Two's a Company in the Florida Sunshine.

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Introduction

Florida's Government-in-the-Sunshine Law has been an integral fabric of our society since 1967, if not earlier. The law's basic contours have been exhaustively written on and are expertly known to most local-government attorneys.

Still, this article aims to add to this literature in three ways: First, the article provides a historical discussion of the open-meeting laws. After all, one cannot correctly apply the law and fully understand where it's going until one understands the law's past. Next, the article discusses an alarming trend concerning per se violations anytime two or more members of the same collegial body are near each other, even if they are not discussing or deliberating together. Finally, much like our old word problems from high-school math class, the article crafts a variety of word problems based on real factual examples where courts and the attorney general have applied the Sunshine Law. That section's goal is to offer new and seasoned government attorneys a quick-reference guide for advising their public bodies.

History of Florida's Sunshine Law

The Sunshine Law exists to protect the concept of self-governance that our country was founded on because an effective democracy requires an informed and participatory citizenry.[1] Concomitant benefits include reducing corruption, encouraging more accurate news reporting, and making government more efficient and responsive to its citizens' needs and desires.[2]

Given the importance of self-governance to our country, the reader might think that open-government laws have always been integral to our society and are part of its common law. But this is not correct. The right to attend government meetings is a relatively modern phenomenon. The right did not exist at common

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[1] Sandra F. Chance & Christina Locke, *The Government-in-the-Sunshine Law Then and Now: A Model for Implementing New Technologies Consistent with Florida's Position As A Leader in Open Government*, 35 Fla. St. U. L. Rev. 245, 245–46 (2008); *see* Alexander Tsesis, *Self-Government and the Declaration of Independence*, 97 Cornell L. Rev. 693, 699 (2012) (recognizing that the Declaration of Independence differentiates self-governance from despotism); *accord Town of Palm Beach v. Gradison*, 296 So. 2d 473, 475–76 (Fla. 1974).

[2] Chance, *supra* n. 1 at 246; *accord Town of Palm Beach v. Gradison*, 296 So. 2d 473, 475–76 (Fla. 1974).

law.[3] In fact, despite having just won a revolution against despotism—which is the antithesis of an open government—the founding fathers drafted the United States Constitution in closed-door meetings.[4]

Although Florida is now considered to be a leader in the Sunshine Law area,[5] this was not always so. In 1905, Florida enacted its first attempt at an open-meeting law with section 165.22, Florida Statutes (1905), which stated in relevant part:

> All meetings of any city or town council or board of alderman of any city or town in the state, shall be held open to the public of any such city or town, and all records and books of any such city or town shall be at all times open to the inspection of any of the citizens thereof.

This statute, while straightforward, was ineffective. In fact, the statute was on the books for over 45 years without a single appellate decision discussing its application until the Florida Supreme Court's 1950 decision in *Turk v. Richard*.[6] That decision made the statute even less effective because it construed the phrase "all meetings" to apply only when a city council meets as "formal assemblages."[7] According to Court, the legislature must have meant "formal assemblages" when it generally referred to "all meetings" because the legislature was presumed to know the general law pertaining to municipal corporations, which is that a municipality does not validly act through its individual council members, but rather only when it sits as a joint deliberative body.[8]

The *Turk* decision was merely one example of a larger nationwide debate in the 1950s about open government.[9] Alabama was the first state with modern Sunshine Laws, which it enacted a year after *Turk*.[10] By the early 1960s, that number swelled to 26 states.[11] Florida, however, lagged behind.

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[3] *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971); Chance, *supra* n. 1 at 246. Interestingly, however, at least one scholar opines that the right to access public records is part of the common law. *Id.* Florida's public-record laws, however, are beyond the scope of this article.

[4] *Id.*

[5] *See infra* nn. 43–44 & text.

[6] *Turk v. Richard*, 47 So. 2d 543, 543 (Fla. 1950).

[7] *Id.* at 544.

[8] *Id.*

[9] Chance, *supra* n. 1 at 248–49.

[10] *Id.* at 248.

[11] *Id.*

In 1957, one state senator, aided by a journalism fraternity, sought to change Florida's anemic open-meeting law by drafting and introducing a more robust sunshine law.[12] That bill stated in relevant part:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.[13]

This bill, however, faced fierce resistance over the next 10 years.[14] In fact, it essentially took a series of federal rulings on legislative reapportionment to pave the way for new legislative blood to make true open-meetings law a reality in 1967.[15]

In that year, the same bill that had been introduced over the past 10 years was introduced again and recommended for passage by the Senate Committee on Judiciary "B."[16] Thereafter, the Florida Senate adopted it, as amended, after deleting the minimum fine for violations and after adding the following important phrase: "at which official acts are to be taken."[17] The Florida House of

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[12] *Id*. The senator was named J. Emory "Red" Cross and the journalism fraternity was Sigma Delta Chi, which is now known as the Society of Professional Journalist. *Id*.

[13] *Id*. at 249 n.37; *see* Ruth Mayes Barnes, Note, *Government in the Sunshine: Promise or Placebo?*, 23 U. Fla. L. Rev. 361, 361 n.4 (1971) (recognizing that the same bill was introduced from 1957 until 1967).

[14] Chance, *supra* n. 1 at 249.

[15] *Id.*; Cheryl Cooper, *Sending the Wrong Message: Technology, Sunshine Law, and the Public Record in Florida*, 39 Stetson L. Rev. 411, 416 (2010) (explaining that the biggest impediment to change was a group of legislators known as the "Pork Chop Gang," who were finally ousted after a 1966 federal reapportionment ruling). The seminal reapportionment decision was *Baker v. Carr*, 369 U.S. 186 (1962). This decision's importance and widespread effect cannot be understated. Chief Justice Earl Warren explained in an interview at his retirement that of all the important cases his Court faced, *Baker v. Carr* was "perhaps the most important case that we've heard since I've been on the Court." *The Political Thicket*, Radiolab Presents: More Perfect (June 10, 2016) (downloaded using iTunes). One commentary explained that this decision "broke two justices" of the Supreme Court because it gave one a mental breakdown leading to his retirement and caused another to pass away shortly after the decision. *Id*. The decision set off a cascade of disruptive changes in state governments nationwide, including causing a special election in Florida in 1967, which elected "relatively young and urban" legislators, who were "new to government" and "not committed to the traditions of the old legislature . . . ."*see* Talbot D'Alemberte, *The Florid State Constitution* 14–16 (Oxford University Press, 2d ed. 2017).

[16] Chance, *supra* n. 1 at 249.

[17] *Id*. at 249.

