Sunshine Law changes could alter how history's first draft is written

There are times when trends in the state are obvious in the calls that come into the Hotline. Perhaps this relates to new government employees taking jobs after Jan. 1. But there have been several calls in recent weeks related to whether a public body can refuse to release minutes of meetings until they are approved by the body itself at a subsequent meeting.

Those approved minutes are "official" minutes, as opposed to the initial version, which we'll call "draft" minutes. (And "draft minutes" is an all-encompassing but undefined term, ranging from a tape recording of the meeting to the notes taken by a staff person or board member during the course of the meeting in lieu of a secretary handling the task.)

Long ago, this issue of access to draft records was addressed by the Missouri Supreme Court in the case of *John Hemeyer v KRCG-TV*, decided in 1999. The television station had filed a Sunshine Law request for a videotape of the booking of a state representative, brought into the sheriff's office on his arrest for driving while intoxicated. That booking process was filmed on a camera in the sheriff's department. The station sought a copy of the tape.

The sheriff attempted to argue that the tape was not a "public record" under Missouri's Sunshine Law because it was not "retained" by his office. The tapes were regularly recycled and not permanently stored. But the station argued that the word "retained" as used in the state statute did not require permanent storage. And the Supreme Court agreed. "Although the tapes are reused, they are still retained by the Sheriff. The plain and ordinary meaning of the word 'retain' does not specify a length of time for holding or maintaining," the Court's opinion said. Because at the time the Sunshine request was made, the Sheriff's office still "retained" the tape, it was a public record, the Court held.

Further argument dealt with whether a temporary record was a "record" for purposes of state law. The Court recognized that the state record statutes, contained in Chapter 109, do have different retention policies for various kinds of records. But the Court pointed out that the term "record" as used in Chapter 610, the state Sunshine Law, doesn't distinguish between permanent and temporary records, and the Sunshine Law, in its own provisions, requires that its language be interpreted liberally and therefore a temporary record is treated no differently than a permanent record.

So, first, this case is clear that any "temporary" record in the hands of a public body which you have requested under a Sunshine Law request is to be made available, whether or not it is "approved." Back prior to Josh Hawley being elected Missouri's Attorney General, there was a Q&A in the AG's Sunshine Law handbook that made this clear, and I still have a photocopy of that page I'll be glad to send out to anyone who needs it, for what it's worth (which, granted, may be nothing).

Now, here's what troubles Sunshine Law advocates today — A number of bills are pending at the moment in the Missouri legislature that would change important provisions of the current state Sunshine Law.

Among the changes proposed in various bills are a change in the definition of "record," and, in conjunction with that, the elimination from the category of records available to the public any unofficial ("transitory") records in the hands of public governmental bodies.

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Another would change the provisions that the Sunshine Law is to be "liberally" construed to favor openness in public records. A further change would allow the state legislature and other public bodies to announce extended closures, and thereby stay any requirement to respond to open record requests until the body reopens.

And, most importantly, a suggested change would eliminate the recent success the public had before the Missouri Supreme Court, which held that public bodies must pay for the process of closing records, rather than the public when it requests records that are partly open and partly closed.

The public needs to understand that many in the state legislature are not in favor of open records principles this session. All of us need to be talking to our legislators about these issues and making sure they hear the voice of their constituents.

The public is entitled to transparency in government.

Passing these measures is not in the public's best interest.

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