

Authority Commissioners

James Herston, Chair
Robert D. Hancik, A.A.E., Vice-Chair
Kathleen Coppola, Secretary/Treasurer
Paul Andrews, Asst. Secretary/Treasurer
Pam Seay, Commissioner



CEO
James W. Parish, P.E.

Airport Authority Attorney
Darol Carr

Charlotte County Airport Authority

WORKSHOP AGENDA

January 18, 2018 – 9:00 a.m.

Punta Gorda Airport

1. **Call to Order** - Reminder to Turn Off Your Cell Phones
2. **Invocation** – For those who wish to join, please rise for the invocation.
3. **Pledge of Allegiance**
4. **Roll Call**
5. **Citizen's Input:**
Anyone wishing to address the Board during this portion of the Meeting must sign in, state their name for the record, and address their comments to Agenda items only. Each citizen will be allowed no more than two minutes to express their opinion.
6. **Government in the Sunshine/Public Records Presentation** **Ms. Mooney-Portal**
7. **Code of Ethics** **Ms. Mooney-Portal**
8. **WMU Update** **Mrs. Coppola**
9. **Land Acquisition** **Mr. Hancik**
10. **Rental Car Survey** **Mr. Hancik**
11. **T-Hangar Development** **Mr. Hancik**
12. **Project/Funding Schedule** **Mr. Hancik**
13. **Open Discussion** **Mr. Hancik**
14. **Adjournment**



PERSSON & COHEN, P.A.
ATTORNEYS AND COUNSELORS AT LAW

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**CHARLOTTE COUNTY AIRPORT AUTHORITY
SUNSHINE, PUBLIC RECORDS, AND ETHICS LAWS**

**Presented by: Maggie D. Mooney-Portale, Esq. and
R. David Jackson, Esq.**

January 18, 2018

I. SUNSHINE LAW

The purpose of Florida's Sunshine Law is to provide a right of access to government proceedings. All public agencies in the State of Florida, including independent special districts, are subject to the Sunshine Law.

The Sunshine Law is set forth in Florida Statutes § 286.011 and Article 1, Section 24 of the Florida Constitution. **The Sunshine Law extends to discussions and deliberations taken by a public board and is applicable to any gathering (formal or casual) of two or more members of the same board of commission to discuss some matter on which foreseeable action will be taken by the public board or commission.**

THREE BASIC REQUIREMENTS OF SUNSHINE LAW AS SET FORTH IN FLORIDA STATUTES § 286.011:

1. Meetings of the public must be open to the public;
2. Reasonable notice of such meetings must be provided; and
3. Minutes of the meeting must be taken.

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

St. Petersburg
111 Second Avenue NE, Suite 536
St. Petersburg, Florida 33701

Venice
217 Nassau Street S.
Venice, Florida 34285

MEETING:

1. The Sunshine law applies to meetings between individuals who are members of the same board.
2. Meetings with agency staff are not ordinarily subject to the Sunshine Law unless staff ceases to function in a staff capacity and is delegated authority normally within the public agencies discretion (i.e., committee composed of staff to select an Executive Director, attorney, auditing firm).
3. Discussions between a public board and its attorney are subject to the Sunshine Law. However, some discussions between public boards and its attorney are exempt (i.e., when the discussions relate to pending litigation and are conducted in a proper shade meeting; however, the shade meeting exemption does not apply when a lawsuit is only threatened.)
4. A limited exemption from the Sunshine Law also exists for discussions between an agency's Executive Director and the elected body of the public agency for collective bargaining (i.e., labor/union negotiations).
5. The Sunshine Law applies to subcommittees, unless they are engaged solely in fact-finding or information gathering.
6. Members of an Airport Authority can meet socially provided that matters which are coming before the board or may come before the board are not discussed. Discussion of board business may include in-person meetings, telephone conversations, written correspondence, e-mails, text messages, or social media.

MEETINGS OPEN TO THE PUBLIC:

1. Florida Statutes § 286.0114 requires that the public be provided with a "reasonable opportunity" to be heard on a matter before the board takes official action. The statute provides for the recovery of attorney's fees for violations of this provision.
2. The board may adopt rules relating to the orderly conduct of public participation at public meetings or hearings. This includes time limits.
3. When there is a public hearing or quasi-judicial hearing, then the public always has had a right to participate.

