

Sunshine Law, investigative visits

Number: INFORMAL

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Subject:
Sunshine Law, investigative visits

Mr. Frank A. Kreidler
Chairman, District 9
Human Rights Advocacy Committee
1124 South Federal Highway
Lake Worth, Florida 33460-5244

RE: HUMAN RIGHTS ADVOCACY COMMITTEE--HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF--PUBLIC MEETINGS-- GOVERNMENT IN THE SUNSHINE LAW-- applicability of Government in the Sunshine Law to investigative visits by two or more members of the committee. s. 286.011, Fla. Stat.; s. 24(b), Art. I, State Const.

Dear Mr. Kreidler:

This is in response to your recent request regarding the applicability of the Government in the Sunshine Law to certain activities of the Human Rights Advocacy Committee. Specifically, you ask whether the Sunshine Law applies to two or more members of the committee who go to a group home for the purpose of inspecting the home and speaking with the clients. You state that there may be future action taken by the committee should there be an adverse report as a result of the monitoring. Moreover, it has been found that new members on the committee are most efficiently trained by sending them along with an experienced member for a monitoring visit.

In sum, the Government in the Sunshine Law would be applicable to a meeting of two or more of the members of the Human Rights Advocacy Committee where the members discuss matters upon which future action may be taken by the committee. The mere presence of two members during an investigation, however, would not make the Sunshine Law applicable, if the members avoid discussion between themselves of issues that may come before the committee for official action.

The district human rights advocacy committees were created to serve as an independent third-party mechanism for protecting the constitutional and human rights of clients within programs or facilities operated, funded, licensed, or regulated by the Department of Health and Rehabilitative Services.[1] In order to carry out these duties, the committees are authorized to monitor by site visit and inspection of records the delivery and use of such programs for the purpose of preventing abuse or deprivation of the constitutional and human rights of clients.[2] Moreover, the committees are responsible for "[r]eceiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights."[3]

With specified exceptions, the committees are authorized access to all client records, files and

reports of the programs or facilities.[4] Any investigation or monitoring, however, cannot impede or obstruct matters under investigation by law enforcement or judicial authorities. Further, access to client records that are confidential may only be had through petition to the circuit court, stating the specific reasons for seeking such information and its intended use.[5] The court may authorize access to such records upon a finding that it is directly related to an investigation regarding the possible deprivation of constitutional or human rights or the abuse of a client.

Section 402.166(8), Florida Statutes, in pertinent part, provides:

"(b) All information obtained or produced by the committee which is made confidential by law, which relates to the identity of any client or group of clients subject to the protection of this section, or which relates to the identity of an individual who provides information to the committee about abuse or alleged violations of constitutional or human rights, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Portions of meetings of a district human rights advocacy committee which relate to the identity of any client or group of clients subject to the protections of this section, which relate to the identity of an individual who provides information to the committee about abuse or alleged violations of constitutional or human rights, or wherein testimony is provided relating to records otherwise made confidential by law, are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution.

(d) All records prepared by members of the committee which reflect a mental impression, investigative strategy, or theory are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or until the investigation ceases to be active. For purposes of this section, an investigation is considered "active" while such investigation is being conducted by the committee with a reasonable, good faith belief that it may lead to a finding of abuse or of a violation of human rights. An investigation does not cease to be active so long as the committee is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the committee or other administrative or law enforcement agency."

Thus, the statute recognizes that certain activities and records of the committee are exempt from the Sunshine Law and the Public Records Law.[6]

Generally, the Government in the Sunshine Law applies to "any board or commission of any state agency, authority or of any agency or authority of any county, municipal corporation, or political subdivision." [7] Thus, the statute applies to public collegial bodies within this state.[8] This office has consistently stated that the Sunshine Law is applicable to any meeting of two or more members of a board or commission at which official acts are to be taken.[9] The mere presence of two or more members of a board does not subject a gathering to the Sunshine Law unless the members discuss issues coming before the board among themselves.[10]

Thus, it would be advisable for members of the committee, who are involved in an investigation, to avoid discussions among themselves during the investigation, unless such meeting has been noticed and held pursuant to provisions of the Government in the Sunshine Law.

I trust these informal comments will be helpful in answering your questions. These observations were made by the Division of Opinions in order to assist you and do not represent an official

opinion of the Attorney General.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] Section 402.166(7)(a), Fla. Stat. (1995).

[2] Section 402.166(7)(b), Fla. Stat. (1995).

[3] Section 402.166(7)(c), Fla. Stat. (1995).

[4] Section 402.166 (8)(a)1., Fla. Stat. (1995).

[5] Section 402.166(8)(a)2., Fla. Stat. (1995).

[6] See s. 119.07, Fla. Stat. (1995), and s. 24(a), Art. I, State Const. (all records made or received in connection with the official business of any public body, officer, or employee of the state subject to inspection and copying by the public).

[7] See s. 286.011(1), Fla. Stat. (1995).

[8] See *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

[9] See Ops. Att'y Gen. Fla. 76-202 (1976), 74-358 (1974) and 74-84 (1974).

[10] Cf. Ops. Att'y Gen. Fla. 92-5 (1995) (candidates' forum where two or more members of same board are present not subject to Sunshine Law unless there is discussion among the members on issue that will come before the board for action).