



DEPARTMENT OF LEGAL AFFAIRS

OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32301

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Attorney General
State of Florida

JUL 26 1982

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7-26-82

Mr. Bryan W. Henry
City Attorney
City of Tallahassee
City Hall
Tallahassee, Florida 32301

Re: Opinion request regarding whether hospitalized
city commissioner may vote on ordinances, reso-
lutions and other business of commission by
telephone.

Dear Mr. Henry:

This is in response to your request for an opinion regarding whether an incapacitated city commissioner may vote by telephone on ordinances, resolutions, and other matters which come before the city commission during its regularly scheduled meetings. Your letter states that the commissioner is hospitalized in the city and medically unable to attend the meetings in person. However, you note that the meetings of the commission are televised live and will be broadcast into the commissioner's hospital room so that the commissioner can see the televised activities and hear the debate among fellow commissioners in addition to the comments of the public. You indicate that the commissioner can vocally express a vote by the use of a telephone connection which will be amplified so that the attendees at the public meetings, as well as the television audience, can hear the commissioner's comments and votes.

I regret to inform you that this office will be unable to formally opine on the question you have presented because of the absence of legislative or judicial direction on this issue. My research has revealed no Florida statutory or decisional law dealing with the facts you have presented nor has any such provision of the city charter been brought to my attention.

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However, in an effort to be of some assistance to you, I note the following. Section 286.011, F.S., Florida's Government-in-the-Sunshine Law, provides that:

- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

A city commission is unquestionably a public body within the scope of the Sunshine Law. See, Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974), cert. denied. 423 U.S. 868 (1975); Killearn Properties, Inc. v. City of Tallahassee, 366 So.2d 172 (1 D.C.A. Fla., 1979). Although §286.011, F.S., does not address your specific question, it would appear that if a regularly scheduled meeting of the city commission is properly noticed and attended by a legal quorum of the commission, the meeting and all official action taken during the meeting complies with the provisions of §286.011, F.S., and enactments by a required majority vote at such a meeting would be valid regardless of other circumstances.

On several occasions this office has opined regarding the practice of conducting public business by telephone and the compliance of this practice with the Sunshine Law. In AGO 071-32, it was stated at page 52 that:

[T]elephone conversations between public officials on aspects of the public's business are part of the process which ultimately leads up to final recorded action in a formal public meeting, and they may not be held covertly. These conversations come within the ambit of the Sunshine Law and must be subjected to the scrutiny of the public to the greatest extent possible. They may, therefore, not be held in secret, or in a place wholly inaccessible to members of the public or representatives of the news media for the specified purpose of and with clear intent to avoid the Sunshine Law's requirements.

This office concluded that, "telephone conversations . . . would become secret and unlawful if members of the public and press were deliberately excluded from the public offices furnished for the conduct of the public's business," and that, absent the exclusion of the press and public, such communications would not be in violation of the Sunshine Law. Because the facts of your question as presented to this office do not contemplate any telephone conversations which would be held covertly or in secret but provide for a public interchange of ideas at a regularly scheduled and noticed commission meeting, it does not appear that this activity would constitute a violation of §286.011, F.S. See also, AGO 075-59.

In order for enactments by the commission to be binding upon the municipality, the legislative body must be duly assembled and act in the fashion prescribed by law. See, Turk v. Richard, 47 So.2d 543, 544 (Fla. 1950); Nash v. Richard, 166 So.2d 624 (3 D.C.A. Fla., 1964). See generally, 4 McQuillan, Municipal Corporations §13.07 (3rd Rev. ed. 1979); 56 Am.Jur.2d Municipal Corporations §155; 62 C.J.S. Municipal Corporations §391. Section 166.041, F.S., of the Municipal Home Rule Powers Act established a uniform procedure for the adoption of municipal ordinances and resolutions which is applicable to and cannot be lessened or reduced by any municipality in the state. Section 166.041(4), F.S., provides in part that:

A majority of the members of the governing body shall constitute a quorum. An affirmative vote of a majority of a quorum present shall be necessary to enact any ordinance or adopt any resolution . . .

It is clear from this section that in order to adopt an ordinance or resolution a quorum must be present and a majority of those present must vote in favor of the legislation. Whether the hospitalized commissioner would be "present" at the commission meeting for purposes of constituting a "majority of a quorum present" is not addressed by any Florida case law or statute of which I am aware. But see, 62 C.J.S. Municipal Corporations §399, which states at p. 757: "In order to constitute a quorum the requisite number of members must actually be present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone." Cf., Penton v. Brown-Crummer Investment Company, 131 So. 14 (Ala. 1930).

In summary, it appears that if a regularly scheduled meeting of the city commission is properly noticed and attended by a legal quorum of the commission, the meeting and official action taken during the meeting would comply with the provisions of the Sunshine Law, regardless of other circumstances. Telephone conversations in which public business is discussed are not per se violations of the Sunshine Law unless the press and public are excluded therefrom, and from the facts you have presented this does not appear to be the case. With regard to constituting a quorum for enactment of ordinances pursuant to §166.041(4), F.S., it is unclear whether an affirmative vote by a hospitalized commissioner communicating by telephone would count toward constituting "a majority of a quorum present" and in the absence of judicial or legislative direction on this question this office cannot conclusively opine thereon.

I hope these informal comments will be of assistance to you. With all good wishes, I am

Sincerely,

JIM SMITH
ATTORNEY GENERAL

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