

FRANK & LOR

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR JEFFERSON COUNTY, FLORIDA.

CASE NO. 89-235

ROBERT B. RACKLEFF, JO ELLYN RACKLEFF,
WILLIAM DURELL MILLER, JANICE L. HOLMES,
PAUL JOSEPH NAHOON, CLYDE DILLON SIMPSON,
ISREAL CHARLES LAWRENCE, and FRANCES EUGENE
JOHNSON, individually and on behalf of the
Citizens of the State of Florida,

ISSUED
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Plaintiffs,

vs.

MORDAUNT BISHOP, CLIFFORD BROWN,
J. E. COOKSEY, W. B. EDWARDS, JR., and
T. B. WALKER, not individually, but in
their capacities as members of the
County Commission of Jefferson County

and

DANNY MONROE, SUSAN HAGAN, DAVID
WARD, BILL TELLEFSEN, HERBERT
DEMOTT, BILL BASSETT, FRED WILLIAMS,
JACK HAMILTON, and BILL COUNTS,
not individually, but in their
capacities as members of the
Jefferson County Planning Commission,

Defendants.

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ORDER ON MOTION FOR SUMMARY JUDGMENT

Robert B. Rackleff, et al., Plaintiffs, seek summary judgment
against Morduant Bishop, et al., as members of the Jefferson County
Commission and Danny Monroe, et al., as members of the Jefferson
County Planning Commission, Defendants. The Plaintiffs claim that
various members of these governmental bodies have violated provisions
of the "Public Records" act (F.S. § 119) and the "Public Meetings"
act (F.S. § 286) entitling Plaintiffs to an award of attorneys fees.¹
The Court has reviewed the court files, the submissions of respective
counsel and their arguments.

The Court finds no disputed issues of material fact concerning
several of the events in question and issues a partial summary judgment

The May 9, 1989 Conference During
the County Commission Meeting

①
During a duly called and noticed meeting of the Jefferson County Commission on May 9, 1989, Commission Chairman Morduant Bishop processed the public meeting for several minutes for the purpose of securing the county attorney's advice. He was joined in this conference by Commissioners J.E. Cooksey and Clifford Brown and County Planning Commissioners David Ward and Bill Tellefsen. The conversations of the conferees were not generally³ audible to the members of the public present in the meeting room. At the conclusion of the conference, Chairman Bishop brought the meeting back to order and advised the audience that "the decision of the board, after consulting with our attorney, is that we will continue with the meeting . . ."

While this conference was not a clandestine violation of Florida Statute § 286.011, it nevertheless violated the letter and spirit of this law which requires that public meetings be "open to the public all times." The irony of a public meeting violation occurring during a duly noticed county commission meeting before a large audience of citizens and the assembled news media is not lost upon the Court. However, the private confab of several county commissioners, the Commission attorney and two members of the Planning Commission (a subsidiary agency of the Board) resulted in a clear violation of this statute. [Defendants' contentions to the contrary, while artfully and assiduously advanced, are unavailing.]

Samson ✓

While it is unmistakable that the private conference resulted in a decision to proceed with the meeting,⁴ the formulation of such a decision at the conference is not critical to a finding that the violation occurred. See Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969) and Wood v. Marston, 442 So. 2d 934 (Fla. 1983). Inquiry and discussions which lead to final

unforeseeable actions are also covered under this statute. Moreover,

not found and counsel has not presented any precedent embracing or applying the doctrine of waiver (nor estoppel) to a sunshine violation case. Further, any contention that a conference with the Commission attorney on a purely procedural matter is exempt from Chapter 286, has been rejected in Neu v. Miami Herald Publishing Co., 462 So. 2d 821 (Fla. 1983). There are no issues of disputed material facts relating to this incident, thus summary judgment is appropriate.

May 8, 1989 Meeting at Bassett's Dairy

This "meeting" has several facets which must be examined separately.

The meeting of Planning Commissioners Bill Bassett and Bill Tellefson was not a violation of F.S. § 286. The Planning Commission had previously completed its inquiry and made its recommendation concerning the Texaco application. Since County Commission action on the proposal was imminent, it was not reasonably foreseeable that the application would be brought back before the Planning Commission.

