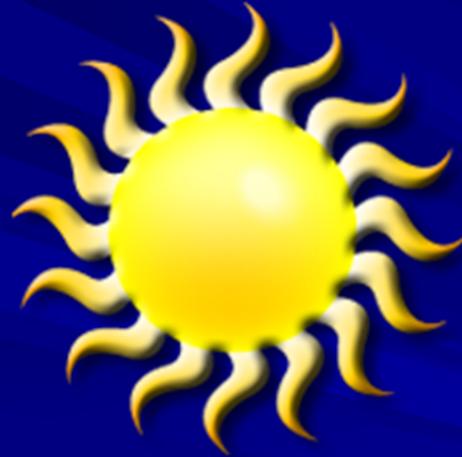


Government in the Sunshine

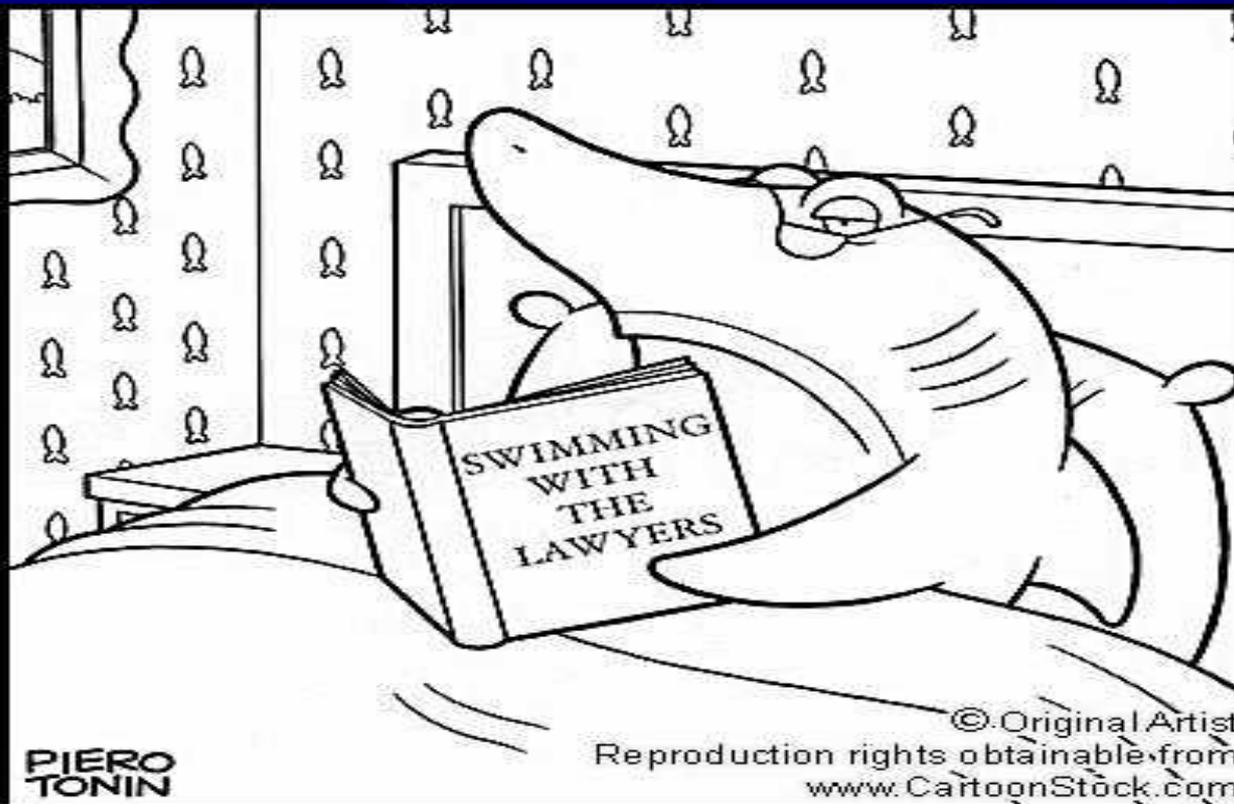


Office of the County Attorney
Jeffrey A. Klatzkow, County Attorney

This presentation highlights the requirements of the following four sets of laws and how they relate to Board-appointed committees

- ✦ The Sunshine Law
- ✦ Public Records Law
- ✦ Ethics Laws
- ✦ Ex Parte Communications

Studying for the New York State Bar Ethics Examination



Sunshine Law

- ✦ Protects the public from “closed door” decision making and provides a right of access to governmental meetings.

*(F.S. § 286.011 (“Sunshine Law”) and
Fl. Constitution Art. I, Sec. 24)*

ARE YOU SURE
WE DON'T NEED
GOVERNMENT
IN THE
SUNSHINE?

TRUST
ME



HOW WILL WE
KNOW IF YOU'RE
DOING ANYTHING
WRONG?

TRUST
ME



WHAT
IF WE
DON'T
TRUST
YOU?

