

Sunshine Law, commissioner meeting with planning org.

Number: INFORMAL

Date: January 31, 2003

Subject:

Sunshine Law, commissioner meeting with planning org.

The Honorable Joe McClash
County Commissioner, District 7
Manatee County
Post Office Box 1000
Bradenton, Florida 34206

Dear Mr. McClash:

Thank you for considering this office as a source for assistance in determining whether the Sunshine Law, s. 286.011, F.S., is applicable to meetings between a county commissioner and members of a metropolitan planning organization.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may comment formally. The Attorney General is statutorily authorized to provide legal opinions to governmental agencies and officers on questions of law relating to their own official duties.[1] Thus, this office is authorized to provide you with a legal opinion on your own duties as an individual county commissioner or, at the request of a majority of members of either the metropolitan planning organization or the county commission, we will issue an opinion on the duties and responsibilities of such entity.

Since your inquiry appears to deal with the actions of other officials and agencies, this office cannot formally address these matters. However, the following informal comments are offered in an effort to provide you with some assistance.

The Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision." It is collegial bodies to which the state is addressed and it applies to political subdivisions and to boards or commissions created by law or by a public agency.[2] Thus, a metropolitan planning organization, which is an entity created pursuant to law,[3] would appear to be subject to the terms of s. 286.011, F.S.,[4] as would a county commission.

Your letter does not indicate whether the county commissioner in question is meeting with the members of the metropolitan planning organization (m.p.o.) together or meeting with individual members. If these meetings are one-on-one, the Sunshine Law would not apply to the meetings unless the county commissioner or the m.p.o. member had been delegated some authority by the entire body to act on their behalf.[5] However, it would violate the statute for the m.p.o. members to use the county commissioner as a liaison between members of the board or for the county commissioner to hold a series of successive meetings with the m.p.o. members to

discuss matters which should be discussed in the sunshine.[6]

With regard to meetings where several members of the metropolitan planning organization are present, the Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to s. 286.011. Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.[7]

I am enclosing copies of sections of the Government-in-Sunshine Manual which discuss these points more thoroughly. You may wish to order a copy of the manual, which discusses both the Sunshine and Public Records Laws. I am also sending you a copy of the order form for the manual.

This informal, advisory letter was prepared by the Department of Legal Affairs in an effort to be of assistance to you. The opinions expressed herein are those of the writer and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/twd

Enclosures - Government-in-the-Sunshine Law Manual (1992 ed.) pp. 12-16, 23-26, and order form.; AGO 90-17

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

[2] See, e.g., AGO 74-364 (regional planning council), AGO 78-105 (police complaint review board), AGO 82-66 (regional sewer facility board), and AGO 71-389 (district school board).

[3] Section 339.175, F.S., authorizes the creation of metropolitan planning organizations.

[4] Cf. AGO 82-35 (Sunshine Law applies to citizens' advisory committee appointed by metropolitan planning organization).

[5] See AGO 90-17 (An individual city council board member may, with either the formal or informal approval of the board, privately meet with a private garbage contractor if the purpose of the meeting is essentially information gathering and the council member has not been delegated a portion of the decision-making authority of the council. He may also, acting on his own, negotiate with the contractor provided he does not have the authority to bind the city council and

does not act on behalf of the council. If however, the council member has been authorized, formally or informally, to exercise any decision-making authority on behalf of the council, such as approving or rejecting certain contract provisions, he is acting on behalf of the council and such meetings are subject to s. 286.011.)

[6] See *Blackford v. School Board of Orange County*, 375 So.2d 578 (5 D.C.A. Fla., 1979) (a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law), and AGO 74-47 (a city manager is not subject to the Sunshine Law so long as he does not act as a "liaison" between board members or attempts to act in the place of board members at their direction).

[7] See *Hough v. Stembridge*, 278 So.2d 288 (3 D.C.A. Fla., 1973). *And see Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969); *City of Miami Beach v. Berns*, 245 So.2d 38 (Fla. 1971).