

# GOVERNMENT IN THE SUNSHINE 101

Sylvia Torres, Esq.  
Alachua County Attorney's Office  
352-374-5218



# Government in the Sunshine 101

- I. The Sunshine Law
- II. Public Records Law
- III. Voting Conflicts



# Part I: Sunshine Law

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# Sunshine Law

- **Florida Constitution, Article 1, Section 24:**
  - All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, **shall be open and noticed to the public...**
- **Section 286.011, Florida Statutes:**
  - 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, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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 board or commission must provide **reasonable notice of all such meetings**



# Sunshine Law

- Applies to all governmental collegial bodies.
  - Is also applicable to advisory committees created by public agencies are subject to the Sunshine Law even if their recommendations are not binding



# Sunshine Law Meeting

- Communication between two or more members of the same committee
  - Topic: any matter that may foreseeably come before their committee for action
  - Forum or medium: in-person, telephone, email, text, Facebook (et al.), third party conduit



# Sunshine Law Requirements

- **Sunshine Meeting**
  - Open to public;
  - Reasonable public notice (see law on independent districts;
  - Minutes taken and promptly recorded; and
  - Opportunity for public comment before issues are decided – public participation in decision making process.



# Sunshine Law

## Open To Public

- Open to public requirements
  - Within Alachua County (public buildings)
  - No physical or psychological barriers
  - Inaudible utterances
  - Right to record





# Sunshine Law Notice

- Reasonable notice requirements
  - Name of board/committee (not topics)
    - No agenda needed
  - Location & time
  - Manner of advertisement
  - Lead time – special districts have specific requirements



# Sunshine Law Minutes

- Minutes requirements
  - Written
  - Promptly recorded
  - Includes votes, action & significant discussion



# Sunshine Law

## Participate & Be Heard

- Participate & be heard requirements
  - At some point during decision-making process
  - W/i reasonable proximity to official action
  - Subject to reasonable rules of conduct



# Sunshine Law Scenarios

- You receive an email from your board liaison and you respond.
- You publish a newspaper op-ed and another member publishes a rebuttal.
- You meet a friend at the grocery store and he tells you that another member is voting a specific way on an issue.
- 2 members of your advisory board attend Board of County Commissioners meeting and speak.



# Sunshine Law Cure

- Made a mistake, now what?
  - Stop communication ASAP
  - Fully and completely debate issue at noticed public meeting
- Organizational cure but no personal cure



# Sunshine Law

## Best Practices

1. Keep your public business in the public
2. Construe possible topics widely
3. Ask before you send, publish, etc.



# Part I: Sunshine Law

## Questions?



# Part II: Public Records Law

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# Public Records Law

## Section 119.07(1)(a), Fla. Stat.

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.



# Public Records Law

## What is a public record?

- Content, not the medium
  - Record made or received in connection with official business
  - Used to perpetuate, communicate or formalize knowledge
- Not limited to written documents



# Public Records Law

## What is a request?

- Any sufficient to identify records desired
  - Need not be in writing (telephone, in-person)
  - May not require requester to identify self
- Existing record
  - Does not mandate creation of new record



# Public Records Law

## What to do if you get a request?

- Responding to request
  - CTAC Administrative Procedure, “Public Records”
  - Contact Ashley or Executive Director



# Public Records Law

## Best Practices

1. Forward all records received or made staff
2. Follow CTAC policies and procedures
3. Notes? It depends.
  - Only use for person recollection or memory. Not PR.
  - Share with others. PR.



## Part II: Public Records

# Questions?



# Part III: Voting Conflicts

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# Voting Conflicts

## Section 112.3143, Fla. Stat.

... any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer ...





# Voting Conflicts

- If you are present, there is a statutory requirement to vote. Sec. 286.012, Fla. Stat. If you are present, you **must** vote.

EXCEPT

- An individual **shall** abstain from the vote if there appears to be a conflict of interest under Secs. 112.311, 112.313 or 112.3143, Fla. Stat. (Sec. 286.012, Fla. Stat.)



# Voting Conflicts

A conflict exists when:

- Vote would inure to “special private gain or loss;” or
- Knows that vote will inure to the “special private gain or loss” of:
  - a principal (or parent organization or subsidiary of corporate principal)
  - a relative, or
  - a business associate



# Voting Conflicts

## Special Gain or Loss

- What is “special private gain or loss”?
  - What is “special” depends on the facts
    - Size of class of affected persons
    - Speculative or remote
  - Must be economic benefit or loss



# Voting Conflicts Special Gain or Loss

- Who is a “principal”?
  - Employer
  - Client
  - Parent, subsidiary or sibling organization of employer or client
- Present, not part or future employment



# Voting Conflicts

## Special Gain or Loss

- Who is a “relative”?
  - Father
  - Mother
  - Son
  - Daughter
  - Husband
  - Wife
  - Sibling
  - In-laws (mother, father, son, daughter)



# Voting Conflicts Special Gain or Loss

- Who is a “business associate”?
  - Engaging in common business undertaking
- Present, not part or future relationship



