
THE BRECHNER REPORT

Volume 24, Number 11 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
November 2000

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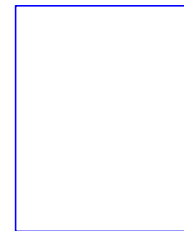
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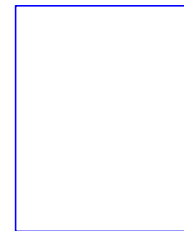
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members of the Monroe County Board of County Commissioners spoke via telephone conference call during the selection process.

According to the state attorney's office, the calls were not advertised to the public, a violation of the state's Open Meetings Law. The contract

was awarded to New Jersey based-Ogden Water Systems to plan and construct the sewer system on June 28.

The state began its investigation in early August, following the discovery of the conference calls and faxes that indicated discussion had taken place outside the official meeting. (9/2-7/00)

County closed door settlement raises questions

Stuart – Martin County commissioners may have violated the state's Sunshine Law by approving a settlement for a lawsuit filed against the city by a woman who was paralyzed in an accident involving Martin County volunteer firefighters.

to discuss the \$2.43 million settlement for Margaret Helm, who was stuck by the firefighters vehicle after she stopped to help an elderly couple injured in a traffic accident in March, 1999. A claims bill seeking permission from the Legislature was filed in Tallahassee before the commissioners approved the settlement in an open meeting.

The private meeting seems to violate a March 1997 court ruling that permanently enjoins the County from settling lawsuits in closed-door sessions, said Martin Reeder, an attorney representing the Palm Beach Post. The meeting's transcripts remain sealed. (9/24/00)

Press access suit moved to federal court

St. Petersburg – An attorney for the St. Petersburg Times is unhappy with federal authorities who decided to move the paper's suit for access to an internal police investigation from state to federal court on the day trial was to begin.

ACCESS RECORDS

obtain investigation records of police Lt.

Donnie Williams who was accused of dealing drugs in 1998.

"What bothers me about this is, the Times made this public records request more than a

year ago," said attorney Thomas McGowan. He questions the move of the trial.

"You can do a lot more in secret in federal court than you can in state court," said McGowan. (9/7/00)

The newspaper and the Pinellas County Police Benevolent Association are suing the city to

Sheriff must comply with law

Nassau County - The Nassau County sheriff has been ordered by a judge to comply with the state's Public Records Law following a complaint filed by a Fernandina Beach attorney.

Judge Alban E. Brooke, Fourth Judicial Circuit, ordered Sheriff Ray Geiger to provide records to attorney John Cascone. According to Cascone's motion, he had requested records from the sheriff's office via certified letter on August 23. The letter was received on August 28, but after nine days, the request had not been answered. Cascone then requested the court order. According to the court order, in addition to providing the requested information, the sheriff's office must pay legal fees. (9/13/00)

Bucs' must pay for holding records

Tampa - The Tampa Bay Buccaneers football organization has been ordered to pay about \$47,500 to local authorities for refusing to turn over public records last year.

The Hillsborough County Commission and the Tampa Sports

Authority sued the team when they refused to reveal how they made money from publicly financed Raymond James Stadium.

Judge Gasper Ficarrota, 13th Judicial Circuit, ordered the Bucs to pay the county \$32,500 and the Sports Authority about \$15,000 to cover legal fees. (9/21/00)

Hospital authority wants open medical services meetings

Baker County – The Baker County Hospital Authority is considering a move to open up formerly closed meetings of its management company, Baker County Medical Services, Inc. to address concerns over construction of a

new hospital and nursing home.

The authority has primarily served as a property tax conduit since creating the management company in 1993.

But in 1999, the authority took a more active role by hiring an inspector

to insure that construction guidelines were being met.

Attorney Bruce Robinson will review the matter and make recommendations to the authority in late September.

(9/14/00)

State attorney clears city commissioners

Bunnell – There were no violations of the state's Sunshine Laws by city commissioners or the city attorney, according to the state attorney's office. Elly Johnson, former city manager for Bunnell, filed the charges with the state attorney's office after being fired by the commission in March.

In his complaint, Johnson accused the city attorney, two city commissioners and the Mayor Joann King, of regularly discussing city

business in the City Hall parking lot following meetings. The two commissioners and the Mayor listed in the complaint had voted to fire Johnson in March.

The state attorney's investigation found no evidence that city attorney Tance Roberts was being used as a conduit between commissioners and that "a conflict existed between some city commissioners and Mr. Johnson."

