

IN THE COUNTY COURT FOR
SUMTER COUNTY, FLORIDA

CASE NO. 91-175-CC

STATE OF FLORIDA

vs.

ED ADAMS, JAMES L. CATLETT,
CARL E. CUNDIFF, RAY GREEN,
PAUL J. JOCHUM, WAYNE LEE,
MARGARET TUCKER,
Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came on to be heard upon the Defendants' Motion, pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, for the entry of summary judgment against the Plaintiff, and the Court having heard argument of counsel and considered the pleadings and discovery, and based on stipulation of the parties that there exists no genuine issue as to any material fact, does hereby make the following findings:

1. The Defendants, ED ADAMS, JAMES L. CATLETT, CARL E. CUNDIFF, RAY GREEN, PAUL J. JOCHUM, WAYNE LEE, MARGARET TUCKER, were at all times relevant hereto, duly appointed members of the Sumter County Board of Adjustment.
2. The Sumter County Board of Adjustment is comprised of ten (10) members. As of April 22, 1991, the Board consisted of the seven (7) named defendants, and Richard Bradley, Dossie Singleton, and Louise Goodwin.
3. The Sumter County Board of Adjustment holds regularly scheduled meetings on the second and fourth Mondays of each month. All such meetings

are held at the Sumter County Courthouse in the County Commission Chambers. All such meetings are duly noticed and open to both the press and public.

4. On April 22, 1991, the Board of Adjustment held a duly called, regularly scheduled meeting. Board members Singleton and Goodwin did not attend the meeting. Board member Bradley was initially in attendance but departed during the course of the meeting.

5. The meeting began at or about 7:30 p.m. The Board conducted routine business and entertained one variance request, that being a variance request for the construction of a carport by a Mr. DePew. No other cases were on the agenda for formal action that evening.

6. Mr. DePew and his friend, Ed Tomberlin, left the public meeting at the conclusion of his variance case. The only people remaining in the meeting room at that time were the eight (8) Board members in attendance, Board Clerk Marge Theis, and James E. Wade, III. No members of the press attended any part of the meeting.

7. Board Clerk Marge Theis keeps the minutes of Board meetings and regularly tape records Board meetings for that purpose. At the conclusion of the DePew hearing, being the last formal item on the agenda, Ms. Theis turned off the tape recorder in preparation for adjournment. At that time, however, the Board members were still in or about their seats; the lights in the meeting room were still on; and the doors to the meeting room were unlocked and open.

8. As the Board members were gathering their materials to leave, but while they were still in or about their seats in the open meeting room, one or more of the Board members mentioned to Mr. James Wade, Board Attorney,

that they had received a letter from Attorney C. John Coniglio inviting them to go on an inspection trip of an industrial facility located in Tampa similar to one being proposed for Sumter County.

The applicant for the Sumter County industrial site was being represented by Mr. Coniglio and was scheduled to come before the Board of Adjustment at a future date. Several Board members acknowledged that they had received similar correspondence, and they collectively asked their attorney if it was legal under the Sunshine Law for them to go on such an inspection trip.

9. The attorney advised the Board members that if they chose, they could go on such an inspection trip, so long as they did not discuss the merits of the pending application with one another. No collegial decision was made by the Board whether to attend the inspection trip; that was left to each Board member's discretion. The entire discussion on this matter took no more than 2-3 minutes.

10. There was absolutely no discussion at the April 22, 1991 meeting as to the merits of the pending industrial use application being represented by Mr. Coniglio. The only issue discussed was the applicability of the Sunshine Law to the proposed trip.

11. At the conclusion of this brief discussion, the remaining Board members left the Board meeting room and the official public meeting was concluded. No other matters were discussed.

12. The minutes of the Board of Adjustment meetings contain a summary of the substantive actions taken by the Board during its meeting. The minutes of the April 22, 1991 meeting did not contain a reference to the discussion

about the legal propriety of the industrial site visit. When the Board's attorney reviewed the minutes at the next meeting, he did not think that that omission was significant since no substantive action had taken place on that issue.

As a result of the foregoing findings of facts, the Court makes the following conclusions of law:

The Florida Sunshine Law, Section 286.011 (Fla. Stat. 1991), provides, in pertinent part, as follows:

1. All meetings of any board or commission ... of any agency or authority of any county ... 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.

