

## **A “Sunshine” Reminder for Members of the Regional Planning Councils**

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So you have been asked to serve on a regional planning council in Florida? It cannot be that hard, can it? Certainly a job with no pay will have absolutely no pitfalls or unmarked hazards...right?

As the General Counsel for the Central Florida Regional Planning Council since 1992, I can assure you that there is a particular unmarked hazard in your roadway. It is called The Sunshine Law. The purpose of this article is to acquaint new members (and give a reminder to seasoned members) about this law and its implications. After all, violators of this law may have to pay court fines or even do time in the county jail (which is a terrible way of learning about jail overcrowding). So, read on with interest.

First, it is important to note that a regional planning council is, by design, a very eclectic group. The membership is divided into two categories: elected officials and gubernatorial appointees. It is possible (and very likely) to have a farmer from a rural area sitting next to a corporation president from a large city. A council mix could include a retired school principal appointed by the governor and a county commissioner who sells real estate. The diverse group usually only comes together at council meetings. This circumstance causes the first concern. It is natural for these members to get acquainted over coffee before the meeting. Sometimes, the conversation may turn to the Development of Regional Impact (DRI) hearing on the agenda. This is where the Sunshine Law throws a curve ball at you. Such conversations, though innocently started, are against the law.

The Sunshine Law is a nickname given to Florida Statute 286. This chapter is only about two pages in length. However, its impact extends into that coffee conversation and many other seemingly innocent areas of a council member's life. The law essentially addresses three separate subjects: (1) meetings between council members; (2) notice of the meetings; (3) minutes of the meetings. As a council member you can rest assured that your staff has procedures in place to comply with (2) and (3) above. Those areas are not where you can get in trouble. It is (1) that needs to be your focus (and thus the focus of this article).

You see, (2) and (3) provide the “sunshine” into a conversation. That is, when your staff properly publishes reasonable notice of a meeting and takes accurate minutes of the meeting, you can converse about any subject on your mind at the meeting without fear of running afoul of this law. It is when you have the conversation outside the “sunshine” that your General Counsel will wince. Over the years, I have seen some situations that, at first glance, appear innocent, but are actually violations of the law. Below are some examples. After each example is a suggested solution to avoid the problem.

### **EXAMPLE 1**

The council has an upcoming DRI hearing. To become better educated on the development area, the applicant (or your staff) arrange for a bus tour to the proposed development site. Two council members are seated beside each other on the bus and the conversation is drifting toward the development.

**SOLUTION:** The bus trip needs to be the subject of a reasonable notice and accurate minutes. Your staff can handle that. When done properly, members of the press know about the trip and usually tag along (sometimes in the seat beside you). All conversations about the potential development should be said loud enough so the person taking the minutes (usually in the front of the bus) can hear you and take your comments down.

#### EXAMPLE 2

A meeting has been properly noticed and the secretary is taking minutes. During a break in the meeting, you and another council member find yourselves in the bathroom or the coffee room with each other. The conversation starts to drift.

**SOLUTION:** Don't discuss the pending council business at all. Remember this: even if a member of the press is in the room with you, the conversation is not in the "sunshine" and is unlawful. It is only when the minutes are being taken that things are rolling along as they should.

#### EXAMPLE 3

You are having a conversation with a member of the staff (your Executive Director, for example). You ask the staff member how another council member feels about a certain pending issue (like a staff pay raise or a DRI hearing).

**SOLUTION:** Don't ask. Using a staff member (or any other person) to have conversations with another council member is unlawful. It is just like the other council member was in the room. Also, you are putting the staff member in a very awkward position. Because the staffer works for you, he wants to make you happy and answer your questions. However, this is one of the only times that the staffer can be charged with a violation of the Sunshine Law and the possible criminal conviction would not look good on his resume when he is looking for another job.

#### EXAMPLE 4

You and another council member are email friends and you converse that way, rather than around the water cooler at the meetings.

**SOLUTION:** Don't do that either. Courts have held that email conversations are just like water cooler conversations.

#### EXAMPLE 5

You are sitting at a council meeting at your usual place. During the course of the meeting, the council member next to you leans over and whispers a comment about something unrelated to the agenda item being discussed. You whisper back and a conversation ensues.

**SOLUTION:** Though this is not a violation of the Sunshine Law, you will never convince the people in the back of the room of that, especially if they are on the losing end of your vote. So, it is always wiser to refrain from such conversations during a meeting. It will be one less time you will need to defend yourself. Keep in mind that such conversations, to be in the sunshine, must be heard by the person taking minutes. So actually discussing agenda items under such circumstances is an absolute no-no.

Well, the above five examples may have some of you scared. If so, you are overreacting to this article. There is so much you can talk about that is not covered by the Sunshine Law. The weather, ball game scores, church gossip, restaurant reviews are all subjects you can discuss

at any time with any other council member. You can even talk about votes that the council has already taken on items not coming back up for another vote. These conversations can take place in each other's homes or around the water cooler or in the car on the way to a meeting and you have no problem. It is only when you are talking about a matter that could be the subject of future council action that the "sunshine" needs to be in the room.

It has been my observation that council members do not want nor intend to violate this law. Problems usually occur when the hazard is unmarked and the conversation takes an unexpected turn. Your sensitivity to the constraints discussed here will go a long way toward giving you piece of mind.

**The author received his Juris Doctorate Degree from the University of Florida in 1972 and has been practicing law in Florida since. His knowledge and expertise in the Sunshine Law came from serving as a city attorney for 15 years and serving as the General Counsel to the Central Florida Regional Planning Council since 1992.**