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Shield law bill hits wall after committee hearing

Court defers ruling on openness conflict

Accident reports may no longer contain addresses.

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This month a number of items crossed my desk that I want to share with you.

First, I remind you that we have less than two months left in the legislative session. We started this session excited and optimistic because two senators, one from each political party, had approached the association eager to look at sponsoring a reporter's shield law. Language was drafted, re-drafted and re-drafted again. Meetings were held with sponsors. Bills were filed by sponsors amid great fanfare. A hearing was held in a Senate subcommittee. Editorials were written by many of you supporting the concept of a shield law for reporters in the state.

And then silence. The bill continues to languish in committee. A senator who is also a prosecutor indicated privately in at least one conversation that he was simply opposed to this concept in general.

And, shortly thereafter, another subpoena — this time for photographs — was served on a newspaper photographer in the state. This was unrelated to the legislative process, of course, but proof once again that we desperately need a reporter's shield law in Missouri.

There is always next year....

Meanwhile, the Court of Appeals on the eastern side of the state wrestled with an interesting Sunshine Law question recently. The court was presented with a case where a city charter provision stated that in order to be effective, city council actions must be taken in a meeting open to the public. Meanwhile, the city took a vote on revoking an agreement in an otherwise properly closed meeting of the city council.

The court of appeals noted this conflict between the Sunshine Law and the city charter. It also noted that one might argue that the city charter provision fell under the exception that allows closure of records "which are protected from disclosure by law" in a negative sense, requiring that the council always act in open meetings and never in closed meetings. The court of appeals also noted that there is case law stating that a charter provision conflicting with a state statute is void.

In good court of appeals fashion, the court dodged this tough issue, finding that the parties had failed to raise this issue in the trial court and therefore it was not properly before the court of appeals for a decision. But it certainly raises questions about whether a city ordinance could fall under the exception in Section 610.021.14, which covers other laws that provide for closed records.

If the city had an ordinance that required all actions where votes are taken to be held in closed meetings, could a city claim this was a "law" requiring closure of such meetings, thereby voiding the requirements of the Sunshine Law? Probably not. No doubt a court would hold that where the two provisions of the Sunshine Law conflict, openness would prevail. (The courts have done this before in similar conflicts under the Sunshine Law.) But it was an interesting twist.

In Buchanan County recently, a conflict arose involving a state law enacted in the juvenile code a few years ago making public all records from that division in cases of the death of a child within the juvenile system. A juvenile officer announced that he intended to release their records regarding the abuse and death of a 17-month-old child, but the local prosecuting attorney argued that the court should prohibit this release while his prosecution actions were ongoing in the matter.

The circuit judge who heard the case agreed that the state agency was a "law enforcement agency" under the Sunshine Law and therefore must close its investigative records pending the end of the criminal investigation.

This is the same jurisdiction, incidentally, that several years ago ruled that the coroner is a "law enforcement agency" and that therefore the coroner's records are closed as investigative records.

Finally, the Missouri Supreme Court declined to consider a Sunshine Law case that has left reporters in the state struggling with law enforcement accident reports, and as a result, important identifying information is no longer available to the public and the media.

The Eastern District Court of Appeals recently upheld a circuit court ruling that accident reports do not need to contain addresses and phone numbers of those involved in the accidents because that information is not required to be in an incident report. All that is required in an incident report is the date, time, location, name of the victim and "immediate facts and circumstances surrounding the initial report."

As a result of this ruling, reporters are going to probably find more information blacked out of police accident reports than had previously been withheld. When the victim is Jim Smith, and there are a dozen Jim Smith's in town, it's going to be harder for reporters to clarify which local resident is in the hospital without doing a lot more digging. And this ruling is getting a lot of attention from local prosecutors, so I fully expect for reporters to see the results of this ruling quickly throughout the state.