

Sunshine Law, county development council

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Subject:
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Mr. Louis E. Hatcher
Assistant State Attorney
Fifth Judicial Circuit
Courthouse Annex
209 North Florida Avenue
Bushnell, Florida 33513

Mr. Randall N. Thornton
Sumter County Attorney
Post Office Box 58
Lake Panasoffkee, Florida 33538

Dear Mr. Hatcher and Mr. Thornton:

You have asked for my opinion on substantially the following question:

Is the Sumter County Development Council, Inc., subject to the provisions of s. 286.011, F.S., the Government in the Sunshine Law?

In sum:

The meetings of the Sumter County Development Council, Inc., are not subject to s. 286.011, F.S., as no delegation of legislative or governmental functions by any local governmental entity has occurred and the council does not act in an advisory capacity to any such entity.

According to information you have provided, the Sumter County Development Council, Inc., is a private non-profit corporation established by local business people. The purpose of the development council is to foster and promote economic development in Sumter County and to advertise and publicize the county and cities therein. The council encourages the location of suitable industries within the county. Once the council finds a business prospect which is interested in locating in Sumter County, it puts the prospect in touch with local property and business owners. The council also assists by furnishing other information regarding available services and resources. If the business decides to relocate to Sumter County, it is responsible for seeking governmental rezoning and development approvals. The council receives funding from private individuals, businesses, the Industrial Development Authority of Sumter County, and some of the city councils in Sumter County.

You state that no city or county agency or board has delegated any governmental or legislative

function to the council nor do they exert any control over the activities of the council. Further, the council does not act in an advisory capacity to either the county or city governments according to your letter.

However, it appears that city councils and the Board of Commissioners of Sumter County are authorized to designate or recommend members of the council and a city commissioner currently sits as a member of the council. In addition, a number of council members are also members of the Industrial Development Authority. The Industrial Development Authority was created by the Board of County Commissioners of Sumter County pursuant to statute. The authority works with the development council to promote economic development in Sumter County.

Section 286.011(1), F.S., Florida's Government in the Sunshine Law, provides in pertinent part:

"All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision . . . at which official acts are to be taken are declared to be public meetings open to the public at all times"

In *Times Publishing Company v. Williams*,^[1] the court expressed the view that the Legislature intended the Sunshine Law to apply to "every 'board or commission' . . . over which [the Legislature] has dominion and control."^[2] Thus, s. 286.011, F.S., is not applicable to private organizations which are not state or local governmental agencies or subject to the control of the Legislature or which do not serve in an advisory capacity to such state or local governmental agencies.

Regarding what entities are subject to the Sunshine Law, the Florida Supreme Court has held that an ad hoc advisory board, whose powers were limited to making recommendations to a public agency and which possessed no authority to bind the agency in any way whatsoever, was subject to the Sunshine Law. In *Town of Palm Beach v. Gradison*,^[3] the Court held that an advisory group of citizens served as an arm of the town council and was, therefore, a board or commission subject to s. 286.011, F.S.^[4] In that case the Court determined that the advisory body was serving part time as the alter ego of the town council. The group was making tentative decisions guiding the zoning planners and much of the administrative and legislative decisional zoning formulation authority which would ordinarily have been exercised by the governing body of a city had been delegated to this citizens group.

However, as the Court recognized in *Gradison*, the Legislature has "no right to require meetings of civic organizations, unconnected with [local] government, to conform to the government in the sunshine law."^[5] Thus, s. 286.011, F.S., is not applicable to private organizations which are not state or local governmental agencies or subject to the control of the Legislature or which do not serve in an advisory capacity to such state or local governmental agencies.^[6]

In a number of previous opinions this office has stated that the receipt of public funds by a private corporation does not, in and of itself, subject such an organization to the requirements of s. 286.011, F.S.^[7] Thus, in AGO 83-1 this office concluded that a private corporation which performed services for a public agency and received compensation therefor was not by virtue of this relationship alone subject to the requirements of the Sunshine Law provided that the public

agency's governmental or legislative functions have not been delegated to it.

The fact situation in AGO 83-1 is similar to the one you have presented. In that opinion, this office was asked to determine whether a volunteer fire company, a private nonprofit corporation, was subject to the Government in the Sunshine Law. The purpose of the volunteer fire company was to "prevent and control damage or destruction of property and loss of life due to fire, to supply fire protection . . . as well as fire prevention, to all persons in the [special fire control district], and to make available Advanced Life Support to all in the district." Thus, the company provided an essentially public service. Further the volunteer fire company was geographically coextensive with a fire control district created by the Pinellas County Board of County Commissioners and subject to the administration of the county fire protection authority which was created by special act of the Legislature. The operating budget of the private fire company was approved and funded by the statutory county fire protection authority. Despite these factors this office concluded that the private fire company was not subject to the Sunshine Law because no delegation of either legislative or governmental functions had taken place.

