Florida's Sunshine Laws – Open Meetings/Public Records
and the
Valencia College Foundation Board of Directors
(Some portions adapted from the Government in the Sunshine Manual)
Fall, 2025

In a Florida Attorney General's Advisory Legal Opinion - AGO 2005-27 (4/20/2005), the Attorney General opined that a community college (now, college) direct-support organization, as then defined in section 1004.70, Florida Statutes, is subject to the Government in the Sunshine Law, section 286.011, Florida Statutes. The full text of the Opinion follows this summary. This means that the Valencia College Foundation Board must comply with the Sunshine Law, just as Valencia's District Board of Trustees has done since its inception. One difference in notice requirements is that although the Foundation Board always must provide "reasonable notice" of its public meetings, including meetings of Foundation Board subcommittees, the Foundation Board is not required to observe the more specific notice provisions that are additionally applicable to the College's District Board of Trustees under the formal rulemaking and public notice requirements contained in section 120, Florida Statutes, commonly referred to as the Administrative Procedures Act.

➢ Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter *which will foreseeably come before that board for action*. Thus, the communication may occur, but only in the context of a publicly noticed meeting. Foundation Board members may talk to each other about the college and its plans and progress, to the extent that these matters will not come before the Board for action. Regarding matters that routinely are brought before the Foundation Board for action, please regard the following list:

Routine Foundation Board Action Items

Operating budget
Contracts with vendors, including investment advisers and auditors
Board Minutes; Policy revisions
New board members; Board member performance expectations
Annual audit
CEO performance review (Executive Committee)
Unusual or unique gifts that require specific action pursuant to Board policy
Investment Policy
Emeritus Director

In response to a common question, conversations with or about donors (or potential donors) or gifts related thereto are typically not matters that must be discussed in public meetings. To encourage a prudent and cautious approach, please consult Foundation staff before a communication takes place, to clarify the application of this law, and to make any necessary arrangements to enable the communication.

There are three basic requirements of the Sunshine Law (s. 286.011, F.S.):

(1) meetings of public boards or commissions must be open to the public;
(2) reasonable notice of such meetings must be given; and
(3) written minutes of the meetings must be taken.

➢ 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.

➢ It is the how and the why officials decided to so act which interests the public, not merely the final decision.

Are advisory boards which make recommendations or committees established only for fact-finding subject to the Sunshine Law?

➢ Advisory boards whose powers are limited to making recommendations to a public agency and which possess no authority to bind that agency in any way are subject to the Sunshine Law.

➢ There is no "government by delegation" exception to the Sunshine Law, and public agencies may not avoid their responsibilities or conduct the public's business in secret by use of an alter ego.

Fact-finding committees

➢ A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for committees established for fact-finding only. When a committee has been established strictly for, and conducts only, fact-finding activities, i.e., strictly information gathering and reporting, the activities of that committee are not subject to s. 286.011, F.S.

What types of discussions are covered by the Sunshine Law?

➢ 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.

➢ The use of a written report (or email) by one member of a public body to inform other members of a subject which will be discussed at a public meeting is not a violation of the Sunshine Law if prior to the meeting, there is no interaction related to the report among the board members. In such cases, the report, which may be subject to disclosure under the Public Records Act, is not being used as a substitute for action at a public meeting as there is no response from or interaction among the members prior to the meeting. If, however, the report (or email) is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to s. 286.011, F.S.

➢ The use of computers, phones, texts, social media, instant messaging, and the like to conduct public business is commonplace. While there is no provision generally prohibiting the use of these means to carry out public business, their use by members of a public board or commission to communicate among themselves on issues pending before the board is subject to the Sunshine Law.

Can the members of a public board vote by secret ballot or use of coded letters or numbers or may a member abstain from voting?

➢ Section 286.011, F.S., requires that meetings of public boards or commissions be "open to the public at all times." If at any time during the meeting the proceedings become covert, secret, or not wholly exposed to the view and hearing of the public, then that portion of the meeting violates that portion of s. 286.011, F.S., requiring that meetings be "open to the public at all times."