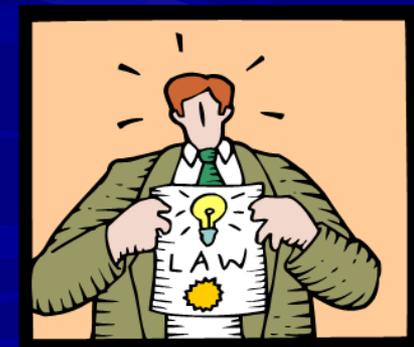
WITHOUT
GOVERNMENT
IN THE
SUNSHINE
YOU'LL JUST
HAVE TO...



BEATTIE *What's the problem with
Coryndon's politics?*
©2005 Edward Brock & Assoc. Journal

What is Florida's Government-in-the-Sunshine Law?

- ★ Enacted in 1967
- ★ Found in Chapter 286, Florida Statutes
- ★ Establishes a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies or authorities



The Sunshine Law gives the public access to 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” *AND*

- ✦ Allows the public to observe each preliminary step leading to the final decision.
- ✦ Prevents the Board from creating closed committees that narrow the Board’s decisions.
- ✦ Applies to Board appointed committees.

The Three Basic Requirements of the Sunshine Law, § 286.011, Florida Statutes



Meetings of public boards, commissions or committees ("boards") must be open to the public.



Reasonable notice of such meetings must be given.



Minutes of the meeting must be taken.

I

**Meetings of public boards,
commissions or committees
("boards") must be open to the public.**

Committee type determines the applicability of these laws

There are two types of committees:

1. Decisions Making Committees
2. Fact finding/Focus Group Committees



Decision Making Committees become part of the Board's decision making process *AND*

- ✦ Choose alternatives and direction; narrow or eliminate options for the Board's consideration.
- ✦ Make decisions by voting.
- ✦ Make recommendation to the Board directly or through staff.
- ✦ Create bylaws.

Focus Groups provide a source of community input and factual resources *AND*

- ✦ Have no characteristics of a Decision making committee.
- ✦ Do not need bylaws.
- ✦ Provide individual input, data and factual findings to staff, as part of staff's development in its advisement to the Board.
- ✦ Do not take votes.
- ✦ Maintain a brainstorming focus.

