

Sunshine law minutes

LOZMAN v. City of Riviera Beach, No. 502007CA  
007552

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA

CA 15th  
Cir. Ct.

CASE NO. 502007CA007552XXXXMBAN

June 9,  
2009)

FANE LOZMAN,  
Plaintiff,

COPY

v.

CITY OF RIVIERA BEACH, a  
Municipality in the State of Florida,

Defendant.

**ORDER GRANTING PLAINTIFF FANE LOZMAN'S MOTION  
FOR SUMMARY JUDGMENT AND DENYING DEFENDANT THE  
CITY OF RIVIERA BEACH'S CROSS-MOTION FOR SUMMARY JUDGMENT**

THIS CAUSE came before the Court on May 29, 2009, on the Motion for Summary Judgment ("Summary Judgment Motion") filed by Plaintiff Fane Lozman ("Mr. Lozman") and the Cross-Motion for Summary Judgment ("Cross-Summary Judgment Motion") filed by Defendant the City of Riviera Beach (the "City"). Having reviewed the Summary Judgment Motion and Cross-Summary Judgment Motion, the briefings and materials submitted in support thereof, as well as having reviewed the file, heard argument of counsel, and being otherwise fully advised in the premises, this Court grants Final Summary Judgment in favor of Mr. Lozman for the following reasons:

**FACTUAL AND PROCEDURAL BACKGROUND**

The Defendant, CITY OF RIVIERA BEACH ("City" hereafter), a municipal corporation and political subdivision of the state, holds City council agenda review meetings on Mondays prior to its regular Wednesday City council meetings.

The City's agenda review meetings are open to the public and publicly noticed as required by subsection (1) of the Sunshine Law, § 286.011(1), Fla. Stat. (2007). The City also audio tapes its agenda review meetings.

Prior to this action being filed, the City did not record written minutes of its agenda review meetings. After this action was commenced, the City began recording written minutes of its agenda review meetings.

The Plaintiff, FANE LOZMAN ("Lozman" hereafter), asserts in his amended complaint that the City is required to record written minutes of its agenda review meetings pursuant to subsection (2) of the Sunshine Law, § 286.011(2), Fla. Stat. (2007), and violated the Sunshine Law by failing to do so.

The City in answering Lozman's amended complaint denied violating the Sunshine Law.

Accordingly, the issues for determination by this Court are:

- a) Whether the minutes requirement of Florida's Sunshine Law, § 286.011(2), Fla. Stat. (2007), applies to local governments, specifically, the City; and, if so,
- b) What relief Mr. Lozman is entitled to in the form of declaratory and injunctive relief.

#### THE FLORIDA SUNSHINE LAW

In relevant part, Florida's Sunshine Law, § 268.011, provides as follows:

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any *such* board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

Mr. Lozman contends per the "plain meaning" of the statute, that the minutes requirement contained in §268.011(2) applies to local governments, including the City, and requires such entities to record and keep minutes of all their public meetings as that term has been interpreted under the statute. The City contends that the plain meaning of the statute leads to the conclusion that the minutes requirement applies only to state entities.

**SCOPE OF MINUTES REQUIREMENT OF  
FLORIDA'S SUNSHINE LAW, § 286.011(2)**

The question as to whether the minutes requirement of Florida's Sunshine has been decided by the Fourth District Court of Appeal, Specifically, in IDS Properties, Inc. v. Town of Palm Beach, 279 So. 2d 353 (Fla. 4th DCA 1973), app'd by Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974), a city was sued for alleged violations of the Sunshine Law when a citizen's planning committee advising the city participated in several meetings, but "never gave any notice of its meetings with the planner, nor were the meetings open to the public, *nor were minutes taken.*" Id. at 355 (emphasis added).

In Krause v. Reno, 366 So. 2d 1244 (Fla. 3d DCA 1979), a screening committee composed of five citizens selected by the City Manager of Miami screened applications for the position of police chief, but the "public was given no notice of this meeting, nor was the meeting at any time open to the public, [and] [n]o minutes were kept of this meeting, which were made available to the public." Id. at 1246. The Third District affirmed, and found that a Sunshine Law violation had occurred, and held that the screening committee was "permanently enjoined and restrained from holding, conducting, or participating in any meeting wherein public business is

discussed or contemplated or transacted or at which official acts are to be taken unless such meetings are at all times open to the public and properly noticed in advance *and the minutes of such meetings are recorded* and promptly opened to the public.” *Id.* at 1249 (emphasis added).

In News-Press Pub. Co., Inc. v. Carlson, 410 So. 2d 546, 549 (Fla. 2d DCA 1982), The Second District reversed that portion of the order denying the injunction, and remanded, holding that, once the committee engaged in conduct subject to the Sunshine Law, “[a]t that point the committee must give reasonable notice to the public, *and keep minutes of their meetings as required by section 286.011, Florida Statutes (1979).*” *Id.* (emphasis added).

