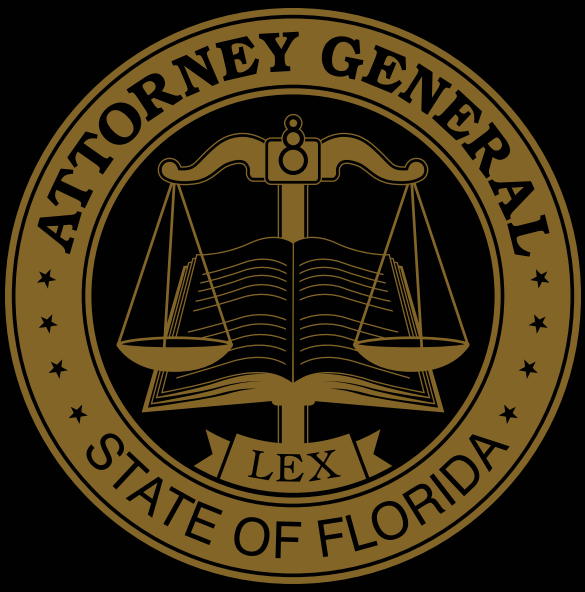
ATTORNEY GENERAL BIENNIAL REPORT



2023-2024

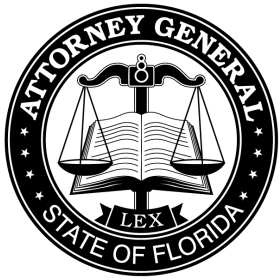
BIENNIAL REPORT

of the

ATTORNEY GENERAL
STATE OF FLORIDA

January 1, 2023 through December 31, 2024

ASHLEY MOODY
Attorney General



Tallahassee, Florida

CONSTITUTIONAL DUTIES OF THE ATTORNEY GENERAL

The 1968 Florida Constitution provides, in article IV, section 4, subsection (b), that the Attorney General shall be "the chief state legal officer."

By statute, the Attorney General is head of the Department of Legal Affairs and supervises the following functions:

Serves as legal advisor to the Governor and other executive officers of the State and state agencies;

Defends the public interest;

Represents the State in legal proceedings; and

Keeps a record of his or her official acts and opinions.

OFFICE OF THE ATTORNEY GENERAL
STATE OF FLORIDA

February 7, 2025

The Honorable Ron DeSantis
Governor of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor DeSantis:

Pursuant to constitutional duties and the statutory requirement that this office periodically publish a report on the Attorney General official opinions, I submit herewith the biennial report of the Attorney General for the two preceding years from January 1, 2023, through December 31, 2024.

This report includes the opinions rendered, an organizational chart, and personnel list. The opinions are alphabetically indexed by subject in the back of the report with a table of constitutional and statutory sections cited in the opinions.

It is an honor to serve the people of Florida with you.

Sincerely,

John Guard
Acting Attorney General

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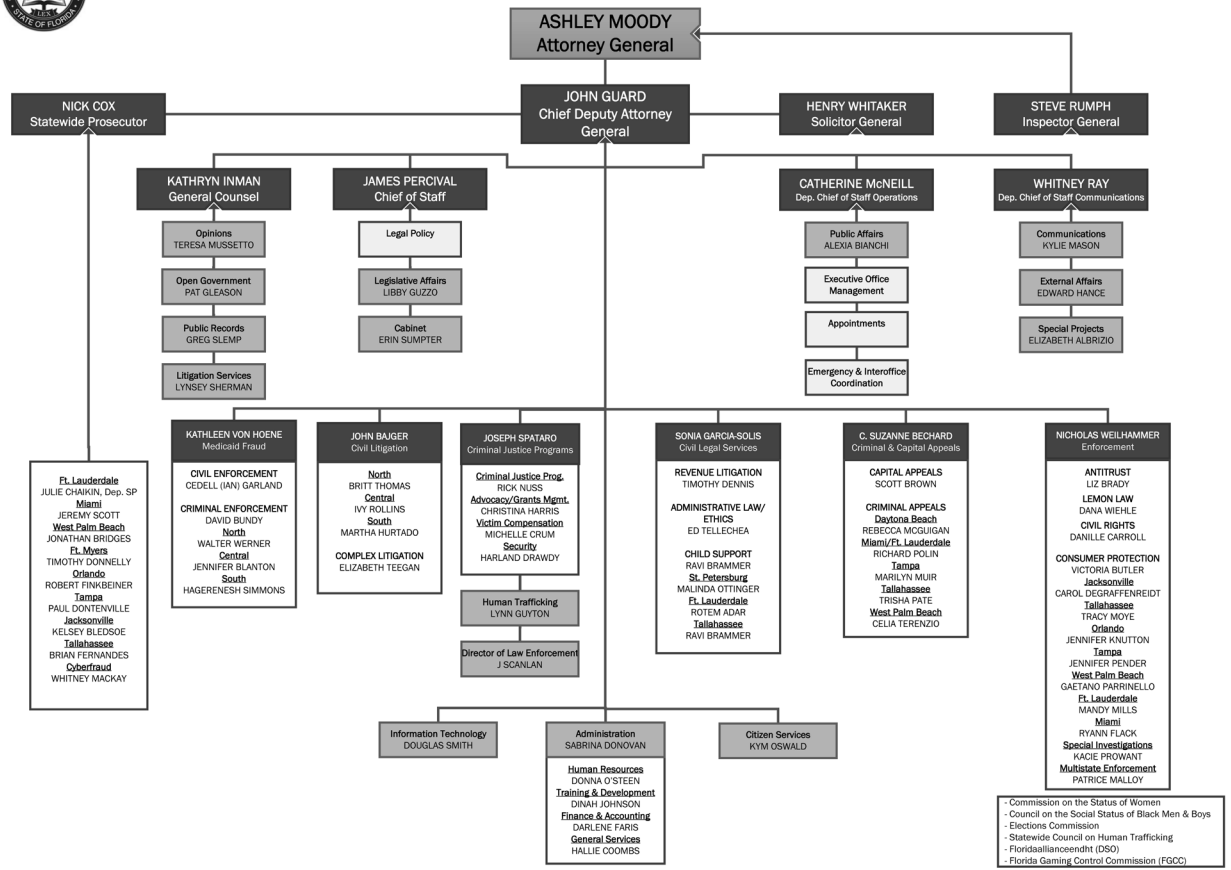
STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL



OFFICE OF THE ATTORNEY GENERAL

(as of December 31, 2024)
The Capitol, Tallahassee, Florida 32399-1050
(850) 245-0140

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DEPARTMENT OF LEGAL AFFAIRS

Statement of Policy Concerning Attorney General Opinions

I. General Nature and Purpose of Opinions

Issuing legal opinions to governmental entities has long been a function of the Office of the Attorney General. Attorney General Opinions serve to provide legal advice on questions of statutory interpretation and can provide guidance to public bodies as an alternative to costly litigation. Opinions of the Attorney General, however, while generally regarded as highly persuasive, are not binding in a court of law. Attorney General Opinions are intended to address only questions of state law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative, or administrative policy.