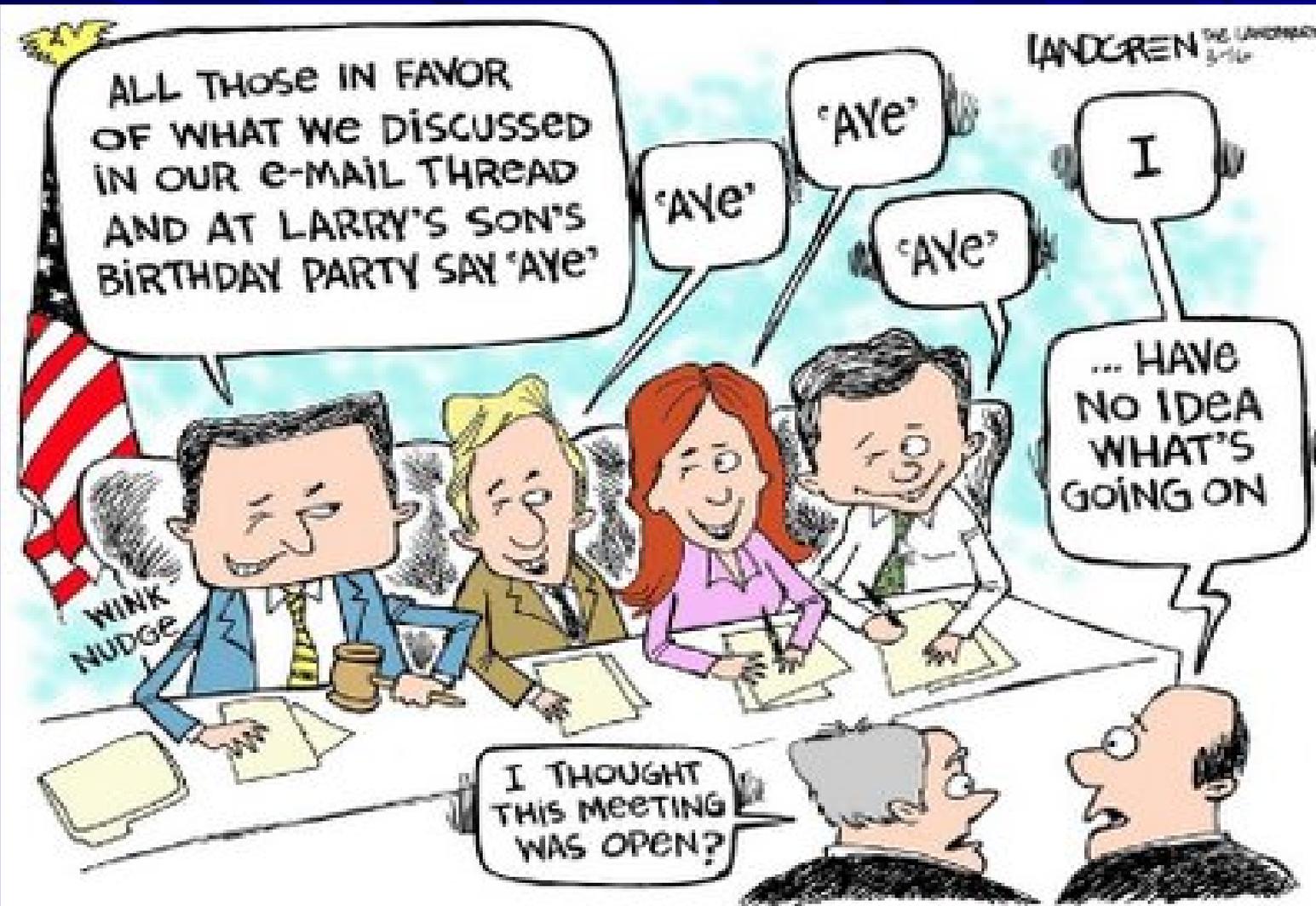
The Sunshine Law applies when --

- ★ Two or more members of a governing board (such as the BCC) discuss a matter that may foreseeably come before the governing board.

E-Mails

E-mails of factual background information from one board member to other board members are permitted if there is no exchange of board members' comments or responses on subjects requiring board action. The e-mails become a public record.





ALL THOSE IN FAVOR OF WHAT WE DISCUSSED IN OUR E-MAIL THREAD AND AT LARRY'S SON'S BIRTHDAY PARTY SAY 'AYE'

LANDGREN THE LAWRENCE 3-16

'Aye'

'Aye'

'Aye'

I

... HAVE NO IDEA WHAT'S GOING ON

WINK NUDGE

I THOUGHT THIS MEETING WAS OPEN?

Written Correspondence

A board member may send documents on matters coming before the board for official action to other board members, PROVIDED there are no responses from, or interaction related to documents among, the board members prior to the public meeting. The written correspondence becomes a public record.



Blogs

Website blogs or message boards that solicit comment from other members of the board by their response on matters that would come before the board trigger the requirements of the Sunshine Law.



The Sunshine Law does not apply when --

- ✦ Committees or groups appointed to engage only in fact-finding activities.
- ✦ Board created focus groups or other such committees that:

Only provide individual input, data and facts as part of staff's development in its advisement to the Board.

Do not narrow options.

*The Sunshine Law is broadly construed
Exemptions are narrowly construed*

Meetings Must be Open to the Public

The public must be allowed to attend meetings; however, there is no obligation to allow the public to participate. The location:

- ✦ Must be accessible
- ✦ Sufficient size for turnout
- ✦ Facility cannot discriminate based on age, race, etc.
- ✦ Public access not unreasonably restricted
- ✦ Be within Collier County with few exceptions

II

Reasonable notice of such meetings must be given.

- ★ The public must be given reasonable and timely notice so they can decide whether to attend. What is “reasonable” or “timely” depends on the circumstance. It does not necessarily require a newspaper advertisement; contact the County Attorney Office for guidance.

...WHEN THE MOON'S
SHADOW SWEEPS ACROSS
THE EARTH'S SURFACE...
OR...



WHEN ELECTED OFFICIALS
HAVE SECRET MEETINGS
CONDUCTING THE PEOPLE'S
BUSINESS...



GALILEO EXPLAINS ABSENCE OF SUNSHINE.

III

Minutes of the meeting are required. Written minutes must be taken and made available promptly.

- ✦ Sound recordings may also be used, but only in addition to written minutes.
- ✦ Minutes may be a brief summary of meeting's events.
- ✦ Minutes are public records.
- ✦ Minutes must record the votes.



Inspection Trips

Members of a public board or commission may conduct inspection trips.

- ✦ If discussion relating to the business of the board will occur between board members during an inspection trip,

SUNSHINE LAW APPLIES

- ✦ All requirements of § 286.011, F.S. must be met.

Electronic Meetings Local Governments

Absent member may participate by telephone conference if:

- ✦ Absence is due to extraordinary circumstances
- ✦ A quorum of local board must be physically present



The Sunshine Law and Staff

- ★ When a staff member is appointed to a board, the staff member loses his or her identity as staff while working on the board and the Sunshine law applies to the board.
- ★ It is the nature of the act performed, not the makeup of the board or the proximity of the act to the final decision, which determines whether a board composed of staff is subject to the Sunshine Law.

Sunshine Law Applications

- ✱ Does not apply to members of different boards
- ✱ Applies to non-voting members as well as voting members
- ✱ Social events are fine – but do not discuss County business
- ✱ Does not apply to private organizations, such as homeowners' associations
- ✱ Does not apply to a meeting between a Commissioner and a private citizen
- ✱ Does not apply to staff so long as staff is in a fact-finding mode
- ✱ Applies to staff once staff become part of the decision-making process

Validity of Action Taken in Violation of The Sunshine Law/Subsequent Corrective Action

- ✪ Section 286.011, F.S., provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.
- ✪ Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law is void *ab initio*.
- ✪ *Within limitations*, some case law exists holding that Sunshine Law violations can be cured by independent, final action taken completely in the Sunshine.

