

Sunshine Law, notice, agenda

Number: INFORMAL

Date: January 30, 2003

Subject:
Sunshine Law, notice, agenda

The Honorable Leroy E. Evans, Sr., Chairman,
Dixie Board of County Commissioners

RE: GOVERNMENT IN THE SUNSHINE LAW--SPECIAL MEETINGS--AGENDAS--notice for special meetings; ability to discuss item not on agenda. s. 286.011, F.S.

Dear Mr. Evans:

You ask whether the board of county commissioners may discuss and take action on anything other than the subject for which a special meeting of the board was called.

While s. 286.011, F.S., the Government in the Sunshine Law does not specify any notice requirements, the courts have stated that as a practical matter in order for a public meeting to be in essence "public," reasonable notice of the meeting must be given. See *Hough v. Stembridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973); *Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985). The type of notice required under the Sunshine Law is variable, depending on the facts of the situation. In each case, however, the notice must reasonably convey all the information required in a particular situation and it must afford a reasonable time for interested persons to make an appearance if they wish to do so.

This office has, among other things, suggested that an agenda, if available, be contained in the notice, or if no agenda is available, subject matter summations might be used. See *Inf. Op. to Mr. W.W. Caldwell, Jr.*, February 10, 1975. It is not necessary, however, that each item discussed by a public board or commission be noticed via a published prior agenda under the Sunshine Law. Such a specific requirement has been rejected by the courts because it could effectively preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body. See *Hough v. Stembridge*, *supra* at 291. It may be advisable, however, to postpone taking any action on the issue, if controversial or an issue of critical public concern, until it has been properly noticed.

Moreover, if any applicable statute prescribes notice, that statute controls and must be strictly observed. See, e.g., s. 125.35, Fla. Stat., prescribing the procedures for the sale of real property by the county commission. In addition, the board of county commissioners would be subject to any rules adopted by the board concerning the conduct of board meetings, including the requirements for notice and agendas. See s. 125.01(1)(a), Fla. Stat., stating that the legislative and governing body of a county has the authority to adopt its own rules of procedure.

Any question regarding the interpretation of the county's local rules, codes or ordinances should

be referred to the county attorney rather than this office. See, the Statement of Policy Concerning Attorney General Opinions, a copy of which is enclosed, which states in part that "[o]pinions are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law."

You also ask whether the clerk-auditor for the board must post the notices for the special meetings or whether the chairman of the board may prepare, sign and post the notice.

As the court in *Hough, supra* at 290-291, recognized:

"The agenda plots the orderly conduct of business to be taken up at a noticed public meeting as provided for by city charter or ordinance. F.S. s. 286.011 does not embody this subject matter nor does it contemplate the necessity for each item to be placed on the agenda before it can be considered by a public noticed meeting of a governmental body. Although the drawing up of an agenda is a matter related to a noticed public meeting, *it essentially is an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by city charters and ordinances.*" (e.s.)

Such a question would appear to be dependent upon the procedures adopted by the board of county commissioners. Accordingly, I would suggest that you discuss this matter with your county attorney.

I hope that the above informal advisory comments will be of assistance to you in resolving these matters.

Sincerely,

Joslyn Wilson
Senior Assistant Attorney General

JW/tgk

Enclosure