

Sunshine Law--meetings of university presidents

Number: INFORMAL

Date: February 18, 2002

Subject:
Sunshine Law--meetings of university presidents

The Honorable Doug Wiles
Representative, District 20
Suite 316, The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

RE: GOVERNMENT IN THE SUNSHINE--UNIVERSITIES--COMMUNITY COLLEGES--
applicability of Sunshine Law to meetings of association of university presidents. s. 286.011, Fla.
Stat.

Dear Representative Wiles:

You ask substantially the following question:

Are meetings of the State University Presidents Association subject to the Government in the
Sunshine Law?[1]

In sum:

If the State University Presidents Association operates as a collegial body for incipient decision-making, then the association would be subject to the Sunshine Law. If the association, however, merely provides an opportunity to network and discuss common concerns, the association would not necessarily be subject to the open meetings law. The Legislature, therefore, may wish to clarify the status of such an association.

According to information supplied to this office, the State University Presidents Association was formalized as an entity in February 2001, and is composed of all Florida public university presidents. It appears that during meetings of the association, issues crucial to higher education in Florida are being considered, such as education reform, the One Florida program, education budgets, and the Bright Futures Scholarship program.

Section 286.011(1), Florida Statutes, provides that "[a]ll 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 . . . at which official acts are to be taken are declared to be public meetings open to the public at all times" The basic requirements of the Government in the Sunshine Law are that meetings of a board or commission be open to the public, reasonable notice of such meetings be given, and minutes of the meeting be taken.[2]

The courts of this state have repeatedly held that the entire decision-making process is subject to the Sunshine Law, not just the formal assemblage of a public body at which voting to ratify an official decision is carried out. The statute extends to discussions and deliberations as well as to formal action taken by a public body.[3] Therefore, the law is generally applicable to any gathering where two or more members of a public board or commission discuss some matter on which foreseeable action will be taken by that board or commission.

It is well settled that there is no "government by delegation" exception to the Sunshine Law such that public agencies may avoid their responsibilities and conduct public business in secret by use of an alter ego.[4] While generally a meeting between two public officials who are not members of a public collegial body would not be subject to the Sunshine Law, a public official can create a collegial body that will be subject to the provisions of section 286.011, Florida Statutes, if such a body has been delegated some of the official's decision-making authority or participates in the decision-making process.[5] It would be consistent with the purpose of the Government in the Sunshine Law to find that an association of the university presidents which potentially engages in incipient decision-making affecting the universities, is a board or commission subject to the requirements of section 286.011, Florida Statutes.

This office has consistently found that a board or commission created by a public agency or entity is subject to section 286.011, Florida Statutes.[6] For example, in Attorney General Opinion 97-17, this office concluded that a not-for-profit corporation created by a public agency to assist in the agency's redevelopment plan is subject to the Sunshine Law. However, it is recognized that organizations such as the Florida League of Cities and the Florida Sheriffs Association, where members meet to network and discuss concerns common to all, are not subject to the public meetings requirements of section 286.011, Florida Statutes.

Similarly, in Attorney General Opinion 00-08, this office considered whether the Sunshine Law was applicable to a fire commissioners' forum, a nonprofit corporation created by the fire control and rescue districts in Lee County, whose membership was limited to the fire control districts in the county and which held monthly informal meetings attended by fire chiefs and fire commissioners of the various local governments in Lee County. This office concluded that if the forum operates as a collegial body for incipient decision-making, then it too would be subject to the Sunshine Law. As an organization providing an opportunity to network and discuss common concerns, however, the forum would not by itself be subject to the open meetings law.

It must be recognized that the courts of this state have held that the Sunshine Law must be broadly construed to effect its remedial and protective purpose.[7] Moreover, as the Supreme Court of Florida made clear in *Town of Palm Beach v. Gradison*,[8] "[w]hen in doubt, [a collegial body] should follow the open-meeting policy of the State."

There is some evidence that the State University Presidents Association plays a role in the ultimate decision-making process by the state university presidents. As such, the association would be subject to the Sunshine Law. This office has been advised that a somewhat similar organization, the Community College Council of Presidents, hold their meetings in accordance with section 286.011, Florida Statutes. There appears to be some uncertainty, however, as to the role played by the university presidents association in the decision-making process. It may, therefore, be advisable for the Legislature to clarify whether meetings of the association are

subject to the provisions of section 286.011, Florida Statutes.

Therefore, I am of the opinion that if the State University Presidents Association operates as a collegial body for incipient decision making, then the association would be subject to the Sunshine Law. If the association, however, merely provides an opportunity to network and discuss common concerns, the association would not necessarily be subject to the open meetings law. The Legislature, therefore, may wish to clarify the status of such an association.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] You raise a similar inquiry regarding an association composed of 1) the chairs of the state university boards of trustees, 2) community college presidents, or 3) the chairs of the community college boards of trustees. The conclusions reached herein would appear to be equally applicable to these associations.

[2] See s. 286.011(1) and (2), Fla. Stat.

[3] See *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 699 (Fla. 1969), in which the Court recognized the right of the public to be present and heard during all phases of enactments by public boards; *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979). And see *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), stating:

"Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an 'official act,' an indispensable requisite to 'formal action,' within the meaning of the act."

[4] See *IDS Properties, Inc. v. Town of Palm Beach*, 279 So. 2d 353 (Fla. 4th DCA 1973), *certified question answered sub nom.*, *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

[5] See, e.g., *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983); *Silver Express Company v. District Board of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So. 2d 1099 (Fla. 3d DCA 1997); *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979).

[6] See Op. Att'y Gen. Fla. 97-17 (1997) and opinions cited therein. See also Ops. Att'y Gen. Fla. 97-27 (1997) (board of trustees of private nonprofit corporation subject to Sunshine Law after it entered into purchase/lease/option agreement with city where city had oversight responsibilities, owned the building housing the museum and made a substantial financial contribution to its operation); 92-53 (1992) (Sunshine Law applies to a direct-support organization created as a private nonprofit corporation for the purpose of assisting a public museum); and 96-43 (1996)

(Astronauts Memorial Foundation, a nonprofit corporation, subject to Sunshine Law when performing duties funded under the General Appropriations Act).

[7] See, e.g., *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983); *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Board of Public Instruction of Broward County v. Doran*, *supra* (statute should be broadly construed to effect its remedial and protective purpose).

[8] 296 So. 2d at 477.