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Two-tiered penalties in Sunshine Law

Do legislators get space in your paper?

By JEAN MANEKE
MPA Legal Consultant

(Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000; jmaneke@manekelaw.com.)

Gov. Bob Holden's signing of the amendments to the Missouri Sunshine Law are extremely exciting for the Missouri Press Association members. While the new law, which is detailed elsewhere in this magazine, covers a number of troubling issues, it is especially important in terms of the changes it makes in copy costs and regarding the penalties imposed for violations of the law.

For many years we have struggled with the wide variety of costs for copying public records. I am aware of copies that are billed at $10 regardless of how many pages comprise the record, to charges of $1 per page (common in our courts system) to charges of 25 cents a page, which are all high when one considers that private businesses such as Kinko's charges less than 10 cents per page.

Of course, the problem that we will still face is that records are, more and more frequently, being generated electronically. While the 10-cents-per-page language in the new law will benefit those just needing a few paper copies (limited to pages 9 x 14 in size), it will not solve the problem of excessive charges for duplicating electronic records. But it is probably true that most of the records requested of public governmental bodies in the state are paper copies, generally the size of a regular piece of paper, and so this bill goes far in standardizing those copying costs.

The biggest change to the law, of course, is the creation of a two-tiered penalty provision in the law. Previously, the law provided that if one violated it, there was no fine or attorney fees imposed unless the plaintiff could prove that the violation was "purposely" done.

If the plaintiff could meet that standard showing an intentional action by the public governmental body, then the court was required to fine the body or its member in an amount of not more than $500. Further, the court was permitted to assess the plaintiff's attorney fees against the defendants, if it so chose.

Under the provisions that take effect on Aug. 28 this year, there are separate provisions for "knowing" violations and for "purposely" violating the law.

If a court finds there was a knowing violation of the provisions of the sunshine law, the new law provides that the court must assess a fine of up to $1,000 per violation, and the court may further choose to order the defendants to pay the plaintiff's attorney fees.

In deciding the proper fine, the courts take into consideration the size of the jurisdiction, the seriousness of the offense and whether the body has previously violated the law.

If a court finds there was a purposeful violation, the mandatory fine escalates from nothing to $5,000, and the court is required to order the payment of the attorney fees.

Of course, the issue will be whether a violation is a knowing violation or a purposeful violation. The new law does not define those terms. "Purposely" has been previously defined in the case of Spradlin v. City of Fulton. The Missouri Supreme Court, in that case, defined the word as "intentionally; designedly; consciously; knowingly" and held "an act is done 'purposely' if it is willed, is product of conscious design, intent or plan that is to be done, and is done with awareness of probable consequences..."

Purpose is defined as "that which one sets before him to accomplish or attain; an end, intention, or aim, object, plan, project. (The) term is synonymous with ends sought, an object to be attained, an intention, etc."

I t will be up to the courts to now define the word "knowing." Legislators and members of MPA have strug-

gled to define that term. There is current Missouri case law defining knowing that uses words similar to the words used in the definition of purposely above.

However, it would seem there is room to argue, in attempting to define this new term, that one begins with a premise that public officials are deemed to know the law that applies to them.

There is substantial case law in the state holding that public officials, whose duties are derived from statutes, are "conclusively presumed to know the law." If they know the law, one can then assume that they also intended to do the actions they did and that they intended the results that flowed from those actions.

If one of the results of those actions is a holding by the court that their actions violated the law, then it would seem that you may have the basis for arguing that you have a knowing violation.

Okay, maybe only lawyers can appreciate the analysis in that last paragraph!

But the point is that there is, one hopes, a basis to find a violation of the sunshine law under a lesser standard and a potential to make this a serious issue for public governmental bodies.

Having some teeth in the law will be beneficial for the media and the public as well.

Do legislators get space?

Finally, before I close, let me share with you one issue that arose over and over in the legislative session. Legislators believe you, as local newspapers, are less willing to print their positions on matters than you are the positions of citizens, particularly in regard to situations that arise concerning the lawmakers.

We're not talking the canned "legislative reports" here that are generated on a weekly basis. We're talking about letters to the editor and similar communications that are generated by politicians when they feel their actions or positions are being misinterpreted. Often these are sent to the papers as letters to the editor.

Legislators argue that these missives receive less consideration than other letters to the editor that you receive.

I raise this not to say that their allegation is true or false. Rather, I just want to make the point that some legislators believe they are treated less fairly than the public. Certainly, it should be our goal to treat everyone fairly and equally and to give all readers equal access to the forum our local paper provides.