

## **E-mail remains easy Sunshine Law detour**



### **Bids should be sought for public notices**

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Some passing thoughts post-MPA convention:

There is still concern over members of public bodies using e-mail to circumvent public discussion in meetings.

The new law requires that any member who sends an e-mail about public business to a quorum of other members of a public governmental body send a copy of the message to the body's records.

This indeed doesn't prevent one member from sending a message to a second member, that second member sending it on to a third member, then to the fourth member, and so on. E-mail is just a system fraught with the potential for abuse.

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It's always interesting who one finds as your bedfellow in media access cases. Earlier this summer, the media found itself in a position of having its interests argued by the Rev. Larry Rice, a well-known figure in the state, especially in the St. Louis area. He and others in the New Life Evangelistic Center, an interdenominational religious center, attempted to convince the 8th Circuit Court of Appeals in St. Louis that there should be a right to videotape and broadcast executions at the Missouri Department of Corrections facility in Potosi.

The court disagreed that executions are public events.

The Rev. Rice and his supporters believe that the ban violates the public's right of access under the First Amendment to public proceedings.

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Newspapers have had frequent arguments with the Missouri Department of Transportation over access to data showing accident frequency on Missouri highways. The safety reports done by the department have been withheld in response to Sunshine Law requests, with the state agency claiming the federal highway Hazard Elimination Program prohibits the release of such data as evidence in a trial or during discovery, and therefore it is a closed record.

We have thought this is an incorrect application of this law, but the matter has not been taken to the Missouri courts. But an appellate court in New York recently addressed this issue, ruling that the federal law does not act as an exception under New York's sunshine law. The appellate court said that the ban is not applicable to materials requested for a purpose other than litigation.

This is exactly the position that Missouri newspapers have argued unsuccessfully with the state transportation department in the past. The New York transportation department has appealed the matter to its supreme court.

One cannot guarantee that the Missouri transportation department will follow any ruling made ultimately in New York, but it does provide fodder for continuing to pursue these records. Perhaps the new director of Missouri's department will take a different view.

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One of our members reminded me that I have not mentioned to all of you that she obtained a ruling from the Circuit Court in Cass County on an issue of legal notice publication that might affect others in the state. The City of Belton's council was declining to put up for bid the selection of a newspaper to publish the semiannual statement of the city, as required by Section 79.160 of the Missouri Statutes. The Journal, published by Integrity

Publishing, Inc., sued the city council seeking a court ruling that they were required to take bids on this matter.

The city opposed the issue. They acknowledged that they were required by state law to publish in a legal notice paper and that they had to accept the most advantageous terms that could be obtained, but claimed they did not have to take bids.

That became the crux of the matter before the court – whether a public body that must select the “most advantageous terms” must put the matter up for bids?

The court found that there was an implied obligation in the statute to solicit bids.

Citing case law that supported that taking bids is to advance the public interest in securing the most economical result by inviting competition, the court held that the City of Belton was required to put up for bid its publication. This is an issue that probably affects other jurisdictions in the state.

If your jurisdiction is not taking bids for its legal notice publications, please feel free to contact me and I will be glad to forward a copy of this decision to you for your use.

Missouri Press Association, which had nothing to do with this case, is not in the business of suggesting one paper over another should be the legal notice publication in the county. However, the legal notice statutes exist to protect all the public notice newspapers in the state.

The publication of legal notices is a public service of the highest order, providing the means for the public to obtain critical information about matters of significant importance. If newspapers didn't serve as the repository of legal notices, many matters of public concern would not be generally available to the greatest number of members of the public. Newspapers are a permanent archive of legal notice matters, whereas the internet is not a permanent record. The circulation of newspapers continues to surpass the access to the internet, particularly in out-state Missouri communities. And so your association continues to view the support of newspapers as the key repository of legal notice information a primary function of the association.