

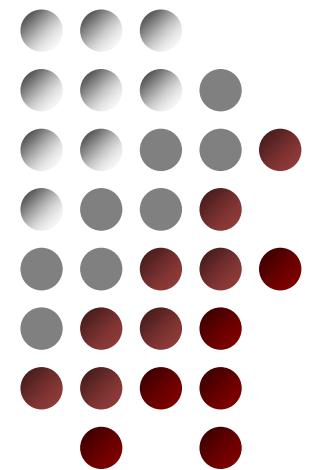
The Missouri Open Meetings and Records Law

Better known as...

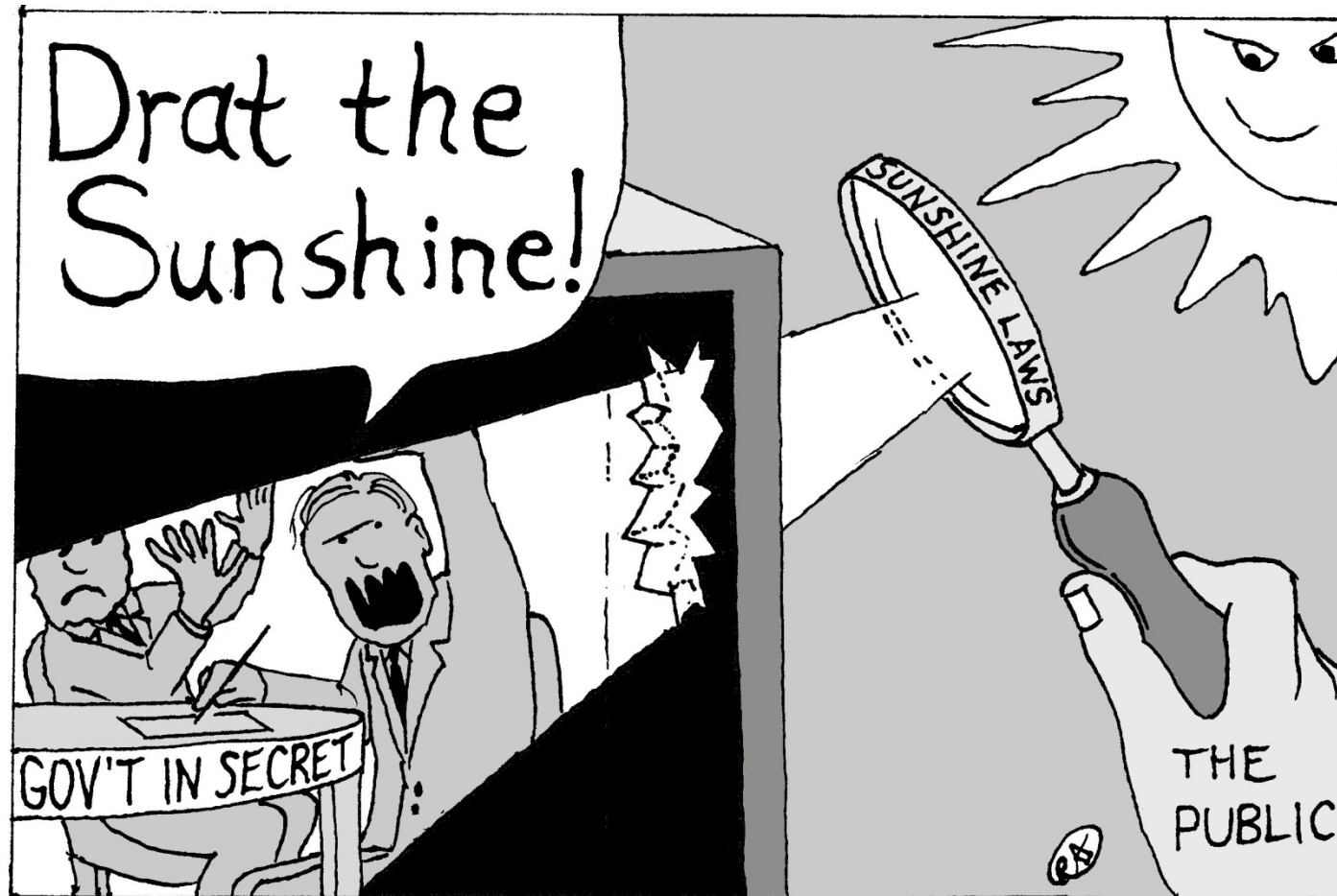
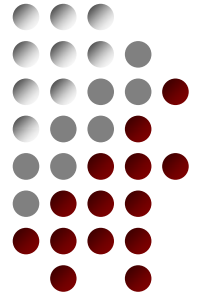
THE SUNSHINE LAW

Megan D. Meadows, Esq.

