

# The Sun shines on all in Missouri, but not always equally

Over the next month, many of you will be seeing your present (and/or prospective) state legislators and senators cross your towns. They are in the midst of campaigns. They are telling you and your voters why they should be elected to fill seats in Jefferson City beginning next January.

They will tell you what is wrong with the way government is run. It's no surprise they believe there is a lot "wrong" with the way our state government is being run. State Auditor Nicole Galloway also believes there is wrong in our state legislature and she recently released two reports including, among other issues, what she sees as violations of the state Sunshine Law.

In the 19-page report on the audit of the House of Representatives and in the 17-page report on the audit of the Senate, the report details areas with Sunshine Law deficiencies. First, the report focuses on records held by the House of Representatives and by the Senate. Both legislative bodies are entities "created by statute," and therefore the records retained by both bodies are inherently "records" subject to the Sunshine Law. All such records are "open" records unless the House or Senate defines what records are specifically closed. All public bodies are required to do that. They need a policy defining that a certain record is closed; otherwise, it is an open record. The House of Representatives has no such policy, the state auditor found, and neither does the Missouri Senate.

Also, the House and the Senate have no formal policy regarding retention of email correspondence. All emails come through the public body's system. Emails through the House of Representatives' system are only archived for six weeks. Emails through the Senate's email system are archived for just 30 days. Only emails retained by an individual member in a separate backup are retained longer than that. But there is no policy that documents these retention policies. Therefore, the state auditor recommends such a policy be established in each legislative body.

In responding to these allegations, both of the bodies were explicit and

specific to declare that it is their policy that none of the records of individual legislators are public records. This is true even though those emails pass through a server maintained by the public governmental body – the Senate and the House of Representatives. They responded that this policy is adopted "under cases interpreting that law." And each body states, "This is important because confidential personal information of constituents is often included in records" of individual legislators.

The Senate's response says it will consider formalizing the current emails retention policy. But neither indicates any intention to change the policy regarding all emails remaining outside the scope of the Sunshine Law. Galloway had recommended that legislators clarify their email retention policies. In an earlier audit by the late former State Auditor Tom Schweich, he had called for lawmakers to amend the law so it clearly applied to individual legislators, because this created "a double standard."

Secondly, the Speaker of the House creates certain interim committees, which are required by the Sunshine Law and the rules of the House of Representatives to create and maintain minutes, which are to be deposited with the Chief Clerk. However, at this time, not every interim committee is following these rules, in part because there has been a switch-over in the House to an automated recording system creating a real-time record of committee actions.

The House Representatives said they believe this issue is being resolved. The auditor also noted the Senate Administration Committee and at

least one Senate interim committee did not adequately prepare or retain meeting minutes. And the House has certain joint committees with the Senate. However, some agendas and meeting minutes of those committees have not been prepared or adequately retained as required by law. In response to this complaint, the House and Senate both responded they believe the operation of legislative committees was a matter of proceedings committed to the legislative branch of government and therefore not subject to the Sunshine Law.

Every candidate for public office campaigns on a platform of transparency in government. Most of the state legislators and candidates will tell you

they expect citizens to abide by state law. These Sunshine Law violations are clear indications that the walk needs to match the talk.

Taking the oath of office as a state legislator requires each of them to uphold the laws of the State of Missouri, including the Sunshine Law. These kinds of deviations should not be permitted by our highest public bodies in the state. It would be nice if they would decide they should be subject to the Sunshine Law in regard to their emails. Perhaps that isn't going to ever happen. But to fail to keep minutes, to not have a policy as to what records are open and what are closed, is inexcusable.

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