Sunshine Law, duties of comm. dev. dist. supervisor

Number: INFORMAL

Date: April 05, 2007

Subject:
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The Honorable Donald G. Pratt
Supervisor, Community Development District
20945 Pixie Court
Land O Lakes, Florida 34637

Dear Mr. Pratt:

The Office of Attorney General Bill McCollum is in receipt of your letter requesting information regarding your duties under the Government in the Sunshine Law as a member of the board of supervisors of a community development district. You state that you have been advised that you may not speak with the other supervisors on the board regarding issues that may come before the board for action.

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied by the courts to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There are three basic requirements of section 286.011, Florida Statutes:

(1) meetings of public boards or commissions must be open to the public;
(2) reasonable notice of such meetings must be given; and
(3) minutes of the meetings must be taken.

A right of access to meetings of collegial public bodies is also recognized in Article I, section 24 of the Florida Constitution, which virtually all collegial public bodies are covered by the open meetings mandate of the open government constitutional amendment with the exception of the judiciary and the state Legislature, which has its own constitutional provision requiring access. The only exceptions are those established by law or by the Constitution.

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to section 286.011, Florida Statutes. Instead, the law is applicable to *any* gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which *foreseeable action* will be taken by the public board or commission. See *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). *And see*, *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); and *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977). The courts have recognized that it is the how and the why officials decided to so act which interests the public, not merely the final decision. Thus, the court stated in *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company,* 462 So. 2d 821 (Fla. 1985):

"Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire *decision-making process* that the legislature intended to affect by the enactment of the statute before us."

You should also be aware that while the Sunshine Law generally requires two or more members of the same board discussing some issue that will foreseeably come before the board, there are circumstances in which the Sunshine Law may apply to a single individual or where two board members are not physically present. Certain factual situations have arisen where, in order to assure public access to the decision-making processes of public boards or commissions, it has been necessary to conclude that the presence of two individuals of the same board or commission is not necessary to trigger application of section 286.011, Florida Statutes. As stated by the Supreme Court, the Sunshine Law is to be construed "so as to frustrate all evasive devices." See *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). *And see, State v. Childers,* No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), *per curiam affirmed*, 886 So. 2d 229 (Fla. 1st DCA 2004) (county commissioner violated the Sunshine Law when he expressed his opinion on a commission issue to two other commissioners at an unannounced meeting in the office of a county administrator).

For example, while 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, if the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to section 286.011, Florida Statutes. Discussions conducted via telephones, computers, or other electronic means are not exempted from the Sunshine Law. Moreover, a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an “alter ego." The Sunshine Law is also applicable to meetings between a board memberand an individual who is not a member of the board when that individual is being used as a liaison between, or to conduct a de facto meeting of, board members.

You may wish to review the Government in the Sunshine Manual which discusses the requirements of both the Government in the Sunshine Law and the Public Records Laws. An abridged edition of the manual is available online at: www.myfloridalegal.com/. Click on "Open Government" from the menu on the left side of the screen to access the manual.

Thank you for contacting the Florida Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General