Circumstances in which the Sunshine Law may apply to a single individual or where two board members are not physically present

➢ Certain factual situations have arisen where, to assure public access to the decision-making processes of public boards or commissions, it has been necessary to conclude that the presence of two individuals of the same board or commission is not necessary to trigger application of s. 286.011, F.S. As stated by the Supreme Court, the Sunshine Law is to be construed "so as to frustrate all evasive devices."

a. Written correspondence between board members

Example: *The use of a written report by one commissioner to inform other commissioners of a subject which will be discussed at a public meeting is not a violation of the Sunshine*

Law if prior to the meeting, there is no interaction related to the report among the commissioners. In such cases, the report, which is (note: in the case of the Foundation, it may not be – due to our specific public records exemptions) *subject to disclosure under the Public Records Act, is not being used as a substitute for action at a public meeting as there is no response from or interaction among the commissioners prior to the meeting.* AGO 89-23.

If, however, the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to s. 286.011, F.S. AGO 90-03. See also, AGO 96-35, stating that a school board member may prepare and circulate an informational memorandum or position paper to other board members; however, the use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law.

b. Delegation of Authority

"The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego. “Thus, this office has concluded that a single member of a board who has been delegated the authority to act on behalf of the board in negotiating a lease "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. A meeting between representatives of a private organization and a city commissioner appointed by the city commission to act on its behalf in considering the construction and funding of a cultural center and performing arts theater would also be subject to s. 286.011, F.S. AGO 84-54. On the other hand, if a board member or designee has been authorized only to gather information or function as a factfinder, the Sunshine Law does not apply. AGO 95-06.

i. Fact-Finding vs. Decision Making

For example, if a member of a public board is authorized only to explore various contract proposals with the applicant selected for the position of executive Director, with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law. If, however, the board member has been delegated the authority to reject certain options from further consideration by the entire board, the board member is performing a decision-making function that must be conducted in the sunshine.

What are the consequences if a public board or commission fails to comply with the Sunshine Law?

1. Criminal penalties

➢ Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Section 286.011(3)(b), F.S. A person convicted of a second-degree misdemeanor may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to $500. Sections 775.082(4)(b) and 775.083(1)(e), F.S. The criminal penalties apply to members of advisory councils subject to the Sunshine Law as well as to members of elected or appointed boards. AGO 01-84 (school advisory council members).

➢ Conduct which occurs outside the state which constitutes a knowing violation of the Sunshine Law is a second-degree misdemeanor. Section 286.011(3)(c), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business. Section 910.16, F.S.

2. Noncriminal infractions

➢ Section 286.011(3)(a), F.S., imposes noncriminal penalties for violations of the Sunshine Law by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. The state attorney may pursue such actions on behalf of the state. AGO 91-38.

➢ If a nonprofit corporation is subject to the Sunshine Law, such as is the case with the Foundation, the members of the corporation's board of Directors constitute "public officers" for purposes of s. 286.011(3)(a), F.S. AGO 98-21.

3. Attorney's fees

➢ Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Section 286.011(4), F.S. Attorney's fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney, such fees may not be assessed against the individual members of the board. Section 286.011(4) and (5), F.S.

➢ If a member of a board or commission is charged with a violation of s. 286.011, F.S., and is subsequently acquitted, the board or commission is authorized to reimburse that member for any portion of his or her reasonable attorney's fees. Section 286.011(7), F.S.

4. Civil actions for injunctive or declaratory relief

➢ Section 286.011(2), F.S., states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. The burden of prevailing in such actions has been significantly eased by the judiciary in sunshine cases. While normally irreparable injury must be proved by the plaintiff before an injunction may be issued, in Sunshine Law cases the mere showing that the law has been violated constitutes "irreparable public injury."

➢ Future violations may be enjoined by the court where one violation has been found and it appears that the future violation will bear some resemblance to the past violation or that the danger of future violations can be anticipated from the course of conduct in the past.

5. Validity of action taken in violation of the Sunshine Law and subsequent corrective action

➢ Section 286.011, F.S., provides that no resolution, rule, regulation, or formal action shall be considered binding except as taken or made at an open meeting.

➢ Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law is void.

➢ A violation of the Sunshine Law need not be "clandestine" for a contract to be invalidated, because "the principle that a Sunshine Law violation renders void a resulting official action does not depend upon a finding of intent to violate the law or resulting prejudice.