The intent in enacting the statute has been explained by numerous Florida courts:

"The clear policy the legislature has established for Florida is simple to understand: to have the public's business carried out in public." City of Ft. Myers v. News-Press Publishing Co., Inc., 514 So.2d 408 (Fla. 2d DCA 1987). Such public meetings have been referred to as "a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be effected by the subsequent action of the (public agency)." Town of Palm Beach v. Gradison, 296 So.2d 473, 475 (Fla. 1974).

It is undisputed that the Sumter County Board of Adjustment is a public agency whose meetings are controlled by the provisions of the Florida Sunshine Law. It is further undisputed that the April 22, 1991 meeting of the Sumter County Board of Adjustment was duly noticed pursuant to the requirements of the Sunshine Law.

At issue is a "challenged discussion" wherein a question was posed

by Board members to their attorney as to whether it was permissible under the Sunshine Law to take part in an inspection trip to an industrial waste recycling site. The Plaintiff objects to the propriety of engaging in this discussion and its timing. Specifically, the State takes issue with the facts that the discussion was not placed on the formal agenda for the April 22 meeting; that the business contained on the agenda had been completed and the meeting had been "adjourned" prior to the challenged discussion; and that the minutes of the meeting did not contain any reference to the challenged discussion.

Before consideration of whether or not the Sunshine Law was complied with, the Defendants argue that even had the challenged question not been asked during a duly noticed public meeting, in the room and at the time specified in the published notice, the meeting in question would not have been subject to the Sunshine Law. They argue that the Board members' inquiry concerned whether individual participation in an inspection trip would violate the Sunshine Law and that that discussion did not relate to any matter on which foreseeable action would be taken. Simply put, the Defendants' position is that the Sunshine Law does not apply. The Court rejects this argument.

Clearly, had this been a generic inquiry as to the Sunshine Law in general the Defendants' position might be tenable. The fact that this discussion pertained to the applicability of the Sunshine Law to a specific issue pertaining to the gathering of information which arguably might lead to Board action in one direction or another dictates a result wherein the Sunshine Law provisions and requirements are applicable.

As previously noted, the meeting of April 22, 1991 was properly noticed.

to the public, there was no break in time between the alleged "adjournment" and the challenged discussion, no member of the public or the press relied to their detriment on the alleged "adjournment" by leaving the proceedings and there has been no allegation that the alleged "adjournment" was utilized as a tool to avoid the public scrutiny of governmental meetings intended by the enactment of Florida's Sunshine Law.

Under the Sunshine Law, a meeting is either fully open or fully closed; there are no intermediate categories." Neu v. Miami Herald Publishing Co., 462 So.2d 821, 823 (Fla. 1985). The discussion was not, nor intended to be, a "secret meeting" of the type the law seeks to prohibit.

"A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public. When at such meetings, officials mentioned in Florida Statute 286.011, F.S.A., transact or agree to transact public business at a future time in a certain manner they violate the Government in the Sunshine Law, regardless of whether the meeting is formal or informal." City of Miami Beach v. Burns, supra., at 41.

Technical niceties aside, this Court must follow the intent and spirit of the legislature in requiring that the public's ability to observe and participate in government business not be stolen from view. The "challenged discussion", neither intentionally nor inadvertently, was removed from public observation.

Finally, the State suggests that a Sunshine Law violation occurred because the minutes of the meeting do not reflect either the legal inquiry or the attorney's advice discussed at the meeting. Both parties agree that the existence of a tape recording of the "challenged discussion" is not required by Florida law.

At the outset, it should be noted that no member of the press or public

(See, Plaintiff's Response to Interrogatory Number 3 of January 13, 1992.)

The State seeks to find fault with the "challenged discussion" because that topic was not listed on the agenda for the night's meeting. However, there is no requirement that the Sumter County Board of Adjustment even post an agenda for its meeting. Though reasonable notice of a public meeting is mandatory, "a posted agenda is unnecessary." Yarborough v. Young, 462 So.2d 515 (Fla. 1st DCA 1985). Also: News and Sun-Sentinel Co. v. Cox, 702 F.Supp. 891 (S.D. Fla. 1988). The agenda only

... plots the orderly conduct of business to be taken up at a noticed public meeting as provided for by city charter or ordinance. F.S. Section 286.011 does not embody the subject matter nor does it contemplate the necessity for each item to be placed on the agenda before it can be considered by a public noticed meeting of a governmental body. ... Therefore, that part of the summary judgment which refers to the necessity of an agenda under the Sunshine Law is erroneous and argument based thereon is without merit. Hough v. Stinbridge, 278 So.2d 288, 290 (Fla. 3d DCA 1973). See, also 1975 Op. Att'y Gen. Fla. 075-305 (December 19, 1975). "I am of the opinion that the failure of a specific item to appear on a published agenda does not preclude discussion of that item at an open, publicly noticed meeting of a governmental body."

