



Perry County
Republic
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Perryville, MO
Circ. 5085
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-800-114
Judges hears arguments in Sunshine suit

Attorneys for the city and the local paper argued their cases in court Friday during a hearing for a lawsuit involving the Sunshine Law.

But “arguing” may be misleading in this case, because the two sides agreed on nearly every issue at hand.

The case, *The City of Perryville v. The Republic-Monitor*, is a request for a declaratory judgment, which means the city is asking Circuit Court Judge Benjamin Lewis to decide if a public records request by the newspaper means the city should turn over a job evaluation report for former city administrator Bill Lewis.

Jean Maneke of Kansas City represented the newspaper at the hearing, while city attorney Tom Ludwig spoke for the city.

After a May 5 hearing
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Sunshine case heard by Judge Lewis

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during which Bill Lewis's attorney Robert Sweeney presented the evaluation as a public exhibit, publisher Kate Martin of *The Republic-Monitor* made an official request for the document and four other exhibits under the provisions of Missouri's open record law, called the Sunshine Law.

The city immediately released the other four documents, but filed the lawsuit asking the court to decide if the job evaluation report was an open record.

"According to city policy, employment records are a closed record," Ludwig told Judge Lewis. "Former city administrator Bill Lewis was involved in a personnel process that allows a city administrator to have a public hearing, what we term a 'name-clearing hearing' when his attorney offered a photocopy of this evaluation report to the board as a public exhibit. It was left with the city clerk."

Ludwig told the court that all attempts to contact Bill Lewis through his attorney have failed, and noted that the attorney or Lewis himself had given a copy of the evaluation to at least one other media outlet.

"The night of the hearing, Lewis provided a copy of the evaluation to a reporter from The Southeast Missourian newspaper in Cape Girardeau, according to a report in that newspaper," Ludwig said.

"It's bizarre that in six weeks during which the court adjourned Mr. Lewis to this case that they have done nothing to respond.

"We feel that even though this document was entered as a public exhibit, it doesn't change the status that for us this is still an employee's record.

"The fact that we're arguing this may be moot or silly at this point, because other media have been given the document while *The Republic-Monitor* has not."

Maneke said that the original copy of the document which is included in Bill Lewis's employment file at city hall is a closed record.

"But we have two separate physical documents here," she told the court. "The fact that the two separate documents are the same record doesn't matter. The one filed as a public exhibit is a public record."

Judge Lewis took the matter under advisement, noting that it may be two or three weeks before his decision is final.

Maneke then asked Judge Lewis to hear a motion about attorney's fees, stating that a prior case decision stated that any governmental body that sued someone seeking a public record was responsible for attorney's fees.

Ludwig was allowed to respond.

"It's a terrible shame that any of us had to incur legal fees for this matter," he said. "The city, the newspaper and the court have made every effort to expediate this matter, and we have all acted in good faith.

"However, Mr. Lewis and his attorney have made no response, which has run up the attorney fees for all of us.

"I suggest that since the city acted in good faith and in fact in the only manner it could have, that the court finds that the fees should be paid by the co-defendant Mr. Lewis.

"This all could have been avoided," Ludwig said. "This isn't the fault of the newspaper or the city."

Kate Martin, publisher of *The Republic-Monitor*, said that she has also requested the document from Bill Lewis's attorney.

"In a June 23 e-mail, Mr. Sweeney offered the document to me and said I'd have it as quickly as possible," Martin said. "We're still waiting.

"However, the larger issue remains and that is whether a governmental body should release a document that was presented as a public exhibit during a public hearing.

"I believe that the law says they should and I'm hoping the judge agrees."

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