

SESSION I

GOVERNMENT IN THE SUNSHINE LAW

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I. INTRODUCTION

WHAT IS THE GOVERNMENT IN THE SUNSHINE LAW?

The Government in the Sunshine Law, which is commonly referred to as the Sunshine Law, provides a right of access to governmental meetings at both the state and local levels. At the heart of the law is maintaining faith of the public in government through open meetings, allowing for public input in governmental decisions and keeping a check on governmental abuse.

Specifically, the law (Section 286.011 Fla. Stat.) requires that:

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipality corporation, or political subdivision ...at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting or any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection.

There are three basic requirements of the Sunshine Law:

1. Meetings of public boards or commissions must be open to the public;
2. Reasonable notice of such meetings must be given; and
3. Minutes of the meeting must be taken.

II. WHAT AGENCIES ARE COVERED BY THE SUNSHINE LAW?

The Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision.

It applies to public collegial bodies within the state at both the local as well as state level.

It applies equally to elected or appointed boards or commissions.

III. WHAT QUALIFIES AS A MEETING?

The Sunshine Law applies to all discussions or deliberations as well as the formal action taken by a board or commission.

The Sunshine Law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.

Despite the "two or more members", a single individual can trigger applicability of the Sunshine Law. When an individual has been delegated the authority to act for the board or commission, then any action he/she takes which would have been subject to the Sunshine Law if done by the board or commission is still subject to the law.

There is not a requirement that a quorum be present for a meeting to be covered under the law. The fact that a meeting cannot be conducted for lack of a quorum will not insulate board members if discussions are held out of the sunshine.

IV. WHO ARE PUBLIC OFFICERS?

A public officer may be an "agency" for purposes of creating a board or committee that is subject to the Sunshine Law. In *Krause v. Reno*, 366 So.2d 1244 (Fla 3d CDA 1979), the court held that a city manager was an "agency" for the purposes of the Sunshine Law. Therefore, when the city manager appointed an advisory group of citizens to assist him in screening applications and making recommendations for the position of chief of police, the city manager created a "board" that was subject to the Sunshine Law. Similarly, in *Silver Express Company v. Miami-Dade Community College*, 691 So.2d 1099 (3d DCA 1997), the court held that a committee appointed by the College's purchasing director to consider proposals to provide flight services was subject to the Sunshine Law. In this case, the committee consisted of college staff and one private person who advised and assisted the purchasing director in evaluating and ranking the proposals.

A single elected official, such as a mayor, who creates a committee or group to assist in reorganizing the city government or seeking advise on pending legislation can create a committee or group that is subject to the Sunshine Law. See AGO 85-76 wherein Attorney General Jim Smith, opined that "a community standards committee which is appointed by the mayor to assist him in formulating his policies and recommendations and which gives advice and makes recommendations to the mayor concerning legislative enactment standards is subject to the Government in the Sunshine Law."

V. ADVISORY BOARDS

An advisory board, whether created by law, ordinance or otherwise; appointed by a single public official or a collegial body and, whose purposes are limited to making recommendations and which possess no authority to bind government are subject to the Sunshine Law. For example, the Sunshine Law has been held applicable to an

advisory committee that was established by a city council and was active on its behalf.

VI. FACT-FINDING COMMITTEES

A committee set up for and conducting only fact-finding activities, *i.e.*, strictly information gathering and reporting with no decision-making authority, is not subject to the Sunshine Law.

If any decision-making function is coupled with the fact-finding activities, any such meeting is subject to the Sunshine Law.

VII. PRIVATE ORGANIZATIONS

In general, a private corporation that performs services for a public agency and receives compensation for such services pursuant to a contract or otherwise is not, by virtue of this relationship alone, subject to the Sunshine Law.

The Florida Supreme Court has held that airlines that use airport facilities are not public representatives of an airport authority.

The Sunshine Law has been held not to be applicable to a nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available by the city.

However, if a private agency acts on behalf or a governmental entity in the performance of its public duties it may be subject to open meeting requirements.

A not-for-profit corporation created by a city redevelopment agency to assist in the implementation of the agency's redevelopment plan has been held subject to the Sunshine Law as has a nonprofit organization designated by a county to fulfill the role of its dissolved cultural affairs council.

