

1-B-1 | ADVISORY BOARDS

Advisory boards and committees created by public agencies may be subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them. The “dispositive question” is whether the committee has been delegated “decision-making authority,” as opposed to mere “information-gathering or fact-finding authority.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). “Where the committee has been delegated decision-making authority, the committee’s meetings must be open to public scrutiny, regardless of the review procedures eventually used by the traditional governmental body.” *Id.* Accord *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting extensively from *Sarasota Citizens for Responsible Government*, in finding that textbook evaluation committees created by the superintendent pursuant to school board policy to recommend textbooks, had been delegated decision-making authority and were therefore subject to the Sunshine Law even though the school board made the final decision to approve the textbooks.

For example, in *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the Sunshine Law. The Gradison court, concluding that the committee served as the alter ego of the council in making tentative decisions, stated that “any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law.” *Id.* at 476. See also *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (committee which compiled a report that was perfunctorily accepted by the board made a significant ruling affecting decision-making process and was subject to s. 286.011); and *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county ordinance to serve in an advisory capacity to the county manager). Accord AGOs 98-13 (citizen advisory committee appointed by city council to make recommendations to the council regarding city government and city services), and 01-84 (school advisory council created pursuant to former s. 229.58 [now s. 1001.452], F.S).

The Sunshine Law does not establish a lesser standard for members of advisory committees that are subject to the Sunshine Law. See



Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 869 (Fla. 3d DCA 1994) (“[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials”). Nor is there an exception from the Sunshine Law for an advisory group created by a county commissioner and composed of volunteers. See Inf. Op. to Wallace, January 7, 2019, emphasizing that it is the nature of the functions of an advisory group that determines the application of the Sunshine Law, not the manner of their appointment or their volunteer status.

a. Advisory Boards Appointed by a Single Public Official

The Sunshine Law applies to advisory committees appointed by a single public official as well as those appointed by a collegial board. See Inf. Op. to Wallace, January 7, 2019 (“In the first place, advisory groups appointed by a single public official are not immunized from the public meetings requirement”).

For example, in Wood v. Marston, 442 So. 2d 934 (Fla. 1983), the Florida Supreme Court determined that the Sunshine Law applied to an ad hoc advisory committee appointed by a university president to screen applications and make recommendations for the position of law school dean, because the committee, in deciding which applicants to reject from further consideration, performed a policy-based, decision-making function. See also Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by agency purchasing director to consider and rank various contract proposals deemed subject to Sunshine Law); Florida Citizens Alliance, Inc. v. School Board of Collier County, 328 So. 3d 22 (Fla. 2d DCA 2021) (textbook committees created by the superintendent pursuant to school board policy to evaluate and rank textbooks for approval by the school board governed by s. 286.011, F.S., because they “clearly ‘helped to crystalize the decision to be made’ by the School Board,” quoting from Silver Express, 691 So. 2d at 1100); and Linares v. District School Board of Pasco County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applies to committee formed by school board planning director to develop and recommend to the superintendent proposed new school attendance boundaries). Accord AGOs 05-05 (fact that advisory group was created by



chief of police and not city commission and its recommendations were made to police chief would not remove group from ambit of the Sunshine Law); 85-76 (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation); 87-42 (ad hoc committee appointed by mayor to meet with Chamber of Commerce and draft proposal for transfer of city property). And see Inf. Op. to Lamar, August 2, 1993 (transition team appointed by mayor to make recommendations regarding governmental reorganization).

b. Fact-Finding Committees

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. "[A] committee is not subject to the Sunshine Law if the committee has only been delegated information gathering or fact-finding authority and only conducts such activities." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). See also *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172 (Fla. 1st DCA 2017); and *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). Accord AGO 95-06 (when a group, on behalf of a public entity, functions solely as a fact-finder or information gatherer with no decision-making authority, no "board or commission" subject to the Sunshine Law is created).