4. Public meetings cannot be held at any facility that discriminates on the basis of sex, age, creed, color, origin, or economic status. Location must be “easily accessible” to the public.
5. Meetings of the governing body shall be held in a public building when available within the district or in a building in the county accessible to the public. Fla. Stat. § 189.015(3).

REASONABLE NOTICE:

1. Reasonable notice of all meetings must be provided. According to the Florida Attorney General, the definition of “reasonable” depends on the facts of the situation and board involved. Florida Statutes § 189.015(1) requires special districts to advertise notice of their meetings in a newspaper of general circulation at least seven (7) days prior to the meetings unless there is an emergency.
2. The Sunshine Law does not mandate that an agency provide notice of each item to be discussed through a published agenda. A public body can add additional items to the agenda at regularly noticed meetings and take action on the added item.

MINUTES:

1. Written minutes of all meetings and workshops must be recorded and open to the public for inspection. The minutes do not need to be a verbatim transcript.

CONSEQUENCES OF SUNSHINE VIOLATIONS:

1. Any member of a board or commission who knowingly violates the Sunshine Law may be subject to criminal penalties of a misdemeanor of the second degree. Fla. Stat. § 286.011(3)(b).
2. The Sunshine Law provides that a fine not exceeding \$500.00 may be imposed for noncriminal infractions. Fla. Stat. § 286.011(3)(a).
3. In civil actions to enforce Sunshine Law, reasonable attorney’s fees will be assessed against any board or commission found to have violated the Sunshine Laws.

II. PUBLIC RECORDS LAWS

Chapter 119, Florida Statutes, and Article I, Section 24 of the Florida Constitution set forth Florida's Public Records laws.

The Public Records Act defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law...and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Fla. Stat. § 119.011(2).

Article I, Section 24 of the Florida Constitution states:

Every person has the right to inspect or copy **any public record made or received in connection with the official business** of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

Florida Statutes § 119.011(12) defines public records as "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."

PUBLIC RECORDS:

1. **Public records include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge, no matter the form.**
2. There is no "unfinished business" exception to the public inspection and copying requirement of Chapter 119, Florida Statutes.
3. Budgets and financial records are public records.
4. The Public Records Act includes records contained and stored in a public agency's computer. Computer records are subject to public inspection unless a statutory exemption exists which removes the records from disclosure.
5. E-mail messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption. Private e-mails stored in government computers do not automatically become a public record by virtue of that storage.

6. Communications on social networking sites (Facebook, Twitter, YouTube, LinkedIn, etc.) and text messages are considered to be public records when communications relate to official business of the local government. Content of the communication is the determining factor.

RIGHT TO INSPECT/COPY:

1. Any person is authorized to inspect and receive copies of public records. They do not have to have a special or legitimate interest. Requests do not have to be made in writing.
2. The records custodian of the agency or his/her designee is responsible for making public records available for inspection and/or copying “at any reasonable time, under reasonable conditions.” Fla. Stat. § 119.07.
3. Fees may be charged pursuant to the statute for copying costs and special service charges for “extensive use” of clerical or supervisory labor, or “extensive” information technology. Fla. Stat. § 119.07(4)(d). Agencies may adopt a policy imposing a “reasonable special service charge” based on the actual labor cost for clerical personnel who are required, due to the nature or volume of a public records request, to safeguard such records from loss or destruction during inspection.

EXEMPTIONS:

1. There is a temporary exemption from the public records act for sealed bids or proposals received by an agency pursuant to a request for bids or proposals until the agency provides notice of its decision or within 30 days after the bid is opened, whichever is earlier. Fla. Stat. § 119.071(1)(b)2.
2. Attorney-client communications between an agency and its attorneys are subject to the public records laws for a limited period of time when there is litigation pending. Only those records which reflect a “mental impression, conclusion, litigation strategy or legal theory” are protected from disclosure.
3. Some personnel records may be subject to the public records laws. However, social security numbers are confidential and exempt from disclosure and may only be released under a narrow set of circumstances.
4. Airport security plans, photographs, maps, blueprints, drawings, and similar materials that depict critical airport operating facilities are exempt from disclosure. Fla. Stat. § 331.22.

