

## What level of cost ends access to public records?



By JEAN MANEKE  
MPA Legal Consultant



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

December begins the time when legislative proposals for the coming year are percolating in the minds of those who will serve in the Missouri legislature in 2007, and in the minds of organizations, such as the Missouri Press Association, that monitor the activities of those legislators for both “good” and “bad” bills from the organization’s perspective.

As MPA begins looking at its legislative issues for the coming year, Doug Crews, executive director of the organization, raised an interesting issue worth further consideration by all of us. One of the most significant decisions by the Missouri Supreme Court this past fall was its ruling on the voter identification law. Announced in October, the Court’s ruling voided the state legislative mandate that voters must present a photo identification in order to vote at the polling place. Built into that law was the requirement that every voter must obtain a photo identification in order to meet this requirement.

But that requirement proved to be a hurdle for voters. The law did recognize that some residents of the state would be non-drivers and therefore allowed for the obtaining, at no charge, of an official non-driver license to resolve this issue. But it didn’t recognize that the requirements to obtain this document would be more onerous than anticipated.

Specifically, elderly residents (and some not so elderly) found themselves attempting to obtain a birth certificate or a passport to meet this requirement. The biggest issue for those fighting this law was the difficulty in obtaining a birth certificate that some of these residents encountered.

But for those of us who deal with obtaining public records on a daily basis, the interesting issue to watch was the controversy that developed over the cost of obtaining that record and the complaints that arose over the use of those funds. The Supreme Court even addressed the issue of fees in its opinion.

“Both passports and birth certificates are themselves costly. In fact, the record reveals that Missouri charges \$15 to provide the certified, embossed copy of a birth certificate required by (federal law) to obtain a non-driver’s license. Missourians born in other states must pay fees ranging from \$5 to \$30 to obtain official copies of their birth certificates. A passport is even more expensive. The record reveals that a person born in the United States who wishes to obtain a United States passport must pay between \$97 and \$236, depending on the speed with which one may need the passport. For a person born outside the country, the cost of a passport may be higher due to the cost of additional documents needed as proof of citizenship or naturalization,” the Court noted.

And in the case where a voter has married and changed his or her name as a result of that event, there is the additional cost of obtaining this additional documentation. “This additional documentation requires the payment of further fees. For example, the cost of a certified copy of a marriage license ranges from \$5 to \$30,” the Court noted.

In reaching its conclusion that this law was unjust, the Court took into account these fees and at one point, while stating that these were not in fact a “poll tax,” said “... all fees that impose financial burdens on eligible citizens’ right to vote, not merely poll taxes, are impermissible under federal law. There can be no lesser requirement under Missouri law.”

Perhaps this case opens the door to further consideration as to whether fees charged for access to public records are too high. Is a record “accessible” to the public when the cost to obtain it is \$15? What if the cost rises

to \$50? When does access become non-existent because it is too expensive?

Perhaps this next legislative session might allow lawmakers the opportunity to explore this issue. If it does, it's an issue that the Missouri Press Association will find highly interesting.

On another front, this past month an interesting conflict in the law arose in a Kansas City courtroom. The issue arose in a criminal hearing in a Jackson County courtroom where a defendant was expected to enter his guilty plea in connection with some of the charges made against him in connection with his alleged rape of five women.

The defense attorney cited Missouri statutes contained in Chapter 191, pointing out to the court that those statutes mandate that HIV information must be kept confidential by those receiving access to such information. As a result of that statute, the judge in the matter made the decision to close the courtroom, and all participants in the hearing refused to divulge to the media any information regarding the proceeding. Information regarding the outcome of the hearing was not immediately posted on Case.Net, the online database of court information for the state.

"It was with reluctance that the court had to clear the courtroom in order to comply with the statute," the judge told a reporter for The Kansas City Star.

This incident raises significant concerns for courthouse reporters in the state. The Missouri Constitution mandates "that the courts of justice shall be open to every person ..." A conflict between the state constitution and state statutes absolutely needs addressing by the legislature. Surely those who drafted this bill never intended to use it to close courtroom criminal sentencings or other criminal proceedings when HIV information was involved.

