



Prosecuting attorney ⁸⁰⁰⁻²⁴¹sues commissioners

Alleged violations of Sunshine Law prompt suit

by Regina Wynn

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Ozark County Prosecuting Attorney Tom Cline has filed a lawsuit against Ozark County commissioners David Morrison, T.J. Lewis and Greg Donley alleging the commissioners knowingly violated Missouri's Sunshine Law. Cline filed the suit April 22, 2010, in the Circuit Court of Ozark County.

order the commissioners to refrain from further unpublished meetings and secret votes; and to impose any justifiable sanctions the court deems appropriate. Cline alleges that the commissioners entered into a lease agreement with Ozark Action without proper public notice and posting of a tentative agenda, a violation of the Sunshine Law.

The lawsuit alleges that the commissioners failed to post agendas of public meetings, as required by the law, and conducted official business during these meetings, including the purchase of the former Viva Tequila building off the Gainesville square and the subsequent leasing of part of the building to Ozark Action, Inc.

In August 2009, the commissioners approved the purchase of the former Viva Tequila restaurant at 105 and 107 East Third Street in Gainesville from owner Bill Oliver for \$116,700. The purchase was not listed on a posted agenda. The building was to be used as a courthouse annex "for the benefit of the general public and public officials," according to the filed lawsuit.

The Missouri Sunshine Law requires that a governmental body such as the county commissioners give, at least 24 hours' notice of a meeting, excluding holidays and weekends. The law also requires that a tentative agenda be posted prominently in the office of the body holding the meeting or in the building where the meeting will be held.

Count 1 alleges that the commissioners entered into an agreement prior to March 8, 2010, to provide the majority of the building to Ozark Action.

On Aug. 20, 2009, Morrison, Lewis and Donley, other elected officials, members of the public, and a representative of the *Ozark County Times* attended a meeting conducted by a member of the Missouri Attorney General's office. All who attended the meeting were told of the requirements of the Sunshine Law and given copies of the Sunshine Law handbook.

On March 8, 2010, Ozark Action released a request for bids to conduct work inside the structure. The bid was published in the *Ozark County Times* on March 17, 2010, and stated that the Ozark Action office would be relocating from its current location at 18 Court Square to the new office space. Bids were to be submitted by 4:30 p.m. March 31.

Cline says that there were no published agendas or minutes prior to March 31, reflecting a decision or discussion about leasing the county building to Ozark Action. However, on April 5, Morrison signed over a lease of the county property to Ozark Action. The

Count 1

In count 1 of the lawsuit, Cline asks the court to rescind a contract between the commissioners and Ozark Action; to

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signed lease is from April 1, 2010, to March 31, 2011. Conditions of the lease include the provision that Ozark Action will pay the costs of improvements in lieu of the first year's rent. Ozark Action will pay \$300 monthly rent beginning April 1, 2011. County commissioner Dave Morrison is the president of the board of Ozark Action.

Action on the lease agreement was listed on the April 5 agenda. The April 5 meeting minutes state that the commissioners agreed to sign the lease agreement with Ozark Action Inc. since they felt it was no longer necessary for the county to have two offices in the annex. The reason given for this was that the commissioners had decided during a 2009 meeting not to split the recorder and circuit clerk positions.

Cline alleges that "the conduct of the defendants with regards to Ozark County's public property is in direct violation" of the Sunshine Law "and apparently was done in secrecy without public oversight or scrutiny." He further states that the commissioners' actions concerning the county annex being rented to a non-governmental group "is against public policy and serves to exclude elected officials and staff from the use of publically owned property."

Count 2

Count 2 charges the commissioners with 74 violations of the Sunshine Law in the 10-month period from June 2009 through March 2010. Cline states in the lawsuit, "the defendants have consistently and systematically violated the provisions" of the Sunshine Law.

Beginning in June 2009, the suit alleges there were no items listed on any of the posted agendas for the nine open meetings held that month. Out of eight meetings held in July 2009, only the July 27 meeting listed a tentative agenda. The other seven agendas were blank.

In August 2009, the commissioners posted blank agendas for

seven of the eight open meetings they held. Only Aug. 27 meeting listed a tentative agenda. Seven open meetings were held in September 2009, all with blank agendas. Of the nine open meetings held in October 2009, only the Oct. 22 meeting listed a tentative agenda. The other eight agendas were blank.

Eight open meetings were held in November. Only the Nov. 19 meeting listed an agenda. The agenda listed a hearing to determine whether to separate the offices of circuit clerk and recorder. The suit alleges that other county business was conducted on that date and was not listed on the posted agenda. Seven of the

November agendas were blank.

In December 2009, the commissioners held eight open meetings. The Dec. 14 and Dec. 21 meetings listed tentative agendas. Six of the month's agendas were blank.

Eight open meetings were held in January 2010. Five meetings were held with blank agendas. The Jan. 7, Jan. 14 and Jan. 28 meetings listed tentative agendas.

Of the five open meetings held in February, the Feb. 11 meeting was the only one to list a tentative agenda. The other four meeting agendas were blank.

Three meetings in March 2010 listed tentative agendas: March 15, March 18 and March 22. Six other meetings were held, all with blank agendas.