5. Any exemption from the public records laws must be stated in writing. Fla. Stat. § 119.07(1)(e). **The public records laws are construed in favor of open government**, so exemptions are strictly construed.

CONSEQUENCES OF PUBLIC RECORD VIOLATIONS:

1. Any member of a board or commission who knowingly violates the Public Records Act may be subject to criminal penalties of a misdemeanor of the first degree (one year in prison or \$1,000 fine, or both). Fla. Stat. § 119.10(1)(b).
2. The Public Records Act provides that a fine not exceeding \$500 may be imposed for noncriminal infractions by a public officer. Fla. Stat. § 119.10(1)(a).
3. Further, any person who willfully and knowingly violates any provision of the Public Records Act commits a misdemeanor of the first degree punishable by one year in prison or \$1,000 fine, or both. Fla. Stat. § 119.10(2)(a).
4. If a civil action is filed against an agency and the court determines that the agency unlawfully refused to permit a public record to be inspected or copied and the complainant provided written notice identifying the public record request to the agency's custodian of public records at least five business days before filing the civil action, the court shall assess and award attorney's fees against the agency responsible. If the court determines the complainant's request to inspect or copy a public record was for an "improper purpose," the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, but shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. Fla. Stat. § 119.12.

NOTE:

Lorenzo v. City of Venice, Case No. 2008 CA 8108 SC (Fla. 12th Cir. Ct. Oct. 7, 2009) - Judge Robert Bennett ordered the City of Venice to pay \$777,114.42 in attorney's fees and costs to the Plaintiff's attorney. This judgment (for just the Plaintiff's attorneys' fees and costs) is one of the highest and most costly judgments entered against a local government for violations of the Public Records and Sunshine Laws.

III. FLORIDA'S ETHICS CODE FOR AIRPORT AUTHORITY BOARD MEMBERS:

Florida's Ethics Code is found in Part III of Chapter 112, Florida Statutes, and Article II, Sec. 8 of the Florida Constitution.

Florida's Ethics Code applies to all public officers and employees of the state, regional and local levels, including Airport Authority Members.

The Ethics Code is premised upon maintaining public trust and prohibits public officials from using their office for "private gain." Private gain almost always references a public official's *financial interest* that is directly enhanced as a result of the vote, where the gain is direct and immediate.

1. The Ethics Code reads like a list of prohibited acts and includes prohibitions on:

- a) Bribes: Airport Authority Members are prohibited from soliciting or accepting anything of value if they know, or with the exercise of reasonable care, should know that it was given to influence their official actions. Fla. Stat. § 112.313(2), (4).
- b) Soliciting Gifts: Except for gifts from relatives, Airport Authority Members are prohibited from soliciting a personal gift of any size from a political committee or from a lobbyist [i.e., vendors, contractors, etc.]. Fla. Stat. § 112.313(2).
- c) Accepting Gifts: Except for gifts from relatives, Airport Authority Members also must comply with following regarding acceptance of personal gifts:
 - 1) Gifts under \$25.00 - May be accepted from anyone and need not be reported.
 - 2) Gifts between \$25.00 and \$100.00 - May be accepted from anyone, but lobbyists, e.g. vendors, must report giving the gift.
 - 3) Gifts above \$100.00 - Must be reported by all Airport Authority Members and may not be accepted from political committees or lobbyists, e.g. vendors. See, Fla. Stat. § 112.3148.
- d) Misuse of Public Position: Airport Authority Members are prohibited from wrongfully using or attempting to use their official position or confidential information to secure a special privilege, benefit, or exemption for themselves or others. Fla. Stat. § 112.313(8).
- e) Employees/Authority Members: No Airport Authority Member may be an employee of the Airport Authority over which they govern. Fla. Stat. § 112.313 (10).

