



Maneke law column

You have power to file Sunshine Law complaints

So many times, callers to the Missouri Press Association Legal Hotline believe they have evidence that a public body in their area is violating the State's open meetings/open records law. They've become aware of a public meeting where there appears to be no notice given. They attend a meeting where a vote is taken without any discussion about the various options available to the public body.

Perhaps they've requested copies of public records and are quoted a cost to obtain the copies that seems unreasonable. Because these are member papers' reporters, they call the hotline. We discuss the facts and talk about what the law says. Sometimes when the reporter calls the public body's representative back and discusses the language in the law, the problem is resolved.

But sometimes it is not resolved. The public body refuses to acknowledge that it broke the law. The public body refuses to make records available to the requester. Reporters sometimes find that records seem to have disappeared. And then what do reporters do?

Well, one option I always suggest (because it's the cheapest option) is that the caller think about filing a complaint on the Missouri Attorney General's website. Attorney General Eric Schmitt has a form on that site (click "Missouri Law" / "Sunshine Law" / "Sunshine Law Complaint Form"). Anyone can file a complaint with his office for consideration by the office staff.

Every Attorney General has his (or, possibly someday, "her") own standards for what action is taken. But theoretically, every complaint made to that office is considered by someone there as to whether a violation has occurred.

In fact, there are statistics on that site relating to this issue that date back to 2015, and there are some interesting statistics available. For example, it

appears that in calendar year 2019, 410 such complaints were filed with the AG's office. The largest bulk of them (163) were filed by the general public. And 64 were filed by members of the media. In fact, you don't even take Second Place in terms of requesters – that position is held by "attorneys" in the state.

Complaints registered in 2019 have been for the most part against cities, with the second-largest group of complaints being made against law enforcement officers. And what kind of resolution resulted from

investigations of these complaints? Well, unfortunately, more than a fourth of the complaints resulted in a finding of "likely no violation." There is no way of knowing whether that is a valid determination, whether that is because the bulk of these complaints were from citizens who themselves don't understand the law, or whether this is because, as is often said in regard to those "official Attorney General opinions" by lawyers who disagree with them, "Well, that's just one lawyer's opinion ..."

Still, it's encouraging that about 10 percent of the complaints were resolved with a letter to the body. And, amazingly enough, the chart says 12 complaints resulted in litigation being initiated.

For example, one complaint, from 2018, recently resulted in the AG's office issuing a letter to the City of Neosho finding that in lieu of enforcement action, it would require the city council, city clerk, mayor and "other key City staff" to attend Sunshine Law training in the immediate future. The session will be provided by the AG's staff in Neosho.

In conjunction with that conclusion, the AG's office detailed in a lengthy letter the actions that city officials had engaged in which were of concern. One of the biggest concerns for the AG's office was a number of discussions which took place among council members via text messages. These texts clearly were being exchanged by a quorum of the council members in lieu of public discussion at a properly noticed meeting. The AG's office pointed out that electronic communications among a quorum of the members possibly could have constituted, under these facts, a "meeting where public business was discussed." Also, the AG's office questioned whether these messages were being properly "retained" as required by the State Public Records law and record retention requirements, or whether they were improperly being deleted.

So seeing a letter like that being issued by Attorney General Eric Schmitt's office is encouraging for all of us – yes, there are folks who are investigating these complaints and, at times, action is being taken to ensure that public bodies are following the law.

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