Sunshine Law, electronic communications

Number: INFORMAL

Date: April 05, 2007

Subject:
Sunshine Law, electronic communications

The Honorable Jack Tanner
Chair, Lee Soil and Water Conservation District
5901 Pendragon Lane
Fort Myers, Florida 33912

Dear Mr. Tanner:

You state that the Lee Soil and Water Conservation District is considering conducting some of its meetings and voting through electronic communications open to the public. You ask whether there are any statutes or regulations restricting such an action.

In Attorney General's Opinion 2002-32, this office was asked whether board members of a special district could discuss matters via the internet. The opinion concluded that use of an electronic bulletin board by water management district basin board members to discuss matters that might foreseeably come before the board over an extended period of days or weeks, which did not permit the public to participate online, would be a violation of section 286.011, Florida Statutes. Of particular concern was the lack of reasonable notice when a particular issue was to be discussed so that the public could have meaningful participation in the discussion. The opinion found that use of the bulletin board for discussions of the basin board placed the burden on the public to constantly monitor the site in order to participate meaningfully in the discussion taking place there and extended this burden over the course of days, weeks, or months. This office would not read the Government in the Sunshine Law, a statute enacted in the public interest, in a manner that would essentially foreclose meaningful public participation in a public meeting.

Subsequently, this office issued an informal opinion to Mr. Michael Ciocchetti, Attorney for the Town of Ponce Inlet, dated March 23, 2006, which discusses the use of an electronic discussion board for conducting public meetings and the implications of the Government in the Sunshine Law on this proposal. While it appeared that the electronic discussion board proposal developed by the Town of Ponce Inlet attempted to address a number of factors of concern in the 2002 Opinion, this office continues to have reservations about any proposal for a public meeting which places the burden on the public to constantly monitor the site in order to participate meaningfully in the discussion and which extends this burden over the course of days, weeks, or months.

Accordingly, this office suggested that the use of an electronic bulletin board to discuss matters that may foreseeably come before the town commission over an extended period of time would not comply with the spirit or letter of section 286.011, Florida Statutes.

I am also enclosing copies of various opinions as to the authority of local boards to conduct public meetings via electronic media technology such as a telephone or video conferencing. For example, in Attorney General Opinion 2001-66, this office considered whether an airport authority could conduct discussions or meetings over the internet when such discussions or meetings were noticed to the general public, viewable by the general public, open to input by the general public, and recorded for public inspection. This office found that the authority members could conduct informal discussions and workshops over the internet, provided proper notice was given and interactive access by members of the public was provided. For meetings at which a quorum was necessary for action to be taken, however, the opinion concluded that physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. *See also* Ops. Att'y Gen. Fla. 98-28 (1998) (district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board is physically present at the meeting site); 02-82 (2002) (physically-disabled members of the City of Miami Beach Barrier-free Environment Committee could participate and vote on board matters by electronic means if they are unable to attend, as long as a quorum of the members of the board is physically present at the meeting site).

I hope that the enclosed opinions may be of some assistance to the district in resolving this issue.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

Enclosures