

Howard L. McKinnon, Town Manager
Shelia A. Evans, Town Clerk



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AGENDA
HAVANA TOWN COUNCIL WORKSHOP
JANUARY 18, 2018 3:00 PM

Call Workshop to Order

Mr. Jodi Finklea, Florida Municipal Power Agency, Staff Informing Public Officials

Motion to Adjourn



Informing Elected Officials

Town of Havana, Florida
Workshop
11 January 2018

A Little about Me



Jody Lamar Finklea, B.C.S.

Florida Bar, Board Certified City, County, and Local Government Lawyer

- ▶ Represented and worked with local governments exclusively since 1999
- ▶ Represented clients in Sunshine Law litigation
- ▶ Currently:
 - ▶ General Counsel and Chief Legal Officer, Florida Municipal Power Agency
 - ▶ General and Regulatory Counsel, Florida Municipal Electric Association, Inc.

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Topics for today

- ▶ Sunshine Law basics
 - ▶ Three basic requirements
 - ▶ Penalties
- ▶ No conduit rule
- ▶ Getting work done
- ▶ Polling elected officials
- ▶ Rules of the road

“(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.

(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.

Section 286.011, Florida Statutes (2017).

The law of Florida is that public business must be done in public.
Florida Constitution, Art. I, sec. 24(b).

Sunshine Law Basics

- ▶ Section 286.011 and its related statutes and case law (collectively, the “Sunshine Law”) is generally applicable to all:
 - ▶ Local government governing bodies (e.g., the Havana Town Council)
 - ▶ Advisory Boards and Committees
- ▶ Three basic requirements
 1. Meetings must be open to the public;
 2. Reasonable public notice must be given for each meeting; and
 3. Minutes of meetings must be taken and promptly recorded

Sunshine Law Basics

- ▶ For members of local government bodies this means:
 - ▶ The Sunshine Law is applicable to any gathering, whether formal or casual, of (1) two or more members of the same board or commission (2) to discuss some matter (3) on which foreseeable action will be taken by the public board or commission. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010).
- ▶ The Sunshine Law includes both formal and informal discussions among members of the same collegial body, including
 - ▶ Text messages
 - ▶ Social media posts
 - ▶ Email
 - ▶ Etc.
- ▶ There is no requirement that a quorum be present or that an item be listed on a board agenda in order for a meeting of members of a public board or commission to be subject to the Sunshine Law.

Sunshine Law Basics

- ▶ It is the process of the decision making, not just the final decision that the Court has interpreted as being covered by the Sunshine Law:

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.

Times Publishing Company v. Williams, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).

Sunshine Law Basics

- ▶ Penalties
 - ▶ *Knowing* violations are second degree felonies. § 286.011(3)(b), Fla. Stat. (2017).
 - ▶ Carries a punishment of up to 60 days in jail and a \$500 fine
 - ▶ Upon indictment or criminal case being filed, Governor can remove a local official from office. (e.g., Wauchula City Commission)
 - ▶ Administrative fines of up to \$500, and reasonable attorneys fees and costs for the civil plaintiff.
- ▶ Exemptions to the Sunshine Law are strictly enforced by the courts. Always seek the advice of your counsel.

No Conduit Rule

- ▶ Even if two members of the same collegial body do not actually have a conversation, there can still be a violation of the Sunshine Law, if a third party acts as a conduit.
- ▶ Where an individual relays information between two members of the same collegial body about a matter that will foreseeably come before the body for action, that individual has acted as a conduit.
- ▶ Conduit discussions are a violation of the Sunshine Law.

Getting Work Done

- ▶ Does this mean that a member of the Town Council cannot discuss Town business outside public meetings?
- ▶ No.
 - ▶ Constituent discussions are okay,
 - ▶ Attending fact findings and community events are okay,
 - ▶ Discussing matters with Town staff are okay,
 - ▶ Living and being a part of the community is okay.
- ▶ But, serving on a local board or council does mean you have to be a little more cautious about discussions of government business.