Similarly, their meeting with Commissioner Bishop (individually) was not a violation. Summary judgment in favor of the Defendants is therefore appropriate as to this facet of the May 8 meeting.

X Once Commissioner Clifford Brown arrived, however, any meeting with Commissioner Bishop created the potential of a sunshine law violation. For the purposes of this motion, Plaintiffs have conceded that there was no discussion by these County Commissioners of the pending application of Texaco. It is undisputed that there were discussions by the two sets of Commissioners concerning this lawsuit that was filed that very day. It is unclear to this Court from a review of the files and depositions the extent and nature of these "discussions" concerning the lawsuit. Thus, summary judgment on this issue is precluded.

Site Inspection Trips

It is undisputed that Planning Commissioners David Ward

for jury

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the dictates of Chapter 286 by giving appropriate notice to the public of this inspection tour. This joint inspection tour resulted in a Sunshine Law violation. Bigelow v. Howe, 291 So. 2d 645 (2nd DCA 1974).

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Similarly, the site inspection trip taken by Planning Commissioners Bassett and Herbert Demott and the tour of Texaco's Bainbridge, Georgia facilities by County Commissioners Bishop and T. Butler Walker were violative of Chapter 286. Prior notice of these tours would have foreclosed any possibility of sunshine violations.

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Plaintiffs have indicated a waiver of entitlement to attorneys fees arising from the incident wherein Planning Commissioners Hagan and Ward met with Plaintiffs Robert and Jo Ellyn Rackleff prior to the Planning Commission vote on the issue. This "meeting" was at the specific request of these Plaintiffs to voice their concerns over the Texaco project. The Court finds that this "meeting" was not a violation of the Sunshine Law. The Court finds that it would be unconscionable to allow citizens to invite public officials to meet with them for the purpose of expressing concerns about a public project and subsequently complaining that such meeting violated F.S. § 286.011. ?

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Likewise, Planning Commissioner Ward's solo sojourn to Texaco's Bainbridge facility was not a sunshine violation. The Court rejects Plaintiffs' arguments and authority to the contrary and finds no evidence that Ward used this as an "evasive device" to avoid the Sunshine Law. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974). As a matter of law, Defendants are entitled to summary judgment.

The Workshop Meetings.

^
The Jefferson County Planning Commission held workshop meetings on March 16, 23 and 30, 1989 concerning a comprehensive land use plan for the county. While the issue of the fuel tank storage facility

In any event, summary judgment is not appropriate as to this issue inasmuch as the record is unclear and there appears to be a disputed issue of fact as to whether the initial workshop was noticed. If the initial meeting was noticed, there would be no violation of the "public meeting" portion of the Sunshine Law. Further, there would be no violation of the subsequent, continuation meetings, since it appears undisputed that the date, time and place of such meetings were announced at the respective, preceding meeting. Shaughnessy v. Metropolitan Dade County, 238 So. 2d 466 (3rd DCA 1970).

On the other hand, if the initial meeting was not appropriately noticed, both it and the subsequent meetings would be violative of the public meeting requirements of Chapter 236. Summary judgment as to these meetings is inappropriate given the existence of the disputed material facts.

The gathering of County Commissioners and
Planning Commissioners at the conclusion of
the April 13, 1989 Planning Commission meeting

After the April 13, 1989 Planning Commission meeting, Plaintiff Robert B. Rackleiff observed that a number of Jefferson County Commissioners and Planning Commissioners congregated and conversed. There are no allegations or evidence whatsoever to indicate the topics of any conversations. Absent any evidence of discourses of public issues by these public officials, a sunshine violation is not established. Such violations may not be established by mere speculation, innuendo or surmise. Evidence is required. The Defendants are entitled to a summary judgment as a matter of law concerning this incident.

