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A T T O R N E Y S   A T   L A W

# FLORIDA'S GOVERNMENT IN THE SUNSHINE ACT

**By: Terry E. Lewis**

*“Helping Shape Florida’s Future”<sup>®</sup>*

**I. The Scope of the Sunshine Act.**

- A. Meetings of all public boards or commissions must be open to the public;**
- B. Reasonable notice of such meetings must be given; and**
- C. Minutes of the meetings must be taken. (See Section 286.011, et seq., Florida Statutes and The Government in the Sunshine Manual, 2010 edition, page 5.**

## **II. Agencies Governed by the Sunshine Act.**

**A. The Sunshine Act applies to “any board or commission of any State agency or authority or any authority of any county, municipal corporation, or political subdivision.” The term “political subdivision” includes fire rescue districts and all other special districts created pursuant to State law. Turner v. Wainwright, 379 So.2d 148,155 (Fla. 1<sup>st</sup> DCA, 1980).**

## **II. Agencies Governed by the Sunshine Act (Cont'd).**

**B. Advisory boards which make recommendations to decision making boards are subject to the Sunshine Act. Lyon v. Lake County, 765 So.2d 785 (Fla. 5<sup>th</sup> DCA, 2000).**

**C. Fact finding committees are exempt from the Act if they take no part in the decision-making process.**

## **II. Agencies Governed by the Sunshine Act (Cont'd).**

**D. Private entities that have been delegated the authority to administer a public agency program may be subject to the Act e.g., a downtown redevelopment task force that determines how the city commission should redevelop downtown, AGO 83-95.**

**E. Homeowner's associations are not subject to the Act.**

## **II. Agencies Governed by the Sunshine Act (Cont'd).**

**F. Federal agencies are not subject to the Act.**

**G. The Governor and Cabinet are subject to the Act when sitting as a collegial board created by the Legislature (Trustees of the Internal Improvement Trust Fund). They are not subject to the Act when discharging a constitutionally mandated duty (acting as a pardon or clemency board).**

## **II. Agencies Governed by the Sunshine Act (Cont'd).**

**H. The Legislature is not directly subject to the Act. Article III, Section 4(e) of the Florida Constitution requires that “prearranged meetings between more than two members of the legislature or between the governor, the president of the Senate, or the speaker of the house of representatives the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time...shall be reasonably be open to the public.” Reasonable “openness is defined exclusively by House and Senate rules.**

- II. Agencies Governed by the Sunshine Act (Cont'd).**
  - I. Agency staff meetings are not normally subject to the Act unless the staff member or members have been given authority over some portion of the decision-making process. Wood v. Marston, 442 So.2d 934 (Fla. 1983). Examples include staff authority to short-list bidders or job applicants.**



### **III. Meetings or Communications Subject to the Sunshine Act.**

- A. Any gathering, whether formal or casual, of two or more members of the same board to discuss matters on which foreseeable action of the board will be taken is subject to the Act and must be noticed. Hough v. Stembridge, 278 So.2d 288 (Fla. 3d DCA 1973).**
  
- B. Committee meetings when the committee has been delegated authority to act on behalf of a board. Leach-Wells v. City of Bradenton, 734 So.2d 1168 (Fla. 2<sup>nd</sup> DCA 1999). (Committee short-listed applicants to be considered by city council).**

### **III. Meetings or Communications Subject to the Sunshine Act (Cont'd).**

**C. Use of non-board members to act as liaison between board members and determine their views on matters to come before the board will violate the Act unless noticed. Blackford v. School Board of Orange County, 375 So.2d 578 (Fla. 5<sup>th</sup> DCA 1979). (School superintendent held meetings outside the Act with all board members to discuss and communicate concerns regarding redistricting and poll members.)**

### **III. Meetings or Communications Subject to the Sunshine Act (Cont'd).**

**D. Any formal, informal (workshop), investigative or other meeting of two or more members of a board must comply with the Act unless a specific statutory exemption applies. Such meetings include personnel committee meetings, complaint review board meetings, disciplinary and grievance proceedings, applicant interviews and selection and screening committee or board meetings.**