Attorney General Opinions are not a substitute for the advice and counsel of the attorneys who represent governmental agencies and officials on a day-to-day basis. They should not be sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency's own legal counsel. Nor should an opinion be sought to provide leverage to one side in a dispute between agencies.

Particularly difficult or momentous questions of law should be submitted to the courts for resolution by declaratory judgment. When deemed appropriate, this office will recommend this course of action. Similarly, there may be instances when securing a declaratory statement under the Administrative Procedure Act will be appropriate and will be recommended.

II. Types of Opinions Issued

There are several types of opinions issued by the Attorney General's Office. All legal opinions issued by this office, whether formal or informal, are persuasive authority and not binding.

Formal numbered opinions are signed by the Attorney General and published in the Annual Report of the Attorney General. These opinions address questions of law which are of statewide concern.

This office also issues a large body of informal opinions. Generally these opinions address questions of more limited application. Informal opinions may be signed by the Attorney General or by the drafting assistant attorney general. Those signed by the Attorney General are generally issued to public officials to whom the Attorney General is required to respond. While an official or agency may

request that an opinion be issued as a formal or informal opinion, the determination of the type of opinion issued rests with this office.

III. Persons to Whom Opinions May Be Issued

The responsibility of the Attorney General to provide legal opinions is specified in section 16.01(3), Florida Statutes, which provides:

> **Notwithstanding any other provision of law, [the Attorney General] shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer.**

The statute thus requires the Attorney General to render opinions to "the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate . . . ."

The Attorney General may also issue opinions to "a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision." In addition, the Attorney General is authorized to provide legal opinions to the state attorneys and to the representatives in Congress from this state. §§ 16.08, 16.52(2), Fla. Stat. (2021).

Questions relating to the powers and duties of a public board or commission (or other collegial public body) should be requested by a majority of the members of that body. A request from a board should, therefore, clearly indicate that the opinion is being sought by a majority of its members and not merely by a dissenting member or faction.

IV. When Opinions Will Not Be Issued

Section 16.01(3), Florida Statutes, does not authorize the Attorney General to render opinions to private individuals or entities, whether their requests are submitted directly or through governmental officials. In addition, an opinion request must relate to the requesting officer's own official duties. An Attorney General Opinion will not, therefore, be issued when the requesting party is not among the officers specified in section 16.01(3), Florida Statutes, or when an officer falling within section 16.01(3), Florida Statutes, asks a question not relating to his or her own official duties.

In order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts or on questions requiring a determination of the constitutionality of an existing statute or ordinance.

Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances, or charters rather than the provisions of state law. Instead such requests will usually be referred to the attorney for the local government in question. In addition, when an opinion request is received on a question falling within the statutory jurisdiction of some other state agency, the Attorney General may, in the exercise of his or her discretion, transfer the request to that agency or advise the requesting party to contact the other agency. For example, questions concerning the Code of Ethics for Public Officers and Employees may be referred to the Florida Commission on Ethics; questions arising under the Florida Election Code may be directed to the Division of Elections in the Department of State.

However, as quoted above, section 16.01(3), Florida Statutes, provides for the Attorney General's authority to issue opinions "[n]otwithstanding any other provision of law," thus recognizing the Attorney General's discretion to issue opinions in such instances.

Other circumstances in which the Attorney General may decline to issue an opinion include:

- **questions of a speculative nature;**
- **questions requiring factual determinations;**
- **questions which cannot be resolved due to an irreconcilable conflict in the laws (although the Attorney General may attempt to provide general assistance);**
- **questions of executive, legislative, or administrative policy;**

- **matters involving intergovernmental disputes unless all governmental agencies concerned have joined in the request;**

- **moot questions;**

- **questions involving an interpretation only of local codes, charters, ordinances, or regulations; or**

- **matters where the official or agency has already acted and seeks to justify the action.**

V. Form In Which Request Should Be Submitted

Requests for opinions must be in writing and should be addressed to:

Florida Attorney General
Department of Legal Affairs
The Capitol PL01
Tallahassee, Florida 32399-1050

The request should clearly and concisely state the question of law to be answered. The question should be limited to the actual matter at issue. Sufficient elaboration should be provided so that it is not necessary to infer any aspect of the question or the situation on which it is based. If the question is predicated on a particular set of facts or circumstances, these should be fully set out.

This office attempts to respond to all requests for opinions within three to six months of their receipt in this office. To facilitate responses to opinion requests, this office requires that the attorneys for public entities requesting an opinion provide a memorandum of law with the request. The memorandum should include the opinion of the requesting party's own legal counsel, and a discussion of the legal issues involved, with references to relevant constitutional provisions, statutes, charter provisions, administrative rules, judicial decisions, etc.

Input from other public officials, organizations, or associations representing public officials may be requested. Interested parties may also submit a memorandum of law and other written material or statements for consideration. Any such material will be made a part of the file of the opinion request to which it relates.

VI. Miscellaneous

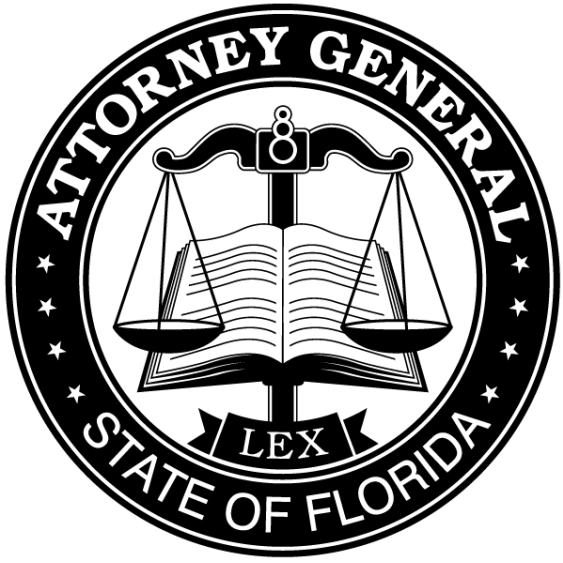
This office provides access to formal Attorney General Opinions through a searchable database on the Attorney General's website at:

MyFloridaLegal.com

Persons who do not have access to the Internet and wish to obtain a copy of a previously issued formal opinion should contact the Citizen Services Unit of the Attorney General's Office. Copies of informal opinions can be obtained from the Opinions Division of the Attorney General's Office.

