

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### SOUTHERN DIVISION

JAY PURCELL, Appellant,	)	No. ED92213
	)	
	)	Appeal from the Circuit Court
v.	)	of Cape Girardeau County
	)	
CAPE GIRARDEAU COUNTY	)	
COMMISSION, Respondent.	)	Filed: July 21, 2009

Cape Girardeau County Commissioner Jay Purcell (Purcell), in his individual capacity, sued the Cape Girardeau County Commission (the Commission) alleging violations of Missouri's Open Meetings and Records Act, commonly referred to as Missouri's Sunshine Law, Sections 610.010 through 610.030, RSMo (2006).<sup>1</sup> Purcell appeals from the trial court's grant of summary judgment in the Commission's favor finding no violation of the Sunshine Law.

REVERSED AND REMANDED WITH DIRECTIONS.

The Southern Docket Division holds: A county commission may not sue or be sued as a distinct legal entity. Actions against a county commission may be brought only by naming the individual commission members in their official capacity. Under the statutory directives of Chapter 49, a county commission's powers and responsibilities, like those of the board of police commissioners, fall short of those allocated to a corporate or quasi-corporate legal entity that may be sued. Although no Missouri case has addressed this issue in the context of a county commission created under Section 49.010, the Supreme Court's thorough discourse on this issue in the context of the Board of Police Commissioners in American Fire Alarm Co. v. Board of Police Commissioners, 227 S.W. 114 (Mo. 1920), is instructive. Further, actions brought under Missouri's Sunshine Law are not exempt from the principles discussed in American Fire Alarm. The trial court erred when it allowed the action to proceed against the Commission without the individual commission members named as defendants in their official capacity. The judgment is reversed and remanded with directions that the action be dismissed without prejudice.

Opinion by: Kurt S. Odenwald, J. Nannette A. Baker, C.J., and Patricia L. Cohen, J., Concur.

Attorney for Appellant:	John P. Clubb
Attorney for Respondent:	Thomas A. Ludwig
Attorney for Amicus Curiae:	Jean Ann Maneke

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**

<sup>1</sup> All subsequent statutory references are to RSMo 2006, unless otherwise indicated.