



Sunshine Law Work Session

**Orange County Board of
County Commissioners**

**Orange County Attorney's Office
February 21, 2017**



Sunshine Law

- **Overview of Sunshine Law**
- **Exceptions**
- **Potential Pit Falls**
- **Violations**
- **Enforcement**



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SUNSHINE LAW OVERVIEW

- **Provides right of access to governmental proceedings**
- **Applies to both elected and appointed boards**
- **General Rule – All meetings at which official acts are taken or public business is transacted or discussed shall be open and noticed to the public**



SUNSHINE LAW OVERVIEW

- **Sunshine Law applies to:**
 - Any meeting
 - Between two or more members of the same board
 - When discussing matters that may foreseeably come before that board

- **“Meeting” includes:**
 - BCC, advisory board, work group meetings
 - Telephone calls, text messages
 - Emails, other written correspondence
 - Informal discussions or deliberations
 - Intermediaries/liaisons/conduits



SUNSHINE LAW OVERVIEW

- **Sunshine Law meetings are subject to three basic requirements:**
 - Meeting must be noticed to public
 - Meeting must be open to public
 - Minutes must be recorded



SUNSHINE LAW OVERVIEW

- **“Reasonable notice”**
 - **Not defined by statute**
 - **Notice given at such time and in such manner that media and general public may attend meeting**
 - **Dependent on circumstances and type of meeting**



SUNSHINE LAW OVERVIEW

- **Meetings must be open to public**
 - **Location easily accessible to public**
 - **Adequate size**
 - **May not discriminate against or restrict access to public**



SUNSHINE LAW OVERVIEW

- **Minutes**
 - **Promptly recorded in writing**
 - **Available and open to public for inspection and copying**
 - **Consist of brief notes reflecting events of meeting**
 - **Audio recording permitted but not required**



SUNSHINE LAW OVERVIEW

- **County Administrative Regulations address “Noticed Meetings” and require:**
 - **Notice – Agenda Development Office generates meeting notice and provides at least 2 working days notice**
 - **Open to Public – Meeting held in County meeting room or a meeting room at a governmental building where public may freely attend**
 - **Minutes – Minutes taken by County Comptroller staff and audio recorded**



SUNSHINE LAW OVERVIEW

Florida Statutes

**Orange County
Regulation 2.09
(BCC)**

Notice

**Reasonable
Notice**

**At least 2
working days**

Location

**Accessible
to the public**

**County meeting
room/
governmental
building**



SUNSHINE LAW OVERVIEW

- **Court Interpretations of Sunshine Law:**
 - **Construed so as to frustrate all evasive devices**
 - **Construed liberally to give meaning to its public purpose**
 - **Exemptions should be narrowly construed**
 - **Each step in the decision making process is an official act**



SUNSHINE LAW OVERVIEW

- ***Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010)**
 - Board entered into a MOU with a professional baseball team
 - Prior to the public hearing, private staff meetings were held with each commissioner
 - Meetings were informational briefings regarding contents of the MOU
 - No evidence that staff communicated information from one commissioner to the other
 - Court found no violation of Sunshine Law



SUNSHINE LAW OVERVIEW

- ***Blackford v. School Board of Orange County, 375 So. 2d 578 (Fla. 5th DCA 1979)***
 - Superintendent held a series of successive one on one meetings with individual members of the School Board to discuss several options to solve a redistricting problem
 - After meetings, staff put together a plan which was adopted at a public meeting
 - Court found that Sunshine Law had been violated because the circumstances amounted to *defacto* meetings at which official acts were taken



SUNSHINE LAW OVERVIEW

- ***Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008)**
 - Board members went on “fact-finding” tour of neighborhoods affected by proposed rezoning
 - Court found bus tour violated the Sunshine Law because Board convened in a confined space and had opportunity to make decisions outside of public scrutiny
 - Violation not egregious and was corrected by subsequent meetings and discussions open to the public



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SUNSHINE LAW

Exceptions

- **Fact-Finding Committees**
 - Only applies to information gathering and reporting
 - If committee authorized to make recommendations, Sunshine Law applies

- **Litigation Discussions**
 - Settlement or litigation strategy discussions
 - Discussions regarding evaluation of risk management claims
 - Exempt from Sunshine Law and minutes exempt from public records laws until end of litigation



SUNSHINE LAW

Exceptions (Con't)

- **Labor**

- Collective bargaining negotiations with bargaining agent are subject to Sunshine Law
- Discussions between County Administrator and Board are exempt – §447.605, Fla. Stat.

- **Security**

- Discussion and records concerning security systems and public property are exempt from Sunshine – §286.0113(1), Fla. Stat.



Sunshine Law

Potential Pit Falls

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- **Potential Pit Falls**
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Sunshine Law

Potential Pit Falls

- **Speaking Engagements**
 - Two or more Board members in attendance
 - One or more Board members may be a speaker
 - More than one Board member may give an opinion
 - But cannot engage in discourse between each other



Sunshine Law

Potential Pit Falls (Con't)

- **Social Media**

- **AGO 2009-19**
- **Communications on government Facebook page may be subject to government in the Sunshine Law**
- **Board members may not use government's Facebook page in discussion of matters that foreseeably will come before the Board**



Sunshine Law

Potential Pit Falls (Con't)

- **Conduits/Intermediaries/Liaisons**
 - **Board members may not have staff or non-board members act as liaisons between board members**
 - **Communication with a private citizen whom board member knew or should have known was acting as a conduit**



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Sunshine Law Violations

- **Action taken is void**
 - Can be cured by subsequent Sunshine meetings
- **Attorney's fees recoverable**
- **Unknown violation**
 - Non-criminal infraction \$500 fine
- **Known violation**
 - \$500 fine and/or 60 days in jail
- **Removal from office by Governor – extraordinary**



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Sunshine Law Enforcement

- **Sunshine violations are normally investigated by Law Enforcement**
- **Prosecuted by State Attorneys**



SUNSHINE LAW

Questions?



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