Government in the Sunshine

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

Sunshine Law

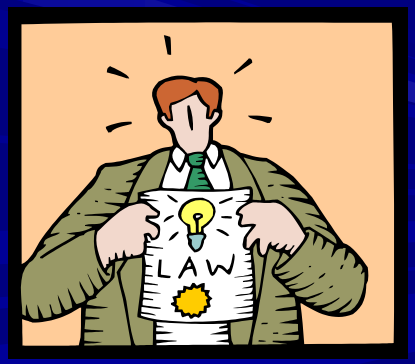
- Protects the public from “closed door” decision making and provides a right of access to governmental meetings.

(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 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

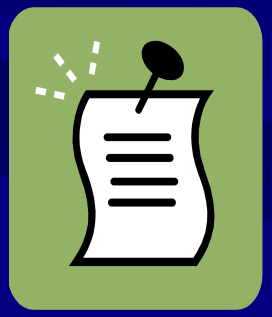


The Sunshine Law gives the public access to meetings of "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision" *AND*

- 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. Decision 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.

Fact Finding 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.

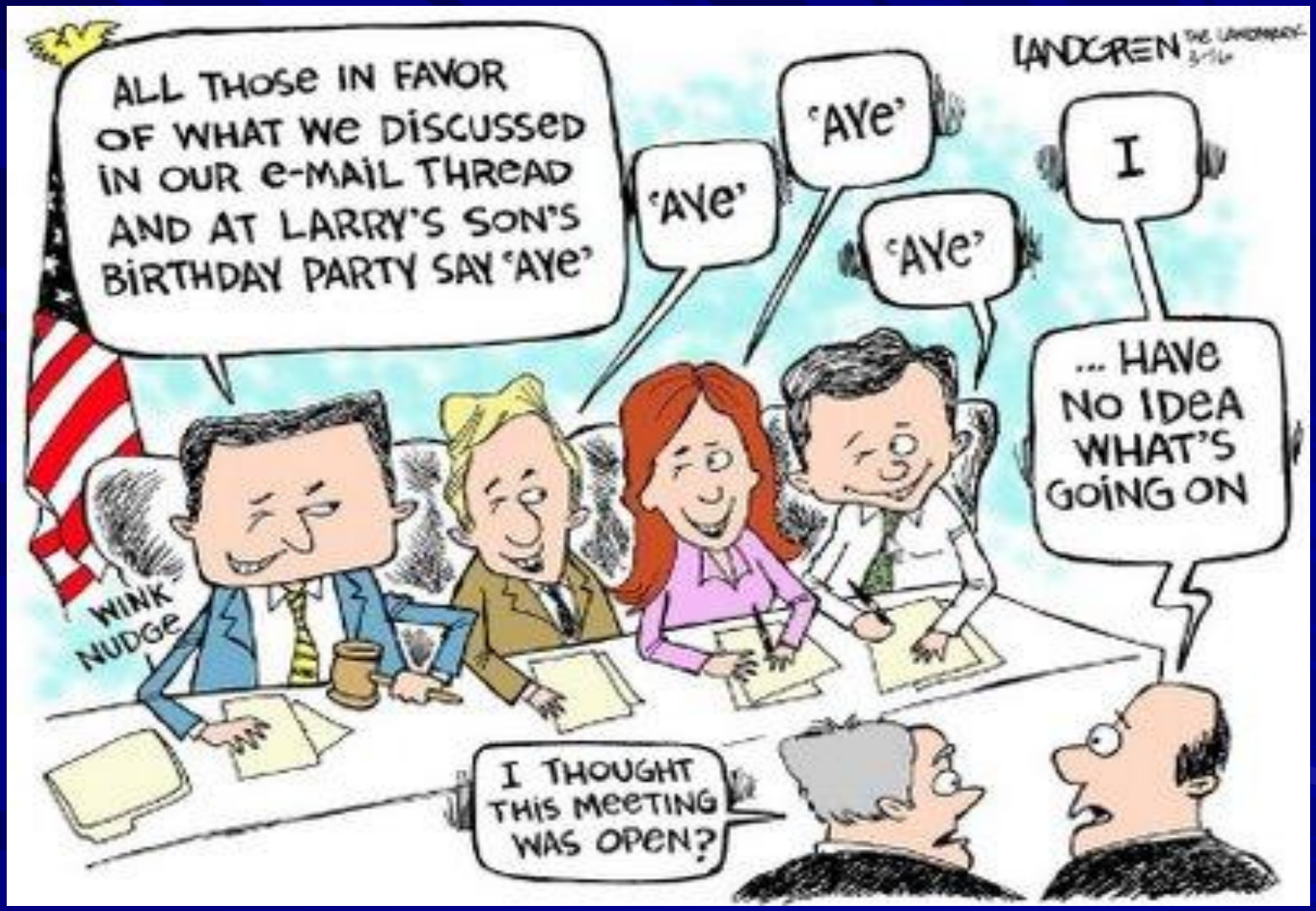
ADVISORY BOARD GUIDELINES FOR PUBLIC RECORDS AND EMAILS

- While you are serving on an advisory board, correspondence and emails to or from anyone, on any computer (private or government owned), relating to County business is a public record.

- Public records must be maintained pursuant to State guidelines. You may save them on the computer, a disk, or as a hard copy. If leaving your position on an advisory board, please provide a copy of all public records in your possession to the County Staff Liaison.