Key Points – Florida Public Records Law

Florida's Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Accordingly, in the absence of a statutory exemption, this right of access applies to all materials made or received by the Foundation in connection with the transaction of official business which are used to perpetuate, communicate, or formalize knowledge.

I. Public Records

a. Section 119.011 provides a right of access to the records of state and local governments as well as to records of private entities acting on their behalf. If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption.

b. In absence of a statutory exemption, this right of access applies to:

i. 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;
ii. made or received pursuant to law or ordinance or in connection with the transaction of official business;
iii. by any agency (includes a private entity "acting on behalf" of a public agency); and
iv. which are used to perpetuate, communicate, or formalize knowledge - regardless of whether it is in final form or the ultimate product of an agency.

Draft Documents: There is no "unfinished business" exception to the public inspection and copying requirements of Ch. 119, F.S. Accordingly, any agency record, if circulated for review, comment, or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label.

Personal Notes: Not every record made or received during official business is prepared to "perpetuate, communicate or formalize knowledge." Accordingly, preliminary drafts or notes prepared for the personal use of the writer may not be public records but constitute mere "precursors" of public records if they are not intended to be the final evidence of the knowledge recorded.

c. Electronic records, emails, texts, and social media posts may be public records when they are created or received in the transaction of official business and are governed by the same rules as written documents and other public records. Such records should be retained in accordance with the retention schedule for other records relating to performance of the Foundation's functions and formulation of policy. Regarding the use of technology and social media, Board members are well advised to avoid any action that evades or could be construed as an attempt to evade the requirements of law.

Statutory Exemption applicable to records of Florida College System Direct Support Organizations

II. **Foundation Records Exemption**: Be reminded that certain records of the Foundation remain confidential and exempt under the public records law in accordance with s.1004.70(6), which states in part, "[t]he identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. All records of the organization, other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, shall be confidential and exempt from the provisions of s. 119.07(1)."

Foundation Public Records Not Exempt: Therefore, Foundation records generally considered to be public records include the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability.

Florida Attorney General
Advisory Legal Opinion
Number: AGO 2005-27
Date: April 20, 2005
Subject: Sunshine Law, community college Foundation

The Honorable Ray Sansom
Representative, District 4
303 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399-1300

RE: GOVERNMENT IN THE SUNSHINE–COMMUNITY COLLEGES–DIRECT SUPPORT ORGANIZATIONS–applicability of Sunshine Law to community college direct support organizations. ss. 286.011, 1004.70, Fla. Stat.

Dear Representative Sansom:

You ask substantially the following question:

Is a community college direct-support organization, as defined in section 1004.70, Florida Statutes, subject to the Government in the Sunshine Law?

Section 286.011(1), Florida Statutes, the Government in the Sunshine Law, provides in pertinent 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 political subdivision . . . at which official acts are to be taken are declared to be public meetings open to the public at all times . . . ."

In interpreting the Sunshine Law, the courts have stated that the law should be liberally construed to give effect to its public purpose.[1] Moreover, both the courts and this office have advised officials that if they are in doubt as to the applicability of the law, they should comply with the open-meeting policy of the state.[2]

While private organizations generally are not subject to the Sunshine Law, section 286.011, Florida Statutes, has been held applicable to private organizations in order to avoid a circumvention of the statute. In determining which entities may be covered by the Sunshine Law, the courts have determined that it was the Legislature's intent to extend application of the law so as to bind every board or commission of the state, or of any county or political subdivision, over

which it has dominion and control.[3] In determining whether such an organization is subject to the Sunshine Law, this office has generally reviewed all the factors relating to the responsibilities of the private entity and its relationship with the public agency.

Based upon such a review, this office advised a direct-support organization, created pursuant to statute for the purpose of assisting a district school board in carrying out the educational needs of its students, to meet in the Sunshine.[4] The organization was authorized to use district property, its board of Directors consisted of several school officials, its principal place of business was the school board offices, and the organization's agent was the school board attorney.

Subsequently, in Attorney General Opinion 92-53 this office advised that the John and Mable Ringling Museum of Art Foundation, Inc., created as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, was subject to the requirements of section 286.011, Florida Statutes. The Foundation was authorized to use museum property. Its records were subject to disclosure under Florida's Public Records Law, with the exception of the identity of donors who wished to remain anonymous. This office determined that the ties between the Foundation and the museum were substantial, and thus the Foundation was subject to the Sunshine Law.

