

OFFICERS: Meetings of the Columbia City Council regarding the hiring of a municipal judge or city manager fall within the "personnel" exception of § 610.010 et seq., RSMo Supp. 1973)
CITY OFFICERS:
SUNSHINE LAW:
025(4) of the Sunshine Law (§§ 610.010, et seq., RSMo Supp. 1973) and therefore may be closed to the public.

OPINION NO. 155

July 18, 1975

Honorable Larry R. Marshall
State Senator, District 19
32 North 8th Street
Columbia, Missouri 65201



Dear Senator Marshall:

This opinion has been issued in response to your request for an official written opinion on the following question:

"Under the Sunshine Law passed in 1973 and the exception to open meetings for personnel matters, does a public official such as a municipal judge or city manager come within the definition of personnel, thereby allowing the closed meeting for the selection of said individuals?"

In relating the facts underlying this opinion request, you note that the Columbia City Council soon will be meeting to appoint a successor to Roger D. Hines, who recently was removed from the office of municipal judge of the City of Columbia by the Missouri Supreme Court. See In re Hines, No. 59067 (Mo. Banc July 14, 1975). We shall, therefore, treat your question as dealing specifically with the Columbia City Council.

Your reference to the "Sunshine Law," of course, is to §§ 610.010 et seq., RSMo Supp. 1973, commonly known as the "Sunshine Law" or "Sunshine Bill." Section 610.015 requires, inter alia, that "all public meetings shall be open to the public." "Public meeting" is defined by § 610.010(3) as:

". . . any meeting, formal or informal, regular or special, of any public governmental body, at which any public business is discussed, decided or public policy formulated;"

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The term "public governmental body" is defined in § 610.010 (2) as:

". . . any constitutional or statutory governmental entity, including any state body, agency, board, bureau, commission, committee, department, division, or any political subdivision of the state, of any county or of any municipal government, school district or special purpose district, and any other governmental deliberative body under the direction of three or more elected or appointed members having rule-making or quasi-judicial power;" (Emphasis added)

The Columbia City Council is a governmental entity created by the charter of the city (Article I, § 2), which is a municipal government of constitutional origin (Article VI, § 19, Constitution of Missouri). Therefore, the regular and special meetings of the city council normally are required to be open to the public by § 610.015. Cohen v. Poelker, 520 S.W.2d 50, 52-53 (Mo.Banc 1975).

There are, however, certain exceptions to the operation of § 610.015, including § 610.025(4) which provides, in part, that "meetings relating to the hiring, firing or promotion of personnel of a public governmental body" may be closed to the public.

Since your question seeks to determine whether council meetings relating to the hiring of "public officials" such as the municipal judge or city manager may be closed to the public, the determinative factor is whether these officials may be classified as "personnel" of the Columbia City Council. If they may be so classified, § 610.025(4) authorizes (but does not require) such meetings to be closed.

The term "personnel" is not defined in Chapter 610. Furthermore, it appears the term has never been judicially defined by any appellate court of this state. Nor is reference to the open meetings laws of other states particularly enlightening. The exception relating to personnel matters is undoubtedly the most common exception in open meetings statutes. See note, Open Meetings Statutes: The Press Fights For The "Right To Know," 75 Harv.L.Rev. 1199, 1208 (1962); Wickham, "Let The Sun Shine In! Open-Meeting Legislation Can Be Our Key to Close Doors in State and Local Government," 68 N.W.L.Rev. 480, 485 (1973). However, in most statutes where the exception appears, the phrase "public officer or employee," or similar language is used, rather than "personnel."¹

¹Alaska Stat. Ann. § 44.62.310(c)(2) (1974); Ark. Stat. Ann.

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The personnel exception to New Mexico's open meetings law applies to "personnel matters." N.M.Stat. Ann. § 5-6-23(E) (Supp. 1974). This phrase, however, is not defined in the statute; nor has it been interpreted by the New Mexico courts. In fact, the word "personnel" does not appear to have been judicially defined in any jurisdiction.

We must, therefore, look to the well-established rule of statutory construction that words appearing in a statute must be given their "plain and ordinary meaning." State ex rel. Dravo Corporation v. Spradling, 515 S.W.2d 512, 517 (Mo. 1974); State v. Brady, 472 S.W.2d 356, 358 (Mo. 1971).

