

The Sunshine Law

A Citizen's Sword

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Questions Presented

- What is the Sunshine Law?
- Where does it come from?
- To whom does it apply?
- What does it require?
- What are the penalties for violating it?
- Who enforces it?
- Are there any other tools?

What is the Sunshine Law?

The Sunshine Law establishes a basic right of access to most meetings of state and local governmental agencies or authorities.

There are three basic requirements of the Sunshine Law:

- (1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meetings must be taken and promptly recorded.

From Where Does it Come?

- Both State statute and the Florida Constitution. *Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012, 1021 (Fla. 2000), noting that the Sunshine Law “is of both constitutional and statutory dimension.”
- Florida's Government-in-the-Sunshine Law was enacted in 1967. Today, the Sunshine Law can be found in Chapter 286 of the Florida Statutes.

To Whom Does it Apply?

- “[A]ny board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision.” *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).
- Virtually all “collegial public bodies,” with the exception of the judiciary and the state legislature.
- State, regional, and local government agencies.
- Both elected and appointed bodies. AGO 73-223.

To Whom Does it Apply?

- The intent is to extend application of the SS law to bind “every ... political subdivision over which [the State] has dominion and control.” *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).
 - Civil service boards, redevelopment task force, boards of adjustment, beautification committee, board of governors of municipal country club, regional sewer facility board, dentistry regulatory boards, mosquito, control district board.
 - COJ, COJB, COAB, CONB City Councils, JEA, JPA.

To Whom Does it NOT Apply?

- Advisory committees established for fact-finding only. *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985).
- Private organizations, unless delegated the authority to perform some governmental function. *See e.g., Inf. Op. to Fasano*, June 7, 1996.
 - HOA, political party meetings.
- Receiving money from the government is not enough to bring an agency under the SS law. *Stanfield v. Salvation Army*, 695 So. 2d 501 (Fla. 5th DCA 1997).
- Federal agencies operating within the state. AGO 71-191. *See also Cincinnati Gas and Electric Company v. General Electric Company*, 854 F.2d 900 (6th Cir. 1988), cert. denied, 109 S.Ct. 1171 (1989).
- The judiciary, but it *does* apply to quasi-judicial meetings. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

But What Kind of Meetings?

- Not all meetings of these boards and agencies are subject to the SS law.
- The SS law is applicable to any gathering, whether formal or casual
 - of two or more members
 - of the same board or commission
 - to discuss some matter on which foreseeable action will be taken by the public board or commission.
Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973).

What if There is no “Meeting?”

- One-way communications
 - When they do not result in the exchange of comments or responses, does not constitute a “meeting.”
 - If, however, the communication is circulated among board members for comments with such comments being provided to other members, that is a “meeting.” AGO 90-03.
- Use of liaisons
 - When an individual is being used as a liaison between agency members, or to conduct a de facto meeting of, board members, that is a meeting. AGO 74-47.
- Use of technology
 - Discussions conducted via telephones, computers, or other electronic means are not exempted from the SS law. This includes “tweeting” and facebook posts.

What Does the SS Law Require?

There are three basic requirements of the Sunshine Law:

- (1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given;
and
- (3) minutes of the meetings must be taken and promptly recorded.

What Makes a Meeting “Open to the Public?”

- The Obvious

- SS law prohibits agencies from holding their meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access to such a facility. F.S. 286.011(6).
- *F.S. 286.26*, relating to accessibility of public meetings to the physically handicapped.

What Makes a Meeting “Open to the Public?”

- The Not So Obvious
 - No chilling effect., i.e. no restaurants, private homes, etc..
 - No inaudible discussions. AGO 71-159.
 - An agency may not require persons wishing to attend public meetings to provide identification as a condition of attendance. AGO 05-13.

What Makes a Meeting “Open to the Public?”

- The Miscellaneous
 - Must provide enough space.
 - May not exclude certain members of the public.
- The mere fact that a meeting is held in a public room does not make it public within the meaning of the SS Law. *Bigelow v. Howze*, 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974). For a meeting to be “public,” the public must be given advance notice and provided with a reasonable opportunity to attend. *Id.*

What Constitutes Reasonable Notice?

- A vital element of the SS law is “reasonable notice.” In order for a public meeting to be in essence “public,” reasonable notice of the meeting must be given. *Hough v. Stembridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973).
- **The type of notice that must be given is variable,** however, depending on the facts of the situation and the board involved. In each case, however, an agency must give **notice at such time and in such a manner as will enable the media and the general public to attend the meeting.** AGOs 04-44, 80-78 and 73-170. *And See Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991), citing AGO 73-170.

What Constitutes Reasonable Notice?

- The purpose of the notice requirement is to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wish. *Lyon v. Lake County*, 765 So. 2d 785, 790 (Fla. 5th DCA 2000).
- “Governmental bodies who hold unnoticed meetings do so at their peril.” *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

Outside Requirements

- Additional elements may be required by other statutes, codes or ordinances.
 - APA
 - Sunshine Law Compliance Ordinance

Is an Agenda Required?

- AGO recommends an agenda, however, the courts have held that the SS law does not *mandate* that an agency provide notice of each item to be discussed via a published agenda. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973).
- However, other statutes, codes or ordinances may impose such a requirement and agencies subject to those provisions must follow them. (SS Compliance Ordinance.)

What Minutes Must be Recorded?

- The SS law specifically requires that minutes of a meeting of a public board or commission be promptly recorded and open to public inspection. F.S. 286.011.
- The SS law does not require that meetings be transcribed or tape recorded. AGO 82-47, *State v. Adams*, No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992).
- Once made, such minutes are public records.

What Happens if the SS Law is Violated?

- Criminal Penalties
 - Any official who *knowingly violates the* SS Law is guilty of a misdemeanor of the second degree. F.S. 286.011(3)(b),
- Removal From Office
 - F.S. 112.52(1).

