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Interesting dissent from 1998 Sunshine Law Case

Judge Wolff correctly saw need to require openness

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"The same sunshine that disinfects can also cause cancer." What's true in the real world surely isn't true with our sunshine law, is it?

I recently had occasion to re-read the 1998 Missouri Supreme Court decision on a sunshine law case involving a closed meeting under the real estate exception. The case of Spradlin v. City of Fulton was a wonderful decision in terms of emphasizing that the sunshine law is to be interpreted broadly and its exceptions interpreted narrowly in order to effectuate the purpose of the law that meetings of the public be open to the public.

But what caught my eye this time, as I read the opinion, was the concurrences and the dissents in the opinion. Often the focus in reviewing opinions is only on the majority opinion. But in this opinion, the side courses are equally as interesting as the main dish.

As a reminder, this case focused on whether a city council could meet in closed session under the real estate exemption to discuss the purchase of land by a private developer, which would then lease the golf course that would be developed there. The city was not involved in the purchase of the land, but despite that fact, the council was meeting in closed session to discuss the purchase of the land.

The majority opinion, as I indicated, held that this meeting violated the exception for "leasing, purchase or sale of real estate," as set out in Section 610.021 (2). But a secondary issue in that case was perhaps just as interesting: The parties who filed the suit sought to have the court rule that they should have their attorneys fees paid because they had successfully established a violation, albeit not a "purposeful" one. (The law at that time said that "Upon a finding by a preponderance of the evidence that a member of a public governmental body has purposely violated [the law], the member may be subject to a civil fine in the amount of not more than five hundred dollars and the court may order the payment by such member of all costs and reasonable attorneys fees to any party successfully establishing a violation of [the law.]" Since that time, the language has changed in connection with the new provisions regarding "knowing" violations.)

And so the court found itself parsing the sentence, doing sentence diagramming and generally trying to determine the correct grammatical read on language that probably was written by someone who didn't give this issue a second thought.

But, as I said, it's not the main decision that is so interesting. It's the concurrences and dissents that caught my eye on this recent read. The quote above, which we started this column with, was made by Judge John C. Holstein (who is no longer on the Missouri Supreme Court). The point he made was that the exceptions to the sunshine law are there to prevent a detrimental effect to the public body from public disclosure of matters that need to be kept secret for the financial interest of the city in spending public funds, such as in an effort to negotiate the best price for a piece of land.

Perhaps the most discouraging statement that Judge Holstein made was to suggest that the threat of an award of attorneys fees being made had no effect on whether or not bodies observed the requirements of the sunshine law. "My sense ... is that there are ample social, political and economic interests at work to ensure a steady supply of real estate dealers, land developers, local journalists, concerned citizens, and hungry lawyers to keep most city officials in compliance with the law."

Unfortunately, I don't believe that has proven to be a correct statement of the fact.

And Michael Wolff, who currently is serving as the chief justice of the Missouri Supreme Court, began by noting that he concurred that the law had been violated by the closed meeting, but dissented because he believed that the statute DID allow awarding attorneys fees when the court found a violation of the sunshine law had occurred, whether or not it was purposeful. (Justice Wolff showed a commanding understanding of the rules of grammar – his "grammar school" teacher would be proud of him!) Then he took issue with Judge Holstein's statement to suggest that there is a "relative shortage of wealthy gadflies and caring media barons," and therefore most public bodies would simply ignore the law and do the public's business privately.

In discussing this case, he noted, "The obvious fear is not that the lease price will be affected by public knowledge of the impending deal, but that public exposure would enrage the citizenry and thus kill the deal. That is precisely why we have a sunshine law."

Precisely.

In October, you'll have a chance to attend a Day at the Supreme Court. You can hear about the process cases go through there and actually get to watch an argument. You'll have a chance to meet Justice Wolff (who formerly was himself a reporter!), and the others who presently comprise our court. I encourage you to go. It will be a wonderful opportunity to get to know those who make decisions that affect all of us.

And a brief p.s. on another subject: I have decided we need a compendium of some of the sunshine law issues I see on a regular basis – a data pool of violations that occur regularly that are patently obvious to anyone who bothers to read the law. Perhaps the next time we are attempting to educate our legislators about the blatant violations that occur regularly, this would be helpful.

So I have started a blog site: www.mosunshine.blogsource.com.

All of you are my "reporters" – you provide me the resources to do this. I won't be naming names or giving credit. I'll just record. Not every violation, just the ones that make you say "duh" and slap your head. I don't expect to have much trouble finding material.

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