Sunshine Law, Public Record and Voting Conflicts Overview

- Presented by:

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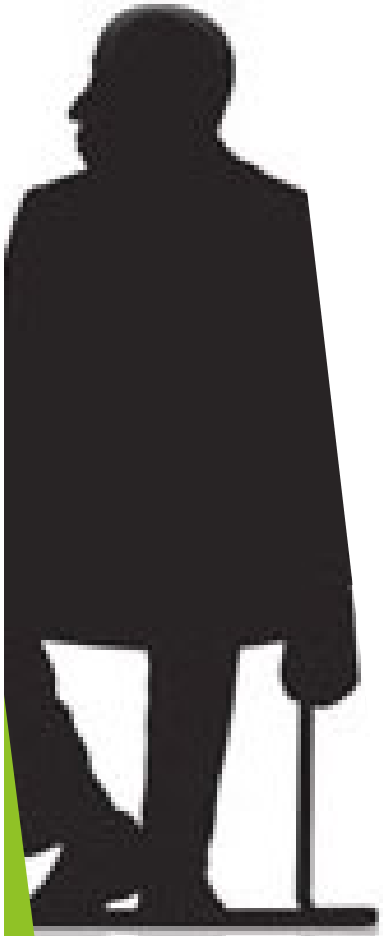

Section 286.011, Florida Statutes

There are three basic requirements of Sunshine Law:

(1) Meetings of public boards or commissions must be open to the public at all times

(2) Reasonable notice of such meetings must be given

(3) Minutes of the meetings must be taken, promptly recorded and open to public inspection

Scope of the Sunshine Law

Sunshine Law Applies to:

- Any meeting
- Between two or more members of the same board
- Ad hoc Committees created by a public entity that acts in advisory capacity to the public entity
- Private Organizations delegated authority to perform a government function or play integral role in the decision-making process
- When discussing matters that may foreseeably come before that board
    - Limited Exception: Committees created merely for the purpose of fact-finding (no decision making)

"Meeting" Includes:

- County Commission meetings and workshops
- Telephone calls and text messages
- Emails and other written correspondence
- Informal discussions or deliberations

Public Records Law

Public Records
Section 119.07(1)(a), Florida Statutes

- 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.

What is a Public Record?

Section 119.011(12), F.S., defines "public records" to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Voting Conflicts

Section 112.3143(3)(a), F.S.)

Requires no County, municipal, or other Local Public Officer (including members of Board appointed committees) shall vote in an official capacity upon any measure which would inure to the special private gain or loss of themselves, any principal or entity by whom they are retained, other than an agency as defined in 112.312(2), Fla. Stat., or to any relative or business associate.

Voting Conflicts Rule

Local Elected or Appointed Officers may not vote on:

- Any measure which would inure to his or her special private gain or loss, or
- Any measure which a public officer *knows* would inure to the special private gain or loss of:
  - A principal by whom he/she is retained
  - A parent organization or subsidiary of a corporate principal by whom the officer is retained
  - A relative
  - A business associate

Section 112.3143(3)(a)

Important Terms

Who is a Principal?

An employer, a client of a legal, accounting, insurance or other professional practice; or A corporation for which officer serves as a compensated director.

Who is a Relative?

Father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

What is a Business Associate?

A person or entity who is carrying on a business enterprise with the public officer, regardless of the form of the business.

Special Private Gain or Loss - Considerations

1. What is the size of the affected class?
2. Is the gain or loss remote or speculative?
3. Is this merely a preliminary or procedural measure?

See Section 112.3143(d), F.S.

If You Have a Voting Conflict, What Should You Do?

Local Elected or Appointed Officers must:

- (1) abstain from voting;
- (2) disclose conflict orally prior to the vote; and
- (3) file a memorandum (Form 8B) within 15 days.

- In addition, appointed local officers must publicly disclose the conflict before participating in discussion of the matter.

Additional Information

- If you have more than one conflict on a particular vote, be sure to disclose them all on the Form 8B

- Section 112.3143(5)-When conflict arises related to client of legal practice, you must disclose the nature of the conflict "in such a way as to provide the public with notice of the conflict"

- Voting conflict statute does not require you to leave the room

Resources

- Florida Attorney General-Sunshine Manual-myfloridalegal.com/open-government/sunshine-manual

- Florida Commission on Ethics-ethics.state.fl.us