

IN THE CIRCUIT COURT OF BOONE COUNTY, 13TH JUDICIAL CIRCUIT  
STATE OF MISSOURI

SOUTHEASTERN LEGAL	)
FOUNDATION, INC.,	)
	)
Plaintiff,	)
	)
v.	)
	)
MISSOURI SCHOOL	)
BOARDS' ASSOCIATION,	)
	)
	)
Defendant.	)

**PETITION**

Plaintiff Southeastern Legal Foundation, Inc. (SLF), for its Complaint against Defendant Missouri School Boards' Association (MSBA), states as follows:

**THE SUNSHINE LAW**

1. Chapter 610, RSMo., contains statutes requiring—with a few specified limitations—that the meetings, records, and votes of all public bodies must be open to the public; this set of statutes is commonly referred to as the “Sunshine Law.”
2. The Sunshine Law governs the production of public records in Missouri. *See* § 610.010 - .035, RSMo.
3. The Sunshine Law applies to “quasi-public governmental” bodies. § 610.010(4)(f)a – b, RSMo.
4. The definition of “quasi-public governmental body” is liberally construed as well, and any exceptions strictly construed to promote the public policy of transparency. § 610.011.1, RSMo; *see SNL Secs v. Nat’l Ass’n of Ins. Comm’rs*, 23 S.W.3d 734, 737 (Mo. Ct. App. 2000).

5. In 1988, the Missouri Attorney General issued an opinion stating that the MSBA is a “quasi-public governmental body” and thus, subject to the provisions of the Sunshine Law. Mo. A.G. op. no. 103-88, 1988 Mo. AG LEXIS 48.
6. Section 610.011, RSMo, declares:
  1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. ***Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.*** [Emphasis added.]
  2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.
7. Put more simply, transparency is the rule for public entities in Missouri. Courts are not at liberty to infer exceptions to this rule; the only permissible exceptions are those established by statute and courts are instructed to construe those exceptions strictly in order to preserve the rule of transparency. *See* § 610.011.1, RSMo.
8. Section 610.023.2, RSMo., requires each public governmental body and quasi-public governmental body to make its public records available to the public for inspection and copying.
9. Section 610.023.3, RSMo., requires a records custodian to respond to a request “in no event later than the third business day following the date the request is received[.]”
10. Section 610.024.1, RSMo., provides that if a record is exempt from disclosure, “the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.”

11. Section 610.027.1, RSMo., states that “[a]ny aggrieved person, taxpayer to, or citizen of, this state . . . may seek judicial enforcement of the requirements of sections 610.010 to 610.026.”
12. Section 610.027.2, RSMo., states that once a party bringing suit under the Sunshine Law has demonstrated to the court “that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record, or vote, *the burden of persuasion will be on the body and its members to demonstrate compliance*” with the Sunshine Law. [Emphasis added.]
13. Section 610.027.3, RSMo, states:  
  
Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount of up to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010 to 610.026, the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

### **PARTIES**

14. Plaintiff Southeastern Legal Foundation is a 501(c)(3) national nonprofit, public interest law firm and policy center that advocates constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. SLF’s programs include analysis, publication, and a transparency initiative seeking public records relating to school board meetings and the relationships between school boards associations in various states and local school boards.
15. Defendant Missouri School Boards’ Association is 501(c)(6) organization, incorporated under Chapter 355 of the laws of the State of Missouri. Its stated purpose is to help local

school boards ensure all students succeed, to serve as the unified voice of school board members throughout the state and to provide board member training, comprehensive policy support, legal assistance, superintendent search guidance, and other services designed to allow school boards to put maximum resources in the classroom. MSBA's principal place of business is in Boone County, Missouri.

16. As a quasi-public governmental body, MSBA's records are subject to the provisions of Missouri's Sunshine Law.

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over this action pursuant to §§ 610.027 and 610.030, RSMo; Missouri Supreme Court Rule 92; and Missouri Constitution Article V, § 14.
18. This Court has personal jurisdiction over MSBA because MSBA's principal place of business is in Boone County, Missouri.
19. Venue is proper in this Court under § 610.027.1, RSMo, as MSBA's principal place of business is in Boone County, Missouri.
20. The Court has jurisdiction to issue injunctions to enforce the provisions of the Sunshine Law under § 610.030, RSMo and Missouri Supreme Court Rule 92.

