Courts rule on website, open meeting lawsuits

Words 'knowing' and 'purposeful' must go

Our judges have produced two decisions this summer that will be of interest to you.

One relates to suits against someone for an Internet posting. The other relates to how public bodies post notice of potential closed meetings, and is especially interesting if your public body tends to not know whether it is going to hold a closed meeting or not before the meeting begins.

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In the first case, the facts were not at all unusual. It began with Missouri residents who bred and sold dogs while also exhibiting them at dog shows. Some competitors who did not reside in Missouri decided to write about them, creating a website that was called "Stop [name of the Missouri kennel operation]."

Needless to say, the website was not favorable, and the Missouri residents filed suit for libel.

The circuit court found that the defendants didn't have sufficient contact to the state for them to be subject to a Missouri court's jurisdiction. The plaintiffs appealed.

The appellate court found that while other states have cases on this subject, there is little Missouri case law dealing with websites and whether that constitutes sufficient contact to the state for jurisdiction purposes.

Therefore, the court looked for evidence of what it called "express aiming" or "targeting" in regard to this situation, especially for evidence as to whether the defendants "purposefully directed" their conduct to Missouri. Based on evidence, the court found that the defendants directed their website at the plaintiffs and their Missouri business operation in an effort to cause them injury in Missouri.

As a result, the court found that was a sufficient "contact" in this state to hold them under jurisdiction of the Missouri courts. And in language that borrows from another state's caselaw but that will go down in Missouri caselaw history as a classic, the court says, "... if you pick a fight in Missouri, you can reasonably expect to settle it here."

And the lesson for YOU from this case?

Jurisdiction, as we have known it for years, is changing. All of us who are publishing online need to realize we may be subject to suit in places far-flung from where we do business. That's not a happy thought for many of us.

The second case, involving the sunshine law, is also quite interesting. It's a decision by the U.S. District Court for the Eastern District of Missouri, Northern Division. What that means for lawyer purposes is that it's not an appellate decision and not significant precedent for future courts. (Although the honest truth is that when you find a decision that supports your argument, you use it for whatever it's worth, hoping that you can convince your judge to follow it!)

It involved a suit by Bill Wright, a citizen and former police officer in Salisbury. He believed his termination was a violation of his First Amendment rights, among other complaints. His lawsuit alleged that the city council failed to provide notice in its agenda for its meeting that the budget of the police department would be discussed at the meeting, that the council went into closed session without announcing an exception, and that the discussion of the budget continued into the closed meeting. (The plaintiff also alleged these violations were either purposeful or knowing, pursuant to the statutory standard.)

The court found that the city council's agenda did not include in its open meeting agenda either the budget or the issue of a reduction in force due to budget problems. At the bottom of the agenda, it noted that council "may enter into an executive session ... to discuss personnel matters, the lease or purchase or sale of real estate, or legal or privileged matters under Sections 610.021 (1), (2) and (3)."

After the regular meeting was held, the council voted to go into closed session. Its minutes did not show that a reason for the closed session was given.

The court opinion indicates that there was significant information available about the discussion in the closed meeting, including the budget and several matters regarding the officer's performance on the force. Upon returning to open session, the council continued a discussion of the budget and voted to eliminate one full-time police officer, namely the plaintiff.

A key piece of evidence was that the attorney for the city had approved the notice of the meeting and attended the closed meeting, and he knew that the city depended on him for proper legal advice.

The court found that clearly the council violated the sunshine law in going into a closed meeting without referencing the exception that permitted the meeting, both in its agenda and in its minutes in connection with the vote. This part of the decision is strong, and I would hope would be quite helpful in future cases.

On the other hand, the judge held that the councilmen had relied on the lawyer's advice, and therefore there was no "knowing" or "purposeful" violation of the law. (I call this the "Get Out of Jail Free card.")

This case is just one more reason it's time to eliminate those words from the sunshine law. They simply don't work and are a travesty to the rights of the public to enforcement of this law. It's time for strict liability, even at a significantly lower fine.