

Whenever the discussion turns to changes that are needed in the Sunshine Law, it inevitably ends up in the arena of how to put some teeth into enforcement. As many of you know, proposals floating around in the legislature this session deal with raising and lowering the fine to whether the standard for violating the law should be strict liability or some other test.

And, in conjunction with that discussion, reporters generally complain that enforcement is impossible. If a public body refuses to follow the law, there are no “Sunshine Law” police to ensure enforcement.

When this complaint was raised recently at the “Newspaper Day at the Capital” session in Jefferson City, hosted by MPA and the Associated Press, our state Attorney General Jay Nixon was emphatic in his assurance to those attending that his office acted aggressively in response to citizen complaints about this issue. He pointed out that his office had filed several amicus briefs in court cases of major importance in the state in recent years (including the case involving MPA member The Media in Kahoka several years ago) and had actually brought a Sunshine Law suit not long ago in Jefferson County. (That case recently resulted in a circuit court ruling against the school district and in favor of the AG’s office. The school district has decided not to appeal and the matter is now terminated.)

Further, General Nixon stated that one of his staff members each day is assigned to field Sunshine Law calls from citizens and the media in an effort to act as a mediator or counselor on such matters, working to ensure compliance with the law.

During the weeks after that strong declaration, the Columbia Tribune, in an editorial, spoke out strongly about how public prosecutors seem to leave enforcement of the law to the public rather than taking aggressive efforts to make public officials toe the line.

“Even more effective would be routine enforcement by the attorney general. If this were done, the law would be respected much more widely,” publisher Hank Waters wrote. “It would not take that many actions to alert and instruct public officials throughout the state....These suits should be a regular part of (Nixon’s) office agenda.”

General Nixon, of course, took strong exception to accusations in the editorial that his office was unresponsive, citing many of the points noted above to demonstrate the importance he places on enforcement of this law. In a letter to the editor which ran shortly thereafter, he noted that more than a thousand local officials have attended the ethics-in-government conferences he has hosted which include training on the law.

The reality behind these strong opinions on each side can be found in a recent hotline call to this office from Kathy Dohrman, publisher of the Sweet Springs Herald. Kathy was having difficulty obtaining a police incident report from the local police chief. She called the hotline and we discussed what the law says should be contained in the incident report and I suggested she elicit the help of the city prosecutor in this matter. Often, if a local lawyer gets involved, concerns of local law enforcement that they are violating the law will disappear.

Unfortunately, that did not work and, because she was on a tight deadline (and remembering all the discussion above over the last few months), I suggested she contact Nixon’s office, remind them of what had been said on this subject in recent weeks and put them to the test on this issue.

Kathy heard soon thereafter from Paul McGuffee, an assistant attorney general in that office, who had the police chief fax him a copy of the report form, which appeared to meet the legal requirements of an “incident report.” Mr. McGuffee talked with the chief about the reasons the actual report was being withheld, and found that apparently it related to instructions he was receiving from the local juvenile office (because the names of juveniles were apparently contained in the original report) and from the local city prosecutor.

Kathy had advised the police chief that she was willing to have the report with the names of the juveniles redacted and Mr. McGuffee said he encouraged the police officer to provide her with that form, after redacting the names of the juveniles, which would indeed allow him to meet the statutory requirements while still acting within the requirements of the state juvenile laws as they applied to him.

The last word from the police chief was that he would pass along this opinion to the local prosecutor and consult with him before taking any further action. Kathy did not, however, receive the report in time for the weekly newspaper deadline she was facing.

“Generally, we do get cooperation from local officials. When we explain the law to them, they are willing to do” what it requires, Mr. McGuffee said in an interview afterward. “We wind up preventing a violation” of the law through the intervention of the Attorney General’s office.

“Sometimes, we do get calls where the requests (for access) are not entirely clear,” he pointed out. And, “it’s hard to know all the facts we need to know what the body ought to be doing,” he also noted. Sometimes the callers (particularly when it is from a citizen as opposed to a call from a reporter who may have more training on the Sunshine Law and its requirements) give General Nixon’s office only part of the whole story and, in fact, the public body has done nothing wrong.

“My job is to try to get the records and meetings open to the extent the law allows,” Mr. McGuffee concluded.

And to the extent that Jay Nixon’s office can assist in the never-ending-battle to ensure that these records and meetings remain open, we do owe him our thanks for his support of our mutual efforts in this manner.