



**CIRCUIT ATTORNEY  
CITY OF ST. LOUIS**

**KIMBERLY M. GARDNER**

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June 5, 2018

Edward L. Dowd, Esq.  
Dowd Bennett LLP  
7733 Forsyth Blvd., No. 1900  
St. Louis, MO 63105

VIA FAX: 314-863-2111

Re: State v. Greitens, Cause no. 1822-CR01377

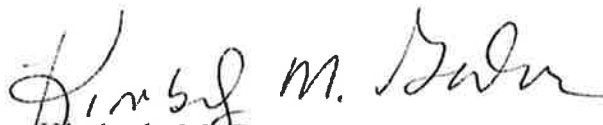
Dear Ed:

I am writing to let you know we received an opinion from the Office of the Attorney General following our request on the issue as to whether we are legally obligated under the Sunshine Law to turn over an unredacted copy of the stipulation agreement in the above matter.

The Attorney General unequivocally gave the opinion that the record is subject to disclosure under the Sunshine Law. A copy of that opinion is enclosed.

Given that opinion, it is our intent to furnish unredacted copies of the stipulation agreement to those who have made that request. As a courtesy to you, given your prior objections to that release, we will not do so until 5:00 P.M. tomorrow, June 6, 2018.

Sincerely,

  
Kimberly M. Gardner  
Circuit Attorney

Enclosure



**ATTORNEY GENERAL OF MISSOURI**

**JOSHUA D. HAWLEY**  
ATTORNEY GENERAL

JEFFERSON CITY  
65102

P.O. Box 899  
(573) 751-3321

June 5, 2018

Hon. Kimberly M. Gardner  
St. Louis Circuit Attorney  
1114 Market Street, Room 401  
St. Louis, Missouri 63101

Dear Circuit Attorney Gardner:

I write in response to your June 4, 2018 request for guidance from the Attorney General's Office regarding a series of Sunshine Law requests that your office has received. In particular, you have inquired whether the Sunshine Law requires the production of the unredacted "Stipulation for Dismissal" ("Stipulation") between your office and Eric Greitens. Based on the factual representations set forth in your inquiry and for the reasons below, we believe that the Stipulation constitutes an open record under the Sunshine Law.

We understand that your office and Mr. Greitens entered into the Stipulation on May 30, 2018. Pursuant to the Stipulation, your office agreed to dismiss the computer-data-tampering charge brought against Mr. Greitens in Case No. 1822-CR01377 pursuant to § 56.087, RSMo; Mr. Greitens agreed to withdraw certain pending motions in that case; and Mr. Greitens released certain potential civil claims against you, your office, and individuals acting on behalf of your office. Two provisions of the Stipulation have been redacted in the publicly available versions of the document. You have represented to us that no court has ordered any portion of that document to be sealed. On June 1, 2018, Mr. Greitens resigned as Governor of Missouri, and the computer-data-tampering charge against him was dismissed with prejudice.<sup>1</sup>

We have concluded that the Stipulation constitutes an open record pursuant to § 610.021. Section 610.021 provides, in relevant part, that

any . . . settlement agreement relating to legal action, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or

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<sup>1</sup> Please note that our analysis depends on the accuracy and comprehensiveness of the facts set forth in your inquiry. Our analysis conceivably could change if we were presented with different or additional facts.

with its authority . . . shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed[.]

§ 610.021(1), RSMo. The policy behind this rule is clear. Under Missouri law, a settlement agreement is a type of contract. *See, e.g., Estate of Hutchison v. Massood*, 494 S.W.3d 595, 601 (Mo. App. W.D. 2016). “Contracts entered into by governmental entities are precisely the type of records the Sunshine Law seeks to provide to the public.” *North Kansas City Hosp. Bd. of Trustees v. St. Luke’s Northland Hosp.*, 984 S.W.2d 113, 122 (Mo. App. W.D. 1998). “The clear purpose of the Sunshine Law is to open official conduct to the scrutiny of the electorate. To prevent the disclosure of contracts that public governmental bodies enter into with private entities or individuals would significantly inhibit this purpose.” *Id.* (quotation omitted).

