
City Attorney Opinion - Sunshine Law for Mayor and Unopposed Candidates

Rick Miller <rmiller1970@gmail.com>
To: Bob Francis <bfrancis@belleislefl.gov>
Cc: Yolanda Quiceno <yquiceno@belleislefl.gov>

Wed, Nov 18, 2020 at 8:19 AM

Bob-

The reason for my query is that as you know, I have been working with the Mayor and some council members on a number of initiatives in my capacity as Chairman of the Budget Advisory Committee. I would like to get clarity on our communications going forward. Can you confirm with the city attorney the attached Florida Attorney General Opinions (AGO 90-26) titled "Sunshine Law, mayor possessing veto power only" which allows the Mayor to speak with council members. As you recall, the mayor was added to the city commission during a charter amendment a few years ago, however, the Mayor doesn't vote. I believe I heard something to the effect that the mayor was not allowed to speak with council members as he was now part of the body based on comments from the city attorney. The AG Opinion (attached) says the opposite. The key differentiator was the "power to vote".

"the power to vote was a primary factor in determining whether the mayor was considered to be a part of the city council for purposes of the Sunshine Law. Under the charter for the City of Sweetwater, the mayor is a separate executive officer possessing no power to vote under any circumstances.[4] The power to veto with no accompanying power to vote would not appear to make the mayor a member of the council for purposes of the Sunshine Law.[5]

Accordingly, I am of the opinion that the mayor, possessing only the power to veto, is not a member of the city council to whom the Sunshine Law applies. Meetings between the mayor and an individual member of the council, therefore, would not generally be subject to the terms of s. 286.011, F.S.

My take away from this advisory legal opinion is that the mayor can work with individual council members as long as he is not working as a go-between advising members of others' views. Please confirm this with our attorney.

On a similar note, a separate opinion applies to candidates running unopposed. AGO 98-60 "Sunshine Law--unopposed candidate" clarifies that candidates in unopposed elections are NOT subject to sunshine laws until after the election.

"a candidate without opposition in the general election is not considered to be elected for the purpose of the Florida Election Code until the date of the general election.[5] ... Accordingly, I am of the opinion that although a candidate running for city commission may be unopposed, he or she is not considered to be a member-elect for purposes of the Government in the Sunshine Law until the election has been held."

AG90-26 - <http://www.myfloridalegal.com/ago.nsf/Opinions/5F21648E8EAE9852852563D1004D7599>

AG98-90 - <http://www.myfloridalegal.com/ago.nsf/Opinions/B944CF8BCC74AA47852566910047D975>

Thank you.

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Bob Francis <bfrancis@belleislefl.gov>

Fwd: City Attorney Opinion on Mayor Subject to Sunshine Law

Rick Miller <rmiller1970@gmail.com>

Wed, Nov 25, 2020 at 1:58 PM

To: Bob Francis <bfrancis@belleislefl.gov>, Yolanda Quiceno <yquiceno@belleislefl.gov>

See below.

Sent from my iPhone, please excuse any typos

Begin forwarded message:

From: Kacie Prowant <Kacie.Prowant@myfloridalegal.com>

Date: November 25, 2020 at 12:42:52 PM EST

To: RMILLER1970@gmail.com

Subject: RE: City Attorney Opinion on Mayor Subject to Sunshine Law

Dear Mr. Miller,

We have received the inquiry that you, as an unopposed candidate for the Belle Isle City Council, have posed regarding whether the Mayor of Belle Isle is considered to be a member of the City Council for purposes of Florida's Government in the Sunshine law. A majority of the existing Council members have not requested an opinion from this office concerning the question that you pose. Because this office is unable to provide legal advice to you regarding this matter under the statutory authority of the Attorney General to provide legal opinions, we are unable to comment on your question.

Teresa L. Mussetto

Senior Assistant Attorney General

From: [Dan Langley](#)
To: [Nicholas Fouraker: mayor@belleislefl.gov](mailto:mayor@belleislefl.gov)
Cc: [Kurt Ardaman](#)
Subject: Belle Isle - Mayor Subject to Sunshine Law
Date: Wednesday, April 10, 2019 11:22:00 AM
Importance: High

Dear Mayor Fouraker:

As previously stated by Kurt Ardaman and me, as Mayor you are subject to the Sunshine Law and are not permitted to have discussions with any Council member regarding City business that foreseeably could come before the City Council except during public meetings of the City Council; that includes no one-on-one discussions with a Council member.

The position of Mayor is a non-voting member of the City Council pursuant to Section 3.01 of the City Charter. Regardless of the non-voting status and limited veto authority of the Mayor, the fact that the Mayor is a member of the Council makes the Sunshine Law applicable.

As I said I would, I discussed this matter this morning with Special Counsel for Open Government, Pat Gleason with the Florida Office of Attorney General and she concurs with our opinion -- the Mayor is subject to the Sunshine Law as a non-voting member and presiding officer (chair) of the City Council.

With regard to this subject, the Government-In-The-Sunshine Manual (2019), page 8, states:

b. Mayor meeting with individual city commissioner or city council member

If the mayor *is a member of the council* or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council *are subject to the Sunshine Law.*

AGOs 83-70 and 75-210. However, if a decision falls within the administrative functions of the mayor and would not come before the city council for consideration, discussions between an individual member of the city council and the mayor are not subject to the

Sunshine Law since such discussions do not relate to a matter which will foreseeably come before the city council for action. *Id.*

On the other hand, if the mayor is *not* a member of the city council and does not possess any power to vote even in the case of a tie vote but possesses only the power to veto legislation, the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided the mayor is not acting as a liaison between members and neither individual has been delegated the authority to act on behalf of the council. AGOs 90-26 and 85-36. *And see* Inf. Op. to Cassady, April 7, 2005 (mayor who *is not* a member of the city council and cannot vote even in the event of a tie, may meet with an individual council member to discuss the mayor's recommendations to the council concerning prospective appointees). *Cf. City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since mayor was responsible under the city charter for disciplining city employees, mayor in carrying out this function was not subject to s. 286.011, F.S.).

To the extent that the City or you have received contrary advice in the past, we recommend that you disregard it and comply with the Sunshine Law.

Please carefully review the Sunshine Law memorandum that we provided to you and let us know if you have any questions or need any clarifications.

Thank you.

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