Sunshine Law, electronic discussion board

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Subject:
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Mr. Michael Ciocchetti
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Daytona Beach, Florida 32118

Dear Mr. Ciocchetti:

As Town Attorney for the Town of Ponce Inlet, you have contacted the Florida Attorney General's Office regarding the use of an electronic discussion board for conducting public meetings and the implications of the Government in the Sunshine Law on this proposal. Attorney General Crist has asked me to respond to your letter.

Florida's Government in the Sunshine Law, section 286.011(1), Florida Statutes, provides:

"All meetings of any board or commission . . . of any agency or authority of any county, municipal corporation, or political subdivision . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."

This statute was enacted in the public interest to protect the public from "closed door" politics and must be broadly construed to effect its remedial and protective purposes.[1] Florida courts have repeatedly stated that it is the entire decision-making process to which the Sunshine Law applies and not merely to a formal assemblage of a public body at which voting is conducted to ratify an official decision. The statute extends to discussions and deliberations as well as to formal action taken by a public body.[2] As the court stated in *Times Publishing Company v. Williams*,[3]

"It is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us . . . . 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."

Thus, the public is entitled to meaningful participation in the decision-making process and this constitutional right is protected by the Government in the Sunshine Law.

You have asked whether an electronic discussion board maintained by a municipality for the sole purpose of discussing matters which will ultimately come before a voting body of the municipality violates the Government in the Sunshine Law if the municipality implements the following protections:

1. Each topic of discussion to be posted by the municipality on the Internet board is noticed in the same manner as a public meeting, pursuant to section 286.011, Florida Statutes.

2. Each topic of discussion on the electronic discussion board is open for discussion for a period of one month.

3. The municipality makes computers with access to the discussion board available within its jurisdiction to the public.

4. The municipality allows public participation on the electronic discussion board to the same degree as all voting members of the municipal body.

5. The full text of all discussions posted on the discussion board is archived as a public record and available upon request.

6. Any voting upon the issues discussed on the electronic discussion board will take place at a publicly noticed "live" meeting of the municipal body.

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.

The program you have proposed allows the public to participate online on the internet site to the same extent as board members. The town proposes to make computers with access to the internet board available within its jurisdiction to the public. The Town of Ponce Inlet would open issues for discussion on the electronic bulletin board for a period of one month. Voting on issues discussed on the electronic discussion board will take place at a publicly noticed "live" meeting of the municipal body.

While it appears that the electronic discussion board proposal developed by the Town of Ponce Inlet attempts to address a number of factors that were of concern in Attorney General's Opinion 2002-32, 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. In light of these concerns, this office would suggest that the use of an electronic bulletin board by the Town of Ponce Inlet 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 trust that these informal comments will assist you in advising your client. The conclusions reached herein are those of the writer and do not constitute a formal Attorney General's Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See, e.g., Wood v. Marston*, 442 So.2d 934, 938 (Fla. 1983); *Canney v. Board of Public Instruction of Alachua County*, 278 So.2d 260 (Fla. 1973)*; Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

[2] *See Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 699 (Fla. 1969), in which the court recognized the right of the public to be present and heard during all phases of enactments by public boards and commissions; *Krause v. Reno*, 366 So.2d 1244 (Fla. 3d DCA 1979).

[3] 222 So.2d 470, 473 (Fla. 2d DCA 1969).