Sunshine Law, preservation bd. hearings

Number: INFORMAL

Date: December 13, 2006

Subject:
Sunshine Law, preservation bd. hearings

Mr. Tom Brady
Post Office Box 523
Micanopy, Florida 32667

Dear Mr. Brady:

On behalf of the Micanopy Planning and Historic Preservation Board, you ask whether the board's certificate of appropriateness hearings require public notice and a posted agenda.

As a public board, meetings of the board are subject to the state's Government in the Sunshine Law, section 286.011, Florida Statutes. The Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision."[1] It is equally applicable to elected and appointed boards. The statute extends to the discussions and deliberations as well as the formal action taken by the board. Thus, section 286.011 has been held to apply to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before the board for action.[2] As the court stated in *Times Publishing Company v. Williams*,[3]

"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."

There are three basic requirements of section 286.011, Florida Statutes: 1) meetings of the board must be open to the public, 2) reasonable notice of the meetings must be given, and 3) minutes of the meetings must be taken.

While section 286.011, Florida Statutes, did not contain an express notice requirement until 1995, the courts had read such a requirement into the statute, stating that in order for a public meeting to be public, reasonable notice must be given.[4] Notice is required even though meetings of a board may be "of general knowledge" and are open to the public.[5] This office has stated that the type of notice that must be given is variable and is dependent upon the facts of the situation and the board involved. In each case, however, the agency must give notice at such time and in such a manner as will enable the media and general public to attend the meeting. As the First District Court of Appeal recognized in *Rhea v. City of Gainesville*,[6] the purpose of the reasonable notice requirement is "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."

This office has recommended publication of an agenda, if available, in the notice of the meeting or if an agenda is not available, subject matters summations. The courts, however, have held that section 286.011, Florida Statutes, does not mandate that an agency provide notice of each item to be discussed via a published agenda since such a requirement could effectively preclude access to meetings by members of the public who wish to bring specific issues before a governmental body.[7] Even though the Sunshine Law does not prohibit a board from adding topics to the agenda of a regularly noticed meeting, this office has advised boards to postpone formal action on any added items that are controversial. As this office stated in Attorney General Opinion 03-53, "[i]n the spirit of the Sunshine Law, the [public board] should be sensitive to the community's concerns that it be allowed advance notice and, therefore, meaningful participation on controversial issues coming before the commission." Moreover, a public board may be subject to additional notice requirements imposed by other statutes, charters, or codes.

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

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tzg
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[1] *See City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). *And see Town of Palm Beach v. Gradison*, 296 So. 2e 473 (Fla. 1974), concluding that advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law even though their recommendations are not binding on the entities that created them.

[2] *See, e.g., Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3rd DCA 1973), *City of Miami Beach v. Berns, supra*. *And see Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3rd DCA 1994) (Sunshine law equally binds members of governmental bodies, be they advisory committee members or elected officials).

[3] 222 So. 2d 470, 473 (Fla. 2nd DCA 1969), *disapproved in part on other grounds in Neu v. Miami Beach Publishing Company*, 462 So. 2d 821 (Fla. 1985).

[4] *See, Hough v. Stembridge, supra*; *Yarborough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985).

[5] *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309-310 (Fla. 1st DCA 1991).

[6] 574 So. 2d 221, 222 (Fla. 1st DCA 1991).

[7] *Hough v. Stembridge, supra*; *Yarborough v. Young, supra*.