Government-in-the-Sunshine Law -- Private Organization

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Subject:
Government-in-the-Sunshine Law -- Private Organization

Mr. Dustin L. Watkins
Sugarman & Susskind, P.A.
100 Miracle Mile, Suite 300
Coral Gables, Florida 33134-5429

RE: GOVERNMENT IN THE SUNSHINE LAW – MEETINGS – PRIVATE ORGANIZATION – application of Sunshine Law to board of trustees of private insurance trust fund. s. 286.011, Fla. Stat.

Dear Mr. Watkins:

On behalf of your client, the Board of Trustees of the Fort Lauderdale Fire Fighters Insurance Trust Fund, you have asked for my opinion on the following question:

Is the Board of Trustees of the Fort Lauderdale Fire Fighters Insurance Trust Fund subject to open meetings requirements of the Government in the Sunshine Law, section 286.011, Florida Statutes?

In sum:

The Board of Trustees of the Fort Lauderdale Fire Fighters Insurance Trust Fund is subject to the open meetings requirements of the Government in the Sunshine Law, section 286.011, Florida Statutes.

Your letter acknowledges that in 1997 your office asked the same question on behalf of the same client. Attorney General Opinion 98-01 concluded that "[t]he Board of Trustees of the Fort Lauderdale Fire Fighters Insurance Trust Fund is subject to the Government in the Sunshine Law, section 286.011, Florida Statutes."[1] As reported in this earlier opinion, the Fort Lauderdale Fire Fighters Insurance Trust Fund was created in August of 1981 pursuant to an Agreement and Declaration of Trust between the City of Fort Lauderdale and the Fire Fighters Union. The transfer of this responsibility to the union was the result of a collective bargaining agreement. The purpose of the trust fund was to receive contributions on behalf of the city and each employee, and to administer these funds and provide insurance benefits to the participants and their beneficiaries.

Prior to entering into this agreement, the city provided insurance benefits directly to its fire department employees. As was noted in the 1998 opinion, and you have not suggested it is currently otherwise, the city continues to administer insurance benefit plans for all other city

government employees.

This office has recognized that private organizations generally are not subject to the Government in the Sunshine Law unless the private organization has been created by a public agency, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.[2] Thus, the Sunshine Law does apply to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.[3]

The Agreement and Declaration of Trust of the Fort Lauderdale Fire Fighters Insurance Trust Fund (the agreement) provides that the term "[p]lan" as used in the trust agreement shall mean "these rules and regulations as adopted and thereafter amended from time to time by the Trustees regarding death, accident, health and hospitalization, and surgery, medical benefits and other related benefits and the basis on which such benefits are made available to Participants and Beneficiaries, as determined by the Trustees."[4] The term "[e]mployer" as used therein includes the City of Fort Lauderdale, Florida and any other employer who "is bound to make payment of contributions on behalf of certain of its Employees to the Trust Fund."[5] An "[e]mployee" for purposes of the trust agreement is "[a]ny Employee represented by the Union and working for an Employer as defined herein;" officers or employees of the union; former fire department employees along with the spouses, widows, children and dependents; and other employees of the Fort Lauderdale Fire Department for whom the trustees have agreed to accept contributions.[6]

My review of the earlier opinion suggests that these terms have remained substantially the same. While collective bargaining may result in limiting the scope of the insurance being provided during a particular year, that is, as you state, that the trust fund currently is limited to reimbursing retired Fort Lauderdale fire fighters for certain medical expenses and health insurance premiums that they may incur, the trust agreement reflects the broader authority of the trust to provide insurance benefits to Fort Lauderdale's fire fighter participants and beneficiaries.

In Attorney General Opinion 98-01, this office considered the applicability of the Government in the Sunshine Law to the Fort Lauderdale Fire Fighters Insurance Trust Fund and determined that the board of directors of the trust fund was acting on behalf of the city in collecting and administering employee contributions and was accomplishing a public purpose. Information and data provided by the city were used to compile records of the funds and the moneys being administered were public funds contributed on behalf of public employees.[7] The opinion notes that a responsibility of a governmental agency may not be transferred to a private entity with the effect of creating an exemption from the open meetings requirement of section 286.011, Florida Statutes.

Again, while the situation presented by your most recent letter is not identical to that discussed in Attorney General Opinion 98-01, the similarities are significant and it would appear that the reasoning of the 1998 opinion and the Informal Opinion provided to the Board of Trustees of the Fort Lauderdale Fire Fighters Insurance Trust Fund dated December 28, 1998, on the Government in the Sunshine Law would be applicable.

Thus, it is my opinion that the Board of Trustees of the Fort Lauderdale Fire Fighters Insurance

Trust Fund is subject to the open meetings requirements of the Government in the Sunshine Law, section 286.011, Florida Statutes.
Sincerely,

Pam Bondi
Attorney General

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[1] I note that an Informal Attorney General Opinion dated 12/28/98 on the same topic was issued to Mr. Richard M. Weiner, attorney for the Board of Trustees of the Florida Fire Fighters Insurance Trust Fund and affirming the conclusion in Op. Att'y Gen. Fla. 98-01 (1998) under the slightly different facts of the restated trust agreement entered into following issuance of Op. Att'y Gen. Fla. 98-01 (1998).

[2] *See* Op. Att'y Gen. Fla. 07-27 (2007).

[3] *See, e.g.,* Ops. Att'y Gen. Fla. 00-03 (2000) (board of directors of corporation performing services for Department of Children and Families which services would normally be performed by department); 98-49 (1998) (nonprofit organization designated by county to fulfill role of county's dissolved cultural affairs council); 83-95 (1983) (private nonprofit corporation when county accepts corporation's offer to review, recodify, and prepare draft amendments to county zoning code).

[4] *See* Art., I, s. 1.11, Agreement and Declaration of Trust of the Fort Lauderdale Fire Fighters Insurance Trust Fund.

[5] *Id.* s. 1.9.

[6] *Supra* n.5 at s.1.8.

[7] I note that it appears that the city continues to contribute toward insurance for its firefighter employees under the bargaining agreement. *See, e.g.,* Article 34, Agreement Between City of Fort Lauderdale and Local 765 effective April 6, 2010 - September 30, 2012.