



Maneke law column

The more things change, the more they stay the same

A year and a half ago, a lawyer from Sugar Creek, Mo., called me to chat about some Sunshine Law issues. He had requested copies of city records relating to a city collections clerk, particularly related to her application for the job, hiring guidelines of the city and, most particularly, the records reflecting the city council's vote to hire her, and subsequent records relating to pay increases she received.

The city responded nearly 25 days later, providing only minimal documentation in response to his request. So, pointing out this defect, he made the request again, setting out in detail the specific Sunshine Law requirements supporting that the information about this woman's hiring was a matter of public record and that the city had an obligation under the law to release the vote that was taken to hire this individual. The city acknowledged receipt of his request and also that it had three days to respond. But, 15 days later, the city provided only meeting minutes in its response, still failing to provide any document showing a vote taken to hire this person.

The lawyer, Cyril Wrabec, and I had a number of discussions about his situation and case strategies. And, in March 2017, Cyril filed suit against the Sugar Creek custodian of records over the lack of proper response to his Sunshine Law request.

The city hired Mike Sanders, former Jackson County executive, to defend them. I note that as an interesting choice only because I must point out he is now serving 27 months in a federal prison for conspiracy to commit wire fraud in connection with his "creative" use of campaign contributions he received.

The city denied the allegations, and one of their defenses "creatively" asserted by Sanders was that the request for the records was made too late. The Sunshine Law states that suits to enforce the law shall be brought

"within one year from which the violation is ascertainable" and cannot be brought "later than two years after the violation." This was an important issue, because the city employee whose hiring was being scrutinized had actually been hired in 2009. Without a doubt, more than two years had passed.

The key to understanding what was happening here was that the city council failed for almost 10 years to keep proper minutes of its actions. It wasn't until Cyril filed his lawsuit, I suspect, that the city was told it was not keeping proper minutes. And so, instead of admitting to Cyril when he made his request that it didn't have the minutes, and acknowledging its defective process, it chose to attempt to throw blame back on the requester for not asking for the minutes eight years earlier. The city council sought to have the judge dismiss the petition for a lack of timeliness. Fortunately, that argument wasn't sustained.

The case was tried several months ago and a judgment rendered. (By the time of the trial, attorney Sanders had been replaced on the case by another attorney from his firm.)

The court, in its judgment, held that the city was a public body and the clerk was the custodian of public records, both subject to the Sunshine Law, and that the city had the burden to demonstrate it had not violated the law.

The judgment pointed out that the city aldermen approved the hiring of the employee but that both the clerk and the city attorney had agreed that no actual vote was taken during the closed meeting – in fact, it quoted the city attorney's comment that "votes were rare." The judgment agreed that in response to Cyril's request for records, none were produced because they didn't exist. But the judgment noted that the city clerk "believed her actions and the board's were in compliance with the Sunshine Law." And so, although the judgment found that both

the city board and the clerk violated the law, it also found that the violation was not knowing or purposeful.

There are dozens of U.S. Supreme Court decisions citing the common law principle that "ignorance of the law is no excuse." Certainly that is the foundation of the law under which we are convicted when we are caught speeding or making a turn in a no-turn lane. And nobody elected to public office ever refuses to take their oath to "uphold the laws" of the public body or their jurisdiction because they don't know the laws they need to uphold. Obviously, when they take that oath, upholding the Missouri Sunshine Law is one law they swear to uphold.

But once again, elected officials get a pass due to ignorance of their official duties. Even the city attorney gets a pass from being required to know the law that applies to public bodies.

There is simply no incentive for any public official to make the effort to learn what the Sunshine Law requires of him or her, so long as courts think it's fine for a public official to get a pass because they are ignorant. Attempting to educate himself or herself about the law might create a "knowing" violation and then fines and penalties might result. Better to live in the dark than light a candle of knowledge about the Sunshine Law.

I've said it before, and I'm saying it again. There needs to be strict compliance imposed for Sunshine Law violations. Judges are reticent to impose significant fines and penalties on lower-level elected officials. The incentive to uphold the law just isn't there.

