

## INDIANA'S NEED FOR MORE 'SUNSHINE'

**I**T'S NICE to see a politician take up the spear for open government.

It almost makes you believe that there is a constituency for open meetings and open records. There must be, or Indiana Attorney General Jeffrey Modisett wouldn't have gone on the road to pursue it.

Modisett spoke to the second annual "Your Right to Know" conference this week in Indianapolis, where



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a coalition of journalists and public-interest groups called FOIndiana discussed how to flood more light into the dark corners of government.

Almost certainly, Modisett is right. Ignorance is behind much of what seems like resistance to these

"sunshine" laws among Hoosier officials.

But some officeholders also believe, mistakenly, that such laws were written for the benefit of nosy reporters.

Our long-time First Amendment counsel, Jon Fleischaker, is relentless in pointing out that files and meetings are open for the benefit of the public. To the extent that journalists benefit from rules that make government documents and proceedings available for scrutiny, it is only on behalf of their readers, viewers and listeners.

What really matters is the public's right to know how its business is being conducted.

This may sound simple.

The door is open or it isn't. The file drawer is unlocked or it isn't. The reporters are invited to come in and look around or they aren't.

Of course, it doesn't always work like that.

Sometimes, the resistance to open

government expresses itself more subtly.

For example, if a government office charges \$1 per page to copy a 100-page document, the reporter may think twice. Which is not necessarily a bad thing. Some reasonable constraint in such matters is, well, reasonable. But constraint ought to be voluntary, not dictated by the price-per-page.

Not every newspaper can afford big copying charges, and, more important, not every citizen can afford to copy a fat file at \$1 per page.

Citizens pay taxes, in part to pay for the creation of a public record that they can inspect. Why should they be charged \$1 per page to get a copy of it, when the actual cost of copying is a fraction of that?

Modisett has been criticized as "highly political." But that's a tiresome charge, leveled mostly by opponents who see that he is doing things the public likes. He led the Indiana effort to recover damages from the tobacco companies and has been chairman of the allocation committee in the national tobacco initiative by attorneys general. He knows first hand the value of what is hidden in file cabinets.

And if doing good is good politics, so be it.

In fact, I have some unsolicited advice for Modisett.

Indiana's "sunshine" laws could be improved, and he's just the guy to lead that effort.

South of the Ohio River, we're so used to Indiana being more progressive on a number of important fronts that it may surprise readers when I cite Kentucky's "sunshine" laws as, in some respects, better.

The Kentucky law on open meetings and open records has an extensive, almost inclusive, definition of what constitutes a public agency. When so many government functions are being handed over to quasi-private firms, such a definition is of critical importance — at least, if you want to find out how those firms are handling their taxpayer-financed work.

Indiana law is less extensive in defining what is public.

Moreover, the exemptions in Indiana's open records law appear to be broader than those in the Kentucky statutes. For example, in Indiana there are mandatory prohibitions against disclosure of certain records. There are discretionary prohibitions, too — like certain investigative records of law enforcement agencies and personnel files of public employees.

In Indiana, information concerning disciplinary cases in which final action has been taken (and which resulted in the employee being disciplined or discharged) is available to the public. But there is no mention of making public any charges that resulted in no discipline being imposed. We, and the public, have access to that information in Kentucky. And it is exactly those kinds of cases that often are most interesting and informative for our readers.

The Indiana statutes also don't provide an alternative remedy, to avoid filing a lawsuit over closed meetings and closed files. In Kentucky, we can go to the attorney general for an opinion that has the force of law.

Particularly under former Attorney General Chris Gorman, and continuing under Attorney General Ben Chandler, this has been an important mechanism for solving such problems efficiently and publishing information quickly.

Indiana may have a better education system, and a more distinguished public university, and Hoosier farmers may grow more popcorn, but we Kentuckians have some advantage when it comes to tobacco, bourbon, horses and public access law.

And we don't have Bobby Knight.

Modisett has seen the political virtue in pushing for open government. He can push even harder, by leading an effort to strengthen the Indiana "sunshine" laws.

*David Hawpe's column appears Wednesdays and Sundays in The Forum.*