Jacksonville Ethics Commission

Number: INFORMAL

Date: April 29, 2014

Subject:
Jacksonville Ethics Commission

Mr. Joe Jacquot
Vice Chair
Jacksonville Ethics Commission
117 West Duval Street, Room 450
Jacksonville, Florida 32202

Dear Mr. Jacquot:

On behalf of the Jacksonville Ethics Commission, you have asked this office for assistance in interpreting the Legislature's intent by its use of certain words in section 286.0114, Florida Statutes. Given the statute's straightforward requirements and the delineation of instances in which the statute does not require public participation, as well as the authority for governing bodies to prescribe rules to govern the public's opportunity to be heard, this office is unable to render a formal opinion which would further clarify the statute. The following general comments are offered, however, in order to assist you in applying the statutory requirements to the actions of the commission.

Section 286.0114, Florida Statutes, passed during the 2013 Legislative Session,[1] states:

"(1) For purposes of this section, 'board or commission' means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.
(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).
(3) The requirements in subsection (2) do not apply to:
(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
(c) A meeting that is exempt from s. 286.011; or
(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This

paragraph does not affect the right of a person to be heard as otherwise provided by law.
(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:
(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;
(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
(d) Designate a specified period of time for public comment.
(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.
(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.
(7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.
(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.
(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation."

In *Herrin v. City of Deltona*,[2] the court acknowledged the enactment of section 286.0114, Florida Statutes, stating that the statute "specifically provides, with limited exceptions, that the public be allowed a reasonable opportunity to be heard on a proposition before a board or commission."

When the language of a statute is clear and unequivocal, the legislative intent may be gleaned from the words used.[3] Moreover, absent a statutory definition, the plain and ordinary meaning of words may be used to determine their effect.[4] The terms "proposition" or "official action" are not defined by the act, nor is there a distinction between official action taken at a formal meeting versus an informal setting, such as a workshop. Given that the Government in the Sunshine Law applies to all meetings of a board or commission at which official acts are to be taken,[5] it would be advisable to adhere to the mandates of section 286.0114, Florida Statutes, when a board or commission is taking official action on a proposition regardless of the formality of the meeting.

It should also be noted that section 286.0114, Florida Statutes, recognizes public participation need not occur at the meeting at which the official action on a proposition takes place as long as the public is allowed to speak before official action is taken and that a board or commission may

adopt rules or policies regulating such public participation. In light of the purpose of the statute to allow public participation during the decision-making process on a proposition, it should be liberally construed to facilitate that purpose.[6] This office would suggest, therefore, that when in doubt as to whether the public participation is required, a board or commission should err on the side of allowing the public to do so.

I trust that these informal observations regarding section 286.0114, Florida Statutes, will be of assistance to you. Should you still have concerns about the application of the statute, you may wish to seek legislative clarification.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* Ch. 2013-227, Laws of Fla. (CS/CS/SB 50).

[2] 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013).

[3] *See Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984), *Reino v. State*, 352 So. 2d 853, 860 (Fla. 1977); *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973); *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So. 2d 826, 830 (Fla. 1st DCA 1996).

[4] *See generally Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000) (in absence of a statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary); *In re McCollam*, 612 So. 2d 572 (Fla. 1993) (when language of statute is clear and unambiguous and conveys a clear meaning, statute must be given its plain and ordinary meaning). I would note that the legislative history reflected in The Florida Senate Bill Analysis and Fiscal Impact Statement, CS/CS/SB 50, dated March 8, 2013, states that the term "proposition" is not defined by the bill.

[5] *See Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010).

[6] *Cf. Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969) (statutes enacted for public benefit should be interpreted most favorably to the public); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).