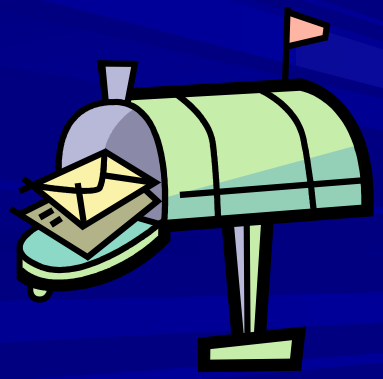
- One-way communications by email should be directed to the County Staff Liaison. Pursuant to the Sunshine Law, no two-way communications between members (except during publicly noticed meetings) is permitted.

- If you choose to communicate with members of the public concerning County business via email, please be aware that your name and email address, as well as the name and email address of the public person, becomes a public record.


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



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

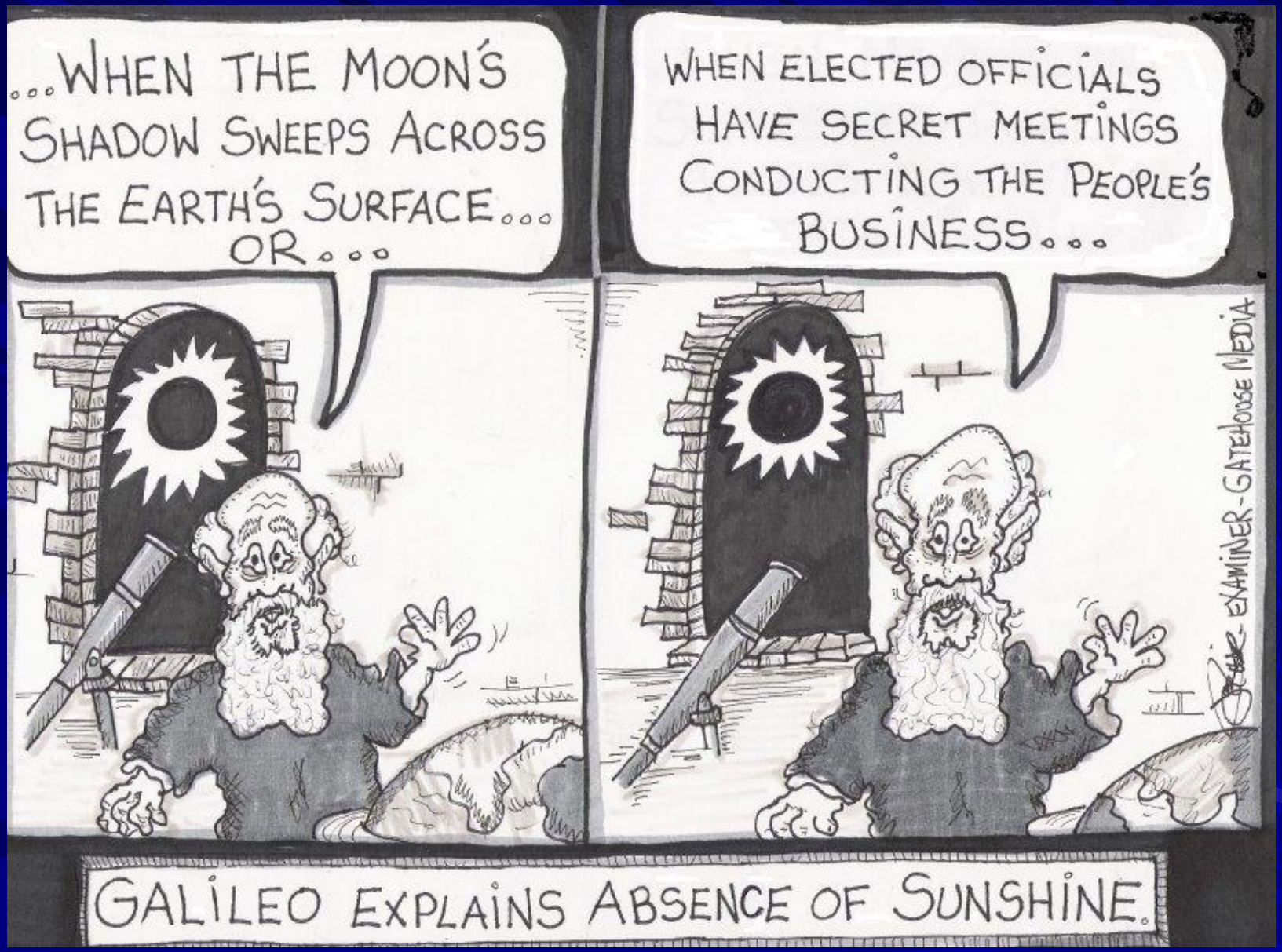
Meetings Must be Open to the Public

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...
EXAMINER-GATEHOUSE MEDIA
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. <u>must</u> 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.

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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.**

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

Questions??

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Resources/Contacts

OFFICE OF THE COUNTY ATTORNEY

Jeffrey A. Klatzkow, County Attorney

Scott R. Teach, Deputy County Attorney

Colleen M. Greene, Assistant County Attorney

3301 East Tamiami Trail, 8th Floor
Naples, FL 34112
Phone: (239) 252-8400
Fax: (239) 252-6300