

ARRESTS:
SUNSHINE LAW:

Where the necessary preconditions
have occurred, § 610.100 and § 610.
105, RSMo Supp. 1973, require that

the appropriate law enforcement agencies, on their own initiative, must close or expunge the records relating to arrest, detention or confinement. The issuance of an injunction or other court order is not a prerequisite to the closing or expunging of such records.

OPINION NO. 188

October 15, 1975

Honorable J. Anthony Dill
State Representative, District 102
7723 Ravinhill Drive
St. Louis, Missouri 63123



Dear Representative Dill:

This official opinion is issued in response to your request for an interpretation of § 610.100 and § 610.105, RSMo Supp. 1973, the so-called "arrest records" portion of Missouri's Sunshine Law. These sections require the closing or expungement of all records of arrest, detention and confinement where certain contingencies exist. In a nutshell, your question asks whether these sections place an affirmative duty upon law enforcement agencies to close or expunge the appropriate records when the preconditions have been met, or whether the individuals affected must obtain a court order to enforce the provisions of these sections. You explain:

"A constituent reports having been charged with the alleged commission of a misdemeanor in 1974. The charge was subsequently dismissed upon payment of costs by a magistrate court in St. Louis County. A year has passed since the date of dismissal. The office of the St. Louis County Prosecuting Attorney advises that it will not expunge or close its records regarding the charge unless the person charged retains an attorney to file a motion with the court directing the prosecutor's office and the police department to expunge or close the arrest record.

"Such a requirement poses a substantial financial burden to the individual. In many cases, such individuals are indigent and have

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no financial resources with which to retain an attorney to proceed with such a motion."

Section 610.100, RSMo Supp. 1973, reads as follows:

"If any person is arrested and not charged with an offense against the law within thirty days of his arrest, all records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records to all persons except the person arrested. If there is no conviction within one year after the records are closed, all records of the arrest and of any detention or confinement incident thereto shall be expunged in any city or county having a population of five hundred thousand or more."
(Emphasis added).

Section 610.105, RSMo Supp. 1973, states:

"If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records to all persons except the person arrested or charged." (Emphasis added).

Section 610.030, RSMo Supp. 1973, states:

"The circuit courts of this state shall have the jurisdiction to issue injunctions to enforce the provisions of sections 610.010 to 610.030 [which deal with open meetings, records and votes] and 610.100 to 610.115."
(Emphasis added).

We first observe that § 610.100 and § 610.105 are couched in mandatory language; that is, these sections repeatedly use the word "shall", which is mandatory, as opposed to the word "may", which is permissive. State v. Paul, 437 S.W.2d 98, 101-102 (St. L.Ct.App. 1969). Furthermore, we note that both § 610.100 and § 610.105 unequivocally state that when certain contingencies exist, the pertinent records "shall thereafter be closed. . ." These sections do not state that the records "shall thereafter be closed. . . upon appropriate court order" or words to that effect.

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Although § 610.030 empowers circuit courts to enforce the provisions of § 610.100 and § 610.105 by injunction, we do not believe that this section makes the issuance of an injunction or other court order a prerequisite to the operation of § 610.100 or § 610.105. Indeed, § 610.030 also vests circuit courts with jurisdiction to issue injunctions to enforce the provisions of § 610.010 to § 610.030. These sections provide, in essence, that all public meetings shall be open to the public and that public votes and records shall be open to the public. If the existence of an injunction were held to be a prerequisite to the implementation of § 610.100 and § 610.105, the same result would logically follow with respect to the operation of §§ 610.010, 610.015 and 610.020. Such a result, needless to say, would be completely absurd, and, would, in effect, emasculate Missouri's Sunshine Law. It is well settled that a statute should be given a construction which will not cause an unreasonable or absurd result. State ex rel. Dravo Corp. v. Spradling, 515 S.W.2d 512, 517 (Mo. 1974).

Finally, it should be emphasized that circuit courts of this state, relying on their general equity powers rather than any specific statutory provision, have for many years ordered the expungement of criminal records in certain situations. Thus, to construe § 610.100 and § 610.105 so as to make a court order a prerequisite to their operation, would render these sections unnecessary and virtually meaningless. It will not be assumed that the legislature intended to do a meaningless act. State ex rel. Thompson-Stearns-Roger v. Schaffner, 489 S.W.2d 207, 212 (Mo. 1973). Thus, a construction which would render a statute redundant and superfluous should be avoided if possible. In Re Estate of Hough, 457 S.W.2d 687, 692 (Mo. 1970).

CONCLUSION

It is, therefore, the opinion of this office that where the necessary preconditions have occurred, § 610.100 and § 610.105, RSMo Supp. 1973, require that the appropriate law enforcement agencies, on their own initiative, must close or expunge the records relating to arrest, detention or confinement. The issuance of an injunction or other court order is not a prerequisite to the closing or expunging of such records.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Philip M. Koppe.

Very truly yours,



JOHN C. DANFORTH
Attorney General