

Sunshine Law getting more action than ever



Fingers being pointed over secrecy, emails

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September draws to a close with more attention being paid to the Missouri Sunshine Law that I believe has ever happened in its past. Suddenly the spotlight of political discussion, the law nearest and dearest to the heart of reporters in this state faces allegations from both sides of the political fence.

Republicans theoretically began the salvos when they charged that the Appellate Judicial Nominating Commission had violated the law in the manner in which they selected the three finalists for the vacancy on the Missouri Supreme Court. It is true that this commission, while a public governmental body, is governed by Supreme Court Rules as to certain matters, and therefore may meet and deliberate behind closed doors, although it appears clear that they are still required under the Sunshine Law to post proper notice of the date, time and place of those meetings, an act that they apparently failed to do.

Critics of the Missouri Plan, a process which has for years taken the judicial selection process out of the political arena and served as a model across the United States, argued that the plan was antiquated and flawed. It failed to allow the Governor to put his imprint upon the court and allowed persons who are outside the political arena a say in the nominees. Exactly, responded the plan's supporters (of which I go on record as being one). The critics seemed to ignore the fact that the Governor is allowed to name participants to the commission and therefore has input into the final selected candidates in that manner.

That discussion was still well underway when suddenly Tony Messenger, editorial page editor of the Springfield News-Leader, and a strong Sunshine Law supporter, filed a sunshine law request for certain emails coming from the Governor's office. The Governor's chief of staff sent out at least one email advocating for pro-life supporters in the state to pressure state officials to remove the Attorney General's office from serving to defend the state against the lawsuit filed by Planned Parenthood over state funding. Messenger quickly discovered that the Governor's office claimed those emails have been destroyed. In fact, apparently the policy of the Governor's office is not to save emails, although it is not clear at this point whether that is all emails coming from that office, or just certain people's emails.

Once again, the Sunshine Law became the chorus of those upset about this development. Aren't those electronic records public records? Isn't there a rule against deleting government agency emails?

Turns out the answer is yes and yes. Chapter 610, which governs records, is clear that electronic records are public records. And no state agency records are to be destroyed unless it is determined by standards set out by the State Records Commission that the record may be destroyed.

So now there are Democrats in the state upset about the Governor's office's policy. As of press time, it is unclear whether anyone will pursue this in a court.

What IS clear, however, is that a suit WAS filed against the third entity which fell into this firestorm of Sunshine Law controversy. The State Ethics Commission, lobbied a pass from the Missouri Supreme Court that it must decide what to do about candidates in the state who took unlimited contributions during the few months earlier this year while the campaign finance laws were in a flux. Rather, in the closed meeting, as the lawsuit filed by the State's Republican Party alleged, the commissioners "pre-determined every substantive policy matter which they decided that day, including the wording and/or substance of the motions that would be offered in open session..."

Amazingly enough, the day after the lawsuit was filed, the commission decided to meet in open session in a special meeting and have a “re-do.”

Clearly, the Sunshine Law will, in the coming few months, play an important role in the discussion of state policy and candidates for statewide office. The 2008 legislative session is going to be very interesting. Candidates running for public office in 2008 are sure to be asked their views on these issues. Your Missouri Press Association will be a player in the legislative arena, as we attempt to work with legislators to improve the law, perhaps with many of the changes we have long advocated.

Stay tuned. The viewing should be interesting.