

**IN THE 21ST JUDICIAL CIRCUIT, COUNTY OF ST. LOUIS
STATE OF MISSOURI**

FILED 11/06/23 JOAN M. GILMER CIRCUIT CLERK ST. LOUIS COUNTY, MO

CITY OF JENNINGS,

Petitioner,

vs.

TERRY WILSON ET AL,

Respondents.

Cause No. 23SL-CC03576

Division 43

ORDER AND JUDGMENT

On the October 10, 2023, Respondents' Motion to Dismiss was called and heard. Petitioner appeared by counsel, Ms. Shira Truitt. Respondents appeared by counsel, Mr. Joseph Dulle. Petitioner was granted leave to file a Response to the Motion to Dismiss by October 20, 2023 and did so. Respondents filed their Reply on October 26, 2023.

Petitioner filed an "Amended Motion for Declaratory Judgment, Enforcement of § 610.021 of the Open Meetings Act and Enforcement of the Open Meetings Act."¹ A motion to dismiss for failure to state a claim is solely a test of the adequacy of the petition. City of Lake Saint Louis v. City of O'Fallon, 324 S.W.3d 756, 759 (Mo. 2010) (en banc). A petition must contain "a short and plain statement of facts showing that the pleader is entitled to relief." Mo. S. Ct. R. 55.05. "The petition states a cause of action if it 'sets forth any set of fact that, if proven, would entitle the plaintiffs to relief.'" Lynch v. Lynch, 260 S.W.3d 834, 836 (Mo. 2011) (en banc).

¹ In accordance with the Missouri Supreme Court Rules, actions are instituted by petition, not by motion. Therefore, for purposes of this hearing the Court treats Petitioner's motion as a petition. The statutes referenced are part of Missouri's Sunshine Law but it is referred herein as the "Open Meetings Act" to be consistent with the terminology used in the operative pleading.

Standing is a jurisdictional matter antecedent to the right to relief and cannot be waived. Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. 2002). Standing addresses whether the party seeking relief has a right to do so. Id. When the issue of standing is raised, courts have a duty to determine the question of their jurisdiction before reaching substantive issues because if a party lacks standing, the court must dismiss the case because it does not have jurisdiction over the substantive issues presented. Id. Mo. S. Ct. R. 55.27(g)(3).

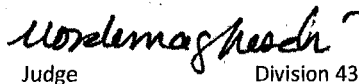
Each of Petitioner's counts is based on alleged violations of the Open Meetings Act, specifically Mo. Rev. Stat. §§ 610.020 and 610.021. Petitioner requests that the August 18, 2023 city council meeting be nullified and civil penalties and attorney's fees be assessed against Respondents pursuant to Mo. Rev. Stat. § 610.027. The Open Meetings Act provides that "*[a]ny aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections § 610.010 to § 610.026.*" Mo. Rev. Stat. § 610.027.1. The Petitioner, however, is none of the above. Petitioner is a public governmental body as defined by Mo. Rev. Stat. § 610.010(4). Therefore, it does not have standing to bring actions for enforcement or violations of the Open Meetings Act pursuant to § 610.027 unless it does so in accordance with the safe harbor provision set forth in Mo. Rev. Stat. § 610.027.6.

This safe harbor provision offers public governmental bodies, such as the City of Jennings, a way to resolve any ambiguity as to their obligations under the law to avoid noncompliance. City of Byrnes Mill v. Limesand, 599 S.W.3d 466, 472 (Mo. Ct. App. E.D. 2020). The safe harbor provision states that a governmental body "which is in doubt about the legality of closing a particular meeting, record or vote" may bring suit in the circuit court to "ascertain the propriety of such action." Mo. Rev. Stat. § 610.027.6; see e.g. City

of Byrnes Mill, 599 S.W.3d at 466; City of Springfield v. Events Pub. Co., 951 S.W.2d 366 (Mo. Ct. App. S. D. 1997). In Count 1, Petitioner does not seek guidance regarding a specific future disclosure or meeting but rather requests that Court declare certain actions already taken void. Therefore, Count 1 is not an action brought pursuant to § 610.027.6 but is an action seeking enforcement of the Open Records Act and relief for past violations, a cause of action that can only be brought by an “*aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney.*” Mo. Rev. Stat. § 610.027.1.

Accordingly, for the reasons stated herein, and the other reasons supported by the record, Respondents’ Motion to Dismiss is GRANTED and the Petitioner’s Amended Motion for Declaratory Judgment, Enforcement of § 610.021 of the Open Meetings Act and Enforcement of the Open Meetings Act is hereby DISMISSED.

SO ORDERED:


Judge Division 43