

Attachment #3

FREQUENTLY ASKED QUESTIONS ABOUT FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW (ART. I, SECTION 24, FLA. CONST., AND SECTION 286.011, FLORIDA STATUTES)

1. What is the purpose of Florida's Government in the Sunshine Law?

The purpose of the Sunshine Law is to give citizens a right of access to governmental proceedings.

2. How does the Sunshine Law give citizens access to governmental proceedings?

The Sunshine Law gives citizens access to governmental proceedings in three ways:

- a) Meetings of public boards or commissions must be open to the public;
- b) Reasonable notice of such meetings must be given; and
- c) Minutes must be taken.

These requirements tell interested citizens when a meeting will be taking place and where it will be held. In addition, the minutes provide a written record of who was in attendance and what took place.

3. Why is public access to governmental proceedings so important in Florida?

Since 1967, the public policy of this state underlying Government in the Sunshine is that citizens have the right to know the "how" and the "why" officials decided to take action, not merely the final decision. And so in keeping with this policy, every expressed thought, as well as every affirmative act of a public official as it relates to and is within the scope of his or her official duties, is a matter of public concern; it is the entire decision-making process that the legislature intended to affect by enacting this law.

In 1992, the Florida Constitution was amended to include the open meetings requirement in Art. I, Declaration of Rights. This provision is self-executing.

4. What is "a meeting subject to the Sunshine Law"?

A meeting subject to the Sunshine Law is *any gathering, or interaction* whether formal or casual, of *two or more* members of the *same* public board, commission, or committee to discuss some matter on which *foreseeable* action will be taken by such public board, commission, or committee at some future meeting.

5. **What entities are subject to the Sunshine Law?**

The statute applies to any board, commission, agency, authority, or advisory committee of the County. It applies to both elected officials and appointed members

6. **Are there any exceptions to this?**

Yes, exemptions are created by general law or caselaw. One such case says that advisory bodies created by law, ordinance, or otherwise are not subject to the Sunshine Law where such a body has been established for *fact finding/information gathering and has no decision-making authority*.

7. **How can it be determined whether an advisory body has only a fact finding/information gathering function as opposed to a decision-making function?**

An advisory committee or board is participating in a decision-making process as opposed to fact-finding when it has the discretion to accept or reject options to be presented to the final decision-making authority. For example, screening of applicants and ranking of proposals. However, where a committee is formed to report back to the public entity on, e.g., employee working conditions, such fact-finding is not subject to Government in the Sunshine.

8. **Does the Sunshine Law apply to staff?**

Not unless the staff member has been delegated decision-making functions outside their normal staff functions.

The focus is on the nature of the act performed, not the make-up of the committee or how close or remote the act is from the final decision. For example, if a governmental entity (this includes the County Administrator) forms a committee composed entirely of staff to make non-binding recommendations to him regarding disposition of employee grievances, the Sunshine Law would apply. Another example of a staff Sunshine committee is where a committee (composed of staff and one outside person) is created by the purchasing director to assist and advise him/her in evaluating proposals. Development Review Committees are also subject to the requirements of the Sunshine Law.

However, a committee composed of staff, which is responsible for informing the decision-maker through fact-finding consultations is not subject to the

Sunshine Law. Nor is the law violated when a government executive uses staff for a fact-finding and advisory function in fulfilling his/her *executive* duties.

Informal meetings between staff and a county commissioner, where the discussions are merely informational, where none of the individuals attending the meeting has the authority to make a final decision during that meeting, and where no formal action was taken or could have been taken at that meeting are not subject to the Sunshine Law.

9. **May members of the same board or committee provide written position statements to each other on subjects that will be discussed at a public meeting?**

Yes, so long as (a) there is no interaction related to the report among the members; (b) the report is not used as a substitute for action at a public meeting, and (c) the written report is maintained by the records custodian as a public record.

This is because the circulation of a written report, which does not result in exchange of comments or responses on subjects requiring board action, does not constitute a *meeting* subject to the Sunshine Law.

When circulating written reports, it is important to remember that if other committee or commission members in turn distribute their own position papers to other members, to the extent that such communication is a "response" to another commissioner's position statement, it would violate the Sunshine Law. The circulation of position statements may *not* be used in place of public discussions and deliberations in order to circumvent the requirements of the law.

10. **Are telephone conversations and e-mails subject to the Sunshine Law?**

Yes, therefore, members of *the same board or committee* should not call or e-mail each other on matters which may *foreseeably* come before that board or committee.

11. **What are the consequences if a public board or committee fails to comply with the Sunshine Law?**

Any member of a board, commission, committee or agency of the county who *KNOWINGLY* violates the Sunshine Law is guilty of a misdemeanor of the second degree. Persons convicted of such violation may be sentenced to jail for up to 60 days and/or fined up to \$500.00

KNOWING violation of the Sunshine Law may also result in suspension of an elected or appointed public office by the Governor.

Where an inadvertent violation of the Sunshine Law occurs, the public officer who commits such a violation is guilty of a *non-criminal infraction*, punishable by a fine not to exceed \$500.00. The State Attorney may pursue such actions on behalf of the State.

In addition, any citizen of this County may apply to the Circuit Court to issue an injunction to remedy past as well as future violations.

12. How does a violation of the Sunshine Law affect the validity of action taken?

Any official action of a public board, agency or committee, which does not comply with the requirements of the Sunshine Law is *void*. The public board, agency or committee must hold a full open public meeting and take independent final action in the Sunshine to cure the violation.

Note, however, that curing the violation does not shield the individuals who violated the Sunshine Law from liability.

13. Are there any guidelines for complying with the notice requirement?

Yes, in the absence of specific statutory requirements for advertising, the Attorney General suggests the following notice guidelines:

- a) The notice should contain the time, date and place of the meeting *and*, if available, an agenda or subject matter summation;
- b) The notice should be prominently displayed in the area the County sets aside for that purpose;
- c) Emergency sessions should be afforded the most appropriate and effective notice under the circumstances and special meetings should have at least 24 hours reasonable notice to the public; and
- d) The use of press releases and/or phone calls to the wire services and other media is highly effective. Advertising in the local newspapers of general circulation would be appropriate.

(NOTE: The determination of who will actually prepare the notice or agenda as well as who will take the minutes should be contained in ordinances, resolutions or policy manuals).

When a public board or committee acts as a quasi-judicial body or takes action on matters that affect the individual rights of citizens in contrast with the rights of the

public at large, the board or committee is subject to the additional notice requirements of Section 286.0105, Fla. Stat., which states:

Each board, commission, or agency of this state or of any political subdivision thereof shall include the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

14. How can members of public boards or committees avoid liability for Sunshine violations relating to notice and access to the public?

If a board or committee member is unable to determine whether a meeting is subject to the Sunshine Law, he or she should leave the meeting *or* make sure that the meeting was properly noticed or advertised, that there are no barriers to public access or ADA access to the meeting place, and that minutes of the meeting are being taken.