Government in the Sunshine -- College Board Meetings

Number: INFORMAL

Date: April 10, 2015

Subject:
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Board of Trustees
Northwest Florida State College
100 College Boulevard
Niceville, Florida 32578

Dear Members of the Board,

It has come to the attention of this office that concerns have been raised about the notice and procedural requirements of the Florida Sunshine Law as applied to the board meetings of Northwest Florida State College. More specifically, it has been reported that recent board actions call into question the public nature of board meetings, the public notice of board meetings, the location of board meetings, and the recording of the minutes of the board.

The Attorney General's role is to educate certain government officials and to facilitate resolution of disputes over the interpretation of the Sunshine Law and access to public records. Consistent with those duties yet while making no formal determination with regard to previous actions of the board, it appears upon review, based on reported information, that the manner in which the college noticed and held a meeting of trustees in Tallahassee is very questionable and could easily be interpreted to contravene Chapter 286 of the Florida Statutes.

As the board of trustees for a state college, you are clearly subject to the provisions of Chapter 286. In an effort to provide the trustees with guidance regarding meetings of the board, we offer the following information.

There are three basic requirements of section 286.011, Florida Statutes: 1) meetings of public boards must be open to the public, 2) reasonable notice of the meetings must be given, and 3) minutes of the meetings must be taken and promptly recorded. This office recognizes that these requirements will depend on the facts and circumstances at hand, however, it should be noted that as stated by the Supreme Court of Florida in *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974), the Sunshine Law is to be construed "so as to frustrate all evasive devices."

Section 286.011(6), Florida Statutes, specifically prohibits public boards from holding meetings "at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility." Thus, this office has stated that a public agency may not hold its meetings in a facility where the public has limited access or where there may be a "chilling" effect on the public's willingness to attend.

The Sunshine Law requires that "reasonable" public notice be given. This office has stated that "reasonable notice" contemplates that an agency will give notice at such time and in such manner as will enable interested members of the public to attend the meeting if they wish to do so. In 1994, the First District Court of Appeal in *Rhea v. School Board of Alachua County*, 636 So. 2d 1383 (Fla. 1st DCA 1994), held that a meeting of the Alachua County School Board which was noticed in the local newspaper but held 100 miles away at a hotel in Orlando constituted a violation of the Sunshine Law. The court in this case declined to adopt a bright line test on this issue, instead applying a balancing test to the facts at hand. The court held that the advantage of eliminating travel time and expense to the board did not outweigh the interest of the public in having a reasonable opportunity to attend.

Section 286.011, Florida Statutes, specifically requires that minutes of a public meeting be "promptly recorded" and open to public inspection. The term "promptly" is not defined for purposes of the statute, nor is it defined by any relevant case law. As stated by the Florida Supreme Court in *Sieniarecki v. State*, 756 So. 2nd 68, 75 (Fla. 2000), in the absence of a statutory definition, words of common usage are construed in their plain and ordinary sense. Webster's New Universal Unabridged Dictionary (2003) defines "prompt" as done, performed, delivered, etc., at once or without delay. The term "minutes" is not defined in the statutes for the purposes of section 286.011(2), but this office has concluded that the term means a brief summary or series of brief notes or memoranda reflecting the events of public meetings in written form. They do not need to be verbatim transcripts of the meeting.

Violations of Sunshine Act fall within the purview of the State Attorney's Office. Any member of a board or commission of any state agency or authority of a county, municipal corporation, or political subdivision who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Section 286.011(3)(b), Florida Statutes. In addition, section 286.011(3)(a), Florida Statutes, imposes noncriminal penalties for violations of the Sunshine Law by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. The state attorney may pursue such noncriminal actions on behalf of the state.

I trust that this information will prove helpful. Please do not hesitate to call my office with questions about Sunshine and Public Records Law compliance in the future.

Sincerely,

Bill McCollum
Attorney General

cc: The Honorable Glenn Hess
State Attorney, Fourteenth Judicial Circuit

The Honorable William 'Willie" N. Meggs
State Attorney, Second Judicial Circuit