

Sunshine Law, nonprofit organization

Number: INFORMAL

Date: January 09, 2006

Subject:
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Mr. Frank M. Bedell
Winter Garden City Attorney
Post Office Box 1391
Orlando, Florida 32802-1391

Dear Mr. Bedell:

This is in response to your question of whether the Winter Garden Heritage Foundation, Inc., a non-profit organization holding fee simple title to a historic theater conveyed by the city with a reversion clause requiring the foundation to operate the theater for the public's benefit, is subject to the Government in the Sunshine Law, section 286.011, Florida Statutes.

You state that the Winter Garden Heritage Foundation (Foundation) is a private, non-profit organization created for the purpose of restoring and preserving historical buildings in the City of Winter Garden (city).[1] The Foundation is governed by its own independent board, with the city having no role in appointing its members or in the oversight of its operation. The city has entered into an agreement with the Foundation for the renovation and operation of the Old Winter Garden Theater, with the Foundation being responsible for securing necessary grants or monies to carry out this purpose.

The city, however, has agreed to provide a portion of the funds in the form of a loan to be repaid by the Foundation. Since the amount of funds required for restoration of the theater exceeds the amount available from the city, the Foundation also will have to solicit funds from other sources. One such source is the Dr. Phillips Foundation, which requires that the Heritage Foundation own fee simple title to the theater before funds will be advanced. In order to comply with this requirement, the city has adopted a resolution conveying fee simple title to the improvements on the property to the Foundation and leasing the underlying real property to the Foundation. There is a deed restriction, however, that the improvements will revert to the city should the Foundation cease to operate the theater for the benefit of the public or to otherwise comply with the restrictions. As part of the resolution, a consolidated promissory note, mortgage and security agreement, ground lease and such other documents as may be requested by the city must be executed by the Foundation in order to secure the city's interests.

Section 286.011, Florida Statutes, Florida's Government in the Sunshine Law, provides public access to governmental proceedings at the state and local levels. The law is equally applicable to elected and appointed boards[2] and applies to any gathering of two or more members of the same board to discuss a matter that will foreseeably come before the board for action.[3] The three basic requirements of the law are that: (1) a meeting be open to the public; (2) reasonable

notice be given; and (3) minutes of the meeting be taken.[4]

The Government in the Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision[.]"[5] Generally, however, it does not apply to private organizations providing services to a state or local government, unless the private entity has been created by the public agency, when there has been a delegation of the public agency's governmental functions, or when the private organization plays an integral part in the decision-making process of the public agency.[6] The mere receipt of public funds by a private corporation is not, by itself, enough to subject the organization to the open government requirements.[7] If a governmental entity has delegated "the performance of its public purpose" to a private organization, however, the open meetings requirements can apply.[8]

In this instance, the operating agreement between the city and the Foundation characterizes the activities of the Foundation in operating the theater as fulfilling a public purpose.[9] This language in and of itself would not dictate a finding that the operation of the theater is a sovereign power that has been delegated to the Foundation and would appear to indicate a legislative finding that the loaning of funds to the Foundation fulfills a municipal purpose. However, such language raises concerns that the activities of the Foundation in operating the theater may involve matters in which the public should have input.

Accordingly, although the Foundation generally operates independently and does not perform a public purpose solely on behalf of the city, this office would suggest that the Winter Garden Heritage Foundation comply with section 286.011, Florida Statutes, when it is holding discussions or making decisions regarding the Old Winter Garden Theater.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Materials provided to this office show that the Foundation has been involved in numerous projects to preserve and restore historic sites in Winter Garden, one of the first being the Edgewater Hotel, that do not involve the city. The Foundation's mission has since expanded beyond the City of Winter Garden to other communities in Orange County, so clearly the Foundation was not created solely to support or operate properties on behalf of the city.

[2] See Op. Att'y Gen. Fla. 73-223 (1973).

[3] See *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

[4] See s. 286.011(1) and (2), Fla. Stat.

[5] Section 286.011(1), Fla. Stat.

[6] See, e.g., Ops. Att'y Gen. Fla. 92-53 (1992) (direct-support organization created for purpose of assisting public museum subject to s. 286.011, Fla. Stat.); 83-95 (1983) (where county accepted services of nongovernmental committee to recodify and amend county's zoning laws, committee subject to Sunshine Law).

[7] See *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992), in which the Court considered application of Ch. 119, Fla. Stat., to a private architectural firm providing services to a school board; determined that the firm was not acting on behalf of the school board, therefore, statute did not apply.

[8] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 382-383 (Fla. 1999) (private nonprofit corporation entering into lease with public hospital authority to operate a hospital subject to open meetings requirements).

[9] See Operating Agreement, City of Winter Garden, Florida, and the Winter Garden Heritage Foundation, Inc., dated May 13, 2004, Whereas Clause, stating, "the renovation, operation and maintenance of the Old Winter Garden Theater for the benefit of the public is declared by the City to represent a municipal purpose[.]"