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Assistant AG Says City Of St. Mary Should Be More Aware Of Potential Sunshine Violations

A Missouri assistant attorney general has notified an alderman in the City of St. Mary that the city may have been in violation of some provisions of the state sunshine law, and should be more aware of its requirements and how to meet them.

On May 5 Ward 1 Alderman Frank Gerardot contacted the Attorney General's Office to inquire about a city-related matter. During the discussion Assistant Attorney General Daryl Hylton informed Gerardot that he had written a letter to the city on April 27 regarding a complaint from a city resident about possible violations of the Sunshine Law.

He said the complaint alleged that the St. Mary Board of Aldermen and its members violated the law in two instances—specifically in that a quorum of the board met on April 14, 2009, and discussed public business without providing proper meeting notice; and that an “emergency meeting” was held the next day at which a vote was taken to appoint former City Clerk JoAnn Donze as deputy clerk (a new position in city government in St. Mary), despite the subject not appearing on the meeting agenda.

The complaint also said some residents had observed a situation in which three city aldermen met at city hall the day before a scheduled meeting, and that residents heard an elected city official talking about “the meeting before the meeting.”

Gerardot informed Hylton that he had not seen or heard about the response letter. He asked that a copy be sent to him.

In Hylton's letter (secured by the Herald last week) Hylton said he had contacted Donze by e-mail in response to the complaint, and “received a prompt response” in which Donze “addressed the allegations and provided records I requested.”

Hylton summarized his reading of the situation in his letter:

“Ms. Donze has indicated that there was not a meeting on April 14, 2009; rather that three members of the Board were summoned to the City Hall for the sole purpose of signing a meeting notice for the next day. To the extent scheduling the meeting may be deemed an informal gathering for ministerial

purposes it may be excluded from the definition of ‘public meeting’ under Section 610.010(5), RSMo.

“However, I would caution the Board and its members, that a “public meeting” includes any meeting where a quorum of the Board discusses public business. If three members of the Board met and discussed the actions to be taken at the next day meeting, that would constitute a violation.”

In response to the complaint about Donze’s appointment, Hylton wrote: “The tentative agenda for the Board’s April 15 meeting includes only two items; electing a city clerk and electing a chairman. Ms. Donze indicates, however, that at the April 15 meeting the Board also voted to appoint a Deputy City Clerk. I would caution the Board that voting on items not included in the tentative agenda could be construed as a violation and possibly subject such action to being voided.”

Hylton added that the minutes of the April 15 meeting provided him by Donze “do not reflect that a vote was taken regarding the appointing of a Deputy City Clerk. Pursuant to 610.020.7 minutes are to include a record of any votes taken.”

Hylton concluded his letter saying, “I urge your Board to review the provisions of the Sunshine law, Chapter 610, RSMo. Please take note that pursuant to 610.027.3 and 610.027.4, RSMo., both the Board and its individual members could be subject to civil penalties, costs, and attorney fees should it be established that a knowing or purposeful violation has occurred.”

He also advised that educational seminars regarding the Sunshine Law are being scheduled in each county, in cooperation with county commissions, and provided a contact for information about when such a session will be held here.

In addition to the letter, Hylton said he sent the city four copies of a booklet published by Attorney General Chris Koster entitled Missouri Sunshine Law. Gerardot said he had not received a copy of the booklet.

The letter was not discussed at any recent meetings of the city board.

“I hope if and when the issue comes up before the board we’ll take what the assistant attorney general says seriously,” Gerardot said. “It’s clear we need to pay more attention to the Sunshine Law than we have been. I think we at least ought to put it on the agenda for discussion at an meeting soon.