The Stipulation constitutes a “settlement agreement” within the meaning of § 610.021(1). “[A] settlement agreement is a compromise by each party to the agreement of certain rights in order to gain what it did not have an established right to claim.” *State ex rel. Mo. Cable Telecommunications Ass’n v. Pub. Serv. Comm’n*, 929 S.W.2d 768, 773 (Mo. App. W.D. 1996). “[A] settlement agreement ‘is an agreement to terminate, by means of mutual concessions, a claim which is disputed in good faith or unliquidated. It is an amicable method of settling or resolving bona fide differences or uncertainties and is designed to prevent or put an end to litigation.’” *Exotics Hawaii-Kona, Inc. v. E.I. Du Pont De Nemours & Co.*, 172 P.3d 1021, 1032 (Hawai’i 2007) (quoting 15A Am. Jur. 2d *Compromise and Settlement* § 1 (1976)); *see also Whitehorse v. Johnson*, 156 P.3d 41, 46 (Okla. 2007).

Pursuant to the Stipulation, both your office and Mr. Greitens agreed to take certain actions in exchange for the resolution of disputed legal claims.<sup>2</sup> The parties’ respective agreements in the Stipulation allowed each “to gain what it did not have an established legal right to claim.” *State ex rel. Mo. Cable Telecommunications Ass’n*, 929 S.W.2d at 773. Moreover, the Stipulation plainly involves the settlement of “legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf.” § 610.021(1), RSMo. Mr. Greitens released civil claims against you, your

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<sup>2</sup> The fact that the parties have styled their agreement as a “stipulation” and have used the verb “stipulate” does not affect this conclusion. The definition of the noun “stipulation” includes “agreement.” Webster’s Third New International Dictionary 2245 (1961). And the definition of the verb “stipulate” includes “to make an agreement or covenant with a person or company to do or forbear something.” *Id.* Thus, the use of the words “stipulate” and “stipulation” are fully consistent with the conclusion that the Stipulation constitutes a settlement agreement. And in any event, the substance of the Stipulation makes it a settlement agreement, and no label can change this conclusion or allow a public governmental body to evade the requirements of the Sunshine Law.

office, and your office's agents. And you agreed to dismiss pending litigation against Mr. Greitens, while Mr. Greitens agreed to withdraw certain motions relating to then-pending litigation. Thus, pursuant to § 610.021(1), the Stipulation constitutes an open record under the Sunshine Law unless a court has ordered the Stipulation to be closed upon "a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011." § 610.021(1), RSMo. We understand that no such order has been entered. And given the circumstances surrounding this matter, it is unlikely that any interests would clearly outweigh the public's strong interest in knowing the terms of the settlement agreement here.

Section 610.105 does not alter this analysis. That section generally governs the disposition of records relating to criminal investigations and prosecutions where a criminal charge has been dismissed. In particular, the statute provides that "[i]f the person arrested is charged but the case is subsequently . . . dismissed . . . , official records pertaining to the case shall thereafter be closed records when such case is finally terminated . . . except that the court's judgment or order or the final action taken by the prosecutor in such matters may be accessed." § 610.105.1, RSMo. Here, § 610.105 does not warrant closing the Stipulation for at least two principal reasons.

*First*, as described above, § 610.021(1) expressly mandates that the Stipulation be made available to the public, because it constitutes a settlement agreement. Even assuming that § 610.105 dictated that the Stipulation be closed, § 610.021(1) would prevail in the event of any perceived conflict between the two provisions. "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." § 610.011.1, RSMo. This interpretive principle mandates that, in the event of a conflict, § 610.021(1) should be construed liberally and § 610.105 should be construed strictly. *See id.* Thus, § 610.021(1) would prevail if it were to conflict with § 610.105.

Several additional interpretive principles buttress this conclusion. For example, "[w]hen the same subject matter is addressed in general terms in one statute and in specific terms in another, the more specific controls over the more general." *Greenbriar Hills Country Club v. Director of Revenue*, 935 S.W.2d 36, 38 (Mo. banc 1996). Section 610.105 addresses *all* public records relating to a criminal case that ultimately is dismissed. *See* § 610.105.1, RSMo; Attorney General Op. No. 311 (Nov. 30, 1973), at 3. In contrast to this highly general provision, the pertinent part of § 610.021(1) applies to a very specific class of documents, that is, settlement agreements. § 610.021(1), RSMo. Because § 610.021(1) applies more specifically to the Stipulation than does § 610.105, the former governs over the latter.

Moreover, the relevant portion of § 610.021 was enacted substantially later in time than was the relevant portion of § 610.105. "A chronologically later statute, which functions in a particular way will prevail over an earlier statute of a more general nature, and the later statute will be regarded as an exception to or qualification of the earlier general statute." *Yates v. Progressive Preferred Ins. Co.*, 331 S.W.3d 324, 329 (Mo. App. W.D. 2011) (quotations omitted); *see also S. Metro. Fire Protection Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 666

(Mo. banc 2009). The portion of § 610.021(1) relating to settlement agreements was enacted in 1998. *See* L.1998, H.B. 1095. In contrast, the relevant provision of § 610.105 was enacted in 1973. *See* L.1973, S.B. 1. Thus, to the extent that § 610.021 and § 610.105 might conflict, the former would prevail. Thus, the Stipulation constitutes an open record under the Sunshine Law.

