Open meetings, advisory group

Number: INFORMAL

Date: January 09, 2019

Subject:
Open meetings, advisory group

Ms. Angela J. Wallace
Deputy County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

Dear Ms. Wallace:

This office has received your letter requesting an opinion as to whether an advisory group formed by Broward County Mayor Mark Bogen is subject to the public meetings law. Attorney General Pam Bondi has asked me to respond to your question.

Section 286.011, Florida Statutes (2018), provides, in part:

"(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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.

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(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding $500."

You state that the Broward County Commission would not establish the advisory group, nor would the Commission delegate any authority to Mayor Bogen regarding such group. Instead, Mayor Bogen alone would create the advisory committee to "provide feedback to him regarding issues of importance to his constituents." In addition, the group would only consist of "volunteers from his Commission district[.]" In the first place, advisory groups appointed by a single public official are not immunized from the public-meetings requirement. It is the nature of their functions rather than the manner of
their appointment that must be scrutinized.[1] Nor is there an exception for a group composed of volunteers.

A limited exception to the open-meeting requirement applies to an advisory committee that is established for fact-finding only. "[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only

conducts such activities." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). "Where the committee has been delegated decision-making authority, the committee's meetings must be open to public scrutiny, regardless of the review procedures eventually used by the traditional governmental body." *Id.* You question whether the function of providing feedback to Mayor Bogen on issues of importance to constituents would be considered fact-finding. Because all advisory committees by their very nature are created to provide input or feedback, that factor alone is not dispositive of the status of the committee for Sunshine purposes. Instead, the key determination will be the exact nature of the feedback being requested and provided.

As you are aware, there are numerous judicial decisions that govern a proper analysis of the issue. These decisions focus on the nature of the responsibilities assigned and actually performed by the advisory committees. *See, e.g., Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) (individuals who provided "advice and information" to a county official who was negotiating with a baseball team regarding a spring-training site were not subject to the Sunshine Law); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (a fact-gathering faculty committee formed to solicit and review applications for the position of law-school dean and to determine who were the most qualified applicants was engaged in a policy-based, decision-making function and thus subject to Sunshine Law); *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974) (a committee of lay citizens that met with a planning consultant to guide zoning planners, make tentative decisions, and advise town council with regard to revision of zoning ordinance was required to meet in the Sunshine); *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985) (committee members who, with city manager, met with applicants for position of police chief, asked questions of the applicants, and discussed qualifications of the applicants afterward with city manager, but did not make recommendations, were not subject to Sunshine Law); *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976) (meetings between college president with employees to discuss problems relevant to employee conditions were fact-finding sessions and not required to be held in the open); Op. Att'y Gen. Fla. 98-13 (1998) (distinguishing between citizen groups that meet to discuss common concerns and develop issues to present to a community advisory committee for consideration – who were not subject to Sunshine Law – from the community advisory committee itself, which was responsible for making recommendations to the city commission about the concerns passed on by city residents that the city commission might foreseeably act upon – which was subject to Sunshine Law).

We recommend that you consult with the Mayor to determine the specific duties and responsibilities he intends to assign to the advisory committee. From this you will be able to more accurately determine whether the committee will be engaged in fact-finding alone or would have the authority to go further and make recommendations that would constitute part of a greater decision-making process. The conveyance of individual thoughts and concerns regarding constituent issues could fall within the scope of fact-finding, whereas meeting as a group and making recommendations to the Mayor on issues that might foreseeably come before the Broward County Commission would presumably require an open meeting under section 286.011. The Florida Supreme Court has stated that the Sunshine Law applies to "the collective inquiry and discussion stages … as long as such inquiry and discussion … relates to any matter on which foreseeable action will be taken."[2]

The authorities cited herein demonstrate that the nature of the information the group is tasked to collect and provide will determine whether the group's meetings with the Mayor must be held in the Sunshine. As a final comment, the Supreme Court has
consistently stated that the Sunshine Law should be liberally construed and that doubts involving its applicability should be resolved in favor of the public.[3]

Sincerely,

Ellen B. Gwynn
Senior Assistant Attorney General

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[1] *See* Government-in-the-Sunshine Manual, p. 2 (2018 ed.), citing the following opinions in which groups appointed by single officials were found to be subject to section 286.011: *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (advisory committee appointed by a university president); *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) (advisory board appointed by an executive officer); *Silver Express Co. v. Dist. Bd. of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by agency purchasing director); Op. Att'y Gen. Fla. 2005-05 ("The fact that an advisory group is created by a single public official rather than by a collegial body such as the city commission does not alter the application of the Sunshine Law to such a group.").

[2] *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). *See also Linares v. Dist. Sch. Bd. of Pasco County*, 6th Jud. Cir., Case No. 17-00230-CA (Jan. 10, 2018) (members of an advisory committee who otherwise complied with open-meetings law violated the statute by discussing matters electronically via emails and social-media posts, and by holding breakout sessions during public meetings that were inaudible to the public) (available on the website of the Office of the Attorney General, http://myfloridalegal.com/sun.nsf/cases/29C95A1EF1A43B058525823C0046A4A1/$file/Linares+v.+District).

[3] *See, e.g., Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) ("When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State."); *Bd. of Public Instruction of Broward Cty. v. Doran*, 224 So. 2d 693, 699 (Fla. 1969) (regarding section 286.011: "Statutes enacted for the public benefit should be interpreted most favorably to the public."). In addition, violation of the Sunshine Law "does not depend on a finding of intent to violate the law or resulting prejudice." *Zorc v. City of Vero Beach*, 722 So. 2d 891, 902 (Fla. 4th DCA 1998).