Representatives wanted to amend the bill to give circuit courts enforcement jurisdiction and to add several exemptions, but the Senate disagreed with the exemptions.[18] After a compromise, the bill was signed into law on July 12, 1967 and became what is now section 286.011, Florida Statutes.[19]

In relevant part, the current version of section 286.011 states:

> (1) All 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, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
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> (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

In other words, the Sunshine Law has three basic requirements: (1) The meetings of governmental bodies must be open to the public; (2) the meetings must be reasonably noticed; and (3) the meetings must have minutes taken and promptly recorded.

Although the legislature enacted this amendment, it was the judiciary who really illuminated what constitutes a "meeting" under the Sunshine Law. After all, section 165.22 and the 1967 version of section 286.011 are really not that linguistically different. Both require "all meetings . . . to be open to the public . . . ." Section 286.011 broadens this to include more than just cities and towns, and it specifically refers to meetings at which "official acts" and "formal actions" are taken. But section 286.011's "all meetings" reference and its reference to "official acts" and "formal actions" is still consistent with the Supreme Court's holding and rationale in *Turk*. The Florida Supreme Court could have held that

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[18] *Id.* at 250.

[19] Ch. 67-356, § 1, Laws of Florida (1967).

Turk still applied to section 286.011 by reaffirming that only "formal assemblages" qualify under the Sunshine Law since, as *Turk* recognized, only meetings of the full deliberative body can validly make "official acts" and "formal actions."

But that's not what happened. Instead, the Supreme Court took a different course in *Board of Public Instruction of Broward County. v. Doran*, which was decided two years after section 286.011's enactment.[20] In that case, a school board had a long-standing policy of interrupting official public meetings to hold an informal, close-door discussion about upcoming matters and then reconvening the public meeting before taking official action.[21] The school board challenged both the constitutionality of section 286.011 and whether their informal conferences constituted a "meeting" within the statute's purview.[22]

Writing for a unanimous Court, Justice James C. Adkins found section 286.011 constitutional.[23] He further reasoned that the legislature's "obvious intent" in enacting the statute was to cover more than just "formal assemblages" since the legislature did not need to enact another statute to cover those given *Turk*'s construction of section 165.22.[24] Rather, Justice Adkins held that section 286.011 was intended to "cover any gathering of the members [of a board] where the members deal with some matter on which foreseeable action will be taken by the board."[25] He then concluded by opining that the public has an "inalienable right" to be present "at all deliberations wherein decisions affecting the public are being made."[26]

Justice Adkins penned this decision in 1969 after having just been elected to the Supreme Court bench seven months earlier.[27] After *Doran* though, Justice Adkins became a champion of the Sunshine Law by broadly interpreting section

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[20] *Bd. of Pub. Instruction of Broward Cty. v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

[21] *Id.* at 695–96.

[22] *Id.* at 697–98.

[23] *Id.*

[24] *Id.* at 698.

[25] *Id.*

[26] *Id.* at 699.

[27] *Compare id.* at 693 (decided July 2, 1969), *with* Florida Supreme Court, *Succession of Justices of Supreme Court of Florida* at p. 5 at http://www.floridasupremecourt.org/justices/index.shtml (click "Dates of Service") (last visited July 4, 2017). Coincidentally, Justice Adkins was the last justice of the Florida Supreme Court elected by popular vote and served until January 6, 1987. *Id.*; *see also* UF Law, *James C. Adkins*, https://www.law.ufl.edu/alumni/james-c-adkins-jr (last visited July 4, 2017).

286.011 in three other Supreme Court decisions, which form the Sunshine Law's interpretative core.

For example, in 1971, two years after *Doran*, Justice Adkins wrote the majority decision in *City of Miami Beach v. Berns*, which implicitly found that section 286.011 had superseded section 165.22 (despite still being on the books) and which broadly recognized that section 286.011 "may push beyond debatable limits in order to block evasive techniques."[28] Two years after *Berns*, Justice Adkins expanded the Sunshine Law again to include the public's right to attend a local government's quasi-judicial proceedings in *Canney v. Board of Public Instruction of Alachua County*.[29] The following year, in the 1974 decision of *Town of Palm Beach v. Gradison*, Justice Adkins stretched the Sunshine Law's rays to cover a committee of citizens appointed by a local government and delegated decision-making authority over preliminary zoning decisions.[30] Justice Adkins reiterated that "[t]he statute should be construed so as to frustrate all evasive devices."[31]

Despite Justice Adkins' expansive reading of the Sunshine Law's reach, the Sunshine Law was still relatively weak because it was just a statute, which meant that it could be modified or even repealed at the legislature's whim at any time. To really brighten as a star, the Sunshine Law needed to become part of Florida's Constitution.

Coincidentally, section 286.011 was enacted at a time when Florida's 1885 Constitution was, itself, undergoing substantial changes largely because of the same federal reapportionment decisions that paved the statute's way.[32] A year after section 286.011's enactment, the Florida citizens passed the 1968 Florida Constitution, which substantially overhauled and repealed the 1885 Constitution.[33] Among other significant changes, the 1968 Florida Constitution

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[28] *City of Miami Beach v. Berns*, 245 So. 2d 38, 40–41 (Fla. 1971).

[29] *Canney v. Bd. of Pub. Instruction of Alachua Cty.*, 278 So. 2d 260, 263–64 (Fla. 1973). This was a much closer decision than *Doran* and *Berns*. It's also worth highlighting that an intervening decision between *Berns* and *Canney* was *Bassett v. Braddock*, 262 So. 2d 425, 427–28 (Fla. 1972), which recognized that labor negotiators employed by a school board in preliminary collective-bargaining negotiations may negotiate outside of public meetings without violating the Sunshine Law. In that 5-2 decision, Justice Adkins dissented. The *Bassett* decision appears to have been superseded by section 447.605(2), Florida Statutes, which requires collective-bargaining negotiations done by a bargaining agent to comply with the Sunshine Law. *Brown v. Denton*, 152 So. 3d 8, 10, 12 (Fla. 1st DCA 2014).

[30] *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 475–77 (Fla. 1974).

[31] *Id.* at 477.

[32] D'Alemberte, *supra* n.15, at 14–18.

