IDENTIFYING SUNSHINE LAW VIOLATIONS IN SCHOOL BOARD AND OTHER MEETINGS OF LOCAL GOVERNMENTAL BODIES

The following summary is intended to help Florida residents identify violations of the Sunshine Law by local governmental bodies. The "Sunshine Law" refers to the requirement of government agencies to conduct business transparently "in the sunshine." It is guaranteed in Florida's Constitution in Article I, Section 24. The Florida legislature has also codified this guarantee and provided remedies for enforcement in Fla. Stat. 286.011.

The General Requirements of the Law

The Sunshine law requires 1) meetings of public boards or commissions must be open to the public; 2) reasonable notice of such meetings must be given; and 3) minutes of the meetings must be taken and promptly recorded. Fla. Stat. 286.011.

Enforcement

The State Attorney may investigate Sunshine violations and prosecute them if they rise to the level of a criminal infraction. Alternatively, any resident may file suit in circuit court to enforce the requirements of the Sunshine Law. Fla. Stat. 286.011(2). A resident bringing a civil action is entitled to reasonable attorney's fees should he prevail.

Scope of the Law

The Sunshine Law applies to "any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision." In short, "all governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010).

A Note about Committees

There has been a trend among school boards in recent years to delegate authority to committees to perform board functions, especially for time-consuming work such as textbook review. Many school boards mistakenly believe that if they call the committee a "fact-finding committee" or if the committee is technically formed by a staff member, *e.g.*, a superintendent,

then the committee need not follow the Sunshine Law. This is incorrect. When it comes to committees, the crucial question is whether or not the governmental entity in question delegated decision-making authority to the committee. If they did, the committee must follow the sunshine law regardless of whether they call themselves a fact-finding committee or answer to the superintendent. *Krause v. Reno*, 366 So. 2d 1244, 1252 (Fla. 3d DCA 1979) (advisors appointed by city manager became agency under Sunshine Law); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (Committee of faculty advisors appointed by the president of a university became an agency under Sunshine law); and *Silver Express Co. vs. Dist. Bd. of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So.2d 1099 (Fla. 3d DCA, 1997) (committee appointed by a purchasing director became an agency under the Sunshine Law).

Whether or not a committee has decision-making authority is determined by their actions. Did they eliminate potential candidates or textbooks from further consideration? If so, they exercised decision-making authority. In *Florida Citizens Alliance, Inc. et al. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2nd DCA, 2021), the School District argued that the textbook selection committees were merely fact-finding committees and the Board ultimately decided whether to adopt the texts or not. The Second District Court of Appeals rejected this argument because the minutes of the committee meetings reflected they had eliminated dozens of books from further review, i.e., they had exhibited decision-making authority.

Notice

The law requires that notice be reasonable. "Reasonable notice" is not defined. However, the Attorney General has suggested that the following be done:

1. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.

2. The notice should be prominently displayed in the area in the agency's offices set aside for that purpose, e.g., for cities, in city hall, and on the agency's website, if there is one.

3. Except in the case of emergency or special meetings, notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.

4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. See Yarbrough v. Young, 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate).

5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly effective in providing notice of upcoming meetings.

Anything less than the foregoing is suspect. Additionally, if the school board provides extensive notice for its own meetings, but provides scant notice for committee meetings, the disparity tends to suggest a notice violation. As noted above, school boards have trended toward using committees to accomplish a variety of tasks. In doing so, the school boards have been failing to make the committee meetings open to the public or to notice them at all. If you are questioning whether your board has provided proper notice for a committee meeting, request all notice for the meeting, and ask whether the notice fulfills the requirements outlined above by the Attorney General? If not, the courts would likely find the notice was insufficient.

Ratification or Cure

Another trend among school boards is to conduct business by committees and then adopt or ratify the committee business during the school board's meeting. These boards are acting under the belief that they "cure" any violation by ratifying the committees work. While it is possible to cure a sunshine law violation, the legal standard is 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." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

The Case of *Florida Citizens Alliance, Inc. et al. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2nd DCA, 2021) is instructive. In this case, the School Board had delegated authority to various committees for textbook selection. The committees spent hundreds of hours reviewing texts, reviewing online materials, listening to publisher presentation, etc. They whittled down a list of over 100 books to just 36. When the school board met, it discussed the 36 recommendations for roughly 20 minutes without naming a single book, mostly congratulating and thanking the committees for their efforts. Later, the School Board argued this meeting was a cure because the public had the opportunity to comment on the adoption of the texts at a duly noticed school board meeting. This argument was rejected because the meeting did not constitute

a full, open hearing that reexamined the issues that had been discussed outside the Sunshine. Not only was there no substance to the meeting, but none of the eliminated texts were up for discussion. Accordingly, there was no way the meeting could constitute a full, open hearing.

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