For questions concerning dual office-holding, in lieu of requesting an opinion, officials may wish to use the informational pamphlet prepared by this office on dual office-holding for public officials. Copies of the pamphlet are available on the Attorney General's website and can be obtained by contacting the Opinions Division of the Attorney General's Office.

In addition, the Attorney General prepares and annually updates the Government-in-the-Sunshine Manual which explains the law under which Florida ensures public access to the meetings and records of state and local government. Copies of this manual are available on the Attorney General's website.



The Capitol
Tallahassee

BIENNIAL REPORT

of the

ATTORNEY GENERAL

State of Florida

January 1, 2023 through December 31, 2024

Opinions - 2023

AGO 2023-01 – April 25, 2023

SECTION 489.103(7)(a)(1), FLORIDA STATUTES – OWNER-BUILDER EXEMPTION – ONE-FAMILY OR TWO-FAMILY RESIDENCES

WHETHER SECTION 489.103(7)(a)(1), FLORIDA STATUTES, PROVIDES AN EXEMPTION FROM BUILDER REQUIREMENTS WHEN THE PERSON SEEKING THE EXEMPTION PLANS TO MAKE IMPROVEMENTS TO A SINGLE UNIT WITHING A BUILDING CONTAINING FOUR INTERCONNECTED UNITS

To: D. Andrew Smith, III, City Attorney, Town of Ponce Inlet

QUESTION:

Does the owner-builder exemption from requirements of chapter 489, part I, which is codified at section 489.103(7)(a)(1), Florida Statutes, apply where a single unit owner seeks to make improvements to an individual dwelling unit in a building containing four such interconnected units?

SUMMARY

Unless and until judicially or legislatively clarified, I conclude that the exemption provided to persons building or improving "farm outbuildings or one-family or two-family residences" owned by such persons and not offered for sale or lease when "acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors" does not apply to owners of individual dwelling units that are part of a single building comprised of four such units.

Background

The Town has received applications from property owners living in buildings that consist of four dwelling units per building. Each applicant seeks an owner-builder exemption that would allow the owner to make improvements to a single unit in the building. Such units are arranged in a row lengthwise across the building (i.e. the front doors all face the same direction); each unit is owned in fee simple ownership; each unit has a private front door, back door, and garage; each unit shares at least one common wall with another unit (interior units have two common walls); and the building has a common roof (i.e., one roof for the whole building). Thus, each residential building contains four individual units, each of which has a separate owner who lives in his or her own unit.[1]

Analysis

Deeming it "necessary in the interest of the public health, safety, and welfare to regulate the construction industry," the Legislature enacted part I of chapter 489, Florida Statutes.[2] Various sections throughout chapter 489 refer to types of dwellings and non-residential buildings. Among these are one-family (or single-family) residence; two-family residence (or duplex); three-family residence; quadruplex housing; townhome; townhouse; condominium unit or cooperative unit; and farm outbuilding.[3]

Section 489.103(7)(a)(1), Florida Statutes, provides an exemption from licensing requirements codified in part I of chapter 489 for property owners acting as their own contractors in building or improving "farm outbuildings or one-family or two-family residences." In pertinent part, it provides:

> This part does not apply to:
>
> (7)(a) Owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors:
>
> 1. When building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed $75,000, on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of any such structure by the owner-builder within 1 year after completion of same creates a presumption that the construction was undertaken for purposes of sale or lease.

The statute also includes a lengthy disclosure statement that the local permitting agency is required to provide to each applicant in connection with an owner's application for an exemption. It reflects that the applicant understands the scope of the exemption and that, if the applicant violates any limitation of the exemption, "the law will presume that [the applicant] built or substantially improved" the residence or farm outbuilding in violation of the exemption. § 489.103(7)(c), Fla. Stat. (2022).

To qualify for the exemption, section 489.103(7)(a)(1) requires that the owner of the subject residence occupy or use, and not offer for sale or lease, the entire one-family or two-family building. The exemption's inapplicability to owners of duplexes where one of the units is leased indicates that the Legislature intended the exemption to apply to a single owner rather than two separate owners of units in a two-unit building.[4]

The Town's question appears to involve applicants who own residential townhomes or townhouse units. A "townhouse" ("[a]lso termed townhome") is defined in Black's Law Dictionary as a "dwelling unit having [usually] two or three stories and often connected to a similar structure by a common wall and (particularly in a planned-unit development) sharing and owning in common the surrounding grounds." Thus, the Town appears to be asking whether a townhouse or townhome unit is included in the Legislature's designation of one-family residence, for purposes of the exemption provided by section 489.103(7)(a)(1). For the following reasons, I conclude that they are not.

Throughout chapter 489, the Legislature opted to refer to different types of structures.[5] In one instance where the Legislature intended its reference to a "single-family" residence to also mean a townhouse, it specifically signaled such intent by adding the expansion word, "including."[6] Section 489.117(4)(d) allows certain persons to undertake the "construction, remodeling, repair, or improvement of single-family residences, *including a townhouse* as defined in the Florida Building Code . . . ." (Emphasis added.) By using the phrase "including a townhouse," the Legislature indicated it intended to expand the meaning of "single-family residence" in that particular provision to include townhouse dwelling units. In addition, this office has confirmed that "single-family dwelling" did not mean "townhouse" in a statute that provided an exception to certain sprinkler system requirements.[7]

In another instance in which the Legislature intended to include townhomes in addition to one-family and two-family residences, it specifically stated such: in contrast to section (7)(a)(1), section (7)(a)(4) provides criteria for an exemption for completing the requirements of a building permit that applies to owners of "a one-family or two-family residence, *townhome*, or an accessory structure of a one-family or two-family residence or *townhome* or an individual residential condominium

unit or cooperative unit." (Emphasis added.) Section (7)(a)(4) further distinguishes itself from section (7)(a)(1) by providing that an owner who qualifies for the exemption under section (7)(a)(4) need not occupy the dwelling or unit for at least 1 year after completion of the project.