# Voting Conflicts

## If you have a conflict...

- Do not vote
- Declare at meeting (basis and describe)
- File Form 8B



# Summary of Form 8B

## FORM 8B - VOTING CONFLICT FOR COUNTY, MUNICIPAL, OTHER LOCAL PUBLIC OFFICERS

NAME and MAILING ADDRESS

DATE ON WHICH VOTE OCCURRED - NAME OF BOARD, COUNCIL, COMMISSION OR COMMITTEE

THE BOARD I SERVE ON IS A UNIT OF WHICH LOCAL AGENCY - NAME OF POLITICAL SUBDIVISION:

MY POSITION IS ELECTIVE or APPOINTIVE

### DISCLOSURE OF LOCAL OFFICER'S INTEREST

I hereby disclose that on [date]

(a) A measure came or will come before my agency which (check one)

inured to my **special private gain or loss**;

inured to the **special gain or loss** of my business associate, \_\_\_\_\_;

inured to the **special gain or loss** of my relative, \_\_\_\_\_;

inured to the **special gain or loss** of \_\_\_\_\_, by whom I am retained; or

inured to the **special gain or loss** of, which is the parent organization or subsidiary of a principal who has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows: [Describe]

NOTICE: UNDER PROVISIONS OF §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE

CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING:

IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION,  
REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000





# Voting Conflicts

## Best Practices

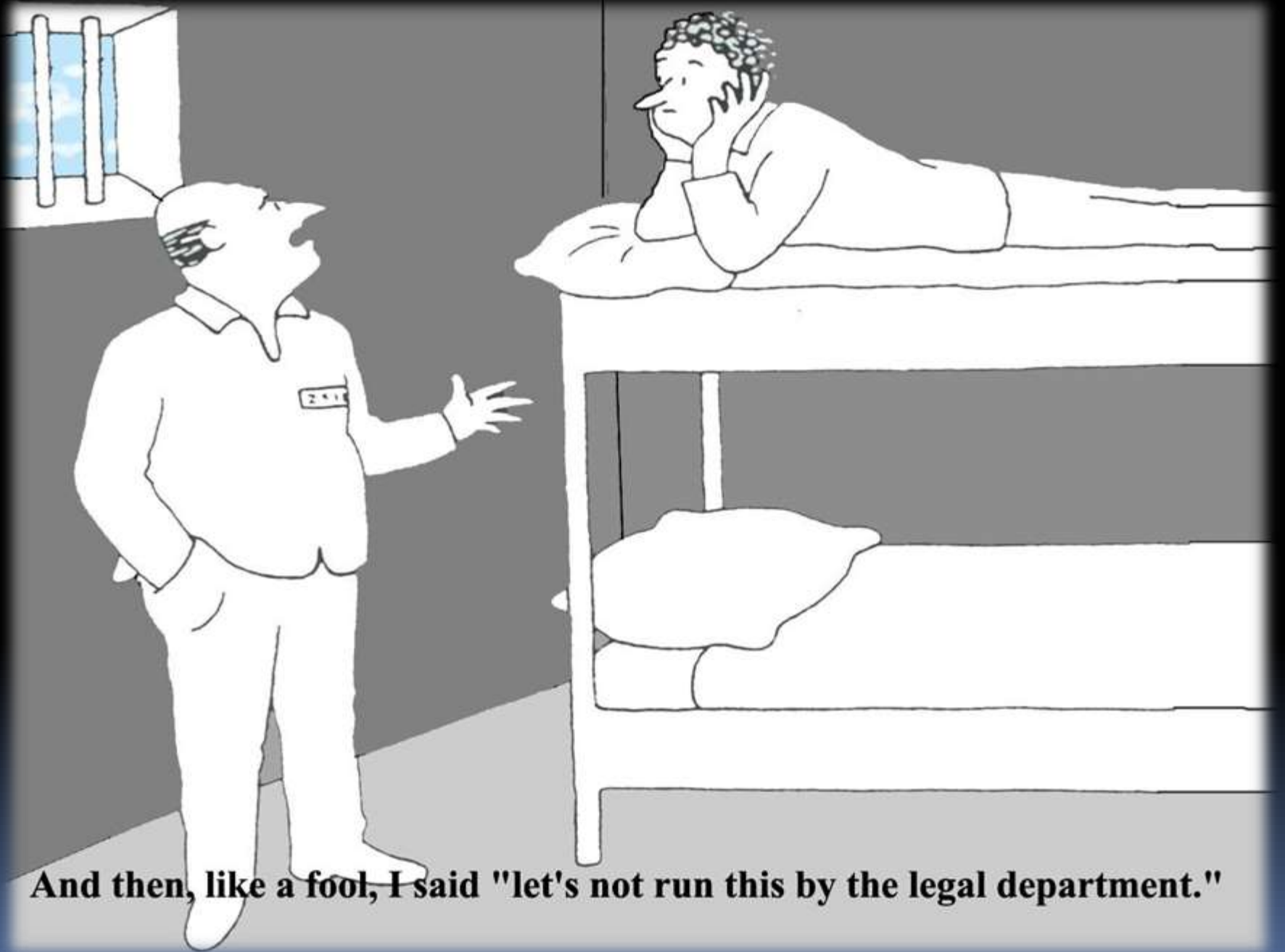
1. Follow your gut; ask first (call liaison)
2. When in doubt, shout it out
3. Don't participate in discussion
4. Always file Form 8B prior to meeting, if known



## Part III: Voting Conflicts

# Questions?





**And then, like a fool, I said "let's not run this by the legal department."**

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