Sunshine Law, participation in meetings

Number: INFORMAL

Date: July 24, 1996

Subject:
Sunshine Law, participation in meetings

Mr. Joseph P. Caetano
Tampa Palm Community Development District
16037 Tampa Palms Boulevard West
Tampa, Florida 33647

Dear Mr. Caetano:

Thank you for considering this office as a source for assistance. You have asked whether someone who is neither a landowner nor a resident of the Tampa Palms Community Development District may participate in the monthly meeting of the district during the portion of the meeting reserved for audience comments. Attorney General Butterworth has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may formally comment. The Attorney General is authorized to provide legal opinions to governmental entities, such as a development district, at the request of a majority of the members of the collegial body itself.[1] In the absence of such a request, I offer the following informal comments for your consideration.

The Sunshine Law, section 286.011, Florida Statutes, requires that meetings of a public board or commission be "open to the public." The courts have recognized the importance of public participation in open meetings. The Florida Supreme Court has stated that "specified boards and commissions . . . should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made."[2]

However, while the right of a person to attend a meeting subject to section 286.011, Florida Statutes, has been acknowledged by the courts of this state, the courts have not expressly addressed the question of the extent to which a citizen must be allowed to speak. Thus, although the importance of public participation in governmental proceedings has been recognized in judicial decisions, the courts have not set forth clear standards regarding the extent of an agency's obligation under the Sunshine Law to provide a meaningful opportunity for such participation at board meetings.

In providing for public participation, this office is of the view that reasonable rules and policies which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of those persons attending the meeting may be adopted by the board or commission.[3] A public board, for example, may adopt a rule or policy limiting the time an individual has to

address the board or, at meetings where a large number of the public is in attendance and may wish to address the board, request that a representative or representatives of each group or faction, rather than all members of the group, address the board. However, these rules may not unreasonably restrict the public's right of access to meetings.

Although not directly considering the Sunshine Law, the court in *Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989), recognized that "to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions." Thus, the court concluded that a mayor's actions in attempting to confine the speaker to the agenda item in the city commission meeting and having the speaker removed when the speaker appeared to become disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's First Amendment rights.

In sum, a board or commission may adopt reasonable rules and policies for the orderly conduct of a public meeting and may require orderly behavior on those persons attending such a meeting. However, it is not readily apparent how the residence of the speaker or his or her ownership of property in a certain area would be relevant to the orderly conduct of a meeting.

I trust that these informal advisory comments will assist you as chairman of the Tampa Palms Community Development District.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tck

Enclosure

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[1] *See* Department of Legal Affairs Statement of Policy Concerning Attorney General Opinions (copy enclosed).

[2] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 699 (Fla. 1969). *See also Town of Palm Beach v. Gradison*, 296 So.2d 473, 475(Fla. 1974), in which the Court spoke of a meeting as being "a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the [public agency]", and *Krause v. Reno*, 366 So.2d 1244, 1250 (Fla. 3d DCA 1979), referring to the "citizen input factor" and stating that this public input was an important aspect of public meetings.

[3] *See, e.g.,* Op. Att'y Gen. Fla. 77-122 (1977) (a rule or policy which prohibits the use of nondisruptive or silent tape recording devices is unreasonable and arbitrary and is, therefore, invalid); Op. Att'y Gen. Fla. 91-28 (1991)(a city may not prohibit a citizen from video taping the meetings of a city council through the use of nondisruptive video recording devices).