

Sunshine Law, video conferencing of workshops

Number: INFORMAL

Date: November 29, 2005

Subject:
Sunshine Law, video conferencing of workshops

The Honorable Charles "Sonny" McCoy
Mayor Pro-tem, District Three
Monroe County Commission
530 Whitehead Street
Key West, Florida 33040

Dear Mr. McCoy:

This is in response to your inquiry as to whether Monroe County may use media technology, such as video conferencing and digital audio, to allow public access and participation by commissioners, staff and constituents in carrying on special and workshop meetings.

You state that because of Monroe County's unique geography spanning 120 miles connected by bridges, the board of county commissioners routinely holds regular, special and workshop meetings at three locations within the county. Travel to these meetings can consume upwards of five hours for a round trip from the upper Keys to the lower Keys. The county wishes to explore the use of electronic communication to hold special and workshop meetings for a one year trial period, in order to minimize the travel time and expense of commissioners and staff.

Section 286.011(1), Florida Statutes, Florida's Government-in-the-Sunshine Law, provides:

"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."

On a number of occasions this office has opined regarding the practice of conducting public business by electronic means and the compliance of this practice with the Sunshine Law. In Attorney General's Opinion 92-44, the issue was whether a county commissioner who was physically unable to attend a commission meeting because of her medical treatment could vote in commission meetings by using an interactive video and telephone system. This system allowed the commissioner to see the other members of the board and the audience at the meeting and the board and audience could see her. Of particular concern in resolving this matter was the statutory requirement that meetings of the county commission be held in a public place in the county and that this requirement necessitated the attendance of a quorum of the commission at the designated public forum. With assurances that a quorum of the members of

the county commission would be present at the public place, this office concluded that a county commissioner who was unable to attend a commission meeting because of a serious medical condition could participate and vote in commission meetings by using an interactive video and telephone system without violating the Sunshine Law.

Subsequently, in Attorney General's Opinion 94-55, this office received a request from a city and the board of trustees of a public museum asking whether a member of the board of trustees could participate in public meetings through the use of a telephone. Again, the situation involved a quorum being present at the public meeting, although no statute required the presence of a quorum at these meetings. Further, the member who was requesting to participate by telephone had health problems that precluded his attendance at the publicly designated meeting place. Under these circumstances this office determined that a member of the board of trustees of this public body could participate in board meetings by telephone and comply with the requirements of the Government in the Sunshine Law.

In Attorney General's Opinion 98-28, the question was whether a school board member could attend and participate in board meetings by use of electronic media. The opinion noted that state agencies and their boards and commissions are authorized by Chapter 120, Florida Statutes, to adopt rules providing procedures for conducting public meetings, hearings, and workshops, in person and by means of communications media technology. Although school boards are agencies for purposes of Chapter 120, Florida Statutes, they are not "state agencies" and may not rely on the terms of section 120.54(5)(b)2., Florida Statutes, for authority to conduct meetings by means of communications media technology. The opinion recognizes the rationale behind statutory authorization for state agency use, as contrasted with local agency utilization, of communications media technology for conducting meetings:

"Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission such as a school board, the representation on a school board is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."

In addition to the consideration of local representation, the opinion recognizes that school boards operate under a quorum requirement analogous to the requirement in Chapter 125, Florida Statutes, that meetings of the county commission be held at an appropriate place in the county.

More recently, this office was asked whether board members of a special district could discuss matters via the internet. In Attorney General Opinion 2002-32, this office concluded that use of an electronic bulletin board by water management district basin board members to discuss matters that might foreseeably come before the basin board over an extended period of days or weeks, which did not permit the public to participate online, would be a violation of section 286.011, Florida Statutes. Of particular concern, was the lack of reasonable notice of when a particular issue was to be discussed so that the public could have meaningful participation in the discussion. The opinion found that use of the bulletin board for discussions of the basin board

placed the burden on the public to constantly monitor the site in order to participate meaningfully in the discussion taking place there and extended this burden over the course of days, weeks or months. This office would not read a statute enacted in the public interest in a manner that would essentially foreclose meaningful public participation in a public meeting.

In Attorney General Opinion 2001-66, this office considered whether an airport authority could conduct discussions or meetings over the internet when such discussions or meetings are noticed to the general public, viewable by the general public, open to input by the general public, and recorded for public inspection. This office found that the authority members could conduct informal discussions and workshops over the internet, provided proper notice is given and interactive access by members of the public is provided. Such interactive access must include not only public access via the internet but also designated places within the authority boundaries where the airport authority makes computers with internet access available to members of the public who may not otherwise have internet access. Notice of such discussions and workshops should include the locations where such computers with internet access will be located. For meetings, however, where a quorum is necessary for action to be taken, physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. Internet access to such meetings, however, may still be offered to provide greater public access.

It is clear from the discussion above, that the use of electronic media technology for official meetings has limitations when there is a need for a quorum or when a meeting must be held at a designated location. For workshops and special meetings at which no formal action will be taken, it would appear that such technology may be used. The county must be vigilant, however, in adhering to the requirements of the Sunshine Law and ensure that the meetings or workshops using electronic media technology are not forums for the commission to undertake formal decisionmaking.

I trust that these informal comments will be of assistance to the commission in formulating a policy for the use of electronic media technology for attendance of commissioners at workshops and special meetings.

Sincerely,

Lagran Saunders
Assistant Attorney General

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