

STATE OF MISSOURI)
) SS
COUNTY OF JEFFERSON)

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
OF MISSOURI AT HILLSBORO, JEFFERSON COUNTY, MISSOURI

DARRYL REED,)
)
Plaintiff,)
)
v.) Cause No. 18JE-CC
) Division
MAPAVILLE FIRE PROTECTION)
DISTRICT)
SERVE: 3687 Plass Road)
Festus, MO 63028)
)
and)
)
ANNETTE ACRE, BOARD MEMBER)
SERVE: 10193 Sandy Church Rd)
Hillsboro, MO 63050)
)
and)
)
RON BECKETT, BOARD MEMBER)
SERVE: 3551 Ketha Circle)
Festus, MO 63028)
)
and)
)
MARVIN BOEHME, BOARD MEMBER)
SERVE: 10427 Craig)
Festus, MO 63028)
)
and)
)
SHERRI HENSLEY, BOARD MEMBER)
SERVE: 9730 Round Table Court)
Hillsboro, MO 63050)
)
)
and)
)

MIKE LAWHORN, BOARD MEMBER)
SERVE: 2880 Johnston Ridge)
Festus, MO 63028)
)
Defendants.)

PETITION

Plaintiff Darryl Reed, Fire Chief of Mapaville Fire Protection District (hereinafter referred to as "District"), by and through counsel, states as follows:

Parties, Jurisdiction, and Venue

1. The Defendant Mapaville Fire Protection District (hereinafter referred to as "District") is located in Jefferson County Missouri, and has a five member board which is elected by the public.

2. The Mapaville Fire Association was established in 1952, and became a Fire District in 2000, which is funded through personal and real property tax.

3. Plaintiff is the Fire Chief of Mapaville Fire Protection District and resides in Jefferson County Missouri.

4. Defendant District is a public governmental body under §610.010.4, RSMo, and its meetings, actions, and records are subject to the provisions of Missouri's Sunshine Law.

5. Defendant Acre and Defendants Lawhorn, Hensley, Beckett and Boehme are sued in their official capacity as a member and former board members of the District.

6. This Court has subject-matter jurisdiction over this action pursuant to §§610.027 and 610.030, RSMo; Missouri Supreme Court Rule 92; and Missouri Constitution Article V, § 14.

7. This Court has personal jurisdiction over Defendant Acre because she resides in Jefferson County, Missouri, and is an elected member of the District. This Court has personal jurisdiction over the Board of Directors because that entity's principal place of business is in Jefferson County, Missouri.

8. Venue is proper in this Court under §610.027.1, RSMo, because the District's principal place of business is in Jefferson County, Missouri.

Allegations Common to All Counts

A. The Sunshine Law Requires that Public Governmental Bodies and Employees Provide Access to Public Records.

9. The Missouri Sunshine Law codifies the State's public policy and commitment to open and transparent government: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public[.]" §610.011.1, RSMo.

10. Pursuant to that clear public policy, "all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in section 610.023 to 610.026." §610.011.2, RSMo.

11. Under the Sunshine Law, a public record includes "any record, whether written or electronically stored, retained by or of any public governmental body . . . or other document . . . prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds[.]" §610.010(6), RSMo.

12. §610.010 of the Sunshine Law which defines a "public meeting" as "any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated".

13. The Sunshine Law §610.020.2 requires “Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body...”

14. Furthermore, the Sunshine law under §610.020.7 requires “A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body...”

15. Missouri’s Sunshine Law, codified in §§ 610.010 through 610.225, RSMo, declares that it is the State’s public policy that “meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public[.]” §610.011, RSMo. The Sunshine Law is to be liberally construed in furtherance of promoting this clear public policy.

16. At all times relevant, Defendant Acre (hereinafter referred to as “Acre”) acts as both a board member and keeper of the records (Clerk) for the District.

17. Acre knowingly violated the Sunshine Law by failing to respond to a lawful Sunshine Request sent to her via fax and by US mail.

18. Acre and the Board of Directors further knowingly violated the Sunshine Law by failing to post notice of the February 19, 2018 Board of Directors meeting timely. See Exhibit 1 attached hereto and incorporated herein by this reference.