Getting Work Done

- ▶ As a general rule, individual board members “may call upon staff members for factual information and advice without being subject to the Sunshine Law’s requirements.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010).
- ▶ City manager is not a member of the city council and thus may meet with individual council members; however, the manager may not act as a liaison for board members by circulating information and thoughts of individual council members. Op. Att’y Gen. Fla. 74-47 (1974).
- ▶ The same rule applies to other Town officials and staff.

Polling Elected Officials

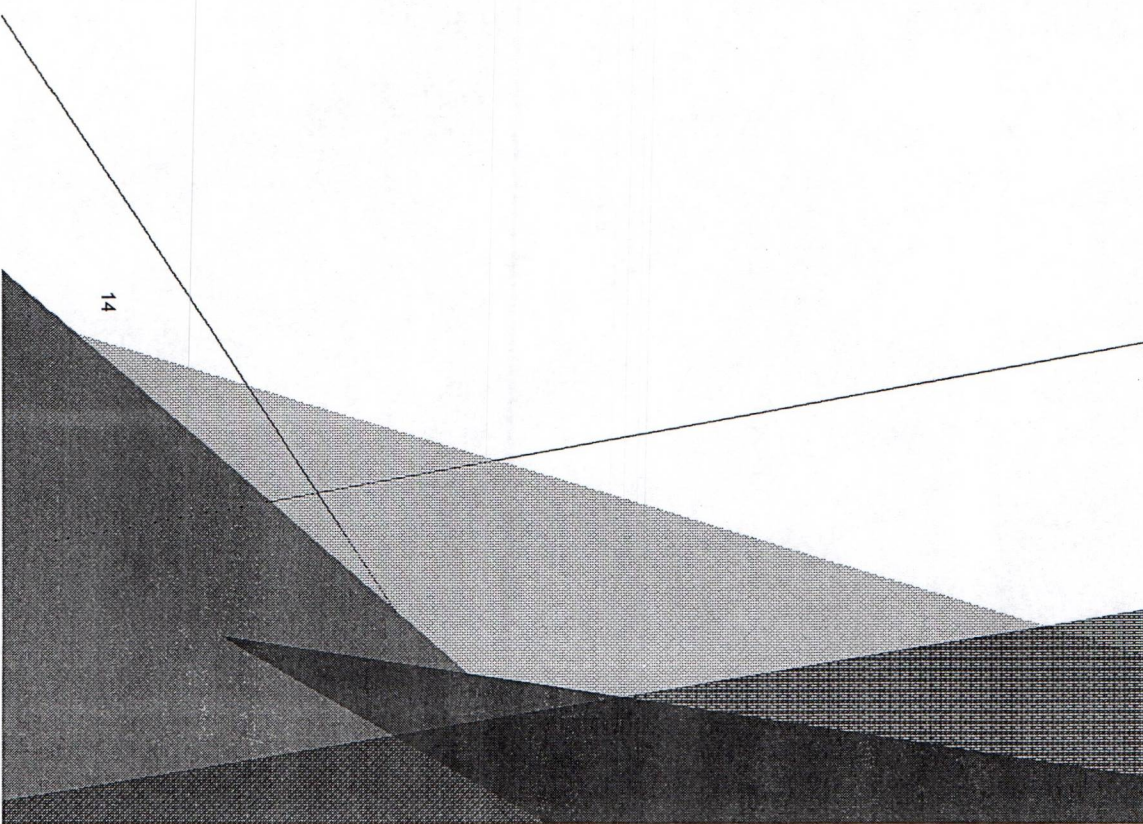
- ▶ Polling is the act of discussing the same matter with different members of the same board or committee and asking each how they will vote on an upcoming matter.
- ▶ Polling is not a violation of the Sunshine Law, strictly speaking.
- ▶ However, the Florida Attorney General has recommended that it is a bad practice, because it creates additional opportunities for Sunshine Law violations. It can also create a perception problem.
- ▶ Administrative officers or staff who serve public boards should not poll board members on issues which will foreseeably come before the board although an administrative officer is not precluded from contacting individual board members for their views on a matter when the officer, and not the board, has been vested with the authority to take action. Inf. Op. to Biasco, July 2, 1997.