Modification of the 96-acre dedication of
property to the 63-acre dedication of property

During the pendency of the Texaco development application, a modification of the number of acres that would be dedicated by

was violative of the Sunshine Law. However, such a modification could have come about as the result of a secret meeting or negotiation; or it could have been executed by a staff member without direct authority of a government official. Essentially, there are a myriad of explanations for such a modification.

The Court declines to engraft a res ipsa loquitur theory to the Sunshine Law. The material facts concerning this modification are in complete and inexorable dispute. Summary judgment as to this issue is therefore precluded.

Alleged public records act violations

Plaintiffs allege that certain Defendants have violated Chapter 119 of the Florida Statutes. With respect to the matters raised in the motion, the Court finds no such violations. The evidence is uncontroverted that the records custodian for Jefferson County, Mr. William Bullock, did maintain a file concerning the Texaco application. The fact that it was kept in a basket rather than a file folder is of no legal consequence. Moreover, there is no evidence that any citizen was refused access to these materials at any time.

The Court also rejects Plaintiffs' contention that the destruction of Commissioner Tellefsen's handwritten notes from the April 6, 1989 planning commission meeting was a violation of the public records law. Plaintiffs have cited no authority to support their theory that these notes became public records by virtue of the fact that Tellefsen made them or delivered them to Mrs. Ethel Strickland, the clerk charged with the responsibility for preparing the minutes. There are no disputed issues of material facts on this issue and therefore summary judgment in favor of the Defendants is appropriate.

General Defenses

Defendants, as a general proposition, argue that the Plaintiffs cannot prevail on their sunshine violation contentions because any

whether injunctive relief should be granted or whether certain governmental action should be nullified due to sunshine violations. This Court could find no authority applying the "cure" doctrine to attorney fee entitlement cases.

Finally, the Court also rejects the Defendants' contentions that Plaintiffs must demonstrate a willful or unlawful violation of the Sunshine Law. While a prosecuting authority must show a willful and unlawful violation to obtain a conviction under the criminal sanctions contained in these laws (F.S. 236.011(3)(b) and F.S. 119.02), these elements are not required for proof of the civil aspect of these statutes. Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Summary judgment is granted in favor of the Plaintiffs with respect to the following incidents:

~~1)~~ The May 9, 1989 private conference during the County Commission meeting; and

~~2)~~ The site inspection trips by Planning Commissioners Hagan and Ward and Commissioners Bassett and Demott. *& trip to Bainbridge by Bishop & Walker*

2. Summary judgment is granted in favor of the Defendants with respect to the following incidents:

~~1)~~ The May 8, 1989 meeting among Commissioners Bassett, Tellefsen and Bishop;

~~2)~~ The meeting of Planning Commissioners Hagan and Ward with Plaintiffs Robert and Jo Ellyn Rackleff;

~~3)~~ Planning Commissioner Ward's trip to Bainbridge, Georgia;

~~4)~~ The April 13, 1989 gathering of Commissioners; and

~~5)~~ The alleged public records violations.

3. Summary judgment on the Plaintiffs' Motion is denied as to the following incidents:

~~1)~~ The May 8, 1989 meeting of Commissioners Bishop and Brown;

~~2)~~ The workshop meetings of March 16, 22 and 30, 1989; and

DONE AND ORDERED in Chambers at Tallahassee, this 5th

day of March, 1990.


P. KEVIN DAVEY, CIRCUIT JUDGE

Copies furnished to:

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1. Plaintiffs' complaint also seeks the imposition of civil penalties. However, Plaintiffs' Motion for Partial Summary Judgment was silent as to that issue, thus it will not be considered at this juncture.

2. Chapters 119 and 286 of the Florida Statutes have generally become known as the "Government in the Sunshine" laws.

3. The affidavit of William Counts dated February 14, 1990 indicates that he heard a portion of the discussion by the conferees.

4. The meeting pertained to the application by Texaco to locate a fuel storage facility near Lloyd, Florida in Jefferson County.

5. The fact that a new application was filed after various County Commission actions does not create an after-the-fact violation. The new application was not pending before them on May 8, 1989 and no one could have predicted the procedural twists and turns this issue took after the May 9, 1989 Commission meeting.