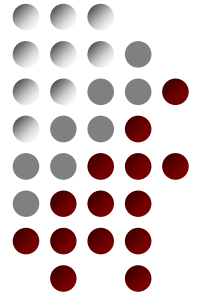
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SPENCER FANE
BRITT & BROWNE LLP

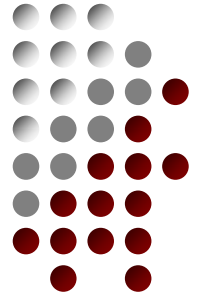


TODAY'S ROADMAP



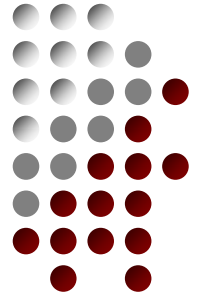
- Mo. Rev. Stat. Chapter 610
- Who is subject to the Sunshine Law?
- Public meetings, votes and records
- Sunshine Law and electronic records
- Closed meetings, votes and records
- Responding to sunshine requests
- “The Bad,” followed by “The Good”

SUNSHINE LAW BASICS



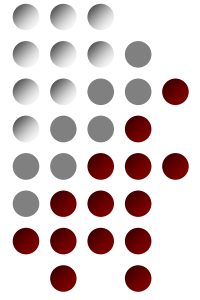
- The Sunshine Law governs the actions of **public governmental bodies**.
 - Legislative, administrative or other governmental entities.
 - Includes institutions of higher education, all departments of political subdivisions, school districts, special-purpose districts.
 - Also includes “quasi-governmental bodies,” which are entities that perform certain public functions or regularly enter into contracts with public governmental bodies.

