Sunshine Law, right of public to participate

Number: INFORMAL

Date: January 31, 2003

Subject:
Sunshine Law, right of public to participate

The Honorable John Thrasher
Representative, District 19
859 Park Avenue, Suite 108
Orange Park, Florida 32073

RE: SUNSHINE LAW–-MUNICIPALITIES–-WORKSHOPS–-right of public to participate in meetings and workshops. S. 286.011, Fla. Stat. (1993).

Dear Representative Thrasher

Thank you for contacting this office on behalf of a member of the Orange Park Town Council who has questions regarding the right of the public to participate in meetings held pursuant to s. 286.011, Fla. Stat. (1993), Florida's Sunshine Law.

In an effort to be of assistance, I offer the following observations. The Sunshine Law applies to *any* gathering where two or more members of the same board or commission gather to discuss some matter on which *foreseeable action* will be taken by the public board or commission. Thus, this office has stated that the following gatherings are subject to the Sunshine Law; "workshop meetings" of a planning and zoning commission;[1] "conference sessions" held by a town council before its regular meetings;[2] "conciliation conferences" of a human relations board;[3] and discussions relating to a preaudit report of the Auditor General by the governing body of a special district.[4]

The Sunshine Law is, therefore, applicable to all functions of covered boards and commissions, whether formal or informal, that relate to the affairs and duties of the board or commission. The fact that a board characterizes business as "nonsubstantive" does not necessarily remove it from the scope of the Sunshine Law. If the "nonsubstantive" business requires the approval or consideration of the entire board or concerns matters that should appropriately be considered and discussed by the board, then, s. 286.011, Fla. Stat. (1993), requires that such business be conducted in the sunshine.[5]

The courts have recognized the right of members of the public to participate in open meetings and to present their views. 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."[6]

However, while the right of a person to attend a meeting subject to s. 286.011, Fla. Stat. (1993),

has been upheld by courts of this state, the courts have not expressly addressed the question of the extent to which a citizen must be allowed to speak. While the importance of public participation in public meetings has been recognized, the courts have not set forth any clear standards as to what extent an agency is required to provide for public participation under the Sunshine Law.

In addition, The Florida Supreme Court has indicated that with regard to certain types of executive meetings, there may not be a right under s. 286.011, Fla. Stat. (1993), for a member of the public to speak. In *Wood v. Marston,*[7] the Court examined the applicability of the Sunshine Law to a staff committee that had been delegated the authority by the university president to recommend candidates for a university position. Reviewing the activities conducted without public input, the Court stated:

"Respondents vigorously contend that opening the committee's meetings would threaten dearly held rights of academic freedom. This Court recognizes the necessity for the free exchange of ideas in academic forums, without fear of governmental reprisal, to foster deep thought and intellectual growth . . . . We hasten to reassure respondents that nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process. Were the chilling effect respondents apprehend balanced against any less compelling a consideration that Florida's commitment to open government at all levels, we might agree that the burdens herein imposed were unduly onerous."[8]

Until the matter is clarified, this office has recognized that when certain committees are carrying out certain executive functions that traditionally have been conducted without public input, the public has the right to attend but may not have the authority to participate. On the other hand, if a committee or board is carrying out legislative functions, this office has advised that the public should be afforded a meaningful opportunity to participate at each stage of the decision-making process.[9]

A board or commission may adopt reasonable rules and policies to ensure the orderly conduct of a public meeting and require orderly behavior on the part of those persons attending. A public board, therefore, may adopt rules and policies for the orderly conduct of a meeting that, for example, limit the time an individual has to address the board. At meetings where a large number of the public is in attendance and may wish to address the board or commission, a public board may request that a representative or representatives of each group or faction on an issue, rather than all members of the group or faction, address the board, provided that such rules do not unreasonably restrict the public's right of access. However, to the extent that rules or policies adopted by a public board or commission seek to unreasonably restrict the public's participation in, or attendance at, the meeting, such rule or policy may well violate the public access requirement of s. 286.011 Fla. Stat. (1993).

Although not directly considering the Sunshine Law, the federal court in *Jones v. Heyman*[10] 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 major'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.

Thus, while the courts have distinguished between executive and legislative meetings of public bodies for purposes of public attendance and participation, this office has determined that workshop meetings of such bodies are generally subject to the Sunshine Law. However, a town council or other public body may adopt rules and policies for the orderly conduct of public meetings.

I trust that these advisory comments will be of some assistance to you and Ms. Griffith, a member of the Orange Park Town Council.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/twd

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[1] *See* Op. Att'y Gen. Fla. 74-94 (1974). *And see Nocera v. School Board of Lee County, Florida* , Case No. 91-1828 CA-WCM (20th Cir. Lee Co., November 25, 1991) (workshop meeting of school board at which school rezoning or desegregation order discussed subject to Sunshine Law).

[2] *See,* Op. Att'y Gen. Fla. 74-62 (1974).

[3] *See* Op. Att'y Gen. Fla. 74-358 (1974).

[4] *See* Op. Att'y Gen. Fla. 73-8 (193).

[5] See Op. Att'y Gen. Fla. 75-37 (1975).

[6] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 93, 699 (Fla. 1969). *And see 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 (3 D.C.A. Fla., 1979), referring to the "citizen input factor" and stating that this public input was an important aspect of public meetings.

[7] 442 So.2d 934 (Fla. 1983).

[8] *Id.* at 941.

[9] Inf. Op. To David G. Conn, May 7, 1987.

[10] 888 F.2d 1328, 1333 (11th Cir. 1989).