

Cash Book
Journal
Jackson, MO
Circ. 5600
From Page:
1
11/25/2009
18749



approval from the Coor- tinal asses
102-114-800

Missouri Supreme Court decides to hear Sunshine case

by David Bloom
Editor

On Tuesday, Nov. 17, the Missouri Supreme Court announced that it will hear arguments in the Jay Purcell versus the Cape Girardeau County Commission lawsuit. Purcell, who is an Associate Commissioner is suing the commission alleging violations of the Open Meetings Law, commonly referred to as the Sunshine Law.

The lawsuit alleges that on April 17, 2008, the Cape Girardeau County Commission violated the Sunshine Law. At that time, the commissioners were Gerald Jones, Larry Bock and Purcell. Bock retired at the end of his term in December 2008; Paul Koeper is now District 1 Commissioner. Koeper is not named in the suit.

At the April 17, 2008, meeting, the commissioners went into closed session to discuss problems that arose regarding County Auditor David Ludwig. The commissioners were seeking Ludwig's resignation, alleging the auditor misused county property by looking at pornographic material on his computer.

Purcell secretly recorded that meeting, and later made that recording public. Purcell filed a lawsuit in May of 2008, alleging the April 17 meeting was improperly closed and that the Ludwig matter should have been discussed in open session. Purcell's lawsuit named the commission as a whole as the defendant rather than against the individual members.

Stoddard County Judge Stephen Mitchell heard the case in October of last year. He ruled in favor of the commission, stating that "the commission's notice complied with the Sunshine Law and that no party purposefully violated the Sunshine Law."

Purcell appealed that ruling to the Eastern District Court of Appeals. The Appeals Court ruled in favor of the county commission, stating that the commission, as a body, could not be sued. Their ruling also stated that the county commission was not a public governmental body that must obey the Sunshine Law. Three appellate judges heard the case, and all three voted in favor of the County.

After this ruling, Purcell sought another hearing from the Court of Appeals, asking the judges to reconsider their ruling. That petition was denied. Purcell then applied to the Missouri Supreme Court to hear the case.

In asking for a hearing, Purcell cited the case's state-wide implications for its citizens and taxpayers. Last week, the Missouri Supreme Court agreed to hear the case.

J.W. Clubb, who represents Purcell, said he expects the Supreme Court to hear arguments in the spring of 2010. Both Clubb and Tom Ludwig, a Jackson attorney representing the county commission, will file briefs, stating their case. Clubb said the briefs used in the earlier trials can be used again, but he expects he will submit different ones.

After receiving and reviewing the written briefs, the Supreme Court will set a date to hear oral arguments in Jefferson City. There is no set timetable for the judges to make a ruling.

The County has spent more than \$20,000 in attorney and court fees. "Purcell is wanting to save the County money by firing employees, but he certainly doesn't mind causing the County to spend money to defend ourselves over something that shouldn't even be there. With the appeal to the Missouri Supreme Court, it will cost us another \$20,000 to defend this frivolous lawsuit when, in essence, he (Purcell) is suing himself," Presiding Commissioner Jones said.

The Missouri Supreme Court will issue the final decision.