

Sunshine law is not unduly burdensome

Elected officials need to know obligations

Some smaller cities in Missouri are becoming painfully aware of the sunshine law, but not due to actions of Missouri Press members.

In the last year, a greater St. Louis area lawyer has filed approximately 120 suits, according to a story in the *Bolivar Herald-Free Press*, quoting officials of the Missouri Municipal League. This lawyer sends requests for copies of minutes of city council meetings, and when the city fails to respond properly under the law, he files suit.

In at least one case, a city apparently chose to settle with the plaintiff rather than litigate, paying him \$5,000, according to the news report cited above.

As a result, cities are upset. The Missouri Municipal League is upset. Reporters in this state who have a good working relationship with their cities are upset. They don't like seeing their municipal officials entangled in litigation against a non-resident whom they feel has no actual interest in seeing that the community has good government.

I understand all these concerns. But I want to raise a cautionary flag against you, the readers, deciding this plaintiff is doing wrong. In fact, the enemy here is not this plaintiff, despite his clearly having motives more closely aligned with personal financial gain than actual justice.

First, it is clear he is beginning each campaign with a sunshine law request. In some cases, cities receiving those requests have failed to make a proper reply.

I've seen some arguments that he is asking for records that do not exist. If that is the case, under the law, the city

has absolutely no obligation to produce them. And all a city is required to do is to respond to a request within 72 hours of its receipt.

If additional time is required to compile records, a city is permitted under the law to request that additional time, so long as the delay requested is "reasonable." And that word is not further defined—a judge is the only one who determines if the delay is reasonable. So one can hardly say the city is being imposed on for such a request.

Reporters regularly make similar requests. Cities regularly respond to such requests seeking additional time to compile the requested records. It is only those cities that fail to timely and properly

respond that are caught in the plaintiff's sunshine law net.

Second, a city that might choose to settle and pay the plaintiff is doing so for its own reasons. Maybe the city looked at its response for the first time with the input of counsel's advice and realized it had broken the sunshine law and decided it had better settle.

Maybe the city, with counsel's advice, felt it had not broken the law, but believed the cost to fight this battle in court was going to be so expensive compared to the smaller sum the plaintiff offered to settle for that it was cheaper to end this battle by settlement. This financial decision happens regularly when a party is faced with litigation.

Maybe the underlying issues—relating to the way a city had imposed taxes, were such that the city had erred and resulted in a decision to settle that had absolutely nothing to do with the at-



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

tached sunshine law issue.

Regardless, I believe those of you whose cities might be entangled in this lawyer's campaign for wealth and notoriety need to be careful with what you say regarding this matter. It is important that every city and every elected official make an effort to understand the obligations imposed by the sunshine law.

It is never an abuse of the law for a citizen or a media entity to file suit when the public entity fails to properly respond. The sunshine law is NOT unduly burdensome.

Please don't ever taken an editorial position that the obligations imposed under this law are unfair. We depend on the sunshine law to do our jobs well. Citizens depend on the sunshine law to maintain a watch on their local government.

It is not an abuse of the law to use it to hold a public body liable if it fails to meet its statutory obligations. This law does not require superhuman efforts to produce every document, even documents that no longer exist, within 72 hours after a request is made.

A city that chooses to settle such a case is ripe for a story about that decision. There's a reason driving that decision that your readers need to know. Maybe the plaintiff had no case. Maybe the plaintiff caught the city in an embarrassing position. Maybe the answer lies somewhere between.

But filing a sunshine law case is not abuse of the law.

Please don't ever take an editorial position that the obligations imposed under this law are unfair.