

Sunshine Law; St. Johns River Alliance, Inc.

Number: INFORMAL

Date: January 11, 2005

Subject:
Sunshine Law; St. Johns River Alliance, Inc.

Mr. Scott L. Knox
Brevard County Attorney
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Dear Mr. Knox:

On behalf of the Board of County Commissioners of Brevard County, you have asked for this office's assistance in determining whether the St. Johns River Alliance, Inc., a non-profit corporation formed to help carry out the federal American Heritage Rivers Initiative and the associated intergovernmental Partnership Agreement among state, local and federal governmental entities, is subject to the open meetings requirements of the Government in the Sunshine Law, section 286.011, Florida Statutes.

The President of the United States created the American Heritage Rivers Initiative by executive order in 1997.[1] Pursuant to the provisions of the initiative, the St. Johns River was officially designated an American Heritage River in recognition of its ecological, historic, economic and cultural significance.[2] The "American Heritage Rivers Initiative Partnership Agreement between the St. Johns River Community, State, Regional and Federal Agencies" was entered into in December 1999.[3]

The partnership agreement established the goals and objectives of the initiative and provided for a Steering Committee for carrying out the program.[4] After working with the Florida Department of Environmental Protection and other state and federal parties, the Steering Committee concluded that the structure of the initiative provided an opportunity to create a public-private partnership to further the goals of the initiative and the overall restoration goals of its partners through a non-governmental organization.[5] The St. Johns River Alliance, Inc., was formed in response to recommendations from the Steering Committee and is described as follows:

"[T]he St. Johns River Alliance, [shall be] a Florida not for profit federal tax exempt corporation to facilitate intergovernmental and public support, whose mission will be to promote, preserve, protect, and celebrate the St. Johns River as an American Heritage River in recognition of its ecological, historic, economic, recreational, and cultural significance, and to further conservation and restoration efforts so that the public may gain a greater appreciation for its importance to the quality of life of current and future generations."[6]

The Board of Directors of the St. Johns River Alliance, Inc., is made up of twenty-three individuals appointed by agencies originally involved in creating the Alliance, including: the Mayor of the City of Jacksonville; the Chairs of the Northeast and East Central Florida Regional

Planning Councils, and the county commission chairpersons for Clay County, St. Johns County, Putnam County, Lake County, Volusia County, Seminole County, Brevard County, Orange County, Flagler County, Osceola County and Indian River County.[7] A number of federal agencies were included in the agreement, although they were not signatories thereto. Among these agencies are the Department of Agriculture, the Department of Commerce, the Department of Defense (Army Corps of Engineers), the Department of the Interior (National Park Service, Fish and Wildlife Service, and U.S. Geological Survey), and the Small Business Administration.[8] Any organization that offers assistance to the St. Johns River community in accomplishing plans consistent with the goals of the American Heritage Rivers Initiative may become a party to the agreement.[9]

The Articles of Incorporation of St. Johns River Alliance, Inc., specify that the corporation was organized specifically "for the purposes of public education and conservation to promote, preserve, protect, restore, and celebrate the St. Johns River as an American Heritage River in recognition of its ecological, historic, economic, recreational, and cultural significance, so that the public may gain a greater appreciation for its importance to the quality of life of current and future generations; and to engage in any lawful purposes not for pecuniary profit." [10] The goals and responsibilities of the St. Johns River Alliance, as set forth in the Memorandum of Understanding, are to:

"[F]oster appropriate action to conserve, restore, and enhance the St. Johns River and improve the quality of life in communities along its banks. As appropriate, the federal and state partners will assist the community in identifying possible funding and/or cost-share sources to support projects and programs identified by the river community to improve the river; provide technical support to the river community; coordinate federal and state efforts through a partnership to support the vision and goals of the river community; and facilitate outreach and information on American Heritage River projects."

The articles of incorporation provide that "[n]o substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office." [11] The St. Johns River Alliance is authorized to seek grants, contracts, and other agreements from among the supporting agencies and from other agencies, foundations, and donors to accomplish its mission. [12] The Alliance is specifically given the authority to "advocate specific policy initiatives before public agencies who are signatories to this agreement[.]" [13]

The partnership agreement specifically requires that "[n]otifications of Steering Committee [now the St. Johns River Alliance, Inc.] meetings will be published in local newspapers, meetings will be open to the public, and minutes will be kept and made available to the public." [14] In addition, a similar provision is directed to advisory committees established for each of the three St. Johns River basins. [15]

A review of the State of the River 2002 report supplied to this office lists the "Accomplishments and Resources Leveraged" by the Alliance. As a reflection of the types of projects undertaken by the Alliance, three projects were selected as "keystone projects" for special focus for 2002-2003:

"Enhancement of the St. Johns River Eco-Heritage Corridor. Goals to improve this river-length corridor are to: obtain signage for site identification, produce activity-themed brochures, enhance the website, and develop an outreach effort to inform communities about the river's wonders.