Lastly, the Legislature has explicitly expanded the meaning of "residence" where it has intended to do so. In section 489.1402(i), Florida Statutes ("Homeowners' Construction Recovery Fund; definitions"), the Legislature created a unique definition for "residence," specifying that the definition applies to sections 489.140 through 489.144, Florida Statutes. The statute defines "residence" as "a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement." In contrast, the Legislature has not, in section 489.103(7)(a)(1), included language similar to that used in sections 489.103(7)(a)(4), 489.117(4)(d), or 489.1402(i) to explicitly include townhome structures.

Conclusion

Based on the foregoing, unless and until judicially or legislatively clarified, I conclude that the owner-builder exemption provided in section 489.103(7)(a)(1) does not apply to owners of individual dwelling units that are part of a single building comprised of multiple units, each of which is owned by a different owner.

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[1] This background information was provided in the original opinion request and in a subsequent email from D. Andrew Smith, III to Teresa L. Mussetto dated March 9, 2023 (on file with the Office of the Attorney General).

[2] § 489.101, Fla. Stat. (2022).

[3] *See* §§ 489.103, 489.105, 489.113, 489.115, 489.117, 489.503, 489.505, Fla. Stat. (2022).

[4] The interpretation this office set forth in Florida Attorney General Opinion 89-68 (1989) supports this observation. At the time, the statute only applied the exemption to each one- or two-family residence that the owner did not offer "for sale." On that basis, this office opined that the exemption set forth in section 489.103(7), Florida Statutes (1988 Supp.), applied to the "owner of property who builds or improves a two-family residence on such property and lives in one of the units while leasing the other unit." Following the date of that opinion, the Legislature amended the statute to prohibit the owner from offering the qualifying residences

for either "sale or lease." (Emphasis added.)

[5] *See* note 3, *supra*.

[6] *See generally White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 781 (Fla. 2017) (observing the "conventional rule in Florida that the Legislature uses the word 'including' in a statute as a word of expansion, not one of limitation").

[7] Op. Att'y Gen. Fla. 97-89 (1997) ("While a townhouse unit may be used as a single-family dwelling, the structure is that of multiple attached units."); *cf.* § 481.203, Fla. Stat. (2022) (defining—for purposes of part I of chapter 481 only—a "townhouse" as a "single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units," and specifying that each "townhouse shall be considered a separate building . . . .").

AGO 2023-02 – July 21, 2023

SECTIONS 28.246(6) AND 938.29(3), FLORIDA STATUTES – CLERK OF COURT, PROPOSED SALE OF DEBT TO THIRD-PARTY DEBT PURCHASER

WHETHER FLORIDA LAW AUTHORIZES CIRCUIT COURT CLERKS TO SELL COURT-ORDERED DEBTS TO THIRD-PARTY DEBT COLLECTORS

To: W. Timothy Weekley, General Counsel, Santa Rosa County

QUESTIONS:

1. **Under sections 28.246(6) and 938.29(3), Florida Statutes, are circuit court clerks authorized to sell to a debt purchaser court-ordered debts, which such clerk is obligated by statute to collect either outright, through a payment plan, or "by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559"?**

2. **If so, may a judgment debtor's driver's license be reinstated pursuant to section 322.245(5)(b)(1), Florida Statutes, following such sale of the debtor's court-ordered financial obligation?**

SUMMARY

Section 28.246, Florida Statutes, obligates circuit court clerks ("clerks") to collect court costs, fines, and other dispositional assessments. The statute further requires such clerks to refer to a private attorney or collection agent judgment-debtors who do not establish a payment plan or who do not remain current with their payment plans. The statute does not specify that selling the debt to a third-party debt collector is a means of disposing of the debt; therefore, the clerk is not authorized to fulfill the clerk's statutory collection and disbursement obligations in that way. This conclusion makes it unnecessary to answer your second question.

Background

According to your correspondence, the Santa Rosa County Clerk's Office has an in-house compliance department and utilizes collection agents, as authorized by section 28.246(6), Florida Statutes. Despite these efforts, "millions of dollars of debt remain outstanding." The Clerk proposes to collect some payment towards these debts by selling longstanding

financial obligations to a debt purchaser, thereby transferring the indebtedness to a third party. If such transfer is deemed authorized, you ask how this might affect certain debtor rights which, by statute, are dependent upon payment or other statutorily authorized resolution of these outstanding obligations.

Analysis

This office has previously stated that the clerk of the circuit court, although a constitutional officer, possesses only such powers as have been expressly, or by necessary implication, granted by statute.[1] Moreover, "[t]he clerk's authority is entirely statutory, and his official action, to be binding upon others, must be in conformity with the statutes."[2]

Section 28.246, Florida Statutes, specifies both the clerk's obligations and authority to collect and disburse payments a person is obligated to make in accordance with court-ordered debts. The question, then, is whether section 28.246 authorizes the clerk to sell certain uncollected debts to third-party purchasers.

In *State v. Peraza*, the Florida Supreme Court stated that the "starting point for any statutory construction issue is the language of the statute itself—and a determination of whether that language plainly and unambiguously answers the question presented."[3] The Court has also stated, "[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."[4]

Here, section 28.246 plainly lays out both the clerk's obligations and the clerk's authority with respect to collection and disbursement of court-ordered debts. It also requires clerks to report certain information to the Legislature.[5] Section 28.246 states that clerks must "collect court costs, fines, and other dispositional assessments and disburse such in accordance with authorizations and procedures as established by general law."[6] It contains requirements applicable to partial payments and payment plans.[7] Finally, section 28.246(6) mandates, in pertinent part:

> A clerk of court *shall pursue* the *collection of any fees, service charges, fines, court costs, and liens* for the payment of attorney fees and costs pursuant to s. 938.29 *which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559.* In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk . . . must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and

follow any applicable procurement practices.

(Emphasis added.) The statute does not list the sale of such debts to a third-party purchaser as a permissible option.

You refer to section 938.29, which section 28.246(6) cross-references. Section 938.29(3) pertains to debts or liens imposed where a "defendant-recipient was tried or received the services of a public defender, special assistant public defender, office of criminal conflict and civil regional counsel, or appointed private legal counsel, or received due process services after being found indigent for costs." It provides, in part, that the clerk of the circuit court "shall enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debt or lien imposed under this section." The only way that a clerk may accomplish such actions is through the specific provisions of section 28.246(6), which unambiguously apply to the "collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs pursuant to s. 938.29."[8] The phrase "or otherwise dispose," as used in section 938.29, does not suggest that an outright sale of the specified debt is permissible under section 28.246(6).[9]

Conclusion

Based on the foregoing, it is my opinion that, unless and until legislatively or judicially determined otherwise, the Clerk must collect court costs, fines, and other dispositional assessments as specified in section 28.246, Florida Statutes. Because the methods enumerated in that section do not include the sale of such debts to a third-party debt purchaser, the Clerk lacks authority to fulfill applicable statutory collection and disbursement obligations in that manner.

