

# Development authorities should do business openly

## Minor statute change makes them 'public'

Recently, a reporter called to discuss in detail whether the local Industrial Development Authority was subject to the sunshine law. It's something he and I have been discussing for some time, and I thought perhaps that some of you may be having the same issue.

Industrial Development Authorities, generally known as IDAs, are created by statute in Missouri. Chapter 349, Section 349.012, provides for the creation of corporations "to promote commercial and industrial development and, in order to achieve such promotion, to engage in any activities, either on its own or in conjunction and by contract with any not-for-profit organization, which it deems necessary to carry on such promotional work."

As detailed in the statutes, the organizations have the power to issue bonds without voter approval, loan proceeds of the bonds for the purchase and construction of development projects, lease or sell property and collect rents and fees for their services.

And the issue of whether these entities are governed by the sunshine law was discussed specifically in the case of *Champ v. Poelker*, a 1988 case that was heard in the Court of Appeals for the Eastern District of Missouri in St. Louis. In that case, the court held that the IDA was NOT a public governmental body as that term was defined in the definitions section of the sunshine law in Section 610.010 in 1988.

However, what is critical to the full understanding of this issue is that the definition of a "public governmental body" that the court in *Champ* relied on was amended in 1998 in House Bill 1095. It was a minor change, but might

be of major significance in determining whether the court's holding in *Champ* still applies.

Before 1998 the definition section of the law spoke specifically of "legislative or administrative governmental entities." The term "administrative governmental entity" was the phrase that was the underpinning of the holding in *Champ*. Today, the law specifically is defined as applying to "legislative, administrative OR governmental entities" created by statute. Therefore, is an IDA an "administrative entity ... created by statute" under the terms of the sunshine law as it exists today?

Back when *Champ* was decided, the court talked about it not being able to tax, formulate governmental policy or promulgate rules. But the court also noted that its purpose benefitted the public. And the court specifically noted in *Champ* that if the legislature wanted non-governing entities to be included in the sunshine law, it would have struck the term "governmental" from the definition.

Well, it seems that is exactly what the legislature did in 1998 when it amended this definition of public governmental bodies. And in that one slight change, I believe the legislature may have wiped out the underpinnings of the *Champ* case law holding as far as it relates to Industrial Development Authorities being subject to the sunshine law.

After all, clearly these are entities that handle public funds and most voters perceive as being public bodies. Therefore, while I can't say that there is existing case law supporting my point, I do think I'm right about this issue.

If your IDA claims it is not subject to the sunshine law, ask them to run



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Call me for a sample of a Terms of Use statement for people who comment on your website.

this analysis by their attorneys. They are spending public funds and this may be what you need to get access to their budget and meeting notices or minutes.

On another note, I don't want to spend an entire column on the subject of Terms of Use for your websites, but if you don't have such a document for those who are commenting on your newspaper websites, I'd be happy to supply several samples to you. As we discussed at regional press association meetings last year, I believe it's important for those who are commenting on your websites to do some kind of "click-through" acknowledgment of having reviewed and accepted your terms of use before they can comment, in order to protect the newspaper from subpoenas and for intellectual property reasons.

If you want to see some samples, contact me and I'll be happy to supply them. I am sure there are many others that are excellent, but they will give you some idea of what you might want to use if you are thinking about this issue.

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