Special Magistrates -- Code Enforcement Boards

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Subject:
Special Magistrates -- Code Enforcement Boards

Mr. Lonnie Groot
Attorney for the City of Sanford
1001 Heathrow Park Lane
Suite 4001
Lake Mary, Florida 32746

RE: SPECIAL MAGISTRATES – CODE ENFORCEMENT BOARDS – COMPETITIVE BIDS – PUBLIC MEETINGS – SUNSHINE LAW – MUNICIPALITIES – special magistrate when acting on behalf of code enforcement board subject to Sunshine Law; sealed bids must be opened at a public meeting in compliance with Sunshine Law, requiring minutes to be taken and recorded. ss. 255.0518 and 286.011, Fla. Stat.

Dear Mr. Groot:

On behalf of the City of Sanford, as approved by the entire city commission, you ask substantially the following questions:

1. Are code enforcement proceedings conducted by a special magistrate subject to section 286.011, Florida Statutes, such that minutes must be taken and transcribed?

2. Does section 255.0518, Florida Statutes, relating to the opening of public bids, require that minutes of such proceedings be taken and promptly recorded under section 286.011, Florida Statutes?

In sum:

1. Section 286.011, Florida Statutes, applies to special magistrates when they are conducting a proceeding under their delegated authority to act as a code enforcement board pursuant to Chapter 162, Florida Statutes.

2. Section 255.0518, Florida Statutes, requires that the opening of public bids and announcement of the name of each bidder and the price submitted in each bid be done at a public meeting subject to the requirements of section 286.011, Florida Statutes, which would include the requirement that minutes be taken and promptly recorded.

Question One

The Government in the Sunshine Law, section 286.011, Florida Statutes, requires that meetings

of a public board or commission at which official acts are to be taken be open to the public and be reasonably noticed, and that minutes of the meeting be taken and promptly recorded. The test for whether the meetings of particular boards, commissions, or other entities are subject to section 286.011, Florida Statutes, has been judicially determined to be whether the board or other entity is subject to the dominion and control of the Legislature.[1] Code enforcement boards, created pursuant to Chapter 162, Florida Statutes, clearly are under the control of the Legislature.[2]

Section 286.011, Florida Statutes, applies to any meeting of two or more members of a board or commission "at which official acts are to be taken[.]"[3] The statute has been held to extend to the discussions and deliberations of, as well as formal action taken by, a public board or commission.[4] The courts of this state and this office, however, have consistently stated that there is no "government by delegation" exception to the Sunshine Law such that a public body may avoid application of the law by delegating the conduct of public business to an alter ego.[5] Thus, while the statute would not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members, section 286.011, Florida Statutes, does apply when there has been a delegation of a board's decision-making authority.

While a special magistrate is not a member of a code enforcement board, section 162.03(2), Florida Statutes, recognizes that a county or municipality may adopt an alternative code enforcement system giving code enforcement boards or special magistrates designated by the local governing body the authority to hold hearings and assess fines for code violations. The subsection also provides that a special magistrate "shall have the same status as an enforcement board under this chapter." Thus, while a special magistrate is not a member of the code enforcement board, there has been a delegation of the code enforcement authority to conduct hearings which if performed by the board would be subject to the Sunshine Law. The special magistrate, therefore, is subject to section 286.011, Florida Statutes, when he or she is carrying out that delegated authority.[6]

In contrast, in Attorney General Opinion 2008-63, this office determined that a training session held by a county for special magistrates hired to hear value adjustment board petitions was not subject to the Sunshine Law. While section 194.035(3), Florida Statutes, requires training sessions provided by the Florida Department of Revenue (DOR) to be open to the public, the legislative history attendant to the amendment which directs DOR to provide and conduct training for value adjustment board special magistrates recognized that counties did not consider training sessions to be meetings subject to public notice requirements.[7] There was nothing to suggest that a special magistrate for a value adjustment board attending an orientation session conducted by a county would be exercising his or her delegated duty to conduct hearings. Thus, the mere attendance of a special magistrate at a training session provided by the county (which unlike DOR training sessions are not prescribed by statute to be open to the public) would not be subject to the requirements of section 286.011, Florida Statutes.

