Government in the Sunshine

Number: AGO 71-159

Date: September 29, 2011

Subject:
Government in the Sunshine

Re: GOVERNMENT IN THE SUNSHINE--MEETING OF A PUBLIC BODY IN A PUBLIC DINING ROOM

To: Richard M. Sepler, City Attorney, Hialeah

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a meeting of a public body, to which the public and the press is invited, be held in a public dining room?

SUMMARY:

There is no violation of law in holding meetings of public bodies in public dining rooms, provided other stipulations of s. 286.011, F. S., are met; however, such meetings are discouraged.

The meetings in question are held in a public dining room at 6:00 p.m. prior to the regularly scheduled meeting of the city council at the city hall at 7:30 p.m. Apparently no official action is taken by the council during the dinner meeting. However, the matters on the agenda are discussed with the city administrator; and, from time to time, department heads, the city engineer, and the city attorney join the meeting and, presumably, enter into the discussion. Members of the public and the press are invited to attend and occasionally appear and sit at the table with the members of the council.

Even though no official action is taken at a meeting of a public body, it is nonetheless a "public meeting" within the purview of the Sunshine Law, s. 286.011, F. S. This was made quite clear by the Florida Supreme Court in Board of Public Instruction of Broward County v. Doran, Fla. 1969, 224 So.2d 693, and City of Miami Beach v. Berns, opinion filed January 27, 1971. In the *Doran* case the court stated unequivocally that ". . . [t]he obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." A discussion of matters on the agenda for the regularly scheduled meeting to follow the dinner meeting is unquestionably concerned with matters on which foreseeable action will be taken by the board. The dinner meeting in question is, therefore, a public meeting within the purview of the Sunshine Law, *supra*.

There is nothing in the Sunshine Law that expressly requires the meeting of a public body to be held in the same location at all times; and I have no doubt that in the proper circumstances—as,

for example, when larger quarters are required for a hearing on a matter that has excited great public interest—the public body may hold its meeting in a place other than its regular meeting place after due notice has been given to the public and the press. Here, however, it appears that the meetings in question are held at another location for the sole benefit of the members of the city council—and, perhaps, its staff members. This fact, standing alone, would not appear to constitute a ground for criticism or make the meeting suspect as one not open to the public; and I do not think it can be said, categorically, that a public body may not call a special meeting at a place other than its regular meeting place to suit the convenience of its members without violating the Sunshine Law.

In our earlier personal discussion of this matter, I advised you that I did not believe the meetings you describe violated the penal provisions of the Sunshine Law. This was my opinion at that time and it is still my opinion today. The rationale for such a view is founded upon the well-established principle of statutory interpretation that penal statutes should be strictly construed.

However, strict construction of penal statutes notwithstanding, I am constrained to include in this opinion an admonition and caveat unique to the Sunshine Law in its legislative and judicial history.

It is not gainsaid that the Supreme Court of Florida has given the Sunshine Law a very broad literal and liberal interpretation. *See* cases cited *supra*. In view of the liberal construction that the Supreme Court has given the Sunshine Law, it is likely that the court would view with some apprehension a public body meeting continuously in a place that the general public does not feel free to enter. It may well be that the court would view such a meeting as violative of the spirit and intent of the Sunshine Law, even though not a violation of the letter of the law.

It seems to me that the selection of a public dining room for the meeting might have a "chilling" effect on the public's willingness or desire to attend the meeting, since there would undoubtedly be many persons who would be reluctant to enter a public dining room without making a dinner purchase and who would be financially unable or personally unwilling to do so. Your letter does not state what arrangements were made to make sure that the proceedings were audible to the members of the public and the press in attendance; and I cannot help but observe that discussions among city council members and staff members that are audible only to a select few who are seated at the table with them might not satisfy the "openness" requirement of the Sunshine Law.

In light of these considerations, and without the benefit of judicial clarification, I am of the view that the city council might well be advised to avoid even the appearance of impropriety by expending all efforts to conform to the spirit as well as the letter of the Sunshine Law.