

Sunshine Law, city council and congressman meeting

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Subject:

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The Honorable Bill Nelson
Representative, Ninth District
Congress of the United States
House of Representatives
1513 Longworth House Office Building
Washington, D.C. 20515

Re: GOVERNMENT IN THE SUNSHINE—luncheon meeting—city council and congressman. S. 286.011, Fla. Stat.

Dear Bill:

This is in response to your request for an opinion as to whether the Government in the Sunshine Law prohibits one of the city councils in your district from meeting with you, at a dutch-treat luncheon forum at which you plan to inform them of federal budgetary matters which vitally concern their communities.

Ordinarily, it is the policy of this office not to give legal advice concerning, nor does it comment upon, the propriety of the official actions of a public body, except at the request of a majority of the members of the public body. Therefore, this office is unable to render a formal opinion in this matter. See s. 16.01(3), Fla. Stat.

However, in an effort to be of assistance to you, I have researched this issue and offer to you the following informal opinion.

Section 286.011, Fla. Stat., provides in pertinent part:

"All meetings of any board or commission of any state agency or authority or of an 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 meetings."

The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

City councils are clearly covered by the Sunshine Law. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

Moreover, it has consistently been the view of the Attorney General's Office that "briefing sessions" or "workshop meetings" of such public bodies must be held in compliance with s. 286.011, Fla. Stat. *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Times Publishing Co. v. Williams*, 222 So. 2d 470 (Fla. 1969) (holding that the Legislature intended to regulate the entire decision-making process by its enactment of the Sunshine Law). Similarly, in *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), the Florida Supreme Court held that:

"An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a non-public pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only the embracing the *collective inquiry and discussion stages*, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. . . . the term "meeting" extends to informal sessions or conferences of the board members designed for the discussion of public business." (e.s.) 296 So. 2d at 477.

Accord, AGO's 074-94 (workshop meetings of planning and zoning commissions); 074-62 (conference sessions held by a town council prior to regular meetings); 074-358 (conciliation conferences held by a Human Relations Board); 074-273 (fact-finding discussions between city council members and a planning firm).

Additionally, it has been the position of this office to discourage "luncheon meetings" of public boards. See AGO 071-159 (such meetings could have a chilling effect upon the public's willingness to attend, due to possible required dinner purchase). That same opinion noted that if discussions among council members were not audible to all present, the openness requirement of s. 286.011, Fla. Stat., might not be satisfied. See *also*, AGO 071-295. See *generally*, Florida Open Government Laws Manual, Office of the Attorney General, 1978.

Conversely, in AGO 072-158, it was opined that a luncheon meeting held by a private organization for city, county or school board officials and other members of the public, at *which there was no discussion among the public officials relating to public business*, was not subject to the Sunshine Law merely because of the presence of two or more members of a covered board or commission. See *generally*, Florida Open Government Laws Manual, *supra*.

A similar conclusion was reached in AGO 076-103. There, three city commissioners who were volunteer firemen wished to attend meetings of the volunteer firemen's association. This office opined that the city commissioners could attend meetings of this nature *provided that* they did

"not engage in any discussion of matters relating to their public duties or on which foreseeable action may be taken by the city commission." In the instant inquiry, it appears extremely likely that discussion of public business by the council members (and perhaps decision making) will take place at the meeting which you propose.

For this reason, and in accordance with the precedents set forth above, I am of the opinion that the meeting which is described in your inquiry would be subject to the Government in the Sunshine Law.

If you have further questions concerning this matter please do not hesitate to contact me or personnel in the Division of Opinions in our Tallahassee Office at 904-488-9853.

With all good wishes, I am

Sincerely,

Jim Smith
Attorney General

JS/AC/is