Clearly, a finding that governmental discussion at a meeting be limited to only those items on a formal agenda would stifle public input on matters of concern to them as well as hamstring board members from dealing with urgent or emergency matters. Existing case law does not demand such a limitation.

Next, the State challenges the fact that the meeting had "adjourned" prior to the discussion which forms the basis of the State's complaint. Although the term "adjourned" was used, the undisputed facts indicate that the challenged discussion took place immediately thereafter. The Board room remained open

since the April 22, 1991 meeting has requested that the minutes be amended, corrected or otherwise changed to reflect the discussion which took place at the end of the meeting. Further, the Board's attorney has sworn that "The minutes of the April 22, 1991 meeting did not contain a reference to the discussion about the industrial site visit. When I reviewed those minutes when they were submitted at the next meeting, I did not think that the omission was significant since no substantive action had taken place on that issue." Affidavit of James E. Wade, III in Support of Summary Judgment.

Section 286.011(2), Fla.Stat. (1991), provides, in pertinent part that "the minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such record shall be open to public inspection". The Attorney General of the State of Florida has opined:

The term "minutes" is not specifically defined in the Florida Statutes for the purposes of (Section 286.011(2) F.S.). ... My research has failed to disclose any authority whose definition of the term "minutes" is construed to mean a word for word or verbatim transcript of a proceeding. It is therefore my opinion that the term "minutes" as used in Section 286.011(2) F.S., means, as its common and ordinary usage exemplifies, a brief summary or series of brief notes or memoranda of the meeting ... Moreover, had the legislature intended by enactment of Section 286.011(2) to require that a verbatim record of a meeting be promptly recorded and open to the public inspection, it could easily have done so by providing for the same instead of for "minutes". By examining the provisions of Section 286.0105, F.S., (i)t becomes clearly evident that the legislature realized the differences between a "verbatim record of the proceedings" and "minutes of a meeting". Section 286.0105, F.S., provides, in pertinent part, that each entity subject to Section 286.022, shall include in its notice of any meeting or hearing the advice that if a person decides to appeal any decision with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for that purpose he may need to ensure that "a verbatim record of the proceeding is made, which record includes the

testimony and evidence upon which the appeal is to be based". (emphasis added) 1982 Op. Att'y Gen. Fla. 082-47 (June 22, 1982).

Thus, the statutory requirement that there need exist "minutes" means that the public agency should provide a brief summary or series of brief notes with regard to proceedings. A word-for-word or verbatim transcript of the proceeding is not required. It is undisputed that minutes were in fact made with regard to the April 22, 1991 meeting and that those minutes were and remain open to the public. And although the minutes in question may not be as thorough as the State would prefer, this alleged lack of completeness does constitute a violation of the Florida Sunshine Law.


Lastly, this Court feels compelled to make an observation as to a fact lost somewhere in the legal intricacies of this case. That is, ironically the Defendants herein are the subject of a complaint that they violated Florida's Sunshine Law by asking their attorney's advice to insure compliance with the very law they now stand accused of violating. Interestingly, the Board's own attorney felt the discussion legally appropriate inasmuch as he did not attempt to prevent it. The individual Defendants appear to be concerned public servants aware of the existence of the Sunshine Law and fully intent on absolute compliance with its requirements by inquiring of counsel.

Obviously, the issue of locating the industrial facility in Sumter County was and remains the subject of much controversy and attention. In retrospect, it arguably might have been better practice to include the "challenged discussion" on the agenda and to have included reference to it in the formal minutes of the meeting. The Defendants have persuaded this Court that such was not possible

inasmuch as the discussion was unanticipated and the lack of recordation unintentional. "Better practice" notwithstanding, the conduct of the Board members attending the meeting do not rise to a level violative of the strict terms and requirements of Florida Sunshine Law. Each individual defendant is entitled to a judgment in their favor as a matter of law. Therefore, be it

ORDERED AND ADJUDGED that the Defendants' Motion for Summary Judgment be and hereby is granted.

DONE AND ORDERED at Tavares, Lake County, Florida, this 15th day of July, 1992.


COUNTY JUDGE RICHARD W. BOYLSTON

Copies furnished to:

Louis E. Hatcher, Assistant State Attorney
Robert Q. Williams, Attorney for Defendant


Judicial Assistant