What are the Consequences if a Public Board or Commission Fails to Comply with the Sunshine Law?

Criminal Penalties:

- ✦ It is a second degree misdemeanor to knowingly violate the Sunshine law.
- ✦ Punishable with a fine of up to \$500 and/or up to 60 days imprisonment.

Other Penalties Include:

- ✦ Removal from position.
- ✦ Payment of attorney's fees incurred by the challenging party, as well as declaratory and injunctive relief.

A Penalty Example

BASED ON LOCAL NEWS REPORTS

Childers To Prison *No restitution ordered*



Former Florida Senate President W.D. Childers, 69, was sentenced in Crestview today to 3 1/2 years in state prison after last month's jury verdict on charges of bribing former Escambia County commissioner Willie Junior. Childers allegedly bribed Junior to vote for purchasing the former soccer complex in Pensacola at a price of \$3.9 million.

After he completes his sentence, Childers also will have to perform 250 hours of community service and serve 1 1/2 years on probation.

Prosecutors sought the maximum penalty of 10 years, five years on each count and more than \$1 million in restitution. Prosecutors also asked the judge to order restitution of more than a million dollars to cover alleged county losses on the real estate deal. However, the judge declined to order restitution. Childers maintained he has a negative net worth.

Childers, 69, also has been [serving a 60-day county jail sentence](#) for violations of Florida's open-government "sunshine" law. He will begin serving the 3 1/2 year prison sentence once he completes the jail term.

The "Banty Rooster," as he was known over a 30-year career as a state legislator in Tallahassee, decided to run for county office as a Republican in 2000 because he was term-limited under a new Florida law. Childers' challenge to the term limits law also was turned away by the courts.

Childers was accused of bribing Junior, a Pensacola Democrat, with at least \$90,000 in checks. Junior testified Childers handed him the money pot following the vote but that he returned \$40,000 in exchange for a cashier's check.

Childers denied giving Junior any cash and testified the checks were loans secured by Junior's equity in a funeral home. He produced two handwritten promissory notes they had signed. Assistant State Attorney John Simon argued that Childers never filed the notes with the court clerk in order to enforce them, which he had often done with other loans, including those to family members.

Sentenced to Jail for Sunshine Law Violations: Suspended Escambia County Commissioner W.D. Childers was sentenced to 60 days in jail for discussing redistricting in a telephone conversation while fellow commissioner listened on a speaker phone, and pleaded no contest for talking with two fellow commissioners about county building projects in front of a staffer.

in exchange promised a

s. Georgann Elliott also

e violations and



The Headlines We Don't Want!

“Judge Finds Marco Councilor Guilty of Sunshine Law
Violation!!” *Naples Daily News 2/7/08*

“Planning Member’s Lunch Clouds Florida in Sunshine
Law” *Naples Daily News 2/7/07*

Grand Jury OKs City Sunshine Law Investigation *7/12/07*
Jacksonville News

“A Times-Union Investigation Finds Evidence of
Florida Sunshine Law Violations” *Florida Times-Union 6/14/07*

PUBLIC RECORDS



Office of the County Attorney
Jeffrey A. Klatzkow, County Attorney



The State of Florida Strongly Favors Open Access to Public Records

-  **The public's right to inspect or copy any public record is established in the Florida Constitution.**
-  **The legislature enacted Chapter 119 of the Florida Statutes setting the policy for the state.**
-  **Florida courts have routinely held that the Public Records Act is to be liberally construed in favor of open access to public records.**

The Definition of Public Records Open to Inspection to Any Person is Very Broad.

A public record encompasses all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge, regardless of whether such materials are in final form.



Public Records Law

 **Public Records include: All documents, paper, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form or means of transmission made or received pursuant to law in connection with transaction of official business by the agency. (*Chapter 119, Florida Statutes*)**

The Public Records Law applies to:

 **Records developed by the Board, Board-Appointed Committees, and employees**

 **All Types of records including written communications, letters, notes and e-mails**

Numerous exemptions are identified in §119.07, Florida Statutes, and other statutes

What Public Records are Exempt From Disclosure?

