Knowing the Sunshine Law and recording public meetings

In the last month, courts in Missouri have issued several opinions that will be important to you as reporters covering stories in the state. Two of those relate to the Sunshine Law, while the third relates to causes of action related to defamation claims. The first two cases are discussed below and the defamation-related case will be discussed next month.

The Missouri Supreme Court issued a 44-page decision that wrestles with the definition of "knowing" as used in our Sunshine Law. As you remember, if a public governmental body has "knowingly" violated the law, the court may issue a fine of up to $5,000 and may impose payment of the plaintiff's attorney fees on the defendant. But that term is not defined in the statute and no case has ever clearly defined that term, although a definition of "purposeful" as used in the law has existed for some time – meaning a "conscious design, intent or plan" to violate the law and doing so "with awareness of the probable consequences."

The court noted in reviewing other court holdings that not having "actual knowledge" would be less than a purposeful violation, based on earlier court holdings, and that a court would not apply "strict liability" to judge such actions, but would find that if a violation was "inadvertent," it would not be a "knowing" violation. Since "purposeful" means more than actual knowledge, it would seem, then, that a showing of "actual knowledge" would indicate of a knowing violation. Based on that standard, evidence of a negligent violation would be the lowest standard of a violation of the Sunshine Law, with "actual knowledge" of the violation a "knowing" violation and "a conscious design, intent or plan ... with awareness of the probable consequences" rising to a "purposeful" violation. A negligent violation can result in actions being overturned but only a "knowing" or "purposeful" violation would potentially result in a fine against a public body or the potential award of attorneys' fees. Thus, clearly "intent" becomes key in distinguishing a "knowing" from a "purposeful" violation.

As always, such a standard requires analysis of the facts of each situation that arises and means that your evidence of the public body's knowledge of what they were doing is very critical in making a case for the court. If you want to read the decision, it is Laut v City of Arnold, Supreme Court decision SC 95307.

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The second decision issued last month is more troubling. It involves who can record the meeting of a public governmental body. In 2015, a political activist group attempted to video record a Missouri Senate committee hearing. It was denied that right and it filed suit, alleging that this violated the provision in the law allowing for audio or video recording of open meetings.

Unfortunately, the Western Division Court of Appeals said it believed the language in the law should not be interpreted as allowing all persons to record, but only that recording was allowed and that the body had the right to ensure the activity was not disruptive. Therefore, the court concluded, if the body provided its own recording of the meeting, it need not allow anyone else the right to make its own recording.

The statute at question here says, "A public body shall allow for the recording ... of any open meeting." And it continues, "A public body may establish guidelines ... so as to minimize disruption to the meeting." It seems to me, if the law is to be interpreted liberally, that so long as a person recording an open meeting is not being "disruptive," then the public body should be barred from prohibiting the action.

There was no evidence that the entity seeking to record the meeting was being disruptive. And I can imagine, as a result of this ruling, a number of public bodies are going to decide that they are better able to record their own meetings, and that charging for a copy of that recording, is a much better route (financially, if not otherwise), than allowing local newspapers to provide their own recording mechanism to record meetings where the reporter cannot be there in person for some reason. Reporters will either have to pay for a copy of the recording or will have to go listen and/or view it at the public body's office in order to know what happened, unless the public body agrees to post the video online. In short, it's arguable that this holding is very shortsighted. Public bodies should have the right to minimize disruptions of meetings. But it takes a very narrow reading of the law to find that this right means only the public body can create a video/audio recording of that meeting. (See Progress Missouri v Mo. Senate, WD 79459.)

Missouri Press did inquire as to whether the plaintiff intended to appeal this ruling and we were preliminarily told that no appeal was planned.