

Electronic recording of meeting

Number: INFORMAL

Date: December 15, 2005

Subject:
Electronic recording of meeting

The Honorable Richard E. Gerstein
State Attorney
Eleventh Judicial Circuit of Florida
Metropolitan Justice Building
1351 N.W. 12th Street
Miami, Florida 33125

Re: ELECTRONIC RECORDING--recording meeting subject to ss. 286.011 and 934.03, F.S.

Dear Mr. Gerstein;

This is in response to your request for an opinion on whether it is a violation of 6934.03, F.S., for a city manager to electronically record a meeting between a city manager and two town councilmen at which time the councilmen advised the city manager that a majority of the five-member council would ask for his resignation at the next council meeting and at which time the manager and the two councilmen worked out and agreed upon the time of the manager's resignation which ultimately went into effect.

According to your letter, the meeting referred to in your question was held without notice to the public and behind closed doors. Additionally, the councilmen were unaware that the meeting was being electronically recorded by the city manager.

The Security of Communications Act, Ch. 934, F.S., was enacted by the legislature in order to protect effectively the privacy of wire and oral communications. To this end, the legislature defined specifically the circumstances and conditions under which the interception of wire and oral communications may be authorized and to prohibit any *unauthorized interception* of such communications. Sections 934.01(2) and 934.02, F.S., define "oral communication" to mean any oral communication uttered by a person *exhibiting an exception that such communications is not subject to interception under circumstances justifying such exception and does not mean any public oral communication uttered at a public meeting.* (e.s.)

The Government in the Sunshine Law, s. 286.011, F.S., requires that any meeting of two or more members of a board or commission subject to the act at which said members discuss any matter on which foreseeable action will be taken must be open to the public at all times. *City of Miami Beach v. Berns*, 245 So.2d 38 (Fla. 1971). The discussions between the two councilmen and the city manager relative to the manager's resignation which was acted upon by the entire council were subject to the provisions of the Sunshine Law. Accordingly, any citizen of the state had a statutory right to attend, record and, if they desired, to tape said conversations so long as

they did so in a nondisruptive manner. *Accord: Nevens v. City of Chino*, 44 Cal. Rptr. 50 (Cal. App. 1965), in which the court nullified a city council rule forbidding the use of silent tape recorders at open council meetings. Section 934.02, F.S., specifically exempts conversations uttered at public meetings from the prohibitions of Ch. 934, F.S. Since the meeting should have been public and was subject to the provisions of s. 286.011, F.S., the tape recording under such circumstances does not constitute a violation of s. 934.03, F.S.

Your question is answered accordingly.

With all good wishes, I remain

Sincerely,

Robert L. Shevin
Attorney General

RLS/SLS/dd