19. Acre and the Board of Directors knowingly and purposefully violated the Sunshine Law by failing to post, or to make accessible, any meeting minutes other than minutes from December 2017.

20. Defendants Acre, Hensley Lawhorn violated the Sunshine Law by meeting in Defendant Acre's office, and creating a quorum to discuss official business of the District on February 24, 2018.

21. Acre has purposefully refused to produce records lawfully requested under the Sunshine Law, in an effort to terminate Plaintiff and replace him with her son.

22. Defendants also attempted to hold a meeting outside of the District boundaries to discourage members of the public, Plaintiff, and employees of the District from attending, in violation of RSMo §321.200.

23. The Sunshine Law violations are knowingly, purposeful, calculated, and malicious.

24. Plaintiff brings this lawsuit to enforce the Sunshine Law, to promote transparency in the operations of the District, and to hold Defendants accountable for their violations of the Sunshine Law.

COUNT I

Violation of Section 610.023.3, RSMo, Against All Defendants for Failure to Provide Access to Public Records

25. Plaintiff herein restates and incorporates by reference the allegations contained in Paragraphs 1 through 24 of this Petition.

26. Section 610.023.3, RSMo, provides that "Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body..."

27. Plaintiff, through his attorney, sent a Sunshine Request to Defendants on or about February 13, 2018.

28. To date, Defendant has failed to respond to the Sunshine Request.

29. Acre has extensive experience as the keeper of records and as board member.

30. Acre knowingly and purposefully failed to respond to the Sunshine Request for approximately three weeks.

31. Defendants have been attempting to remove Plaintiff from his position as Chief, and as part of that agenda, are refusing to respond to the lawful Sunshine Request.

WHEREFORE, Plaintiff prays this Court enter judgment in favor of Plaintiff (a) ordering Defendants to produce the records requested in the February 13, 2018 Sunshine request (b) finding that Defendants knowingly and purposefully violated §610.023.2, RSMo; (c) assessing each Defendant, pursuant to §610.027.3 and §610.027.4 civil penalties of up to \$1,000 for each knowing violation and up to \$5,000 for each purposeful violation of the Sunshine Law that each Defendant committed; (d) award Plaintiff with reasonable attorney fees and (e) such further relief as the Court deems just and appropriate.

COUNT II

Violation of Section 610.020.2, RSMo, Against All Defendants for Failure to Post Proper Notice of a Board of Director Meeting

32. Plaintiff herein restates and incorporates by reference the allegations contained in Paragraphs 1 through 31 of this Petition.

33. The Sunshine Law §610.020 requires “Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body...”

34. Defendants held a Board of Directors meeting on February 19, 2018.

35. Notice of said meeting was posted on February 17, 2018 by Acre.

36. February 17, 2018 was a Saturday.

37. The Missouri Sunshine Law requires meetings be posted 24 hours in advance, excluding weekends.

WHEREFORE, Plaintiff prays this Court enter judgment in favor of Plaintiff (a) ordering any votes or business done at the February 19, 2018 meeting to be null and void (b) finding that Defendants knowingly and purposefully violated §610.020.2, RSMo; (c) assessing each Defendant, pursuant to §610.027.3 and §610.027.4 civil penalties of up to \$1,000 for each knowing violation and up to \$5,000 for each purposeful violation of the Sunshine Law that each Defendant committed; (d) award Plaintiff with reasonable attorney fees and (e) such further relief as the Court deems just and appropriate.

COUNT III

Violation of Section 610.020.7, RSMo, Against All Defendants for Failure to Keep and Provide Meeting Minutes

38. Plaintiff herein restates and incorporates by reference the allegations contained in Paragraphs 1 through 37 of this Petition.

39. The Missouri Sunshine Law under §610.020.7 requires “A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body...”

40. Plaintiff requested certain meeting minutes to be produced in its February 13, 2018 Sunshine Request.

41. Plaintiff on good faith and information believes said records are not being kept appropriately.

42. Defendant has only posted meeting minutes from the December 2017 Board of Directors meeting.

WHEREFORE, Plaintiff prays this Court enter judgment in favor of Plaintiff (a) ordering any Defendant to produce the minutes requested in the February 13, 2018 Sunshine Request, or in the alternative begin keeping the Statutorily required minutes (b) finding that Defendants knowingly and purposefully violated §610.020.2, RSMo; (c) assessing each Defendant, pursuant to §610.027.3 and §610.027.4 civil penalties of up to \$1,000 for each knowing violation and up to \$5,000 for each purposeful violation of the Sunshine Law that each Defendant committed; (d) award Plaintiff with reasonable attorney fees and (e) such further relief as the Court deems just and appropriate.