What Happens When the SS Law is Violated?

- The mere showing that the law has been violated constitutes “irreparable public injury.” *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).
- Void ab initio
 - The SS law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.
 - The courts have held that action taken in violation of the law is void *ab initio*. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).
- No intent is necessary BUT SS law violations “can be cured by independent, final action completely in the Sunshine.” *Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002).

Attorney's Fees

- Reasonable attorney's fees will be assessed against a board or commission found to have violated the SS Law. F.S. 286.011(4).
- But, reasonable attorney's fees may be assessed *against the individual filing an action* to enforce the provisions of F.S. 286.011, if the court finds that it was filed in bad faith or was frivolous. F.S. 286.011(4).

Who Enforces It?

- The circuit courts have jurisdiction to issue injunctions upon application **by any citizen of this state.**



Are there Any Other Tools?

- The Public Records Law-F.S. 119.011
 - All public records are open for public inspection unless the Legislature has exempted them from disclosure.
Wait v. Florida Power & Light Company, 372 So.2d 420 (Fla. 1979).

Public Records Law

- What materials are public records?
 - “all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.”
Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633, 640 (Fla. 1980).
 - Documents, maps, tapes, photos, sound recordings, emails, data processing software, etc..

Public Records Law

- Whose records may I get?
 - Any “agency.”
 - Any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other unit of government created or established by law. F.S. 119.011(2).

Public Records Law

- What does the agency have to do?
 - “[P]ermit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.” F.S. 119.07(1)(a).

Public Records Law

- What does the agency NOT have to do?
 - Answer questions about the records.
 - Create new records.
 - Reformat its records.
 - Respond immediately.
 - PR law allows a “limited reasonable time” for the custodian to retrieve the record and delete those portions which are exempt.

Public Records Law

- What do I have to do to get the records?
 - Any person can get them.
 - No special or legitimate interest is necessary, motivation is immaterial. *Curry v. State*, 811 So.2d 736, 742 (Fla. 4th DCA 2002).
 - Do not have to disclose your name, unless the custodian is required by law to receive it.
 - Does not even have to be in writing.
 - Must sufficiently identify the records desired.
 - Do have to pay a “reasonable” charge, i.e. up to \$1.00/page.
 - Cannot charge for a request to listen to a tape, or read a document, only to copy.

Public Records Law

- Can the agency refuse to produce the item?
 - Yes, but they must state the basis for the refusal.
 - Exemption.
 - Requestor's refusal to pay reasonable fee.
 - Someone else's right of privacy is NOT a legitimate basis for refusal, that is not for the custodian to decide.

Public Records Law

- What can I do if refused a record?
 - Bring a civil action against the agency to enforce the terms of the PR law. *Radford v. Brock*, 914 So.2d 1066 (Fla. 2d DCA 2005).
 - These actions are entitled to an immediate hearing and take priority over other pending cases. *Salvador v. Fennelly*, 593 So.2d 1091 (Fla. 4th DCA 1992).
 - A public officer who knowingly violates the PR law is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree. *State v. Webb*, 786 So.2d (Fla. 1st DCA 2001).
 - Unreasonable and excessive delay may be a violation.
 - If a violation is found, the court shall assess and award against the agency responsible the reasonable attorney's fees. *Smith v. Williams, P.A. v. West Coast Regional Water Supply Authority*, 640 So.2d 216 (Fla. 2d DCA 1994).

Our Local Gov't and the Sunshine Law and Public Records Law

- “Council admits meeting ‘mistakes’” FTU, 6/13/07
- “Do you know when and where your City Council is meeting?” FTU, 6/14/07
- “Shorstein scolds Council on meetings” FTU, 6/27/07
- “City Council still facing Sunshine” FTU, 7/2/07
- “Council’s Sunshine could cost you” FTU, 7/12/07
- “Grand jury to shine light on City Council” FTU, 7/13/07



How Do our Local Gov'ts Stand Up?

- “The importance of honest and open local government in promoting the public welfare has been well understood since the founding of our nation, yet Jacksonville’s residents have rarely felt as disengaged and disenchanting with their local government officials as they do today.”
 - Opening line from the Executive Summary of the Grand Jury presentment, pg. 1.
- “The Grand Jury ultimately concludes that the problems addressed within this presentment occurred as a result of several larger institutional deficiencies that must be resolved.”
 - Page 2-3 of the Executive Summary
- “As a result of this investigation, the Grand Jury sincerely hopes that Jacksonville’s public leaders finally understand the importance of conducting the public’s business in a transparent and forthright manner.”
 - Page 3 of the Executive Summary

Jacksonville Sunshine Compliance Act

June 26th, 2007

The City Council, amidst a storm of community- wide pressure, enacted the Jacksonville Sunshine Compliance Act with its stated purpose being to “ensure compliance with the Sunshine Law.”

- Will post agendas on-line.
- Will email notices to list serves.

How Can We Get Better?

- COAB, COJB, CONB, JEA, JPA, etc. need to embrace modern technology:
 - Post agendas on-line.
 - Email notices to list-serves.
- Citizens need to file SS and PR law cases.
 - Provides an incredible remedy.
 - Very inexpensive if you win.
 - Most importantly, leads to a more informed citizenry and open government.

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- AGO 71-191.
- *Cincinnati Gas and Electric Company v. General Electric Company*, 854 F.2d 900 (6th Cir. 1988), cert. denied, 109 S.Ct. 1171 (1989).
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- AGO 90-03.
- AGO 74-47.
- AGO 71-159.
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- *TSI Southeast, Inc. v. Royals*, 588 So. 48 2d 309, 310 (Fla. 1st DCA 1991).
- *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994).
- AGOs 04-44.
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