



BOARD OF COUNTY COMMISSIONERS

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TO: Members of the Save Our Indian River Lagoon Citizens Oversight Committee

FROM: Christine Valliere, Assistant County Attorney

DATE: March 15, 2019

SUBJECT: Government in the Sunshine/Florida's Public Meetings Law

As an advisory body to the Brevard County Board of County Commissioners, the Save Our Indian River Lagoon Citizens Oversight Committee is subject to the mandates of the Florida Government-in-the-Sunshine Law, Florida's Code of Ethics and the Florida Public Records Act.

Florida's Government-in-the-Sunshine Law provides a right of access and transparency to governmental proceedings. The public policy behind the Sunshine Law is to have all deliberations by a public body conducted in public meetings of which the public and the media have received advance notice.

1. What are the requirements of the Sunshine Law?

The Florida Government in the Sunshine Law, Section 286.011, Florida Statutes, contains four basic requirements:

- a. meetings of public boards or commissions must be open to the public;
- b. reasonable notice of such meetings must be given;
- c. minutes of the meeting must be taken; and
- d. an opportunity for public comment must be granted.

The purpose of Sunshine Laws is to provide transparency in the government decision making process from the beginning, including the advisory board level such as the Citizens' Oversight Committee, through to the final decision.

2. Who does it apply to?

All boards or commissions of Brevard County are subject to the Sunshine Law. The law is equally applicable to advisory boards such as this Committee.

3. What is a “meeting” which is subject to the Sunshine Law?

Florida courts have repeatedly stated that it is the entire decision-making process to which the Sunshine Law applies and not merely to a formal assemblage of a public body at which voting to ratify an official decision is carried out. Thus, the statute extends to “discussions and deliberations” as well as to formal action taken by a public body. Therefore, the law is generally applicable to any gathering where two or more members of a public board or commission discuss some matter on which foreseeable action will be taken by the board, commission or committee. The term “meeting” has been found to include briefing sessions, workshop meetings, informal discussion and other meetings of the public body where no formal vote is taken. Phone calls, email discussions and discussions between committee members on social media are also within the broad definition of a “meeting” subject to Sunshine Law.

Please be especially aware that open meeting laws apply on social media. Citizens’ Oversight Committee members should not comment on, share or like social media content from other Citizens’ Oversight Committee members. You can read posts from another Citizens’ Oversight Committee member, but you cannot respond in any way. Questions about disseminating information through social media can be directed to the Save Our Indian River Lagoon social media coordinator, Brandon Smith.

EXCEPTION: A meeting or communication between a Citizens’ Oversight Committee member and the alternate for that member’s seat are not subject to public meeting requirements because the two represent one, single vote on the advisory board.

Members of a public board or commission are also not prohibited under the Sunshine Law from conducting inspection trips. However, if discussions relating to the business of the board will occur between board members, advance notice must be given; the public must be afforded a reasonable opportunity to attend, and minutes must be promptly recorded and made available for inspection. In some cases, it may not be possible to invite the general public to attend such trips. In these instances, inspection trips made by members of a public board, together with staff and officials of other organizations and members of the press, are not secret meetings in violation of section 286.011 even though the general public is not invited to participate. However, members of the public board should avoid discussions with fellow board members regarding public business while on such trips.

4. Public Meetings

a. Notice and Recording Procedurally

The Sunshine Law requires the giving of notice to members of the public as to

the time and place of the proposed meeting of a public entity, such as yours, and the subject matter to be discussed. The notice should include, among other things, the time, place, and if available, an agenda of the subject matter. Section 286.011(2), Florida Statutes, states that all public meetings must be “recorded” and the record made available for public inspection. The recording need not be a tape or verbatim transcript but must be minutes accurately reflecting actions taken at the meeting.

b. Public Participation:

This committee is required to allow for public comment to assist in the decision-making process in accordance with Section 2-214, Brevard County Code of Ordinances. This body shall establish procedures for taking public comment at all committee meetings. Two kinds of public comment shall be taken:

1. Relevant comment when the committee discusses a particular issue or takes a final vote on any given issue. Public comment should be opened before a motion is made and seconded; and
2. Comment which brings new business or issues before the committee.

Each speaker shall be given at least three minutes to speak, with provision for an extension of time by the chairman or majority vote of the committee.

c. Voting:

The use of secret ballot at public meetings is not acceptable. If a vote is required by the council members then a vote must be made by each member unless there is a bona fide conflict of interest.

d. Voting Conflicts of Interest:

As an appointed member of this Committee, the State’s conflict of interest laws in the Florida Code of Ethics apply to you. All members must keep in mind the possibility of a voting conflict of interest arising as to any items that might come before the Board based not only on their employment relationship, but upon other situations.

Section 112.3143(3), Florida Statutes, provides that:

No...local public officer shall vote in his official capacity upon any measure which would inure to his special private gain; which he knows would inure to the special private gain of any principal by whom he is retained or to the parent

organization or subsidiary of a corporate principal by which he is retained, other than an agency as defined in s. 112.312(2); or which he knows would inure to the special private gain of a relative or business associate of the public officer.