Section 1004.70, Florida Statutes, provides for community college direct-support organizations, which are defined to mean organizations that are:

"1. A Florida corporation not for profit, incorporated under the provisions of chapter 617 and approved by the Department of State.
2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, a community college in this state.
3. An organization that the community college board of trustees, after review, has certified to be operating in a manner consistent with the goals of the community college and in the best interest of the state. Any organization that is denied certification by the board of trustees may not use the name of the community college that it serves."[5]

The chair of the board of trustees of the community college appoints a representative to the board of Directors and the executive committee of each direct-support organization established under section 1004.70, Florida Statutes, and the president of the community college or the president's designee serves on the board of Directors and the executive committee of the direct-support organization.[6] The direct-support organization may be permitted by the community college board of trustees to use the property, facilities, and personal services at any community college by any community college direct-support organization.[7]

Based upon the above, it appears that community college direct-support organizations that operate exclusively on behalf of the community colleges are subject to the provisions of section 286.011,

Florida Statutes.[8] Your letter states, however, that the provisions of section 1004.70(6), Florida Statutes, are used as the basis for stating that these organizations are not subject to the Sunshine Law.

Section 1004.70(6), Florida Statutes, provides for an annual audit of the direct-support organization and establishes several exemptions from the disclosure provisions of section 119.07(1), Florida Statutes. Subsection (6) states:

"Each direct-support organization shall provide for an annual financial audit in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8). The annual audit report must be submitted, within 9 months after the end of the fiscal year, to the Auditor General, the State Board of Education, and the board of trustees for review. The board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability may require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. All records of the organization, other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, shall be confidential and exempt from the provisions of s. 119.07(1)."

The above provision does not create an exemption from the Sunshine Law; rather, it only provides that the records of the organization, other than the auditor's report, are confidential and exempt from the disclosure provisions of the Public Records Law. Section 119.07(9), Florida Statutes, clearly provides that an exemption from section 119.07 "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Law do not by implication allow an agency otherwise subject to section 286.011 to close a meeting.[9]

Accordingly, I am of the opinion that a direct-support organization, as defined in section 1004.70, Florida Statutes, is subject to the Government in the Sunshine Law, section 286.011, Florida Statutes.

Sincerely,

Charlie Crist
Attorney General

CC/tjw
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[1] See, e.g., Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969); Wood v. Marston, 442 So. 2d 934 (Fla. 1983) (statute should be broadly construed to effect its remedial and protective purposes).

[2] See, e.g., Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974) ("[t]he principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.").

[3] See, e.g., Times Publishing Company v. Williams, 222 So. 2d 470, 473 (Fla. 2nd DCA 1969); City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971).

[4] See Inf. Op. to Mr. Michael D. Chiumento, dated June 27, 1990. Cf. Op. Att'y Gen. Fla. 98-42 (1998), in which this office concluded that the Florida High School Athletic Association, a not-for-profit corporation, which had been designated as the governing nonprofit organization of athletics in Florida public schools, was subject to the Sunshine Law.

[5] Section 1004.70(1)(a), Fla. Stat.

[6] Section 1004.70(2), Fla. Stat.

[7] Section 1004.70(3), Fla. Stat. And see s. 1001.64(39), Fla. Stat., stating that each board of trustees shall prescribe conditions for direct-support organizations to be certified and to use community college property and services.

[8] See Palm Beach Community College Foundation, Inc. v. WFTV, Inc., 611 So. 2d 588 (Fla. 4th DCA 1993), in which the court construed the predecessor to s. 1000.70, Fla. Stat., and stated:

"It is undisputed that the Foundation, as a "direct support organization," is considered a state "agency" within the ambit of the public records law. The organization raises and administers funds on behalf of the community college and does many things in this regard that the college would otherwise have to do."

[9] See Ops. Att'y Gen. 04-44 (2004), 95-65 (1995), 93-41 (1993), 91-88 (1991) and 91-75 (1991). And see City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971), in which the Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, the Government in the Sunshine Law, s. 286.011, Fla. Stat., should be construed as containing no exceptions.