Already it looks like there are a number of potentially interesting issues that will await this January's new legislative body.

December begins the time when legislative proposals for the coming year are percolating in the minds of those who will serve in the Missouri legislature in 2007, and in the minds of organizations, such as the Missouri Press Association, that monitor the activities of those legislators for both "good" and "bad" bills from the organization's perspective.

As MPA begins looking at its legislative issues for the coming year, Doug Crews, executive director of the organization, raised an interesting issue worth further consideration by all of us. One of the most significant decisions by the Missouri Supreme Court this past fall was its ruling on the voter identification law. Announced in October, the Court's ruling voided the state legislative mandate that voters must present a photo identification in order to vote at the polling place. Built into that law was the requirement that every voter must obtain a photo identification in order to meet this requirement.

But that requirement proved to be a hurdle for voters. The law did recognize that some residents of the state would be non-drivers and therefore allowed for the obtaining, at no charge, of an official non-driver license to resolve this issue. But it didn't recognize that the requirements to obtain this document would be more onerous than anticipated.

Specifically, elderly residents (and some not so elderly) found themselves attempting to obtain a birth certificate or a passport to meet this requirement. The biggest issue for those fighting this law was the difficulty in obtaining a birth certificate that some of these residents encountered.

But for those of us who deal with obtaining public records on a daily basis, the interesting issue to watch was the controversy that developed over the cost of obtaining that record and the complaints that arose over the use of those funds. The Supreme Court even addressed the issue of fees in its opinion.

"Both passports and birth certificates are themselves costly. In fact, the record reveals that Missouri charges \$15 to provide the certified, embossed copy of a birth certificate required by (federal law) to obtain a non-driver's license. Missourians born in other states must pay fees ranging from \$5 to \$30 to obtain official copies of their birth certificates. A passport is even more expensive. The record reveals that a person born in the United States who wishes to obtain a United States passport must pay between \$97 and \$236, depending on the speed with which one may need the passport. For a person born outside the country, the cost of a passport may be higher due to the cost of additional documents needed as proof of citizenship or naturalization," the Court noted.

And in the case where a voter has married and changed his or her name as a result of that event, there is the

additional cost of obtaining this additional documentation. “This additional documentation requires the payment of further fees. For example, the cost of a certified copy of a marriage license ranges from \$5 to \$30,” the Court noted.

In reaching its conclusion that this law was unjust, the Court took into account these fees and at one point, while stating that these were not in fact a “poll tax,” said “ ... all fees that impose financial burdens on eligible citizens’ right to vote, not merely poll taxes, are impermissible under federal law. There can be no lesser requirement under Missouri law.”

Perhaps this case opens the door to further consideration as to whether fees charged for access to public records are too high. Is a record “accessible” to the public when the cost to obtain it is \$15? What if the cost rises to \$50? When does access become non-existent because it is too expensive?

Perhaps this next legislative session might allow lawmakers the opportunity to explore this issue. If it does, it’s an issue that the Missouri Press Association will find highly interesting.

On another front, this past month an interesting conflict in the law arose in a Kansas City courtroom. The issue arose in a criminal hearing in a Jackson County courtroom where a defendant was expected to enter his guilty plea in connection with some of the charges made against him in connection with his alleged rape of five women.

The defense attorney cited Missouri statutes contained in Chapter 191, pointing out to the court that those statutes mandate that HIV information must be kept confidential by those receiving access to such information. As a result of that statute, the judge in the matter made the decision to close the courtroom, and all participants in the hearing refused to divulge to the media any information regarding the proceeding. Information regarding the outcome of the hearing was not immediately posted on Case.Net, the online database of court information for the state.

“It was with reluctance that the court had to clear the courtroom in order to comply with the statute,” the judge told a reporter for The Kansas City Star.

This incident raises significant concerns for courthouse reporters in the state. The Missouri Constitution mandates “that the courts of justice shall be open to every person ...” A conflict between the state constitution and state statutes absolutely needs addressing by the legislature. Surely those who drafted this bill never intended to use it to close courtroom criminal sentencings or other criminal proceedings when HIV information was involved.

Already it looks like there are a number of potentially interesting issues that will await this January’s new legislative body.