[33] *Id.* at 15–17.

was the first time that Florida citizens recognized the radical notion of granting themselves self-governance over local matters by giving counties and municipalities home-rule authority.[34] This would have been the most logical time to have incorporated section 286.011 into the constitution. Florida citizens had another opportunity ten years later when the 1978 Constitution Revision Commission proposed an amendment incorporating the Sunshine Law, but the Florida citizens declined to adopt that proposal.[35]

Instead, the Sunshine Law did not obtain constitutional dimensions until November 1992 when the Florida citizens added article I, section 24 to the Florida Constitution.[36] That provision states in relevant part:

> (b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

This amendment was overwhelmingly supported by 83.1% of the voters.[37]

Besides further expanding the Sunshine Law's rays over executive agencies, the constitutional amendment contains a notable difference in language than its statutory counterpart about the types of covered meetings. Besides including "all meetings" at which any "official acts are to be taken" like section 286.011, the constitution is arguably broader because it expressly covers "all meetings" at which "public business . . . is to be transacted or discussed."[38] Few

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[34] *Id.* at 249–250 & 256–258.

[35] Patrick John McGinley, *§ 10:2 Origin, Purpose, and Scope of "Government in the Sunshine" Open Meeting Laws*, *in* 24 Fla. Prac., Florida Municipal Law & Practice § 10:2 (West Oct. 2016).

[36] Chance, *supra* n. 1 at 257.

[37] Patricia A. Gleason & Joslyn Wilson, *The Florida Constitution's Open Government Amendments: Article I, Section 24 and Article III, Section 4 (e)—Let the Sunshine in!*, 18 Nova L. Rev. 973, 979 (1994).

[38] Of course, one could also argue that the constitutional amendment is arguably narrower and revives the 1950s *Turk* decision because unlike the statute, the amendment appears to focus on "[a]ll meetings . . . of any *collegial public body* of a county [or] municipality . . . ." as if only the "formal assemblages" of the full collegial public body apply. Art. I, § 24(b), Fla. Const. (emphasis supplied). But, to date, no case supports this construction.

cases have discussed the linguistic differences between the constitutional amendment and the statute, and those that have state that "the new Constitutional amendment does not create a new legal standard by which to judge Sunshine Law cases."[39]

Finally, to further ensure that this right to open government remains impervious to the legislature's whims and membership changes, the Florida citizens expressly stated that the amendment was "self-executing,"[40] which means the right is automatically enjoyed without the aid of legislative enactments, like section 286.011.[41] And to further protect the Sunshine Law's effectiveness by making it extremely difficult to carve out exemptions, the Florida citizens amended the constitution again in 2002 to require a two-thirds vote of both legislative houses before exemptions are added or renewed.[42]

Despite the dimness of its early history, Florida's Sunshine Law now shines among the brightest in the nation.[43] According to several studies, the breadth of Florida's constitutional right and its liberal application by Florida's judiciary has made our Sunshine Law the most effective and with the fewest exemptions in the nation, which has prompted many states to pattern themselves after Florida.[44]

An Alarming Trend towards Per Se Violations

Sunshine Laws has not been without its critics. Some have accused Sunshine Laws of muzzling lawmakers in violation of their First Amendment free-speech rights. Others have suggested that these laws hamper effective government because lawmakers may be hesitant to freely debate for fear of appearing ignorant.[45] And another line of criticism claims that Sunshine Laws diminishes collegiality among decision-makers.[46] According to Justice Adkins,

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[39] *Monroe Cty. v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla. 3d DCA 1994).

[40] Art. I, § 24(c), Fla. Const.

[41] *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010).

[42] Art. I, § 24(c), Fla. Const.; Chance, *supra* n. 1 at 257.

[43] Chance, *supra* n. 1 at 257–58; Stephen Schaeffer, Sunshine in Cyberspace? Electronic Deliberation and the Reach of Open Meeting Laws, 48 St. Louis U. L.J. 755, 757 (2004).

[44] Chance, *supra* n. 1 at 257–58.

[45] Chance, *supra* n. 1 at 257–58.

[46] Christopher J. Diehl, *Open Meetings and Closed Mouths: Elected Officials' Free Speech Rights After Garcetti v. Ceballos*, 61 Case W. Res. L. Rev. 551, 557–58 (2010).

however, the Sunshine Law's "benefit to the public far outweighs the inconvenience of the board or agency."[47]

Still, even Justice Adkins and the Supreme Court have recognized that the Sunshine Law has limitations. For example, in *Rowe v. Pinellas Sports Authority*, Justice Adkins recognized that there is no violation when two decision-makers from different governmental bodies meet.[48] The High Court has also recognized that "[n]othing in the Sunshine Law requires each commissioner to do his or her thinking and studying in public."[49] Nor was the Sunshine Law meant to forbid the "numerous informal exchanges of ideas and possibilities, either among members or with others (at the coke machine, in a foyer, etc.) when there is no relationship at all to any meeting at which any foreseeable action is contemplated."[50]

In fact, up until 2008, virtually every authority agreed that to constitute a Sunshine Law violation, decision-makers must be more than merely gathered together or near each other. Rather, there must be some direct evidence showing that during the gathering, the decision-makers "deliberated," "discussed," or "decided" *among themselves* some matter on which foreseeable action will be taken.[51] Four separate attorney generals have also agreed that decision-makers can attend the same event without violating the Sunshine Law—even if one or more are speaking and expressing their views about upcoming municipal matters—as long as they do not debate and discuss with each other an upcoming

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[47] *Canney*, 278 So. 2d at 264.

[48] *Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72, 75 (Fla. 1984).

[49] *Occidental Chem. Co. v. Mayo*, 351 So. 2d 336, 342 (Fla. 1977), *receded from on other grounds in*, *Citizens of State of Fla. v. Beard*, 613 So. 2d 403, 405 (Fla. 1992). Notably, Justice Adkins dissented in *Occidental* because even though there was no evidence that the commissioners met in secret or used staff as intermediaries, Justice Adkins believed that the record circumstantially showed a Sunshine Law violation. *Occidental*, 351 So. 2d at 344–45 (Adkins, J., dissenting).

[50] *Bassett*, 262 So. 2d at 427. Notably, Justice Adkins dissented on this case as well. *Id.* at 429–30 (Adkins, J., dissenting).

[51] *E.g. Gradison*, 296 So. 2d at 477 ("embracing the *collective* inquiry and discussion stages within the terms of the statute . . . ."); *Doran*, 224 So. 2d at 698 ("The obvious intent was to cover any gathering of the members where *the members deal with some matter* on which foreseeable action will be taken by the board."); *Berns*, 245 So. 2d at 41 ("When at such meetings *officials . . . transact or agree to transact public business* at a future time in a certain manner they violate the government in the sunshine law, regardless of whether the meeting is formal or informal."); *Occidental*, 351 So. 2d at 342 ("So far as the record shows, the commissioners did not *discuss* various points *among themselves* before making a final decision."); *Wolfson v. State*, 344 So. 2d 611, 614 (Fla. 2d DCA 1977 (finding the Sunshine Law's intent was "to cover any gathering of some or all of the members of a public board at which *such members discuss* any matters" that may be taken); *Bigelow v. Howze*, 291 So. 2d 645, 647 (Fla. 2d DCA 1974) (finding "the *two commissioners should not have discussed* what recommendation the committee would make while they were on their [fact-finding] trip to Tennessee") (emphasis supplied for all);

matter.[52] This important qualifier exists to balance the criticisms above against the public's strong interests in attending public meetings.