SUNSHINE LAW BASICS

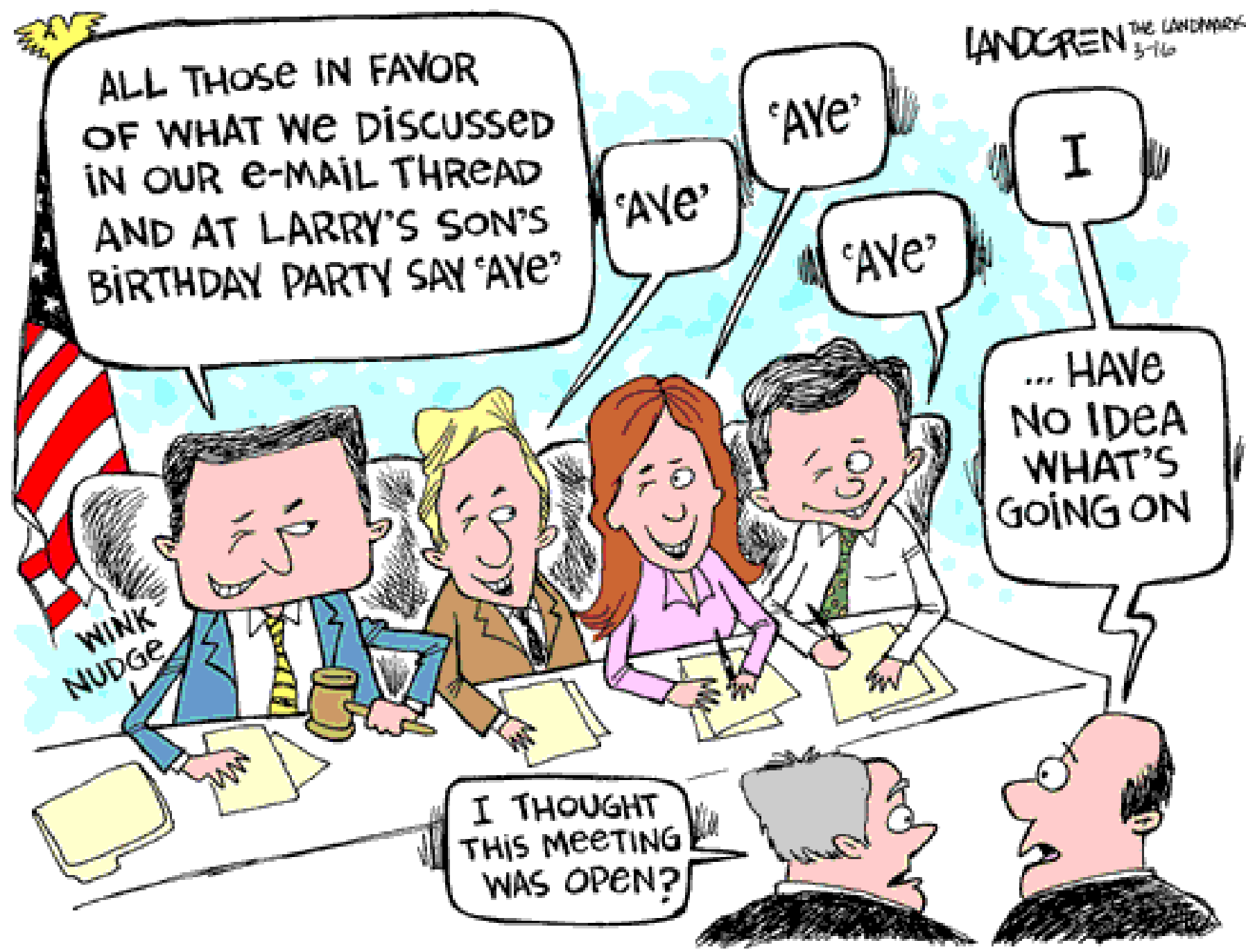


- Except as otherwise provided by law -
 - All **public meetings** of public governmental bodies shall be open to the public as set forth in section 610.020,
 - All **public records** of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and
 - All **public votes** of public governmental bodies shall be recorded as set forth in section 610.015.

PUBLIC MEETINGS



- What is a public meeting?
 - Any meeting of a public governmental body where public business is discussed, decided, or policy formulated.
 - Quorum must be present.
 - Meeting may be in-person, via conference call or video conference, internet chat, or other electronic means.
 - Notice of all meetings must be posted at least 24 hours in advance.



ALL THOSE IN FAVOR
OF WHAT WE DISCUSSED
IN OUR E-MAIL THREAD
AND AT LARRY'S SON'S
BIRTHDAY PARTY SAY 'AYE'

'AYE'

'AYE'

'AYE'

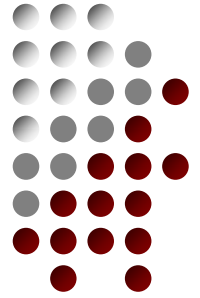
I

... HAVE
NO IDEA
WHAT'S
GOING ON

I THOUGHT
THIS MEETING
WAS OPEN?

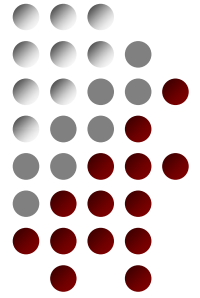
WINK
NUDGE

PUBLIC MEETINGS



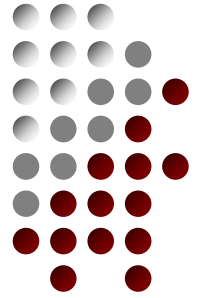
- Does NOT include an informal gathering of members of a public governmental body for ministerial or social purposes
 - Unless intent to avoid the purposes of the Sunshine Law
- Does include luncheon meetings
 - *The Kansas City Star v. Shields*, 771 S.W.2d 101 (Mo. App. 1989)
- Does include any electronic (e-mail or otherwise) votes in lieu of holding a public meeting

PUBLIC MEETINGS



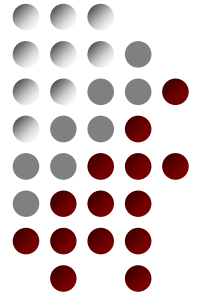
- Notice of public meetings must be posted at body's principal office.
- The notice must include:
 - Time, date and place of meeting
 - Tentative agenda for all open meetings
 - Whether meeting is open or closed (or both)
- Not required – but a good idea:
 - Time the notice was posted – to prove compliance with 24 hour notice rule.
 - Can also post notice online or multiple locations.