Development of ecotourism-related infrastructure such as boat facilities to connect remote recreational areas, bed and breakfast facilities to house ecotourists and waste disposal/package plants for isolated recreational areas.

Connecting and improving trails from various counties and state areas to form a more continuous swath of greenways for environmental enhancement and recreation."

The report indicates that funding has been received and partnerships have been established for a number of projects:

"Monitoring of the Lower St. Johns River. \$240,000 from the US Geological Survey for monitoring to study water quality in sanitary nuisance areas where there were failing septic tanks.

Timucuan Land Acquisition. \$2 million from the National Park Service for land acquisition of critical parcels within the Timucuan Ecological and Historic Preserve, particularly uplands most threatened by development. \$3 million from the City of Jacksonville will match these funds.

Preservation Project. \$150,000 for land acquisition to support the Preservation Project and flood control efforts in Jacksonville, from the Federal Emergency Management Agency.

Volusia Heritage Trail. Technical support from the Rivers, Trails and Conservation Assistance Program is being provided to develop a master plan to connect and network the county's Environmental, Cultural, Heritage and Outdoor Recreation assets.

Hogan's Creek Greenway Restoration. The Corps of Engineers is developing a Preliminary Restoration Plan, the first step in the restoration process, in cooperation with the city of Jacksonville.

Lake George Restoration. The Fish and Wildlife Service provided \$11K in matching funds for controlled burns to eliminate invasive and exotic vegetation.

St. Johns River Eco-Heritage Corridor. The US EPA provided support to fund a half-time coordinator for the Corridor. Camp, Dress and McGee, Inc. provided pro bono resources to launch the web site for the Corridor."^[16]

Among the priorities identified by the Alliance for the St. Johns River are: the acquisition and preservation of environmentally sensitive lands; the improvement of water quality (storm water retrofits and septic tank connections); recreational development (hiking trails, park improvements, and boating access); environmental restoration and protection; and the development of cultural and environmental sites and learning centers.^[17]

Under these circumstances you have asked whether the meetings of the St. Johns River

Alliance, Inc., are subject to section 286.011, Florida Statutes, the Government in the Sunshine Law.

The Government in the Sunshine Law, section 286.011, Florida Statutes, requires that meetings of a public board or commission at which official acts are to be taken are to be open to the public. The statute has been held to extend to the discussions and deliberations of, as well as formal action taken by, a public board or commission.[18] In interpreting the Government in the Sunshine Law, the courts have stated that it was the intent of the Legislature to bind "every 'board or commission' of the state, or of any county or political subdivision over which it has dominion and control." [19]

A private organization that performs services for a public agency and receives compensation for such services is not, by virtue of that relationship alone, subject to section 286.011, Florida Statutes.[20] The courts have generally considered whether there has been a delegation of the public agency's governmental or legislative functions or whether the private organization plays an integral part in the public agency's decision-making process.[21]

The St. Johns River Alliance is authorized to "advocate specific policy initiatives before public agencies," and appears to function as an advocacy group for the St. Johns River – developing plans and priorities and seeking funding to accomplish those goals. In this respect, the Alliance resembles a private, nonprofit corporation that was the subject of Attorney General's Opinion 98-24, regarding its work assisting a municipality in implementing a federal loan program.

In that opinion, the Hollywood Economic Growth Corporation, Inc., was a not-for-profit corporation created as a separate, independent and autonomous entity from the City of Hollywood and was not intended to be an agency or arm of the city. The purpose of the corporation was to promote economic development and investment within the city. The corporation became involved in a federal Housing and Urban Development loan program with the city. The corporation provided assistance to the city on three levels: the corporation marketed the loan program under federal guidelines to identify potential applicants; the corporation prequalified the eligibility of the applicants and their proposed projects; and the corporation provided assistance to the potential applicants in completing their applications and preparing their applications for submission to the city. Based on an analysis of the relationship between the corporation and the city, this office concluded that the corporation would be acting on behalf of the city in undertaking these responsibilities. The corporation was determined to be standing in the shoes of the city for purposes of the Government in the Sunshine Law when it was assisting the city in implementing this loan program.[22]

