

Sunshine Law--meeting at facilities restricting access

Number: INFORMAL

Date: January 30, 2003

Subject:

Sunshine Law--meeting at facilities restricting access

The Honorable Dick Batchelor
Representative, 43rd District
Post Office Box 2031
Orlando, Florida 32802

Re: SUNSHINE LAW--meetings held at facility which discriminates or operates in a manner which unreasonably restricts public access. s. 286.011(6), Fla. Stat.

Dear Representative Batchelor:

This is in response to your recent inquiry concerning the scope of the prohibition contained in subsection (6) of section 286.011, Florida Statutes, Florida's Government in the Sunshine Law.

The Sunshine Law requires that all meetings of any public agency over which the Legislature has dominion and control must be open to the public. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). In 1978, the Legislature amended section 286.011, Florida Statutes, by adding subsection (6). See, Chapter 78-365, Laws of Florida. This provision provides:

"All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility."

In deciding if a possible violation of the Sunshine Law has taken place, a determination must be made whether a *meeting* between two or more members of a public board or commission has taken place. The courts have focused on the term "meeting" in applying the Sunshine Law; no statutory definition of the term has been provided. The Florida Supreme Court has extended the Sunshine Law to apply to discussions and deliberations as well as formal action taken by a public body. The Court in *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, at 699 (Fla. 1969), stated:

"The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. During the past years tendencies toward secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with "hanky panky" in the minds of public-spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commission, through devious ways, should not

be allowed to deprive the public of this inalienable right to be present and to be heard at *all deliberations* wherein decision affecting the public are being made." (e.s.)

See also, *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Times Publishing Co. v. Williams*, 222 So. 2d 470 (Fla. 2nd DCA 1969).

Thus, the law is applicable to any gathering between two or more members of a covered board or commission where the members discuss any matter on which it is foreseeable that action will be taken by the board of commission. However, the law is not applicable when the gathering is entirely for social purposes and no public business is discussed. Likewise, the prohibition contained in subsection (6) of section 286.011, Florida Statutes, probably does not apply to a gathering which is purely for social reasons and does not include any discussion of public business.

You have questioned the scope of subsection (6) and have expressed an intention to extend this prohibition to include all social gatherings attended by governmental agents. It is my recommendation that if the prohibition in subsection (6) is legislatively extended to include social gatherings, a definitional distinction should be drawn between a social gathering that is attended in the members' capacity as private citizens and a social gathering that is conducted in connection with such members' capacity as public officers, employees, or appointees. This distinction would avoid any problem of infringing on an individual's right of association.

I hope that these comments are of assistance to you in the performance of your legislative duties and responsibilities.

With all good wishes,

Sincerely,

Jim Smith
Attorney General

JS/CWc