

Sunshine Law, Public Records, & Ethics

Affordable Housing Advisory Committee
Refresher, March 2019



Sunshine Law

- Sources
 - Art. I, §24, Fla. Const.
 - §286.011, Fla. Stat.
- Applies to advisory committees of County Govt.
- Elements
 1. Notice of Public Meetings Must Be Given
 2. Public Meetings Must Be Open To Public
 3. Minutes of Public Meetings Must Be Taken and Recorded

Sunshine Law

- “Discussion” is defined broadly, can include any form of electronic communication including blogs and facebook posts
- Board members may not use a “conduit” to communicate, i.e., a third party who relays messages.
- Boards may not prohibit non-disruptive videotaping, tape recording, or photography at public meetings.
- Fla. Stat. §286.0114 requires boards to allow public opportunity to be heard before board takes action on a matter (subject to limited exemptions).

Sunshine Law—Practical Considerations

- Don't "Reply All" to email sent to entire AHAC
- You can associate with fellow members, but do not discuss anything that can be reasonably expected to come before you in a public meeting for action.
- Don't comment on a social media site about a matter that may come before the AHAC, when a fellow AHAC member has commented.

Public Records

- Sources
 - Art. I, §24, Fla. Const.
 - Ch. 119, Fla. Const.
- Right of access to records of government including entities acting on behalf of government.
 - Applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge
 - There are statutory exemptions.

Public Records

- Requestor can be anonymous and does not have to give reason for request.
- Broad requests cannot be denied although fees can be applied according to statute.
 - Statutory cost of photocopies and actual cost of labor for extensive requests. Must be wage of lowest paid employee capable of doing the job.
- Requests do not have to be in writing.
- Never make a requestor ask twice.

Public Records

- Board is *not* required to create a record it doesn't have in response to a request.
- Board is *not* required to respond to a standing request.
- Board does *not* have to interpret the record for requestor.

Public Records—Practical Considerations

- Don't text official business on private phone.
 - When unavoidable, take screenshot and save it.
- Send requests received to PIO Julie Murphy.
- If you receive a request directly:
 - Note exact request and get contact information
 - Pass request on to PIO
 - Do *not* ask identity of requester or why the request was made
 - Do *not* tell the requester to contact PIO

Code of Ethics

- Sources
 - § 8, Art. II, Fla. Const.: “A public office is a public trust.”
 - Part III, Ch. 112, Fla. Stat. (“The Code of Ethics”)
- Gifts
- Doing Business with One’s Agency
- Misuse of Position
- Voting Conflicts
- Financial Disclosures

GIFTS

- Never accept a gift that you know (or with reasonable care *should* know) is designed to influence your vote.

Misuse of Public Position

- AHAC members are prohibited from using your official position to obtain a special privilege or benefit for yourself or others.
- §112.313(6), Fla. Stat.

Disclosure or Use of Information

- Committee members may not disclose or use information not available to the public and obtained by reason of his/her public position.
- §112.313(8), Fla. Stat.

Doing Business with One's Agency

- AHAC member cannot act in a public capacity to purchase or rent goods or services from a business of which he is an employee or owner (or if his child or spouse owns more than 5%).
 - Abstaining from voting does not cure. Transaction is prohibited.
- AHAC member cannot act in a private capacity to sell or rent goods or services to the County.
 - If AHAC mbr is an officer or >5% owner, rule applies even if mbr is not directly involved.
- §112.313(3)

Conflicting Employment or Contractual Relationship

- Committee members cannot hold employment or a contractual relationship with a business regulated by or doing business with the County.
- But there are exceptions.
- §112.313(7)

Voting Conflicts of Interest

- Committee member may not vote on any measure which would insure to his/her special private gain or loss, or which he/she knows would inure to the special private gain or loss of any principal by whom he/she is retained (or parent or subsidiary) or which would inure to the special private gain or loss of his/her relative or business associate.
- §112.3143, Fla. Stat.