Rules of the Road

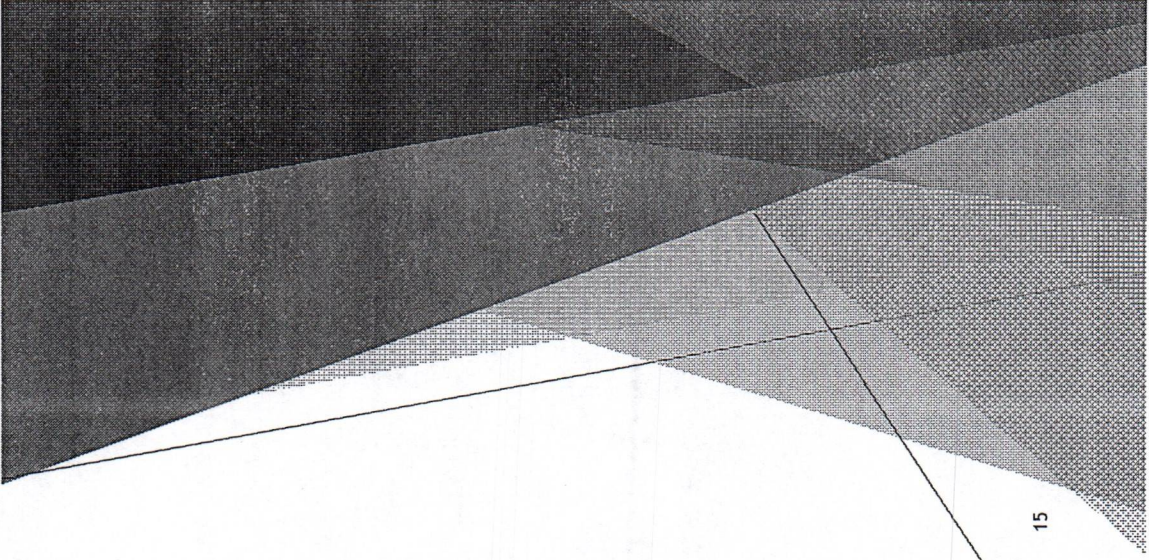
- ▶ Be aware of the Sunshine Law. It is important.
- ▶ Don't be afraid of it.
- ▶ Ask questions of your legal counsel or staff, if you have any.
- ▶ Avoid all discussions *with other council members* of matters where it is foreseeable the council will have to take action on the matter.
- ▶ Feel free to discuss matters with Town staff and officials.
- ▶ Don't inquire of third parties how another member of the council may vote on a matter.
- ▶ Don't respond to social media posts, emails, etc., where you could be responding directly to another member of the council on a matter of Town business.

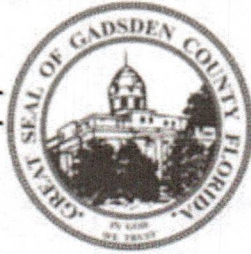
Rules of the Road

- ▶ Stay engaged and active with your community.
- ▶ Thank you for your service to the Town of Havana!



QUESTIONS?





Gadsden County Day at the Florida Capitol

"Do Something Original"

January 16, 2018 at 10:00 a.m.

You are cordially invited to join us for

Gadsden County Day

at the Florida Capitol

on Tuesday

the sixteenth of January

two thousand and eighteen from 10:00 a.m.

to 2:00 p.m.

22nd Floor

Florida State Capitol

400 South Monroe Street

Tallahassee, Florida 32399