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[1] *See* Ops. Att'y Gen. Fla. 2010-20 (2010); 95-33 (1995); 90-69 (1990); 90-42 (1990); 86-38 (1986); 80-93 (1980).

[2] *Sec. Fin. Co. v. Gentry*, 109 So. 220, 222 (Fla. 1926).

[3] 259 So. 3d 728, 730 (Fla. 2018).

[4] *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)).

[5] § 28.246(1), (3), Fla. Stat. (2022) (requiring reports of total amounts collected; amounts assessed and discharged or converted to community service, to a judgment or lien, or to time served; and collection rates for mandatory and discretionary assessments, among other information).

[6] § 28.246(3), Fla. Stat. (2022).

[7] § 28.246(4), Fla. Stat. (2022).

[8] "When the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way." *Alsop v. Pierce*, 19 So. 2d 799, 805–06 (1944).

[9] Had the Legislature intended sale of the debt as an alternative, it likely would have been explicit in providing for it, rather than relying on the phrase "otherwise dispose" to encompass it. *Cf.* § 663.17(7), Fla. Stat. (2022) (stating, in pertinent part, that a licensed office of an international banking corporation may, "upon an order of a court of competent jurisdiction, *sell*, assign, compromise, or *otherwise dispose* of all bad or doubtful debts held by, and compromise claims against, such corporation, other than deposit claims.") (emphasis added).

AGO 2023-03 – October 2, 2023

ARTICLE I, SECTION 8(a), FLORIDA CONSTITUTION, SECTION 790.001(11), FLORIDA STATUTES – DEFINITION OF "SHORT-BARRELED RIFLE"

WHETHER ATTACHMENT OF A STABLIZING BRACE TO A PISTOL OR HANDGUN RENDERS THE PISTOL OR HANDGUN A "SHORT-BARRELED RIFLE" UNDER FLORIDA LAW

To: Representative Shane Abbott, House of Representatives

QUESTIONS:

Does the definition of "short-barreled rifle" codified at section 790.001(11), Florida Statutes (2022), include a pistol with a stabilizing brace?

SUMMARY:

Unless and until judicially or legislatively clarified, I conclude that the definition of "short-barreled rifle," which the Legislature enacted in 1969, does not include a handgun, such as a pistol, to which a person attaches a stabilizing brace, because the use of such an optional accessory does not change the fundamental characteristics of the handgun.

Background

In your letter, you describe a recent rule the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) proposed, in which it set forth "factoring criteria" to "clarify" how it intends to determine whether a firearm's configuration would be subject to certain regulations.[1] You state that ATF estimates that, under the new rule, "99% of pistols equipped with stabilizing braces will now be deemed subject to National Firearms Act controls." You raise both policy and legal concerns regarding the ATF's rule.[2]

Although the ATF's proposed rule and other statements of the federal government concerning specific firearms prompted your request, I understand that your request specifically seeks an opinion concerning the definition of "short-barreled rifle," as codified in section 790.001(11), Florida Statutes (2022). As such, this opinion does not address the federal government's rule or the policy on which it based the rule, but instead analyzes the meaning of "short-barreled rifle" under Florida law.

Analysis

The Legislature based the various provisions of chapter 790 ("Weapons and Firearms") on article 1, section 8(a) of the Florida Constitution, which states, in part, that "the right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Based on this provision, the Legislature defined "short-barreled rifle" as "a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches."[3] The Legislature then declared it "unlawful for any person to own or have in his or her care, custody, possession, or control any short-barreled rifle … which is, or may readily be made, operable."[4]

When interpreting a statute, courts first consider the entire text of the statute and analyze its plain meaning.[5] Courts consider statutory provisions together when such provisions are part of the same statutory scheme.[6] When necessary, the plain and ordinary meaning of words can be ascertained by reference to a dictionary.[7]

Both the plain language of the terms "short-barreled rifle" and "handgun" and consideration of the terms *in pari materia* with other terms and provisions of chapter 790 lead to the conclusion that chapter 790 regards a rifle as fundamentally distinct from a handgun, such as a pistol or revolver. A rifle refers to a firearm that has a rifled bore and is intended to be fired from the shoulder.[8] In contrast, the Legislature recently defined "handgun" to mean "a firearm capable of being carried and used by one hand, such as a pistol or revolver."[9]

The definition of "short-barreled rifle" includes a measurement for the maximum length of the barrel and overall length of the firearm; however, the Legislature broadly defined "handgun" as *any* firearm that can be carried or used with *one* hand, regardless of the length of its barrel. The distinction between the two definitions—one of which contains specific measurements and the other of which describes the manner of use—indicates the Legislature regards the terms as mutually exclusive. Analysis of the provisions of chapter 790 verifies that the two terms are not interchangeable: section 790.221, as noted above, prohibits the care, custody, possession, or control any short-barreled rifle; in contrast, a handgun is not prohibited, but the Legislature has established various provisions applicable to its use.[10]

A stabilizing brace is an attachment that, when added as designed to the rear of a firearm, enables a person to fire the firearm from his or her shoulder. Attaching a stabilizing brace to a handgun only affects the manner of *use* in which the person using the firearm will engage: it does not affect the structural characteristics or integral nature of the handgun as commonly understood. Concluding that the addition of a stabilizing

brace to a handgun would alter the fundamental characteristics of the handgun to the extent that it must be recategorized would ignore the purpose for use of a brace, as a brace can only be used with a *handgun* because it exists to enable a person to continue to use the handgun as the definition contemplates: with one hand. A person's choice to use a brace does not change the fundamental nature of the firearm with which the person uses it; rather, using a brace simply enables a person to hold the handgun with one hand.

