

IN THE COUNTY COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs

Case No: 02-21939-MMC;02-21940-MMB

WYON DALE CHILDERS,
Defendant.

COUNTY ORIGINAL DIVISION
FILED & RECORDED

2003 JUN -9 P 1:22

ERNIE LEE MAGAHA
CLERK OF CIRCUIT COURT
ESCAMBIA COUNTY, FL.

FINDINGS OF FACT, CONCLUSIONS OF LAW
ORDER CERTIFYING A MATTER OF GREAT PUBLIC IMPORTANCE
AND DENYING DEFENDANT'S MOTION FOR BOND PENDING APPEAL

The defendant, Wyon Dale Childers, is before the Court for two counts of violation of Florida's "Government in the Sunshine Act", FS 286.011, for acts alleged to have been committed while serving as a member of the Board of County Commissioners of Escambia County. He was found guilty of the charge by a jury in case 02-21940MMB (the Bonnie Jones phone call on redistricting) and pled nolo contendere to the charge in case 02-21939MMC (the Jean Kassab office meeting regarding the Carlan Killam contract). Sentencing was deferred pending the determination of several felony charges which have now been resolved.

Throughout the proceedings, the defendant has asserted that he could lawfully express or announce in the presence of other commissioners his opinions on matters likely to come before the Escambia County Board of County Commissioners in meetings without public notice, i.e. not "in the sunshine", so long as he did not solicit a reaction or response from another commissioner or commissioners. He took such a position notwithstanding contrary advice from the attorney for the Board of County Commissioners. In both pre-trial and post-trial proceedings, the Court rejected the defendant's argument as the adoption of the defendant's position would thwart the Legislature's clearly expressed intent.

As a result of the jury's verdict and the defendant's plea of nolo contendere, the Court finds as fact that such meetings took place and that the defendant discussed matters likely to come before the Board of County Commissioners. It was undisputed that Commissioner Childers, the defendant herein, and Commissioners Bass and Junior had an unscheduled and unannounced meeting in the office of Jean Kassab, Director of Administrative Services for Escambia County. It was equally undisputed that defendant Childers announced his decision not to sign a board-approved contract for services and that Commissioner Bass "acknowledged" the decision and Commissioner Junior "seemed to understand and agree". Commissioners Childers, Bass and Junior were all members of the Board of County Commissioners on the date of the meeting. The contract was a matter which

had come before the Board and was likely to come before the Board and no notice of any kind was given regarding the meeting in Jean Kassab's office. Further, by virtue of Commissioner Bass' acknowledgment and Commissioner Junior's understanding and agreement, a prohibited meeting, without public notice, including communication, interaction and agreement about business likely to come before the Board had taken place.

Similarly, as to 02-21940MM, the State alleged by superceding indictment that Commissioner Terry Smith and defendant Commissioner Childers took part in a telephone call with the Supervisor of Elections for Escambia County during which they discussed re-districting. The telephone call was not advertised or noticed to the public and concerned a matter that had previously and would again come before the Board. Defendant Childers gave Supervisor Bonnie Jones instructions on how to propose re-drawing county commission district lines. Commissioner Smith also expressed his desires for lines for his district and affirmatively volunteered "We're not violating the Sunshine law. We're just sitting around talking." The jury heard the evidence and convicted defendant Childers on the above facts. The evidence was sufficient to warrant a conviction.

The Court finds as fact the statements above are related to the two charges. For the reasons below, the Court concludes as a matter of law that Defendant Childers breached the law.

The Government in the Sunshine Law, FS 286.011 requires:

All meetings of any board or commission of...any agency or authority of any county...or political subdivision,...at which official acts are taken are declared to be 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."

The defendant conceded in his motion to dismiss that "the statute applies to any gathering where members deal with some matter on which foreseeable action will be taken by the board. Board of Public Instruction of Broward County v Doran, 224 So 2d 693 (Fla. 1969); Canney v Board of Public Instruction of Alachua County, 278 So2d 260 (Fla. 1973). Florida courts have recognized that it is the entire decision-making process that is covered by the Government in the Sunshine Law, not merely meetings at which a final vote is taken. Times Publishing Company v Williams, 222 So2d 470 (Fla. 2 DCA 1969) disapproved on other grounds, Neu v Miami Herald Publishing Company, 462 So2d 821 (Fla. 1985)."

Based on the above facts, the Court concludes as a matter of law that the alleged phone conversations and meeting and defendant Childers' expression or announcement of

opinions on such matters were violations of the law. For judicial economy and because the issue is one of first impression that literally impacts the functioning and communication of boards and commissioners throughout the state, the Court certifies the following question to the First District Court of Appeals as one of great public importance

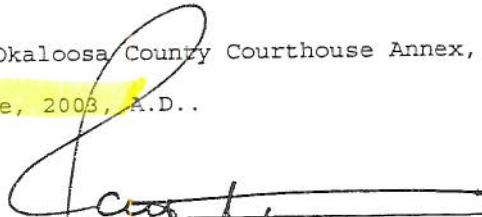
WHETHER COUNTY COMMISSIONERS WHO ARE SUBJECT TO THE
SUNSHINE LAW, SECTION 286.011, FLORIDA STATUTES,
CAN COMMENT ON AGENDA ITEMS, EXPRESS THEIR POSITION
OR VIEWS ABOUT ISSUES THAT MAY FORESEEABLY COME BEFORE
THE COMMISSION FOR FINAL ACTION ON OCCASIONS NOT
ANNOUNCED TO THE PUBLIC SO LONG AS THE COMMISSIONER
WHO STATES HIS OR HER POSITION OR VIEW DOES NOT SOLICIT
A RESPONSE, AND THE COMMISSIONERS DO NOT ENGAGE IN A DISCUSSION,
INTERACT, OR DEBATE THE ISSUE AMONG THEMSELVES?

The defendant was sentenced, inter alia, to a concurrent term of incarceration in the Escambia County jail. The defendant has filed a motion for bond pending appeal noting the defendant's age and ties to the community. The State opposed bond. The motion for bond pending appeal is denied not because the defendant is a danger to the community or a risk of flight. The motion is denied because the law is clear and not fairly debatable. The above question is certified as a matter of great public importance because it involves a matter of first impression with statewide impact. The statute, and civil cases interpreting it, are clear and unambiguous. While there may be debate about the wisdom or breadth of the Government in the Sunshine Law, the proscription is not fairly debatable. Neither a defendant's mere assertion nor the fact that a case is of first impression makes an issue "fairly debatable". The adoption of the defendant's position would thwart the Legislature's clearly expressed intent and leave the public with a dream-like right which could be avoided by covered officials simply sequentially stating their positions on matters likely to come before their body under the guise that they did not seek a reaction, acknowledgment or understanding.

DONE AND ORDERED in Chambers, Okaloosa County Courthouse Annex,
Shalimar, Florida this 5 day of June, 2003, A.D..

6-9-03

Conformed Copies To:
✓ Robert Elmore, ASA
✓ Tiffany Sims, ASA
✓ Richard G. Lubin, Esq.



PATT MANEY
County Judge

ERNIE LEE MAGAHA
Clerk of Court
By: _____
Deputy Clerk