Common exemptions are:



- 📄 **Records prepared for litigation proceedings or in anticipation of legal proceedings**
- 📄 **Social Security numbers of employees or former employees**
- 📄 **Sealed bids or proposals**

Public Records Requests

Can be made verbally or in writing by any person

The Board or Board-Appointed Committee:

- ☞ Has a “reasonable” time to respond
- ☞ Can charge for the cost of retrieving records if the amount requested is voluminous
- ☞ Can charge 15 cents per page

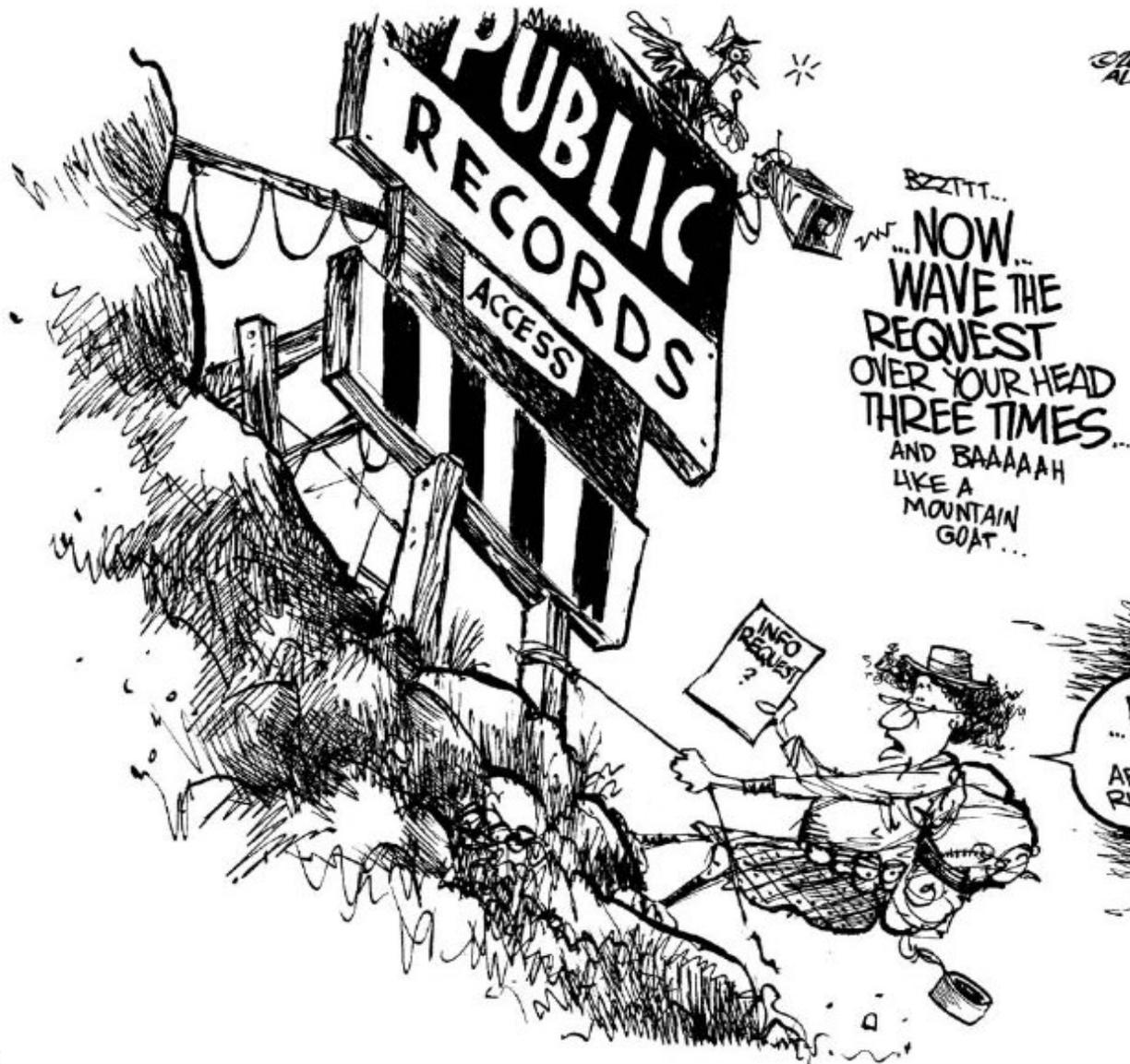
The Public Records Law does not require:

- ☞ The retention of records (this is covered by the State’s records retention policy)
- ☞ The creation of records or the provision of records in the format requested
- ☞ An explanation of the records

Restrictions Placed on Access to Public Records



- ☰ The restrictions a public entity may place on access to public records for reasons of administrative convenience, cost or other factors are narrow and limited.



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ALL RIGHTS RESERVED
2-7

BZZTTT...
...NOW...
WAVE THE
REQUEST
OVER YOUR HEAD
THREE TIMES...
AND BAAAAH
LIKE A
MOUNTAIN
GOAT...

BAH
IS
ABOUT
RIGHT.

