Sunshine Law, fact-finding committees

Number: INFORMAL

Date: June 11, 2010

Subject:
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Mr. John C. Randolph
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Flagler Center Tower, Suite 1100
505 South Flagler Drive
West Palm Beach, Florida 33401

Dear Mr. Randolph:

You have asked this office for advice as to whether the town council, by official act, may identify the Palm Beach County Budget Task Force (created by the town council) as a strictly fact-finding committee which reports its findings to the town council and is, thereby, not subject to the requirements of the Government in the Sunshine Law, section 286.011, Florida Statutes. You also ask, in the event the task force oversteps its fact-finding role and acts in a manner that would be subject to section 286.011, Florida Statutes, may the actions be validated by the town council's subsequent action at a properly noticed public meeting.[1]

The following general comments are provided in order to be of assistance.

Section 286.011(1), Florida Statutes, Florida's Government in the Sunshine Law, provides in pertinent part that "[a]ll meetings of any board or commission . . . of any agency or authority of any . . . municipal corporation . . . at which official acts are to be taken are declared to be public meetings open to the public at all times . . . ." In considering the application of section 286.011, Florida Statutes, the courts have stated that the entire decision-making process is covered, not merely those meetings where the final vote is taken.[2] As stated by the court in *Times Publishing Company v. Williams*,[3]

"Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an 'official act,' an indispensable requisite to 'formal action,' within the meaning of the act."

There is no "government by delegation" exception to the Sunshine Law and a public board or commission may not avoid compliance with the law by delegating its responsibilities to another group.[4] As the Florida Supreme Court stated in *City of Miami Beach v. Berns*,[5] "[t]he Legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control."

The fact that the board or commission is advisory, possessing only the authority to make

recommendations to the public agency, does not remove it from the ambit of the Government in the Sunshine Law. As recognized in *Spillis Candela & Partners, Inc. v. Centrust Savings Bank* ,[6]

"The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law."

In reaching this conclusion, the court relied on the decision of the Florida Supreme Court in *Town of Palm Beach v. Gradison*,[7] in which the Court held that a citizens' planning commission established by the town council to act as an advisory group to the council regarding the formulation of the zoning plan was subject to the Sunshine Law. The Fifth District Court of Appeal in *Lyon v. Lake County*[8] held that the Sunshine Law applies to a site plan review committee created by the county commission to serve in an advisory capacity to the county manager. As the Court stated in *Monroe County v. Pigeon Key Historical Park, Inc*.,[9] "the Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials."

Thus, Florida courts have determined that advisory boards whose powers are limited to making recommendations to a public agency and that possess no authority to bind that agency in any way are subject to the Sunshine Law.[10]

A limited exception to the Sunshine Law’s applicability to advisory committees has been recognized for such committees established for "fact-finding" only. When a committee has been established strictly for fact-finding and it conducts only fact-finding activities, *i.e*., strictly information gathering and reporting, the activities of the committee are not subject to section 286.011, Florida Statutes.[11] However, it has been judicially determined that the fact-finding exception does not apply to the ultimate decision-making governmental authority.[12] When a committee has been granted a decision-making function in addition to fact-finding, the Sunshine Law will apply to the committee's activities.[13]

In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is acting in strictly a fact-finding role or it is exercising part of the decision-making function by sorting through options and making recommendations to the governmental body. Moreover, it raises concerns that a committee officially designated as a fact-finding body would be engaged in activities that might overstep the bounds of their authority and subject it to the Sunshine Law on an intermittent or accidental basis.

Section 286.011, Florida Statutes, provides that no resolution, rule, regulation, or formal action shall be considered binding unless taken or made at an open meeting. Should action be taken in violation of the Sunshine Law, it is considered void *ab initio*.[14] The perfunctory or ceremonial acceptance of actions that were taken at a meeting held in violation of the Sunshine Law will not cure the violation; rather it takes "independent, final action in the sunshine."[15] Only a full open hearing will cure a violation of holding a meeting outside the Sunshine Law.[16]

I trust that these informal comments will be of assistance.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] The authority of this office to render legal opinions is statutorily limited to responding to public officials and entities on questions of law relating to their own duties, thereby precluding comment on the actions of a public official or entity at the request of another. *See* Statement Concerning Attorney General Opinions. You do not indicate that you are requesting an opinion on behalf of a majority of the members of the city commission or of the task force.

[2] *See, e.g., City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973).
[3] 222 So. 2d 470, 473 (Fla. 2d DCA 1969).

[4] *See Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974), stating that s. 286.011, Fla. Stat., should be construed so as to avoid all evasive devices and that this can only be accomplished by embracing within the terms of the statute the inquiry and discussion stages conducted by a committee or other authority appointed and established by a governmental agency which relates to a matter on which foreseeable action will be taken.

[5] 245 So. 2d 38, 40 (Fla. 1971). *And see Town of Palm Beach v. Gradison*, *supra; cf.* Ops. Att'y Gen. Fla. 97-17 (1997) (Sunshine Law applies to not-for-profit corporation created by city development agency to assist in the implementation of the agency's redevelopment plan); 97-32 (1997) (s. 286.011, Fla. Stat., applies to meeting of board of trustees of pension fund of not-for-profit corporation created by county to manage county's public transit system).

[6] 535 So. 2d 694, 695 (Fla. 3d DCA 1988).

[7] 296 So. 2d 473 (Fla. 1974).

[8] 765 So. 2d 785 (Fla. 5th DCA 2000)

[9] 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

[10] *And see* the following opinions in which this office has concluded that advisory bodies are subject to the Sunshine Law: Op. Att'y Gen. Fla. 03-28 (2003) (council created by community college board of trustees to make recommendations to the manager of the college's Business Assistance Center and to the community college president); Op. Att'y Gen. Fla. 92-26 (1992) (committee responsible for making recommendations to the city council on personnel matters); Op. Att'y Gen. Fla. 87-42 (1987) (ad hoc committee appointed to meet with the Chamber of Commerce to discuss a proposed transfer of city property); Op. Att'y Gen. Fla. 85-76 (1985) (ad

hoc committee appointed by mayor for purpose of making recommendations concerning legislation); Op. Att'y Gen. Fla. 82-35 (1982) (citizens' advisory committee appointed by a metropolitan planning organization).

[11] *See Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). *Accord* Op. Att'y Gen. Fla. 95-06 (1995) (group acting on behalf of a public entity functioning solely as a fact-finder or information gatherer with no decision-making authority not subject to the Sunshine Law).

[12] *See Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008) (school board could not take a fact-finding tour without compliance with Sunshine Law even when members are separated by several rows of seats, there was no discussion of preferences or opinions, and no vote was taken during the trip).

[13] *See Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) ("search and screen" committee for university president with undisputed decision-making function in screening candidates was subject to the Sunshine Law). *See also* Op. Att'y Gen. Fla. 94-21 (1994) (Sunshine Law applies to meetings of negotiation team created by city, even though negotiations were subject to ratification by city commission).

[14] *See Town of Palm Beach v. Gradison, supra.*, *and Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979) (resolutions made during meetings held in violation of s. 286.011, Fla. Stat., had to be re-examined and re-discussed in open public meetings).

[15] *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981); *Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (Sunshine Law violations "can be cured by independent, final action completely in the Sunshine.")

[16] *See Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988).