The courts have delineated a test to determine whether a private entity is "acting on behalf of" a governmental agency and is, therefore, subject to s. 286.011, F.S. The critical factors are whether the private entity has been delegated any governmental responsibilities and functions, whether the entity receives public funds, or whether the private entity participates in the decision-making process.[8]

You state that the Sumter County Development Council has not been delegated any of the governmental or legislative functions of county or municipal government[9] nor, according to your letter, does the council act in an advisory capacity to any governmental entity. Further, while the council apparently receives a limited amount of public funds, the mere receipt of funds by the council is not conclusive on the issue of applicability of the Sunshine Law.[10] Finally, the fact that several officials from other local governmental entities also serve on this council does not bring meetings of the council itself within the scope of the Sunshine Law assuming that these officials are not using council meetings to discuss the business of the other bodies on which they serve.[11]

The Board of County Commissioners of Sumter County has created an Industrial Development Authority (an "IDA") for the county. You have advised me that the IDA was created pursuant to statute,[12] after the organization of the Sumter County Development Council, Inc. The two entities work together on occasion and share the common goal of promoting economic development in the county. You have no doubt that the IDA is subject to the provisions of the Sunshine Law and it has always conducted itself accordingly. As discussed herein, it does not appear that the Sumter County Development Council, Inc., is controlled by s. 286.011, F.S., however, I must caution you that, to the extent the IDA may use the development council to fulfill its functions, the meetings of the development council would be subject to the Sunshine Law.[13]

Thus, it is my opinion that the Sumter County Development Council, Inc., is not a board or commission which is subject to s. 286.011, F.S., and the meetings of the council need not follow the procedural requirements of the Government in the Sunshine Law.

I trust that this informal advisory opinion will assist you in advising your respective clients

regarding their responsibilities under the Sunshine Law.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/twd

[1] 222 So.2d 470, 473 (2 D.C.A. Fla., 1969).

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

[3] 296 So.2d 473 (Fla. 1974).

[4] *And see* IDS Properties, Inc. v. Town of Palm Beach, 279 So.2d 353 (4 D.C.A. Fla., 1973), wherein the court held that there was no government by delegation exception to the Government in the Sunshine Law by undertaking to delegate the conduct of public business through the use of an alter ego.

[5] Town of Palm Beach v. Gradison, *supra*, footnote 3 at p. 476.

[6] See Times Publishing Company v. Williams, 222 So.2d 470, 473 (2 D.C.A. Fla., 1969) (in which the court concluded that the Legislature intended the Sunshine Law to apply to "every 'board or commission' . . . over which [the Legislature] has dominion and control.") *And see* City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971), and AGO 83-1 (a volunteer fire company, a private nonprofit corporation, which submits its budget to a county fire protection authority in order to receive public funds for providing fire protection services to a county fire control district is not subject to the Government in the Sunshine Law provided that no governmental or legislative functions of the public body have been delegated to the nonprofit corporation).

[7] See, e.g., AGO 83-1, *supra*, and AGO 74-22. *And see* AGO 78-161 (receipt of public funds by a private nonprofit corporation under contract with a public agency did not subject corporation to s. 286.011); AGO 78-24 (meetings of nonprofit hospital corporation not subject to s. 286.011 by virtue of lease agreement between private corporation and public agency); AGO 76-194 (Orlando-Orange County Industrial Board, Inc., not subject to the Sunshine Law although the organization received public funds and a county commissioner and a member of the city council served as ex officio members of its board of directors).

[8] See Parsons & Whittemore, Inc. v. Metropolitan Dade County, 429 So.2d 343 (3 D.C.A. Fla., 1983); News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., 570 So.2d 1095 (4 D.C.A. Fla., 1990).

[9] *Cf.* AGO 87-44, concluding that the records of a private nonprofit corporation relating to a fund established for making improvements to the city parks are not public records subject to the

Public Records Law, when the corporation raises and disburses only private funds and has not been delegated any governmental responsibilities or functions.

[10] See *Sarasota Herald-Tribune Company v. Community Health Corporation, Inc.*, 582 So.2d 730 (2 D.C.A. Fla., 1991), in which the court noted that merely providing public funds to a private organization is not the deciding factor in determining whether the private entity is acting on behalf of a public agency for purposes of s. 286.011, F.S., although the provision of a substantial share of the capitalization of the organization would be relevant.

[11] See AGO 83-70 (while s. 286.011, F.S., does not preclude two city council members from serving together on a board of trustees of a nonprofit corporation, in those instances when the board of trustees will be discussing some matter which will be brought before the city council for action the city council members should either excuse themselves from such meetings of the board or hold the board meetings in the sunshine).

[12] See Part III, Ch. 159, F.S., providing for the creation of industrial development authorities.

[13] See *IDS Properties, Inc. v. Town of Palm Beach*, 279 So.2d 353 (4 D.C.A. Fla., 1973) (there is no "government by delegation" exception to the Sunshine Law, and public agencies may not avoid their responsibilities or conduct the public's business in secret by use of an alter ego).