

Overview of Open Meetings and Public Records Laws for Advisory Councils

Kelly Samek, Senior Assistant
General Counsel, Florida
Department of Environmental
Protection

Introduction

- Brief overview of the salient points of Chapters 119 and 286, Florida Statutes
- Source: Government-in-the-Sunshine Manual, Office of the Attorney General

Open Meetings Law

- From Chapter 286, Florida Statutes, known as The Government in 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”

Open Meetings Law

- Extends to the discussions and deliberations as well as the formal action taken
- No requirement that a quorum be present

Open Meetings Law

- Applies to public collegial bodies, whether elected or appointed
- Applies to advisory boards, whether or not their recommendations are binding upon the entities that create them

Open Meetings Law

- When a staff member is appointed to a board or official, the staff member loses his or her identity as staff while working on the committee and the Sunshine Law applies to the committee

Open Meetings Law

- It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law

Open Meetings Law

- Applies to any gathering, formal or casual, of two or more members of the same council to discuss some matter that may foreseeably come before the council for action

Open Meetings Law: Telephone Communication

- Applies to the deliberations and discussions between two or more council members on some matter that foreseeably will come before that council for action, therefore, it includes discussions made by telephone

Open Meetings Law: Written Correspondence

- **Interaction** is subject to the Sunshine Law, therefore, circulating written materials for purely informational purposes is OK, but soliciting and exchanging comments on those materials outside of a properly noticed public meeting is not OK

Open Meetings Law: Email or Other Computer Communication

- Similarly, a one-way e-mail communication from one member to another, when it does not result in the exchange of members' comments or responses on subjects requiring council action, is OK

Open Meetings Law: Email or Other Computer Communication

- But email communications are public records and must be maintained by the records custodian for public inspection and copying

Open Meetings Law: Delegation of Authority

- Case law has determined that "The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego"

Open Meetings Law: Delegation of Authority

- When an individual council member or subset of council members conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine
- On the other hand, if a board member or designee has been authorized only to gather information or function as a fact-finder, the Sunshine Law does not apply

Open Meetings Law: Use of Nonmembers as Liaisons

- Applies to meetings between a board member and an individual who is not a member of the board when that individual is being used as a liaison between, or to conduct a de facto meeting of, board members

Voting Requirements

- Cannot abstain from voting unless there is, or appears there is, a possible conflict of interest under the provisions of Chapter 112, Florida Statutes
- However, a conflict of interest does not require you to abstain, only to disclose the interest within 15 days of the vote

Public Records Law

- Chapter 119, Florida Statutes
- Includes: all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency

Public Records Law: Handwritten Notes

- Florida Supreme Court has said law applies to all materials made or received by an agency in connection with official business that are used to perpetuate, communicate or formalize knowledge
- Notes to yourself which are designed for your own personal use in remembering certain things = not subject to disclosure under the law

Public Records Law: Handwritten Notes

- Notes can constitute public records if they are intended to communicate, perpetuate or formalize knowledge of some type
- Example: handwritten notes prepared by a council member regarding research on a matter under discussion by the council and used at a workshop meeting as a reference in discussing the member's position = public records subject to disclosure

Conclusion

- Further information available at:
<http://myfloridalegal.com/sun.nsf/manual>
- When in doubt, consult with assigned staff