

Sunshine Law, transition teams

Number: INFORMAL

Date: December 15, 2005

Subject:
Sunshine Law, transition teams

The Honorable Lawson Lamar
State Attorney
Ninth Judicial Circuit
Post Office Box 1673
Orlando, Florida 32802

RE: SUNSHINE LAW–TRANSITION TEAMS–MUNICIPALITIES–STAFF–applicability of Sunshine Law to transition teams. s. 286.011, F.S.

Dear Mr. Lamar:

This is in response to your recent letter requesting that this office provide guidance to local governments and your office regarding the applicability of the Sunshine Law to the activities of governmental transition teams.

Your letter indicates that a citizens group has filed a complaint alleging that a violation of s. 286.011, F.S., has occurred. Your office has investigated this matter and determined that "there does not appear to be evidence of any intentional violation of the Florida Open Meetings Law." However, in an effort to provide guidance in future situations, you have asked that this office comment on the applicability of the Sunshine Law, s. 286.011, F.S., to the situation described above. The following informal comments are, therefore, submitted in response to that request.

According to information submitted with your request, the transition team was made up of citizens who were appointed by the Mayor of the City of Orlando "to review city operations and our governmental organization structure." It appears that the transition team made recommendations to the mayor regarding "determining priorities or establishing a new approach to city government."

Florida courts have determined that advisory boards whose powers are limited to making recommendations to a public agency and which possess no authority to bind that agency in any way are subject to the Sunshine Law.[1] As in the case of *Town of Palm Beach v. Gradison*,[2] such a board may be made up entirely of private citizens.

The nature of the act performed by the board or committee, rather than its makeup or proximity to the final decision, will determine whether an advisory committee is subject to the Sunshine Law.[3] In *Wood v. Marston*,[4] the Florida Supreme Court concluded that an *ad hoc* advisory committee appointed to screen applications and make recommendations for the position of dean of the law school at a state university played an integral part in the decision-making process and

thus was subject to the Sunshine Law.

A similar result was reached in *Krause v. Reno*.^[5] In that case, the district court held that an advisory board made up of private citizens and appointed and used by a city manager to screen applications and make recommendations for the position of chief of police was subject to s. 286-011, F.S.^[6]

More recently, a circuit court concluded that the activities of an attendance zone advisory committee created by the school board for the purpose of recommending attendance zones to relieve overcrowding and to provide for desegregation in the schools were subject to the Sunshine Law. The court held that even though the school board made the ultimate decision regarding rezoning, the committee played an integral part in the decision-making process.^[7]

Based on the reasoning in these court cases, this office has concluded that the following advisory bodies are subject to the Sunshine Law: a committee responsible for making recommendations to the city council on personnel matters, AGO 92-26; an *ad hoc* committee appointed by the mayor to meet with the Chamber of Commerce to discuss a proposed transfer of city property, AGO 87-42; an *ad hoc* committee appointed by the mayor for purposes of making recommendations concerning legislation, AGO 85-76; a citizens' advisory committee appointed by a metropolitan planning organization, AGO 82-35; an advisory committee studying the municipality's provision of services, Inf. Op. to Fred S. Disselkoe, Jr., July 14, 1992; a finance advisory committee and utility advisory committee, Inf. Op. to Gary L. Stinson and Larry Hopper, December 31, 1990.

For future reference, the City of Orlando may wish to provide its boards and commissions with copies of the Government-in-the-Sunshine Manual so the members of these bodies may familiarize themselves with the requirements of the Sunshine and Public Records Laws as they apply to their various activities. This office updates the manual on an annual basis so that it contains current reference to the statutes, case law and Attorney General Opinions on these laws. Copies of the manual may be obtained from the

First Amendment Foundation
336 East College Avenue, Suite 103
Tallahassee, Florida 32301
Telephone: (904) 222-3518

Thank you for contacting this office. I trust that the preceding informal comments will be of assistance in providing guidance in the future.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974). *Accord Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So.2d 694 (3 D.C.A. Fla., 1988).

[2] *Ibid.*

[3] *Wood v. Marston*, 442 So.2d 934 (Fla. 1983).

[4] *Ibid.*

[5] *Krause v. Reno*, 366 So.2d 1244 (3 D.C.A. Fla., 1979).

[6] *And see* AGO 90-76 (legislatively created statewide nominating commission for workers' compensation judges subject to s. 286.011).

[7] *Nocera v. School Board of Lee County, Florida*, Case No. 91-1828 CA-WCM (20th Cir. Lee Co., November 25, 1991).