

Sunshine and Public Records, council of governments

Number: INFORMAL

Date: January 31, 2003

Subject:

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Paul J. Nicoletti
Attorney for the Loxahatchee
Council of Governments

RE: Applicability of ss. 189.005 and 286.011, Fla. Stat. and Ch. 119, Fla. Stat., to Council of Local Public Officials created pursuant to s. 163.02, Fla. Stat.

Dear Mr. Nicoletti:

Your letter states that the Loxahatchee Council of Governments, Inc., was formed pursuant to s. 163.02, Fla. Stat., and is made up of eleven general and special governments. You request an opinion concerning whether the provisions of ss. 189.005 and 286.011, Fla. Stat., and Ch. 119, Fla. Stat., apply to the Loxahatchee Council of Governments, Inc.

Section 163.02(1), Fla. Stat., authorizes the governing bodies of any two or more counties, municipalities, special districts, or other governmental subdivisions to, by resolution, enter into an agreement with each other for the establishment of a council or local public officials. A council established pursuant to this section is to be a corporation not for profit.

The statute[1] provides that a local government council shall have the power to:

- "(a) Study such area governmental problems as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and area development;
- (b) Promote cooperative arrangements and coordinate action among its members; and
- (c) Make recommendations for review and action to the members and other public agencies that perform local functions and services within the area."

Funds to meet necessary expenses of a council may be appropriated by the governing bodies of the member governments. Services or personnel, use of equipment and office space, and other necessary services may be accepted from members as part of their financial support.[2]

An annual public report of a council's activities is to be made to each of the member local governments. Such a council is required to have its accounts audited annually.[3]

Section 189.005, Fla. Stat., prescribes the notice required for meetings of the governing body of a special district. A "special district" within the scope of these requirements is defined as "a local

unit or special government . . . *created pursuant to general or special law* for the purpose of performing prescribed specialized functions . . . within limited boundaries." [4] (e.s.)

Section 163.02(1), Fla. Stat., contemplates the creation of councils of local public officials by agreement between the local governments which are members. While the statute authorizes member governments to pass a resolution and enter into an agreement to establish such a council, it does not appear that such councils are "created pursuant to general or special law" so as to come within the scope of s. 189.005, Fla. Stat.

Section 119.07(1)(a), Fla. Stat. (1986 Supp.), requires that public records be made available for inspection and examination by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of such records or his designee.

The statute [5] defines a public record as:

"[A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

For purposes of the statute [6] an "agency" is defined to be

"[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

Pursuant to s. 163.02(1), Fla. Stat., a council of local public officials is a corporation. An examination of s. 163.02(3), Fla. Stat., leads me to conclude that such a council acts on behalf of the local governmental agencies which are members of the council in performing the duties described in s. 163.02(3), Fla. Stat.

Therefore, it is my opinion that the Loxahatchee Council of Governments, Inc., is an "agency" within the scope of s. 119.011(2), Fla. Stat., and subject to the requirements of s. 119.07, Fla. Stat. (1986 Supp.), as amended by s. 2, Ch. 87-399, Laws of Florida.

Section 286.011(1), Fla. Stat., states that:

"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, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."

The Florida Supreme Court [7] has expressed the view that the Legislature intended to extend the application of the Sunshine Law (s. 286.011, Fla. Stat.) to as to bind ". . . every 'board or commission' of the statute, or of any county or political subdivision over which it has dominion

and control." [8]

As the Legislature has authorized the creation of councils of local public officials and has specifically provided the powers they possess, it appears that such councils are subject to the "dominion and control" of the Legislature. [9]

Moreover, the courts have liberally interpreted the Sunshine Law in favor of citizen access to all stages of the governmental planning process if conducted by a board or commission or other authority appointed and established by a governmental entity. The Florida Supreme Court has even extended the Sunshine Law to an *ad hoc* advisory board, appointed by a municipality, whose powers were limited to make recommendations and which possessed no authority to bind the municipality. [10] In *IDS Properties Inv. v. Town of Palm Beach*, 279 So.2d 353, 356 (Fla. 4th DCA 1973), *affirmed*, *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974), the court stated: "Those to whom public officials delegate *de facto* authority to act on their behalf in the formulation, preparation and promulgation of plans on which foreseeable action will be taken by such public officials stand in the shoes of such public officials insofar as the application of the Government in the Sunshine Law is concerned."

Based on the foregoing, I am of the opinion that the Loxahatchee Council of Governments is a "board or commission" subject to the provisions of s. 286.011, Fla. Stat.

This informal, advisory opinion 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/tgk

[1] Section 163.02(3), Fla. Stat.

[2] Section 163.02(5)(a), Fla. Stat.

[3] Section 163.02(5)(c), Fla. Stat.

[4] Sections 189.003(1) and 218.31(5), Fla. Stat.

[5] Section 119.011(1), Fla. Stat.

[6] Section 119.011(2), Fla. Stat.

[7] See *Times Publishing Company v. Williams*, 222 So.2d 470, 473 (Fla. 2nd DCA 1969).

[8] *And see* *City of Miami Beach v. Berns*, 245 So.2d 38 (Fla. 1971), wherein Justice Adkins noted that the Legislature was aware of this judicial interpretation at the time it met in 1970 and did not amend the law. The court went on to hold the Sunshine Law to be applicable to government at the municipal as well as the state and county level.

[9] *Cf.* AGO 82-66 concluding that an interlocal administrative entity and its governing board constituted pursuant to the "Florida Interlocal Cooperation Act of 1969," s. 163.01, Fla. Stat., is subject to Florida's Government in the Sunshine Law, s. 286.011, Fla. Stat.

[10] See *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974).