"In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is exercising part of the decision-making function by sorting through options and making recommendations to the governmental body." Inf. Op. to Randolph, June 10, 2010. Thus, if an advisory committee has a decision-making function in addition to fact-finding, the Sunshine Law is applicable. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983), recognizing that while a "search and screen" committee had a fact-gathering role in soliciting and compiling applications, the committee also "had an equally undisputed decision-making function in screening the applicants" by deciding which of the applicants to reject from further consideration, and thus was subject to the Sunshine Law. And see AGO 94-21 (application of Sunshine Law to members of a negotiating team created by a city commission). Cf. *Collier County Public Schools v. Mason Classical Academy*, 342 So. 3d 753 (Fla. 2d DCA 2022), noting



that discussions between two school district employees and the school district attorney conducted as part of the fact-finding process in an investigation of a charter school “clearly were not meetings pursuant to section 286.011(1) because neither employee was a school board member or part of a decision-making committee”).

Accordingly, the determination as to whether an advisory committee created by a public official is subject to the Sunshine Law will necessarily depend on the duties and responsibilities performed by the committee. See Inf. Op. to Wallace, January 7, 2019, noting that the mere designation of a committee’s function as “providing feedback” to the public official is not dispositive of the status of the committee for Sunshine Law purposes; instead, “the key determination will be the exact nature of the feedback being requested and provided.” See also AGO 98-13 (application of the Sunshine Law to a community advisory committee appointed by a city commission).

Moreover, the “fact-finding exception” applies only to advisory committees and not to boards that have “ultimate decision-making governmental authority.” *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1071-1072 (Fla. 5th DCA 2008). In *Finch*, the court held that the “fact-finding exception” did not apply to a school board as the ultimate decision-making body; thus the board could not take a fact-finding bus tour without complying with the Sunshine Law even though school board members were separated from each other by several rows of seats, did not discuss their preferences or opinions, and no vote was taken during the trip. And see Inf. Op. to Sugarman, August 5, 2015 (pension board not authorized to travel out of state to meet with financial consultants).

c. Staff Committees

The Sunshine Law applies to meetings of elected or appointed boards; it does not ordinarily apply to staff committees or meetings. See, e.g., *Occidental Chemical Company v. Mayo*, 351 So. 2d 336 (Fla. 1977), disapproved in part on other grounds, *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992); *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996); and AGO 89-39. The Sunshine Law does not apply “when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her



duties.” Knox v. District School Board of Brevard, 821 So.2d 311, 315 (Fla. 5th DCA 2002).

Thus, a committee composed of staff that is responsible for advising and informing the decision-maker through fact-finding consultations is not subject to the Sunshine Law. Bennett v. Warden, 333 So. 2d 97 (Fla. 2d DCA 1976) (meetings of committee appointed by public college president to report on employee working conditions not subject to Sunshine Law). Cf. AGO 08-63 (although Sunshine Law does not apply to orientation sessions held by counties for special magistrates hired to hear value adjustment board petitions, “nothing would preclude a county from allowing the public to attend such orientations in order to enhance the knowledge of citizens who appear before value adjustment boards”).

Accordingly, a state agency did not violate the Sunshine Law when agency employees conducted an investigation into a licensee’s alleged failure to follow state law, and an assistant director made the decision to file a complaint as “[c]ommunication among administrative staff in fulfilling investigatory, advisory, or charging functions does not constitute a ‘Sunshine’ Law violation.” Baker v. Florida Department of Agriculture and Consumer Services, 937 So. 2d 1161 (Fla. 4th DCA 2006), review denied, 954 So. 2d 27 (Fla. 2007). And see Knox v. District School Board of Brevard, supra, concluding that a team of employees appointed by an area superintendent to meet with her to interview, evaluate and recommend applicants to the superintendent served only in a “fact-finding or advisory” capacity since the superintendent received all applications for the position and he decided which applicants he would interview and nominate to the school board

Similarly, the court in Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000), ruled that the Sunshine Law did not apply to informal meetings of staff where the discussions were “merely informational,” where none of the individuals attending the meetings had any decisionmaking authority during the meetings, and where no formal action was taken or could have been taken at the meetings.

