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⁸⁰⁰ Commissioner defends closed surtax meeting

Ellinger: 'This one is as
close as you can get
to being in litigation'

By Bob Watson
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Cole County Presiding Commissioner Marc Ellinger this week joined Jefferson City Mayor John Landwehr in defending closed-door discussions on the county's surtax controversy.

Thursday morning, the three county commissioners met with Blair Oaks R-2 Schools Superintendent Jim Jones, Blair Oaks School Board President Greg Russell, County Collector Larry Vincent and a county attorney.

The meeting ended without any public announcement of the discussions that occurred.

"As you know, the Open Records law permits us to close meetings where it deals with legal matters or litigation," Ellinger told a reporter Friday. "And I guarantee you that this one is as close as you can get to being in litigation."

"It's certainly a legal action."

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Landwehr offered a similar explanation last month, on his blog (at http://mayorlandwehr.typepad.com/mayor_landwehrs_blog/2010/08/thismornings-news-trib-editorial-is-unfair-and-wrong.html), after a News Tribune editorial argued surtax discussions should be open to the general public.

The issue is complicated.

Lawmakers in 1984 replaced the merchants and manufacturing tax with a surtax on commercial property, as part of each county's distribution to local governments, including school districts, towns and cities.

In 1989, the Cole County clerk's office apparently adjusted the formula used for calculating how much of the annual surtax should go to each of 13 taxing entities.

That change created an inequity that only recently was discovered.

Even though the payments apparently were wrong for the past 20 years, state law allows the districts and county to go back only three years to correct the error — and the Blair Oaks District received the most “extra money” during that three-year period (more than \$656,000), while Jefferson City's government had the biggest shortfall (around \$751,000).

After Jefferson City's coun-

cil held a closed session last month, apparently to discuss the city's response to Vincent's proposal of a 52-year payback plan, Landwehr wrote on Aug. 24: “No public entity should be required to divulge litigation strategy and force its attorneys to give advice in public about a potential lawsuit.

“The legal aspects of this issue include ... who the proper defendants are, what other defendants may be brought into the action by initial parties, what are the chances of success, what are the prospects for collecting on a judgment, what are potential defenses and counterclaims?”

Landwehr said officials had “other important strategic considerations” to consider, as well, in a closed session.

Landwehr and Ellinger both are lawyers.

Ellinger said Friday: “When you're talking about potential legal claims and legal issues, I'm not sure that, out in the open, you want to talk about what some of those legal claims — particularly defenses — may or may not be.

“I mean, that's the purpose of having the Closed Meeting Exception (to the Open Meetings law), is to be able to explore those issues without having to tip your hand in legal strategy.”

Ellinger said the county “sits in the middle” of the ongoing surtax debate, since the county clerk created the problematic formula and state law requires the collector to disburse the money.

Among its provisions, the Missouri Open Meetings/Open Records Law — often called the “Sunshine Law” — allows local governments to hold closed sessions for “legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications (with) its representatives and its attorneys.”

The law doesn't require public disclosure until “final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement.”

The law doesn't appear to allow potential opponents in a court battle to be part of the closed session, but it also doesn't specify that settlement agreements must be discussed openly.

“I can't get into details on what we were discussing in there,” Ellinger said Friday, about Thursday's meeting with Blair Oaks. “When we're looking at what the potential issues are, we may choose to have some people in the room or not, because of what issues we happen to be discussing.”

Since Jefferson City is the entity hurt the most, financially, in the last three years, shouldn't they have been in the meeting?

Ellinger said: “I can promise you that, if there were other issues being discussed, we might have had other parties in the room and not Blair Oaks.

“It depends on what the issues are.”



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County also errs in closing meeting on surtax muddle

The News Tribune

What's good for the proverbial goose — portrayed in this forum on Aug. 24 by the Jefferson City Council — also is good for the gander, represented by the Cole County Commission.

The county's three-member governing body on Thursday met behind closed doors with Cole County Collector Larry Vincent, Blair Oaks School Superintendent Jim Jones and attorneys in continuing efforts to untangle a surtax muddle.

Our problem with the gathering is Jones' presence indicates an effort to negotiate — with only one of the affected entities — and not an attempt by commissioners to confer with counsel on legal strategy.

Some background may be helpful.

The surtax muddle came to light when an error was discovered in the formula used by the county collector's office to distribute surtax revenues to eligible political subdivisions.

As a result of the errant formula, a number of school districts and other entities received overpayments, including an overpayment of more

than \$656,000 distributed to the Blair Oaks School District.

Underpayments included municipalities, with the largest being around \$751,000 owed to Jefferson City.

Collector Vincent, who inherited the muddle, initially proposed a 52-year repayment plan.

The Jefferson City Council countered with a 10-year proposal after approving it in a closed session on Aug. 23.

We criticized the City Council for the closed session at that time, and we extend our disappointment to the county commission.

The state Sunshine Law allows closure for "legal actions, causes of action or litigation ... and any confidential or privileged communications between a public governmental body or its representatives and its attorneys."

But the law also requires governing bodies to "liberally construe" its provisions to promote openness.

We reiterate our observation that none of the parties involved in the surtax misallocation have filed legal action.

The issue is not, at this juncture, before the judiciary.

It remains a negotiation among governments, and the presence of a school superintendent at the commissioners' closed meeting is troubling. It not only suggests negotiations were on the table, but with only one the affected entities.

All the political subdivisions involved in the surtax muddle represent patrons who have an interest in financial circumstances.

Our question remains: Why do governing officials feel the need to shield these discussions from the public?

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