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800-114
Purcell asks appeals court to reconsider dismissal of Sunshine suit
HIS ATTORNEY said the chance of success is slim

By PEG McNICHO
 SOUTHEAST MISSOURIAN

Commissioner Jay Purcell is appealing the recent defeat of his Sunshine Law suit against the Cape Girardeau County Commission.

On Tuesday, Purcell's attorney, J.P. Clubb, filed two legal briefs with the Missouri Court of Appeals' Eastern District. One asks the court to reconsider its July 21 decision to dismiss the lawsuit. Clubb said the court's decision "marks the first time a Missouri court has ruled that county commissions may not be sued as enti-

ties and it makes new law." He also writes that the court chose a 1920 Missouri Supreme Court case over more current state laws, particularly Missouri's Open Meetings and Records Act, nicknamed the Sunshine Law.

The second legal brief assumes the first request will be denied and asks the court to transfer the case to the Missouri Supreme Court.

Jean Maneke, attorney for the Missouri Press Association, called the filing interesting but not unexpected.

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"Often a party unhappy with a court of appeals decision believes they have little choice but to take it on up to the [Missouri] Supreme Court," she wrote in an e-mail to the Southeast Missourian. "It requires little additional investment of time and it clears out any doubts about where you go after that — you don't wonder if things would have been different had you not filed the request for rehearing/transfer."

She, Clubb and Ivan Schrader, attorney for the Missouri Association of Counties, all said the case had a slim chance of moving forward.

"It's always very slim," Maneke wrote, because the Supreme Court takes few of the cases presented to it and because it's unlikely the court of appeals will overturn its opinion.

After the case was scheduled for an appeal earlier this year, Maneke filed a legal brief on behalf of the press association. That legal brief asked the court to avoid weakening the Sunshine Law. Maneke said Tuesday it would not be "appropriate for MPA to interject anything at this point. Our concern is more relative to the interpretation of the significant issues of the law, not on the specific procedural issues."

Purcell had sued over an April 17, 2008, closed-door commission meeting during which he, Presiding Commissioner Gerald Jones and then-1st District Commissioner Larry Bock discussed with Cape Girardeau County Prosecuting Attorney Morley Swingle whether a road easement was legal. The four men also privately confronted County Auditor David Ludwig over improper use of his county computer. Purcell secretly recorded the session and later made the recording public. The Sunshine Law prohibits secret

recordings of properly closed meetings.

Stoddard County Associate Circuit Judge Stephen Mitchell ruled in October that the commissioners did not knowingly violate the Sunshine Law.

In March, the Missouri attorney general's office announced it would not seek charges against Purcell for making the recording. Penalties for secretly recording a closed meeting include up to 15 days in jail and fines up to \$300.

Last month's unanimous opinion by judges Kurt Odenwald, Nannette Baker and Patricia Cohen sent the case back to Mitchell with orders to dismiss the lawsuit. The appeals court ruled Purcell's case should have been filed against individual county commissioners, not the commission itself.

Clubb cited a handful of cases against county commissions, filed by taxpayers, county officials and other government bodies, such as a lawsuit by the Shawnee Bend Special Road District against the Camden County Commission.

A higher cost to file

Clubb wrote that the appeals court opinion will effectively raise the cost for future Sunshine Law suits because requiring each elected official to be named raises the cost of filing a suit. This, Clubb wrote, would have "a further chilling effect on Missourians' access to open records and meetings."

Clubb said if the requests filed Tuesday are denied, he will talk with Purcell about filing a direct request with the Missouri Supreme Court for a hearing.

"This is an issue of statewide importance," Clubb said. "We want finality on this issue of proper governmental bodies to be sued under the Sunshine Law. The court of appeals decision does not provide that."

Tom Ludwig, the attorney hired by the county to represent the county commission in the case, did not return a call for comment.