

Sunshine Law, Candidates' Nights

Number: INFORMAL

Date: January 27, 1998

Subject:
Sunshine Law, Candidates' Nights

Mr. Robert N. Sechen
Vero Beach City Attorney
Post Office Box 1389
Vero Beach, Florida 32961-1389

Dear Mr. Sechen:

You ask for clarification of this office's position regarding the applicability of section 286.011, Florida Statutes, to political campaign functions. Attorney General Butterworth has asked me to respond to your letter.

You note that this office in Attorney General Opinion 86-23 commented upon the applicability of the Government in the Sunshine Law to so-called "candidates' nights." While you are aware of this office's subsequent opinions in this area, you state that the 1986 opinion "remains relevant."

In Attorney General Opinion 86-23, this office made some general observations regarding the applicability of the Government in the Sunshine Law, section 286.011, Florida Statutes, to political campaign functions. This office, however, has further clarified its position on this issue in such opinions as Attorney General Opinion 92-5 and Attorney General Opinion 94-62.

In an informal opinion to Kathryn Cox, then Mayor of the Town of Davie, dated February 7, 1991, this office recognized that events such as candidates' nights serve as a positive and welcome instrument for interested citizens to participate in the governing process. By being afforded an opportunity to question and become aware of the positions taken by the various candidates, including those of incumbent council members, citizens are more likely to participate in the electoral process and make informed decisions. This office is of the opinion that such discourse furthers the goals of the electoral process and should be encouraged.

This office thus stated that in order to subject a candidates' forum sponsored by a private organization to the Sunshine Law, there must be some type of discussion or debate between the council members on an issue or matter which will foreseeably come before the council for action. The presentation by candidates, including incumbent council members running for reelection, of their respective political philosophies would not, however, subject the forum to the requirements of the Sunshine Law.

Such an analysis is consistent with the position taken by this office in earlier opinions considering the parameters of section 286.011, Florida Statutes. For example, Attorney General Opinion 89-23 concluded that it was not a violation of the Sunshine Law for one commissioner to

send a report to another commissioner as long as the other commissioner did not respond. In Attorney General Opinion 81-42 this office recognized that a board member could express his views or voting intent on an issue coming before the board to a newspaper reporter without violating the Sunshine Law even though he knew that his comments would be published prior to the meeting.

Thus, in Attorney General Opinion 92-5, this office reaffirmed its previous interpretation of section 286.011, Florida Statutes, when considering whether the presence of a currently serving city commissioner at a political forum would subject the forum to the Sunshine Law if an incumbent candidate expressed his position on a matter that may foreseeably come before the commission. This office concluded that the mere expression by the incumbent candidate of his position on an issue did not subject the meeting to the requirements of section 286.011, Florida Statutes, even though another commissioner was in attendance. Only if there was debate or discussion between the two commissioners on a matter foreseeably coming before the commission would the Sunshine Law be implicated.

Similarly, in Attorney General Opinion 94-62, this office stated that the Sunshine Law did not apply to a political forum sponsored by a private civic club during which county commissioners expressed their positions on issues that may be coming before the commission so long as they avoided discussing these issues among themselves.

This office, therefore, recognizes a distinction between a privately sponsored political forum where a board or commission member expresses his position on an issue when there are other board or commission members in attendance, and a political forum in which the board or commission members discuss among themselves an issue coming before the board. In the former situation, this office has stated its opinion that the Government in the Sunshine Law does not apply, while in the latter the meeting would be subject to the requirements of that statute.

I trust that the above informal advisory comments will clarify this matter for you.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk