



FLORIDA'S SUNSHINE MANUAL
SUBPART 1-B: WHAT ENTITIES ARE COVERED BY THE SUNSHINE
LAW? APPLICATION OF THE SUNSHINE LAW TO...

Official Handbook on Public Records Laws

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Subpart 1-B

What Entities are Covered by the Sunshine Law? Application of the
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TABLE OF CONTENTS | PART 1 | SUBPART B

Section	Title	Page
1-B-1	Advisory Boards	5
1-B-2	Candidates or Members-Elect	13
1-B-3	Commissions Created by the Florida Constitution	14
1-B-4	Ex Officio Board Members	15
1-B-5	Federal Entities	16
1-B-6	Governor and Cabinet	17
1-B-7	Individual Board Members	18
1-B-8	Judiciary	26
1-B-9	Legislature	35
1-B-10	Married Couple Serving on the Same Board	36
1-B-11	Private Organizations	37
1-B-12	Staff Member or Public Official Also Serving as...	43
-	n/a	Appendix
		45



FLORIDA SUNSHINE MANUAL

PART 1

GOVERNMENT IN THE SUNSHINE LAW



FLORIDA'S SUNSHINE MANUAL

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PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: B WHAT ENTITIES ARE COVERED BY THE SUNSHINE
LAW? APPLICATION OF THE SUNSHINE LAW TO

SECTIONS: 1-B-1 through 1-B-12

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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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1-B-2 | CANDIDATES OR MEMBERS-ELECT

a. Candidates

The Sunshine Law does not apply to candidates for office, unless the candidate is an incumbent seeking reelection. AGO 92-05.

b. Members-Elect

The requirements of the Sunshine Law apply not only to meetings of covered boards or commissions but also to "meetings with or attended by any person elected to such board or commission, but who has not yet taken office." Section 286.011(1), F.S. Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. See also *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973) (individual, upon election to public office, loses his or her status as a private individual and acquires a position more akin to that of a public trustee and therefore is subject to s. 286.011, F.S.). Cf. Inf. Op. to Lamar, August 2, 1993 (Sunshine Law applies to transition team made up of citizens appointed by the mayor to make recommendations on city government reorganization). And see *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applied to advisory committee members "from the moment each member was selected to be on the [committee]").

A candidate who is unopposed is not considered to be a member-elect subject to the Sunshine Law until the election has been held. AGO 98-60. Accord Inf. Op. to Popowitz, August 12, 2016. The Popowitz opinion references a 2010 opinion from the Division of Elections (Div. of Elections Op. 10-09, July 26, 2010), finding that the date of a candidate's election to office could be deemed to be either the date specified by a court in an election case, election day itself, the date the final canvassing board certifies the election results, or some other date, depending upon the particular factual situation involved.

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1-B-3 | COMMISSIONS CREATED BY THE FLORIDA CONSTITUTION

Boards or commissions created by the Constitution which prescribes the manner of the exercise of their constitutional powers are not subject to s. 286.011, F.S., when carrying out such constitutionally prescribed duties. See *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977) (judicial nominating commissions are not subject to s. 286.011, F.S.). Cf. *In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (clemency power does not exist by virtue of legislative enactment; rather Constitution sufficiently prescribes rules for the manner of exercise of the power); and AGO 77-65 (Ch. 120, F.S., inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const.). Compare *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA), affirmed and remanded, 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission [now known as the Florida Commission on Offender Review, see s. 1, Ch. 14-191, Laws of Florida] which Art. IV, s. 8(c), Fla. Const., recognizes may be created by law, is subject to s. 286.011, F.S.

However, Art. I, s. 24, Fla. Const., establishes a constitutional right of access to meetings of any collegial public body of the executive branch of state government by providing that such meetings must be open and noticed to the public unless exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution.

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1-B-4 | EX OFFICIO BOARD MEMBERS

An ex officio board member is subject to the Sunshine Law regardless of whether he or she is serving in a voting or non-voting capacity. AGO 05-18. Accord Inf. Op. to Ardaman, June 24, 2021 (mayor who serves as a non-voting ex officio member of various municipal boards is subject to the Sunshine Law). And see Linares v. District School Board of Pasco County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (finding that the Sunshine Law applied equally to all members of an advisory committee, including a staff member appointed as a non-voting member of the committee whose role was only to advise the voting committee members).

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1-B-5 | FEDERAL ENTITIES

Federal agencies, i.e., agencies created under federal law, operating within the state, do not come within the purview of the state Sunshine Law. AGO 71-191. Thus, meetings of a federally-created council are not subject to s. 286.011, F.S. AGO 84-16.

However, if a board is created pursuant state law, the Sunshine Law applies even if federal officials serve on the board. See Inf. Op. to Markham, September 10, 1996 (technical oversight committee established by state agencies as part of settlement agreement in federal lawsuit subject to Sunshine Law); and Inf. Op. to Green, December 11, 1998 (tri-state river commission established pursuant to state and federal law is subject to the Sunshine Law). See also Inf. Op. to Knox, January 6, 2005 (St. Johns River Alliance, Inc., a non-profit corporation formed to help carry out the federal American Heritage Rivers Initiative and the associated intergovernmental Partnership Agreement among state, local and federal governmental entities, is subject to s. 286.011, F.S., requirements); and 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). Cf. Brown v. Denton, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine).

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1-B-6 | GOVERNOR AND CABINET

Article IV, s. 4 of the Florida Constitution, establishes "a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture." The Governor and Cabinet serve as the head of certain departments within the executive branch. In addition, the Governor and Cabinet have responsibilities that arise under the Constitution. See Art. IV, s. 8, Fla. Const. (clemency).