### **FACTUAL BACKGROUND**

21. In a letter dated March 10, 2022, SLF submitted a Sunshine Law request to MSBA by email.
22. In the Sunshine Law submission, SLF requested:

all records, documents, and communications that relate to school board meetings from November 1, 2021 – March 10, 2022. This request should include, but not be limited to, responsive documents from the National School Boards Association,

- National Education Association, your members, affiliate members, and associate members.
23. SLF sought a waiver of all fees for locating and copying the records as the information would further the public interest and SLF had no commercial intent with the records.
  24. MSBA acknowledged receipt of the request by responding to a follow-up email on March 18, 2022, stating that it had responded by mail postmarked March 14, 2022.
  25. MSBA stated in its mailed response that it will not respond to the request because it is not a “public-governmental body,” but rather a private Missouri non-profit corporation created by Articles of Incorporation dated November 25, 1957, pursuant to the Missouri Nonprofit Corporation Act.
  26. MSBA related that because it was not a “public governmental body,” it “will not be responding further to your March 10, 2022 letter.”
  27. SLF received the mailed response from MSBA.
  28. MSBA did not indicate whether it had responsive documents.
  29. More than 30 years ago, the Missouri Attorney General’s Office concluded that, “[i]t is the opinion of this office that the Missouri School Boards’ Association is a ‘quasi-public governmental body’ as defined in Section 610.010(2), RSMo Supp. 1988, and subject to the provisions of Chapter 610, RSMo, the Sunshine Law.” Mo. Att’y Gen. Op. 103-88, 1988 Mo. AG LEXIS 48, \*9 (Dec. 22, 1988).

#### **MSBA’s Corporate Structure**

30. MSBA’s corporate structure is within the definition of a quasi-public governmental body in § 610.010(4)(f), RSMo.
31. MSBA was a corporation originally organized pursuant to the provisions of Chapter 352.

32. MSBA currently is a corporation organized pursuant to the provisions of Chapter 355 under Missouri law.

**MSBA's Primary Purpose**

33. MSBA's primary purpose is to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies, within the definition of a quasi-public governmental body in § 610.010(4)(f), RSMo.

34. According to its formation documents, MSBA's purpose is to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies:

The purpose of the Missouri School Boards Association shall be the constant improvement of public school education for all the children of Missouri. To that end it shall cooperate to the fullest extent with public officials, school administrators, teachers and all other interested individuals and organizations; study educational problems and inform school boards of the results of such studies and studies made by others, and in particular, act as an agency to enable individual school districts to cooperate with each other for services which can be provided as a common service but which would not be practical to provide in each school district.

35. At the time of Attorney General Opinion 103-88, MSBA's Constitution defined MSBA's purpose as follows:

The purpose of the Association shall be to aid and assist Boards of Education in performing their lawful functions, and to promote, support, and advance the interests of public education in Missouri.

1988 Mo. AG LEXIS 48, \*5 (Dec. 22, 1988).

36. In its most recent, publicly available federal tax filings, MSBA describes its mission as follows:

MSBA helps public schools succeed through leadership, school board training and advocacy. MSBA also provides services and programs designed to help public schools make the most effective and efficient use of their resources

37. On its website, MSBA describes its activities as follows:

MSBA serves as the unified voice of school board members throughout the state and provides board member training, comprehensive policy support, legal assistance, superintendent search guidance, and other services designed to allow school boards to put maximum resources in the classroom. MSBA's Center for Education Safety is the only organization in Missouri supporting school safety and security.

School boards remain an essential institution to ensure that local communities are connected to their public schools. MSBA is the only organization in Missouri established by and governed by local school board members.