For a voting conflict to arise, a “special private gain” must inure to the council member, a principal or parent organization or subsidiary of a corporate principal by whom he/she is retained, a relative, or a business associate. The test formulated by the Commission on Ethics is based in part on the size of the class of persons who stand to benefit from the measure and also based upon the remote and speculative test. Where the class of persons is large, a special gain will result only if there are circumstances unique to the member to gain more than the other members of the class. Where the class of person benefitting from the measure is extremely small, the possibility of special gain is much more likely. Additionally, if the gain is of a questionable nature or magnitude, or is too remote or speculative, then there may not be “special private gain.”

In addition to abstaining from the vote, if the member intends to “participate” in the decision prior to the meeting, the appointed board member should file a memo stating the conflict prior to the meeting, Section 112.3143(4), Florida Statutes. “Participate” means “any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.” The memo shall be incorporated into the minutes of the meeting and read publicly at the meeting. If the member is only participating in the discussion at the meeting, then the conflict should be disclosed orally at the meeting before participating, and a memo should be filed within fifteen (15) days after the vote. No member may participate (attempt to influence the vote) without making this disclosure prior to the discussion on the issue.

5. Public Records

The Florida Records Act, Ch. 119, Florida Statutes, defines public records to include “all materials made or received in connection with official business which are used to perpetuate, communicate or formalize knowledge of government business. All such materials are open for public inspection unless exempt from disclosure.” *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1979).

Electronic public records, including emails, texts and social media communication are subject to the same retention and disclosure laws as written public records. The location of the electronic communication does not control the applicability of the Public Records Act. Emails, texts and social media content sent from or received on private computers, phones or other devices are subject to the public records act if the content relates to official business of the Citizens’ Oversight Committee. To protect yourself, consider opening a new email

account just for Citizens' Oversight Committee business.

Personal notes not intended to be shared, but for use in remembering information may not be public records. Preliminary drafts not shared with others and not intended to be a final record are also not public records. The key is whether the documented is intended to perpetuate, communicate or formalize knowledge about Citizens' Oversight Committee business.

a. Maintenance of Electronic Records

Emails sent to county staff are already being maintained for compliance with public records laws. Citizens' Oversight Committee-related electronic records not sent to staff should either be maintained by the Citizens' Oversight Committee member or forwarded to staff (Brandon Smith), for retention. If you don't transfer records to county staff, you will be responsible for providing copies to county staff should there be a public records request. Transfer all Citizens' Oversight Committee-related records to county staff at the end of your term.

b. Texts

County policy states texting should not be used for county business. If it is used inadvertently, the text message must be captured by screen shot and emailed to county staff for retention.

c. Social media

Citizens' Oversight Committee member activity on social media related to official business of the committee is a public record. "Activity" includes sharing and liking content or posts. County Save Our Indian River Lagoon sites are backed up by a program called Archive Social for public records retention purposes. Activity on other sites not managed by county staff should be screen shot and emailed to staff. If there is a desire to share Citizens' Oversight Committee-related information with the community, please contact Brandon Smith and he will disseminate the information to the public.

6. Does this mean we can't have lunch?

The Attorney General's Office urges public boards or commissions to avoid the use of "luncheon meetings" to discuss board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Discussions at such meetings by members of the board or commission which are audible only to those seated at the table may violate the "openness" requirement of the law. Public boards or commissions are, therefore, advised to avoid meetings at which the public and

the press are effectively excluded.

Members of a public board or commission are not, however, prohibited under the Sunshine Law from meeting together socially provided that matters which may come before the board or commission are not discussed at such gatherings.

7, Beware of the Consequences!

Section 286.011(3), Florida Statutes, provides that any person knowingly violating the Sunshine Law by attending a meeting not held in accordance with the meetings requirements may be guilty of a misdemeanor of the second degree, punishable by up to sixty (60) days in jail and/or a \$500 fine. All other violations are subject to a \$500 fine. Penalties for violating public records laws range from a noncriminal infraction and up to a \$500 fine, to a first-degree misdemeanor punishable by up to a year in jail and a \$1,000 fine, and a third-degree felony punishable by up to a five year sentence and \$5,000 fine, depending on the level of knowledge and intent in violating the law. Section 119.10, Florida Statutes. In addition, in either case, attorneys' fees may be assessed against a party found in violation if a civil action is brought to enforce the law.

8. Conclusion.

In summary, Citizens' Oversight Committee members should not discuss with each other, directly or indirectly, items that will or could foreseeably be discussed and acted on at a public meeting. This is only a brief summary of the Sunshine Law, ethics laws and public records laws. It is not inclusive of all instances where the laws apply. If you have questions concerning specific application, please seek guidance from the County Attorney's Office. If you are concerned whether a particular factual situation may constitute a conflict of interest and some doubt exists whether the conflict exists, an advisory opinion from the Commission on Ethics can be obtained.

Reference:

A valuable source of information about Sunshine Law and the Florida Public Records Law is the Government-in-the-Sunshine Manual, published annually, available on the Florida Attorney General's website at:

[Florida Government-in- the-Sunshine Manual.](#)