The Sunshine Law does not apply to those powers of the Governor and Cabinet which derive from the Constitution; thus, the Governor and Cabinet in dispensing pardons and the other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to s. 286.011, F.S. Cf. *In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (Constitution sufficiently prescribes rules for the manner of exercise of gubernatorial clemency power; legislative intervention is, therefore, unwarranted).

Section 286.011, F.S., however, does apply to those functions of the Governor and Cabinet which are statutory responsibilities as opposed to duties arising under the Constitution. Thus, the Governor and Cabinet are subject to the Sunshine Law when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund or the Florida Department of Law Enforcement. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the "dominion and control" of the Legislature.

Moreover, Art. I, s. 24, Fla. Const., requires that meetings of "any collegial public body of the executive branch of state government" be open and noticed to the public. The only exceptions to this constitutional right of access are those meetings which have been exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or which are specifically closed by the Constitution. And see Article III s. 4(e), Fla. Const., providing, in relevant part that "all prearranged gatherings, between . . . the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

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1-B-7 | INDIVIDUAL BOARD MEMBERS

Section 286.011, F.S., applies to public boards and commissions, i.e., collegial bodies, and has been applied to meetings of "two or more members" of the same board or commission when discussing some matter which foreseeably will come before the board or commission. Therefore, the statute does not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members. See *National Council of Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017); and *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976). See also Inf. Op. to Dillener, January 5, 1990 (Sunshine Law not normally applicable to meeting of town council member with private citizens). Cf. *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991), review denied, 598 So. 2d 75 (Fla. 1992), stating that ex parte (i.e., from one side only) communications in quasijudicial proceedings raise a presumption that the contact was prejudicial to the decision-making process; and s. 286.0115, F.S., enacted in response to the Jennings case, relating to access to local public officials in quasi-judicial proceedings.

However, there have been circumstances where the application of the Sunshine Law to individual board members has been considered. As stated by the Supreme Court, the Sunshine Law is to be construed "so as to frustrate all evasive devices." *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). And see AGO 89-39 (aides to county commissioners are not subject to the Sunshine law unless they have been delegated decision-making functions outside of the ambit of normal staff functions, are acting as liaisons between board members, or are acting in place of the board or its members at their direction).

a. Individual Board Member Meeting with a Member of Another Public Board

The Sunshine Law does not apply to a meeting between individuals who are members of different boards unless one or more of the individuals has been delegated the authority to act on behalf of his or her board. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984). Accord AGO 84-16 (meeting between the chair of a private industry council created pursuant to federal law and the chair of a five-county employment and training consortium created pursuant to state law is not subject to Sunshine Law, unless there is a delegation of decision-making authority to the chair of the

consortium); and Inf. Op. to McClash, April 29, 1992 (Sunshine Law generally not applicable to county commissioner meeting with individual member of metropolitan planning organization). And see News-Press Publishing Company, Inc. v. Lee County, Florida, 570 So. 2d 1325 (Fla. 2d DCA 1990) (Sunshine Law not applicable to mediation proceeding attended by individual members of city and county boards who were in litigation because only one member of each board was present at the proceedings and no final settlement negotiations could be made during the mediation conference).

An individual city council member may, therefore, meet privately with an individual member of the municipal planning and zoning board to discuss a recommendation made by that board since two or more members of either board are not present, provided that no delegation of decision-making authority has been made and neither member is acting as a liaison. AGO 87-34. Accord AGOs 99-55 (school board member meeting with member of advisory committee established by school board), and 97-52 (discussions between individual member of community college board of trustees and school board member regarding acquisition of property by school board).

b. Mayor Meeting with Individual City Commissioner or City Council Member

If the mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council are subject to the Sunshine Law. AGO 83-70. And see Inf. Op. to Ardaman, June 24, 2021 (Sunshine Law applies to discussions between a member of the city council and a mayor who serves as a non-voting member of the council).

On the other hand, if the mayor is not a member of the city council and does not possess any power to vote even in the case of a tie vote but possesses only the power to veto legislation, the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided the mayor is not acting as a liaison between members and neither individual has been delegated the authority to act on behalf of the council. AGOs 90-26 and 85-36. And see Inf. Op. to Cassady, April 7, 2005 (mayor who is not a member of the city council and cannot vote even in the event of a tie, may meet with an individual council member to



discuss the mayor's recommendations to the council concerning prospective appointees). Cf. *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since mayor was responsible under the city charter for disciplining city employees, mayor in carrying out this function was not subject to s. 286.011, F.S.).

c. Use of Non-Board Members or Staff to Act as Liaisons or to Conduct a de facto Meeting of the Board

As a general rule, individual board members "may call upon staff members for factual information and advice without being subject to the Sunshine Law's requirements." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010). And see AGO 81-42 (the fact that a city council member has expressed his or her views or voting intent on an upcoming matter to a news reporter prior to the scheduled public meeting does not violate the Sunshine Law so long as the reporter is not being used by the member as an intermediary in order to circumvent the requirements of s. 286.011, F.S.). Compare, *State v. Dorworth*, No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), affirmed, No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), available in the Cases database at the open government site at myfloridalegal.com, dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney "expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens."

However, because the Sunshine Law must be construed to "frustrate all evasive devices," the law is implicated by a meeting between a board member and a nonboard member who is being used as a liaison for board members. See *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018), citing to AGOs 96-35 (city manager may not ask each commissioner to state his or her position on a specific matter that will foreseeably be considered by the commission at a public meeting, in order to provide the information to the members of the commission) and 75-59 (city manager may meet individually with city council members "to discuss city business provided that the manager does not act



as a liaison for board members by circulating information and thoughts of individual councilmembers to the rest of the board").

Therefore, a city manager should refrain from asking each commissioner to state his or her position on a specific matter which will foreseeably be considered by the commission at a public meeting in order to provide the information to the members of the commission. AGO 89-23. See also Inf. Op. to Goren, October 28, 2009 (while individual city commissioners may seek advice or information from staff, city should be cognizant of the potential that commissioners seeking clarification by follow-up with staff when staff responses are provided to all commissioners could be considered to have participated in a de facto meeting of the commissioners by using staff as a conduit between commissioners). Compare *Sarasota Citizens for Responsible Government v. City of Sarasota*, supra at 765 (private staff meetings with individual county commissioners in preparation for a public hearing on a proposed memorandum of understanding [MOU] did not violate the Sunshine Law because the meetings were "informational briefings regarding the contents of the MOU" and "[t]here is no evidence that [county] staff communicated what any commissioner said to any other commissioner").

Additionally, in *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979), the court held that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the school superintendent and an individual school board member would not be subject to s. 286.011, F.S., these meetings were held in "rapid-fire succession" in order to avoid a public airing of a controversial redistricting problem. Thus, even though the superintendent was "adamant that he did not act as a go-between during these discussions and [denied] that he told any one board member the opinions of the others," the one-to-one meetings amounted to a de facto meeting of the school board in violation of s. 286.011, F.S. Id. at 580. See also *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (4th DCA 2018) (evidence did not "conclusively refute" allegations that a series of telephone calls between the city attorney and individual city councilmembers to discuss termination of and severance pay to, the city manager did not constitute a Sunshine Law



violation; accordingly, trial court should not have entered summary judgment in favor of the city). Cf. *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). In *Foster*, the judge rejected the argument made by the commissioners, that the Sunshine Law permitted city commissioners to attend a private breakfast meeting at which the sheriff spoke and the commissioners individually questioned the sheriff but did not direct comments or questions to each other. The court denied the commissioners' motion for summary judgment and ruled that the discussion should have been held in the Sunshine because the sheriff was a "common facilitator" who received comments from each commissioner in front of the other commissioners.

Similarly, in *Citizens for a Better Royal Palm Beach, Inc. v. Village of Royal Palm Beach*, No. CL 9114417 AA (Fla. 15th Cir. Ct. May 14, 1992), available in the Cases database at the open government site at myfloridalegal.com, the court invalidated a contract for the sale of municipal property when it determined that after the proposal to sell the property which had been discussed and approved at a public meeting collapsed, the city manager met individually with council members and from those discussions the property was sold to another group. The circuit court found that these meetings resulted in a substantial change in the terms of sale and that the execution of the contract, therefore, violated the Sunshine Law. See also *Sentinel Communications Company v. School Board of Osceola County*, No. CI92-0045 (Fla. 9th Cir. Ct. April 3, 1992), available in the Cases database at the open government site at myfloridalegal.com (series of private meetings between school superintendent and individual school board members to consider staff recommendations concerning administrative structure of the school system and to privately address any of the board's concerns, should have been held in the sunshine; while individual board members are not prohibited from meeting privately with staff or the superintendent for informational purposes or on an ad hoc basis, the Sunshine Law "shall be construed to prohibit the scheduling of a series of such meetings which concern a specific agenda"); and AGO 93-90 (board that is responsible for assessing the performance of its chief executive officer [CEO] should not use a review procedure in which individual board members evaluate the CEO's performance and send their



individual written comments to the board chair for compilation and subsequent discussion with the CEO).

Not all staff decisions, however, are required to be made or approved by a board. Thus, the district court concluded in *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), that the decision to appeal made by legal counsel to a public board after discussions between the legal staff and individual members of that board was not subject to the Sunshine Law. And see *Inf. Op. to Biasco*, July 2, 1997 (administrative officers or staff who serve public boards should not poll board members on issues which will foreseeably come before the board although an administrative officer is not precluded from contacting individual board members for their views on a matter when the officer, and not the board, has been vested with the authority to take action).

d. Delegation of Authority to Individual to Act on Behalf of the Board

"The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego." *IDS Properties, Inc. v. Town of Palm Beach*, 279 So. 2d 353, 359 (Fla. 4th DCA 1973), certified question answered sub nom., *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). See also *News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate de facto authority to act on their behalf in the formulation, preparation, and promulgation of plans on which foreseeable action will be taken by those public officials, those delegated that authority stand in the shoes of such public officials insofar as the Sunshine Law is concerned).

