

Government in the Sunshine Law

Very Important Notice

Your attorney should be the first person that you direct questions to about your participation in any activity about which you need information. Others, whether peers, friends, or attorneys, are not bound to defend or represent you in any legal matters.

In addition, the Florida League of Cities offers a free legal consultation service to any attorney who represents a municipality or elected official through the attorney. Municipal attorneys may call the league office at (850) 222-9684.

AN IMPORTANT FEATURE OF FLORIDA LAW



Overview

- Florida's Government in the Sunshine Law or the "Sunshine Law" provides a constitutional and statutory right of notice of and access to governmental proceedings of public boards or commissions at both the state and local levels.

The Law: The Florida Constitution

- Article 1, Section 24(b):

“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 and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.”

The Law: The Florida Statutes

- Section 286.011, Florida Statutes:

“**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**, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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 board or commission must provide **reasonable notice** of all such meetings.”

The 3 Basic Requirements

1. All meetings of public boards or commissions must be open to the public.
2. Reasonable notice of such meetings must be given.
3. Minutes of the meetings must be taken and promptly recorded.

Scope: 2 or More

- If 2 or more members from the same board convene to discuss some matter which will foreseeably come before that board for action, then the Sunshine Law applies.

Scope: Types of Boards

- “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision.” § 286.011, Fla. Stat. (2019).
- Applies to elected and appointed boards, including advisory boards
 - Community Development District example:
 - Board – elected
 - Committees – appointed
 - Hypothetical example:
 - A City tourism board - advisory

Scope: Outside the Scope

- Fact-finding committees
- Staff committees
- Private organizations
 - Unless: created by the public entity, delegated the public entity's governmental function, or an integral part of the public entity's decision-making process
- The state judiciary
- The state legislature

Scope: Officials

- Members-elect
- Incumbent candidates

Scope: Outside the Scope

- Non-incumbent candidates

Scope: Different boards

- The Sunshine Law does not apply if the officials are members of different entities, unless one of the officials has been delegated power to act on behalf of his or her entire entity.

Scope: Meeting with Staff

- The Sunshine Law does not apply to meetings with staff
 - Unless:
 - Staff is being used as a liaison between board members

Delegation

- Delegation does not avoid the Sunshine Law

What Types of Meetings are Covered?

- Meetings of other boards when you are a visitor?
 - No – unless there are 2 or more officials and there is interaction. Should be noticed.
- Meetings of other boards when you are a member?
 - No – unless there are 2 or more officials and there is interaction. Should be noticed.
- Community forums?
 - No – unless there are 2 or more officials and there is interaction or discussing issues that may reasonably be expected to come before the board

What Types of Activities Are Prohibited “Meetings”?

- Emails, text messages, and other written communication to, from and among board members (memos)?
 - This cannot be done; they constitute meetings under the Sunshine Law
- Fact finding trips by the governing board?
 - This cannot be done; constitutes improper meetings under the Sunshine Law.
- “Private” discussions concerning district matters during recess? Cannot take place.
- “Inaudible discussions” between board members that public cannot hear? Cannot take place. [See Sebastian City Council article below.]

Shade Meetings: Attorney Privileged Communications

- Settlement discussions
- Strategy sessions related to litigation expenditures
- Exemption is narrowly construed.

What other Meetings are covered and must be open?

- Workshops? Yes. Covered.
- Investigative meetings? Yes. Covered.
- Attorney/board meetings?
 - Generally, yes.... BUT...
 - Exception for Closed-door attorney/board “shade” meetings
 - Limited to pending litigation...Not open to the public....

Closed-Door Attorney/Board “Shade” Meetings

- Conditions:
 - Who may call the meeting?
 - The **entity’s attorney** shall advise the entity at a public meeting that he or she desires advice concerning *pending* litigation;
 - The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures;
 - The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of the persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened and the person chairing the meeting shall announce the termination of the session.

Closed-Door Attorney/Board “Shade” Meetings

- The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter’s notes shall be fully transcribed and filed with the entity’s clerk within a reasonable time after the meeting.
- The transcript shall be made a part of the public record upon conclusion of the litigation.

