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**Marshfield city attorney rebuts Sunshine Law breach**

**By Linda Greer**  
*linda.greer@marshfieldmail.com*

Marshfield City Attorney David "Chuck" Replogle showed the Board of Aldermen examples of case law Thursday, Jan. 14, that he said prove the city legally closed a meeting three weeks earlier.

Replogle began by saying he "took exception" to how the topic of "Sunshine Law violations" was placed on the agenda, as he did not ask to speak about it.

"I asked to put it on here," Alderwoman Barbara Carroll said.

Carroll said the board violated the state's opening meeting laws when Mayor C.R. "Bob" Clark called for a vote to close the Tuesday, Dec. 22, meeting to discuss litigation although the posted agenda did not include a closed session.

"Did you read the statute?" Replogle asked Carroll.

Replogle included in the board packet a copy of section 610.021 of the state statute, having underlined that the city may close a meeting to discuss "any confidential or privileged communications between a public governmental body or its representatives and its attorneys."

Carroll said, yes, she read the statute, and she had called Richard Sheets, deputy director of the Missouri Municipal League, about the matter. Carroll said Sheets agreed with her that the board violated the Sunshine Law.

"Our agenda closes Monday at noon. Staff has two-and-a-half days to research to see if we need to go into closed session," Carroll said.

**Liquor license**

At the Dec. 22 meeting, just before the board was to discuss a liquor license application for Smokin' Guns pawn and tobacco shop on Spur Drive, Replogle passed a note to Clark, asking to close the meeting.

Carroll said she learned

from Sheets that even though she voted against going into closed session, she would also be culpable in a

lawsuit because she did not state publicly why she opposed closing the meeting.

"I am just as liable," Carroll said.

"I very much disagree," Replogle said, adding that he spoke with a Municipal League attorney about the issue.

The statute requires cities to give 24 hours' notice "unless it is impossible or impractical" to do so, Replogle said.

"What we went into closed session for was incredibly important," Replogle said of the information he received 20 minutes before asking Clark to close the meeting.

Replogle said in an earlier interview that Marshfield Police Chief Doug Fannen learned facts during the meeting that were pertinent for the board to hear before acting on Smokin' Guns owner Frank Rushin's application to sell packaged liquor.

Open discussion of Rushin's application was listed on the agenda, but a closed session was not.

"I totally disagree with you," Carroll told Replogle. "We shouldn't have gone into closed session."

"Do you think we should've discussed it in open session?" Replogle asked.

Carroll said the city is not the only body to approve a liquor license application, meaning that the state could have disapproved it if there was reason to. Carroll added that Sheets told her it was helpful legally that the city approved Rushin's application.

Replogle said again that he does not think the city violated the law.

"I don't think I'm wrong," Replogle said. "If I am, I'll accept total responsibility."

Alderman Tommy Owen asked Carroll what she wanted to achieve by discussing the matter.

Carroll said she is concerned about the board's liability for going into closed session without proper notice.

"The city has already paid out for Sunshine Law violations," Carroll said.

"One," Replogle said.

"I just think we should be careful," Carroll said.

"We are," Replogle said.

The matter concluded with Replogle saying that he and Carroll "agree to disagree."

**Pending complaints**

Marshfield residents Bill and wife Neva Schroder and Steven Gullett filed complaints with the Missouri Attorney General in separate matters against the city for alleged Sunshine Law violations last year.

The Schroders and Gullett claim they were denied access to public records after requesting information from the city.

Neva Schroder, a Tree City USA volunteer, said she asked in December 2008 for tree-planting costs, for which the city charged her \$112 for research time even though Assistant City Administrator Deana Fishel had presented the tree-cost information to the city two weeks earlier.

Schroder said it took the city more than three months to gather the receipts and financial calculations, and then failed to provide all the information she sought.

Gullett, a former Human Rights Advisory Committee vice chairman, said he was "thrown out of City Hall" for asking for committee minutes of a meeting he did not attend almost two years ago. Gullett said his charge of \$25 for copies also was excessive.

Both cases are pending.

**Previous cases**

In mid-2008, the city waived a \$55 research fee for an open records request by Farmington attorney Tom Burcham, a former state representative who sought city sales tax information dating to 1972.

Burcham filed a \$25,000

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lawsuit, plus costs, against Marshfield when the city failed to respond to the requests promptly, later settling out of court in February 2009 for \$5,000.

#### **Mayor apologizes**

In March 2009, Gullett asked the Board of Aldermen to impeach Clark for four alleged violations over the previous year, including the above incident and for not allowing Gullett to take pictures at a public meeting.

The board took no action to impeach Clark. Replogle was tasked with gathering information, later giving his opinion that the mayor was not in a position to be impeached.

Two months later, Clark gave Gullett an apology letter regarding the January photography incident. During the Jan. 14, 2009, Parks and Recreation Advisory Committee meeting, Clark had stopped Gullett from taking pictures of Gullett's teenage daughter as she

asked the committee to support a tree-planting project.

"At the time, legal counsel was not present and I was acting under the mistaken belief that it was lawful to prohibit such photographs at public meetings," Clark wrote in the May 2009 letter. "The following day, I discussed the matter with our city attorney and city administrator, and we determined that my actions were in error."

Gullett said City Administrator Dan McMillan also paid him \$1 to settle the matter, although the letter does not indicate Gullett was paid anything.

"I felt a great victory when the mayor handed me a signed letter that says he did violate my rights," Gullett said in a later interview. "It was never about the money. It's the moral principle."

Clark concluded in the letter that Gullett would be allowed to photograph meet-

ings so long as he did not disrupt them.

"As mayor, you can rest assured that it is of utmost importance to me that our citizens' rights are preserved," Clark wrote.

"What I've always wanted here was for our city officials to do the right thing," Gullett said Friday, Jan. 15.

Carroll said Tuesday, Jan. 19, that she had never seen a copy of the letter until Jan. 15, although her name is printed on the bottom of the letter, along with the three other aldermen's names.

"I am offended by that," Carroll said, adding that the letter should have at least been included in a board packet, if not first discussed with the board.

#### **Next meeting**

The Marshfield Board of Aldermen meets again at 6 p.m. Thursday, Jan. 28, at City Hall. To view an agenda or meeting minutes, visit [www.marshfieldmo.gov](http://www.marshfieldmo.gov).

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