In *News-Press Publishing Company v. Lee County*, 570 So. 2d 1325 (Fla. 2d DCA 1990), a newspaper challenged the trial court's decision to require the parties (two cities and a county) to participate in mediation and to each appoint a representative "with full authority to bind them." The judge then amended the order to allow the parties to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court concluded that the mediation's narrow scope did not give rise to a substantial delegation affecting the board's decision-making function so as to



require the mediation to be open to the public. 570 So. 2d at 1327. And see *Broward County v. Conner*, 660 So. 2d 288, 290 (Fla. 4th DCA 1995), review denied, 669 So. 2d 250 (Fla. 1996) (since Sunshine Law provides that actions of a public board are not valid unless they are made at an open public meeting, a county's attorneys would not be authorized to enter into a settlement agreement on the commission's behalf "without formal action by the county commission at a meeting as required by the statute"). Compare *Lee County v. Pierpont*, 693 So. 2d 994 (Fla. 2d DCA 1997), affirmed, 710 So. 2d 958 (Fla. 1998) (authorization to county attorney to make settlement offers to landowners not to exceed appraised value plus 20%, rather than a specific dollar amount, did not violate the Sunshine Law). Moreover, the Attorney General's Office has advised that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. Accord AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. And see AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

The Attorney General's Office has advised that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. Accord AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. And see AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

However, if the board member has been authorized only to gather information or function as a fact-finder, the Attorney General's Office has concluded that the Sunshine Law does not apply. See e.g. AGOs 95-06, 93-78, and 90-17 (if board member is authorized only to explore various contract proposals,

with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law). Cf. *State, Department of Management Services v. Lewis*, 653 So. 2d 467 (Fla. 1st DCA 1995) (issuance of an order of reconsideration by a board chair does not violate the Sunshine Law where the purpose of the order is to provide notice of a hearing to the parties and allow them an opportunity to provide argument on the issue).

More recently, the First District Court of Appeal ruled that a statute (s. 627.091[6], F.S.), requiring a "committee" of a national insurance rating organization to comply with the Sunshine Law when meeting to discuss the need to alter Florida rates, did not apply to an actuary who performed this function instead of a committee. *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017). In *Fee*, the court noted that the term "committee" has been defined as a "subordinate group," not a single person, and that "the multi-person concept of the term 'committee' further finds support in well-established precedent construing the Sunshine Law."

Moreover, if the individual, rather than the board, is vested by law, charter, or ordinance with the authority to take action, such discussions are not subject to s. 286.011, F.S. See *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since the mayor was responsible under the city charter for disciplining city employees and since the mayor was not a board or commission and was not acting for a board, meetings between the mayor and a city employee concerning the employee's duties were not subject to s. 286.011, F.S.). Cf. AGO 13-14 (where contract terms regarding the police chief's employment have been discussed and approved at a public city commission meeting, Sunshine Law does not require that the consistent written employment contract drafted by the town attorney as directed by the commission be subsequently presented to and approved at another commission meeting).

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1-B-8 | JUDICIARY

The open meetings provision found in Art. I, s. 24, Fla. Const., does not include meetings of the judiciary. In addition, separation of powers principles make it unlikely that the Sunshine Law, a legislative enactment, could apply to the courts established pursuant to Art. V, Fla. Const. AGO 83-97. Thus, questions of access to judicial proceedings usually arise under other constitutional guarantees relating to open and public judicial proceedings, Amend. VI, U.S. Const., and freedom of the press, Amend. I, U.S. Const.

However, a circuit conflict committee established by the Legislature to approve attorneys handling conflict cases is subject to the Sunshine Law, even though the chief judge or his or her designee is a member, because the "circuit conflict committees are created by the Legislature, subject to its dominion and control." AGO 83-97. And see *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to quasi-judicial functions; a board exercising quasi-judicial functions is not a part of the judicial branch of government).

a. Criminal Proceedings

A court possesses the inherent power to control the conduct of proceedings before it. *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982); and *State ex rel. Miami Herald Publishing Company v. McIntosh*, 340 So. 2d 904 (Fla. 1976). A three-pronged test for closing criminal proceedings has been developed to provide "the best balance between the need for open government and public access, through the media, to the judicial process, and the paramount right of a defendant in a criminal proceeding to a fair trial before an impartial jury." *Lewis*, supra at 7. And see *Morris Publishing Group, LLC v. State*, 136 So. 3d 770, 779 (Fla. 1st DCA 2014); and *Miami Herald Media Company v. State*, 218 So. 3d 460 (Fla. 3d DCA 2017).

The factors to be considered are whether:

- 1) closure is necessary to prevent a serious and imminent threat to the administration of justice;
- 2) no alternatives are available, other than change of venue, which would protect the defendant's right to a fair trial; and



- 3) closure would be effective in protecting the defendant's rights without being broader than necessary to accomplish that purpose.

b. Civil Proceedings

Stressing that all trials, civil and criminal, are public events and that there is a strong presumption of public access to these proceedings, the Supreme Court in *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988), set forth the following factors which must be considered by a court in reviewing a request for closure of civil proceedings:

- 1) a strong presumption of openness exists for all court proceedings;
- 2) both the public and news media have standing to challenge any closure order with the burden of proof being on the party seeking closure;
- 3) closure should occur only when necessary
 - a) to comply with established public policy as set forth in the Constitution, statutes, rules or case law;
 - b) to protect trade secrets;
 - c) to protect a compelling governmental interest;
 - d) to obtain evidence to properly determine legal issues in a case;
 - e) to avoid substantial injury to innocent third parties; or
 - f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.
- 4) whether a reasonable alternative is available to accomplish the desired result and if none exists, the least restrictive closure necessary to accomplish its purpose is used;
- 5) the presumption of openness continues through the appellate review process and the party seeking closure continues to have the burden to justify closure.



