

# Court issues public hearing decision

*Public hearings should promote openness in government*

Recently a Missouri Court of Appeals issued a decision that relates to the effectiveness of public hearings in a community. The decision doesn't really relate to your news-gathering process, but it seems a good idea to mention it to you because of the way the courts looked at the idea of public hearings and how that impacts the local government process, and the foundation of openness on which our state Sunshine Law rests.

I need to mention this case is going up on appeal to the Missouri Supreme Court, so it's not a final decision. But your local governments will be watching it, so you should, too.

It began with a group of citizens in Franklin County who were concerned about a proposed coal-ash landfill going onto property adjoining a public utility power plant owned by Ameren. In order for that to happen, the county needed to amend its land use regulations. So, even before Ameren moved to file its proposal, the county noticed up a hearing to amend those land use laws.

When the planning and zoning commission began the hearing, the chairman announced to the public that no testimony would be entertained regarding the specific Ameren proposal, because it was not on the table at that time. Only general testimony relating to the amendment of the land use regulations would be permitted. Some persons were interrupted as they testified and not allowed to make comments if they related only to the Ameren project.



Needless to say, numerous citizens who came to the meeting thinking that this was their time to object to the Ameren project were upset. They ultimately filed suit against the county commission in regard to the board's eventual adoption of the amended land use language, and the subsequent approval of the Ameren project.

Plaintiffs told the court that even though the regulation-amendment process did not directly address the Ameren project, the process of amending the land use laws was orchestrated in a fashion that allowed the proposed Ameren project to qualify under those regulations.

The circuit court began by analyzing what is required in an effective hearing. Such a hearing requires members of the public be able to present their side of the case and for the commission to listen to those arguments, the court said.

Fairness in conducting the hearing also requires fair notice of the hearing to the public, it added. What would an ordinary citizen anticipate in seeing the notice and attending the hearing? The court adopted a "fair-minded person in attendance" standard and said that it was reasonable for the public to believe the proposed project

would be discussed at the hearing. Limiting the testimony in public deprived the public of this opportunity, the court concluded.

While this case will be focused on what is required in a public hearing, what struck me as I read it was that it was a strong opinion by the appellate court of the basic government principal of openness in the process of governing. Limiting what is discussed in a public meeting, the court said. Open and full discussion should be the standard.

"A public hearing, like notice thereof, is an 'indispensable step in the process by which parties of interest may profoundly affect the legislative course'."

That's a quote I'm going to hope to remember next time I'm arguing a Sunshine Law case. I think the same argument applies to discussions which take place out of the public eye. Secret meetings and deliberations which are taken away from the regular meeting of public bodies are equally harmful.

*"A public hearing... is an indispensable step in the process by which parties of interest may profoundly affect the legislative course."*