VIII. STAFF MEETINGS

The meetings of the staff of boards or commissions covered by the Sunshine Law are not generally subject to that law.

In *Cape Publications v. City of Palm Bay*, 473 So.2d 222 (Fla. 5th DCA 1985) the court held that a purely "fact-finding" group which helps a city manager during an interview process is not subject to the Sunshine Law. The group did not screen applicants or make recommendations, Similarly, in *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So.2d 1354 (Fla. 4th DCA 1989), the court held that a meeting between a mayor, who by city charter had the authority of a chief executive officer, and a city employee concerning disciplinary action, was not a meeting under the Sunshine Law. A committee composed of staff which is merely responsible for informing the decision-maker through fact-finding consultations, is not subject to the Sunshine Law.

However, in *Dascott v. Palm Beach County*, 877 So.2d 8 (Fla. 4th DCA 2004), a pre-termination panel constituted a "board" or "commission" because it exercised decision-making authority. In *Dascott* the County Administrator had the sole authority to discipline or terminate county employees. He delegated that authority to each department head. The department head in charge of appellant's pre-termination conference chose to share this authority with the other members of the panel. As the panel exercised a decision-making function, a "board" or "commission" within the meaning of the Sunshine Law was formed and the deliberations should have been conducted in the sunshine.

When a staff member ceases to function in a staff capacity and is appointed to a committee which is delegated authority to make recommendations to a board or official, the Sunshine Law applies to that committee.

IX. SUB-COMMITTEES

Subcommittees are set up as a part of the decision-making process to the board, so the provisions of The Sunshine Law are applicable.

X. MEMBERS OF DIFFERENT BOARDS

The Sunshine Law does not apply to a meeting between individuals who are members of different boards or authorities unless one or more of the individuals has been delegated the authority to act on behalf of the board or commission.

XII. SOCIAL EVENTS

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters that may come before the commission, board or authority are not discussed at such gatherings. Thus, there is no per se violation of the Sunshine Law for a husband and wife to serve on the same public board or authority so long as they do not discuss board or commission business without complying with the requirements of the Sunshine Law.

When two or more members of a board or authority are attending or participating in meetings or other functions unconnected with their board, they must refrain from discussing matters on which foreseeable action may be taken by their board but are not otherwise restricted in their actions.

XII. NOTICE AND PROCEDUAL REQUIREMENTS OF THE SUNSHINE LAW

A. Notice Of Meetings

Generally speaking, reasonable notice of public meetings is required. Although the Sunshine Law does not specify any specific notice requirements, the courts have stated that, as a practical matter, in order for a public meeting to be in essence "public", reasonable notice of

the meeting must be given. The type of notice that must be given is variable, however, depending on the facts of the situation and the board involved. A board or commission must give notice at such time and in such a manner as will enable interested members of the public to attend the meeting. Three days notice has been held to constitute reasonable notice.

Notice requirements may be provided by statute, ordinance or by-laws.

If no notice or defective notice of a meeting is given, a potential violation of the law exists. *Yarborough v. Young*, 462 So.2d 515 (Fla 1st DCA 1985).

The Attorney General's Office suggests the following notice guidelines:

1. The notice should contain the time and place of the meeting, and if available, an agenda (if no agenda is available, subject matter summations may be used);
2. The notice should be prominently displayed in the area of the agency's offices set aside for that purpose;
3. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances and special meetings should have at least 24 hours notice to the public.
4. The use of news releases and/or phone calls to the media is highly effective.

B. Places To Meet

While the Sunshine Law does not specify the place where a meeting of a board or authority must be held, it does prohibit boards or authorities from holding meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access to such a facility. All facilities where public meetings are held should be accessible to the handicapped.

C. Minutes

The minutes of public meetings must be taken. The minutes need not be verbatim transcripts of the meetings; rather the use of the term "minutes" contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting.

There is no requirement that voice recordings be made by the board or commission at each public meeting. If voice recordings are used, then these tapes become public records.

The minutes required to be kept for "workshop" meetings are no different than those required for any other meeting of a board or commission.