Cline alleges "the defendants knew or should have known of the requirements of the Sunshine Law, and did know of those requirements after the Missouri Attorney General's office provided them with instructions during August 2009."

Reasons behind the lawsuit?

The commissioners are not at all happy with Cline's lawsuit against them.

"The commissioners are damn mad," said Morrison, presiding commissioner. "Prosecutor Tom Cline has chosen to file a frivolous lawsuit against the county commissioners apparently because he didn't get the office he wanted in the building the commissioners purchased last year for

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a courthouse annex. Mr. Cline has insinuated that as the president of Ozark Action I have somehow manipulated the commission into an agreement to rent the building to a community action agency. The only thing that being on the OAI board (did) was to let me know that Ozark County needed space to offer GED classes to 10 to 12 clients that currently have to drive to Ava or West Plains for their classes.

"In my opinion, I would much rather help those that most need the help and are trying to better themselves than to provide a plush office for the prosecuting attorney. There are two offices available in this building and Mr. Cline will be able to use side B instead of side A."

Lewis and Donley say they agree with Morrison and feel Cline has filed the lawsuit because he was angered at not getting the office space he wanted.

Cline met with Donley, western district commissioner, and Lewis, eastern district commissioner, at Donley's request on April 12.

During that meeting Donley said he asked Cline why he was investigating the commissioners and threatening to file a lawsuit. "He said that it was his job,"

Donley said. "I then asked him if he was doing this because he was mad at us for not giving him the office building he wanted. He said, 'No you can do whatever you need to with the office buildings.'" Donley said.

"T.J. Lewis then asked him if the previous administration had done its job correctly. Cline said he didn't know. So that leads me to believe Cline was not doing his job then and the only reason he is doing it now is because he did not get what he wanted," Donley said.

"He said it was because we were not posting agendas," Lewis added. "I said we can take care of that and that we would post them from now on. I thought the issue was taken care of then. I thought that was the way it should have been taken care of, by verbal agreement, not in court."

"My question is, Why is there so much concern now?" Donley said. "If Cline was doing his job,

he would have come to our office and talked to us about his concerns on this subject. Instead, Cline sends a letter to the clerk's office requesting information on meeting minutes, posted agendas,

and the five new vehicles purchased – which is not true. The county purchased only two trucks, from Bob Guffey Chevrolet right here in Gainesville, on a state bid price."

"I don't think that Tom is doing this for the right reason," Lewis said. "I think he's filing this because he didn't get the office he wanted. He wanted the larger office."

"He's been prosecuting attorney for over 15 years, and this is the first time he's said anything," said Morrison. "So what does that tell you? He filed this suit after the business with the office space. It's pretty plain to me why he filed this suit."

"We've always tried to get along with him," Morrison continued. "I can't think why he's going to this length unless it's because he wanted side A of the building and we gave him side B. It's still a heck of a lot more office space than he has now, and it's puzzling to us why he went to such lengths to sue us over what appears to be a trivial matter."

"No elected official, whether prosecuting attorney or other office holder, should have to compete with a non-governmental agency for office space that is paid for by taxpayer dollars," Cline said. "This is not about who gets what office. It's about the issues of the Sunshine Law. I'm bringing it up now because it came to my attention at this point in time."

Will previous decisions be nullified?

When asked if he knew the commissioners were violating the Sunshine Law before the lawsuit was filed, Morrison admitted he did know there were violations.

"Yes, I knew," Morrison said. "We hadn't been posting agendas like we should have been, but this is the way we've been carrying on for years. We had been negligent, but often we meet and we don't have official business to conduct."

"Do we have to go back and

start nullifying all decisions and expenditures we have made with no posted agenda? We approved Tom's request for an assistant prosecuting attorney during a meeting with no agenda – does that mean we should go and nullify that?"

"I'm not saying we didn't drop the ball, but I didn't think it needed to go this far," said Lewis.

Changes being made

Because of the lawsuit, the commissioners are instituting several changes in the way they have been conducting their meetings.

"I have informed Kelly (Maddox, county clerk) that she will be taking notes during our meetings," Morrison said. "I don't think the public is aware, but the commissioners, and me in particular, have been keeping the minutes for years. But it really is the county clerk's responsibility to take the minutes, so she will be doing that from now on."

Morrison also said that no official county business or decisions will be conducted except what is on the agenda. The commissioners hold open meetings between 9 a.m. and noon on Mondays and Wednesdays.

"The public needs to know that on account of this lawsuit they may not be getting an answer by just coming in and asking us,"

Morrison said. "We have just operated this office as an informal governmental body. It's the way the commissioners' office has operated forever. This is a rural community, and people come in and talk to us if they have a problem."

"We have an open-door policy," Donley said. "If they have a problem or question, they can come in and ask, and we try to take care of it right away."

"We never tried to act as if we were a bigger community," said Morrison. "This is the way things

have always been done. We've been audited before and the auditors have never had any complaint about the way we conducted business. Plus we don't conduct official business every time we meet because there may be many times we don't have any official business to conduct. You



could take this Sunshine Law to the extreme and say we can't do anything, take care of anything, no matter how small, without posting an agenda.")

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