Furthermore, concluding that the attachment of a brace results in recategorizing the firearm would disregard the Legislature's clear intent to define "short-barreled rifle" in a specific manner. The Second District Court of Appeal emphasized the specificity of the definition of "short-barreled rifle," and the narrow nature of considering a type of firearm as such a rifle, by holding that the definition does not contemplate "another type of weapon" such as a "common handgun" made "from *rifle parts*."[11] The court stated that the definition refers to "a weapon which in its essence is an integral, operable rifle, as the term rifle is commonly understood … whether from the shoulder or as a common hand gun."[12] Concluding that a handgun could become a short-barreled rifle by attaching a stabilizing brace would cause us to disregard the essence a rifle, which, in its "integral, operable" form, means a firearm with a rifled bore that is generally fired from a person's shoulder.

This analysis is also consistent with the Supreme Court of Florida's analytical model in *Florida v. Weeks*, in which the court concluded that determining whether a firearm was a "replica" of an "antique firearm" under section 790.001 depends on the characteristics and functioning of the type of firing system.[13] The court emphasized that understanding the firing system was critical because the system is the distinctive feature of the firearm. In this regard, the court's analysis is consistent with the Second District Court of Appeal's focus on the integral, operable nature of the firearm as being critical to determining its essence. Here, the distinctive features of the essence of a handgun and a short-barreled rifle are simple: a handgun, by definition, can be fired with only one hand and, in contrast, a rifle is designed with the intention that a person will fire it from his or her shoulder, due to the length of its stock. Opting to use a stabilizing brace with a handgun does not change its fundamental characteristics.

Conclusion

Based on the foregoing, unless and until judicially or legislatively clarified, I conclude that neither section 790.001 nor section 790.221, Florida Statutes, prohibit a person from using a handgun with a stabilizing brace. The various definitions of distinct types of firearms codified at section 790.001, Florida Statutes, are based on the fundamental design and operational characteristics of each firearm. Therefore, attaching such a brace does not result in a redesign of the

firearm and does not result in a different type of functionality of the firearm; instead, it only assists with the use of the firearm.

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[1] Factoring Criteria for Firearms with Attached "Stabilizing Braces," 88 Fed. Reg. 6,478 (Jan. 31, 2023).

[2] In your request, you note this Office's participation in litigation challenging the ATF's rule. *See Firearms Regulatory Accountability Coalition, Inc. and States of West Virginia, North Dakota, et al. v. Merrick B. Garland, et al.*, No. 1:23-cv-00024 (D.N.D. filed Feb. 9, 2023).

[3] § 790.001(11), Fla. Stat. (2022). In 2023, the Legislature enacted and the Governor signed H.B. 543, which resulted in the renumbering of definitions in section 790.001, such that the definition of "short-barreled rifle" has since been codified as subsection (16) of section 790.001.

[4] § 790.221(1), Fla. Stat. (2022). The statute does not apply to antique firearms or firearms that are lawfully owned and possessed under provisions of federal law. *Id.*

[5] *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018).

[6] *Bank of New York Mellon v. Glenville*, 252 So.3d 1120, 1128 (Fla. 2018) (considering two statutes together because "they are *in pari materia*, 'in the same matter'" and citing *Fla. State Racing Comm'n v. McLaughlin*, 102 So. 2d 574, 575-76 (Fla. 1958)).

[7] *Seagrave v. State*, 802 So. 2d 281, 286 (Fla. 2001).

[8] Webster's Third New International Dictionary 1954 (Philip B. Gove ed., 2002). A person generally must use a rifle against his or her shoulder because the rifle has a buttstock, which is the stock of a firearm in the rear of the breech mechanism. *Id.* at 306. A stock is "the portion of the weapon behind the trigger and firing mechanism and extends rearward towards the shooter." *Gun Owners of America, Inc. v. Garland*, 19 F.4th 890, 897 n.1 (6th Cir. 2021).

[9] § 790.001(10), Fla. Stat. (2023) (as amended by 2023 Fla. Sess. Law Serv. Ch. 2023-17 (West) (hereinafter, "H.B. 543")). The Legislature's distinct definition of "short-barreled shotgun" also supports the conclusion that the Legislature carefully categorizes the weapons to which chapter 790 applies: section 790.001(17) (2023) defines "short-barreled shotgun" as "a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun … if such weapon as modified has an overall length of less than 26 inches."

[10] *See* §§ 790.06(12)(a), 790.25(2)(m), Fla. Stat. (2023) (as amended by H.B. 543).

[11] *State of Florida v. Astore*, 258 So. 2d 33, 34 (2d DCA 1972) (noting that the word "parts" does not appear in the definition and that the definition does not include "weapons made from individual, non-integrated rifle parts, if such weapons are not otherwise rifles.").

[12] *Id.*

[13] 202 So. 3d 1 (Fla. 2016).

AGO 2023-04 – October 30, 2023

ARTICLE I, SECTION 24(b), FLORIDA CONSTITUTION, SECTIONS 286.011(1) AND 1004.098, FLORIDA STATUTES – USE OF THIRD PARTY TO RANK CANDIDATES ANONYMOUSLY FOR CONSIDERATION AT A FUTURE MEETING

WHETHER THE SUNSHINE LAW ALLOWS A STATE UNIVERSITY PRESIDENTIAL SEARCH ADVISORY ENTITY'S USE OF ANONYMOUS SURVEY RESULTS AND SUMMARIES OF SUCH RESULTS TO SUBSTITUTE FOR DISCUSSIONS AT MEETINGS

To: Rachel Kamoutsas, General Counsel, Board of Governors, State University System of Florida

QUESTION:

Does Florida's Government in the Sunshine Law permit members of a university presidential search and selection committee to use a search firm to survey the committee's members anonymously and subsequently use the survey results to "summarize preferences" and rank the applicants for consideration at a future committee meeting?[1]

SUMMARY:

Unless and until judicially or legislatively determined otherwise, I conclude that the Government in the Sunshine Law (hereinafter, "Sunshine Law") applies to a university presidential search and selection committee and that the Law does not permit such members to use a search firm to anonymously rank candidates to affect which candidates the committee will consider at a future meeting. While an exemption is available for portions of certain meetings of the search committee, this exemption applies only when the committee fulfills all criteria of the exemption, such as recording the entire portion of the exempt meeting.[2]

Background

You indicate that the Board of Governors currently intends to modify Board of Governors Regulation 1.002, which sets forth the process for each Board of Trustees that selects a president of a state university or Florida College System institution, subject to confirmation by the Board of Governors. The regulation currently states that a Board of Trustees must conduct a search and selection process to identify a candidate. As part of that process, the Chair of the Board of Trustees, in consultation with the Chair of the Board of Governors, appoints a search committee

of no more than 15 members.[3] Among other things, the search committee is responsible for "vetting applicants" and "recommending an unranked list of applicants who are qualified."[4] The Board of Trustees then selects a "final qualified candidate . . . as president-elect for recommendation to the Board of Governors for confirmation."[5]

While the regulation states that a Board of Trustees and its search committee may use the services of a search firm or consultant for the search and selection process, it lacks a specific procedure for ensuring compliance with the Sunshine Law.[6] In your request, you state that, in some instances, search committees have used search firms to "conduct a preference survey from committee members, outside of a meeting and off the record, in order to rank and narrow the pool of applicants, and streamline the discussion of applicants, at a future meeting." You describe a "survey process" wherein committee members anonymously rank applicants, after which the search firm "privately" collects the rankings, determines which candidates are the top candidates, and presents the order of ranked applicants at a future meeting. You question whether such a practice is consistent with the Sunshine Law.