38. Upon information and belief, MSBA enters into contracts with public school districts, including for "full maintenance" service agreements and superintendent search services.
39. Upon information and belief, as part of its "Full Maintenance" Service Agreement, MSBA agrees to:

1. Monitor changes in state and federal law and, within a reasonable time, customize applicable district policies and procedures to incorporate changes. . . .
2. Review submitted monthly Board minutes for actions that may warrant a new or revised policy or procedure.
3. Review and edit district-originated revisions and additions to policies and procedures and provide written recommendations.
4. Provide data entry, editing, coding and formatting of draft copies of recommendations of policies and procedures, revisions or additions resulting from services provided in items 1 through 3 of this section.
5. Provide School District with sample policies, procedures and forms upon request.
6. Advise School District on policy-related topics and organization.
7. Maintain a current copy of School District's Board policies and administrative procedures on a continuous basis, including maintenance of an online version of policies and

procedures....

8. Provide legal review of forms at the request of the district....
40. Upon information and belief, MSBA is compensated by the public school district for work performed under the Full Maintenance Service Agreement, which lasts for one year.
41. Upon information and belief, as part of its Superintendent Search Agreement, MSBA assists a school board with developing criteria and qualifications for superintendent candidates, assists the school board with evaluating the candidates, recommends a candidate to the school board, and conducts a seminar for the school board to prepare it for candidate interviews.
42. Upon information and belief, MSBA is compensated by the public school district for work performed under the Superintendent Search Agreement. MSBA's fee is based on a percentage of the first year's contracted salary of the new superintendent.

#### **MSBA's Governing Structure is Made Up of Public Officials**

43. MSBA is comprised of, and governed by, public officials.
44. According to its website, MSBA "is governed by a Board of Directors made up of local school board members from districts throughout the state."
45. Also, it proclaims that MSBA is the "only organization in Missouri established by and governed by local school board members."
46. Public school district school board members are public officials.
47. Upon information and belief, per MSBA's bylaws, only dues-paying Missouri public school district school boards are eligible for active membership in MSBA.
48. Upon information and belief, per MSBA's bylaws, only active members are entitled to hold elective MSBA office and vote in MSBA.

49. Upon information and belief, per MSBA's bylaws, all members of the MSBA Board of Directors are school board members from dues-paying Missouri public school districts who have served at least two years on their school board.
50. Upon information and belief, per MSBA's bylaws, all MSBA officers are school board members from dues-paying Missouri public school districts.

**MSBA's Funding Comes Almost Entirely from Public Funds**

51. Upon information and belief, virtually all of MSBA's revenue comes from public funds.
52. MSBA receives revenue from public funds in the form of membership dues paid by public school districts.
53. According to MSBA's most recent IRS Form 990, MSBA revenue exceeded \$7 million. Of that, membership dues accounted for over \$2.3 million, government grants accounted for over \$416,000, investment income accounted for \$56,000, and "school board services" (program services revenue) accounted for over \$4.2 million.
54. Public school districts are authorized to pay membership dues for its school board members if they join MSBA:

Any school board of the state of Missouri, when it deems it a matter of public interest, may by two-thirds vote of its members join the Missouri School Boards' Association and appoint one or more of its members to attend meetings called by the association within the state of Missouri. The school board may direct payment of the membership dues of the association and of the actual and necessary expenses incurred by members in attending the meetings called by the association from the incidental fund of the district.

§ 162.011, RSMo.

55. MSBA receives revenue from public funds in the form of school board services paid by public school districts.

56. Upon information and belief, school board service revenue includes revenue from paid services covered by “Full Maintenance” Service Agreements and Superintendent Search Agreements.
57. MSBA receives revenue from public funds in the form of government grants.
58. MSBA provides training required by Missouri law.
59. State law requires all new public school board members to complete at least 18.5 hours of training within their first year with the cost of such training to be provided by the district. § 162.203.1, RSMo.
60. State law requires all public school board members to complete at least one hour of refresher training each year of any term in office except for the year in which the initial training is completed. § 162.203.3, RSMo.
61. According to the statute requiring board member training, “[a]ll programs providing the orientation and training required under the provisions of this section shall be offered by a statewide association organized for the benefit of members of boards of education or be approved by the state board of education.” § 162.203.4, RSMo.
62. According to MSBA, “MSBA is approved by the State Board of Education to provide the training and is the only association that was founded by school board members for school board members and has provided quality board training for decades.”
63. MSBA offers the new board member training for free.
64. MSBA offers in-district training at \$300 for up to two hours, and \$150 per additional hour.
65. MSBA offers some online training for \$75 and other topics for free to dues-paying members.