PUBLIC MEETINGS



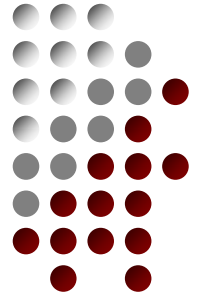
- Minutes of all open and closed meetings shall be taken, including a recording of all votes
- Minutes shall include:
 - Date, time, place
 - Members present and absent
 - Record of votes taken
- Meetings may be videotaped or recorded by the public

PUBLIC VOTES



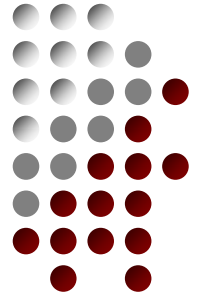
- What is a public vote?
 - Any vote cast at any public meeting.
 - Members must be physically present to vote.
 - BUT in an emergency, a member may vote via phone, internet, etc., but only if a quorum is physically present at the meeting location.

PUBLIC RECORDS



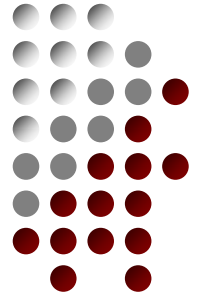
- What is a public record?
 - Any record retained by a public governmental body, including those prepared by outside consultants or contractors.
 - Does NOT include internal records which contain advice, opinions, or recommendations for a decision-making process.

PUBLIC RECORDS



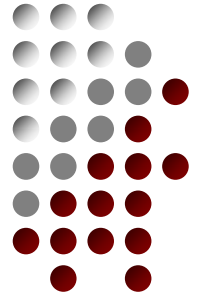
- Unless a record falls under an exemption – it is a public record under the Sunshine Law.
- This includes all electronic records and e-mails, regardless of the format

E-MAIL AS PUBLIC RECORDS

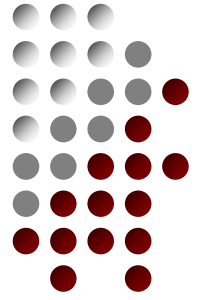


- Any e-mail retained by a public governmental body is a public record.
- 610.025 requirement for e-mails:
 - Any member who transmits a message relating to public business via e-mail shall also transmit the message to the body's custodian of records or "office computer"
 - Required for messages sent to two or more members, and if sender and all recipients constitutes a majority.

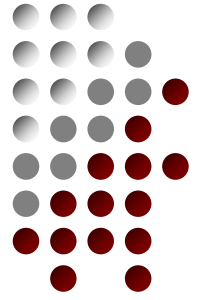
E-MAIL AS PUBLIC RECORDS



- E-mails that may not fall under the 610.025 guidelines, but are retained, are public records subject to disclosure
- Personal e-mails kept on work system
 - These may be subject to the Sunshine law if kept
 - However there is no requirement that these be saved
- E-mail retention policy
 - If your body has one...follow it!

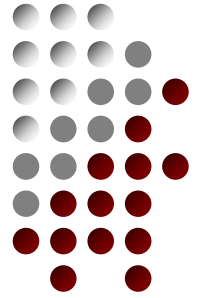


ELECTRONIC PUBLIC RECORDS



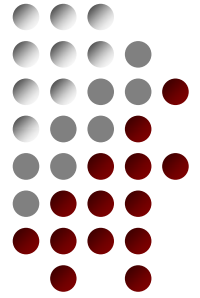
- Everything is becoming electronic
- Other than e-mail, electronic records could mean:
 - Spreadsheets and databases
 - Electronic voting records
 - Ballot initiative records
 - Internet history
 - Phone records
 - Cloud computing
 - Website data
 - “Drafts” of documents

CLOSED RECORDS AND MEETINGS



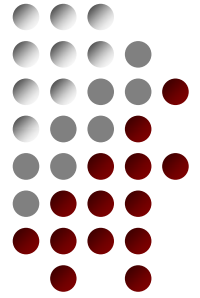
- All public records and meetings are open and subject to the Sunshine law – unless they can be closed under an exemption
- The body may, but is not required, to close records and meetings falling under an exemption
- Exemptions contained in 610.021
 - Twenty-two (22) subsections

EXEMPTIONS UNDER 610.021



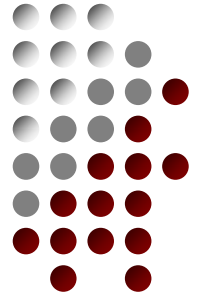
- 1) **Legal actions, causes of action or litigation**
- 2) Leasing, purchase or sale of real estate
- 3) **Hiring, firing, disciplining or promoting employees**
- 4) State militia or national guard
- 5) Non-judicial mental or physical health proceedings of identifiable individuals
- 6) Scholastic records (except to parents for children under 18)
- 7) Testing and examination materials
- 8) Welfare cases of identifiable individuals
- 9) Preparation for labor negotiations
- 10) **Software codes for electronic data processing**