Accordingly, I am of the opinion that inasmuch as there has been a delegation of the county's code enforcement authority and responsibilities to the special magistrate which if performed by the code enforcement board would be subject to the Sunshine Law, the special magistrate conducting a hearing is subject to section 286.011, Florida Statutes.

Question Two

Section 255.0518, Florida Statutes, provides:

"Notwithstanding s. 119.071(1)(b), the state or any county or municipality thereof or any department or agency of the state, county, or municipality or any other public body or institution shall:

(1) When opening sealed bids or the portion of any sealed bids that include the prices submitted that are received pursuant to a competitive solicitation for construction or repairs on a public building or public work, *open the sealed bids at a public meeting conducted in compliance with s. 286.011.*
(2) Announce at that meeting the name of each bidder and the price submitted in the bid.
(3) Make available upon request the name of each bidder and the price submitted in the bid." (e.s.)

The plain language of the statute requires that when a county or municipality is opening sealed bids or any portion of any sealed bids that include the prices received as a result of a competitive solicitation, such must be conducted at a public meeting in compliance with section 286.011, Florida Statutes, and the names of each bidder and the price submitted in the bid must be announced. The section further recognizes that this requirement applies notwithstanding the provision in section 119.071(1)(b), Florida Statutes, which exempts sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation from the Public Records Law "until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier."[8] The legislative history accompanying passage of section 255.0518, Florida Statutes, explains that "[a]s a result of the public records exemption, the components of a sealed bid other than a bidder’s name and price submitted are likely to remain exempt from disclosure until the agency provides notice of an intended decision or for 30 days after the meeting at which the bids are opened, whichever is earlier."[9]

Where the Legislature has directed the manner in which something is to be accomplished, it operates as a prohibition against its being accomplished otherwise.[10] Thus, the opening of sealed bids by a county or municipality must be conducted at a public meeting in compliance with section 286.011, Florida Statutes, which requires that minutes be taken and promptly recorded.

Sincerely,

Pam Bondi
Attorney General

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[1] *See City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969).

[2] *See City of Tampa for Use and Benefit of City of Tampa Code Enforcement Board v. Braxton*, 616 So. 2d 554 (Fla. 2d DCA 1993) (once city opts for local government code enforcement board, it is prohibited from enforcing it ordinances by any means other than prescribed by statute authorizing such boards by constitutional limitation on administrative agency imposing penalties except as provided by law).

[3] *See Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973); Ops. Att'y. Gen. Fla. 93-79 (1993) and 81-88 (1981).

[4] *Times Publishing Company, supra*.

[5] *See IDS Properties, Inc. v. Town of Palm Beach,* 279 So. 2d 353, 359 (Fla. 4th DCA 1973), *certified question answered sub nom., Town of Palm Beach v. Gradison,* 296 So. 2d 473 (Fla. 1974); *News-Press Publishing Company, Inc. v. Carlson,* 410 So. 2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate de facto authority to act on their behalf in the formulation, preparation, and promulgation of plans upon which foreseeable action will be taken by the public officials, then delegates stand in the shoes of such public officials insofar as the Sunshine Law is concerned); Ops. Att'y Gen. Fla. 95-06 (1995), 83-78 (1983), 75-41 (1975), and 74-84 (1974).

[6] *Cf.* Op. Att'y Gen. Fla. 10-15 (2010) (section 286.011, Fla. Stat., applicable to special magistrate for value adjustment board when exercising delegated authority to act on behalf of the board).

[7] *See* Senate Bill Analysis and Fiscal Impact Statement, CS/CS/SB 2080 (companion bill), dated April 22, 2008.

[8] Section 119.071(1)(b)2., Fla. Stat.

[9] House of Representatives Final Bill Analysis, CS/CS/HB 897 (CS/SB 1202 – companion bill), Ch. 2012-211, dated May 9, 2012, p. 3.

[10] *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944) (when the controlling law directs how a thing shall be done, that is, in effect, a prohibition against its being done in any other way); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).