Unquestionably, the "plain and ordinary meaning" of the word "personnel" is rather broad. Its meaning is variously defined in standard American dictionaries as:

"a body of persons employed in some service (as the army or navy, a factory, office, airplane)." Webster's Third New International Dictionary (Unabridged Edition, 1969), at p. 1687;

"the body of persons employed in any work, undertaking or service," The Random House Dictionary of the English Language (Unabridged Edition, 1965), at p. 1075;

"[t]he body of persons employed or active in an organization, business or service." The American Heritage Dictionary of the English Language (1969 Edition), at p. 979.

In view of these rather expansive definitions and in view of the subsection's reference to "hiring, firing and promotion," it is our view that the word "personnel" as used in the context of § 610.025(4) refers to officers or employees of a public governmental body

¹Footnote continued:

12-2805 (1968); Ariz. Rev. St. Ann. 38-431.03(A)(1) (Supp. 1973); Calif. Gov. Code § 54957 (1971 Supp.); Ida. Code Ann. 67-2345(a) (Supp. 1974); Ill. Ann. Stat. ch. 102, § 42 (Smith-Hurd Supp. 1975); Mont. Rev. Codes Ann. § 82-3402(3) (1966); N.H. Rev. Stat. Ann. § 91-A:3 (II) (b) (1973 Supp.); N.C. Gen. Stat. § 143.318.3(b) (1974); Okla. Stat. Ann. 25 § 201 (1974 Supp.); Ore. Rev. Stat. § 192.660 (Supp. 1973); S.C. Code Ann. § 1-20-3(b)(1) (1974 Cum. Supp.); Tex. Rev. Civ. Stat. Art. 6252-17(2)(g) (Supp. 1974); Vt. Stat. Ann. tit. 1, § 313(3) (Supp. 1974); Va. Code Ann. § 2.1-344 (1) (1975 Cum. Supp.); Wis. Stat. Ann. § 66.77(3)(b) (Supp. 1973); Wyo. Stat. Ann. § 9.692.14(ii) (Cum. Supp. 1973).

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who are hired or appointed by, and who are subject to removal by, such governmental body. This definition would, of course, encompass both the municipal judge and city manager of Columbia, since both officials are hired by, and subject to removal by, the Columbia City Council. (See Article XV, § 114, and Article III, § 19, Columbia City Charter). Hence, pursuant to subsection (4) of § 610.025, meetings relating to the hiring of such officials may be closed to the public.

In reaching this conclusion, we are not unmindful that this law should be liberally interpreted (see Op. Atty. Gen. No. 330, Volkmer, 12-18-73), and that consequently, exceptions to its operation should be strictly or narrowly construed. 73 Am.Jur.2d Statutes § 313 (1974) at p. 463-464.

The legislature, in drafting § 610.025(4), did not distinguish between classes or levels of "personnel" of a public governmental body. Certainly, nothing in the language employed in § 610.025(4) justifies such a distinction, no matter how narrowly the word "personnel" is defined. If the legislature had intended to exclude certain public officers or employees from the exception contained in this subsection, it could easily have done so. Its failure to make such a distinction cannot be regarded as an oversight. In any event, in interpreting this subsection, ". . . We are bound by what the General Assembly said, not what it might have said. . . ." State v. Richardson, 495 S.W.2d 435, 440 (Mo.Banc 1973).

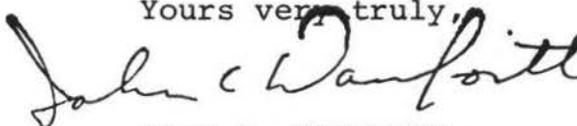
Hence, since there exists no basis for excluding a municipal judge or city manager from the "personnel" exception of § 610.025 (4), it follows that meetings relating to the hiring of such officials may be closed to the public.

CONCLUSION

It is the opinion of this office that meetings of the Columbia City Council regarding the hiring of a municipal judge or city manager fall within the "personnel" exception of § 610.025(4) of the Sunshine Law (§§ 610.010, et seq., RSMo Supp. 1973) and therefore may be closed to the public.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 330
12-18-73, Volkmer