

November 21, 2017

Missouri State Board of Education  
President, Charles W. Shields, *via hand delivery*  
Vice President, O. Victor Lenz  
Member, Michael W. Jones  
Member, Claudia O. Greim  
Member, Eddy Justice  
Member, John D. Russell  
Member, Marvin Jungmeyer

Jefferson State Office building  
205 Jefferson Street, 1<sup>st</sup> Floor  
Jefferson City, MO 65101

*Sent via email: [sbe@dese.mo.gov](mailto:sbe@dese.mo.gov)*

Dear State Board of Education Members:

With respect, I write on behalf of my clients and the taxpayers of the State of Missouri to inform you that any attempts taken today to seat additional or alternative members of the State Board of Education, or ***any discussion*** regarding the seating or appointment a new or additional Board member, will constitute a purposeful violation of the Missouri Sunshine Law.

As you know, the Board is required by RSMo § 610.020 to give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered . . . . Today's tentative agenda does not include an open session of the Board, nor does it provide notice of State Board's intent to seat, recognize the appointment of, or to swear in, any additional or alternative members of the State Board of Education. Such actions are required to take place in an ***open session*** of the Board, just as it did for Board Member John T "Tim" Summers as recently as October 31, 2017. No exception to the Sunshine Law permits closure of a meeting that includes such actions – the Board cannot legally seat, recognize the appointment of, swear in, or even discuss a new Board member in closed session. See RSMo § 610.021.

Nor can the Board simply amend the agenda at this point to add an open session, or create an agenda item to allow for the addition of new or alternative board members. The Board was legally required to provide a tentative agenda including any "matters to be considered". It failed to identify any open session agenda item that relates to the addition of a new Board member. If the Board attempts to amend the agenda at this point to include any discussion of additional board members, it would violate the RSMo § 610.20 requirement to advise the public of the matters to be considered at a meeting of the Board.

By violating the Sunshine Law as described above, each of you as Board members are subject to individual liability. In addition to penalties provided by law, the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation.

Thank you for your consideration in this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Duane A. Martin', with a stylized flourish at the end.

Duane A. Martin

Cc: Dr. Margie Vandeven, Commissioner of Education  
William Thornton, General Counsel