



ATTORNEY GENERAL OF MISSOURI

ERIC SCHMITT

September 18, 2022

Frank J. Ross, Jr.
Polsinelli, P.C.
900 West 48th Place
Suite 900
Kansas City, MO 64112
via email to fross@polsinelli.com

***Re: Sunshine Law Complaints – Scotland County Hospital Board
of Directors***

Dear Mr. Ross:

This letter concerns a series of complaints received by the Attorney General's Office alleging that the Scotland County Hospital Board of Directors has failed to comply with the Sunshine Law. The matters in these complaints raise serious concerns about the Board's adherence to the Sunshine Law's promise of open and transparent public business. This letter will briefly describe the nature of the complaints, the relevant legal obligations the Board is expected to follow, and our Office's intended next steps to safeguard transparent Board governance.

We understand you and your firm have been recently retained by the Hospital to provide legal representation. We are also sending a copy of this letter to the Board's Executive Liaison for Administration.

At the outset, our Office understands the Board to be a public or a quasi-public governmental body, as those terms are defined in § 610.010 of the Sunshine Law. Our most recent information indicates that the Hospital is owned by Scotland County and receives at least a portion of its operating budget from tax dollars. *See, e.g., N. Kansas City Hosp. Bd. of Trustees v. St. Luke's Northland Hosp.*, 984 S.W.2d 113 (Mo. App. W.D. 1998).

The complaints our Office received concern the Board's adherence to the Sunshine Law's open meeting and records requirements.¹

¹ The complaints also raise a number of Board governance issues and matters that may be addressed by other Missouri laws. At present, our review is focused on only matters within the Attorney General's Office's authority to enforce the Missouri Sunshine Law.

First, one complaint reports that on August 15, 2022, three members of the Board, along with at least two Hospital senior executives and likely a consultant, gathered at the Board Chairperson's house. The purpose of that gathering appears to have been to discuss matters of important public business. We understand that three other Board members were purposefully not informed about this gathering beforehand. While information suggests that those at the meeting gathered under the auspices of it being an emergency meeting, no explanation has been given as to why 1) not all members of the Board were invited; 2) no advance public notice was given, even if less than 24 hours; and 3) the meeting could not have been held the following day with at least 24 hours' advance notice.

Traditionally, public governmental body governing documents define the minimum number of members necessary to constitute a quorum. We believe that the Board's full composition has six members. Three of six members may or may not constitute a quorum to vote on matters of public business, as open questions remain about the Board's governance and whether any of the attendees at the August 15, 2022 meeting had authority to cast tie-breaking votes. In any event, under the Sunshine Law, a body's holding of meetings with less than a quorum may still violate the Sunshine Law when the gathering is deliberately held to avoid public-notice requirements. As explained in *Colombo v. Buford*:

[I]t is the intent of the legislature that the Sunshine Law would apply to meetings of groups of less than a quorum of a "public governmental body" where a quorum or more of the body was attempting to avoid the purposes of the Sunshine Law by deliberately meeting in groups of less than a quorum in closed sessions to discuss and/or deliberate on public business then ratifying their actions as a quorum in a subsequent public meeting.

935 S.W.2d 690, 699 (Mo. App. W.D. 1996).

The Board has kept minutes of the August 15, 2022, meeting. Our understanding is that the Board views this m as a "closed" public meeting. The complainants have alleged that the matters discussed and voted upon related to bank accounts, restructuring of certain entities relating to the Hospital, former Hospital employees' conduct, and appointing new Hospital senior executive officers. While some of those items may be authorized to be closed under § 610.021 in a normal meeting, others may not be authorized to be discussed and voted on in closed session.

Our review of this meeting and its aftermath continues. We are especially focused on understanding what items of business were voted on in that meeting, what items were ratified at later meetings, the motivations for the Board excluding a full

complement of Board members from attending the meeting, and whether any of the votes taken are subject to invalidation.

Finally, we understand that the Board received requests for copies of Board meeting minutes—including *draft* minutes—for meetings held in August 2022, including the August 15, 2022, meeting at the Chairperson’s home. We believe that the Board delayed producing these minutes for several weeks. Under § 610.023, a public governmental body must make available its public records within three business days of receiving a request, or else provide specific information about the earliest date the records will become available and an explanation for the delay.

While our review of these matters continue, we demand that the Board immediately implement the following measures to avoid stronger enforcement action:

1. Immediately satisfy all outstanding requests for the Board’s meeting minutes;
2. Evaluate all meeting minutes to ensure that they accurately recorded all votes, including roll call votes;
3. Cease holding meetings that do not include all Board members;
4. Ensure all Board meetings are held after appropriate public notice is given.

Furthermore, we demand that the full Board and the Hospital’s senior executives attend a Sunshine Law training session provided by our Office within the next 60 days. We understand that the Board recently asked for a training. This must be completed as soon as possible. Our Director of Sunshine Law Compliance will schedule this training with the Board’s Executive Liaison for Administration.

We expect that the Board will implement these interim measures in order to avoid immediate stronger enforcement action under the Sunshine Law. The citizens of Scotland County deserve a Board that complies with its Sunshine Law obligations and that does not embark down a path of avoidable and costly enforcement action.

Sincerely,

/s/ Jason K. Lewis

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cc: Brenda Prather, pratherb@scotlandcountyhospital.com