But two recent appellate decisions have suggested that merely being in the same general vicinity as another decision-maker constitutes a Sunshine Law violation even if there is no evidence that they discussed, deliberated, or decided any public business among themselves.

The first of these was the Fifth District's 2008 decision in *Finch v. Seminole County School Board*.[53] In that case, a local school board and several others were taken on a school bus tour of the neighborhoods to allow the board members to physically view the areas potentially impacted by pending legislation.[54] Critically, the unrefuted evidence showed that the school-board members took precautions to avoid Sunshine violations by sitting several rows apart and refraining from discussing the legislation or otherwise sharing their preferences and opinions.[55]

Notwithstanding this unrefuted evidence, the Fifth District found a violation based on the following rationale:

> [The School Board] had ultimate decision-making authority; it was gathered together in a confined bus space; and it undoubtedly had the opportunity at that time to make decisions outside of the public's scrutiny.[56]

Notably, the Fifth District cited nothing to support this conclusory rationale.

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[52] Attorney General Robert L. Shevin: Op. Att'y Gen. Fla. 72-158 (1972); Attorney General Bob Butterworth: Op. Att'y Gen. Fla. 92-05; Op. Att'y Gen. Fla. 94-62 (1994); Op. Att'y Gen. Fla. 98-79 (1998); Op. Att'y Gen. Fla. 2000-68 (2000); Op. Att'y Gen. Fla. 2001-21 (2001); Attorney General Charlie Crist: Op. Att'y Gen. Fla. 2005-59 (2005); Attorney General Bill McCollum: Op. Att'y Gen. Fla. 2008-18 (2008). Although attorney-general opinions are only persuasive authority, the strength of their persuasion grows when two or more different attorney generals reach the same conclusion. *Beverly v. Div. of Beverage of Dep't of Bus. Reg.*, 282 So. 2d 657, 660 (Fla. 1st DCA 1973).

[53] *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1070 (Fla. 5th DCA 2008).

[54] *Id.*

[55] *Id.* at 1070 & 1071–72. Much of the Fifth District's reasoning was devoted to rejecting the school board's argument that this bus tour met the fact-finding exception to the Sunshine Law that was recognized in *Lyon v. Lyon*, 765 So. 2d 785, 789 (Fla. 5th DCA 2000). *Finch*, 995 So. 2d at 1071–72. The Court reasoned that the fact-finding exception did not apply when done by two or more decision makers. *Id.*

[56] *Id.* at 1073.

Relying on this rogue decision, the Fourth District apparently reached a similar conclusion in its 2013 decision in *Citizens for Sunshine, Inc. v. School Board of Martin County*.[57] In that case, three school board members decided to visit their adult-education school after several citizens expressed concerns about its operation.[58] While at the school, the evidence showed that the board members toured classrooms, spoke with teachers and students, and directed questions to the school's coordinator about several items, including her duties and the curriculum.[59] According to the unrefuted evidence, however, the board members "did not take any formal action during their visit and did not deliberate or decide anything."[60] The trial court also ruled that "[w]ithout proof of discussions about some matter on which foreseeable action will be taken by the Board, the element of substantial likelihood of success on the merits is not proven."[61] Although the Fourth District ultimately affirmed for other reasons, they disagreed with the trial court's conclusion about whether the evidence showed a violation.[62] Their rationale was somewhat convoluted, but they cited *Finch* and characterized the board member's questions directed to the coordinator as a "discussion."

Finch and *Citizens for Sunshine* are alarming cases because they risk upsetting the delicate balance between liberal and unreasonable application of the Sunshine Law by effectively creating a per se rule whenever two or more members of the same collegial body are around each other.[63] Until these cases, several Florida courts refused to infer a violation without some direct evidence that the decision-makers privately deliberated, discussed, or decided public business among themselves.[64]

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[57] *Citizens for Sunshine, Inc. v. Sch. Bd. of Martin Cty.*, 125 So. 3d 184, 186 (Fla. 4th DCA 2013).

[58] *Id.* at 185.

[59] *Id.* at 186.

[60] *Id.*

[61] *Id.* at 187.

[62] *Id.* at 188.

[63] See also *Florida's Sunshine Law: The Undecided Legal Issue*, 13 U. Fla. J.L. & Pub. Pol'y 209, 213 (2002), in which the author discusses this budding question of per se violations within the confines of a criminal case, in which the prosecutor (before dropping the charges) sought to hold three school-board members criminally liable after having a spontaneous dinner together for social purposes.

[64] *E.g. Occidental*, 351 So. 2d at 341–42 (finding no evidence that the commissioners discussed a matter among themselves and refusing to infer a violation when the commissioners adopted pre-drafted 22.5-page order in a complex matter after minimal discussion); *B. M. Z. Corp. v. City of Oakland Park*, 415 So. 2d 735, 738 (Fla. 4th DCA 1982) (finding no evidence of private meetings to reach a decision).

The Second District recently had an opportunity to weigh in on this trending issue in its 2017 decision in *Citizens for Sunshine, Inc. v. Chapman*.[65] Unfortunate, this appellate decision went unreported, but its facts and ultimate decision can be garnered from the trial court's well-reasoned decision, which is available on Westlaw.[66]

In that case, a hot-button issue facing the Sarasota City Commission during the summer of 2013 was actively confronting homelessness.[67] During several public meetings, the City Commission hired a consultant to conduct a seven-phase study and assessment of the issue, including potential sites for a new facility.[68] Sometime before the study was completed, a group of business owners invited the City Commission and various staff members to privately meet with them at a local downtown restaurant so that the business owners could air their concerns.[69] Besides a few staff members, the two at-large commissioners attended the meeting, which was also attended by 20-30 other local residents.[70] The meeting itself was not noticed, not opened to the public, and not recorded via minutes.[71]

The trial testimony was undisputed that the two commissioners neither sat near each other at the event nor spoke to each other.[72] It was also clearly established that no third party served as an intermediary to relay messages between them.[73] Finally, the evidence showed that only one commissioner addressed the crowd about their concerns, which was primarily to tell them to be patient and wait for the seven-phase study's completion.[74]

A nonprofit watchdog group sued, claiming that this constituted a meeting in violation of the Sunshine Law. After an expensive, two-day trial, the trial judge ruled against the watchdog group. The trial judge reasoned that the commissioners did not violate the Sunshine Law because the private event with

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[65] *Citizens for Sunshine, Inc. v. Chapman*, No. 2D16-3173, 2017 WL 1277776 (Fla. 2d DCA Apr. 5, 2017) (hereinafter "*Chapman II*").