Accordingly, “meetings among agency staff to assess and make recommendations regarding contract management do not implicate” open meetings requirements. Florida Environmental Regulation Specialists, Inc. v. Florida Department of



Environmental Protection, 342 So. 3d 710 (Fla. 1st DCA 2022). The court observed that "there was no delegation of policy making authority to any group of staff members at the department and the decision to terminate the contract was made by the agency official tasked with doing so." Id. See also *Molina v. City of Miami*, 837 So. 2d 462, 463 (Fla. 3d DCA 2002) (police discharge of firearms committee not subject to Sunshine Law because the committee "is nothing more than a meeting of staff members who serve in a factfinding advisory capacity to the chief "); *J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law not applicable to Department of Children and Families permanency staffing meetings conducted to determine whether to file a petition to terminate parental rights); and *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017) (Sunshine Law inapplicable to meetings "held solely for the purpose of gathering information").

However, if a staff committee has been delegated decision-making authority as opposed to mere fact-finding or information-gathering, the Sunshine Law applies to the committee. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983). It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law. Id. See *News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), concluding that it would be "ludicrous" to hold that "a certain committee is governed by the Sunshine Law when it consists of members of the public, who are presumably acting for the public, but hold that a committee may escape the Sunshine Law if it consists of individuals who owe their allegiance to, and receive their salaries from, the governing authority;" and *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners*, 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002) (staff committee members delegated decision-making authority from public officials no longer function as staff members but "stand in the shoes of such public officials" insofar as the Sunshine Law is concerned).

Thus, in *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee composed primarily of staff that was created by a college purchasing director to



assist and advise her in evaluating contract proposals was subject to the Sunshine Law. The committee's job to "weed through the various proposals, to determine which were acceptable and to rank them accordingly" was sufficient to bring the committee within the scope of the Sunshine Law. See also *Roscow v. Abreu*, No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004), available in the Cases database at the open government site at myfloridalegal.com (committee created by the state department of transportation and composed of officials from state, local, and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway); AGO 05-06 (city development review committee, composed of several city officials and representatives of various city departments to review and approve development applications, is subject to the Sunshine Law); and AGO 86-51 (land selection committee appointed by water management district and delegated decision-making authority to consider projects for inclusion on a list of proposed acquisition projects must comply with Sunshine Law "even though such committee may be composed entirely of district staff and its decisions and recommendations are subject to further action by the district's governing board").

The Silver Express decision was cited in a recent case finding that textbook committees established by a school superintendent to evaluate textbooks using a "quantitative 'rubric for evaluation'" as provided in a school board policy were subject to the Sunshine Law. The court noted that even though the superintendent had the statutory duty to recommend textbooks to the school board, the school board had the authority to select the textbooks. Because the textbooks with the highest number of points were selected for recommendation to the school board, the textbook committee selections constituted rankings and "clearly 'helped to crystalize the decision to be made by'" the school board. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting *Silver Express*, 691 So. 2d at 1100.

Similarly, in *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of a pre-termination conference panel established pursuant to a county ordinance and composed of a department head, personnel



director, and equal opportunity director should have been held in the Sunshine. Even though the county administrator had the sole authority to discipline employees, that authority had been delegated to the department head who in turn chose to share that authority with the other members of the panel.

By contrast, in *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 763 (Fla. 2010), the Court found that a county administrator's discussions with staff and consultants while negotiating a memorandum of understanding with a baseball team did not violate the Sunshine Law because the administrator's "so-called negotiations team only served an informational role." According to the Court, "[t]his is not a situation where [the administrator] and the individuals he consulted made joint decisions. Cf. *Dascott v. Palm Beach County*, [supra]." See also *McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009) and *Jordan v. Jenne*, 938 So. 2d 526 (Fla. 4th DCA 2006).

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