

Court decision could delay records requests

Apologies to Department of Revenue for error

First things first. Last month I reported on a decision by Attorney General Chris Koster's office that would impact all of those who request sunshine law records. Unfortunately, I tagged the wrong state agency involved in the situation.

I guess my mind was on the Department of Revenue's announcement last year that it was substantially increasing the charge for records that previously were produced at reasonable prices. Businesses that use those records and the legislature itself set upon DOR in an effort to force it to view the cost of these records more favorably to the public.

I'm sure DOR thinks we are just picking on them. I'm sorry.

Heap your wrath on DNR instead, folks.

This month I'm unhappy with the Eastern District Court of Appeals and the Missouri Supreme Court. (I know. I'm never happy.) There's a recent decision by the folks at the Eastern District that I can predict is going to cause chaos down the road for requesters of public records.

Some time ago, Great Rivers Environ-

mental Law Center requested certain records from the City of St. Peters. The city was concerned about the legality of closing certain records, so it invoked its rights under Section 610.027 to seek an opinion from the Attorney General's Office as to whether it had a right to close those records.



Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, jmaneke@manekelaw.com.

Time passed. In fact, considerable time passed. In fact, after a month passed, Great Rivers filed suit against the city. It asked the court to find that the city had violated the sunshine law.

The city argued that it had agreed to abide by the holding of the AG's Office and that it had done nothing wrong.

The trial court held that the plaintiff had gotten over-eager in filing suit, and that the city had done nothing more than it had a right to do under

the law. Certainly it was not a knowing or purposeful violation of the law.

Great Rivers filed an appeal. Missouri Press, recalling that in the last year before then-Attorney General Jay Nixon became governor, his office held a request for an AG opinion for months, filed as an amicus.

The current AG's office, concerned about what it saw as a potential onslaught of requests for AG opinions, also filed an amicus.

The court of appeals held that the city had a right to seek the opinion of the AG's office and that its efforts to do what it was rightfully entitled to do were thwarted by Great Rivers filing suit prematurely. Therefore, it held against Great Rivers and in favor of the city.

All of us — Missouri Press, Great Rivers and the AG's office — requested a rehearing by the Court of Appeals on its decision. The AG's office even noted in its filing that its office is not mandated to even respond to all the requests it receives for opinions, let alone provide such an opinion.

The Court of Appeals, in a not-unexpected decision, declined to rehear the case. So all those named above again sought a rehearing before the Missouri Supreme Court. Unfortunately, on Sept. 1 the Missouri Supreme Court declined to hear the case.

What this means to you is that your public governmental body, if it doesn't want to turn over records to you, may simply file a request with the AG's office for an opinion, then sit back and bide its time. It need not produce records while it waits. You have no right to demand it answer your request while it waits for an opinion.

And so, we may have to wait and wait and wait. That's not a good position for any of us. The Court of Appeals and the Supreme Court let us down on this one.

PS: Be sure you read the story in this issue about the jury verdict in the Poplar Bluff case. Big news for sunshine law fans!

\$1 fines for 'knowing' violations of law

Judge Daren L. Adkins ruled Aug. 17 in Carroll County Circuit Court that Carrollton's mayor and members of the city council "knowingly" violated the Sunshine Law twice in 2008.

Each defendant — except then-council member Nancy Miles — was fined \$1 for each of the two violations and ordered to pay a share of \$2,500 attorney fees of plaintiff John Sweeney.

Sweeney filed suit on May 19, 2008,

alleging the city council discussed public business in closed meetings on Feb. 13, 2008, and April 25, 2008, without giving proper notice of the meetings.

Judge finds mayor, council members violated sunshine law twice.

Missouri's Sunshine Law requires public bodies to give notice of all meetings.

Defendants were then-mayor Ernie Sarbaugh and council members at the time of the violations: Scarlet Horine, Paula Sue McCumber, Nancy Miles, Steve Walden and Jack Vantrump.

Miles was exempted from the fines and attorney fee payment.

—from the *Carrollton Democrat*