

## Sunshine Law, polling board members

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**Date:** July 17, 1997

**Subject:**  
Sunshine Law, polling board members

Dr. Frank Biasco  
Escambia Soil and Water  
Conservation District  
9759 Pickwood Drive  
Pensacola, Florida 32514-1620

Dear Dr. Biasco:

Thank you for considering this office as a source for assistance regarding the interpretation of the Government in the Sunshine Law, section 286.011, Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

Section 286.011, Florida Statutes, applies to public boards and commissions, that is, collegial bodies composed of several members. The Government in the Sunshine Law, or Sunshine Law, has been held to apply to any meeting of two or more members of the same board or commission to discuss some matter which will foreseeably come before the board or commission. As a member of a public board, therefore, you may not privately poll other board members regarding their vote on a matter that will come before the board.

Since the Sunshine Law applies to discussions between two or more members of the same board, its terms do not normally apply to meetings or discussions between a board member and a nonboard member. Certain factual situations, however, have arisen where, in order to assure public access to the decision-making process of public boards or commissions, it has been necessary to conclude that the presence of two individuals of the same board or commission is not necessary. As the Supreme Court of Florida stated in *Town of Palm Beach v. Gradison*,<sup>[1]</sup> the Sunshine Law is to be construed "so as to frustrate all evasive devices."

Thus, for example, this office has stated that any interaction between board members via written correspondence or computers on matters which will foreseeably come before the board is subject to the Sunshine Law.<sup>[2]</sup> In addition, if an individual has been designated by a board to exercise its decision-making authority on behalf of the board, that person, in acting on behalf of the board, would be subject to section 286.011, Florida Statutes.<sup>[3]</sup>

The courts and this office have also stated that the Sunshine Law is applicable to meetings between a board member and an individual who is not a member of the board when that individual is being used as a liaison between, or to conduct a de facto meeting of, board members.

For example, in *Blackford v. School Board of Orange County*,<sup>[4]</sup> the court held that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the superintendent and an individual school board member would not be subject to section 286.011, Florida Statutes, these meetings were held in "rapid-fire succession" in order to avoid a public airing of a controversial redistricting problem. Thus, the court held that the series of meetings constituted a de facto meeting of the school board in violation of section 286.011, Florida Statutes.

Not all decisions taken by staff, however, need to be made or approved by a board or commission. Thus, the court in *Florida Parole and Probation Commission v. Thomas*<sup>[5]</sup> concluded that the decision to appeal, made by legal counsel to a public board after discussions between the legal staff and the individual members of the commission, did not violate the Sunshine Law since this was a decision that the legal counsel could make.

This office has advised administrative officers, or staff who serve public boards or commissions, not to contact each member of the board or commission to poll or ascertain the member's vote on a particular matter pending before that board or commission in order to avoid being used as a liaison between board members.<sup>[6]</sup> The Sunshine Law, however, relates to discussions on matters which will foreseeably come before the public board or commission. Thus, it would not preclude an administrative officer from contacting individual members for their views on a matter when the officer, and not the board, has been vested with the authority to take action.

I trust that the above informal advisory comments and enclosed opinion may be of some assistance to you in resolving this matter. You may wish to discuss these issues further with the attorney who advises the district.

Sincerely,

Joslyn Wilson  
Assistant Attorney General

JW/tgk

Enclosure

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[1] 296 So. 2d 473, 477 (Fla. 1974).

[2] See, e.g., Ops. Att'y Gen. Fla. 90-3 (1990) (report circulated among board members for comments with comments being provided to other members is subject to s. 286.011); 89-39 (1989) (use of computers by board members to communicate among themselves subject to Sunshine Law requirements).

[3] See, e.g., Ops. Att'y Gen. Fla. 95-06 (1995). Compare *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989), in which the court held that since the

mayor, and not the city commission, was responsible for disciplining city employees and since the mayor was not a board or commission, meetings between the mayor and the employee were not subject to s. 286.011, Fla. Stat.

[4] 375 So. 2d 578 (Fla. 5th DCA 1979).

[5] 364 So. 2d 480 (Fla. 1st DCA 1978).

[6] See Op. Att'y Gen. Fla. 75-59 (1975), a copy of which is enclosed.