XIII. PUBLIC'S RIGHT TO ATTEND A PUBLIC MEETING

The courts have recognized the public's right to attend and participate in a public meeting. A board's request that members of the public voluntarily leave the room may violate the Sunshine Law.

Staff are members of the public as well as employees and cannot be excluded from public meetings. However, personnel policies may require staff to take annual leave when attending public meetings as individuals.

The courts have not definitively addressed the extent to which a citizen may be allowed to speak at a public meeting. In *Douglas M. Jones v. Richard A Heyman*, 888 F.2d 1328 (11th Cir. 1989), the court held that the chair of a meeting has the duty to conduct an orderly meeting. A person who obstructs the orderly conduct of a public meeting may be removed from the meeting after notice and warning.

XIV. CAN A PUBLIC AGENCY HOLD A CLOSED MEETING?

There are a limited number of exemptions that would allow a public agency to close a meeting.

1. Settlement negotiations or strategy sessions related to litigation expenditures.
The city commission may meet in private with the city attorney to discuss pending litigation under certain conditions. Prior to holding the sessions, the city attorney must notify the commission in a public meeting of the desire to hold the private session, which must be confined in subject matter to the litigation. A transcript of the meeting must be made and will become public record once the litigation is concluded.
2. Meetings relating solely to the evaluation of claims or offers of compromise of claims, filed with the risk manager, are exempt from the Sunshine law. The minutes of these meetings are exempt from disclosure until the termination of the litigation.
3. Collective bargaining sessions. The city manager, or designee, and the city commission may meet in private to discuss actual and impending collective bargaining.
4. Those portions of any meeting which would reveal a security system plan or portion thereof are made confidential and exempt by § 119.071(1) are exempt from § 286.011 and § 24(b), Art. 1 of the State Constitution.

XV. PRACTICAL APPLICATION TO RECURRING EVENTS

A. Workshops And Informal Discussions.

The Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or authority to discuss a matter on which foreseeable action will be taken by that board or commission.

B. Written Correspondence Between Members.

The use of a written report by one board member to provide information to other members relating to a subject which will be discussed at a public meeting is not a violation of the Sunshine Law if, prior to the meeting, there is no interaction related to the report among the members. In such case, the report, which is subject to disclosure under the Public Records Law, is not being used as a substitute for action at a public meeting as there is not interaction among the members prior to the meeting.

The report should not be circulated among members for comments, with such comments then provided to other members. This would be seen as an attempt to circumvent the Sunshine Law and would be a violation of that law.

C. Does the Sunshine Law Apply To Members-elect?

Members-elect of public boards or commissions are covered by the Sunshine Law immediately upon their election to public office. Members-elect should not discuss the board's business with other board members except in a publicly held meeting.

XVI. PENALTIES IMPOSED FOR VIOLATION OF THE SUNSHINE LAW

A. Non-criminal Infractions.

Any public official violating the provisions of the Sunshine Law may be adjudicated guilty of a non-criminal infraction punishable by a fine not exceeding \$500. The state attorney may pursue actions on behalf of the state against public officials that result in findings of guilt for a non-criminal infractions. [§ 286.011(3)(a)]

B. Criminal Penalties.

Any person subject to the Sunshine Law, who knowingly violates the Sunshine Law, is guilty of a misdemeanor of the second degree which is punishable by a term of imprisonment not to

exceed 60 days and/or a fine up to \$500. [§
286.011(3)(b)]

D. Attorney fees.

Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Such fees may be assessed against the individual members of the board except in those cases where the board or commission sought, and took the advice of its attorney; in the latter case, such fees may not be assessed against the individual members of the board.

If a member of a board is charged with a violation of the Sunshine Law and is subsequently acquitted, the board or commission is authorized to reimburse that member for any portion of his or her individually incurred reasonable attorney's fees.

XVII. CONCLUSION

In making a determination as to whether the Sunshine Law is applicable to a specific meeting, one should examine the purpose of the law, who the participants are, and their actions and activities. Once it is determined that the Sunshine Law applies, then reasonable notice must be given. The meeting must be open to the public, held in a location that is accessible to the public and minutes of the meeting must be taken and maintained.