Legal Framework

The Florida Constitution states as follows:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public.[7]

These provisions give Floridians a right of access to governmental proceedings. For decades, courts have recognized that meetings of public bodies must occur in public, as such meetings should be "a marketplace of ideas."[8] For this reason, the Sunshine Law applies to any gathering of two or more members of the same board to discuss any matter that might foreseeably come to that board for action.[9]

Advisory Boards

The Sunshine Law may apply to advisory boards or committees that a public agency creates. The primary test to employ when determining whether the Sunshine Law applies to such boards is whether the board has been delegated "decision-making authority," or only possesses mere "information-gathering or fact-finding authority."[10] Importantly, the power to make recommendations may qualify as decision-making authority even though the entity delegating that authority has the power to reject the recommendation.[11] In 2021, for example, the Second District Court of Appeal determined that textbook evaluation

committees, which a superintendent had created pursuant to school board policy concerning recommendations of textbooks, possessed sufficient decision-making authority even though only the school board could make the final decision to approve textbooks.[12] While this broad approach to the Sunshine Law may seem counter-intuitive, courts have concluded that "the potential for rubber-stamping" and "circumvention of the Sunshine Law" may justify treating a body authorized to make recommendations as if it has received a delegation.[13]

Exemptions

The Legislature is authorized to establish, by general law passed by two-thirds vote of each house, exemptions from the Sunshine Law's open meeting requirements.[14] Any such legislation must state with specificity the public necessity that justifies the exemption, which must not be broader than necessary to accomplish its stated purpose.[15] Pursuant to the fundamental principle that the Sunshine Law requires openness, each exemption expires after five years unless the Legislature enacts an extension of it.[16]

To apply an exemption and hold a meeting outside the public domain, the entity holding the meeting must comply with *all* conditions specified in the exemption.[17] When an exemption does not apply due to lack of compliance with its conditions, the requirement to hold meetings in a public domain and pursuant to the requirements of the Sunshine Law remains effective: when compliance with an exemption is lacking, boards must proceed as though the exemption does not exist.

Evasive Devices

Courts consistently interpret the Sunshine Law to prohibit "evasive devices" designed to circumvent open government.[18] In *Blackford v. School Board of Orange County*, for example, the Fifth District Court of Appeal held that the Sunshine Law applied to a series of meetings between a school superintendent and individual members of a school board because the meetings occurred in succession in order to avoid public deliberation.[19] The single meetings, the court held, amounted to "de facto meetings" of the school board.[20] The court recognized that the school board had not engaged in a "willful violation" of the Sunshine Law, but rather "an attempt [n]ot to violate it"; regardless of this lack of intent, the court held the board violated the Sunshine Law because the individual discussions resulted in de facto meetings by two or more members of the board at which official action was taken.[21] Similarly, in *Leach-Wells v. City of Bradenton*, the Second District Court of Appeal held that a committee's task to "short-list" vendors' responses to a request for proposal was a meeting to which the Sunshine Law applied.[22] The court recognized that the committee did not intend to evade the Sunshine Law and that committee members "never discussed [the] task with one another and never held any secret meetings" but

that, because committee members' individual evaluations were tallied and acted upon, the action of winnowing down proposals should have occurred at a public meeting under the Sunshine Law.[23]

Analysis

The Sunshine Law applies to the search committees that you describe in your request for an opinion. The Board of Governors' regulations provide as much. For example, they require a search firm hired by such a committee to "demonstrate its ability to become familiar . . . with Florida's Sunshine laws."[24] Moreover, according to the regulations, search committees evaluate various candidates for leadership positions and recommend, after "vetting" each applicant, the qualified applicants the board should consider.[25] Under the authorities discussed above, this process renders search committees an advisory committee subject to the Sunshine Law.

Similarly, because the Sunshine Law applies to matters that could foreseeably come before the decision-making body, it applies to a search committee's deliberations regarding the ranking of candidates. The penultimate action of vetting and ranking candidates or options foreseeably, and likely inevitably, leads directly to the search committee's ultimate recommendations of certain candidates. Such a conclusion is consistent with how courts have treated analogous issues. For example, the Fourth District Court of Appeal held in *Transparency for Florida, Inc. v. City of Port St. Lucie* that the Sunshine Law applied when the city attorney polled city council members about a severance agreement "leading up to [a] meeting" at which members reached a decision to approve the agreement.[26] The court explained that the frustration of all evasive devices "can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion … relates to any matter on which foreseeable action will be taken."[27] Similarly, the Third District Court of Appeal held in 1997 that the Sunshine Law applied to a purchasing director's act of "weed[ing] through the various proposals, to determine which were acceptable and rank them accordingly."[28] This conclusion is consistent with *Leach-Wells*, in which the Second District Court of Appeal held that the task of creating a short list of vendors' proposals was an action to which the Sunshine Law applied, as it led to the ultimate decision.[29]

It follows from the above that the process you describe in your request violates the Sunshine Law. Specifically, you describe a survey process wherein committee members anonymously rank applicants by providing their feedback to a search firm. The search firm then collects the rankings and presents the order of ranked applicants at a meeting in order to eliminate or curtail discussion at the meeting. As a result, committee members do not disclose to one another their preferences for candidates in response to the survey. This process is inconsistent with

the Sunshine Law because it uses an evasive device to circumvent public deliberation. In fact, it appears that the very purpose of the process you describe is to inject secrecy into the deliberative process.

