefits for their spouses and eligible unemancipated children, through either or both a contributory or noncontributory plan[.]” Mo. Rev. Stat. § 321.220(15); *see also* § 321.600 (15). It also includes the reality that Missouri law now recognizes lawful marriages of same-sex couples. As a result, the district may no longer refuse to recognize an employee’s spouse simply because the employee and spouse are of the same sex.

This is fantastic news for the district, which has repeatedly professed its desire to treat its employees equally. Few would doubt the folly of depriving first responders—who put their lives on the line—of benefits simply because of their sexual orientation. The law has finally caught up to the basic notion of fairness that most Missourians expect from their government.

American Civil Liberties Union of Missouri Foundation
454 Whittier Street · Saint Louis, Missouri 63108

Letter to Ozark Fire District
October 8, 2014

Please let me know no later than the close of business on October 10, 2014, that the district will take immediate action to begin providing equal spousal benefits to its employees who are legally married to someone of the same sex. In the meantime, please do not hesitate to contact me directly at (314) 669-3420 if you have any questions.

We assume the district's previous refusal to extend benefits was a good-faith attempt to comply with the law as it existed prior to the decision in *Barrier v. Vasterling*. As a result, now that there remains no justification for denying spousal benefits, the district should move toward its inclusive future immediately. In addition to the constitutional problems with the district's prior stance, continuing to deny benefits on the basis of laws that have been conclusively declared unconstitutional would be so arbitrary as to constitute a violation of due process. Litigation against the district should not be necessary, and the district can avoid the expenses of litigation, which would include payment of a plaintiff's attorneys' fees.

I look forward to your prompt response.

Sincerely,



Anthony E. Rothert
Legal Director