[66] *Citizens for Sunshine v. City of Sarasota*, No. 2013-CA-007532-NC, 2016 WL 4140524 (Fla. 12th Jud. Cir. 2016) (hereinafter "*Chapman I*").

[67] *Id.* at *1.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.* at *3.

[72] *Id.* at *2.

[73] *Id.*

[74] *Id.*

their constituents did not qualify as a "meeting" under the law since the commissioners did not engage in "deliberation" with each other.[75] According to the trial judge, "The opportunity for deliberation does not constitute deliberation."[76] Although the Court acknowledged *Finch* and that it was bound by that decision absent conflicting case law from the Supreme Court or another district court, the trial judge found that *Finch* could not be "harmonize[d] with the large body of Florida law that defines 'meetings' under the Sunshine Law as gatherings of members of a governmental entity for the purpose of dialogue, decision, and action about a subject within the entity's purview."[77]

The watchdog group appealed that decision to the Second District Court of Appeal. The First Amendment Foundation and several media outlets and interest groups joined the fray as amici curie in favor of reversal.[78] According to the watchdog group and its amici, evidence of deliberation and discussion are not required by or otherwise mentioned in the Sunshine Law.[79] Rather, the Sunshine Law applied to the meeting because the commissioners were gathered together at the same private event to obtain facts about an upcoming municipal matter that were vital to the commissioners' decision-making process. In other words, the appellants were effectively inviting the Second District to adopt the same per-se-violation rule announced in the Fifth District's *Finch* decision and the Fourth District's *Citizens for the Sunshine* decision.

In a unelaborated, per curiam decision, the Second District rejected their arguments and affirmed the trial judge's holding that the evidence did not show a Sunshine Law violation.[80]

It is unfortunate that the Second District did not write an opinion expressly rejecting this trending per se violation rule and addressing *Finch* and *Citizens for the Sunshine* because the per curiam affirmance has no precedential value.[81] But that decision and the trial judge's at least implicitly shows that not all

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[75] *Id.* at *1, *3.

[76] *Id.* at *3.

[77] *Id.* at *4.

[78] *Chapman II*, No. 2D16-3173, 2017 WL 127776, at *1. The appellee commissioner, Susan Chapman, was joined by The Florida League of Cities, Inc. as amicus curiae in support of affirmance. *Id.* In full disclosure, the author was the League's appellate counsel in that appeal. *Id.*

[79] Briefs are on file with the author. They are also public records that registered users of the Second District's eDCA Electronic Filing System can obtain through that court's eDCA.

[80] *Chapman II*, No. 2D16-3173, 2017 WL 127776, at *1.

[81] *Dep't of Legal Affairs v. Dist. Court of Appeal, 5th Dist.*, 434 So. 2d 310, 311 (Fla. 1983) (holding that "a per curiam appellate decision with no written opinion has [no] precedential value").

judges in Florida are ready to accept a per se violation rule. Indeed, such a rule would lead to many absurd results, as the trial judge recognized.[82] Beyond chance meetings between two elected officials—which under *Finch* would be violation—the per se rule would trigger Sunshine violations under virtually any scenario where two or more commissioners are near each other.

But until an appellate court expressly disagrees with *Finch* or the Supreme Court invalidates it, council members and commissioners would do well to heed the trial judge's advice in *Chapman I*:

> This Court's ruling in this case should not be deemed an endorsement of [the commissioner's] decision to attend the . . . gathering . . . with full knowledge that another commissioner would be in attendance. Those entrusted to hold public office should always endeavor to avoid even the appearance of impropriety. While plainly dicta, the above-referenced Supreme Court admonition about leaving the meeting "forthwith" would well serve all public officials who find themselves in situations similar to the one at issue here.[83]

Word Problems

This section offers a quick-reference guide for attorneys and their public bodies in the form of word problems based on actual cases and attorney general opinions.

Before proceeding further, however, the author offers three disclaimers: First, the answers to each word problem are very brief and may not fully elaborate on their underlying rationale. The reader is encouraged to read the answers' supporting authorities in full before applying the answers to their own situation. Second, the reader is reminded that a change in the facts, however slight or obscure, can result in drastically different results. Finally, insofar as the word problem's answers are supported by either an attorney general opinion or a trial court decision, the reader must take the problem's answer for what it's worth: Persuasive, but by no means binding. Absent a written opinion by Florida's Supreme Court or a Florida District Court of Appeal adopting the answer, the problem's answer is subject to change and should be relied on with caution.

With those caveats in mind, consider these word problems and answers:

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[82] *Chapman I*, No. 2013-CA-007532-NC, 2016 WL 4140524, at *4.

[83] *Id.* at *4 (referring to Justice Adkins' dicta in *Berns*, 245 So. 2d at 41).

- In the middle of a formal school board meeting that was properly noticed and at which the public and press were present, the board took a short recess to conduct an informal conference. Neither the public nor the press were allowed to attend this conference. Although no official action was taken by way of resolution or rule, the board members discussed business of the board. Thereafter, the official meeting was readjourned and the board continued to pass items by reference to letter and number of the agenda via roll-call vote. Did this informal meeting violate the Sunshine laws?

    - Yes, this is a clear-cut example of a Sunshine Law violation. *Bd. of Pub. Instruction of Broward County v. Doran*, 224 So. 2d 693, 695–96, 700 (Fla. 1969).

- Unlike the last example, in which the full school board informally met outside the public and press's presence, this time some of the board members met the day *before* the formal School Board meeting. Although no official action was taken, the meeting's purpose was to allow the staff to give attending board members general information and background about issues that would be considered and voted on at the next day's formal meeting. Even though the public was excluded from the meeting, the press was allowed to attend. The next day, the matter was called up for a vote with minimal discussion. Do the distinctions in this scenario cure the Sunshine Violations in the last example?

