

**IN THE CIRCUIT COURT  
OF CAPE GIRARDEAU COUNTY, MISSOURI**

JAY PURCELL, )  
302 S. Lake Drive )  
Cape Girardeau, Missouri 63701 )

Plaintiff, )

v. )

Case No. \_\_\_\_\_

CAPE GIRARDEAU COUNTY )  
COMMISSION, )  
#1 Barton Square )  
Jackson, Missouri 63755 )

Defendant. )

Serve: Kara Clark, Cape Girardeau )  
County Clerk & Custodian of )  
Records )  
#1 Barton Square )  
Jackson, MO 63755 )

**PETITION FOR JUDICIAL ENFORCEMENT OF  
MISSOURI'S SUNSHINE LAW AND FOR INJUNCTIVE RELIEF**

Plaintiff, Jay Purcell, by and through his counsel John P. Clubb, for his Petition against  
Defendant Cape Girardeau County Commission states as follows:

**Introduction**

In Missouri, we favor openness in government. In fact, it is the public policy of the state, codified in Chapter 610 of the Revised Statutes, that meetings, records, vote, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by

law. The “Sunshine Law” as it is commonly called, shines a light on the workings of our government and insures that Missouri’s commitment to openness is promoted and enforced.

In Cape Girardeau, the County Commission carries out important business and serves the taxpayers. The Commission is bound to comply with the requirements of the Sunshine Law and its failure to do so is the reason that Commissioner Jay Purcell seeks judicial enforcement from this Court.

### **I. Description of the Parties**

1. Jay Purcell is a citizen of the state of Missouri, a resident and taxpayer of Cape Girardeau County, a Cape Girardeau County Commissioner and resides at 302 South Lake Drive, Cape Girardeau, Missouri 63701.

2. Commissioner Purcell was elected as a Commissioner of Cape Girardeau County and began serving his term on January 1, 2005.

3. The Cape Girardeau County Commission (hereinafter “Commission”) is a public governmental body organized pursuant to Chapter 49 of the Missouri Revised Statutes, with its principal place of business located at #1 Barton Square, Jackson, Missouri which is located in Cape Girardeau County, Missouri.

4. The Commission is a public governmental body pursuant to §610.010(4)(a) RSMo 2006.

### **II. Jurisdiction and Venue**

5. This Court has original jurisdiction over this case pursuant to § 610.030 RSMo 2006.

6. Venue is proper in Cape Girardeau County, Missouri pursuant to § 508.010 and §610.027.1, RSMo 2006.

7. Section 610.027.1 authorizes any aggrieved person, taxpayer, citizen of Missouri, or the Missouri Attorney General or the county's Prosecuting Attorney to seek judicial enforcement of §§610.010 to 610.026 RSMo.

### **III. Facts Common to All Counts**

8. Cape Girardeau County was organized on October 1, 1812 and it is a First Class County under the Missouri Revised Statutes.

9. The Commission is composed of three members, styled "commissioners" under §49.010 RSMo.

10. The members of the Commission are Jay Purcell, Gerald Jones, and Larry Bock.

11. On or about April 17, 2008 the Commission held a regularly scheduled meeting at #1 Barton Square, Jackson, Missouri 63755.

12. The public notice for the April 17, 2008 meeting stated that the Commission would have an "Executive Session" where it may, "as part of a regular or special County Commission meeting, hold a closed session to discuss legislation or litigation, leasing, purchasing, sale of real estate, or personnel matters." See copy of Commission agenda attached hereto as Exhibit A and incorporated by reference herein.

13. A portion of the April 17, 2008 meeting was held in open session and a portion of the meeting was held in closed session.

14. Among those present at the portion of the April 17, 2008 meeting open to the public were:

a. Commissioner Purcell

- b. Commissioner Gerald Jones
- c. Commissioner Larry Bock
- d. County Clerk Kara Clark
- e. Cape Girardeau County Prosecuting Attorney Morley Swingle

15. Present at the portion of the April 17, 2008 meeting closed to the public were:

- a. Commissioner Purcell
- b. Commissioner Gerald Jones
- c. Commissioner Larry Bock
- d. County Auditor David Ludwig
- e. Cape Girardeau County Prosecuting Attorney Morley Swingle

16. Cape Girardeau County Prosecuting Attorney Morley Swingle provides legal advice to the Commission from time to time.

17. At the April 17, 2008 meeting, Commissioner Purcell made a motion to adjourn to closed session.

18. At the April 17, 2008 meeting, Commissioners Jones and Bock voted with Commissioner Purcell to adjourn to closed session.

