Florida Sunshine Law for Public Officials

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Florida Sunshine Law

Elected Official Ethics Training

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Purpose and Intent

- **Purpose**
  - to make all government-related meetings "public meetings open to the public at all times ... "
- **Intent**
  - "Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest."

Times Publishing Company, etc. v. Williams, 222 So. 2d 470 (2 DCA 1969)

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Four Basics for Compliance With Public Meeting Requirements

- Notice - Reasonable
- Location - Open and Accessible
- Minutes - Required
- Public Participation - Opportunity Required

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What is a Public Meeting?

- **Article I, Section 24, Florida Constitution**
  - Meeting of a collegial public body at which official acts
  - are taken or business discussed
- **Section 286.011, Florida Statutes**
  - Meeting at which official acts taken
- **Case Law**
  - All meetings where there are discussions of matters which may foreseeably come before a board or commission
  - "All meetings" include staff, committees, temporary groups, or even a single person.

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Who is Covered?

"...any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision..."

Section 286.011(1) F.S.

Essentially, any gathering of the members of a public body within the state where the members deal with some matter on which ***foreseeable action*** may be taken by the body.

See ***City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971)***

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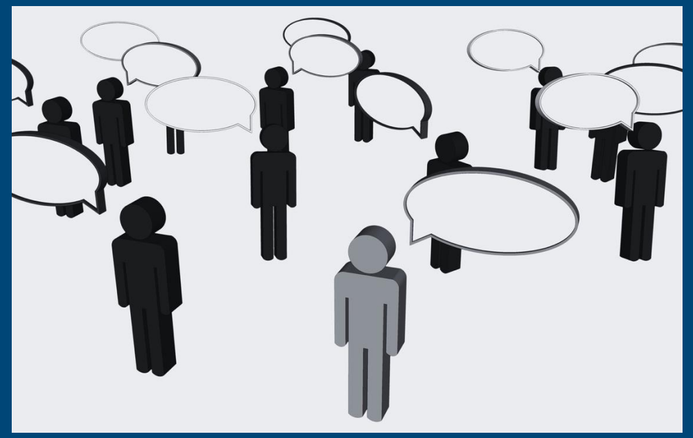
What Constitutes a Meeting?

Meetings/gatherings of two or more individuals to whom the public entity has delegated the conduct of public business are subject to Open Meeting requirements.

Use of non-members or staff to communicate information and thoughts is subject to Open Meeting Requirements.
(use of conduit)



Email Communications or written reports or correspondence between members is generally not a meeting provided it is not used as a means to exchange thoughts, ideas and opinions among members. (It is, however, a public record.)

The Entire Decision Making Process

- " ... it is the **entire decision-making process** that the legislature intended to affect by the enactment of the statute before us. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest."

Times Publishing Company, etc. v. Williams, 222 So. 2d 470 (2 DCA 1969)

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The Entire Decision Making Process

Informal discussions, workshops, executive work sessions, conferences … all are covered.

"One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. ***Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors.*** *The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agenc½ and relates to any matter on which foreseeable action will be taken."*

Town of Palm Beach v. Gradison, 296 So. 2d 474 (Fla 1974)

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Public Meeting v. Private Communications

- Any communication between two or more members of the same board/commission/council to discussing any matter which will foreseeably come before that body for action
- No necessity of the matter being on the commission agenda
- No necessity of a quorum
- Any formal or informal interactive communication, discussion or deliberation between two members of the same body
- One-way communication
- Beware of a conduit/liaison

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Communication Modes

- ❑ Person-to-Person
- ❑ Telephone Conversation
- ❑ Text Messaging
- ❑ Email Correspondence
- ❑ Social Media
  - Posting on social media i.e. Facebook etc., provided members of same body not engage in discussion on any matter which will foreseeably come before that body for action.
- ❑ Use of Personal Devices (laptop or cell phone) for public business

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Notice

- Reasonable notice required, but the law does not set up specific notice guidelines.
    - *"...its purpose was to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished."(approved 3-day notice)*

***Rhea v. City of Gainesville,* 574 So. 2d 221,222_(Fla 1 DCA 1991).**

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Attorney General's Office Suggested Notice Guidelines

- Notice should contain the time and place of the meeting and agenda or a summary of the subject matter
- Notice should be prominently displayed in an area in the agency's office set aside for such purposes
- If it is an emergency meeting, the most appropriate and effective notice under the circumstances should be provided and at least 24 hours reasonable notice to the public
- Use of press releases and/or phone calls to the media is effective

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Minutes

- Minutes must be taken
- A recording is ***not*** required
- Minutes of meetings become the official record of the proceedings and therefore should be carefully reviewed for accuracy before approved

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Location

- Public access is **most important**
- Meetings should not occur in restaurants, small rooms, out-of-town or in other places that unreasonably limit access
- **Section 286.011(6) F.S.** expressly prohibits the holding of any meeting subject to the Sunshine law at any facility "which discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in such a manner as to unreasonably restrict public access to a facility."

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Public Participation

Section 286.0114, F.S. (adopted 2013) Public Participation Law

- Members of the public shall be provided an opportunity to address any appointed or elected body during the decision making process and prior to the body taking official action
- This applies to any action item
- Failure to comply could result in an award of attorney fees against the local government

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Public Participation Other Considerations

- Public has the right to hear all comments made to or by members of the body. Private conversations and side bars should be avoided.
- Receipt of messages, private notes or emails during meeting must be avoided.
- Time limits are permissible as long as they do not unreasonably restrict access.
- The presiding officer can regulate comment to avoid repetitive, irrelevant or disruptive comments or behavior.
- A member of the public can video tape or record any meeting.

