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114-241-800  
**AG: No  
criminal  
charges  
against  
Purcell**

**MORLEY SWINGLE** called for an attorney general probe after learning the county commissioner had secretly recorded a closed meeting

**By PEG McNICHOL**  
SOUTHEAST MISSOURIAN

A three-sentence letter from the Missouri Attorney General office says there will be no criminal charges filed against Jay Purcell for secretly taping a closed Cape Girardeau County meeting last year.



**Jay Purcell**

"This office declines to file any criminal charges in the matter," assistant attorney general Susan D. Boresi wrote

in the letter, dated Friday, to Associate Circuit Judge Gary Kamp.

The state investigation centered on Purcell, Cape Girardeau County 2nd District commissioner, and a recording he made during the closed portion of an April 17 meeting.

Cape Girardeau County Prosecuting Attorney Morley Swingle called for an attorney general investigation in May — a request granted by Kamp — after learning of Purcell's recording. Under Missouri's Open Meetings and Records Act, nicknamed the

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# Purcell

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Sunshine Law, recording a properly closed meeting is punishable by one to 15 days in jail and a fine up to \$300.

Swingle could not pursue a criminal investigation as county prosecutor because he also has a contract with the county commission to be its legal counsel and participated in the April 17 closed session.

Swingle said he received a copy of the attorney general's letter by fax Monday afternoon and forwarded it to Purcell's attorney, J.P. Clubb.

The letter, Swingle said, simply means the attorney general's office "won't file any criminal charges" and that the decision cannot be appealed.

"I always respect the decision a prosecutor makes," Swingle said.

Purcell said he was pleased by the attorney general's letter and that criminal prosecution was Swingle's idea and a separate action from the lawsuit, which he said has already had a positive effect.

"At the end of the day, the commission will be better for it and so will the citizens," Purcell said. "A year ago, you would not have heard Presiding Commissioner Gerald Jones apologizing for not having something on the agenda. It's painfully obvious we need to do a lot better. I think we'll get there."

Clubb said the letter does not change an appeal currently underway stemming from a lawsuit Purcell filed in May, accusing the county commission of violating the Sunshine Law during the closed April 17 meeting.

Purcell made the motion to close the session, to discuss easements. Presiding Commissioner Jones amended the wording to include personnel matters. Purcell, Jones and then-1st District commissioner Larry Bock unanimously agreed to close the meeting. They discussed, among other things, a controversial road easement and confronted County Auditor David Ludwig over the use of his county computer.

Associate Circuit Judge Stephen Mitchell ruled in October that though the discussion strayed off topic, it did not constitute a purposeful or knowing violation of the Sunshine Law. Courts can issue fines and other penalties to government bodies or their individual members for Sunshine Law violations, ranging from \$1,000 for knowing violations and possible court costs for \$5,000 and court costs for purposeful violations. Any actions taken during an improperly closed meeting can be voided by the court.

The county rejected a May 22 settlement offer, which required acknowledging the commission broke the law and would agree to Sunshine Law training.

Clubb said it's too late to drop the suit because an appeals court decision "will have binding precedent, not just on the county commission, but potentially every government body in the state."

The case goes before the Eastern District Court of Appeals on April 29 in Farmington, Mo.

No one from the attorney general's office was available for comment on this story.

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