And see Amendments to the Florida Family Law Rules of Procedure, 723 So. 2d 208, 209 (Fla. 1998), reiterating support for the Barron standards and stating that “public access to court proceedings and records [is] important to assure testimonial trustworthiness; in providing a wholesome effect on all officers of the court for purposes of moving those officers to a strict conscientiousness in the performance of duty; in allowing nonparties the opportunity of learning whether they are affected; and in instilling a strong confidence in judicial remedies, which would be absent under a system of secrecy;” and *Lake v. State*, 193 So. 3d 932, 934 (Fla. 4th DCA 2016) (trial court did not depart from essential requirements of law by refusing to close Jimmy Ryce Act civil commitment review proceeding; statutory provision requiring that certain treatment records introduced into evidence be maintained under seal unless opened by the judge “does not require that the press and public be barred from any discussion of treatment or treatment records during a review hearing”).

c. Depositions

While the courts have recognized that court proceedings are public events and the public generally has access to such proceedings, the general public and the press do not have a right under the First Amendment or the rules of procedure to attend discovery depositions. See *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 380 (Fla. 1987), cert. denied, 108 S.Ct. 346 (1987), stating that while discovery depositions in criminal cases are judicially compelled for the purpose of allowing parties to investigate and prepare, they are not judicial proceedings. Accord *Post-Newsweek Stations, Florida, Inc. v. State*, 510 So. 2d 896 (Fla. 1987) (media not entitled to notice and opportunity to attend pretrial discovery depositions in criminal cases); and *SCI Funeral Services of Florida, Inc. v. Light*, 811 So. 2d 796 (Fla. 4th DCA 2002) (upholding protective order closing depositions to the media based on privacy concerns). Cf. *Lewis v. State*, 958 So. 2d 1027 (Fla. 5th DCA 2007) (while *Burk* applied to unfiled depositions made during an ongoing, active criminal prosecution, materials related to defendant’s prosecution, including depositions, are subject to disclosure after the case becomes final).



d. Florida Bar Grievance Proceedings

An attorney's claim that the Florida Bar violated the Sunshine Law by refusing to allow him to attend a grievance committee meeting of the Bar was rejected in *Florida Bar v. Committee*, 916 So. 2d 741, 744-745 (Fla. 2005): "The grievance committee meetings of the Bar are private, and therefore the Bar is justified in prohibiting [the attorney] from attendance." The Court reiterated its statement from *The Florida Bar: In re Advisory Opinion*, 398 So. 2d 446, 447 (Fla. 1981), that "[n]either the legislature nor the governor can control what is purely a judicial function."

e. Grand Juries

Section 905.24, F.S., provides that "[g]rand jury proceedings are secret"; thus, these proceedings are not subject to s. 286.011, F.S. See *Clein v. State*, 52 So. 2d 117, 120 (Fla. 1950) (it is the policy of the law to shield the proceedings of grand juries from public scrutiny); and *In re Getty*, 427 So. 2d 380, 383 (Fla. 4th DCA 1983) (public disclosure of grand jury proceedings "could result in a myriad of harmful effects"). The grand jury has also been referred to as a "coordinate branch of the judiciary, and as an arm, appendage, or adjunct of the circuit court." *State ex rel. Christian v. Rudd*, 302 So. 2d 821, 828 (Fla. 1st DCA 1974). Cf. *Butterworth v. Smith*, 110 S.Ct. 1376 (1990), striking down a Florida statute to the extent that it prohibited a witness from disclosing his own testimony before a grand jury after the grand jury's term has ended.

In addition, hearings on certain grand jury procedural motions are closed. The procedural steps contemplated in s. 905.28(1), F.S., for reports or presentments of the grand jury relating to an individual which are not accompanied by a true bill or indictment, are cloaked with the same degree of secrecy as is enjoyed by the grand jury in the receipt of evidence, its deliberations, and final product. Therefore, a newspaper has no right of access to grand jury procedural motions and to the related hearing. *In re Grand Jury*, Fall Term 1986, 528 So. 2d 51 (Fla. 2d DCA 1988). And see *Palm Beach Newspapers, Inc., v. Doe*, 460 So. 2d 406 (Fla. 4th DCA 1984) (hearing ancillary or related to a grand jury session constitutes a proceeding which comes within the protection of s. 905.24); and *In re Subpoena to Testify Before Grand Jury Directed to Custodian of Records*, 864 F.2d 1559 (11th Cir.



1989) (while a court must hold a hearing and give reasons for closure of criminal court proceedings, a court is not required to give newspapers a hearing and give reasons for closure of grand jury proceedings).

f. Judicial Nominating Commissions/Judicial Qualifications Commission

Judicial nominating commissions for the Supreme Court of Florida, the district courts of appeal, or for a judicial circuit for the trial courts within the circuit are not subject to the Sunshine Law. *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977). Article V, s. 11(d), Fla. Const., however, requires that except for its deliberations, the proceedings of a judicial nominating commission and its records are open to the public. While the deliberations of a commission are closed, such a limitation appears to be applicable to that point in the proceedings when the commissioners are weighing and examining the reasons for and against a choice. Inf. Op. to Russell, August 2, 1991.

The statewide judicial nominating commission for workers' compensation judges, however, is not a judicial nominating commission as contemplated by the Constitution; thus, such a commission created pursuant to the workers' compensation law is subject to s. 286.011, F.S. AGO 90-76.

proceedings of the Judicial Qualifications Commission are confidential. However, upon a finding of probable cause and the filing of formal charges against a judge or justice by the commission with the Clerk of the Supreme Court, all further proceedings of the commission are public. Article V, s. 12(a)(4), Fla. Const.

g. Mediation Proceedings

(1) Court-Ordered Mediation

Court-ordered mediation and arbitration are to be conducted according to the rules of practice and procedure adopted by the Florida Supreme Court. Sections 44.102(1) and 44.103(1), F.S. And see rule 10.360(a), Florida Rules For Certified and Court-Appointed Mediators ("A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties."). (e.s.) Cf. Everglades Law Center,

Inc. v. South Florida Water Management District, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that written mediation communications are confidential pursuant to ss. 44.103(3) and 44. 405(1), F.S., and must be redacted from the full transcript of a closed litigation session when it becomes public pursuant to s. 286.011(8), F.S.