(9/6/00)

City settles suit with sunshine advocate

Bay County – By admitting that they did not meet the "high standards for openness provided in the Sunshine Law," county commissioners have settled a private citizen's lawsuit.

Phil Sexton filed his suit against the city, alleging that the city violated the state laws when commissioners discussed a controversial underwater sewage pipeline project at a May 16

meeting. In a reply letter, the commission acknowledged that "the meeting could have been conducted in a more orderly fashion." The letter included a disclaimer that neither the city or county admitted to any violations.

In return, Sexton has dropped his suit and forgiven the city for the \$200 court costs. (8/23/00)

DEFAMATION

Anonymous e-mailers not protected

Miami – The identity of people who post defamatory messages on the Internet are not protected, according to a recent Third District Court of Appeals order.

Last September, Eric Hvide, former chief executive officer of Hvide Marine, Inc., filed suit against Internet service providers Yahoo! Inc. and America Online, Inc., to reveal the names of eight individuals who posted anonymous defamatory messages on a Yahoo! Financial chat room.

In May, Judge Eleanor Schockett, 11th Judicial Circuit, ruled that the on-line providers must reveal the names of

the individuals. The American Civil Liberties Union, who represented the anonymous individuals, filed an appeal to suppress the motion. The appeals court issued the stay in June to give both sides an opportunity to file legal briefs.

The court's latest action could create a chilling effect on free expression in chat rooms, according to the ACLU. "The court had the potential to set an important precedent about the right to speak anonymously on the Internet," said Lyrrisa Lidsky, a University of Florida law professor and cooperating attorney with the Florida ACLU chapter.

(10/18/00)

NEWS NOTES

N.J. papers take FOI honors

Gainesville — An investigative series written by seven New Jersey newspapers that delved into the "cult of secrecy" of public records is the winner of this year's Joseph L. Brechner Center for Freedom of Information award.

The series will be recognized at the 15th annual Brechner Center for Freedom of Information award celebration Nov. 20. Two reporters, Jason Method and Frank Kummer will accept the \$3,000 award for the Gannett-owned New Jersey newspapers.

The series, "Public Access Denied," chronicles the poor compliance rate with the state's public record law. "This series represents the best example of how newspapers can work with private citizens to learn more about their government," said Sandra Chance, director of the Brechner Center.

A similar project focusing on Arkansas' Freedom of Information Act, received an honorable mention.

The annual award was established by the late Joseph L. Brechner, an Orlando broadcasting pioneer.

[Editor's Note: See related story on the Back Page]

DECISIONS ON FILE

Copies of case opinions, attorney general opinions, or legislation reported in any issue as on file may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

State grand jury recommends sealing accident records

St. Petersburg – A statewide grand jury has recommended sealing auto accident reports as a way to crack down on “ambulance-chasing” lawyers and doctors, according to a recently released report.

Currently, access to accident records is available under the state’s Public Records Law. In its report, the grand jury recommends to legislators to allow accident reports made available to only a

select few, such as the accident victims, their insurance companies and “legitimate” journalists and news organizations.

The Florida Bar Association does not agree with the report’s findings, noting that the association aggressively investigates suspected cases of fraud, according to Tony Boggs, director of the state bar’s legal division.

The grand jury was empaneled in

1999 to review and make recommendations to lawmakers on a variety of financial crimes. (9/7/00)

CENSORSHIP Library reading program halted

Jacksonville -- The public library has discontinued a reading incentive program following objections by some parents. To commemorate the release of “Harry Potter and the Goblet of Fire,” the Jacksonville library created special certificates which were given out to children once they completed the book. The fictional book series depicts the adventures of an apprentice wizard and has drawn a wide following among school children.

The practice drew the ire of several parents, including John Miesburg who objects to the witchcraft themes of the books, “If they are going to pass out witchcraft certificates, they should promote the Bible and pass out certificates of righteousness,” said Miesburg.

The library started the program on July 8, but discontinued it on July 19. “We decided that discretion was the better part of valor,” said Kenneth Sivulich, library director. (9/13/00)

Filmmakers lose Delta Chi tape suit

Gainesville – A judge has ruled that videotapes from a 1998 University of Florida fraternity party under investigation by the state attorney’s office are protected and has denied a request for copies by two Miami filmmakers.

Billy Corben and Alfred Spellman, claimed that state attorney Rod Smith

violated the state’s Open Records Law. But the tapes are student records and therefore under state law, are exempt from public disclosure, ruled Judge Stan Morris, Eighth Judicial Circuit.

