

Florida's Government-in-the-Sunshine Law: Does It Apply to Your Organization?

~ Zachary B. Buffington

Directors, committee members, and officers of nonprofit organizations frequently seek advice regarding whether their organizations are subject to Florida's Government-in-the-Sunshine Law. It is wise to ask this question, as this law (commonly referred to as the "Sunshine Law") often extends beyond traditional state and local government agencies.

Before looking at the scope of the Sunshine Law, it is important to understand the law's purpose. The Sunshine Law is intended to promote transparency in state and local government by providing a constitutional and statutory right of access to public proceedings. It has three general requirements: (1) meetings of a public board or commission must be open to all citizens, (2) reasonable advance notice of such meetings must be given, and (3) meeting minutes must be taken, promptly recorded, and open to public inspection.

Although the purpose and the requirements of the Sunshine Law may be easy to understand, the scope of the law is not as straightforward. The Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision." The Florida Supreme Court and the Florida Attorney General's Office have interpreted this to cover almost all public boards and commissions at the state and local levels. Local governmental bodies (such as county and city commissions) are covered, and most public school district boards, special district boards, and interlocal agreement boards also are within the purview of the Sunshine Law.

Private Organizations

So what about private organizations that interact with or do business with a public agency? Private organizations, of course, are not public. Therefore, they generally are not subject to the Sunshine Law. Merely providing services to, or receiving funds from, a public agency does not bring a private entity within the law's reach. However, in certain situations, the Sunshine Law and each of its requirements have been extended to private organizations that have significant ties to a public agency.

One situation where the Sunshine Law may apply to a private organization occurs when that organization was created by a legislative act or created by a public agency. If a private entity was established by state or local law or by a public agency to perform a public function, the entity probably will be subject to the Sunshine Law's requirements. Reviewing this issue, the Florida Attorney General's Office found that a nonprofit corporation set up to handle a city's redevelopment plans was covered because it was established by the city. Similarly, it was concluded that the Sunshine Law applied to a nonprofit corporation that was legislatively created to manage the Department of Corrections' work programs.

Even if a private entity was not created by a legislative act or by a public agency, the Sunshine Law may still apply if the private entity is delegated authority to act on behalf of a public agency in the performance of the agency's duties. In this type of situation, Florida courts and the Attorney General's Office will assess the relationship on a case-by-case basis to determine whether the public agency delegated its governmental function or purpose to the private organization. As specific examples, a nonprofit coalition managing foster care services for the Department of Children and Families and a nonprofit corporation charged by the City of Pensacola with overseeing the development of publicly owned waterfront property both were found to be covered by the Sunshine Law because they essentially stood in place of the public agency and performed its duties.

Committees

If the Sunshine Law is applicable, the law's requirements not only apply to the organization's governing board or commission, but the requirements may also apply to one or more committees of the board or commission. This depends on the purpose of the particular committee and whether it has been given the authority to make decisions for the public agency. Generally, if a public agency creates a committee and gives it decision-making authority, the Sunshine Law will apply and all committee members will be held to the same standards as the members of the board or commission. Therefore, an executive committee or a management committee of a public board may be within the scope of the Sunshine Law. Conversely, in situations where a committee or task force simply gathers information and reports to the board, and the board retains the ultimate decision-making authority, Florida courts have held the committee is not covered.

Common Missteps to Avoid

While this article is not intended to be a comprehensive review of the Sunshine Law's details and requirements, it is worth noting some examples of how organizations run into issues with the Sunshine Law. One common mistake made by public board or commission members is engaging in discussions outside of a publicly held meeting. Although this may sound harmless, it is important to remember the Sunshine Law applies to any gathering of two or more members of the same board, commission, or committee to discuss a matter that will foreseeably come before their board, commission, or committee for action. Thus, any private meeting or discussion that involves the business of the public board or commission (even a casual discussion that takes place on the golf course, sitting at a baseball game, or over lunch) could be a violation. Another common mistake occurs when public board or commission members attempt to take actions or engage in discussions via telephone or electronic correspondence. To comply with the Sunshine Law, board and commission meetings must be open to the public. Therefore, members of a public board or commission may not use conference calls, emails, text messages, social media, or other forms of electronic correspondence to have private discussions regarding board or commission business, and such methods of communication should be avoided.

As mentioned above, the goal of the Sunshine Law is to give citizens the right to access state and local public proceedings. To accomplish this goal, the Florida courts and the Attorney General's Office interpret the law to have an extensive reach. Accordingly, nonprofit directors, committee members, and officers should take a close look at the Sunshine Law to determine if it applies to their organizations and, if it does, what they must do to ensure compliance with the law's requirements.



Zach is a partner with Williams Parker.

He focuses his practice in the areas of business law and health law. He represents business owners and executives in connection with acquisitions, sales, mergers, joint ventures, and investments, as well as corporate governance and operational matters. Zach earned his JD and MBA from Stetson University.

