

1-F-6 | VALIDITY OF ACTION TAKEN IN VIOLATION OF THE SUNSHINE LAW AND SUBSEQUENT CORRECTIVE ACTION

Section 286.011, F.S., provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law is void ab initio. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). *Accord Sarasota Citizens For Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010), noting that “where officials have violated section 286.011, the official action is void ab initio.” See *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (selection committee rankings resulting from a meeting held in violation of the Sunshine Law are void ab initio and agency enjoined from entering into contract based on such rankings); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under s. 286.011, F.S.); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (by failing to open its minutes to public inspection and copying in a timely and reasonable manner, prejudice is presumed and therefore city’s approval of minutes is null and void ab initio); and *Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014), (upholding trial court ruling that voided an agreement reached after closeddoor mediation sessions which resulted in changes to pension benefits of city employees in certain unions). Compare s. 286.0114(8), F.S. (an action taken by a board or commission which is found to be in violation of s. 286.0114, F.S. [providing a right to be heard on a proposition before a state or local board or commission] “is not void as a result of that violation”).

Similarly, a circuit judge found that where two members of civil service board held a private discussion about a pending case during a recess, the board’s subsequent findings in the case were “null and void” and the city must reconvene the board and hear the evidence de novo. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. And see *Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa*, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to



be no case law “squarely resolving” whether a wrongful exclusion of one person would void all actions taken at the meeting, “there is legal support for that proposition”).

A violation need not be “clandestine” in order for a contract to be invalidated because “the principle that a Sunshine Law violation renders void a resulting official action does not depend upon a finding of intent to violate the law or resulting prejudice.” *Port Everglades Authority v. International Longshoremen’s Association, Local 1922-1*, 652 So. 2d 1169, 1171 (Fla. 4th DCA 1995). But see *Killearn Properties, Inc. v. City of Tallahassee*, 366 So. 2d 172 (Fla. 1st DCA 1979), cert. denied, 378 So. 2d 343 (Fla. 1979) (city which had received benefits under contract was estopped from claiming contract invalid as having been entered into in violation of the Sunshine Law).

Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes “independent final action in the sunshine,” the decision of the board or commission will not be disturbed. *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981). *Accord Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (Sunshine violations “can be cured by independent, final action completely in the Sunshine”). And see *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 861 (Fla. 3d DCA 1994) (adoption of the open government constitutional amendment, Art. I, s. 24, Fla. Const., did not overrule the *Tolar* “standard of remediation”). Cf. *Board of County Commissioners of Sarasota County v. Webber*, 658 So. 2d 1069 (Fla. 2d DCA 1995) (no evidence suggesting that board members met in secret during a recess to reconsider and deny a variance and then perfunctorily ratified this decision at the public hearing held a few minutes later); *B.M.Z. Corporation v. City of Oakland Park*, 415 So. 2d 735 (Fla. 4th DCA 1982) (where no evidence that any decision was made in private, subsequent formal action in sunshine was not merely perfunctory ratification of secret decisions or ceremonial acceptance of secret actions).

Thus, in a case involving the validity of a lease approved by a board of county commissioners after an advisory committee held two unnoticed meetings regarding the lease, a court held that the Sunshine Law violations were cured when the board of county commissioners held open public hearings after the unnoticed meetings, an effort was made to make available to the public the

minutes of the unnoticed meetings, the board approved a lease that was markedly different from that recommended by the advisory committee, and most of the lease negotiations were conducted after the advisory committee had concluded its work. *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860-861 (Fla. 3d DCA 1994).

Similarly, a school board remedied an inadvertent violation of the Sunshine Law when it subsequently held full, open and independent public hearings prior to adopting a redistricting plan. *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008). And see *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) (any possible violations that occurred when county commissioners circulated e-mails among each other were cured by four subsequent public meetings involving discussion of multiple proposals); *Jackson v. City of Tallahassee*, 265 So. 3d 736 (Fla. 1st DCA 2019) (public city commission meeting to fill a vacancy on the commission, which included a full discussion of the appointment, candidate presentations, more than an hour of public comment, and numerous speakers, cured any purported violation that may have occurred during the application process). Cf. *Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 553-554 (Fla. 2d DCA 2014), noting that "even when an illicit action is 'cured' it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine."

It must be emphasized, however, that only a full open hearing will cure the defect; a violation of the Sunshine Law will not be cured by a perfunctory ratification of the action taken outside of the sunshine. *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988). See also *Anderson v. City of St. Pete Beach*, 161 So. 3d at 553 (city failed to cure Sunshine Law violation since it merely perfunctorily ratified in public session what had already been decided in closed meetings).

For example, in *Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998), review denied, 735 So. 2d 1284 (Fla. 1999), the Fourth District explained why a subsequent city council meeting did not cure the council's prior violation of the Sunshine Law:

It is evident from the record that the meeting was not a full reexamination of the issues, but rather, was merely the perfunctory acceptance of the City's prior decision. This was not a full, open public hearing

convened for the purpose of enabling the public to express its views and participate in the decision-making process.

Instead, this was merely a Council meeting which was then opened to the public for comment at the City's request. There was no significant discussion of the issues or a discourse as to the language sought to be included. The City Councilmen were provided with transcripts of the hearings, but none reviewed the language previously approved, and the Council subsequently voted to deny reconsideration of the wording.

More recently, the Fourth District reversed an order granting summary judgment in favor of a city which claimed that a special meeting cured an alleged Sunshine Law violation arising from approval of a separation agreement for the departing city manager. The court observed that the entire proceeding lasted less than 15 minutes and "no one mentioned the terms of the agreement, nor did they discuss at length the reasons for the termination." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 786 (Fla. 4th DCA 2018). According to the court, "[t]he meeting may be more perfunctory... than the meeting in *Zorc*." *Id.* And see *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 (minutes of school board meeting did not go into enough depth to carry the school district's burden of proving a cure of an advisory committee's violation of the Sunshine Law; the violation can be remedied only when all matters previously considered by the advisory committee are brought by independent action into the sunshine). Cf. AGO 12-31 (audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate entity; the committee may not, therefore, ratify a defective request for proposals which was created and issued by the county's financial officer contrary to the requirements of the law).

Similarly, a school board's argument that it had cured Sunshine violations committed by its textbook committees because it held two public board meetings on the textbook recommendations, and also posted all the materials online, was rejected based on a finding that the board had failed to hold "a full and open hearing" on the recommendations. *Florida Citizens Alliance, Inc. v. School*



Board of Collier County, 328 So. 3d 22 (Fla. 2d DCA 2021). The court found it significant that under a school board policy, the board could not choose a textbook on its own by considering other alternatives from the textbooks previously considered by the committee. Instead, if the board rejected a textbook, the matter would go back to the textbook committee for a new review and recommendation.

Moreover, an appellate court warned that while subsequent public board meetings may have “cured” a Sunshine Law violation, “if a pattern of Sunshine Law violations existed before this violation, then perhaps we may have found that any subsequent school board actions were merely ‘perfunctory ratification[s] of secret actions and decisions.’” Citizens for Sunshine, Inc. v. Martin County School Board, 125 So. 3d 184, 189 (Fla. 4th DCA 2013). See Bert Fish Foundation v. Southeast Volusia Hospital District, No. 2010-20801-CINS (Fla. 7th Cir. Ct. February 24, 2011), available online in the Cases database at the open government site at myfloridalegal.com (series of public meetings did not “cure” Sunshine Law violations that resulted from 21 closed door meetings over 16 months; “[t]here was so much darkness for so long, that a giant infusion of sunshine might have been too little or too late”).

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