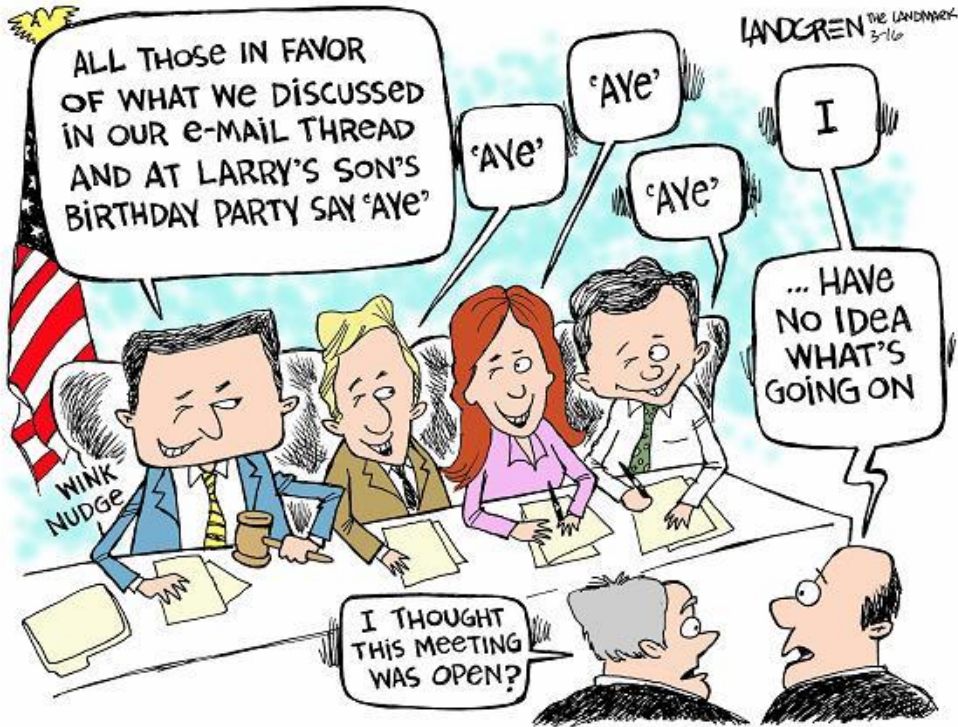
Shade Meetings: Who may attend?

- The public board
- The entity's attorneys
- The chief administrative officer of the entity
- The court reporter

Shade Meetings: After the litigation

- They are made part of the public record upon conclusion of the litigation

Notice and Procedure: Notice and Agenda



Notice and Procedure: Notice and Agenda

- Reasonable notice required under the Sunshine Law, and specific notice as to community development districts required by Section 189.015, F.S.
- The agenda – Not required generally by the Sunshine Law, BUT as to community development districts, required by another statute, Section 189.069(2)(a)(16), F.S.,
 - An agenda is to be posted on the district website at least 7 days before each meeting or workshop.

Notice and Procedure: Location

- Facilities that discriminate or unreasonably restrict access are prohibited as meeting locations.
- Example: if anticipate a large crowd, need to accommodate in larger venue.
- In the case of community development districts have an additional requirement, meetings of the Board shall be held in a public building when available within the district, in a county courthouse of a county in which the district is located, or in a building in the county accessible to the public. See Section 189.015(3), F.S.

What if I cannot attend the meeting?

- Generally, can appear telephonically if there are extraordinary circumstances (AGO 03-41).

However, if a quorum of a local board is physically present, “the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board.” AGO 03-41.

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting. AGO 94-55. *And see* AGOs 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).

Minutes

- Must be promptly recorded.
- Can either be a verbatim account or a summary of the discussions and events that took place at the meeting.
- Must be available to public inspection.

Failure to Comply

- Criminal penalties
- Removal from office
- Noncriminal infractions
- Attorney fees
- Civil actions for injunctive or declaratory relief