Public access to court-ordered mediation proceedings between two cities and a county was raised in News-Press Publishing Company, Inc. v. Lee County, Florida, 570 So. 2d 1325 (Fla. 2d DCA 1990). Initially, the judge required the parties to have present a representative "with full authority to bind them"; however, after the media objected to the closure of the mediation proceeding, the judge amended the order to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court noted that no two members of any of the public boards would be present at the mediation proceedings and that the mediation's narrow scope did not give rise to a substantial delegation affecting the boards' decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. Cf. Brown v. Denton, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine; "[w]e cannot condone hiding behind federal mediation, whether intentionally or unintentionally, in an effort to thwart the requirements of the Sunshine Law.").

Similarly, in O'Connell v. Board of Trustees, 1 F.L.W. Supp. 285 (Fla. 7th Cir. Ct. Feb. 9, 1993), the court noted that as to public agencies, mediation is subject to the Sunshine Law; thus, no more than one member of a collegial body should attend the mediation conference. And see Fla. R. Civ. P. 1.720(d), stating that "[i]f a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to

recommend settlement to the appropriate decision-making body of the entity." Accord Fla. R. App. P. 9.720(a).

(2) Other Mediation Proceedings

Mediation meetings conducted pursuant to the Florida Governmental Conflict Resolution Act, ss. 164.101-164.1061, F.S., which involve officials or representatives of local governmental entities who have the authority to negotiate on behalf of that governmental entity are subject to the Sunshine Law. Inf. Op. to McQuagge, February 13, 2002. Similarly, a closed attorney-client session may not be held to discuss settlement negotiations on an issue that is the subject of ongoing mediation pursuant to a partnership agreement between a water management district and others which is not in litigation. AGO 06-03.

h. Statutes Providing for Closed Court Proceedings

Certain court proceedings may be closed in accordance with Florida Statutes as follows:

(1) Adoption:

Hearings held under the Florida Adoption Act are closed. Section 63.162(1), F.S. See *In re Adoption of H.Y.T.*, 458 So. 2d 1127 (Fla. 1984) (statute providing that all adoption hearings shall be held in closed court is not unconstitutional).

(2) Dependency:

Except as provided in s. 39.507, F.S., dependency adjudicatory hearings are open to the public unless, by special order, the court determines that the public interest or welfare of the child is best served by closing the hearing. Section 39.507(2), F.S. And see *Mayer v. State*, 523 So. 2d 1171 (Fla. 2d DCA), review dismissed, 529 So. 2d 694 (Fla. 1988) (former version of statute requiring hearings to be closed did not violate First Amendment).

(3) Guardian Advocate Appointments:

Hearings for appointment of guardian advocates are confidential. Section 39.827(4), F.S.

(4) HIV Test Results:

Court proceedings in cases where a person is seeking access to human immunodeficiency virus (HIV) test results are to be conducted in camera unless the person tested agrees to a hearing in open court or the court determines that a public hearing is necessary to the public interest and proper administration of justice. Section 381.004(2)(e)9., F.S.

(5) Pregnancy Termination Notice Waiver:

Hearings conducted in accordance with a petition for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy shall remain confidential and closed to the public, as provided by court rule. Section 390.01114(6)(f), F.S.

(6) Termination of Parental Rights:

Hearings involving termination of parental rights are confidential and closed to the public. Section 39.809(4), F.S. See *Natural Parents of J.B. v. Florida Department of Children and Family Services*, 780 So. 2d 6 (Fla. 2001), upholding the constitutionality of the statute. And see *J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law does not apply to Department of Children and Families permanency staffing meetings conducted to determine whether to file petition to terminate parental rights). Cf. *Stanfield v. Florida Department of Children and Families*, 698 So. 2d 321 (Fla. 3d DCA 1997) (trial court may not issue "gag" order preventing a woman from discussing a termination of parental rights case because "[t]he court cannot prohibit citizens from exercising their First Amendment right to publicly discuss knowledge that they have obtained independent of court documents even though the information may mirror the information contained in court documents").

(7) Victim and Witness Testimony in Certain Circumstances:

Except as provided in s. 918.16(2), F.S., if any person under 16 years of age or any person with an intellectual disability is testifying in any civil or criminal trial concerning any sex offense, the judge shall clear the courtroom, except for listed individuals. Section 918.16(1), F.S. If the victim of a sex offense is testifying concerning that offense, the court shall clear the courtroom, except for listed individuals, upon request of the victim, regardless of the victim's age or mental capacity. Section 918.16(2), F.S. Cf. *Pritchett v. State*, 566 So. 2d 6 (Fla. 2d DCA), review denied, 570 So. 2d 1306 (Fla. 1990) (where a trial court failed to make any findings to justify closure, application of s. 918.16, F.S., to the trial of a defendant charged with capital sexual battery violates the defendant's constitutional right to a public trial). Accord *Kovaleski v. State*, 854 So. 2d 282 (Fla. 4th DCA 2003), cause dismissed, 860 So. 2d 978 (Fla. 2003).

For a more complete listing of statutory exemptions, please see Appendix D and the Index.