### **MSBA Enjoys Important Public Functions as a Matter of State Law**

66. By statute, the working group convened whenever the State Board of Education develops or revises academic performance standards or learning standards must include an educator chosen by MSBA. § 160.514.3(4), RSMo.
67. By statute, the governor must select a member for the Missouri Charter Public School Commission from a slate of three nominees recommended by MSBA. § 160.425.3(5), RSMo.
68. By statute, the Legislative Task Force on Dyslexia must include one member of MSBA. § 633.420.3(19), RSMo.
69. By statute, the Career Readiness Course Task Force must include one member selected by “a statewide association of school boards.” § 167.910.1(9), RSMo.
70. By statute, the Missouri Department of Health and Senior Services was directed to work with “a statewide association of school boards” and other organizations to promulgate rules under the Interscholastic Youth Sports Brain Injury Prevention Act. § 167.765.1, RSMo.
71. By statute, the Missouri Department of Elementary and Secondary Education (DESE) was directed, “in cooperation with any appropriate professional association,” to develop a model policy or policies for allergy prevention and response. § 167.208.2, RSMo.
72. DESE reported that it collaborated with MSBA to develop the model policy for allergy prevention and response, and the policy “was crafted in MSBA format.”
73. By executive order, MSBA selected one member to serve on the Missouri School Safety Task Force.
74. MSBA’s Center for Education Safety (CES) “is the only statewide school safety organization in Missouri and is supported and operated solely by MSBA.”

- 75. The CES was originally a partnership of MSBA, until 2017 when state funding for school safety was no longer available and MSBA assumed full support. *Id.*
- 76. As demonstrated by publicly available information collected to date, MSBA is subject to the Sunshine Law because it is a quasi-public governmental body.
- 77. Upon information and belief, MSBA has responded to Sunshine Requests in the recent past submitted by the Missouri Attorney General on October 8, 2021, indicating that it did not have any records responsive to this request.

**COUNT ONE**  
**Violation of Missouri's Sunshine Law**

- 78. All preceding paragraphs are incorporated by reference.
- 79. MSBA is a quasi-public governmental entity under the Sunshine Law.
- 80. Upon information and belief, MSBA knowingly and purposely failed to respond to Sunshine Law requests submitted by SLF.
- 81. MSBA is in violation of the Sunshine Law by failing and/or refusing to employ search methods reasonably likely to lead to the discovery of records responsive to SLF's request and, accordingly, failing and/or refusing to produce any and all non-exempt records responsive to the request.

**REQUEST FOR RELIEF**

- 82. Declare that MSBA violated § 610.023.
- 83. Declare that MSBA is a quasi-public governmental entity under the Sunshine Law.
- 84. Enter an immediate order directing MSBA to preserve all records potentially responsive to SLF's Sunshine Law Request, and prohibiting MSBA, its employees, agents, or representatives from transporting, concealing, removing, destroying, or in any way tampering with records potentially responsive to said request;

85. Enter an order directing MSBA to conduct searches for any and all records responsive to SLF's Sunshine Law Request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to SLF's Sunshine Law Request;
86. Enter an order enjoining MSBA from continuing to withhold any and all non-exempt records responsive to the Sunshine Law Request;
87. Order MSBA to pay SLF an appropriate civil penalty as authorized by § 610.027, RSMo;
88. Award SLF's attorneys' fees and costs of litigation as authorized by § 610.027, RSMo; and,
89. Grant any and all other relief as this Court deems just and proper.

Dated: April 19, 2022.

Respectfully submitted,

/s/ Derek H. MacKay  
Derek H. MacKay MO #59078  
Knight Nicastro MacKay, LLC  
304 W. 10<sup>th</sup> Street  
Kansas City, MO 64105  
Phone: (816) 708-0105  
mackay@knightnicastro.com

JEFFREY CLAYMAN\*  
LA Bar No. 30442  
FL Bar No. 52017  
Southeastern Legal Foundation  
560 West Crossville Road, Suite 104  
Roswell, GA 30075  
Telephone: 770/977.2131  
jclayman@southeasternlegal.org

\*(pro hac vice pending)

Counsel for Plaintiff