COUNT IV

Violation of Section 610.020.2, RSMo, Against Defendants Acre, Lawhorn, and Hensley for Violation of Notice of the Public Meeting as Defined by Section 610.010.5

43. Plaintiff herein restates and incorporates by reference the allegations contained in Paragraphs 1 through 42 of this Petition.

44. On or about February 24, 2018, Defendants attempted to hold a Board of Directors Meeting.

45. At that meeting, Board Member Ron Beckett alleged that two volunteer employees were attempting to kill him with cleaning product.

46. Defendant Beckett filed a police report, and refused to participate in the meeting.

47. Evidence shows the employees (not the volunteers which Defendant Beckett alleged) cleaned the hallway, using Pine-sol cleaner earlier in the day, making it difficult for Beckett to breathe.

48. After Defendant Beckett left the room, the three remaining Board Members, Hensley, Lawhorn and Acre, went into Acre's office and discussed official District business, including but not limited to, the resignation of another Board member.

49. Defendants' failed to call the public meeting to order; and, instead, had a private meeting behind closed doors.

50. 610.010 of the Sunshine Law which defines a "public meeting" as "any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated".

WHEREFORE, Plaintiff prays this Court enter judgment in favor of Plaintiff (a) ordering any votes or business done at the February 24, 2018 Board meeting be null and void (b) finding that Defendants knowingly and purposefully violated §610.020.2, RSMo; (c) assessing each Defendant, pursuant to §610.027.3 and §610.027.4 civil penalties of up to \$1,000 for each knowing violation and up to \$5,000 for each purposeful violation of the Sunshine Law that each Defendant committed; (d) award

Plaintiff with reasonable attorney fees and (e) such further relief as the Court deems just and appropriate.

/s/ Allison Sweeney

Robert K. Sweeney #38322

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March 14, 2018
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MAPAVILLE FIRE PROTECTION DISTRICT NOTICE OF BOARD OF DIRECTORS MEETING

February 19, 2018

PUBLIC NOTICE IS HERBY GIVEN OF THE TWO HUNDRED TENTH (210th) MEETING OF THE BOARD OF DIRECTORS OF THE MAPAVILLE FIRE PROTECTION DISTRICT OF JEFFERSON COUNTY, MISSOURI. MEETING IS OPEN TO THE PUBLIC. MEETING WILL BE HELD AT THE FIRE STATION HEADQUARTERS LOCATED AT 3687 PLASS ROAD.

THE TENTATIVE AGENDA FOR SAID MEETING IS AS FOLLOWS:

TENTATIVE AGENDA MAY ALSO INCLUDE AT ANYTIME A VOTE FOR A CLOSED MEETING AS AUTHORIZED BY MISSOURI REVISED STATUTES 610.021

- I. CALL TO ORDER:
- II. OPENING CEREMONIES/INTRODUCTIONS
- III. ROLL CALL & DETERMINATION OF QUORUM
- IV. AMENDMENTS TO, AND ADOPTION OF AGENDA
- BOARD TO ENTER INTO CLOSED SESSION TO ADDRESS A PERSONNEL ISSUE
- V. COMMENTS FROM PATRONS
- VI. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETING
- VII. FINANCIAL REPORT:
 - FINANCIAL REPORT FOR MONTH OF JANUARY 2018
- VII. FIRE CHIEF'S REPORT:
 - ALARM REPORT
 - LETTERS AND CORRESPONDENCE
 - STATUS OF APPARATUS/EQUIPMENT
- IX. BUILDING REPORT:
 - N/A
- X. UNFINISHED BUSINESS:
 - ADOPTION OF PUBLIC PARTICIPATION POLICY
- XI. NEW BUSINESS:
 - N/A
- XII. CLOSING COMMENTS

POSTED 2/17/18
1:15 P.M.