    - No. This is still a violation irrespective of the fact that the press was present and less than the full board informally met to gather background information about the upcoming issues. *Bd. of Pub. Instruction of Broward County v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

- Before an upcoming meeting, local businesses invite the city council and several staff members to informally meet with them at a restaurant about a prominent city-wide issue. The meeting is not open to the public, duly noticed, and no minutes are kept. Two of the at-large council members decide to attend along with several staff members. At the meetings, the staff members predominantly address the crowd, but one of the council members does as well. The other council member does not. Did the council member violate the Sunshine Law?

    - No, as long as the council members do not interact or debate the issue together. *Citizens for Sunshine v. City of Sarasota*, No. 2013-CA-007532-NC, 2016 WL 4140524 (Fla. 12th Jud. Cir. 2016), *aff'd per curiam*, *Citizens for Sunshine, Inc. v. Chapman*, No. 2D16-3173, 2017 WL 1277776 (Fla. 2d DCA Apr. 5, 2017). But given *Finch* and *Citizens for Sunshine*, it's safer to avoid the situation.

- Town Council decides to contract with a planning firm to update and revise the town's zoning ordinances. The Council also created a planning committee for the purpose of ensuring that the firm's efforts will be consistent with the character, image, and land-use controls intended by the Town's citizens. The planning committee is comprised of only citizens nominated by the Council with the power to make tentative decisions guiding the zoning planners and advising the Council on the ultimate zoning ordinance's draft. But the Council made it clear that it had final authority to override the planning committee. Did this citizens-planning committee have to comply with the Sunshine Law?

    - Yes. Since the committee was created by the Town Council and was essentially delegated administrative and legislative authority to formulate zoning policies, it was an arm of the Council that had to meet in the sunshine. *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 475–76 (Fla. 1974).

- County Commissioners delegated to its Administrator the authority to negotiate a memorandum of understanding (MOU) with a professional baseball team. In furtherance of this delegation, the Administrator retained two consultants for their baseball expertise and consulted with several members of the county staff. After months of the Administrator meeting with these experts, the staff, and people from the baseball team—all of which occurred outside the sunshine—the Administrator negotiated the MOU, which was later approved by the County Commissioners at a four-hour public meeting after hearing from the Administrator, the county staff, and over 40 citizens. Did the Administrator violate the Sunshine Law by conducting his meetings with the consultant and county staff in private?

    - No, because no formal committee was established and his consultations were purely information gathering and fact finding. The final authority to negotiate the MOU's terms rested with the Administrator. *Sarasota Citizens For Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 763 (Fla. 2010).

- A school board scheduled a public meeting of the special services selection committee to evaluate applications of general contracts to remodel a high school. All of the Sunshine Law's general requirements were otherwise met, but the committee refused to allow one applicant to videotape the proceedings. While all agree that the videotaping itself would have been unobtrusive, the committee felt that the meeting participants would not act normally while being videotaped, which would impair the committee's work. Did the committee violate the Sunshine Law?

- Yes. As long as the use of video or audio recording services are nondisruptive, the Sunshine Law allows the public to use them during public meetings. *Pinellas Cnty. Sch. Bd. v. Suncam, Inc.*, 829 So. 2d 989, 990–91 (Fla. 2d DCA 2002).

- Before revising attendance zones for a new high school, the school-board members organized a bus tour of neighborhoods affected by the rezoning so that they could physically view the impacted areas and possible bus routes. In an effort to avoid a Sunshine Law violation, the board members were separated from each other by several rows, no member discussed his or her preferences or opinions, and no vote was taken during the trip. Although no minutes were taken, two members of the media were present as well as other school-district staff members. A week later, the school board convened a public meeting that lasted between five and seven hours. The meeting was attended by 800-900 people, who were given ample opportunity give input before the school board eventually approved a plan that had been modified several times during the meeting. Did the bus tour constitute a closed-door meeting in violation of the Sunshine Law?

    - Yes. Since the tour involved the ultimate-decision makers, it was not exempt under the fact-finding exception. Further, the decision-makers were in a confined space and had the opportunity to make a decision outside of the public's scrutiny. But this technical violation was ultimately cured through the five- to seven-hour public meeting. *Finch v. Seminole Cnty. Sch. Bd.*, 995 So. 2d 1070–71, 1073 (Fla. 5th DCA 2008).

- At three school-board meetings, members of the public expressed concern about how the district's adult-education school was being operated. After the last of these meetings, three board members took it upon themselves to make a surprise visit to the school. During the visit, the board members toured classrooms, spoke with teachers and students, and discussed with the coordinator her duties, the school's morale, the teachers' contracts, the school's curriculum, and the rumors about whether the school would remain open. But it was undisputed that the three board members took no formal action and did not deliberate or decide anything. Did this ad hoc, fact-finding inquiry by some, but not all, the school board members constitute a meeting under the Sunshine Law?

    - Yes. *Citizens for Sunshine, Inc. v. Sch. Bd. of Martin Cnty.*, 125 So. 3d 184 (Fla. 4th DCA 2013)

- The school board of one county decided to hold a public workshop at a hotel in a different county that was over a 100 miles away because the board would already be at that location for a statewide conference. Assuming that the meeting

was sufficiently noticed and remained open to the public if they chose to attend, was this meeting still a violation of the Sunshine Law?

- Yes. Although a per se rule does not exist, public meetings should generally be held within the geographical boundaries of the board or agency that is holding the meeting. *Rhea v. Sch. Bd. of Alachua Cnty.*, 636 So. 2d 1383, 1384 (Fla. 1st DCA 1994).

- County decides to contract with an appraisal firm to perform appraisals on the county's property. After meeting in the sunshine with several firms, the full county commission narrowed its choice to two firms. Then it appointed a committee of two of its members and the county's tax assessor to gather more information on the two firms. The committee proceeded to travel to Tennessee where the firms were located and hold meetings. This fact-finding trip was widely publicized and known within the county. After meeting with the firms, the committee met a final time in Tennessee to agree on a recommendation. After returning to the county, the committee gave its recommendation to the full commission. Because of an objection by the nonchosen firm, the commission delayed a vote until the next meeting and thereafter chose the firm proposed by the committee. Did the fact-finding committee comprised of two commissioners violate the Sunshine Law?

  - Yes. The court recommended that instead of meeting in Tennessee to decide on the recommendation, the committee should have returned to their county and made their decision at a duly noticed public meeting. *Bigelow v. Howze*, 291 So. 2d 645, 647 (Fla. 2d DCA 1974).

- The mayor of a council-managed city held a private meeting with a city employee for disciplinary purposes. No one other than the mayor and the employee were present. Is this meeting governed by the Sunshine Law?

