

Closing public meeting requires specific reason

Catch-all agenda entry inadequate

One of the biggest frustrations we have in dealing with the sunshine law as it presently exists is public bodies that list closed meetings on their agendas and then cite as their reason for closing a multitude of the exceptions listed in Section 610.021.

There may be a rare occasion when discussions are truly planned for several matters involving all the exceptions listed. But it is generally done to cover for a public body that hasn't bothered to think ahead about what it might bring before the body for discussion. It fears that it will need a closed meeting at the regular meeting and not have it properly listed on the agenda.

Just recently I fielded two calls where this was the issue. One of those calls was actually from a public body whose clerk felt that this practice somehow seemed wrong. I explained to her that I believe indeed it is wrong based upon the fact that the law is clear that any notice of a closed meeting must cite "the specific reason announced to justify the closed meeting..." according to Section 610.022.3.

Citing an assortment of reasons for closing a meeting is clearly not citing "the specific reason" as the statute requires. Plus, Section 610.020.4 contains a provision for holding any meeting, open or closed, on less than 24-hours notice when a true emergency exists and where "the nature of the good cause justifying that departure from the normal requirements" is stated in the minutes.

In short, if it is truly an emergency, the body doesn't have to worry that it didn't give proper notice of a closed meeting. It can hold it by voting to go into closed

meeting and properly stating the emergency that justifies the need to do so in its minutes. Otherwise, it should give the required 24-hour notice and properly schedule a closed meeting.

(Not long ago I mentioned that in the collection of public body agendas

that you sent me, I have a huge number of examples of just this infraction. Indeed, it is more widespread than I imagined.)

The good news is that we now have at least one judge who recognizes this as a violation of the law. The bad news is that it is not an appellate court decision, which could be cited as legal precedent in the future. Still, it exists and the time may come it will be helpful to us, so I want to talk about it so that we remember it when that time comes.



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The decision was issued by the U.S. District Court for the Eastern District of Missouri, Northern Division, based in Hannibal. The case involved a police officer terminated by the City of Salisbury, which asserted several claims in regard to his termination.

Most of the decision relates to matters that are not relevant to the sunshine law. Those issues were heard by a jury, but the sunshine law claim was submitted to the court for a determination.

The court found that the city had listed on its agenda a proposed closed meeting, citing exceptions 1 (legal matters), 2 (real estate) or 3 (personnel matters) of Section 610.021. It is important that the minutes of the open meeting during which the closed meeting was held did not mention any specific reason for holding the closed meeting.

During that closed meeting, however, it is clear that the plaintiff's performance

was discussed. Then, in the open session continuation that followed, the board moved to eliminate the position on the police force that the plaintiff held. That motion passed.

The court concluded that a violation occurred when the board failed to cite a reason for going into the closed meeting. "While notice of such a possibility on multiple grounds was provided in advance of the public meeting, the precise reason for this closed session was not publicly announced at the open meeting, by referencing the specified exception provided under the statute, nor was the basis reflected in the minutes," the judge stated in his written opinion.

The court then launched into a consideration of whether the violation was knowing and/or purposeful. I won't discuss that in detail. Suffice it to say the court did not find a knowing or purposeful violation. The argument in the opinion mimics the arguments we always hear – the lack of "credible evidence that any Defendant knew that his actions might violate the Law."

Still, it's one step closer to a tighter law. Perhaps it will be something the legislature will consider seriously if a sunshine law bill is proposed in this session. And it's a case we'll want to keep handy for the next time this issue comes before a court in Missouri!

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