Voting Conflicts of Interest

- In the event of a conflict of interest, AHAC member must:
 - 1. Disclose nature of conflict.
 - 2. Abstain from voting.
 - 3. File Commission on Ethics Form 8A or 8B with the minutes of the meeting.
- Appointed board members can discuss a matter for which he/she has a conflict after disclosing the nature of the conflict.

Hypothetical #1

- **Scenario:** An AHAC member owns property adjacent to a large parcel which the AHAC is voting to recommend the BCC acquire. Almost anyone would agree that the subject parcel would be a wise purchase for the County's affordable housing stock. However, the parcel is also prime for development. If the BCC purchases the property, the AHAC member will benefit from continued, unimpeded views of a waterway. If the BCC does not purchase the parcel, the AHAC member may still enjoy an increase in property values due to the parcel's development.
- **Issue:** May the AHAC member vote to recommend the purchase?
- **Answer:** It depends! The safe route is to declare a potential conflict of interest and abstain from voting. The answer hinges on whether continued, unimpeded views constitute a "special private gain."

Hypothetical #2

- **Scenario:** AHAC member's husband is an attorney in a not-for-profit firm specializing in environmental and growth management issues. Husband is involved in a lawsuit seeking to invalidate a zoning approval granted by a city to allow timber harvests on land owned by a tree farming company. The AHAC is considering whether to recommend that the BCC purchase the subject property from the tree farming company.
- **Issue:** May the AHAC member vote to recommend the purchase?
- **Answer:** Yes, *if* her husband is on salary not tied to billable hours and no attorney fees or damages are sought in the suit!
 - See Comm'n on Ethics Opinion 08-30.

Hypothetical #3

- **Scenario:** AHAC is considering recommending the BCC purchase land owned by XYZ Inc., a company not in the business of owning land and seeking to liquidate this asset. An AHAC member's child is a 6% owner of XYZ Inc.
- **Issue:** Must the AHAC member abstain from voting to recommend the BCC purchase the land?
- **Answer:** Trick question! The transaction is prohibited altogether. Abstaining does not cure. The LAC member must either resign or the purchase must be foregone by the County.

Hypothetical

- County receives public records request from a news reporter for a legal memorandum authored by the County Attorney setting out strategy in a controversial lawsuit.
- Issue: Is the memorandum a public record that must be furnished?
- Answer: It depends. If the case is concluded it must be furnished. If the case is pending, it does not. The Public Records Law protects the thoughts and impressions of the government attorney while a case is pending. After the litigation is complete, the thoughts and impressions of the government attorney becomes a public record. What about a memo from a private lawyer?

Hypothetical

- A member of the Tourist Development Council is the owner of a restaurant in Flagler Beach. The restaurant will host an awards banquet for an upcoming fishing tournament.
- **Issue:** Can the council recommend a grant be awarded to the restaurant for catering the banquet? What if the member in question abstains from voting?
- **Answer:** Because the member is an owner, the council cannot vote to award the grant even if the member abstains. The transaction is prohibited. However, the council may award the grant to the sponsors of the fishing tournament, who may use it to offset costs of the banquet if at the time of the grant decision they have not finalized such arrangements.

Hypothetical

- At a meeting of the Board of County Commissioners, a citizen in the audience refuses to stand for the Pledge of Allegiance.
- Issue: May the Chairman instruct the Sheriff's deputy to eject the person from the chambers?
- Answer: No. The meeting is a public forum. Refusing to stand is a form of political speech, the most protected speech under the First Amendment. However, if a person becomes unruly/disruptive, after being given ample opportunity to quiet down, the deputy may eject him.
- https://www.youtube.com/watch?v=8Dqpvh6_z0g

Conclusion

- The point of the previous hypothetical questions was *not* to test your knowledge, but to demonstrate how quickly ethics issues become complicated.
- The Ethics Laws are not always intuitive, and how the Comm'n on Ethics interprets the Code evolves over time.
- You can always call the County Attorney's Office if faced with a dilemma.
- Ph: 313-4005

Resources

- Florida Attorney General's Office has the "Government In The Sunshine Manual" available online.
 - www.myfloridalegal.com
- Florida Commission on Ethics has the "Guide to the Sunshine Amendment and Code of Ethics" available online.
 - www.ethics.state.fl.us