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1-B-9 | LEGISLATURE

Article I, s. 24, Fla. Const., requires that meetings of the Legislature be open and noticed as provided in Art. III, s. 4(e), Fla. Const., except with respect to those meetings exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution. And see Art. III, s. 4(c), Fla. Const. (votes of members during final passage of legislation pending before a committee and, upon request of two members of a committee or subcommittee, on any other question, must be recorded).

Pursuant to Art. III, s. 4(e), Fla. Const., the rules of procedure of each house of the Legislature must provide that all legislative committee and subcommittee meetings of each house and joint conference committee meetings be open and noticed. Such rules must also provide:

[A]ll prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

In accordance with Article III, s. 4(e), both the Senate and the House of Representatives have adopted rules implementing this section. Senate Rules may be found online at flsenate.gov. Rules of the House of Representatives may be found at myfloridahouse.gov.

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1-B-10 | MARRIED COUPLE SERVING ON THE SAME BOARD

There is no per se violation of the Sunshine Law for a husband and wife to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of s. 286.011, F.S. AGO 89-06.

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1-B-11 | PRIVATE ORGANIZATIONS

The Attorney General's Office has recognized that private organizations generally are not subject to the Sunshine Law unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. AGO 07-27.

However, as discussed below, the Sunshine Law applies to private entities created by law or by public agencies, and to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.

a. Private Entities Created Pursuant to Law or by Public Agencies

The Supreme Court has stated that "[t]he Legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which [the Legislature] has dominion or control." *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971).

Accordingly, if a private entity has been created by law or by a public agency to perform a public function, the Sunshine Law applies. See *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017), noting the application of the Sunshine Law to governmental bodies and to private entities created by a public entity. Accord AGO 00-08 ("a board or commission created by a public agency or entity is subject to section 286.011, Florida Statutes").

For example, in AGO 04-44, the Attorney General advised that a nonprofit corporation established by state law to manage corrections work programs of the Department of Corrections, was subject to the Sunshine Law. And see AGOs 98-42 (association legislatively designated as the governing organization of athletics in Florida public schools), 97-17 (not-for-profit corporation created by a city redevelopment agency to assist in the implementation of its redevelopment plan), and 16-01 and 98-01 (board of trustees of an insurance trust fund created pursuant to collective bargaining agreement between a city and the employee union). Cf. s. 20.41(6) and (8), F.S., providing that area agencies on aging, described as "nongovernmental, independent, not-for-profit



corporations" are "subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings."

b. Private Entities Providing Services to Public Agencies

A private corporation performing services for a public agency and receiving compensation for such services is not by virtue of this relationship alone subject to the Sunshine Law unless the public agency's governmental or legislative functions have been delegated to it. *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law). And see AGOs 98-47 (Sunshine Law does not apply to private nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available through a city). 80-45 (the receipt of Medicare, Medicaid, government grants and loans, or similar funds by a private nonprofit hospital does not, standing alone, subject the hospital to the Sunshine Law); and Inf. Op. to Gaetz and Coley, December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Sunshine Law).

However, although private entities are generally not subject to the Sunshine Law simply because they do business with public agencies, the Sunshine Law can apply if a public entity has delegated "the performance of its public purpose" to a private entity. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 382-383 (Fla. 1999). *Accord National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017); and *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021).

For example, in *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659, 660 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010), the court deemed it "undisputed" that a not-for-profit corporation charged by the City of Pensacola with overseeing the development of public waterfront property "is subject to the requirements of the Sunshine Law."

Similarly, the Attorney General's Office has found meetings of the following entities to be subject to the Sunshine Law:



Family Services Coalition, Inc., board of directors, performing services for the Department of Children and Families which services would normally be performed by the department, AGO 00-03; Astronauts Memorial Foundation when performing duties funded under the General Appropriations Act, AGO 96-43; nonprofit organization designated by county to fulfill role of county's dissolved cultural affairs council, AGO 98-49; nonprofit corporation specifically created to contract with county for operation of a public golf course on county property acquired by public funds, AGO 02-53; downtown redevelopment task force which, although not appointed by city commission, stood in place of the city commission when considering downtown improvement issues, AGO 85-55; and a private nonprofit corporation, if the county accepts the corporation's offer to review, recodify, and prepare draft amendments to the county zoning code, AGO 83-95. Cf. Inf. Op. to Bedell, December 28, 2005 (private nonprofit organization which entered into an agreement with a city to operate a theater, received city funding in the form of a loan for this purpose, and leased property from the city, should comply with the Sunshine Law when holding discussions or making decisions regarding the theater).

More recently, the First District determined a national insurance rating organization with statutory responsibility to file proposals for changes in Florida rates was not subject to the Sunshine Law. The court determined that the state insurance agency retained the responsibility to approve or disapprove rates and "did not delegate any authority to carry out an agency function required to be performed in the sunshine." *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017). See also *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021) (private entity that entered into a contract with a state agency to perform certain services was not subject to the Sunshine Law because the public entity did not delegate the performance of its public purpose to the private corporation).

c. Application of the Sunshine Law to specific private entities

(1) Direct-Support Organizations

In AGO 05-27, after reviewing the responsibilities of a nonprofit corporation created pursuant to statute as a

direct-support organization and the organization's relationship to the public agency, the Attorney General's Office concluded that the organization was subject to the Sunshine Law. See also Inf. Op. to Chiumento, June 27, 1990 (Sunshine Law applies to school district direct-support organizations created pursuant to statute; although the direct-support organizations "constitute private nonprofit corporations, they seek to assist the district school board in carrying out its functions of meeting the educational needs of the students in the county"). And see AGOs 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions subject to Sunshine Law), and 11-01 (Sunshine Law applies to Biscayne Park Foundation, Inc., created as a nonprofit foundation to act as an instrumentality on behalf of the Village of Biscayne Park and intended to enhance the Village's opportunities to raise monies through special events, sponsorships, donations, and grants for the Village).

