

1-C-16 | TELEPHONE CONVERSATIONS AND VIRTUAL MEETINGS**a. Private Telephone Conversations**

Private telephone conversations between board members to discuss matters which foreseeably will come before that board for action violate the Sunshine Law. See *State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), per curiam affirmed, 886 So. 2d 229 (Fla. 1st DCA 2004), available online in the Cases database at the open government site at myfloridalegal.com (private telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law). See also the discussion on pages 23-24 regarding the application of the Sunshine Law to emails, text messages, and other written communications between board members.

b. Authorization to Conduct and Participate in Public Meetings via Telephone, Video Conferencing, or Other Electronic Media**(1) Sunshine Law**

Although both the Florida Constitution and the Sunshine Law require that, unless exempt by law, meetings of a government board must be "public meetings" that are "open to the public," neither provision requires that members of the public board be physically present during the meeting. AGO 20-03. Instead, the Attorney General's Office has observed that a board's use of electronic media technology to increase public participation in meetings and the use of such media to allow members of a board or commission to participate in a duly noticed public meeting does not necessarily raise Sunshine Law issues, "but rather implicates the ability of a board or commission to conduct public business with a quorum." See Inf. Op. to Stebbins, December 1, 2015.

(2) In-Person Quorum Requirements

The Attorney General's Office has advised that if a quorum is required to conduct official business, boards may only conduct meetings by teleconferencing or other technological means if they are authorized to do so by law or the in person requirement for constituting a quorum is lawfully suspended during a state of



emergency. AGO 20-03. And see Executive Order 20-69, issued by Governor DeSantis on March 20, 2020 (recognizing that public boards should be able to use technology to conduct meetings in light of the declared public health emergency resulting from the COVID-19 pandemic, and suspending Florida Statutes requiring that a quorum be physically present during the state of emergency). Executive Order 20-69 (which expired on November 1, 2020), stipulated that boards holding virtual meetings must still comply with the Sunshine Law. See also AGO 20-03, noting that if "meetings are conducted by teleconferencing or other technological means, public access must still be afforded which permits the public to attend the meeting. That public access may be provided by teleconferencing or technological means."

Similarly, "[a]s an administrative arm of the city's governing body... it would appear that the same legislative requirement for the physical presence of a quorum in order to conduct municipal business would apply when the retirement board is carrying out its delegated duties." AGO 10-34. Thus, in January 2021, the Attorney General's Office concluded that in the absence of legislation providing otherwise, the same physical presence quorum requirement that governs school board meetings would apply to meetings of school board advisory committees. Inf. Op. to Myrick, January 28, 2021. See now s. 1001.43(10), F.S., effective July 1, 2021, providing that members of school district "special committees and advisory committees may attend meetings in person or through the use of telecommunications networks such as telephonic and video conferencing."

(a) State Boards

In AGO 98-28, the Attorney General's Office concluded that s. 120.54(5)(b)2., F.S., authorizes state boards to conduct public meetings via entirely electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. See Rule 28-109, F.A.C. And see AGO 20-03, noting that state



boards have been conducting meetings using "communications media technology" since 1997.

(b) Local Boards

(1) Meetings

As to local boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct meetings entirely through the use of electronic media technology applies only to state agencies. AGOs 20-03 and 98-28. Thus, unless the in-person requirement to constitute a quorum has been waived by law or lawfully suspended during a state of emergency, a quorum of the board must be physically present. AGO 20-03.

For example, since s. 1001.372(2)(b), F.S., requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id.* And see AGOs 09-56 (where a quorum is required and absent a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum). and 10-34 (city may not adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum). Cf. s. 120.525(4), F.S., allowing a voting member of a regional planning council that covers three or more counties who participates via telephone or videoconferencing to be counted towards a quorum, provided that at least one third of the voting members are present at the meeting location and that notice of intent to participate remotely is given at least 24 hours prior to the meeting; s. 163.01(18), F.S., authorizing certain entities created by interlocal agreement to conduct public meetings and workshops by means of communications media technology; and Ch. 17-214, Laws of Florida, authorizing the Monroe County School Board, Monroe County Commission,



or any political subdivision thereof, to adopt rules and procedures for using communications media technology for meetings at which no final action is taken.

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).

(2) Workshops

The physical presence of a quorum has not been required where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at workshop meetings where no formal action will be taken. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. See Inf. Op. to Stebbins, December 1, 2015 (approval of board meeting minutes constitutes official action; vote to approve minutes not exempted from



quorum requirements). Moreover, as discussed above, boards conducting workshop meetings electronically must still comply with the Sunshine Law.

For example, the Attorney General's Office advised that airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. AGO 01-66. Such interactive access must include not only public access via the Internet but also at designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have Internet access. *Id.* For meetings, however, where a quorum is necessary for action to be taken, the physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. *Id.* Internet access to such meetings, however may still be offered to provide greater public access. *Id.* Cf. AGO 08-65, noting that a city's plan to provide additional public access to on-line workshop meetings by making computers available at a public library "should ensure that operating-type assistance is available at the library where the computers are located."

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks, which does not permit the public to participate online, violates the Sunshine Law by circumventing the notice and access provisions of that law. AGO 02-32. And see Inf. Op. to Ciocchetti, March 23, 2006 (even though the public would be able to participate online, a town commission's proposed use of an electronic bulletin board to discuss matters that foreseeably may come before the commission over an extended period of time would not comply with the spirit or



letter of the Sunshine Law because the burden would be on the public to constantly monitor the site in order to participate meaningfully in the discussion). Compare AGO 08-65 (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided).

Moreover, there is no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting. Inf. Op. to Sugarman, August 5, 2015.

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