

Public forum hosted by city council member

Number: INFORMAL

Date: January 12, 2009

Subject:
Public forum hosted by city council member

Mr. David Jove
Hallandale Beach City Attorney
400 South Federal Highway
Hallandale Beach, Florida 33009-6422

Dear Mr. Jove:

You ask whether a forum hosted by a city council member in which the public will be invited to attend and which other council members may attend and discuss matters which may foreseeably come before the city commission for action should be publicly noticed, and if so, by whom.

The Government in the Sunshine Law, section 286.011, Florida Statutes, provides a right of access to governmental proceedings at both the state and local levels. There are three basic requirements of section 286.011: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken.

As you are aware, the Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to section 286.011, Florida Statutes. Rather, the statute is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.[1] As the court recognized in *Times Publishing Company v. Williams*,[2] it is the how and the why officials decided to so act which interests the public, not merely the final decision:

"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."
(emphasis supplied in original)

Thus, the Florida Supreme Court has stated that the "collective inquiry and discussion stages" are embraced within the terms of the statute.[3] The Sunshine Law is, therefore, applicable to all functions of covered boards and commissions, whether formal or informal, which relate to the affairs and duties of the board or commission. Thus, for example, this office has stated that a meeting with a congressman and city council members to discuss "federal budgetary matters which vitally concern their communities" should be held in the sunshine because "it appears extremely likely that discussion of public business by the council members [and perhaps

decision making] will take place at the meeting." [4]

This office has recognized in a number of opinions that members of a public board or commission may attend private forums sponsored by private organizations and express their position about issues facing the commission without violating the Sunshine Law, so long as they do not discuss or debate the issues among themselves. [5] In your inquiry, however, the forum is not being hosted by a private entity, but by a city council member and other city council members will be invited to attend and participate in the discussion.

Accordingly, it appears that such a meeting would be subject to the requirements of the Government in the Sunshine Law, including the requirement that notice be provided. As set forth in section 286.011(1), Florida Statutes, in requiring that meetings of public boards be open to the public, "[t]he board or commission must provide reasonable notice of all such meetings."

I trust that the above informal comments may be of assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

[1] See, e.g., *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). And see *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); and *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977).

[2] 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985).

[3] *Town of Palm Beach v. Gradison*, 296 So. 2d 474, 477 (Fla. 1974).

[4] Informal Op. to the Honorable Bill Nelson, May 19, 1980.

[5] See, e.g., Ops. Att'y Gen. Fla. 00-68 (2000), 94-62 (1994), and 92-05 (1992).