



Savannah
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400-241-114
**Reporter's counsel sends
letter to City Administrator**

By Duane Thies
The Savannah Reporter

The Savannah Reporter has sent a letter from Jean Maneke of The Maneke Law Group, L.C., of Kansas City, Mo., to Mike Fisher, city administrator of the City of Savannah expressing displeasure about the failure of the City to release the fiscal year 2010 City Operating Budget. *The Savannah Reporter* staff and management requested the document on more than one occasion and were refused by the City Administrator. The Council approved the budget before the City provided a copy to the newspaper, preventing public disclosure and calling into question the validity of the passed budget. The City Clerk is the custodian of records for the

City government, but she was told not to provide the document by Fisher, according to *The Savannah Reporter* publisher Guy Speckman. *The Savannah Reporter* was prevented from publishing any of the items in the proposed budget because of Fisher's refusal to provide the document. Fisher delivered a copy to the newspaper office on Tuesday, following the City Council's passage of the budget on Monday evening.

Maneke is the attorney for the Missouri Press Association and counsel to *The Savannah Reporter*.

"My understanding is that the Reporter on October 7, 2009, made a sunshine law request for a copy

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Letter continued

of the city budget," the letter says. "As such, it should have generated a response within 72 business hours. My understanding is that you responded on October 8, 2009, advising that the budget would be produced 'after their (the Council's) approval.' Indeed, I understand the Minutes of the council meeting of October 12, 2009, specifically state, 'The Reporter has requested a copy of the budget, which we will provide after Council's approval of it.'

"Please be advised that you have violated Missouri's sunshine law in refusing to produce a copy of the draft budget when requested by the Reporter on October 7, 2009," the letter continues. "Case law in Missouri is specific that a draft copy of a document is a public record. There is no justification to withhold a draft document until it is finally approved. I would cite you to the case of *Hemeyer v. KRCC-TV* where the court held that because a tape might possibly be reused and therefore written over, as opposed to kept permanently, it is considered 'retained' for purposes of the sunshine law. Similarly, in *Missouri Protection and Advocacy Services v. Allan*, the court said: 'The plain and ordinary meaning of the word retain is 'to hold or continue to hold in possession or use; continue to have...; maintain, in one's keeping,' Webster's Third New International Dictionary, 1938 (1981). There can be no doubt DESE has retained, in the layman's sense of the word, the draft of the OSEP report. The appellants have in their possession the report in question and according to the plain meaning of" state law, "the requirement of retention has been fulfilled. The court ordered the record released in response to a sunshine law request.'

"Even the Attorney General's handbook is clear on this issue," Maneke's letter says. "On page 21 of the most recent version of the book (revised August 2009), it notes 'Do minutes retained in draft form have to be provided to the public within three business days

of the request? Yes. A draft of the minutes is a public record under Section 610.010 (6) and must be provided as soon as possible and no later than the end of the third business day after the request is received...'

"Your refusal to produce this

budget is a clear violation of the sunshine law, documented in your own minutes of the meeting," the letter says. "The law provides penalties for such violations, including the voiding of the action taken and potential fines and assessment fees for 'knowing' or 'purposeful' violations.

"Your violation of the law not only prevented the newspaper from obtaining the record in a timely fashion, but if you so responded to everyone asking for a draft copy prior to your meeting, you prevented the public from having adequate notice so as to advise the council members of concerns in the budget that might have benefited the elected officials in the performance of their duties," the letter says. "The whole purpose of transparency in government is to engender confidence in the handling of the public's affairs and to allow them to participate in the governance process. Your secrecy in this matter has defeated both of these purposes.

"Your attorney is sufficiently versed in the law to have recognized such an error," Maneke writes. "I would urge you to consult with him and to avoid making such a mistake in the future. My understanding is that the paper does not intend at this time to pursue this in court, but I cannot guarantee they will always be so temperate in their response."

"We take our role in reporting the news of the community seriously," said Guy Speckman, publisher of *The Savannah Reporter*. "I informed the City Administrator and the City Clerk more than once that they were required to provide this information, and they ignored my