PENALTIES



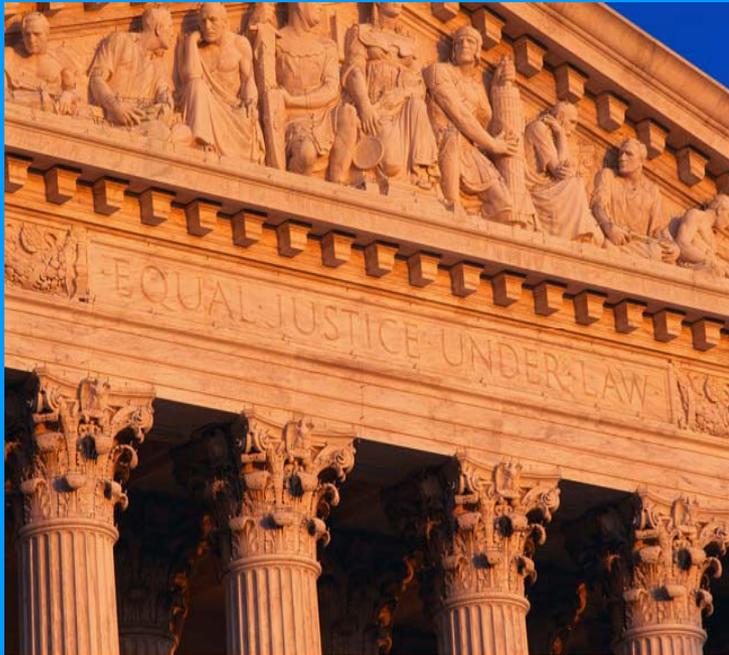
A violation of the Public Records Act carries both civil and criminal penalties!

Ethics Laws



County Attorney Office
Colleen M. Greene
Assistant County Attorney

Three Areas of Ethics Laws



**Chapter 112, Florida Statutes,
Part III**

**Collier County Ordinance
No. 2003-53, as amended**

**Collier County Manager
Administrative Procedures
CMA #5311**

This will not suffice!



Chapter 112, *Florida Statutes*

Applies to all advisory board members, elected officials, and County employees.



Collier County Ordinance No. 03-53, as amended

Applies to all advisory board members, elected officials and County employees (more stringent than Ch. 112, *Fla. Stat.*).

CMA #5311

Applies to all County employees.

I

Florida Statutes

Code of Ethics for Public Officers and Employees

Code of Ethics

Protects against conflict of interest and establishes standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(Chapter 112, Part III, *Florida Statutes* and the *Florida Constitution*, Article II, Section

Florida Code of Ethics

Addresses:

- ◆ Standards of Conduct
- ◆ Voting Conflict
- ◆ Financial Disclosure

Applies to:

- ◆ County Commissioners
- ◆ Board Appointed Committees
- ◆ Board Employees

- ◆ Prohibits certain actions or conduct
- ◆ Requires certain disclosures be made to the public

Standards of Conduct

Soliciting and Accepting Gifts. May not solicit or accept anything of value that is based on an understanding that their vote, official action, or judgment would be influenced by such a gift.

Accepting Unauthorized Compensation. May not accept any compensation, payment, or thing of value that is given to influence a vote or other official action.

Misusing Public Position. May not corruptly use his/her official position to obtain a special privilege for himself/herself or others.

Disclosing or Using Certain Information. May not disclose or use information not available to the public and obtained by reason of his/her public positions for the personal benefit of himself/herself or others.

Additional Standards of Conduct

- **Doing business with one's agency.** A public officer or employee acting in a private capacity shall not attempt to do business with the County/agency where he/she serves as a public officer or employee. Applies to private business in which officer, employee, spouse or child has a material interest. (Specific exemptions apply.)
- **Engaging in conflicting Employment or Contractual Relationship.** A public official may not be employed or contract with any business entity regulated by or doing business with his or her public agency. (Specific exemptions apply.) (May be waived by full Board.)

Code of Ethics for Public Officers and Employees

Conflict or Conflict of Interest

A situation in which regard for a private interest tends to lead to a disregard of a public duty or interest.

(§ 112.312(8), *Fla. Stat.*)

Voting Conflicts of Interest

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.

Requires that public officers, including members of advisory committees:

- ⊙ Must announce the nature of the conflict before the vote; abstain from voting; and file a memorandum of voting conflict.
- ⊙ May not participate in the discussion without first disclosing the nature of their interest in the matter (either in writing prior to the meeting, or orally as soon as they become aware that a conflict exists).
- ⊙ May not participate in an attempt to influence the decision.

Penalties

Violation of Statute

Civil penalties, fine or removal from office



II

County Ethics Ordinance

Ordinance No. 2003-53, as amended

* **Legislative intent**

* **Lobbyist Registration**

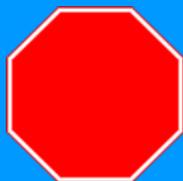
* **Gifts from Lobbyists**

* **Gift Definition Exceptions**

* **County managerial employee post
employment restrictions**



County Ethics Ordinance



■ No, thank you!

Public officials are prohibited from accepting any gift or any other thing of monetary value from anyone that has an interest that may be substantially affected by the performance or non-performance of duties of a public official.

County Ethics Ordinance

Limited Exceptions Apply!

- Gifts from relatives.
- Unsolicited advertising or promotional materials.
- Gifts for participation in a seminar.
- Award of nominal commercial value.
- Food or beverage offered to all attendees at a business meeting (the \$4.00 rule).

When in doubt, please ask!