Even if this were a case of first impression, this Court also finds that § 268.011(2) is plain on its face and requires that local governments, including counties, municipal corporations, such as the City, and political subdivisions, record and maintain minutes of public meetings. Specifically, § 268.011(2) expressly provides that “[t]he minutes of a meeting of any *such* board or commission of any such state agency or authority shall be promptly recorded.” (emphasis added). The common meaning of the term “such” implies that it is referring to an item or thing, in this case specific language, immediately preceding it. In this case, the “last antecedent” to the use of the word “such” in subsection (2) of § 286.011, referring to §286.011(1), encompasses boards and commissions, agencies and authorities of all levels of government: “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution.” § 286.011(1), Fla. Stat. (2007).

Florida law is “beyond doubt that the Statute [the Sunshine Law] is to be construed liberally in favor of open government” in order to effectuate the legislature’s goal “to assure openness in and access to government.” Krause v. Reno, 366 So. 2d 1244, 1250 (Fla. 1979); see

also Zorc v. City of Vero Beach, 722 So. 2d 891, 897 (Fla. 4th DCA 1998) (“it is well settled that the Sunshine Law, enacted for the public benefit, should be liberally construed to give effect to its public purpose”). It thus “should be interpreted most favorably to the public,” Board of Pub. Instr. v. Doran, 224 So. 2d 693, 699 (Fla. 1969), and in such a way as “to frustrate all evasive devices.” Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974).

#### **DECLARATORY JUDGMENT (COUNT I) FINDINGS**

Remedial measures taken after a lawsuit seeking declaratory judgment is filed do not moot a claim for declaratory judgment. Gangloff v. Taylor, 758 So. 2d 1159 (Fla. 4th DCA 2000)

The City continues to take the position that the Sunshine Law minutes requirement does not apply to local governments. An active controversy exists on this issue between Mr. Lozman and the City. Without an order from this Court declaring that the minutes requirement does apply to local governments, there is no guarantee that the City will not revert to its conduct of not keeping minutes. Gangloff, 758 So. 2d at 1159 (declaratory judgment action not moot when there was no guarantee that board would not revert to its prior conduct despite its voluntary compliance after suit was filed).

Thus, for the reasons set forth above, this Court finds that, based upon the undisputed facts, the City held Agenda Review Meetings without recording minutes, which this Court finds to be in violation of the statute. Mr. Lozman thus is entitled to a declaration that the City was in violation of the statute until June 2007, when it started recording minutes.

#### **INJUNCTIVE RELIEF (COUNT II) FINDINGS**

Mr. Lozman also seeks an injunction preventing the City from failing to record and maintain minutes of all agenda review meetings held by the City. The City argues that its current

voluntary compliance with the minutes requirement of the Florida Sunshine Law has rendered Mr. Lozman's request for injunctive relief moot. The Court rejects the City's argument.

The Court finds that injunctive relief enjoining the City from engaging in future violations of Florida's Sunshine Law by failing to record and maintain minutes of Agenda Review Minutes is appropriate here in light of the City's past conduct and consistent refusal to record and maintain such meetings, even after being advised to do so by the City Attorney. Moreover, an injunction is most appropriate here, given that the City has continuously taken the legal position that local governments are not required by the Sunshine Law to record minutes .

### **COUNT III DISMISSED**

Mr. Lozman has represented to the Court, that in the interests of finality of this action, and should his Summary Judgment Motion be granted, he is withdrawing and voluntarily dismissing Count III of his Amended Complaint.

It thus is **ORDERED AND ADJUDGED** that

1. The Summary Judgment Motion filed by Plaintiff Mr. Lozman is **GRANTED**.
2. The Cross-Summary Judgment Motion filed by the Defendant City is **DENIED**.
3. Based on the foregoing and on Plaintiff, Mr. Lozman's withdrawal of his claim for transcription of minutes of past agenda review meetings, Count III of his Amended Complaint

**FINAL JUDGMENT** is entered in Mr. Lozman's favor and against the City of Riviera

Beach as follows:

A. **JUDGMENT** on the merits on Plaintiff Mr. Lozman's claim for declaratory relief is hereby entered in favor of Plaintiff Lozman and against the Defendant City based on the City's violation of Florida's Sunshine Law, Fla. Stat. § 286.011(2), by failing to record written minutes of its city council Agenda Review Meetings prior to June 4, 2007.

B. **JUDGMENT** on the merits on Plaintiff Mr. Lozman's claim in this action for injunctive relief is hereby entered in favor of Plaintiff Mr. Lozman and against the Defendant City. The City is hereby **PERMANENTLY ENJOINED** from any further violations of the Sunshine Law, Fla. Stat. § 286.011 and continue to record written minutes of its agenda review meetings.

C. Plaintiff Mr. Lozman is hereby entitled to be awarded his reasonable attorney's fees and costs incurred in prosecuting this action pursuant to § 286.011(4). This Court retains jurisdiction to determine the amount of fees and costs to be awarded.

For which let execution issue.

**DONE AND ORDERED** in Chambers, at West Palm Beach, Palm Beach County,

Florida this 9 day of June, 2009.

  
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HONORABLE JACK S. COX

Copies furnished to:

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