Sunshine Law, appointive boards

Number: AGO 73-223

Date: October 06, 2011

Subject:
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RE: SUNSHINE LAW—APPLICABILITY TO APPOINTIVE BOARDS

To: George F. Young, Chairman, Broward County Board of Rules and Appeals, Fort Lauderdale

Prepared by: Jan Dunn, Assistant Attorney General

QUESTION:

Are appointive bodies subject to s. 286.011, F. S., the Sunshine Law?

SUMMARY:

Appointive bodies, as well as elective, fall under the purview of the Sunshine Law. Advisory bodies can be controlled by the Sunshine Law. Committees of a governing board composed of members of the board must have public meetings when such meetings deal with matters pertaining to the duties and responsibilities of the board.

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."

There is no mention of distinction between an elective or appointive body. The statute includes *all* boards and commissions. The court in Times Publishing Company v. Williams, 222 So.2d 470 (2 D.C.A. Fla., 1969), stated:

". . . the legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion and control." (Times Publishing Co. at 473)

In AGO 071-29, it was found that the deliberations of the Miami Civil Service Board, following a hearing on a disciplinary matter, must be conducted openly under the Sunshine Law. Attorney General Opinion 072-400 says that regulatory boards under the Department of Professional and Occupational Regulation (which are appointive bodies) fall under the purview of the Sunshine Law.

Your question, therefore, must be answered in the affirmative.

Your letter mentions that the board has committees which meet to discuss the possibility of changes to the building code. These committees apparently are composed of persons familiar with the subject matter being discussed. The changes proposed by these committees are brought before the entire board for action.

The question you might have had in mind is whether the Sunshine Law is applicable to these committees. It is possible from your description of the committees that they are advisory. It has been previously questioned whether advisory bodies are subject to the Sunshine Law. Attorney General Opinion 073-159 involved an advisory planning commission created by ordinance. The ordinance contemplated that the commission would hold formal meetings; it required that attendance and voting records be kept; that such records be public records; and that the city council make appropriations available to the commission. Also, planning functions which affected almost every aspect of urban life had been delegated to the commission. The opinion went on to say that

"While the Venice City Council has the final decision on all proposals and recommendations which come from the planning commission, as a practical matter the latter body will play a significant role in establishing the future patterns of growth and development for the community. The knowledge and experience which a planning commission acquires during the preparation of a comprehensive general plan for the future development of a community isn't likely to be quickly absorbed by any governing body. As a consequence the governing body for the City of Venice, and others like it, will necessarily rely heavily on the recommendations of its planning commission. It follows then that the proceedings at the planning commission level provide the best opportunity for both public input and public information."

Under this situation, I held that the commission's meeting had to be held in accordance with the requirements of the Sunshine Law. It is not clear from your description of the board's committees whether they have similar functions, duties or procedures to follow. If this is the case, then even though they are advisory, the requirements of the Sunshine Law would have to be followed.

City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971), should also be mentioned. This case involved the issue of whether a city council could hold informal sessions at which the public was excluded. In holding that it could not, the Florida Supreme Court emphasized the principle that the Sunshine Law was intended to cover all gatherings where members dealt with matters "on which *foreseeable action* will be taken by the board." Although *Berns* was concerned with meetings of members of a governing board, it is possible that the principle cited by the court is equally applicable to an advisory committee of such a board. The committees of the Broward County Board of Appeals seem to be dealing with highly technical matters relating to changes in the county's building code. (Some changes would involve engineers and contractors while others plumbing or electrical sections.) When committees are composed of persons knowledgeable in a certain specialized field, it can probably be assumed that not all of the members of the parent board are familiar with the problems or solutions of each such field. Therefore, as said in AGO 073-159, the board will "necessarily rely heavily on the recommendations of its planning commission." To close to the public a meeting of such an advisory committee, where probably many of the board's decisions are made, or at least where matters "on which foreseeable action

will be taken by the board" are dealt with, would be, in effect, to disregard the intent and principle of the Sunshine Law. According to the court in *Berns*, "Our duty is to interpret this law as it is written and, if possible, do so in a manner to prevent its circumvention."

If the members of the committees are also members of the board, the committee meetings would fall under the holding of Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969), and be subject to the Sunshine Law. The circuit court had said that the Sunshine Law was intended to cover "any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." *Doran* at 698. The final judgment of the Florida Supreme Court enjoined the defendants from holding any meeting "at which are held any discussions on matters pertaining to the duties and responsibilities of the Board. . . ." *Doran* at 700. Your letter indicates that the committees meet to discuss the possibility of code changes. Since such changes are part of the board's function, these committee meetings would deal with matters "pertaining to the duties and responsibilities of the Board."