

Audits show frequent sunshine law violations

AG's office needs to take action

Hot off the presses of the Missouri State Auditor's office is a report regarding sunshine violations among public bodies between January 2008 and December 2009, which details numerous violations by bodies of both open and closed meeting requirements and shortcomings in access to public records. It comes as no surprise to us that the auditor concludes that improvements are needed in all areas – both meetings and records – involving public bodies.

In the summary of her findings, State Auditor Susan Montee cited numerous examples of sunshine law violations in 59 audits of public bodies ranging from the Governor to St. Louis proper to the Village of Iatan and the Sugar Creek Special Road District. (Not every audit resulted in a finding of a sunshine law violation, which should bring joy to all sunshine law supporters across the state.)

Montee listed numerous conclusions of violations, and in each case cited the public body or bodies that had violated the law. The largest number of violations was for meeting minutes not including sufficient detail of matters discussed and votes taken, for which she found 32 entities with violations. Her conclusion was that minutes should always “include the information necessary to provide a complete record of all significant matters discussed and actions taken.”

Another large area of violations, which comes as no surprise, is that 28 of the governmental units audited failed to adequately document in the open meeting minutes the reasons for closing meetings and votes.

Two categories of violations tied for the next largest group of infractions. One was that meeting minutes were not signed by the preparer or adequately approved by a member of the governing body. Montee found 26 public bodies'



Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, jmaneke@manekelaw.com.

minutes had this problem, and her recommendation was that all minutes be signed by the preparer and a member to document their approval and attest to the completeness and accuracy of the minutes.

The other was that minutes were not maintained for closed meetings in 26 cases, clearly a violation of state law, which mandates minutes be kept of closed meetings.

Other shortcomings included:

- Failure to maintain up-to-date minutes for open meetings (14).
- Evidence of business being conducted outside of regular open meetings (4).
- Bodies meeting at a time that was inconvenient for the public to attend (1).
- Lack of detail in closed meeting minutes regarding discussions and votes taken (8).
- Minutes not signed by the preparer or approved by the body (2).
- Illegible minutes (2).
- Failure to document in closed meeting minutes that issues discussed in those meetings were permissible under the exemptions in the sunshine law (18).
- Discussion of subjects not within the exception for discussion during the closed meeting (3).
- Failure to document in open meeting minutes the final disposition of matters discussed in closed meetings (11).
- A lack of formal policies and procedures regarding public access to records

(20).

- Lack of an email retention policy (4).

- Lack of records documenting requests for access to records and the response given by the body to those requests (2).

- Failure to properly document whether a record was “open” or “closed” under the sunshine law (1).

- Lack of a tentative agenda and notice for public meetings (11).

- Failure of notices of closed meetings to properly identify the actual subject to be discussed at the upcoming meeting (4).

This is a fascinating study of an ongoing problem, and I applaud the State Auditor for pointing out the obviousness of this problem in the audits she conducts. What is baffling to me, however, is why a state official can document such a problem and there be no mechanism set up to deal with it.

If a state official at the highest level issues a report where she documents violations of the law, why isn't there a mandate that the state's highest law enforcer should pursue such violations?

Every one of these violations, all 214 of them, is documented in these audit reports. Let me say that again — every sunshine violation above is fully documented in the conclusions of the audit reports prepared by the State Auditor's Office, along with the evidence supporting it.

If the report concluded by saying that a public body was stealing funds from the state treasury, what would the result be? Would the Attorney General's office just turn the other way and ignore the report and its conclusion? Of course not. That's ridiculous. And so is this.

Iam not suggesting the Attorney General's office needs to prosecute every violation. It has plenty of work to do. But if there are 214 documented violations of the law in this report, there are thousands of others in public bodies around the state that are not being documented, and in most cases, it's likely due to a lack of understanding of the seriousness of this law.

This law needs to be enforced just like every other law in the state of Missouri. And at this point, the ball is in the Attorney General's court.