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# Single person a public body for Sunshine Law purposes

## AG's opinion reflects court decisions

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Is a public body of one a "public governmental body" under the Sunshine Law? This question arises often in the course of newspapers dealing with school districts and law enforcement entities.

One of the earliest cases to discuss this issue dealt with the position of the St. Louis County executive, an executive position within the County of St. Louis's governmental operations. A reporter for the St. Louis Post-Dispatch wanted access to the meetings of the Annexation Study Commission, a group that was formed by the county executive. The paper argued that since the county executive is a public governmental body, it therefore followed that the group, which was appointed by the county executive and which reported back to him, also is a public governmental body. Of course, the county argued that the county executive, as a single person, could not constitute a "body" as defined by the Sunshine Law.

The court first looked at the definition in the statute, which defines a body as "an entity," and then turned to a legal dictionary to reach its conclusion. "Black's Law Dictionary defines entity as including a "person" or "governmental unit."

While a single-member body cannot have meetings, it can have records. One aspect of the Sunshine Law is that public records are open. Thus, it is not inconsistent to hold a single-member body as a governmental entity, the court concluded (in the case of MacLauchlan v. McNary).

And so, for the first time, there was precedent in Missouri supporting that a public governmental body can be a body of one in terms of civil positions.

The issue arose again just four years later, when the Post-Dispatch found itself in an argument with officials from the City of Wentzville over access to certain city records. A city official, called the city coordinator, claimed that he could not be held to be a public governmental body since he was an individual.

In this case, the court turned to the city charter to find the ordinance creating this position and outlining his duties. Further, the city tried to argue that the city coordinator had no policy-making authority but had only ministerial powers.

But the court (in Tipton v. Barton) said that the precedent set in the earlier MacLauchlan case showed that the critical factor was that the position of city coordinator was one which "clearly encompasses making determinations which affect the public" and therefore this position was a public governmental body under the definitions in the Sunshine Law.

Then, a year later, a citizen in Clay County made inroads into this area of the law on the criminal side. The citizen, a bondsman, wanted records of inmates in the Clay County Jail, but the sheriff declined to make those records available to him. The sheriff attempted to argue that changes to the definition of "public governmental body" made in 1987 took him outside the definition. However, the court (in Charlier v. Corum) disagreed, stating "It is clear that the sheriff is an administrative entity created by state statute."

All of these cases form the foundation that just recently was used by the Missouri Attorney General's Office to issue its opinion that a Missouri school district superintendent is also a "public governmental body" under the law. The Cape Girardeau school district's superintendent had formed a task force to recommend budget cuts. The question arose whether that advisory task force was subject to the Sunshine Law, meaning it would have to post notice of meetings and take minutes.

The Cape Girardeau County prosecuting attorney asked the Attorney General's Office to issue an opinion on the subject. And it is most interesting to note that the opinion, issued on Nov. 30, begins by detailing how the opinion lies on whether the superintendent is a public governmental body, because if he is — in and of himself — then the task force appointed by him also falls under the law. And the opinion cites many of the cases we have cited above in this column. "The superintendent in this instance was himself a public governmental body, who in turn appointed a second public governmental body, an advisory committee, for the purpose of making expenditure recommendations," the opinion stated. The opinion holds that the superintendent is "an administrative entity" as set out in Section 610.010 (4), and that further support for that is found in the fact that the position of superintendent is created by order of the Cape Girardeau School District.

Therefore, since the superintendent is a "body," then the task force he created also is a "body" subject to the Sunshine Law. While the opinion of Missouri's Attorney General is not binding law, as a court opinion would be in the state, it certainly may carry some weight in an argument about this subject, and, in this case, is based upon such a good foundation of case law that it should be helpful if you find yourself in an argument on this subject.

You can locate the AG opinion I cited, which was issued Nov. 30, 2004, online at ago.state.mo.us/opinions/2004/129-2004.htm.