PENALTIES **for violating County Ethics** **Ordinance**

County
Ordinance
Violations Carry
Jail as Well as
Fine Penalties



III

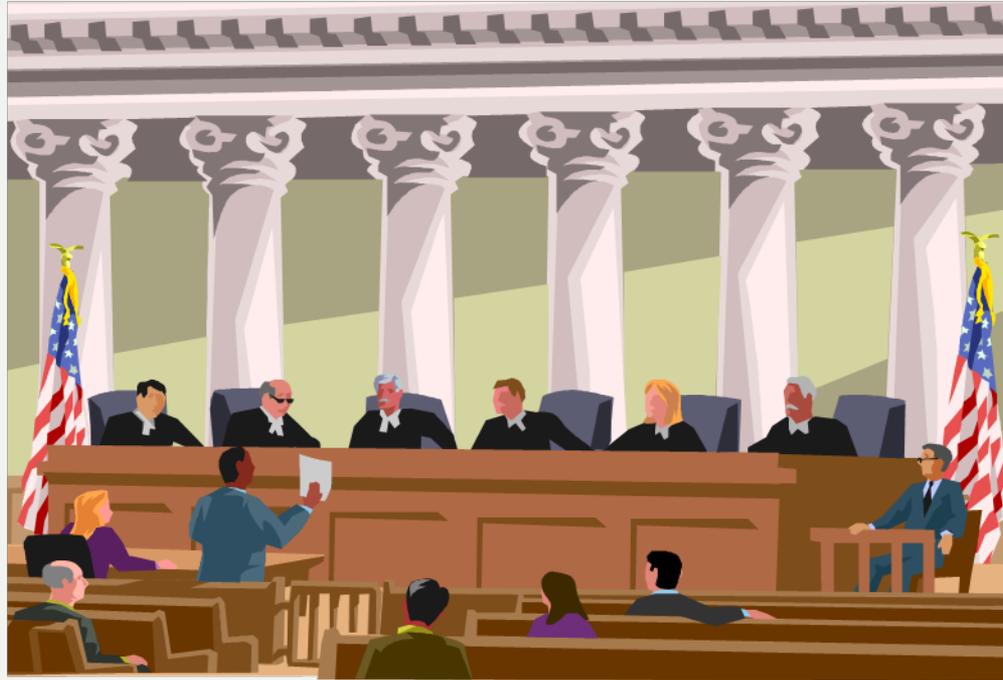
County Manager Administrative Procedures Code of Ethics/Standards of Conduct CMA #5311



❖ Prohibited receipt of gifts or items of value by County Employees

❖ Violation may result in disciplinary action up to and including discharge

Quasi-Judicial Boards



Office of the County Attorney
Jeffrey A. Klatzkow, County Attorney

What do we mean by quasi-judicial?

LEGISLATIVE vs. QUASI-JUDICIAL

As explained by the Florida Supreme Court in Board of County Commissioner of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993):

“It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy.”

Advisory Boards that Serve in a Quasi-Judicial Capacity

- ➡ **Collier County Airport Authority**
- ➡ **Building Board of Adjustment and Appeals**
- ➡ **Collier County Code Enforcement Board**
- ➡ **Collier County Planning Commission**
- ➡ **Collier County Water and Wastewater Authority**
- ➡ **Contractor's Licensing Board**
- ➡ **Public Vehicle Advisory Committee**
- ➡ **Environmental Advisory Council**

Advisory Boards that Require the Filing of *Form 1 Disclosure Statements*

- ➔ **Collier County Code Enforcement Board**
- ➔ **Collier County Planning Commission**
- ➔ **Collier County Water and Wastewater Authority**



Ex Parte Communications

A PRESUMPTION OF PREJUDICE!



Collier County Resolution 95-376

*established a process which removes the
presumption of prejudice through
disclosure of ex parte communications
with public officials*

Resolution 95-376

- ☑ The local public official must disclose the substance of any ex parte communication and the identity of the person, group or entity with whom the communication took place, and make such disclosure a part of the record before final action on the matter.

