Sunshine Law -- Employment Contracts

Number: AGO 2013-14

Date: July 03, 2013

Subject:
Sunshine Law -- Employment Contracts

Mr. Bradly Roger Bettin, Sr., P.A.
96 Willard Street, Suite 202
Cocoa, Florida 32922

RE: MUNICIPALITIES – PUBLIC RECORDS LAW – GOVERNMENT IN THE SUNSHINE LAW – CONTRACTS – EMPLOYMENT CONTRACTS – whether draft employment contracts are required by Sunshine Law to be presented to, considered and approved by city commission at public meeting. s. 286.011, Fla. Stat.; Ch. 119, Fla. Stat.

Dear Mr. Bettin:

As interim town attorney for the Town of Inglis, Florida, you have asked for my opinion on the following question of law:

In those situations where the Town Commission of the Town of Inglis, as the contracting authority, wishes to enter into an employment agreement which must be reduced to writing under applicable Florida law, does the Sunshine Law require that the proposed written contract be presented to, considered and approved by the Commission at a duly noticed Sunshine Law compliant meeting?

In sum:

A written employment contract of the Town of Inglis, the terms of which have been approved at a public meeting, is a public record available for inspection and copying pursuant to Chapter 119, Florida Statutes. However, nothing in the Government in the Sunshine Law requires that such a proposed written contract be subsequently presented to, considered and approved by the Town Commission at a Sunshine Law compliant meeting.

Your letter states that the police chief for the Town of Inglis has, over the past few years, had his employment reduced to contract and the term of that employment extended by action of the town commission. The terms of these contracts regarding the chief's employment were discussed and approved at a public meeting. The town commission directed the town attorney to draft employment documents reflecting the terms and conditions discussed and approved at these public meetings. I note that the salary of the Inglis Chief of Police is set by the town's personnel policy and was not the subject of discussion at the commission meeting or in the employment documents drafted by the town attorney. The benefits and rights of the chief of police are those granted by the town's personnel manual which has been incorporated into the town's code of ordinances and were not the subject of discussion during the commission meeting. None of the

written contract documents prepared by the town attorney were presented to or approved by the town commission after they were drafted. Rather, the town attorney drafted the documents as directed by the town commission and including those terms discussed and approved at a public meeting and they were then provided to and signed by the mayor of the Town of Inglis and the other contracting party, the chief of police.

You advise that the charter and ordinances of the Town of Inglis make the town commission the contracting authority and supervisor for the town's various department heads. With regard to the execution of instruments, Article III, section 3 of the town charter provides that the mayor is authorized to "sign all . . . instruments of writing to which the Town is a party, when authorized to do so by the Town Commission." In addition, Article IV, section 5 of the charter provides that "[t]he mayor shall execute contracts entered into by the Town Commission." Nothing in the charter or ordinances to which you have cited requires that written contracts to which the town is a party must be reviewed and discussed at public meetings. Thus, your question is whether such a requirement is imposed by the Government in the Sunshine Law, section 286.011, Florida Statutes.

Florida's Government in the Sunshine Law, section 286.011, Florida Statutes, provides a right of access to governmental proceedings of public boards and commissions, including those of municipal corporations. The law applies equally to elected or appointed boards and covers any gathering, whether formal or casual, of two or more members of the same board to discuss a matter upon which foreseeable action will be taken by the board.[1] Meetings subject to the Sunshine Law are required by the statute to be noticed and minutes must be recorded. However, the Sunshine Law itself does not impose an open meetings requirement on particular types of governmental activity, it merely requires that when official action must be taken at a meeting, such a meeting must be open to the public.

Thus, to the extent that the Town of Inglis is required to discuss or consider the terms of the city's employment contracts at meetings of the town commission, the Government in the Sunshine Law would require those meetings to be held in compliance with section 286.011, Florida Statutes, that is, appropriate notice is required and minutes must be recorded. However, no provision of the town charter or ordinances to which you have brought my attention requires that a draft written contract be presented to, considered and approved by the town commission at a public meeting prior to the mayor signing such contract and no provision of section 286.011, Florida Statutes, imposes such a requirement.[2]

The Florida Statutes do contain examples of statutory requirements for public dissemination of information to be considered by municipal governments prior to formal action being taken. For example, section 166.041, Florida Statutes, provides a uniform method for the adoption and enactment of municipal ordinances and resolutions. Subsection (2) of that statute requires that each ordinance or resolution be introduced in writing and subsection (3)(a) requires that written copies be available for inspection. Subsection (6) allows municipalities to specifically add requirements for adoption or enactment of ordinances or resolutions or prescribe procedures in greater detail. Thus, based on the provisions of section 166.041(6), Florida Statutes, it appears that the Town of Inglis could adopt an ordinance requiring that written employment contracts authorized by the town commission and to be signed by the mayor must be presented for public inspection prior to execution or discussed at a public meeting prior to execution. The practice of

the town commission not reviewing the final drafted product prior to execution raises concerns but no provision of the Government in the Sunshine Law, or any local ordinance of the Town of Inglis to which you have brought my attention, currently imposes such a requirement for considering draft employment contracts.

In addition, a written employment contract of the Town of Inglis would be a public record subject to inspection and copying pursuant to Chapter 119, Florida Statutes. There is no "unfinished business" exception to the public inspection and copying requirements of Chapter 119, Florida Statutes. As the Florida Supreme Court stated in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*,[3] the term "public record" means "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." Such material is a public record regardless of whether it is in final form or the ultimate product of the agency. Accordingly, any agency record, if circulated for review, comment, or information is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or labeled similarly.

In sum, a written employment contract of the Town of Inglis, the terms of which have been approved at a public meeting, is a public record available for inspection and copying pursuant to Chapter 119, Florida Statutes. However, nothing in the Government in the Sunshine Law requires that such a proposed written contract be subsequently presented to, considered and approved by the Town Commission at a Sunshine Law compliant meeting.

Sincerely,

Pam Bondi
Attorney General

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[1] *See Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973); *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); and *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

[2] *Cf.* Op. Att'y Gen. Fla. 01-29 (2001), concluding that once the county commission finds that an expenditure serves a county purpose and the clerk of court determines that the expenditure is not illegal, the clerk may issue a warrant without further action by the commission.

[3] 379 So. 2d 633, 640 (Fla. 1980).