

Investigators need licenses; are journalists investigators?

State Supreme Court considering that now

The Missouri Supreme Court heard a case in November that should generate a decision in the next month or so that we should be anticipating. It contains a key issue that could impact not only our profession but also the debate that repeatedly comes up when we discuss a shield law bill in the state.

The case is Ricky Gurley v. Missouri Board of Professional Investigation Examiners. Gurley is a private investigator from Columbia.

In the course of applying for his license, Gurley ran into difficulties that resulted in a multi-month fight to reinstate his license and a loss of business opportunities during his appeal of the license denial.

While he won that battle before the Administrative Hearing Commission, he has pursued his fight over the validity of the terms of the language of the statute that governs licensing of private investigators.

The language being discussed in the Supreme Court comes from Section 324.1100(11)(b), which defines the business of private investigators as “the furnishing of, making of, or agreeing to make, any investigation for the purpose of obtaining information pertaining to ... the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.”

And related to that is Section 324.1104(1), which states, “It shall be unlawful for any person to engage in the private investigator business in this state unless such person is licensed as

a private investigator under sections 324.1100 to 324.1148.”

Now all of you can guess where we are heading with this. Gurley is arguing, for his appeal, that this statute violates his First Amendment rights. He argues that every citizen who gets on his or her computer and “Googles” someone else is engaging in the making of an investigation of a person. Everyone with a computer needs to be licensed.

But, more importantly for us, every reporter who makes an investigation of a person may fall under this definition. Certainly every reporter is engaged in the business of investigating and reporting on those investigations.

That’s a business enterprise.

Just where does the First Amendment fit into all of this?

Well, when the Supreme Court heard this case in November it was clear the judges were also pondering those issues. In fact, and here I credit the coverage of *The Columbia Missourian* for what follows, one judge specifically asked, “What if I’m a stringer for

a newspaper ... and I want to research people in the news?”

When the Court rules on this, one can only wonder how they will distinguish between a reporter and a private investigator. And that’s very close to the issue Missouri Press folks grapple with when we attempt to craft a shield law bill for journalists in the state.

How do we define a “journalist?” Is it just a reporter for a newspaper? Of course not.

Is it just a person employed with a traditional “media” outlet? Traditional media outlets are not the only ones employing journalists today. Think about Patch. Think about bloggers. Are those folks not journalists also?

One bill that is flitting around Jefferson City already this year, on a totally unrelated issue, has buried in the bottom of it a reference to licensing or registering reporters. No one in the industry wants to go there. Having government control the process of being classified as a “journalist” would be an affront to the First Amendment.

Tough questions indeed for our Supreme Court judges. I have no doubt they will find a way to avoid a bad decision in this matter. I look forward to a narrowly written opinion avoiding all these rabbit holes. But I can’t help but anticipate how interesting the reading will be watching them carefully tiptoe around them.

And I still believe Missouri needs a shield law, but I’m hoping some reporter won’t have to go to jail to get one, as was the case in Kansas!

Hoping to see you at Day at the Capitol!



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