**THE SUNSHINE LAW**

The Florida Constitution safeguards every Floridian's right of access to government meetings and records. The comprehensive breadth and scope of our sunshine laws have served for many years as a model for the rest of the nation. In Florida, disclosure is the standard, unless the Legislature concludes that the public necessity compels an exemption from our strong open government laws.

The best way to ensure that government truly represents the people it serves is to keep the government open and accessible to those people. For several decades now, Florida has shown that openness is the key to building and maintaining public trust in the institutions of government. The Attorney General's Office is committed to maintaining and building upon this tradition of openness.

The Government in the Sunshine Manual is prepared on an annual basis by the Florida Attorney General's Office to serve as a guide to those seeking to become familiar with the requirements of the open government laws. It is intended for both governmental agencies and the citizens they serve.

Publicly created advisory boards which make recommendations

Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). Accord *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988). "[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994). *And see Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county commission to serve in an advisory capacity to the county manager).

The Attorney General's Office has issued numerous opinions discussing the application of the Sunshine Law to advisory committees. The following are some of the advisory committees which have been found to be subject to the Sunshine Law:

- community issues advisory bodies--AGO 98-13 (citizen advisory committee appointed by city council to make recommendations to the council regarding city government and city services), 93-41 (criminal justice commission established by county ordinance to develop and make recommendations on criminal justice issues in the county), and 85-55 (community certification committee organized for the purpose of qualifying city as a blue chip community under a program of the Department of Commerce);
- employee or personnel advisory bodies--AGO 96-32 (employee advisory committee), 92-26 (committee responsible for making recommendations to city council on personnel matters), and 84-70 (grievance committees);
- education advisory bodies--AGO 03-28 (business assistance center advisory council created by community college board of trustees), 01-84 (school advisory councils created pursuant to former s. 229.58 [now s. 1001.452], F.S.), and 74-267 (Council of Deans appointed by state university president);
legislation implementation advisory bodies--AGOs 92-79 (advisory committee appointed to assist state agency with the implementation of legislation), and 85-76 (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation); planning or property acquisition advisory bodies--AGOs 05-07 (lake restoration council created by the Legislature within a water management district to advise district governing board), 02-24 (vegetation committee created by city code to make recommendations to city council and planning department regarding vegetation and proposed development), 87-42 (ad hoc committee appointed by mayor to meet with Chamber of Commerce to discuss a proposed transfer of city property), and 86-51 (land selection committee appointed by water management district to evaluate and recommend projects for acquisition).

The Sunshine Law applies to advisory committees that are appointed by a single public official as well as those appointed by a collegial board. See, e.g., Wood v. Marston, 442 So. 2d 934 (Fla. 1983) (Sunshine Law applies to an ad hoc advisory committee appointed by university president to screen applications and make recommendations for the position of dean of the law school); Silver Express Company v. District Board of Lower Tribal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by community college purchasing director to consider and rank various contract proposals must meet in the Sunshine); and Krause v. Reno, 366 So. 2d 1244 (Fla. 3d DCA 1979) (Sunshine Law governs advisory group created by city manager to assist him in screening applications and making recommendations for the position of chief of police). Accord AGO 05-05 (advisory group created by police chief to make recommendations regarding various issues affecting the police department is subject to the Sunshine Law). And see Inf. Op. to Lamar, August 2, 1993, regarding the application of the Sunshine Law to a transition team made up of citizens appointed by a mayor to make recommendations on the reorganization of city government.

**Number of board members required to be present**

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to s. 286.011, F.S. Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973). And see City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971); Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969); and Wolfson v. State, 344 So. 2d 611 (Fla. 2d DCA 1977). Thus, discussions between two members of a three-member complaint review board regarding their selection of the third member of the board must be conducted in accordance with the Sunshine Law. AGO 93-79. Cf. AGO 04-58 ("coincidental unscheduled meeting of two or more county commissioners to discuss emergency issues with staff" during a declared state of emergency is not subject to s. 286.011 if the issues do not require action by
It is the how and the why officials decided to so act which interests the public, not merely the final decision. Thus, the court recognized in *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985):

> Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us.

**Informal discussions, workshops**

The Sunshine Law applies to *any* gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. As the Florida Supreme Court said, "collective inquiry and discussion stages" are embraced within the terms of the statute, *Town of Palm Beach v. Gradison*, 296 So. 2d 474, 477 (Fla. 1974). With these principles in mind, the Attorney General's Office has stated that the following gatherings are subject to the Sunshine Law: "executive work sessions" held by a board of commissioners of a housing authority to discuss policy matters, AGO 76-102; "conciliation conferences" of a human relations board, AGO 74-358; "workshop meetings" of a planning and zoning commission, AGO 74-94; "conference sessions" held by a town council before its regular meetings, AGO 74-62; discussions of preaudit reports of the Auditor General by the governing body of a special district, AGO 73-08. *And see Ruff v. School Board of Collier County*, 426 So. 2d 1015 (Fla. 2d DCA 1983) (organizational meeting of task force subject to s. 286.011, F.S.).

The Sunshine Law is, therefore, applicable to all functions of covered boards and commissions, whether formal or informal, which relate to the affairs and duties of the board or commission. "[T]he Sunshine Law does not provide that cases be treated differently based upon their level of public importance." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla. 3d DCA 1994). *And see* Inf. Op. to Nelson, May 19, 1980 (meeting with congressman and city council members to discuss "federal budgetary matters which vitally concern their communities" should be held in the sunshine because "it appears extremely likely that discussion of public business by the council members [and perhaps decision making] will take place at the meeting").