The Legislature has specifically exempted portions of meetings of some direct-support organizations. For example, any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committee of the board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S. Section 1004.28(5) (c), F.S. See also s. 292.055(9), F.S. (portions of meetings of Department of Veterans' Affairs direct support organization during which the identity of a donor or potential donor who wishes to remain anonymous is discussed are exempt).

(2) Economic Development Organizations

Several Attorney General Opinions have considered whether the Sunshine Law applies to private economic development organizations. These opinions have concluded that the Sunshine Law applies when there has been a delegation of a public agency's authority to conduct public business such as carrying out the terms of the

county's economic development strategic plan. AGO 10-30. See also AGO 10-44 (Sunshine Law applies to nonprofit corporation delegated authority to carry out the terms of the county's green economic development plan). Compare Inf. Op. to Gaetz and Coley, December 17, 2009 (open government laws did not apply to private economic development corporation since no delegation of a public agency's governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of the agency). Cf. *Economic Development Commission v. Ellis*, 178 So. 3d 118, 123 (Fla. 5th DCA 2015) (trial court erred by using the "delegation of function" test to conclude that a private entity under contract with a county to provide economic development services was subject to the Public Records Act because there was "not a clear, compelling, complete delegation of a governmental function" to the entity; instead, the court should have used the "totality of factors" test to make this determination). For more information on the "delegation of function" and "totality of factors" tests, please refer to the discussion on pages 62-64.

(3) Homeowners' Associations

The Sunshine Law does not generally apply to meetings of a homeowners' association board of directors. Inf. Op. to Fasano, June 7, 1996. Other statutes govern access to records and meetings of these associations. See, e.g., s. 720.303(2), F.S. (homeowners' association board of directors); s. 718.112(2)(c), F.S. (condominium board of administration); s. 719.106(1)(c), F.S. (cooperative board of administration); and s. 723.078(2)(c), F.S. (mobile home park homeowners' association board of directors). Cf. AGOs 99-53 (an architectural review committee of a homeowners' association is subject to the Sunshine Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits), and 07-44 (property owners association subject to open government laws when acting on behalf of a municipal services taxing unit).

(4) Political Parties

Meetings of political parties are not subject to s. 286.011, F.S. Inf. Op. to Armesto, September 18, 1979.



(5) Volunteer Fire Departments

In AGO 04-32, the Attorney General advised that boards of directors of volunteer fire departments that provide firefighting services to the county and use facilities and equipment acquired with county funds are subject to the Sunshine Law. Cf. AGO 00-08 (meetings of Lee County Fire Commissioner's Forum, a nonprofit corporation created by fire districts operating in Lee County, at which two or more members of the same district board discuss matters that may foreseeably come before the board for official action are subject to the Sunshine Law). And see *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So. 2d 1230 (Fla. 4th DCA 1977), cert. denied, 358 So. 2d 132 (Fla. 1978) (private nonprofit volunteer fire department, which had been given stewardship over firefighting, which conducted its activities on county-owned property, and which was funded in part by public money, was an "agency" for purposes of the Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

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1-B-12 | STAFF MEMBER OR PUBLIC OFFICIAL ALSO SERVING AS MEMBER OF PUBLIC BOARD

In some cases, staff members or public officials also serve as members of public boards. If so, discussions between those board members that involve matters which foreseeably could come before the board must be held in the Sunshine. For example, a 1993 Attorney General Opinion concluded that communications between the sheriff and the state attorney, as members of the county's criminal justice commission, would be subject to the Sunshine Law when such discussions involve matters which foreseeably would come before the commission. AGO 93-41. Cf. AGO 11-04, noting that if the state attorney and sheriff elect to appoint individuals to serve on a county criminal justice commission in the place of each officer, as authorized by county ordinance, neither the state attorney nor the sheriff would be a member of the commission so as to make these communications subject to the Sunshine Law. See now, s. 286.01141, F.S. (2013), creating a Sunshine Law exemption for that portion of a meeting of a duly constituted local advisory criminal justice commission at which members of the commission discuss active criminal intelligence or investigative information that is currently being considered by or which may foreseeably come before the commission, provided that public disclosure of the discussion is made at any public meeting of the commission at which the matter is being considered.

However, the Sunshine Law is applicable only to discussions of matters which may foreseeably come before the board. For example, the Sunshine Law would not apply to meetings between the mayor and city commissioners where a mayor performs the duties of city manager and the city commissioners individually serve as the head of a city department when the meeting is held solely by these officers in their capacity as department heads for the purpose of coordinating administrative and operational matters between executive departments of city government for which no formal action by the governing body is required or contemplated. Those matters which normally come before, or should come before, the city commission for discussion or action, however, must not be discussed at such meetings. AGO 81-88. Accord AGOs 83-70 and 75-210 (mayor may discuss matters with individual city council member which concern his or her administrative functions and would not come before the council for consideration and further action).

Similarly, the Sunshine Law would not apply to a school faculty meeting simply because two or more members of school advisory



council who are also faculty members attend the faculty meeting as long as council members refrain from discussing matters that may come before the council for consideration. Inf. Op. to Hughes, February 17, 1995; and Inf. Op. to Boyd, March 14, 1994.

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APPENDIX



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