

Different ways the public can review the people's business

Most Missouri journalists are acquainted with the Sunshine Law, found in Chapter 610 of the Missouri Statutes. But fewer are aware of a second law, the Public and Business Records law found in chapter 109 of the Missouri Statutes. From those who do know this law, the most frequently asked question is why it isn't used more often in making open records requests? The answer lies in its complications.

It is a very short section of Missouri law with only two sections in Chapter 109 that contain statutes pertinent to "open record" access.

Section 109.180 says, "Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement."

Section 109.190 then says, "In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any person has the right of access to the records, documents or instruments for the purpose of making photographs of them while in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The work shall be done under the supervision of the lawful custodian of the records who may adopt and enforce reasonable rules governing the work. The work shall, where possible, be done in the room where the records, documents

The Sunshine Law is most known for accessing public records, but a lesser known Missouri law allows "the public or any person interested ... a right to inspect or take extracts or make copies from any public records."

or instruments are by law kept, but if that is impossible or impracticable, the work shall be done in another room or place as nearly adjacent to the place of custody as possible to be determined by the custodian of the records. While the work authorized herein is in progress, the lawful custodian of the records may charge the person desiring to make the photographs a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done."

There are some significant differences between these two statutes and the rights and responsibilities inherent in Missouri's Sunshine Law (i.e.: chapter 610). One of the most significant is that Section 109.190 specifically states that the person requesting access to the records has a right of "making photographs" of the record. Cell phones providing easy camera access and scanner access, this provision of that statute gives a citizen a right to take their own photo or scan of the document, although it does say that the public servant may charge for the "services ... to supervise the work" and for the use of the room by the person taking the photo.

How much can be charged for

this cost? There is no case law in Missouri on that issue. There is one Attorney General's opinion that says the statutory fee of the recorder for copying (which right now is \$2.00 a page) does not apply and is not to be collected where copying is done by a member of the public under this section regarding right of persons to photograph public records, but where the recorder or the recorder's deputy copies such documents, the statutory fee must be charged. (See Op.Atty. Gen. No. 55, dated August 4, 1978.) Possibly the charge would be nothing, a lawyer might argue.

Another interesting difference between these statutes and the Sunshine Law in chapter 610 is that Section 109.180 of these statutes refers to the person requesting access as a "citizen of Missouri" whereas chapter 610 refers to persons requesting access as "the public." That can be a critical difference if the requester is not a citizen of the State of Missouri. A U.S. Supreme Court case several years ago held that a non-resident of a state is not a "citizen" of the state for Sunshine Law purposes.

A third significance is that the only penalty for violation of the sections in chapter 109 is that if an official violates section 109.190, they may be removed from office or impeached and the fine upon conviction cannot exceed \$100.00, or confinement in the county jail not exceeding 90 days, or both fine and imprisonment. It's more a criminal-type offense.

Fines for violations under chapter 610 require proof of knowing or purposeful violations. The two standards are significantly different.



Jean Maneke, is MPA's Legal Hotline attorney. Contact her at (816) 753-9000; jmaneke@manekelaw.com.