  - No. Since the mayor is not a board or commission—nor acting on their behalf—then meetings between him and city employees in regard to the major's duties, unrelated to those of a board or commission, are not "meetings." *City of Sunrise v. News & Sun-Sentinel Co.*, 542 So. 2d 1354, 1356 (Fla. 4th DCA 1989)

- Decision-makers from a city, the county, and another local government agency negotiated and eventually adopted an Interlocal Agreement to cooperate in the acquisition, construction, and financing of a sports stadium. A decision-maker from each of the three agencies met over several months with themselves and various members of the different agencies' staffs. But at these meetings, there was never two or more individuals from the same agency with decision-making authority. The individuals could only report back to their respective agency's

governing body. After negotiating the Interlocal Agreement, the subsequent discussion and decision of all three governing bodies occurred in noticed public meetings. Did these negotiations violate the Sunshine Law?

- No, as long as the committee did not have final decision-making authority and no two decision-making members of the same agency attended the meetings. *Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72, 75-76(Fla. 1984)

- Property owner had to submit his application for site-plan review to the county's Technical Review Committee (TRC), which was a formal committee created by the County Commission via ordinance. It was officially comprised of the County Manager, the County Sheriff, and several department heads. Its function was to advise the County Manager on site-plan approvals, conditional-use permits, and other development matters. Before the TRC decided the owner's application, there were three meetings. Two pre-TRC meetings by city staff at which no decision-maker was present and only information was gathered about the owner's application and property, and then a final meeting held by the TRC. If the two pre-TRC meetings were not noticed and open to the public, but the final TRC meeting was, did the county violate the Sunshine Law?

  - No. The pre-TRC staff meetings was not created by county ordinance and only served to gather information by the county staff, which is exempt under the Sunshine Law. Since the final TRC meeting *was* officially created by the County, it properly complied with the Sunshine law's requirements. *Lyon v. Lake Cnty.*, 765 So. 2d 785 (Fla. 5th DCA 2000).

- City Commission held a formal public meeting that was properly noticed to discuss a Memorandum of Understanding (MOU) with the county concerning a particular development project. The property owner and a representative of a citizens-activist group attended the meeting and sought to be heard, but the commission refused public input and, pursuant to the staff's recommendation, adopted the MOU. Did the refusal to allow public input constitute a Sunshine Law violation?

  - No. The Sunshine Law only gives the public the right to attend public meetings, but not the right to be heard at public meetings. *Herrin v. City of Deltona*, 121 So. 3d 1094, 1096–97 (Fla. 5th DCA 2013). But section 286.0114, Florida Statutes (2013), which took effect several months after this decision, may require giving the public a reasonable opportunity to be heard.

- The president of a junior college periodically meets with a group called the Career Employees Council (CEC), which the president created and is comprised of representatives of career employees appointed by the president. The president meets with the CEC behind closed doors to discuss various issues about employees' working conditions in general, including wages and hours. Thereafter, the president makes recommendations to the Administrative Council, which conducts its meetings in the sunshine and which, in turn, make their recommendations to the Board of Trustees for ultimate ratification or rejection after the Trustees meet in the sunshine. Is the President and CEC's meetings governed by the Sunshine Law?

    - No. The president is merely the Board of Trustees executive officer; thus his is not a "board" or "commission" subject to the sunshine. And the CEC serves at his pleasure, is not controlled by the Board of Trustees, and exists more to aid the president in gathering information. *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976).

- The board of directors for a public hospital created an ad hoc committee known as the internal-budget committee, which was comprised of the president and his staff. The committee's purpose was to prepare a proposed budget. That budget was then submitted to the finance committee, which consisted of members of the board. After the finance committee accepted the proposed budget in the sunshine with very little discussion, the proposed budget was then submitted to the full board of directors, which also accepted it in the sunshine with very little discussion. Was the internal-budget committee required to comply with the Sunshine Law?

    - Yes. Although the ad hoc committee was comprised of the president and other staff members—as in *Bennett*—this committee was formed by the board of directors and then delegated authority to prepare a proposed budget—which is different than *Bennett* where the president's committee was not controlled, formed, or delegated authority by the decision-makers. *News-Press Pub. Co., Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982).

- A university's charter gave the university's president the final authority to choose the next dean, but only after receiving recommendations from a committee comprised of seven faculty members, a university benefactor, and two non-voting student members, all of whom were elected by the faculty at large. The committee would solicit, screen, and submit applications for the deanship for approval of a list of the best applicants by the faculty before forwarding that list to the president for final selection. Was the screening committee governed by the Sunshine Law?

- Yes, because the committee had the initial discretion to winnow out applicants and create a list of allegedly the best candidates for the faculty to approve and then for the president to choose the next dean off that list. *Wood v. Marston*, 442 So. 2d 934, 937-38, 939-40 (Fla. 1983).

- Assistant superintendent assembled a team of five school-board employees and herself to interview the eleven candidates who applied for an open middle-school-principal position. The team interviewed each candidate, discussed their strengths and weaknesses, and assigned them numerical scores. Based on the team's input, the assistant superintendent recommended two or more candidates to the superintendent. But all eleven applicants were ultimately given to the superintendent, who decided which applicants to interview again and nominate to the School Board. Was the assistant superintendent's screening committee governed by the Sunshine Law?

    - No, unlike *Wood* (above), the screening committee did not winnow out applicants, but rather gathered information and initial impressions about them, and then submitted the entire list with recommendations to the decision-maker (the superintendent). *Knox v. Dist. Sch. Bd. of Brevard*, 821 So. 2d 311, 312–13 (Fla. 5th DCA 2002).

- A county charter recognized that the County Administrator served at the pleasure of the County Commission and had the power to suspend, discharge, or remove employees. Per the charter, the County Commission further delegated this power of the County Administrator to the individual department heads via an ordinance. Before termination, the employee was to be given a pre-termination conference before her department head and two neutral staff members, at which the employee can have an attorney present and present evidence. Thereafter, the ordinance gave the final termination decision to the department head. But in practice, the department head would deliberate with the two neutral staff members behind closed doors before making a joint decision. Did these closed-door deliberations violate the Sunshine Law?

    - Yes. While probably not intended by the County Commission's ordinance, the department head's decision to deliberate with the neutral staff members to reach a decision effectively resulted in sharing the decision-making authority to terminate the employee, thereby creating a de facto pre-termination board. *Dascott v. Palm Beach Cnty.*, 877 So. 2d 8, 12 (Fla. 4th DCA 2004).