**Second**, § 610.105 does not mandate closure of the Stipulation, because the Stipulation constitutes “the final action taken by the prosecutor” in Case No. 1822-CR01377. While § 610.105 mandates the closure of most records relating to a dismissed criminal case, that requirement does not apply to “the final action taken by the prosecutor.” § 610.105.1, RSMo. This exception protects the public’s strong interest in knowing the basis for a prosecutor’s decision to abandon criminal charges after a prior determination that probable cause exists to believe that the defendant had committed a crime. Here, the Stipulation reflects the Circuit Attorney’s final action to resolve the computer-data-tampering case against Mr. Greitens. Thus, while § 610.105 mandates the closure of most records relating to Case No. 1822-CR01377, the statute does not apply to the Stipulation. *Id.* This interpretation of § 610.105 would also avoid the conclusion that that section conflicts with § 610.021. “Whenever possible, [courts] will not interpret one section in a way that brings it into contradiction or conflict with another section.” *C.D.J. v. Dep’t of Social Servs.*, 507 S.W.3d 605, 612 (Mo. App. E.D. 2016) (quotation omitted). Thus, § 610.105 does not mandate the closure of the Stipulation.

For the foregoing reasons, we conclude that the unredacted Stipulation constitutes an open record under the Sunshine Law.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. John Sauer', with a long horizontal flourish extending to the right.

D. John Sauer

First Assistant and State Solicitor



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June 5, 2018

Edward L. Dowd, Esq.  
Dowd Bennett LLP  
7733 Forsyth Blvd., No. 1900  
St. Louis, MO 63105

VIA FAX: 314-863-2111

Re: State v. Greitens, Cause no. 1822-CR01377

Dear Ed:

I am writing regarding the stipulation for dismissal in the above matter.

Your client blatantly violated a material obligation in that agreement with a public statement he made in conjunction with his resignation from the office of Governor of the State of Missouri when he stated:

**“... I have not broken any laws or committed any offense worthy of this treatment.”**

Given your client's blatant and material violation of the agreement, this office is no longer under any obligation under that agreement to maintain confidentiality of any provision of that agreement that your client previously sought.

Sincerely,

  
Kimberly M. Gardner  
Circuit Attorney

**From:** John Garvey [<mailto:JGarvey@careydanis.com>]

**Sent:** Friday, June 01, 2018 2:43 PM

**To:** Gardner, Kimberly <[GardnerK@stlouiscao.org](mailto:GardnerK@stlouiscao.org)>; Dierker, Robert <[DierkerR@stlouiscao.org](mailto:DierkerR@stlouiscao.org)>; Jim Martin <[jmartin@dowdbennett.com](mailto:jmartin@dowdbennett.com)>; Adam Simon <[asimon@dowdbennett.com](mailto:asimon@dowdbennett.com)>

**Subject:** release

Kim, I am going to Judge Burlison's courtroom div 10 right now to stop the release of the undredacted material. We are asking the court to hold you in contempt of court for the unredaction without court order. You may recall that it was Judge Burlison who requested these paragraphs be redacted, and it was him who wanted this information to be sealed in the file. Do not release the information until we appear in front of the Judge today. Please have someone there today to meet with us. Jack Garvey

Jack Garvey  
Carey Danis & Lowe  
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VIA FAX 314-863-2111

Re: State v. Greitens, No. 1822-CR01377, Sunshine Law Issue

Dear Ed:

This office has been inundated with Sunshine Law requests for disclosure of the unredacted stipulation executed by us in regard to the above case.

As you know, Judge Burlison permitted the filing only of the blacked-out version of the stipulation, so the unredacted version is not part of the official record of the Court. Consequently, we believe that the Sunshine Law requires us to treat the unredacted stipulation as an open record and subject to disclosure, notwithstanding the agreement to seal paragraph 1.

By this letter, we are providing notice that we consider that the law requires us to release the unredacted version of the stipulation in conformity to Sunshine Law requests, unless a court orders otherwise. Pending Sunshine Law requests will necessitate a response by June 1 by close of business.

Please advise if you intend to seek relief to prevent disclosure of the unredacted stipulation, as we do not consider it proper to expend time and effort in defending media Sunshine Law actions on this issue.

Sincerely,

Kimberly M. Gardner  
Circuit Attorney