

Sunshine Law,delegation of authority

Number: INFORMAL

Date: January 31, 2003

Subject:
Sunshine Law,delegation of authority

The Honorable Rita Garvey
Mayor, City of Clearwater
Post Office Box 4748
Clearwater, Florida 34618-4748

Dear Mayor Garvey:

Thank you for your letter requesting my opinion on the legality of certain actions of the city commission and other officials in a recent purchase of real property on behalf of the City of Clearwater. This office, like the courts, must presume the validity of official actions which have been taken in the past by the city until judicially determined otherwise.[1]

From your letter, I understand that you have questions in two areas of the law: the applicability of the Government-in-the Sunshine Law to certain actions of city officials involved in the purchase of real property for the city and the applicability of s. 166.045, F.S., to the negotiations regarding this property. I will offer the following informal comments in an effort to guide future actions by the city commission and other city officials.

A line of Florida cases has expressed the position of the courts that governmental entities may not carry out decision-making functions outside the Sunshine Law by delegating such authority.[2] When 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 those public officials, those delegated that authority stand in the shoes of such public officials insofar as the application of the Government-in-the Sunshine Law is concerned.[3]

Thus, in AGO 90-17 this office concluded that a person or committee who has been delegated the authority to reject certain options from further consideration by the entire public body performs a decision-making function which must be conducted at a public meeting. However, in cases where the activities of the individual are limited to fact-finding or information gathering, the courts have determined that a board or commission subject to the Government-in-the-Sunshine Law does not exist and compliance with the terms of the law is not required.[4]

You ask whether s. 166.045, F.S., applies to the City of Clearwater. Section 166.045, F.S., relates to the proposed purchase of real property by municipalities and provides a limited exemption from the requirements of the Public Records Law for municipalities relying on this statute. Apparently, Clearwater has no charter provision or ordinance which would govern such proceedings and did not rely on the exemption contained in s. 166.045, F.S., in the recent real property purchase with which you are concerned.

In AGO 90-53 this office was specifically asked whether the procedures in s. 166.045(1)(a) and (b), F.S., are mandatory if a municipality has no charter or ordinance provisions setting forth its own procedures for the acquisition of real property, regardless of whether the municipality seeks to utilize the limited exemption from Ch. 119, F.S., which is contained therein. After an examination of the legislative history surrounding the enactment of amendments to this section in 1988, it was concluded that the Legislature intended to authorize the utilization of an alternate procedure by municipalities which had charter provisions or ordinances in place did not conflict with Ch. 119, F.S.

However, as the opinion concludes, a municipality which does not have a procedure for the purchase of real property in its charter or ordinance would not appear to satisfy the second component of s. 166.045(1)(c), F.S. Thus, the opinion states that "a municipality which does not have any charter or ordinance setting forth the procedure for the acquisition of real property would be required to comply with the provisions of s. 166.045, F.S."

In the absence of any amendments to s. 166.045, F.S., or any contrary caselaw, this office continues to be of the opinion that municipalities which do not presently have charter provisions or ordinances in place establishing a procedure for the purchase of real property are bound by the requirements of s. 166.045, F.S. However, Attorney General Opinions are merely advisory^[5] and are not legally binding although they are afforded great weight by the courts.^[6]

I trust these informal comments will be of assistance to you and will provide guidance to the city and its officials in the future.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/twd

Enclosed: Attorney General Opinion's 90-53, 90-17, and 84-54, Statement of policy.

cc: Michael S. Hooker
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[1] See AGO's 78-64 and 77-99, and Department of Legal Affairs Statement of Policy Concerning Attorney General Opinions (copy enclosed). *Cf. State ex rel. Watson v. Caldwell*, 23 So.2d 855 (1945); *Adams Packing Association, Inc. v. Florida Department of Citrus*, 352 So.2d 569 (2 D.C.A. Fla., 1977); *Department of Revenue v. Young American Builders*, 330 So.2d 864 (1 D.C.A. Fla. 1976).

[2] See *News-Press Publishing Co., Inc. v. Carlson*, 410 So.2d 546 (2 D.C.A. Fla., 1982).

[3] *Id.* at 547-548. *And see* IDS Properties, Inc. v. Town of Palm Beach, 279 So.2d 353 (4 D.C.A. Fla., 1973).

[4] *See* Cape Publications, Inc. v. City of Palm Bay, 473 So.2d 222 (5 D.C.A. Fla., 1985).

[5] *See* Department of Legal Affairs Statement of Policy Concerning Attorney General Opinions (copy enclosed).

[6] *See, e.g.,* Beverly v. Division of Beverage of Department of Business Regulation, 282 So.2d 657 (1 D.C.A. Fla., 1973).