

## Publications reveal attitude on openness



### Don't give advice on liquor advertising

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January is here and with it comes the start of the legislative session. Your press association will have begun work encouraging the passage of a new Sunshine Law bill through the Legislature, seeking to further tinker with some of the ongoing problems the public has with access to public records.

I encourage you to corner your state legislators when you have the chance (as well as all those candidates you'll be seeing running for statewide office) and remind them of how important this law is to you and how desperately we need these changes.

The MPA staff will be sending out further information once we have a bill number and you'll be able to see the proposed changes in print, so you'll have something to refer to when you talk to these representatives.

When the message comes from you, it means so much more to these representatives. You are their constituents. Your opinion matters. Please take every opportunity to spread the word this spring, because passage of these amendments is never easy.

Meanwhile, I want to share with you some tidbits from some of the publications that cross my desk. I am fortunate, I suppose, to have the opportunity to read some of the materials being distributed to your municipal officials by the associations in the state that represent them.

I always am drawn by the articles that talk with these officials about Sunshine Law matters. It is always especially interesting to me to consider the perspective behind the writing.

Two perfect examples of the dichotomy of these viewpoints have crossed my desk in recent months. In December in the *Missouri Municipal Review*, Dave Rosenberg, a county official in the state of California, writes about parliamentary procedures. At the end of his thoughtful piece, he points out three "special rules," as he terms them, that apply to each agenda item, he says.

These rules are:

RULE 1: Tell the public what the body will be doing.

RULE 2: Keep the public informed while the body is doing it.

RULE 3: When the body has acted, tell the public what the body did. And he concludes, "Public input is essential to a healthy democracy and community participation in public meetings is an important element of that input."

You might want to ask your local public officials if they've read this article and mention the conclusion to them. These are wise words for public officials to take to heart. If we had more public officials following this line, we'd have less difficulties with Sunshine Law issues.

Of course, there's always someone taking the other perspective. Patrick Cronan, who writes what he himself calls "drivel" each month to municipal attorneys across the state, is always happy to point out ways public officials can skirt the Sunshine Law.

Not long ago, he passed along to his readers that the exceptions added to the Sunshine Law in 2002 (exceptions 18, 19 and 20, dealing with security issues), were written very broadly. While acknowledging that the Sunshine Law specifically instructs that the exceptions to the law are to be "strictly construed," he suggests that "maybe you can fool the public and even a judge or two" by showing them the language in these exceptions.

In short, when the representatives of the press association argued to those seeking to pass these exceptions that

the language was overly broad and vague, we were right. And further, some city attorneys (at least one we know of) apparently encourage attempting to fool judges, regardless of the fact that lawyers are mandated pursuant to the Rules of Professional Conduct to not make a false statement of material fact or law to the judiciary. Attitude is everything, right?

Finally, let me clarify again an issue that generates regular calls to the hot-line in the area of advertising. What is permitted and not permitted in terms of advertising prices for the sale of liquor by the drink? Missouri does not have state statutes governing this issue. Rather, it is governed by The Code of State Regulations. Those regs are changed on a regular basis. As your hotline attorney, my focus is on statutes that deal with Sunshine Law and libel and related issues, and I don't generally stay current on all the laws that relate to the liquor industry. I will tell you that there is no penalty that is imposed upon a newspaper for any advertisement it runs relating to the price of liquor by the drink. However, your advertiser can incur fines and penalties if he runs an ad that violates these state regulations.

Therefore, you do not want to be giving advice to your advertisers about what they can and cannot run. If you do, you risk being blamed if they are found to have violated the state regulations. You could end up being sued for damages.

That is why, when you call the hot line, I suggest you send your advertiser to consult with his attorney. Tell him you will run whatever he provides to you and know that no liability will attach to the newspaper. But leave it up to him and to his attorneys as to what he can and cannot run.

Federal postal regulations prohibit mailing of notices of games of chance unless they are for a not-for-profit organization and permitted by state law, therefore running such ads is permissible.