

Sunshine Law, calling attorney-client meeting

Number: INFORMAL

Date: July 12, 2001

Subject:
Sunshine Law, calling attorney-client meeting

Ms. Tammy K. Vock
Vero Beach City Clerk
Post Office Box 1389
Vero Beach, Florida 32961-1389

Dear Ms. Vock:

On behalf of the Vero Beach City Council, you ask who may call an attorney-client meeting pursuant to section 286.011(8), Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

Section 286.011(8), Florida Statutes, enables a governmental entity to meet privately with its attorney provided that certain conditions are met.[1] The subsection provides as follows:

"(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

- (a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.
- (b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- (c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- (d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.
- (e) The transcript shall be made part of the public record upon conclusion of the litigation."

In construing the Government in the Sunshine Law, the courts have recognized that the

Sunshine Law, enacted for the public benefit, should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed.[2] In construing the provisions of section 286.011(8), Florida Statutes, the courts have held that strict compliance is required with the terms of the exemption. Thus, for example, in *City of Dunellon v. Aran*,[3] the court held that the city council's failure to announce the names of the attorneys participating in the closed attorney-client session did not comply with the requirements of section 286.011(8) and thus violated the Sunshine Law. The court rejected the city's claim that when the mayor announced that attorneys hired by the city would attend the session but did not give the names of the individuals, his "substantial compliance" was sufficient for the statute.

Similarly in *School Board of Duval County v. Florida Publishing Company*,[4] the court held that only those persons listed in section 286.011(8), Florida Statutes, could attend the closed attorney-client meeting.

As noted by the courts, section 286.011(8), Florida Statutes, provides

"a governmental entity's attorney an opportunity to receive necessary direction and information from the government entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting." [5]

Section 286.011(8), Florida Statutes, permits any governmental agency, its chief executive and attorney to meet in private if the agency is a party to litigation *and the attorney desires advice concerning settlement negotiations or strategy*. While the statute does not specify who calls the closed attorney-client meeting, it does require as one of the conditions that must be met that the governmental entity's attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation." It may be that this is the requirement to which the city attorney was referring.

Thus, pursuant to section 286.011(8)(a), Florida Statutes, one of the conditions that must be met prior to holding of a closed attorney-client meeting is that the city attorney must indicate to the city council at a public meeting that he or she wishes the advice of the city council regarding the pending litigation to which the city is presently a party before a court or administrative agency. If the city attorney does not advise the city council at a public meeting that he or she desires the council's advice regarding the litigation, the city council is not precluded from providing such advice to the city attorney but it must do so at a public meeting.

I trust that the above informal advisory comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] Subsection (8) was adopted in 1993. See s. 1, Ch. 93-232, Laws of Fla.

[2] See *City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

[3] 662 So. 2d 1026 (Fla. 5th DCA 1995). And see Ops. Att'y Gen. Fla. 98-06 (1998) and 95-06 (1995).

[4] 670 So. 2d 99 (Fla. 1st DCA 1996). And see *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998).

[5] Staff of Fla.H.R.Comm. on Government Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement at 3, quoted by *School Board of Duval County v. Florida Publishing Company*, *supra*; and *Zorc v. City of Vero Beach*, *supra*.