Sunshine Law, use of written reports by bd. members

Number: INFORMAL

Date: October 09, 2009

Subject:
Sunshine Law, use of written reports by bd. members

Ms. Marilyn Bainter
36811 North County Road 44-A
Eustis, Florida 32736

Dear Ms. Bainter:

The Office of Attorney General Bill McCollum has received your letter asking about your duties under the Government in the Sunshine Law, section 286.011, Florida Statutes, as a member of a hospital district's governing board.

In order for this office to formally comment upon this matter, a request should come from the head of the public agency. As the head of the agency is a board, a majority of the members of that board must request the opinion. The request should be submitted on the agency's official letterhead (or the agency attorney's letterhead) and be accompanied by a memorandum of law prepared by the agency attorney.

In an effort to be of assistance, however, I would note that this office has stated that the use of a written report by one commissioner to inform other commissioners of a subject which will be discussed at a public meeting is not a violation of the Sunshine Law if prior to the meeting, there is no interaction related to the report among the commissioners. In such cases, the report, which is subject to disclosure under the Public Records Act, is not being used as a substitute for action at a public meeting as there is no response from or interaction among the commissioners prior to the meeting. *See* Attorney General Opinion 89-23. *And see* Attorney General Opinion 01-20 (e-mail communication of factual background information from one city council member to another is a public record and should be maintained by the records custodian for public inspection and copying; however, such communication of information, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Sunshine Law).

The Government in the Sunshine Law, however, would be implicated if the report is circulated among board members for comments with such comments being provided to other members as there is interaction among the board members. *See* Attorney General Opinion 90-03. *And see* Attorney General Opinions 96-35 and 08-07. Moreover, as this office discussed in Attorney General Opinion 01-21 in the event that council members distribute their own position papers to other council members on the same issue would be "problematical" and may violate the Sunshine Law. *And see* Attorney General Opinion 07-35. You may access the Attorney General Opinions online at: http://myfloridalegal.com/opinions.

You may wish to review the Government in the Sunshine Manual which discusses both the Government in the Sunshine Law and the Public Records Law. An abridged edition of the manual is available online at: http://www.myfloridalegal.com/sun.nsf/manual.

Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh