

SUNSHINE LAW:
ST. LOUIS CITY:
CITIES, TOWNS & VILLAGES:

Budgetary meetings of the St. Louis Board of Estimate and Apportionment and the St. Louis Board of Education are "public meetings" under Section 610.010, RSMo Supp. 1973, and may not be closed pursuant to Section 610.025, RSMo Supp. 1973.

OPINION NO. 144

August 1, 1975

Honorable James F. Conway
State Senator, District 6
3811 Flora Place
St. Louis, Missouri 63110



Dear Senator Conway:

This opinion is issued in response to your request for an official Attorney General's opinion answering the following question:

"Does the general discussion of personnel as a group, rather than as an individual or specific individuals, when determining budgetary increases or decreases that affect the size of the staff of said public governmental bodies, give cause for the exclusion of the public at such meetings under the language, 'meetings relating to the hiring, firing or promotion of personnel?'"

In setting out the facts which prompted this request, you state:

"Recently, the Board of Estimate and Apportionment of the City of St. Louis and the St. Louis Board of Education, have held closed meetings for purposes of discussing budgetary matters. These public governmental bodies have excluded the public from these meetings, stating that budgetary conditions might require the laying off of personnel subsequently, they could have a closed meeting and votes under Section 610.025, subsection 4."

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As I am sure you are aware, Chapter 610 of the Revised Statutes of Missouri requires that all meetings of any public governmental body be open to the public.

Section 610.010(2), RSMo Supp. 1973, defines "public governmental body" to include "any . . . board . . . of any . . . school district."

Meetings of the Board of Estimate and Apportionment of the City of St. Louis are also covered by the Act.

The Supreme Court of Missouri recently held that the Board of Estimates and Apportionment:

". . . constitute a vital part of the government of the city affecting all its people. Hence, its action is of the type which the General Assembly has said by Chapter 610 shall not be taken in secrecy, but shall be open to the public. To hold otherwise would result in these statutes being meaningless and ineffective . . ." Cohen v. Poelker, 520 S.W.2d 50, 52-53 (Mo.Banc 1975).

As a general rule of statutory construction, statutes which introduce some new regulation or ordinance for the public good are to be considered remedial in nature and are to be given a liberal construction. City of St. Louis v. Carpenter, 341 S.W.2d 786 (Mo. 1961). Courts in other jurisdictions having public meeting laws similar to Missouri's have consistently applied a liberal construction to such legislation. Laman v. McCord, 432 S.W.2d 753 (Ark. 1968); Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969); Brown v. State, 245 So.2d 41 (Fla. 1971); City of Miami Beach v. Berns, 245 So.2d 38, 40 (Fla. 1971); Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260, 263 (Fla. 1973).

The St. Louis Court of Appeals in B-W Acceptance Corporation v. Benack, 423 S.W.2d 215, 218 (St.L.Ct.App. 1967), stated:

". . . one of the cardinal principles of construing remedial legislation is that courts are to consider the evil sought to be cured and 'to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for the continuance of

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the mischief.' Decker v. Deimer, 229 Mo. 296, 129 S.W. 936[4]."

The mischief sought to be remedied by the Sunshine Law is the deliberate exclusion of the public from the decision-making processes of public governmental bodies. See Board of Public Instruction of Broward County v. Doran, supra at 699.

In Cohen v. Poelker, supra at 52, the court stated:

"The several sections of Chapter 610, considered together, speak loudly and clearly for the General Assembly that its intent in enacting the Sunshine Law, so-called was that all meetings of members of public governmental bodies (except those described in § 610.025) at which the peoples' business is considered must be open to the people and not conducted in secrecy, and also that the records of the body and the votes of its members must be open."

Where a statute is to be liberally construed, the exceptions to the operation of that statute should be given a narrow construction. See 73 Am.Jur.2d Statutes § 313 (1974) at 463-464, which states:

". . . ordinarily a strict or narrow construction is applied to statutory exceptions to the operation of laws. . . . These rules are particularly applicable where the statute promotes the public welfare, or where, in general, the law itself is entitled to a liberal construction. . . ."

The General Assembly recognized that in certain specific situations, set forth in Section 610.025, the interest of the public in open meetings is outweighed by other interests. The legislature explicitly set forth the various subjects that may be discussed behind closed doors.

According to your opinion request, the members of the Board of Estimate and Apportionment for the City of St. Louis and the St. Louis Board of Education have maintained that they may close their budgetary meetings pursuant to Section 610.025, subsection 4, RSMO Supp. 1973, which reads as follows:

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"Any nonjudicial mental health proceedings and proceedings involving physical health, scholastic probation, scholastic expulsion or scholastic graduation, welfare cases, meetings relating to the hiring, firing or promotion of personnel of a public governmental body may be a closed meeting, closed record, or closed vote." (Emphasis added).

In our opinion, meetings of these public governmental bodies for the purpose of discussing budgetary matters affecting personnel as a group, rather than on an individual level, are not authorized to be closed and must, therefore, be open to the public.

Subsection 4, the provision in question here, excludes meetings and proceedings involving personnel matters in which premature publicity could cause unjustified damage to individual reputations. The subsection specifically excludes meetings concerning questions of mental and physical health, welfare matters, situations involving possible disciplinary action or dismissal, and the "hiring, firing or promotion of personnel of a public governmental body."

The Board of Estimate and Apportionment is not involved in the hiring, firing, or promotion of employees on an individual level. Its functions are set out in Article XVI of the Charter of the City of St. Louis. Section 3 of Article XVI provides that this Board shall:

". . . annually submit and recommend to the board of aldermen a bill appropriating the amounts deemed necessary for the use of each department, board and office for the current fiscal year and a bill establishing the city tax rates for the current year; . . ."

Thus, this Board engages in those governmental activities in which the public has the greatest interest--the taxing and spending of the public's money. Admittedly, a low appropriation might require the laying off of personnel. However, this would be an administrative financial decision not involving the merits of an individual employee and not within the meaning of Section 610.025.

The same is true of a purely budgetary meeting of the St. Louis Board of Education. Although, it should be noted that such a body may become involved in individual cases as well and such meetings may properly be closed.

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CONCLUSION

It is the opinion of this office that budgetary meetings of the St. Louis Board of Estimate and Apportionment and the St. Louis Board of Education are "public meetings" under Section 610.010, RSMo Supp. 1973, and may not be closed pursuant to Section 610.025, RSMo Supp. 1973.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Assistant Attorney General