MORE EXEMPTIONS



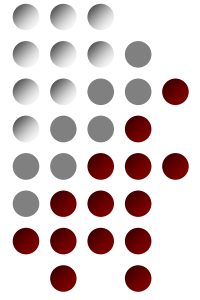
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- 11) **Specs for competitive bidding**
 - 12) Sealed bids, drawing and proposals
 - 13) **Individually identifiable personnel records – does not apply to names, positions, salaries and length of service for all employees**
 - 14) Protected by other laws (e.g., voter registration info under 115.157)
 - 15) Scientific and technological innovations
 - 16) Municipal hotlines (abuse and wrongdoing)
 - 17) Confidential communications with auditors
 - 18) Guidelines and policies regarding public safety
 - 19) Security systems and access thereto
 - 20) **Computer networking**
 - 21) Credit card numbers and personal identifiers
 - 22) Proposals to license property to higher education institution

CLOSED MEETINGS



- A public meeting may only be closed if it falls under one of the exemption categories
- Before going closed, a vote of the majority of members must be made
- The specific reason for closing must be announced and entered into the minutes
- Closed session votes must be made available to the public
 - Includes employment hiring/firing votes – within 72 hours

RESPONDING TO REQUESTS



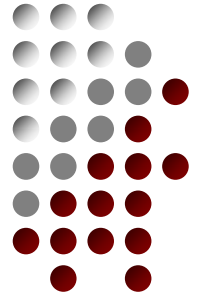
1) **Receive the request**

- Is it clear what is being asked for?

2) **Acknowledge the request in writing**

- Respond within three business days, even if the request cannot be completed that quickly

RESPONDING TO REQUESTS



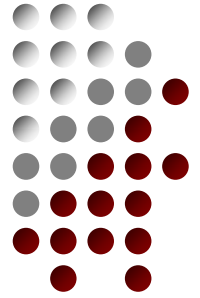
3) **Determine whether to accept or reject the request**

- If records to be produced are partially open and partially closed, then required to produce and redact as necessary, providing a reason for the redactions

4) **Complete the request**

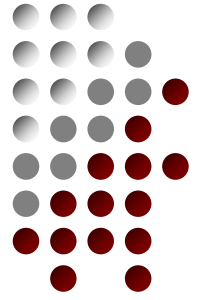
- Obligated to provide the records in requested format, if available
- Charge for research time (employee's regular rate), copying (10 cents per page), cost of disk for electronic records

THE BAD - PENALTIES



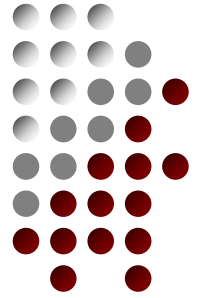
- Any aggrieved person, taxpayer, citizen of Missouri, or prosecuting attorney or attorney general may seek judicial enforcement of the Sunshine Law
- Actions must be brought in the county where the body is located

THE BAD - PENALTIES



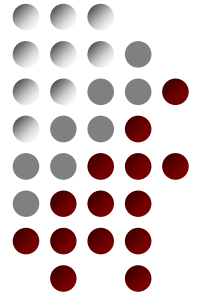
- If a Court finds that a public governmental body has violated the Sunshine Law, it:
 - SHALL impose fine up to \$1,000 and MAY order for costs and attorney's fees for knowing violations
 - SHALL impose fine up to \$5,000 and SHALL order for costs and attorney's fees for purposeful violations

THE GOOD



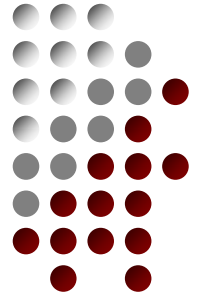
- Attorney General issues advisory opinions upon request, answering questions about the Sunshine Law and how its applied
- Noteworthy opinions:
 - Cannot close a meeting to appoint non-employees to board positions (Opinion No. 184-89)
 - Members of a body may not present at a closed meeting are allowed access to those minutes (Opinion No. 82-97)

RELATED LEGAL ISSUES



- Changes at election authorities may affect the frequency and types of Sunshine requests
 - Moving toward campaign contribution limits?
 - More electronic records and accessibility of information

THANK YOU



ANY QUESTIONS????

- For more information, visit <http://ago.mo.gov/Open-Government.htm>

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