

Sunshine Law, due public notice

Number: AGO 73-170

Date: September 30, 2011

Subject:
Sunshine Law, due public notice

RE: SUNSHINE LAW—MEANING OF TERM "DUE PUBLIC NOTICE"

To: Jack Faircloth, Clerk, Circuit Court, Bonifay

Prepared by: Henry George White, Assistant Attorney General

QUESTION:

WHAT IS THE MEANING OF THE TERM "DUE PUBLIC NOTICE" IN S. 125.001, F. S., AS THAT TERM RELATES TO THE PROVISIONS OF THE SUNSHINE LAW, S. 286.011, F. S.?

SUMMARY:

The meaning of the term "due public notice" is variable, depending on the facts of each situation. The purpose of notice is to apprise individuals or the public generally of the pendency of matters which may affect their personal or property rights and afford them the opportunity to appear and present their views. The nature of the proceeding at which these rights are to be affected, the nature of the rights themselves, the applicable statutory provisions, and other surrounding circumstances will influence the notice requirements of each case. But in every case the notice must reasonably convey all the information required in that situation and it must afford a reasonable time for interested persons to make an appearance if they wish.

Chapter 125, F. S., deals with the powers and duties of county commissioners, and s. 125.001 relates specifically to notice of board meetings. It provides that "[u]pon the giving of due public notice, regular and special meetings of the board may be held at any appropriate public place in the county."

No statutory definition of the phrase "due public notice" is given. Section 286.011, F. S., the Government in the Sunshine Law, is a policy declaration by the legislature that all meetings of public bodies at which official acts are to be taken shall be open to the public. Implicit in this policy is the requirement that the public have notice of such meetings. While the Sunshine Law does not expressly mention notice, the cases construing it do speak of the public's right "to be present and to be heard," *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969), and the right of "public scrutiny and participation," *City of Miami Beach v. Berns*, 245 So.2d 38 (Fla. 1971). It is axiomatic that the right "to be present and to be heard" has little meaning or value unless the public is informed that particular matters are pending and can choose whether or not to attend and participate in a meeting. An understanding of the purpose of notice assists in the formulation of a functional definition of that term.

There is no precise definition of or formula for due notice which is applicable to every situation. Due notice is a relative term, the meaning and sufficiency of which can be ascertained only in reference to the particular facts and circumstances upon which it bears. Notice which is adequate under normal conditions may be impractical or impossible in emergency situations. So the purpose behind the requirement of notice, the events about which notice is given, and the nature of the rights affected will determine what is required in each case. However, the comments below do provide some guidelines against which the method of notice chosen in each situation may be measured.

Although the following comments as to "notice" were stated in reference to the requirements of "due process" in judicial proceedings, they are applicable to some extent to meetings of administrative bodies.

"An elementary and fundamental requirement of due process in any proceeding which is to accord finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance. . . . [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, or, where conditions do not reasonable permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes." [Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 315 (1950)]. (Citations omitted.)

I have previously stated in AGO 071-32 that any meeting which is subject to the provisions of the Sunshine Law must be preceded by:

". . . a reasonable and ample period of notice . . . [to] the public and representatives of the press so that they may attend . . . [the] meeting if they wish. [B]oth the period of notice of the meeting and the method of promulgating the notice to the public must be performed in strict accordance with legislative requirements when these requirements exist; where there is no legislative prescription, then the serving of notice and the promulgation of the notice must be given in a reasonable manner calculated to timely inform the public."

Accord: Attorney General Opinions 071-346 and 072-400.

As noted above, s. 125.001, *supra*, requires "due public notice" of regular or special meetings of the board of county commissioners, but the type or period of notice required in this situation is not covered by the statute. As the statute does not identify the prerequisites for adequate notice, the criteria outlined above will come into play. Thus, even though s. 125.66(2), F. S., requiring at least fifteen days' notice of an intention to enact a county ordinance, prescribes the manner in which the notice of intention must be given, such notice will not satisfy the requirements of s. 125.001 unless there is proper notice of the time and place of the meeting at which such action is to be taken by the board of county commissioners. Similarly, s. 125.66(3), F. S., allows a

waiver of the notice requirements by a four-fifths vote of the county commissioners declaring that an emergency exists and that the immediate enactment of an ordinance is necessary. Nevertheless, this section, read with s. 125.001, contemplates that due notice of the time and place of the regular or special meeting at which the emergency enactment is acted upon will have been given pursuant to s. 125.001.

In sum: In every situation in which some type of notice is required, the content of the notice and the method of promulgating it will be influenced by applicable statutory requirements and by what the particular circumstances may fairly and reasonable dictate or require. If the purpose for notice is kept in mind, together with the character of the event about which notice is to be given and the nature of the rights to be affected, the essential requirements for notice in that situation will suggest themselves. Good faith adherence to those guidelines will assure that the notice requirements of each situation will be satisfied.