The case involves a stripper who claims she was raped when she performed at a Delta Chi fraternity initiation party in 1998. (8/26/00)

FIRST AMENDMENT

Student fights school t-shirt ban

Brooksville - A student is fighting to keep the t-shirt on his back. Citing an interest in the Civil War and his southern heritage, Joel Roberts is resisting a school ban on clothing that could provoke disruptions.

Roberts has been reprimanded twice for wearing his “Legends of the Confederacy” t-shirts to Central High school.

School officials say that in the past,

depictions of the Confederate flag have caused disruptions at the school. “It has been something that has raised the dander of some students,” said Dennis McGeehan, Central High principal.

But the 16-year old student sees it differently. “It’s just a flag, I don’t attach anything to it. I’m not a racist,” he said. Roberts has the support of his parents and other students who have circulated a petition supporting him. (9/7/00)

No swan song for swine judge rules

STUART — Music may soothe the savage beast, but for a pig farm located near a prestigious golf course, a judge has ruled that while the pigs can stay, the tunes need to be toned down.

“I don’t want any monkeying around with the noise bothering these folks,” said 19th Circuit judge Ben Bryan in his instructions to pig farmer Thomas Rossano.

Bryan reversed his previous order

requiring Bryan to remove the pigs from his family’s property. He also ordered Roassano to turn down the music he plays to soothe his pigs.

For over three and a half years, Rossano has been fighting with Martin County and the owners of the Florida Club, an upscale golf club located next to Rossano’s property; they have filed zoning violations claims against Rossano for raising livestock. (7/21/00)

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Jumping public access loopholes in New Jersey

If Swiss cheese were turned into law, it would look a lot like NJSA 47:1A-1, New Jersey's Right to Know law. Shot through with exemptions and convoluted logic, the law boils down to this: Governmental

The Back Page

By Paul D'Ambrosio

records are public only if mandated by law to be kept. Sounds good, right? But few records

Paul D'Ambrosio

are required to be kept by law. And here is another loophole: there is no time limit for fulfilling a request, so government officials can keep you dangling for weeks, months or an eternity.

New Jersey media has silently suffered poor access for many decades and it is widely accepted that we have one of the worst public access laws in the nation. To change that, we began a public journalism project to educate voters and Legislators about the pitfalls of the current law.

The *Asbury Park Press* began the campaign in 1997 with its "Right to Know Nothing" series (a 1998 Brechner FOI Award winner) that showed readers how bad access can allow bad things to happen in government.

In 1999, after a public access reform bill died in the Legislature and the governor reneged on her promise to issue an executive order to open up her branch of government, the *Press* and six other daily newspapers in the Gannett New Jersey group planned what would become one of the largest access surveys in the nation.

The project was broken into three phases: Survey and report; poll citizens and Legislators about their views on public access; and run frequent editorials to push for a new law. Taking part in the largest journalism project in state history were the *Press*, the *Courier-News*, *Courier-Post*, the *Vineland Daily Journal*, the *Daily Record*, the *Home News Tribune* and *Ocean County Observer*.

In early 2000, the newspapers sent 70 surveyors to more

than 600 municipal offices, school boards and police stations seeking information that was public even under our weak law. The initial three-day series written by Trenton Statehouse Bureau staffers Jason Method and *Courier-Post* reporter Frank Kummer.

What we found wasn't surprising: A third of the school boards refused to show their budgets; half of the towns and schools wouldn't produce overtime records; and nearly 8 out of 10 police stations turned surveyors away when they asked to see the weekly police blotter.

Comments from public officials ranged from rude to arrogant, telling surveyors such things as "We don't just give records to anybody who asks for them" and "Public information is for township of Rockaway residents only."

The subsequent poll showed a sharp divide between the public and Legislators on this issue. Nearly 8 out of 10 citizens wanted to amend the state Constitution to provide for open government, while only half of the lawmakers supported that notion. Nearly 70 percent of people wanted to see the daily activity logs of their Legislators, but just 39 percent of the lawmakers thought that would be a good idea.

Reaction to the series generated a number of letters and op-ed pieces and sparked debate in the Legislature. When pressed, leaders of both houses agreed to support the reform measure. It passed the Assembly this Spring, but it has stalled in the state Senate. The reason: the state attorney general claims the law would reveal the names of confidential police informants, and local towns said it would be too much work for clerks to provide public records to the public.

As is New Jersey's tradition, opponents have worked against the bill behind closed doors, attempting to insert language that will effectively kill any true reform.

In the meantime, we'll be trying out best to pry open that door.

Paul D'Ambrosio is the Investigations Editor for the Asbury Park Press and the 1998 winner of the Brechner FOI Award.