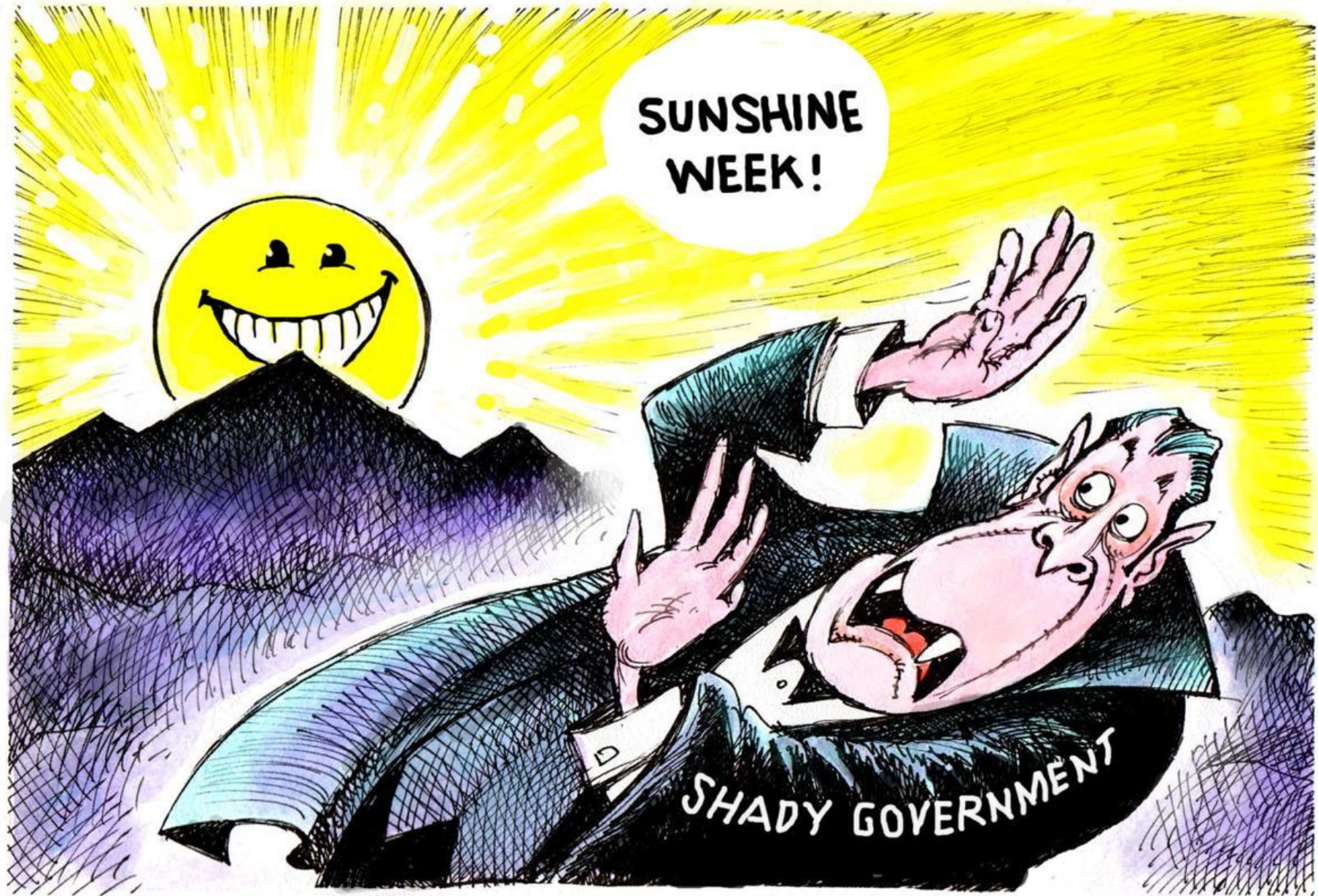
Examples

- <https://www.news-press.com/story/news/local/2020/10/06/cape-coral-mayor-joseph-coviello-pays-100-fine-settle-sunshine-law-violation-case/3634519001/>
- <https://www.wflx.com/2020/06/17/sebastian-council-members-arrested-sunshine-law-violations/>
- <https://tallahasseereports.com/2019/11/14/florida-sunshine-law-went-dark-for-leon-county-school-meetings/>
- <https://www.youtube.com/watch?v=3o9moVH0C3M>

Resources

Here are sources for general information, events, and courses:

- Florida Constitution and Statutes <http://www.leg.state.fl.us>
- Florida Attorney General <http://myfloridalegal.com/>
 - 2020 Sunshine Manual <http://www.myfloridalegal.com/sun.nsf/sunmanual>
- Florida League of Cities www.floridaleagueofcities.com
 - Manual <http://www.floridaleagueofcities.com/resources/publications/official's-manual>
- Florida Institute of Government and Affiliates <http://iog.fsu.edu/>



DAVE GRANLUND © www.davegranlund.com

Questions?

