

**MISSOURI MUNICIPAL LEAGUE**

**2012 ANNUAL CONFERENCE**

***THE SUNSHINE LAW  
CHAPTER 610 RSMO  
GOVERNMENTAL BODIES & RECORDS LAW***

**PRESENTED BY**

**PAUL V. ROST**

**CUNNINGHAM, VOGEL & ROST, P.C.**

*legal counselors to local government*

333 S. Kirkwood Road, Suite 300

St. Louis, Missouri 63122

314.446.0800

*paul@municipalfirm.com*

*www.municipalfirm.com*

**OSAGE BEACH, MISSOURI**

**SEPTEMBER 16-19, 2012**

## THE SUNSHINE LAW

### CHAPTER 610 RSMO: GOVERNMENTAL BODIES AND RECORDS LAW

#### **History and Purpose**

- Originally enacted in 1973.
- The “Sunshine Law” opens governmental records, meetings, and votes for public access.
- Also allows records, meetings, and votes to be “closed” in order to keep them confidential.
- All public governmental bodies are subject to this law.
- Liberally construed.

#### **“Public Meetings”**

- Aimed at “meetings” – should be public
- To have a *meeting*, generally the focus is on whether a **QUORUM** of the governmental body is present – A quorum is one more than half of the members.
- Remember, though, that the Sunshine Law liberally construed applies also to less than a quorum where the entity is attempting to circumvent the law by having separate meetings of less than a quorum but which involve a quorum where the same public business is discussed.

#### **Section 610.015. Votes, how taken.**

- “Except as provided in section 610.021, rules authorized pursuant to Article III of the Missouri Constitution and as otherwise provided by law, all votes shall be recorded, and if a roll call is taken, as to attribute each “yea” and “nay” vote, or abstinence if not voting, to the name of the individual member of the public governmental body. Any votes taken during a closed meeting shall be taken by roll call. All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication. All votes taken by roll call in meetings of a public governmental body consisting of members who are all elected, except for the Missouri general assembly and any committee established by a public governmental body, shall be cast by members of the public governmental body who are physically present and in attendance at the meeting. When it is necessary to take votes by roll call in a meeting of the public governmental body, due to an emergency of the public body, with a quorum of the members of the public body physically present and in attendance and less than a quorum of the members of the public governmental body participating via telephone, facsimile, Internet, or any other voice or electronic means, the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. Where such emergency exists, the votes taken shall be regarded as if all members were physically present and in attendance at the meeting.”

- *Exceptions:* Missouri general assembly and any committee established by a public governmental body.

**Section 610.015. Votes, how taken.**

“... When it is necessary to take votes by roll call in a meeting ..., due to an emergency ..., with a quorum of the members ... physically present and in attendance and less than a quorum of the members ... participating via telephone, facsimile, Internet, or any other voice or electronic means ...”

- Can vote while not physically in attendance AS LONG AS it is not a vote that requires a roll call;
- *e.g.*, ordinances; votes to go into closed session; votes in closed session, or other roll call votes.

**Section 610.015. Votes, how taken.**

“... the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. **Where such emergency exists, the votes taken shall be regarded as if all members were physically present and in attendance at the meeting.**”

**Sections 610.022(1) & 610.022(2): Closed Meetings, Procedure and Limitation**

- Section 610.022. *Closed meetings, procedure and limitation — public records presumed open unless exempt.*
  1. Except as set forth in subsection 2 of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this chapter shall be announced publicly at an open meeting of the governmental body and entered into the minutes.
  2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.
- To close a meeting an affirmative vote by the majority of the elected governmental body is required. A record of each members vote and the reason for closure must be included in the open meeting’s minutes.

**Section 610.010. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms mean:

- (6) “**Public record**”, any record:
  - written or electronically stored
  - retained by or of any public governmental body
  - including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds
    - including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body
- (6) “**Public record**” does *not* include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting.
- Any document or study prepared for a public governmental body by a consultant or other professional service ... shall be retained by the public governmental body in the same manner as any other public record;

**Section 610.025. Electronic transmission of messages relating to public business, requirements.**

- Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format.
- Only applies to “messages sent to 2 or more members of that body so that, when counting the sender, a majority of the body's members are copied. Any such message received by the custodian or at the member's office computer shall be a public record subject to the exceptions of section 610.021.”

**Under Sunshine, a compilation of information must already exist in public records – you do not have to create it.**

- You do not have to answer questions
- You do not have to “certify” records

## Personnel Information

- **Individually identifiable** personnel records, performance ratings, or records pertaining to employees *or* applicants for employment. Section 610.021(13)
  - *Only exceptions:*
    - Name
    - Position
    - Salary, and
    - Length of service
      - Section 610.021(13) RSMo.
- Elected officials are not “employees” –*AG Opinion No. 77-92* (For purposes of section 610.021(3) and (13), an elected mayor and elected city council members are not employees of a city)
- Section 610.021(3) does not authorize a city’s governing body to close a meeting when considering appointments of *volunteers* to citizen boards. *AG Opinion No. 184-89*

## Other closed records

- **Section 610.021(14) –Records which are protected from disclosure by law:**
  - **HIV testing records** - Section 191.656
  - **Tax returns** - Section 32.057
  - **Qualification to carry a concealed weapon** - Section 571.101.9
  - **Many juvenile records** - Section 211.321
  - **Mental health treatment records** - Section 630.140
  - **Genetic information** Section 375.1309
  - **Adoption records** - Section 453.120 and Section 453.121

Records closed under **federal law**; *e.g.*, educational agencies or institutions may lose federal funding if they release education records or personally identifiable information of students without their parents' written consent (*Family Educational Rights and Privacy Act of 1974*, 20 U.S.C. 1232g).

- **Social Security Numbers**

- Should you redact SSNs?
  - Section 610.035 RSMo. states that no “state entity” shall publicly disclose any SSN unless permitted by law or authorized by the holder of that SSN...
- A city is not a “state entity” as defined by the statute
- Section 610.021(14) Records which are protected from disclosure by law
- **42 USC 405 (c)(2)(c)(viii)(I)** states: Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

### **Right to Speak**

- Sunshine law has no effect on and creates no right to speak at a public meeting

### **Tentative agenda - 24 Hours**

- Section 610.020.2 – Notice “shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed”
- Section 89.050 – 15 day hearing notice requirement
- Section 67.2725 – 4 days’ notice for meetings where eminent domain or taxes are discussed

#### *Exception-*

- Section 610.020.4 allows meetings on *less than* 24-hours’ notice for “good cause”
- But this will not work for the zoning, eminent domain or tax issues set forth above

---

### **NOTICE & DISCLAIMER**

**These seminar materials and the related presentation are intended for discussion purposes and to provide those attending the seminar with useful ideas and guidance on the topics and issues covered. The materials and the comments of the presenters do not constitute, and should not be treated as, legal advice regarding the use of any particular technique, device or suggestion, or its legal advantages or disadvantages. Although we have made every effort to ensure the accuracy of these materials and the presentation, neither the attorney presenting this seminar nor Cunningham, Vogel & Rost, P.C. assumes any responsibility for any individual’s reliance on the written or oral information presented.**