- f) **Doing Business with Ones Agency.** Airport Authority Members are prohibited from purchasing or leasing any items or services on behalf of their Airport from any business in which they (or certain family members) are an officer, partner, director, or proprietor, or in which they (or certain family members) have a material interest. Subject to certain limited exceptions, Airport Authority Members (acting in their public capacity) are prohibited from renting, leasing, or selling items or services to their Airport. Fla. Stat. § 112.313(3).
- g) **Conflicting Contractual or Employment or Employment Arrangement.** Subject to certain exceptions, Airport Authority Members are prohibited from having any employment or contractual relationships with an entity that does business with their Airport, or that creates a continuing or frequently recurring conflict between their private interests or duties. Fla. Stat. § 112.313(7).
- h) **Anti-Nepotism:** Generally, Airport Authority Members are prohibited from appointing, employing, or promoting (or advocating for such actions) any of their relatives to a position over which they exercise jurisdiction or control. Fla. Stat. § 112.3135(2).
- i) **Voting Restrictions:** Airport Authority Members must abstain from voting and refrain from participating in discussion on any measure that specifically benefits themselves, their employers or principals, or their relatives. Fla. Stat. § 112.3143.
 - 1) If conflict is known by Airport Authority Member, he/she must publicly state to the assembly the nature of the conflict and abstain from voting.
 - 2) Memorandum of Voting Conflict must be filed with board secretary within 15 days.

2. Disclosure Requirements: There are multiple forms that are available on the Commission of Ethics website for financial interest disclosures and voting conflicts. All of these forms are subject to Florida’s public records laws.

3. Complaints/Civil Penalties.

- Removal/suspension from office
- Impeachment
- Public censure, reprimand, demotion or salary reduction
- Restitution of any pecuniary benefits received due to the violation

- Civil penalty of up to \$10,000.00

4. Advisory Opinions from Florida Commission on Ethics.

- Ethics Commission opinions (formal and informal) are binding on the conduct of the person who is the subject of the opinion.
- Once issued and followed the Ethics Commission opinion provides a type of immunity from ethics complaints for the requesting individual seeking direction.
- Informal ethics opinions take approximately two weeks to 30 days, and potentially several months for formal opinions.

WEBSITES:

Florida Statutes and Constitution:

<http://www.leg.state.fl.us>

Florida's Attorney General's Government in the Sunshine Manual:

<http://www.myfloridalegal.com/sun.nsf/sunmanual>

Florida Commission on Ethics:

<http://www.ethics.state.fl.us/>

SUNSHINE LAW AND PUBLIC RECORDS EXAM

PART I: SUNSHINE LAW

1. Mr. Jet and Mrs. Chopper are good friends and both members of the same Airport Authority. While having dinner at their favorite restaurant their conversation includes stories about their grandkids and a discussion about a minor item that will likely be on the Board's agenda in a couple months. Have Mrs. Chopper and Mr. Jet violated the Sunshine Law and if so what should they do?
 - a. They have not violated the Sunshine Law because the item discussed has not been placed on a Board agenda yet.
 - b. They have violated the Sunshine Law but no one knows about the conversation besides them so they should just pretend like it never happened.
 - c. They have violated the Sunshine Law but there is nothing that can be done to fix their mistake.
 - d. They have violated the Sunshine Law so they should notify appropriate Airport Authority staff to place the discussed item on the next agenda so that Mrs. Chopper and Mr. Jet can publicly reveal what was discussed.

2. An Airport Authority Board has business to discuss so they get together in the banquet room of a local restaurant. Seven (7) days' notice is provided in the paper and minutes are kept. There has been no Sunshine violation.
 - a. True
 - b. False

3. Bill and Ted are members of the same Airport Authority Board. The Airport Authority Board has set up a committee to investigate excellent adventures the Airport Authority Board may wish to undertake. Does the committee have to meet in the Sunshine?
 - a. Yes
 - b. No