19. During the closed portion of the meeting April 17, 2008 the Commission discussed the alleged misuse of county resources by County Auditor David Ludwig and what options the Commission had to punish Mr. Ludwig or to get him to discontinue his violation of county policies on resource use.

20. In addition, at the closed portion of the April 17, 2008 meeting, the Commission discussed in closed session the issue of an improperly notarized easement on County Road 436.

21. Cape Girardeau County Prosecuting Attorney Morley Swingle was present at the closed portion of this meeting.

22. Mr. Swingle failed to prevent the Commission from going into closed session.

#### **IV. Cape Girardeau County Commission's Violation of Missouri's Sunshine Law**

##### **COUNT I**

##### **The Commission's Meeting was Improperly Noticed**

23. Commissioner Purcell hereby realleges and incorporates all other allegations in this petition as if fully set forth.

24. Section §610.020.1 RSMo states in pertinent part as follows:

All public governmental bodies shall give notice of the time, date and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered...

25. Section §610.020.2 RSMo states in pertinent part as follows:

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 unless for good cause such notice is impossible or impractical...

26. The Commission violated §610.020.1 because it failed on its notice for the April 17, 2008 meeting to include as agenda items on the closed portion of the meeting discussion of the McBryde easement and County Auditor Ludwig's alleged misuse of county resources and violation of county policies.

27. The Commission violated §610.020.2 because it failed to provide notice conforming with the statute for the closed meeting on April 17, 2008.

## COUNT II

### The Commission Improperly Discussed County Auditor Ludwig in Closed Session

28. Commissioner Purcell hereby realleges and incorporates all other allegations in this petition as if fully set forth.

29. Section 610.011 RSMo provides that it is:

....the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 RSMo shall be liberally construed and their exceptions strictly construed to promote this public policy.

30. Section 610.010(3) RSMo defines “public business” as “all matters which relate in any way to the performance of the public governmental body’s functions or the conduct of its business.”

31. Section 610.021(3) RSMo allows, in pertinent part, for a public governmental body to close meetings or records relating to employees under the following circumstances:

Hiring, firing, disciplining, or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded.

32. While in closed session on April 17, 2008 the Commission discussed County Auditor Ludwig’s alleged violation of county internet policy.

33. County Auditor Ludwig is an elected official elected pursuant to §55.050 RSMo.

34. Elected officials are not employees for purposes of Section 610.021(3).

35. The Commission violated §§610.021 and 610.011 by going into closed session to discuss County Auditor Ludwig’s alleged violation of the County’s internet policy and potential actions by the Commission to address the alleged violations.

**COUNT III**  
**The Commission Improperly Discussed the Lawrence McBryde Easement  
in Closed Session**

36. Commissioner Purcell hereby realleges and incorporates all other allegations in this petition as if fully set forth.

37. Section 610.021(1) RSMo allows, in pertinent part, for a public governmental body to close meetings or records under the following circumstances:

Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys.

38. Section 610.021(2) RSMo allows, in pertinent part, for a public governmental body to close meetings or records under the following circumstances:

Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor.

39. While in closed session on April 17, 2008 the Commission discussed the improperly notarized McBryde easement on County Road 436.

40. Section 610.021 RSMo did not allow the discussion of the McBryde easement to be held in closed session.

41. The Commission violated §§610.021 and 610.011 by going into closed session to discuss the improperly notarized McBryde easement on County Road 436.

## **V. Prayer for Relief**

42. The actions described above demonstrate that the Cape Girardeau County Commission failed to follow the requirements of §§ 610.010 - 610.026, RSMo with regard to meeting notice requirements and that the Commission held a closed meeting in violation of Missouri's Sunshine Law.

WHEREFORE, the Plaintiff, Commissioner Jay Purcell, prays this Court to enter an order:

- (1) finding that the Cape Girardeau County Commission has violated §§610.020.1 to 610.020.2;
- (2) finding that the Cape Girardeau County Commission has violated §§610.011 to 610.021;
- (3) issuing an injunction pursuant to § 610.030, RSMo 2000, requiring Defendants to immediately comply with the provisions of §§ 610.010 to 610.026, from the date of this judgment forward;
- (4) requiring Defendants to pay reasonable attorneys fees and costs of this action;  
and
- (5) Such other and further relief as the court shall deem proper.

Respectfully submitted,

THE CLUBB LAW FIRM, LLC

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