Public officers-elect and sunshine law

Number: AGO 74-40

Date: November 06, 1998

Subject:
Public officers-elect and sunshine law

RE: SUNSHINE LAW--APPLICABILITY TO PUBLIC OFFICERS-ELECT

To: Thomas G. Freeman, Winter Springs City Attorney, Altamonte Springs

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Can elected officials, prior to taking office, violate the Sunshine Law without liability?

SUMMARY:

Members-elect of boards and commissions are within the scope of the Sunshine Law. There must be proof of scienter in order for there to be criminal liability.

Your question is answered by Hough v. Stembridge, 278 So.2d 288 (3 D.C.A. Fla., 1973). The court held that "members-elect of boards, commissions, agencies, etc. are within the scope of the Government in the Sunshine Law." *Hough* at 289.

In order for there to be a criminal violation of the statute, there must be proof of scienter. The Supreme Court, in Board of Public Instruction of Broward Co. v. Doran, 224 So.2d 693 (Fla. 1969), stated that

"Subsection (3) of Fla. Stat., s. 286.011, F.S.A., provides that any person who violates the provisions of the act by attending a meeting not held in accordance with the provisions hereof, is guilty of a misdemeanor. Defendant complains because scienter was not made a specific element of the offense. We construe the statute to impliedly require a charge and proof of scienter."