4. Jack and Jill are members of the same Airport Authority Board and they have a water fetching issue related to the airport to discuss that they know will come before them for a vote and they know that they cannot meet together outside the Sunshine to discuss Airport Authority business. So Jack and Jill exchange text messages regarding the best means to fetch this water. There has been no Sunshine violation as long as they use a pail.
- a. True
 - b. False
5. Amelia and Sully sit on the same Airport Authority Board. A contentious five-hour meeting has just ended with the deferral of a final decision on an airport access plan to the next meeting. Before leaving the dais, Amelia and Sully jointly discuss with a staff member what can be done prior to the next meeting to make the plan more acceptable. Have Amelia and Sully violated the Sunshine Law?
- a. Yes.
 - b. No.
6. Tin Man and Scarecrow (members of the Airport Authority Board) have vastly different opinions as to the options for reconstructing a portion of the yellow brick runway that has fallen into disrepair. A local historic preservation group (not a public agency) has set-up an informational session to educate the public on the various options and to solicit their comments before the matter is heard by the Airport Authority. During the session Tin Man announces that historical yellow bricks must be used even if they cost more to purchase and install. A few minutes later, Scarecrow stands up and says he will only support the more economical concrete stained and stamped to look like yellow bricks. Who has violated the Sunshine Law?
- a. Tin Man
 - b. Scarecrow
 - c. Neither
 - d. Both

7. Which of the following are appropriate ways to provide your opinion on a matter that will be coming before your Board to a fellow Board member?
 - a. Send an e-mail to the other Board member but ask him not to respond.
 - b. Make your statement at a properly noticed meeting of your Board.
 - c. Tell a staff member to tell your fellow Board member what you think.
 - d. Type a letter and have it included in the agenda package for the Board's next meeting.
 - e. Tell the fellow Board member your opinion when you bump into him at the grocery store.

PART II: PUBLIC RECORDS

1. Charlie Brown has a Facebook page that he updates regularly. He is also a member of the Airport Authority Board. Charlie Brown posts that he is about to head to a Board meeting. In response, his Facebook friend Snoopy responds with a post on his page inquiring whether a dog park will be part of the Airport Layout Plan the Board is considering. He follows up his post with a Facebook private message to Charlie Brown with more of his concerns. The following are public records and must be preserved:
 - a. Only Snoopy's post
 - b. Both Charlie Brown's post and Snoopy's post
 - c. Only Snoopy's private message
 - d. Both Snoopy's post and the private message
 - e. The Public Records Act does not apply to any of the Facebook posts or the private message
2. Hurricane Godzilla just passed over Charlotte County. A friend of yours who has business coming before your Board at the meeting in two days sends you a text wanting to know whether the meeting will be happening and if you think the hurricane will impact the Board's decision. You can delete the text because it was sent during a state of emergency.
 - a. True
 - b. False

3. A person going by the name “Protector of the Truth” sent a public records request composed of cutout magazine letters to the Airport Authority’s custodian of records for all e-mails sent or received on the past 31 Mondays at noon by Airport Authority members or staff. Protector of the Truth would like to pick them up in one week. The Airport Authority should:
 - a. Ignore the request.
 - b. Ask “Protector of the Truth” to identify why the e-mails are needed.
 - c. Comply with the request.
 - d. None of the above.

4. Lindy was recently elected to the Airport Authority Board. She takes her role seriously and in the first agenda package she receives makes numerous notes on her thoughts and possible questions. At the meeting, she uses her notes to ask questions and make comments. A member of the public who dislikes the vote she made on a certain matter requests a copy of her notes. The notes are a public record that must be disclosed.
 - a. True
 - b. False

5. An Airport Authority member exchanges e-mails with a resident about the color choices for the walls of the terminal and he/she uses his/her private e-mail address rather than the Airport Authority-issued address. The Airport Authority then receives a public records request for all e-mails related to the terminal. Because the Airport Authority member used his/her private address and because there are personal e-mails on his/her computer, those e-mails are not subject to review unless the Airport Authority member gives permission.
 - a. True
 - b. False

6. An Airport Authority Executive Director, Red Baron, in preparing an exciting parachuting policy for review and approval by his Airport Authority, produces a “draft” policy clearly marked “draft” and circulates it to the Airport Authority members for review and comment. The “draft” is a public record subject to inspection.
 - a. True
 - b. False