- Due to a criminal investigation against him, a police officer was referred to the a sheriff's office's Professional Standards Committee (PSC), which consists of

certain administrative members, a union representative, and non-employee civilians. The PSC meetings are not public, but they give the police officer an opportunity to present evidence. Thereafter, the PSC makes a recommendation to the inspector general, who is a designee of the sheriff and a non-voting member of the PSC that has the ultimate power to either agree with the PSC's recommendation, send the case back to the PSC for further investigation, or reject the recommendation and change the discipline. After a closed-door meeting, the PSC recommended termination. The inspector general did not attend the PSC meeting or otherwise deliberate with the PSC. But after reviewing the recommendation, the inspector general ultimately agreed with the recommendation and terminated the officer. Does this process violate the Sunshine Law?

- No. The PSC lacks final decision-making authority and serves only a fact-finding and advisory function. The ultimate decision-maker—the inspector general—reaches the final decision by deliberating on his own outside of the PSC's presence, which makes this example distinguishable from *Dascott* above. *Jordan v. Jenne*, 938 So. 2d 526, 530 (Fla. 4th DCA 2006)

- A fire district chief—who also happened to be the local firefighter union's chief negotiator—sued a city and a fire pension fund's board of trustees in federal court over a pension dispute. During the lawsuit, the parties voluntarily sought mediation, which occurred over several months in closed-door mediation sessions. Although not parties, the mediation also included several other city employee unions. At the end of the mediation, the parties and the nonparty unions entered a mediated-settlement agreement, which, among other things, specifically changed the defined pension benefits of City employees in the unions. Were these closed-door mediation sessions governed by the Sunshine Law?

    - Yes, because changes to the employee pension benefits must be subject to mandatory collective bargaining, which must be conducted in the sunshine. *Brown v. Denton*, 152 So. 3d 8, 10, 12 (Fla. 1st DCA 2014). This is a good example of how an otherwise exempt meeting (settlement negotiation in pending litigation) can inadvertently turn into mandatory sunshine meetings.

- A city was involved in litigation against the operator of an aircraft facility that owed the city funds for utility and rent. During the litigation, the city council held several closed-door strategy sessions. At one of the meetings, the attendees included the City Attorney, Special Litigation Counsel, City Manager, City Clerk, Airport Director, and the Director of Public Works and Engineering. Did this closed-door meeting violate the Sunshine Law?

- Yes, because section 286.011(8)'s pending-litigation exception identifies only specific people that can be present during the closed-door meeting. The City Clerk, the Airport Director, the Director of Public Works and Engineering, and any other general staff member was not authorized to attend under the statutory exception. *Zorc v. City of Vero Beach*, 722 So. 2d 891, 897 (Fla. 4th DCA 1998).

- A private civic club sponsors monthly lunch forums at a local restaurant. Frequently, the club would invite county commissioners to serve as speakers on a panel during the lunch. Sometimes there would be two or more commissioners on the same panel. There was no charge to members of the public who attended, but did not order lunch. But only those who paid the admission fee could pose questions to the panelist. Many of the questions posed to the commissioners concerned public issues that could foreseeable come before the county board of commissioners in the future for a decision. The county, however, neither provided notice of the events nor maintained minutes. Does this violate the Sunshine Law?

    - No, as long as the county commissioners avoided discussing among themselves the issues that could come before the full board. Op. Att'y Gen. Fla. 94-62 (1994); Op. Att'y Gen. Fla. 2000-68 (2000).

- Does the Sunshine Law apply to a political forum or candidates' night at which a non-incumbent candidate and an incumbent candidate each express positions on matters that may foreseeably come before the commission and when at least one other commissioner, who is not a candidate, is present, but not a participant?

    - No, as long as there is no an interchange or debate between the incumbent candidate and the attending commissioner. Op. Att'y Gen. Fla. 92-05 (1992); Op. Att'y Gen. Fla. 98-79 (1998).

- A municipality creates a community-development board to make recommendations on proposed ordinances that will later come before the city commission for consideration. Two city commissioners, who are not members of the community-development board, attend the board meeting to express their views before the board votes on a recommendation. If no notice was given in advance of the community-development board meeting, did the two city commissioners violate the Sunshine Law?

    - No. The commissioners may attend the community development board meetings and individually express their views even though the other commissioner is present as long as they do not engage in discussion or

debate among themselves. Op. Att'y Gen. Fla. 98-79 (1998); Op. Att'y Gen. Fla. 2000-68 (2000); Op. Att'y Gen. Fla. 2005-59 (2005).

- Before a city-council meeting, one council member outlines her ideological position on an upcoming matter in a group email that she then sends to all other council members. If no one responds to the email and the email did not solicit a response, did this group email violate the Sunshine Law?

    - No. This email is no different than when two council members are physically present at a private event and one expresses his position in front of the other one. As long as they do not respond or debate, there is no violation. Op. Att'y Gen. Fla. 2001-20 (2001); Op. Att'y Gen. Fla. 96-35 (1996).

- Do two city commissioners violate the Sunshine Law if they attend a "citizens police academy" together that lasts sixteen weeks?

    - No. Members of the same public board may attend private forums sponsored by private organizations and express their position about issues facing their public board without violating the Sunshine Law as long as they do not discuss or debate the issue among themselves. Op. Att'y Gen. Fla. 2008-18 (2008).

- A commissioner holds a press conference with several reporters to discuss upcoming public business and share her voting intent. Does this violate the Sunshine Law?

    - No, as long as he reporters are not being used as an intermediary to circumvent or evade the Sunshine Law. Op. Att'y Gen. Fla. 81-42 (1981).

- For several months, the City Council of a beachside town has considered whether the vessel speeds along an important access-point to the Gulf of Mexico should be reduced for the safety of manatees. The local newspaper runs daily articles on this polarizing issue and regularly tweets about it. All members of the Council follow the local newspaper as well as each other on Twitter. Before an upcoming vote, one council member responded to the newspaper's tweet by saying: "@Beachside_Newspaper. Important Vote Thursday! We need residents to attend and show support for gods creatures. #SaveTheSeaCows." Shortly thereafter, another council member also responded with: "#SaveTheSeaCows." Did these tweets violate the Sunshine Law?

    - Undecided, but probably. By analogy, the Attorney General has opined that exchanges and discussions via Facebook would violate the

Sunshine Law. Op. Att'y Gen. Fla. 2009-19 (2009). Further, this is no different than when one council member emails her ideological position to others. That, alone, is probably not a violation. But the other council member's response showing agreement and support was.

Conclusion

At the end of the day, Justice Adkins's mantra offers the best advice that local-government attorneys can give to local-government clients: "When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State."[84]

[84] *Gradison*, 296 So. 2d at 477 (citing Ruth Mayes Barnes, *Government in the Sunshine*, 23 Florida Law Review 361, 365 (Winter 1971).