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Appeals court rules Purcell cannot sue Cape Commission

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Jay Purcell has lost his appeal in a lawsuit against the Cape Girardeau County Commission for Sunshine Law violations.

That is the opinion of the Missouri Eastern District Court of Appeals, which issued an 11-page ruling in the case on Tuesday morning.

Purcell, the county's second district commissioner, filed the lawsuit last year in May, claiming the commission broke the Sunshine Law -- formally known as the Missouri Open Meetings and Records Act -- during an April 17, 2008 closed meeting.

In October, Cape Girardeau Circuit Court Judge Stephen Mitchell ruled against Purcell, saying the commission didn't intend to break the law while discussing, behind closed doors, real estate issues and confronting the county auditor for misusing

his county computer. Purcell appealed Mitchell's ruling.

The Eastern District judges did not address any of the Sunshine Law issues. Instead, the court used a 1920 Missouri Supreme Court ruling to support its opinion that the county commission was not a legal entity and therefore could not be sued. Purcell's case was decided by Eastern District Court Chief Justice Nannette A. Baker, Judge Kurt S. Odenwald and Judge Patricia L. Cohen, who have allowed for the case to be started completely over, if each commissioner is named individually in a suit. Purcell also has the option to ask Missouri's Supreme Court to hear the case.

Tom Ludwig, the Jackson attorney who represented the commission said the appeals court made a "limited decision," which he said remains a victory for the county. He said Tuesday's opinion is "an acknowl-

edgement by the court of what we've been saying all along -- this is a case of a public official, who, in spite of his denials all along, that strictly sued himself."

Jean Maneke, the Kansas City attorney who filed a brief on behalf of the Missouri Press Association over concerns that the case could weaken the Sunshine Law, said the court ruled on "the smallest possible issue in the case." Maneke said the ruling "leaves the case to continue and be heard another day, which ought to concern the commissioners."

J.P. Clubb, Purcell's attorney, said he was disappointed in the court's opinion, because it did not address Sunshine Law issues raised.

"We're disappointed that we didn't get a ruling on the merits of the case and that the court decided this matter on a technicality," Clubb said, adding that he and Purcell will "be talking over the next several days about what our options are."

