

Sunshine Law; anonymous newsletter

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Date: October 31, 2000

Subject:
Sunshine Law; anonymous newsletter

The Honorable David Syrkus
Police Chief
Town of Melbourne Village
555 Hammock Road
Melbourne Village, Florida 32904-2513

GOVERNMENT IN THE SUNSHINE--PUBLIC MEETINGS--ELECTRONIC COMMUNICATION--MUNICIPALITIES--anonymous newsletter used to communicate among commissioners subject to Sunshine Law. s. 286.011, Fla. Stat.

Dear Chief Syrkus:

You ask whether a city commissioner who publishes an anonymous newsletter using an e-mail address to receive feedback violates the Government in the Sunshine Law when the newsletter is sent to and feedback is received from fellow commissioners. You state that the commissioner uses the newsletter to state his position on matters that will come before the commission and solicits responses that are subsequently published.

Section 286.011(1), Florida Statutes, provides that "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 . . . 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.

Florida courts repeatedly have stated that the entire decision making process is subject to the Sunshine Law, and 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.[1] 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.

As stated by the Supreme Court of Florida, however, the Sunshine Law is to be construed "so as to frustrate all evasive devices." [2] The use of a written report by one commissioner to inform other commissioners of a subject which will be discussed at a public meeting is not violation of the Sunshine Law, if prior to the meeting, there is no response or interaction related to the report among the commissioners.[3] If, however, the report is circulated among the board members for comments, with such comments being provided to other members, there is an inappropriate

interaction among the members under the Sunshine Law.[4]

This office has found that the use of a computer by a board or commission to communicate among themselves on issues pending before the board is subject to the Sunshine Law.[5] Thus, the use of an electronic news letter discussing matters that foreseeably may come before a board or commission would be prohibited.

In this instance, the fact that the newsletter is anonymously written by one of the commissioners does not alter the conclusions noted above. The use of such an electronic newsletter facilitating communication among the members of a public board or commission on matters that foreseeably may come before the body for official action would be subject to the Government in the Sunshine Law.

I trust these informal comments are of some assistance to you in resolving this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] 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."

[2] *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

[3] Attorney General Opinion 89-23 (1989).

[4] Attorney General Opinion 93-03 (1993). See also Op. Att'y Gen. Fla. 96-35 (1996), stating that school board member may prepare and circulate an informational memorandum to other board members; however, the use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law.

[5] Attorney General Opinion 89-39 (1989).