

Sunshine Law, workshop meetings, public participation

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Subject:

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Mr. David G. Conn
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Post Office Box 5239
St. Augustine, Florida 32085-5239

RE: GOVERNMENT-IN-THE SUNSHINE LAW--MUNICIPALITIES--applicability to workshop meetings of city commission; participation by public. s. 286.011, Fla. Stat.

Dear Mr. Conn:

This is in response to your request for an opinion on whether the public has the right to participate in a workshop meeting conducted by the city commission by being able to make comments and ask questions?

You state these workshops conducted by the city commission are duly advertised, affording the public the opportunity to be present during the meeting. At the workshops city business is discussed, and eventually the matters discussed are made the subject of a public hearing or are placed on the agenda for a regular city commission meeting. You further state that either at the public hearing or when the item is placed on the regular agenda, the public has the opportunity to participate by making comments or asking questions.

Section 286.011(1), F.S., provides:

"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, except as otherwise provided in the Constitution, 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."

Based upon the facts outlined in your letter, it is clear that the Sunshine Law is applicable to a workshop meeting held by the city commission to discuss future city business. See *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 698 (Fla. 1969). "The obvious intent [of the Sunshine Law] was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." See *also* *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974) (the term "meeting" extends to informal sessions or conferences of the board members designed for the discussion of public business); *Times Publishing Company v. Williams*, 222 So.2d 470, 473 (Fla. 2nd DCA 1969) (entire decision-making process subject to Sunshine Law).

The text of the statute provides no express requirement of public participation. However, the courts of this state on construing the law have read into the concept of an open meeting the right to be heard. In *Board of Public Instruction of Broward County v. Doran*, *supra* at 699, the Florida Supreme Court stated:

"The right of the public to be present *and to be heard* during all phases of enactments by boards and commissions is a source of strength in our country. . . . Regardless of their good intentions, these specified boards and commission, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and *to be heard at all deliberations* wherein decisions affecting the public are being made." (e.s.)

And even more expansively, in *Town of Palm Beach v. Gradison*, 296 So.2d 473, 475 (Fla. 1974), the Supreme Court expostulated:

"Every meeting of any board, commission, agency or authority of a municipality should be a *marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the municipality*. The ordinary taxpayer can no longer be led blindly down the path of government, for the news media, by constantly reporting community affairs, has made the taxpayer aware of governmental problems. Government, more so now than ever before, should be responsive to the wishes of the public. *These wishes could never be known in nonpublic meetings, and the governmental agencies would be deprived of the benefit of suggestions and ideas which may be advanced by the knowledgeable public.*" (e.s.)

The Court in *Gradison* at 475 went on to state: "The taxpayer deserves an opportunity to express his views and have them considered in the decision-making process." See also *Krause v. Reno*, 366 So.2d 1244 (Fla. 3d DCA 1979), describing this public participation as the "citizen input factor" and stating that this public input was an important aspect of open meetings. *And see* AGO 73-170, noting that the purpose of notice of a meeting subject to s. 286.011 is "to apprise individuals or the public generally of the pendency of matters which may affect their . . . rights, and afford them the *opportunity to appear and present their views.*" (e.s.) Thus, the right of the public to participate in open meetings, to present their views and to have some input into the decision-making process has been recognized by the courts of this state and by this office.

In *Wood v. Martson*, 442 So.2d 934 (Fla. 1983), however, the Florida Supreme Court in considering the applicability of the Government-in-the-Sunshine Law to a search-and-screen committee elected by the University faculty and delegated the authority by the University President to recommend candidates for a university position, stated that the public had no authority to participate in or to interfere with the decision-making process. The facts of the *Marston* case, however, are distinguishable from the present inquiry. In that case the search-and-screen committee was exercising an executive function delegated to it by the University President; no legislative decision-making function was being exercised by the committee and the Court was particularly sensitive to the respondents' arguments concerning academic freedom:

"We note that the concerns expressed in respondents' brief are real and reasonable ones. Respondents vigorously contend that opening the committee's meetings would threaten dearly held rights of academic freedom. This Court recognizes the necessity for the free exchange of

ideas in academic forums, without fear of governmental reprisal, to foster deep thought and intellectual growth. . . . We hasten to assure respondents that nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process. Were the chilling effect respondents apprehend balanced against any less compelling a consideration than Florida's commitment to open government at all levels, we might agree that the burdens herein imposed were unduly onerous."

442 So.2d at 941.

Such concerns of the Court regarding academic freedom are not applicable to the instant inquiry. Furthermore, the Court in *Marston* in no way indicated it was receding from its earlier position set forth in *Board of Public Instruction of Broward County v. Doran, supra*, and *Town of Palm Beach v. Gradison, supra*, and in fact, relied upon both decisions in concluding that the Sunshine Law was applicable to University's search-and-screen committee. Nor did the Court imply that public agencies exercising legislative functions should not continue to be a "marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the [public board or commission]." *Town of Palm Beach v. Gradison, supra* at 475. To so construe *Marston* with such a broad interpretation would eviscerate a central aspect of the sunshine law.

Accordingly, I am of the opinion, until judicially clarified otherwise, that while the public does not necessarily have the right to participate in all meetings of advisory bodies exercising executive functions, the citizen input factor remains a vital ingredient of public meetings or governmental bodies carrying out legislative responsibilities. Therefore, I am of the view that the city commission should accord the public an opportunity to be heard at its workshop meetings.

The public input factor to be meaningful must be available at all public meetings, at all stages of the decision-making process. Of course, public input is subject to reasonable rules and policies which insure orderly conduct of a public meeting which may be adopted by a public agency whose meetings come within the purview of the Sunshine Law. See *generally* 62 C.J.S. *Municipal Corporations* s. 400.

Based upon the foregoing I am of the opinion that a workshop meeting of the city commission of the City of St. Augustine Beach at which official business is discussed is subject to the Sunshine Law and should provide the opportunity for public input.

This informal advisory opinion was prepared by the Division of Opinions in an effort to be of assistance to you; it should not be considered a formal opinion of the Attorney General.

Sincerely,

Division of Opinions

Craig Willis
Assistant Attorney General

CW/tgk