ADVISORY COMMITTEES OPERATING IN THE SUNSHINE

SUNSHINE LAW AND VOTING LEGAL ISSUES FOR DISTRICT’S SUNSHINE COMMITTEES

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The Sunshine Law (Florida's Open Government Law) applies to any meetings of advisory committee members and any gathering (informal or formal) of two or more advisory committee members at which official acts occur such as voting or discussion of matters that will foreseeably come before the advisory committee for action.

- Also applies to any non-voting ex-official Committee Members.

1. Florida’s Sunshine provisions appear in the Florida Constitution (Fla. Const. Article I, Section 24(b)) and FLA. STAT. §286.011.

2. There are certain statutory exemptions, such as if the discussion involves a security system or security system plan. See FLA. STAT. §§ 281.301 and 286.0113.
If this Law is violated, the action taken by the committee may be invalidated.

Further, a civil fine of up to $500 may be assessed against the member for any violation of this statute, and criminal penalties for a second degree misdemeanor may be imposed upon any member who knowingly violates this Law.
• Written Correspondence Can Violate the Sunshine Law.
• E-mails regarding committee matters generally would be public records, and subject to retention under the District's records retention schedule and subject to disclosure under Florida's Public Records Act.
• This also applies to text messaging.
Public records include "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." They include emails.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency or its employees/agents in connection with official business which are used to perpetuate, communicate or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has specifically exempted them from disclosure.
• The fact that the business to be discussed may be characterized as "non-substantive" does not necessarily remove it from the scope of the Sunshine Law.
• Similarly, if a conversation is by telephone, or the discussion is by use of a computer, Sunshine Law prohibits members from the same entity from these discussions.
• Social Media forums such as: Facebook, Twitter, etc. are also included under Sunshine Law.
• “Members of a public board or commission may attend private forums sponsored by private organizations and express their position about issues facing the commission without violating the Sunshine Law, so long as they do not discuss or debate the issues among themselves” Fla. AGOs 2000-68, 1994-62 and 1992-05.
OPEN MEETINGS

• The Attorney General explained: "[M]embers of a public board or commission are **not prohibited** under the Sunshine Law from meeting together socially, provided that matter's which may come before the board or commission are **not discussed** at such gatherings."

• **Non-members Must Not Be Used as a Conduit** for Thoughts of Members.
  ▪ No liaisons.

• Luncheon Meetings Discouraged.
• Inaudible Discussions Prohibited, such as side discussions.
ALL VOTING at MEETINGS MUST be OPEN

- No secret votes.
VOTING ISSUES

• Advisory committee members, if present at a committee meeting, cannot vote on an issue before the committee if a conflict of interest exists and must disclose the conflict before the committee conducts its vote and complete and file Ethics Commission form 8B.

• Members, if present at a committee meeting, cannot abstain from voting, unless a conflict of interest exists;

• Members who might have a conflict must disclose their conflict prior to participating but may participate in the discussion of an item or make an attempt to influence the decision, although we do not recommend that members participate; and

3. The Statute defines participate as: any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction. This would include discussion or written material at or before the committee meeting or with staff as stated below.
Members **must abide by** considerations under **the Code of Ethics** required by statute and/or School Board Policy which include:

- not corruptly misusing their public position to secure a personal benefit for themselves or others,
- not accepting anything of value to the recipient based on any understanding that the vote, official action, or judgment of the official would be influenced thereby,
- not accepting any compensation, payment, or things of value when the official knows or, with the exercise of reasonable care, should know that it is given to influence a vote or other action in which the official was expected to participate in his/her official capacity, and

- providing "honest services."

**4. Ethics training** for advisory committee members can be found on the District's website at: [http://www.palmbeachschools.org/Community/Board_Committees.asp](http://www.palmbeachschools.org/Community/Board_Committees.asp). Committee Members must **complete, sign and sign** the District form PBS 2429, acknowledging they watched the training. Members must also **complete, sign and submit** the District’s Conflict of Interest form – PBS 2421.