To be sure, section 1004.098, Florida Statutes, which the Legislature enacted in 2022, contains an exemption that permits state universities and Florida College System institutions to hold closed-door meetings in limited circumstances, pursuant to certain conditions. With regard to the open meetings requirements of the Sunshine Law, the statute provides that any portion of a meeting held for identifying or vetting applicants for the position of president of such university or institution is exempt from the requirement to hold a meeting open to the public.[30] But the statute specifically requires recording any closed portion of any such meeting and provides an exemption from public records disclosure requirements for the recording.[31] In other words, the statute *assumes* discussion will occur when a search committee begins to consider applicants and *treats* that discussion as subject to the Sunshine Law. It merely provides that such discussion may occur outside public view so long as it occurs on the record.[32]

Conclusion

Based on the foregoing, unless and until judicially or legislatively determined otherwise, I conclude that the acts of members of a presidential search and selection committee evaluating and ranking candidates are actions to which the Sunshine Law applies. Florida's Government in the Sunshine Law does not permit members to use anonymous communications with an intermediary search firm about their preferences for certain candidates when such communications are subject to the Sunshine Law and the search firm gathers such input in lieu of the members' discussion. Overall, in the absence of an applicable exemption, the Sunshine Law prohibits ranking that occurs by way of anonymously surveying and organizing members' input, even if those rankings are not a final vote and are only used to replace or limit discussion at a future meeting.

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[1] You included the Office of the Attorney General Certification of Counsel form with your request for opinion. With the form, you explained that an Inspector General investigation pertaining to possible anomalies in the search process for a university president was ongoing at the time of your request. You do not request an opinion related to that investigation.

[2] § 1004.098, Fla. Stat. (2023) ("Applicants for president of a state university or Florida College System institution; public records exemption; public meetings exemption").

[3] Florida Board of Governors Regulation 1.002(1)(a), Presidential Search and Selection (2023).

[4] Florida Board of Governors Regulation 1.002(1)(c), Presidential Search and Selection (2023).

[5] Florida Board of Governors Regulation 1.002(1)(d)(iii), Presidential Search and Selection (2023).

[6] Florida Board of Governors Regulation 1.002(1)(b)(ii) states that, after the search committee is formed, a Board of Trustees may retain the services of an executive search firm or consultant and that such firm or consultant should be familiar, or demonstrate its ability to become familiar, with "Florida's Sunshine laws in chapters 119 and 286, Florida Statutes." The regulation generally indicates that the search firm or consultant may provide "assistance" to the search committee in its performance of certain responsibilities. Florida Board of Governors Regulation 1.002(1)(c), (d), Presidential Search and Selection (2023).

[7] Art. I, § 24(b), Fla. Const.; *see also* § 286.011(1), Fla. Stat. (2023).

[8] *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 475 (Fla. 1974); *see also Transparency for Fla. v. City of Port St. Lucie*, 240 So. 3d 780, 784 (Fla. 4th DCA 2018) (stating that the Sunshine Law "aims to prevent '[t]he evil of closed door operation of government without permitting public scrutiny and participation'" (quoting *City of Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971))).

[9] Op. Att'y Gen. Fla. 96-35 (1996) (explaining that a city manager could not ask each commissioner to state his or her position on a specific matter that "will foreseeably be considered by the commission at a public meeting").

[10] *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010).

[11] *Sarasota Citizens*, 48 So. 3d at 762; *see also id.* at 763 (explaining that the critical inquiry concerning whether a delegation is one of decision-making authority is "the nature of the act performed" rather than "the make-up of the committee or the proximity of the act to the final decision" (quoting *Wood v. Marston*, 442 So. 2d 934, 939 (Fla. 1983))).

[12] *Fla. Citizens All., Inc. v. Sch. Bd. of Collier Cnty.*, 328 So. 3d 22 (Fla. 2d DCA 2021).

[13] *Sarasota Citizens*, 48 So. 3d at 762 (quoting *Wood*, 442 So. 2d at 939–40).

[14] Article I, Section 24(c), Fla. Const.

[15] *Id.*

[16] § 286.0111, Fla. Stat. (declaring applicable the provisions codified at section 119.15, Florida Statutes, concerning legislative review of exemptions on a periodic basis).

[17] *Zorc v. City of Vero Beach*, 772 So. 2d 891, 896–97 (Fla. 4th DCA 1998) (discussing *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99 (Fla. 1st DCA 1996), and Florida Attorney General Opinions 98-06 (1998) and 95-06 (1995)).

[18] *Gradison*, 296 So. 2d at 477 (stating the Sunshine Law is to "be construed so as to frustrate all evasive devices"); *see also Canney v. Bd. of Pub. Instruction of Alachua Cnty.*, 278 So. 2d 260, 264 (Fla. 1973) (stating that boards and agencies had "obviously attempted to read exceptions into the Government in the Sunshine Law which do not exist" and that, regardless of "sincere" intentions, "such boards and agencies should not be allowed to circumvent the plain provisions of the statute").

[19] 375 So. 2d 578 (Fla. 5th DCA 1979).

[20] *Id.* at 580–81 (explaining that the court's "duty is to interpret this law as it is written and, if possible, do so in a manner to prevent its circumvention" (quoting *Berns*, 245 So. 2d at 40)).

[21] *Id.* at 580–81 (acknowledging that the superintendent insisted that he only obtained general feedback and denied telling any one board member the opinions of any of the others but holding that the discussions were "in contravention of the Sunshine Law").

[22] 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999).

[23] *Id.*

[24] Board of Governors Regulation 1.002(1)(b)(ii), Presidential Search and Selection (2023).

[25] Board of Governors Regulation 1.002(1)(c), Presidential Search and Selection (2023).

[26] 240 So. 3d 780, 785 (Fla. 4th DCA 2018).

[27] *Id.* at 784 (quoting *Gradison*, 296 So. 2d at 477).

[28] *Silver Express Co. v. Dist. Bd. of Lower Tribunal Trs.*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997).

[29] 734 So. 2d at 1171; *accord Wood*, 442 So. 2d at 938 (stating that the rejection of certain candidates was a policy-based, decision-making function to which the Sunshine Law applies).

[30] § 1004.098, Fla. Stat. (2023).

[31] § 1004.098(2)(b), Fla. Stat. (2023).

[32] § 1004.098(2)(a), (b), Fla. Stat. (2023) (discussing "[a]ny portion of a meeting held for the purpose of identifying or vetting applicants").

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CITATOR

CITATOR TO FLORIDA CONSTITUTION, FLORIDA STATUTES, AND LAWS OF FLORIDA CONSTRUED IN OPINIONS RENDERED FROM JANUARY 1, 2023 THROUGH DECEMBER 31, 2024

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