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Violations - Impact on Action Taken

- Action taken at a meeting that was not open to the public, whether intentional or not, by operation of Section 286.011(1), F.S. is void.

- Curative measures can be taken. A full open hearing and not a ceremonial simple ratification of the action will cure the defect and validate the action.

- It is not enough to simply re-notice the action and seek public comment on the matter at a subsequent public meeting.

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Notable Case

- *Citizens for Sunshine, Inc. v. School Board of Martin County*
  (125 So.3d 184, Florida Fourth DCA [2013])
  - At three school board meetings, multiple people voiced concerns about the district's adult education school.
  - After the third meeting, three school board members visited the school without any notice of the visit.
    - During the visit, the board members asked the school's coordinator about teacher contracts, support received, teaching materials and staff morale.
    - The testimony was the board members did not take any formal action, did not deliberate or decide anything. "They came, they saw and they left." - Quoted testimony from the hearing
  - Sued by a non-profit for violating Sunshine because there was no notice.

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- The Appellate Court said there was a substantial likelihood of a Sunshine Law violation:
  - "The undisputed evidence showed that the defendant board members, without providing notice, conducted a meeting at the adult education school relating to matters on which foreseeable action would have been taken. The coordinator and the defendant school board members discussed: the coordinator's duties; a summary of which teachers were on contract; the support which the school received; appropriate teaching materials; rumors about whether the school would remain open or would close; and staff morale at the school."

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Notable Case

(995 So.2d 1068, Florida Fifth DCA [2013])

- ***Finch V. Seminole County School Board***
  - School Board needed to revise attendance zones because of a new high school.
  - Three proposed alternative plans to address the zoning were created.
  - After receiving the plans, the members of the School Board, the Superintendent and Deputy Superintendent of Schools, two members of the media, two candidates for the School Board, and representative of the transportation sector of school system were taken on a school bus tour of the neighborhoods that would be affected by the rezoning.

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- The purpose of the tour was to enable the members of the School Board to physically view the potentially impacted areas and to look at possible bus routes that might be utilized, depending on which plan was finally adopted. The school board viewed the this as a “fact finding” trip, and thus not covered by the sunshine law.

- As a precautionary measure, the School Board members were separated from each other by several rows of seats. According to the evidence, no member discussed his or her preference for any of the plans, no opinions were expressed, and no vote was taken during the trip. Likewise, no minutes of anything that happened on the trip were taken.

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- A week later the School Board convened a public meeting that lasted between five and seven hours, and was attended by 800 to 900 people. The public was given ample opportunity to make comments at the meeting. Following the public input segment, the Superintendent made his recommendation for one of the proposed plans. One School Board member spoke in favor of modifying the plan, but was eventually convinced that the proposed plan with slight modifications would be best to meet the needs of the community.

- After a lengthy discussion the School Board unanimously approved the plan with some changes, and authorized the advertising of the selected plan for final adoption a month later.

- The School Board was sued for violating the Sunshine Law and on appeal, the Fifth DCA said very directly that it had:
  - "In the present case it is clear that the School Board was not an advisory board. It had ultimate decision-making authority; it was gathered together in a confined bus space; and it undoubtedly had the opportunity at that time to make decisions outside of the public's scrutiny. We conclude, therefore, that the conduct of the bus tour, indeed, constituted a violation of the Sunshine Law."
- However, the School Board was lucky in one sense because of its subsequent actions:
  - "In the present case we conclude that the bus tour was not egregious and was cured by the subsequent public hearings at which the rezoning plan was adopted. It was certainly not a willful violation of the Sunshine Law. Rather, there appeared to be an effort on the part of the School Board to comply with the statue. In this respect we note that the bus trip was hardly a secret. Two members of the media, in fact, where invited along. In addition, the School Board made efforts to assure that the board members were separated spatially, and that no discussions concerning the selection of the plan took place."

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Ask Yourself…

- Was this meeting set up according to all of the public meeting requirements?
- Does it *look like* it might engage in improper communication?
  - A one-on-one discussion with a colleague is a social function
  - A side bar with a colleague off microphone during a meeting
  - A conversation with one or more colleagues during a break
- Have we provided *all* interested members of the public the opportunity to be heard?
- Have my colleagues and I explained ourselves sufficiently during deliberations so that our decision and our reasons are clear to the public?

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Exemptions to Public Meetings Law Requirements

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Exemptions

- The Sunshine law is to be liberally construed to accomplish its public purpose - exemptions shall be narrowly construed.
  - See ***Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla 1969)**

- Exemptions are created by a 2/3 vote of the Legislature and are generally subject to review and automatic repeal every five years unless renewed.

***Times Publishing Company, etc. v. Williams*, 222 So. 2d 470 (2 DCA 1969)**

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Major Exemptions from Public Meetings Law

- ❑ **Attorney Client Discussion (Shade Session),** Sec. 286.011(8), F.S.
  - Settlement negotiations
  - Strategy sessions
  - Expenditures
- ❑ **Executive Session re: Labor Negotiations (Collective Bargaining)**, Sec. 447.605, F.S.
- ❑ **Security of Public Buildings**, Sec. 281.301,F.S.
- ❑ **Procurement Selection/Evaluation Committees** (Vendor Negotiations), Sec. 286.0113, F.S.

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Violations of Florida's Sunshine Law

- A public official who violates the Sunshine Law may be adjudged guilty of a noncriminal infraction, punishable by fine not exceeding $500. Section 286.011(3)(a), Fla. Stat.

- A public official who knowingly violates the Sunshine Law may be adjudge guilty of a misdemeanor of the second degree. Section 286.011(3)(b), Fla. Stat.

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