Sunshine Law, social meetings

Number: AGO 71-295

Date: October 10, 2011

Subject:
Sunshine Law, social meetings

RE: SUNSHINE LAW—PROPRIETY OF SOCIAL MEETING PRECEDING OFFICIAL MEETING—s. 286.011, F. S.

To: Oscar A. Jose, Jr. Member, Board of Commissioners, Florida Inland Navigation District, Miami

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. May an official meeting of the Board of Commissioners of the Florida Inland Navigation District be preceded the same day by a boat trip attended by members and officials of the board where no provision is made for public participation?

2. May an official meeting of the Board of Commissioners of the Florida Inland Navigation District be immediately preceded by a luncheon attended by members and officials of the board in a private dining room or private club?

3. Should a complete stenographic verbatim public record be made by the Board of Commissioners of the Florida Inland Navigation District of all its meetings by court reporter?

SUMMARY:

Public bodies should avoid secret meetings, from which the public and the press are effectively excluded, preceding official meetings, even though such secret meetings are held ostensibly for purely social purposes only and with the understanding that the members of the public body will, in good faith, attempt to avoid any discussion of official business.

As noted in AGO 071-32, the Florida Supreme Court said in City of Miami Beach v. Berns, Fla. 1971, 245 So.2d 38, that it is the intent of the Sunshine Law that any meeting of a public body relating to any matter on which foreseeable action will be taken by such body must be held openly and publicly. The court defined "secret meeting" as follows:

"A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public. When at such meetings officials . . . transact or agree to transact public business at a future time in a certain manner they violate the government in the sunshine law, regardless of whether the meeting is formal or informal."

The court has never dealt with the specific question of whether a board or commission may precede its formal official meeting with a purely social gathering from which the public and the press are excluded. In the *Berns* case, *supra*, the court indicated that "an informal conference or caucus of any two or more members" would violate the Sunshine Law, stating that "[i]n this area of regulating, the statute may push beyond debatable limits in order to block evasive techniques." When read in context, the quoted language means only that less that a quorum of a public body may not meet to confer or "caucus" on an *official business* matter and thereby evade the proscription of the Sunshine Law; and it cannot be interpreted as holding that the members of a public body may not attend a social gathering and, in the course thereof, discuss matters *other than official business matters*. As noted in the *Berns* case, *supra*,

"The Legislature did not intend to muzzle lawmakers and administrative boards to an unreasonable degree. It would be contrary to reason and violate the right of free speech to construe the law to prohibit any discussion whatever by public officials between meetings. The practice of discussing politics and government is part of our American heritage enjoyed by public officials and private citizens. The evil of *closed door operation of government* without permitting public scrutiny and participation in what the law seeks to prohibit. If a public official is unable to know whether by any convening of two or more officials he is violating the law, he should leave the meeting forthwith." (Emphasis supplied.)

Similarly, in AGO 071-32 I observed that members of a public body will inevitably meet in their homes, on golf courses, in restaurants, and in other places that are not public offices and that it would be absurd to ban constructive discussions or hold them unlawful merely because they were not held in public offices; however, it was emphasized that "conversations bearing on the public's business" should be open to the public and the press.

Here, however, it is proposed to hold a secret meeting preceding an official meeting, ostensibly for social purposes. In AGO 071-159 I stated that a meeting of a public body in a public dining room which the general public might not feel free to enter might be held by the court to be a violation of the spirit and intent of the Sunshine Law, even though it might not violate the letter of the law, since the public and the press were notified of the meeting and it was technically open to the public. Similarly, a purely social meeting at which no official business is to be discussed or transacted might not violate the letter of the Sunshine Law. However, when such a meeting is held in a place where the public and the press are effectively excluded from participation, it is a "secret meeting" as defined by the court in the *Bern* case, *supra*; and the court might very well conclude that such a meeting is an "evasive technique" to avoid the statute, just as it held that a discussion of official business by less than a quorum "permits crystallization of secret decisions to a point just short of ceremonial acceptance" and should be avoided.

Unless and until this question is legislatively or judicially clarified, I am inclined to the view that a public body should avoid a secret meeting from which the public and the press are effectively excluded, prior to its public meeting, even though the secret meeting is held for social purposes only and with the understanding that the members of the public body will, in good faith, avoid any discussion of official business.

As noted in my letter to you under date of Sept. 2, 1971, the act creating the district should state whether a record of the meetings of the governing body should be kept. In the absence of

anything in the special act creating the district so requiring, I know of no reason why a verbatim transcript of the official actions of the district's governing body should be made by a court reporter.