In an early Sunshine Law case, *Town of Palm Beach v. Gradison*, [23] the Florida Supreme Court construed the scope of section 286.011, Florida Statutes, to extend to include the "inquiry and discussion stages" of meetings of public bodies. The Court held that an advisory lay group of citizens served as an arm of the town council by serving part-time as the alter ego of the council to make tentative decisions guiding zoning planners. Much of the administrative and legislative decision-making authority regarding zoning matters was delegated to this group, and therefore the Court held that it was a board or commission subject to section 286.011, Florida Statutes.[24] In the earlier *IDS Properties* case, the Fourth District Court of Appeal stated that:

"It is axiomatic that public officials cannot do indirectly what they are prevented from doing directly. Those to whom public officials delegate de facto authority to act on their behalf in the formulation, preparation and promulgation of plans on which foreseeable action will be taken by such public officials stand in the shoes of such public officials insofar as the application of the Government in the Sunshine Law is concerned." [25]

A review of the enabling documents of the St. John's River Alliance, Inc., and the cases and statutes discussed above present a close question of whether the Alliance is subject to the Government in the Sunshine Law. The Alliance clearly works with state and local governmental entities in the development and implementation of projects relating to the St. Johns River. The membership of the board of directors reflects substantial governmental involvement at the local and state level. Funds to carry out projects of the alliance come from governmental sources.

The facts of this case present a close question whether the St. Johns River Alliance, Inc., is subject to the Government in the Sunshine Law. However, the courts of this state have held that the Sunshine Law must be broadly construed to effect its remedial and protective purpose. [26] As the Supreme Court of Florida made clear in *Town of Palm Beach v. Gradison*, [27] "[w]hen in doubt, [a collegial body] should follow the open-meeting policy of the State."

Therefore, it is the opinion of this office that the St. Johns River Alliance should consider itself subject to section 286.011, Florida Statutes, and provide notice of its meetings, hold those meetings open to the public, and record minutes of Alliance meetings as provided in the Government in the Sunshine Law and cases decided thereunder.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] See Exec. Order No.13061, at 62 Fed. Reg. 27,253 (1997).

[2] See American Heritage Rivers Initiative Partnership Agreement between the St. Johns River Community, State, Regional and Federal Agencies, dated 12/15/1999.

[3] *Id.*

[4] See St. Johns River Alliance Memorandum of Understanding, "Whereas" clause 2.

[5] *Id.* "Whereas" clause 4.

[6] *Supra* n. 4 at paragraph 3.

[7] See St. Johns River Alliance Memorandum of Understanding, paragraph 8A.

[8] *Id.* at paragraph 8D.

[9] *Supra* n. 7 at paragraph 8H.

[10] Article II, paragraph 1, Articles of Incorporation of St. Johns River Alliance, Inc.

[11] *Id.* at paragraph 3.

[12] See St. Johns River Alliance Memorandum of Understanding, paragraph 5.

[13] *Id.*

[14] American Heritage Rivers Initiative Partnership Agreement between the St. Johns River Community, State, Regional and Federal Agencies, s. 2, "Steering Committee" dated 12/15/1999.

[15] *Id.* "Advisory Committees," stating that "meetings will be open to the public and minutes of meetings will be kept and made available to the public."

[16] See State of the River 2002, St. Johns American Heritage River, p. 2.

[17] See *Id.*, p. 3.

[18] See, e.g., *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2nd DCA 1969).

[19] *Id.*

[20] See Op. Att'y Gen. Fla. 04-32 (2004).

[21] See, e.g., *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980).

[22] And see Op. Att'y Gen. Fla. 98-47 (1998), concluding that the Hollywood Economic Growth Corporation was not subject to the Government in the Sunshine Law when it was counseling and advising private business concerns on their participation in the federal loan program made available through the City of Hollywood.

[23] 296 So. 2d 473 (Fla. 1974).

[24] And see *IDS Properties, Inc., v. Town of Palm Beach*, 279 So. 2d 353 (Fla. 4th DCA 1973), wherein the court held that there was no government by delegation exception to the Government in the Sunshine Law by undertaking to delegate the conduct of public business through the use of an alter ego.

[25] *Id.* at 356.

[26] *Seem e.g., Wood v. Marston*, 442 So. 2d 934 (Fla. 1983); *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 699 (Fla. 1969) (statute should be broadly construed to effect its remedial and protective purpose).

[27] *Supra* n. 24.