

City Attorney Memorandum

Distribution of Individual Commissioner Materials in Advance of Meetings

This memorandum is to address a complex issue of Sunshine Law - Commissioner distribution of materials prior to BOC Meetings and Workshops that should be handled carefully to avoid inadvertent Sunshine Law violations by Commissioners.

The safest way is to send the materials to the City Clerk who can then distribute materials at the noticed public meeting or agenda packets prepared in advance of noticed meetings that comply with Florida's Sunshine Law.

A response to a memorandum sent by any Commissioner could result in a sunshine law violation by both the commissioner who is the sender of the original memo and the commissioner who sends a response to the memo.

A number of previous AGO opinions are summarized in the Fla Sunshine Law Manual 2019 p. 22-25¹ provide direction on how materials can be distributed.

Please keep in mind the following with regard to Sunshine Law on the distribution of materials:

1. E-mail, text messages, and other written communications between board members are prohibited by Florida's Sunshine Law.

The Sunshine Law requires boards to meet in public; boards may not take action on or engage in private discussions of board business via written correspondence, e-mails, text messages, or other electronic communications. City commissioners may not use an electronic newsletter to communicate among themselves on issues that foreseeably may come before the commission. Inf. Op. to Syrkus, October 31, 2000. And see AGO 09-19 (members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action); and Inf. Op. to Martelli, July 20, 2009 (authority should discuss business at publicly noticed meetings "rather than in a series of letters between authority members"). The members of an advisory committee created to make recommendations to the superintendent on school attendance boundaries violated the Sunshine Law when they exchanged private electronic communications (emails and Facebook messages) relating to committee business. Linares v. District School Board of Pasco County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018). See also AGO 89-39 (members of a public board may not use computers to conduct private discussions among themselves about board business).

2. Distribution of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law, in AGO 96-35

The Attorney General's Office stated that while it is not a "direct violation" of the Sunshine Law for members to circulate their own written position papers on the same subject as long as the board members avoid any discussion or debate among themselves except at an open public meeting, this practice is "**strongly discourage[d]**." AGO 07-35. "Such action would be

¹ <http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad>

equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input.” AGO 96-35. City council’s discussions and deliberations on matters coming before the council must occur at a duly noticed city council meeting and the circulation of position statements must not be used to circumvent the requirements of the statute AGO 01-21; AGO 08-07 (city commissioner may post comment regarding city business on blog or message board; however, any subsequent postings by other commissioners on the subject of the initial posting could be construed as a response in violation of the Sunshine Law); and Inf. Op. to Jove, January 22, 2009 (posting of anticipated vote on blog).

- 3. A commissioner may send a written report to other commissioners on a subject that will be discussed at a public meeting without violating the Sunshine Law, if prior to the meeting, there is no interaction related to the report among the commissioners.**

Further, the report must be maintained as a public record, should not being used as a substitute for action or discussion at a public meeting.

AGO 89-23. And see AGO 01-20 (e-mail communication of information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council members’ comments or responses on subjects involving foreseeable action by the council). Cf. Inf. Op. to Kessler, November 14, 2007 (procedural rule requiring county commissioner to make a written request to commission chair to withdraw an item from the consent agenda does not violate the Sunshine Law). If, on the other hand, the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to s. 286.011, F.S. AGO 90-03.

- 4. A procedure whereby a board takes official action by circulating a memorandum for each board member to rank or short-list selections violates the Sunshine Law.**

Inf. Op. to Blair, May 29, 1973. And see *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk ranked the proposals based on the committee members’ individual written evaluations; the court held that “the **short-listing was formal action that was required to be taken at a public meeting**”); *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013) (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting); and AGO 93-90 (board not authorized to use employee evaluation procedure whereby individual board members send their individual written comments to the board chair for compilation and subsequent private discussion with the employee). Compare *Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency “evaluation team” members who individually evaluated competing proposals, individually assigned scores, and individually submitted their scores for consideration by others, did not take “formal action” and thus were not obligated to conduct a meeting subject to the Sunshine Law).