Resolution 95-376

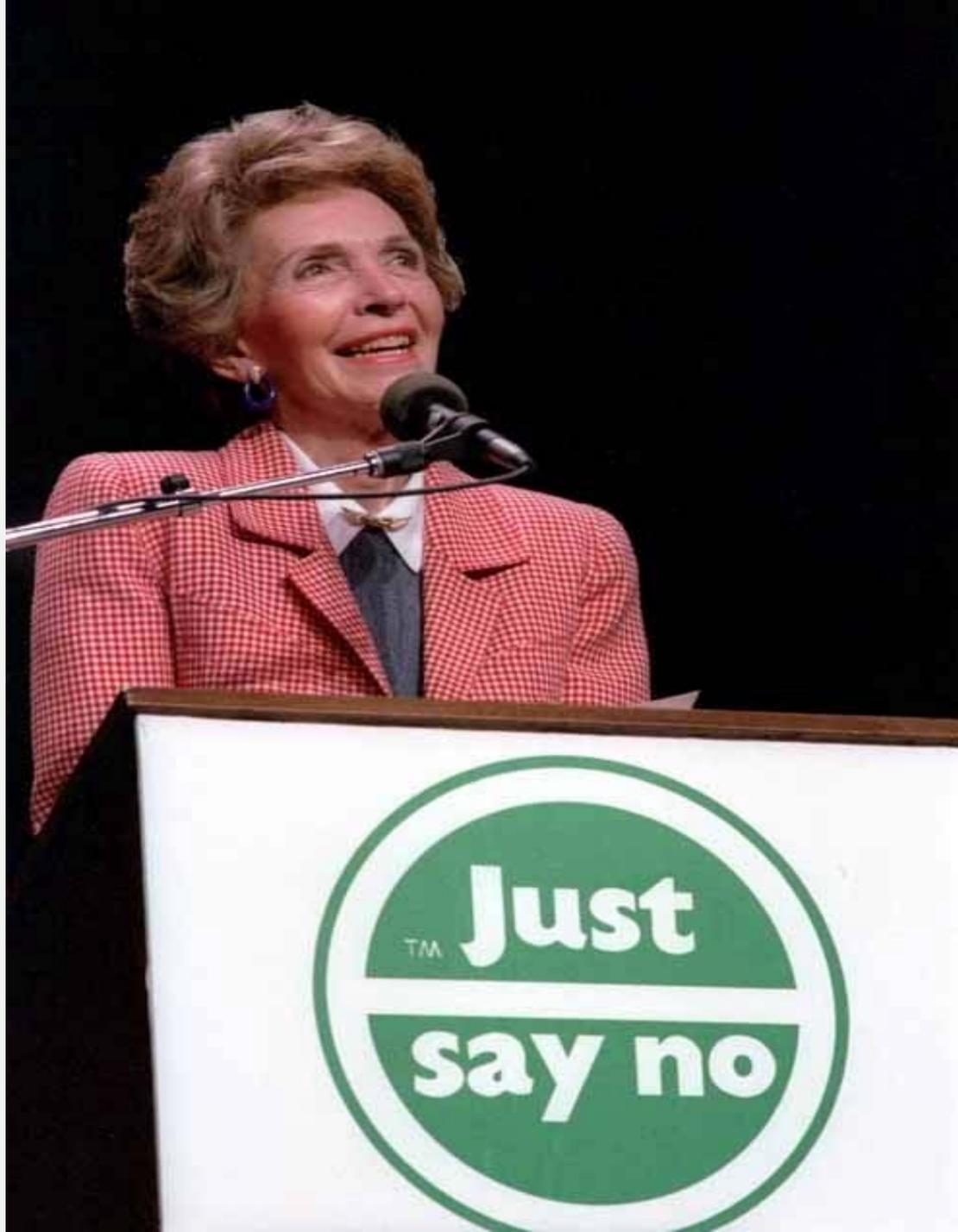
- ☑ The local public official may read written communications if such written communications are made a part of the record before final action on the matter.

Resolution 95-376

- ☑ The local public official may conduct investigations and site visits and may receive expert opinions if the existence of the investigation, site visit or expert opinion is made a part of the record before final action on the matter.

Resolution 95-376

- ☑ Disclosures must be made before or during the public meeting at which a vote is taken on the matter to allow a reasonable opportunity to refute or respond to the ex parte communication.



Summary*

* Or creating order out of chaos

What is the oldest profession?

A physician, an engineer and an attorney were discussing who among them belonged to the oldest of the three professions represented.

The physician said, "Remember, on the sixth day God took a rib from Adam and fashioned Eve, making him the first surgeon. Therefore, medicine is the oldest profession."

The engineer replied, "But, before that, God created the heavens and earth from chaos and confusion, and thus he was the first engineer. Therefore, engineering is an older profession than medicine."

Then, the lawyer spoke up. "Yes," he said, "But who do you think created all of the chaos and confusion?"



**THE FIVE RULES FOR BEING ON
A BOARD-APPOINTED
COMMITTEE
(CHISELED IN STONE!!!)**

I

DO NOT MEET WITH
ANOTHER MEMBER OF
YOUR COMMITTEE
OUTSIDE OF A DULY
NOTICED PUBLIC
MEETING!



II

**DO NOT COMMUNICATE
WITH ANOTHER MEMBER OF
YOUR COMMITTEE OUTSIDE
OF A DULY NOTICED PUBLIC
MEETING!**





III

**DO NOT DISCUSS ANY
MATTER WITH ANYONE
WHO MAY COME BEFORE
YOUR BOARD OR
COMMITTEE!**

IV



ABSTAIN ON ANY VOTE
THAT YOU BELIEVE MAY
CONSTITUTE A CONFLICT
OF INTEREST!

V

DO NOT TAKE
ANYTHING!



Resources/Contacts

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**Questions/Concerns Regarding Sunshine Law, Public
Records, Ethics and Ex-Parte Disclosure Matters**