

A stylized sun with a large yellow circle in the center and numerous yellow rays of varying lengths radiating outwards. The background is a solid light blue color. The entire graphic is enclosed within a thin yellow border.

The First Amendment Foundation

**Florida's Sunshine Law
2010**



Overview

- **Two Parts:**
 - Public records; and,
 - Public meetings or “sunshine.”
- **Two Bases:**
 - Statutory (oldest); and
 - Constitutional (1993).
- **Exemptions:**
 - Restrictions on creation;
 - More than 1,100; and
 - Record exemption doesn’t imply meeting exemption.



Public Oversight

- Trust in government at all time low.
- Open government helps to improve trust in government.
- Public oversight of government action provided through:
 - Access to public records; and
 - Access to public meetings.



Entire Process

. . . It is the entire decision-making process that the legislature intended to affect by the enactment of the statute. . . . Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. . . . each such step constitutes an official act. . . .

Times Publishing Co. v. Williams
222 So. 2d 470, 473 (2nd DCA 1969)



FLORIDA'S CONSTITUTION

Access to Government Meetings

Article I, section 24(b)

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



FLORIDA LEGISLATURE

Note that the Florida Legislature is not subject to the meetings provision in Article I, section 24(b), of Florida's Constitution.

However, the Legislature *is* bound by the requirements of Article III, s. 4(e), Fla. Con., which says that meetings between **more than 2** members of the Legislature must be “reasonably open” to the public.



FLORIDA COURTS

Florida courts are not bound by the meetings requirements in Article I, section 24(b), Fla. Con. However, Amendment VI of the U.S. Constitution guarantees open judicial proceedings, and although a court has the inherent power to control its proceedings, there is a “strong presumption of openness” in both criminal and civil proceedings. In each case a court must balance the interests of the parties against those of the public.



FLORIDA'S SUNSHINE LAW

Section 286.011, F.S.

Three simple requirements:

1. Meetings of public agencies must be open to the public;
2. Reasonable notice of such meetings must be given; and
3. Minutes must be taken.



WHAT IS A “MEETING”?

Generally, the Sunshine Law applies to *any* gathering, *whether formal or informal*, of **two or more** members of the same board or commission to discuss some issue on which foreseeable action will be taken by the board or commission.

[*Hough v. Stembridge*, 278 So.2d 288 (Fla. 3d DCA 1973)]

Question

Two members of the school board are annoyed by Mr. Smith, a self-appointed watch dog, who is extremely critical, it seems, of everything the school board does. The two members arrange a conference call with the school superintendent to discuss what action the board might take to address the “Smith problem”. Is this a violation of the Sunshine Law?



EVASIVE DEVICES

- The use of a telephone to conduct such discussion does not remove the conversation from the requirements of the law. [*State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003, *per curiam aff'd.*, 886 So.2d 229 (1st DCA 2004)).
- Can't use computers to conduct private discussions among members about board business. [AGO 89-39].
- Others:
 - Pinning;
 - Social Networking Sites (Facebook or Myspace).

question

Mr. Smith and Reporter X want to attend a meeting of an advisory committee formed by the school board to make recommendations about the location of a new school. The committee is comprised of the school superintendent and five parents active in the PTA. Can Mr. Smith and the reporter attend the meeting?



WHO IS COVERED?

- All public agencies in the state: state agencies, local governments, school boards, and special districts.
- Private companies doing business on behalf of a government agency.
- Advisory boards and committees.
- One person acting on behalf of a board or commission.

question

After the high school basketball game, Mr. Smith decides to go to his favorite bar to savor the home team's win. When he gets there, he sees three members of the school board sitting at a table talking. Are the school board members violating the Sunshine Law?



When does the Sunshine Law *not* apply?

- Fact-finding meetings;
- Social events; and
- When there is a *specific* statutory exemption.

question

The school board is holding a special meeting and has notified the reporter who covers education for the local newspaper about the board's upcoming meeting. Is notice to the local newspaper public notice under the sunshine law?



PROCEDURAL REQUIREMENTS

NOTICE

- Must be *sufficient so as to inform*;
- Must be reasonable in terms of
 - Content;
 - Timing; and
 - Placement.
- Other statutes may provide specific requirements.