## **IV. Exemptions, Partial Exemptions.**

**A. When an agency has been sued, Section 286.011(8) Florida Statutes allows an agency governing board, its attorney and chief executive or administrator to hold a closed door meeting to discuss litigation strategy, settlement negotiations and expenditures. These meetings require published notice and must commence once a regular meeting of the board has convened. A court reporter must attend and produce a verbatim transcript of the meeting which becomes a public record once the litigation has concluded.**

## **IV. Exemptions, Partial Exemptions (Cont'd).**

- B. Section 768.28(16)(c), Florida Statutes exempts portions of meetings from the Act to evaluate claims, consider offers of settlement, or offers compromise of tort claims filed with a risk management agency until termination of the litigation or settlement of claims. AGO 2004-35.**
  
- C. Section 447.605(1), Florida Statutes exempts meetings between the chief executive officer (or a labor negotiating committee) and the agency governing body to discuss collective bargaining issues. Notably, the negotiating bargaining sessions between the agency representatives and the union are subject to the Act. City of Fort Myers v. News-Press Publishing Company, Inc., 514 So.2d 408 (Fla. 2<sup>nd</sup> DCA 1987).**

## **V. Consequences of Sunshine Act Violations.**

- A. Section 286.011(1)(a), Florida Statutes provides that any public officer who violates the Act is subject to a noncriminal fine not to exceed \$500.**
  
- B. Section 286.011(1)(b) & (c), Florida Statutes provide for second degree misdemeanor penalties for knowing violations of the Act.**

## **V. Consequences of Sunshine Act Violations (Cont'd).**

**C. Section 286.011(4), Florida Statutes provides that when a court has determined that an individual or board has violated the Act, the court shall assess reasonable legal fees against the agency and may assess them against individual members of the board. However, if the board acted on advice of legal counsel and followed that advice, no attorney's fees may be assessed against individual members.**

## **V. Consequences of Sunshine Act Violations (Cont'd).**

- D. The court may also assess legal fees against a complainant if the court finds the complaint was filed in bad faith and was frivolous.**
  
- E. A board member charged with a violation of the Act must bear their own attorney's fees until acquitted. Once acquitted, the board may reimburse any or all the member's attorney's fees.**



## VI. True or False Quiz

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	True	False
A. Members-elect of boards that have not been seated are subject to the Act.	<input type="radio"/>	<input type="radio"/>
B. Candidates for office who meet with current board members are subject to the Act.	<input type="radio"/>	<input type="radio"/>
C. Meetings between a member of one fire rescue board and a member of another fire rescue board are subject to the Act.	<input type="radio"/>	<input type="radio"/>
D. Meetings between a mayor and members of her city council are subject to the Act.	<input type="radio"/>	<input type="radio"/>
E. Meetings between a board member and his alternate are subject to the Act.	<input type="radio"/>	<input type="radio"/>
F. Community forums sponsored by private organizations at which candidates for reelection to office on the same board express their views on the city and matters that need to be decided by the board are subject to the Act	<input type="radio"/>	<input type="radio"/>
G. Two members of the same board are not subject to the Act by attending the same social event or educational seminar as long as they don't discuss board business.	<input type="radio"/>	<input type="radio"/>
H. A husband and wife may serve on the same board without violating the Act.	<input type="radio"/>	<input type="radio"/>

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## **VII. True or False Quiz - Answers.**

- A. Members-elect of boards that have not been seated are subject to the Act. (true)**
  
- B. Candidates for office who meet with current board members are subject to the Act. (false)**
  
- C. Meetings between a member of one fire rescue board and a member of another fire rescue board are subject to the Act. (false)**

## **VII. True or False Quiz – Answers (Cont'd).**

- D. Meetings between a mayor and members of her city council are subject to the Act. (Generally true unless the Mayor has no authority to vote)**
  
- E. Meetings between a board member and his alternate are subject to the Act. (false – they will never vote on an issue together)**

## **VII. True or False Quiz – Answers (Cont'd).**

- F. Community forums sponsored by private organizations at which candidates for reelection to office on the same board express their views on the city and matters that need to be decided by the board are subject to the Act. (false as long as they don't discuss matters among themselves)**
  
- G. Two members of the same board are not subject to the Act by attending the same social event or educational seminar as long as they don't discuss board business. (true)**
  
- H. A husband and wife may serve on the same board without violating the Act. (true)**