Sunshine Law, Public Service Commission

Number: AGO 73-344

Date: October 07, 2011

Subject:
Sunshine Law, Public Service Commission

RE: SUNSHINE LAW—PROCEEDINGS OF PUBLIC SERVICE COMMISSION

To: William H. Bevis, William T. Mayo, and Paula Hawkins, Commissioners, Public Service Commission, Tallahassee

Prepared by: Barry Scott Richard, Deputy Attorney General

QUESTIONS:

1. Is it a violation of the Government in the Sunshine Law, s. 286.011, F. S., to hold a closed meeting of the Public Service Commission, excluding participation by members of the media and public, to discuss disciplinary actions brought against a commission employee by another state agency?

2. Does withholding from the news media and public the results of a final decision of the Public Service Commission members for a period of seven days or longer violate the Government in the Sunshine Law?

3. What procedures should the commission adopt in exercising its quasi-judicial functions?

4. What procedures should the commission adopt for the purpose of meeting jointly to consider inter-commission matters such as personnel matters?

SUMMARY:

It is a violation of the Government in the Sunshine Law, s. 286.011, F. S., to hold a closed meeting of the Public Service Commission, excluding participation by members of the media and public, to discuss disciplinary actions brought against a commission employee by another state agency.

The withholding from the news media and the public of the results of a final decision of the Public Service Commission for seven days or longer is a violation of the Sunshine Law and the Public Records Law, Ch. 119, F. S.

In order to fully comply with the Sunshine and Public Records Laws, the Public Service Commission should give reasonable notice of all meetings and agendas; should take votes and discuss all matters involving public business on which foreseeable commission action may be taken at public meetings open to the news media and the public at all times; and should make

vote sheets, final orders, and all other documents and materials made or received pursuant to law or ordinance or in connection with the transaction of official business open to inspection by the public and the news media at all reasonable times.

You report that the commission has reserved the first, third, and fifth Mondays of each month for commission conferences pursuant to an agenda of items to be considered and that notices of such conferences were posted in the lobby of the commission's general offices in Tallahassee. However, you state that "no specific or special effort was made to notify anyone outside the commission staff that a particular item would be considered on a particular day." You advise that prior to 1973, it was the practice of the commission to take an open vote of the commissioners at the public meetings after consideration of each agenda item. Each commissioner would also record his vote on a printed vote sheet. When a commissioner was not ready to vote on a particular matter, it was usually deferred until the next conference. You further advise that in early 1973 the commission modified the above procedure. Instead of the commissioners voting at the public meetings, it has been the recent practice of the commissioners to vote privately in their offices on the vote sheet. A final written order is then prepared by the staff during which interim period any commissioner may change his or her vote.

The "Government in the Sunshine Law," s. 286.011, F. S., provides:

"(1) *All* meetings of *any board or commission of any state agency or authority* or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings *open to the public at all times*, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting." (Emphasis supplied)

It is clear that the Public Service Commission falls within the term "any agency" within the statute. The fact that an administrative board established by the legislature is exercising quasi-judicial functions does not remove it from the ambit of the Sunshine Law. Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973).

The Government in the Sunshine Law is not limited to meetings at which final, formal actions are taken. It applies to "any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969); Canney v. Board of Public Instruction of Alachua County, *supra*. The law requires that the public and the news media be admitted to "every assemblage of a board or commission governed by the act at which any discussion, deliberation, decision, or formal action is to be had, made or taken relating to, or within the scope of, the official duties or affairs of such body . . . ." Times Publishing Co. v. Williams, 222 So.2d 470 (2 D.C.A. Fla., 1969).

The legislature has not exempted discussion involving personnel matters. To the contrary, the legislature has specifically rejected such an exception as noted in the *Canney* case:

"There is no question as to legislative intent, as the arguments made in this case were also made in the Legislature and rejected. The Sunshine Law, Chapter 67-356, originated with Senate Bill 9 in the 1967 Legislature. When the House considered the bill, it adopted an

amendment which read, 'This act shall not apply to hearings involving individuals charged with violations of laws or regulations respecting employment.' I Journal of the House of Representatives 959 (June 5, 1967). This amendment was not accepted by the Senate and the bill was ultimately passed without such an amendment." [Canney, *supra*, at 263.]

See AGO 071-29, holding that the deliberations of a civil service board following a hearing on a disciplinary matter are required to be conducted in the presence of the public and the press. It follows that the commission cannot hold a closed meeting to discuss disciplinary action brought against a commission employee by another state agency.

It is my opinion that the commission cannot withhold from the news media and the public the results of a final decision of the Public Service Commission for any period of time. As noted above, s. 286.011(1), F. S., requires that meetings "be public meetings open to the public at all times." Section 286.011(2) further provides:

"(2) The minutes of a meeting of any such board or commission of any state agency or authority shall be *promptly* recorded and such records shall be open to public inspection. . . ." (Emphasis supplied.)

A final decision of the commission cannot be withheld for 7 days or longer since the meeting must be open to the public "at all times" and the minutes of the meeting must be "promptly recorded" and "open to public inspection."

Withholding of the final decision is also prohibited by the Florida Public Records Law, Ch. 119, F. S., which provides in pertinent part:

"119.01 Public records open to examination by citizens.—All state, county, and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen. . . .

119.07 Inspection and examination of records; exemptions.—
(1) Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law."

Section 119.011(2) defines public records as:

". . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, *made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.*" (Emphasis supplied.)

"Agency" is defined in s. 119.011(2) as "any state, county or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law."

There can be no question but that the Public Service Commission falls within the broad definition

of agency within the statute. It is my understanding that after the commissioners cast their votes on the "vote sheet," it is forwarded to the executive secretary of the commission and retained permanently in the commission files. I have no difficulty in concluding that such a ballot is "made or received pursuant to law or ordinance" and made "in connection with the transaction of official business." Since the ballot is a public record as soon as it is "made" and since public records, by virtue of s. 119.011, F. S., are open for a personal inspection by any citizen of Florida "at all times," it follows that the final decision cannot be withheld for any period of time. It should be noted that I see nothing wrong with the votes being recorded on the vote sheet so long as they are made openly at a public meeting and so long as the vote sheets are available for public inspection.

I would also note that I am aware of no requirement that the commission vote immediately after a matter is considered at a meeting. I see nothing wrong with the commissioners taking time to individually review records and documents and personally deliberate in their respective offices so long as they reconvene in a public meeting with sufficient notice prior to engaging in any discussion of business or taking any votes.

In response to your request, I recommend that the commission adopt the following procedures to insure that it complies with the letter and spirit of the Sunshine and Public Records Laws:

Notices of commission meetings and agendas should be released to the news media and the public and posted in the lobby of the commission's general offices sufficiently in advance of meetings to give reasonable notice to those who may wish to attend.

Discussion of all matters involving public business on which foreseeable commission action may be taken, and all votes by the commissioners, should be at public meetings open to the news media and the public at all times.

Vote sheets, final orders, and all other documents and materials "made or received pursuant to law or ordinance or in connection with the transaction of official business" should be open for inspection by members of the news media and the public generally at all reasonable times.