Question

Mr. Smith wants to speak at the school board meeting, but the school board has a policy prohibiting public participation. Does Mr. Smith have a right to speak?



PROCEDURAL REQUIREMENTS

2. PUBLIC PARTICIPATION

Florida's Supreme Court has stated that the public has an "inalienable right to be present and to be heard" at public meetings.

[Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693, 699 (Fla. 1969)]



REASONABLE RULES

2. PUBLIC PARTICIPATION, cont'd

A government agency can adopt *reasonable rules* which require orderly behavior and allow for the orderly progression of public meetings.

[2010 *Government-in-the-Sunshine Manual*, p. 63]

Question

A committee is created to make a recommendation to the school board about the location of the new school and is meeting in Mrs. Smith's kitchen. Is that okay? Does the education reporter have a right to attend? The public?



PROCEDURAL REQUIREMENTS

3. LOCATION

A government agency -

- Cannot hold a meeting at any facility which discriminates based on age, race, etc.;
- Cannot unreasonably restrict public access;
and
- Must hold meetings in a facility of sufficient size so as to accommodate the anticipated turnout.

Question

The school board is meeting to discuss the possible firing of a high school principal. Mr. Smith sees the members of the school board sitting in the conference room and opens the door. The school superintendent says Mr. Smith can't attend the meeting because of the "sensitive" nature of the discussion. Can they keep Mr. Smith out?



EXEMPTIONS

- *Presumption of Openness*: All meetings between two or more members of the same board or commission are open to the public unless there is a *specific* statutory exemption.
- Only the Legislature can create an exemption to our constitutional right of access.
- If denied access to a meeting, the person denied may demand the statutory citation authorizing closure.



Security Exemption Section 286.0113, F.S.

Allows closure of portions of government meetings which would reveal a security system plan.

A “security system plan” includes “all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations . . . relating to the physical security of the facility or revealing security systems . . . ”[Section 119.071(2), F.S.]



Litigation Exemption

Section 286.011(8) , F.S.

1. Applies to *pending* litigation to which the public agency is *presently* a party;
2. Agency attorney must notify the agency at a public meeting;
3. Attendance is strictly limited;
4. Subject matter is limited to discussion of settlement negotiations or strategy sessions related to litigation expenditures;
5. Action is prohibited;
6. The meeting must be recorded by a court reporter; *and*
7. A transcript of the meeting becomes a public record at the conclusion of the litigation.



Minutes

- Written minutes generally required but verbatim transcripts are not.
- Promptly recorded and open to public inspection.
- Is public record when created, even though not yet sent to board members or officially approved.
- Other statutes may require more.



SANCTIONS

- An unintentional violation: non-criminal infraction punishable by a fine up to \$500
Section 286.011(3)(a), F.S.
- A knowing violation: 2d degree misdemeanor punishable by a fine of not more than \$500 and/or a jail term of not more than 60 days
Section 286.011(3)(b), F.S.
- Suspension or removal from office
Section 112.52(1), F.S.
- Attorney's fees and court costs
Sections 286.011(4) and (5), F.S.

Question

The school board attorney informs the school board that it may have been a violation of the Sunshine Law to refuse Mr. Smith the right to attend the meeting held to discuss firing the principal. Mr. Smith has said he's going to sue to overturn the school board's decision to fire the principal (Mr. Smith's daughter-in-law). What can the school board do?



Cure Meetings

- No resolution, rule, regulation, or formal action shall be considered binding except as taken at an open meeting. [Section 286.011, F.S.]
- Action taken in violation of the Sunshine Law is void *ab initio*. [*Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974)]
- Action – but *not* violations - can be cured when the offending agency takes “independent final action in the sunshine.” [*Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981)]



Need Help?

- First Amendment Foundation
 - Call (800) 337-3518 or (850) 222-3518
 - E-mail sunshine@floridafaf.org
- Office of Open Government
 - Call (850) 921-6099
 - http://www.flgov.com/og_home
- Open Government Mediation Program
 - Call (850) 245-0157
 - <http://www.myflsunshine.com/>