



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

MEMORANDUM

To: Mayor & Village Council
Village of Key Biscayne

Cc: Village Manager
Joseph Centorino, Commission on Ethics

From: Stephen J. Helfman, Village Attorney 

Subject: Sunshine Meetings

Date: June 1, 2018

I. Introduction

I was recently contacted by Joe Centorino, the Executive Director of the Miami-Dade County Commission on Ethics (the "COE") regarding the "Sunshine Meetings" that frequently occur between Council Members apart from the regularly scheduled Village Council Meetings. He informed me that the COE has received several complaints on the propriety of these "Sunshine Meetings."¹

In light of the complaints to the COE and others that have been directed to me, I thought it would be beneficial to once again describe the requirements for holding such meetings and to suggest additional procedures for future meetings to help avoid potential violations and to be more publicly transparent.

II. Meeting Requirements

Should you find it necessary to communicate with one or more of your fellow Council Members outside of the regularly scheduled Council meetings, the Sunshine Law requires, at a minimum, that the following conditions must be met:²

¹ The COE does not regulate or enforce the Sunshine Law; however, complaints are reviewed and if it is found that an actionable violation has occurred, the COE may refer the matter to the State Attorney's Office.

² Meetings or communications that do not in any manner relate to Village business (currently or in the foreseeable future) are not subject to these requirements.

- 1 Notice Reasonable notice of the meeting(s) must be posted and published in the same manner as all regularly scheduled Council meetings. The notice should contain the topic(s) to be discussed, the time and place of the meeting, and the Council Members who will be in attendance. If possible, this notice should be provided seven (7) days in advance of the meeting but not less than forty eight (48) hours prior to the meeting. If the meeting is a true emergency, there is some precedent for 24 hour advanced notice.
- 2 Open to Public The meetings should be held at Village Hall, the Village Council Chambers or other public facility within the Village. Access must be welcoming to the public. The public should not be restricted from observing the meeting and listening to the conversation. The public may be invited to speak, however, there is no absolute right of the public to actually participate in the meeting.³
- 3 Minutes Minutes of the meeting should be made during or immediately after the meeting and must contain sufficient details for the public and other Council Members who did not attend to easily understand all discussions and action taken at the meeting.

Finally, remember that any action by the Council requires four (4) affirmative votes at a Council meeting, and consequently, no binding action can be taken at a Sunshine Meeting.

III Violation of the Sunshine Law and Impact on Governmental Proceedings

Violations of the Sunshine Law may result in the voiding of any action taken by the Council on the matter. While this problem can be cured by disclosure with a full and open discussion of the issue discussed in the Sunshine Meeting, the violation may still subject the elected official/board member to sanctions. Depending on the severity of the violation, the State Attorney's Office has the authority to charge violators with everything from a civil infraction (resulting in fines) to criminal misdemeanors (resulting in imprisonment up to 60 days) and removal from office can be ordered by the governor.

Apart from any individual violation, there is a larger concern that the Sunshine Meetings, in some instances, have effectively become a de facto committee system where material discussions and decisions are occurring in advance of and without the participation of the entire Council. Some of you have expressed concern with this particular circumstance. Of course, this would be contrary to the intent of the Sunshine Law and importantly has the potential to undermine the Council's authority. The Sunshine Meeting process cannot be

³ If the full Council considers a proposition that may have been discussed at a Sunshine Meeting, the public must be given a right to speak to that matter before any decision is made by the Council. That opportunity can be during the 'public comment' portion of the agenda.

used to evade the purpose of the Sunshine Law nor should it be used as a substitute for a full public discussion of issues among the entire Council

IV **Recommendations**

In addition to complying with the legal requirements outlined above I would suggest the following

- 1 **Limit Meetings and Council Participation** Limiting the number of meetings will reduce the risk that violations may occur I would recommend that the Sunshine Meetings be held only when there exists a special circumstance that necessitates a discussion prior to the next regularly scheduled Council meeting This will also help eliminate the concern that one or more of you are excluded from important dialogue and decisions In addition I would recommend that the number of Council members participating in a Sunshine Meeting be limited to no more than three (3) as this would eliminate any argument that the Council is taking action at a Sunshine Meeting as opposed to at a Council meeting Other Council Members may attend the meeting as non participants
- 2 **Record Meetings** Written minutes frequently do not accurately reflect the discussions and action taken at the meeting Therefore I would urge each of you to make a digital audio recording of the entire Sunshine Meeting The Clerk should be able to assist with this These recordings will insure that the public has access to a verbatim proceeding and importantly it will allow non attending Council Members to have the benefit of the entire discussion prior to voting on any matter Finally if it is necessary the recording can be used as a cure to any violation

V **CONCLUSION**

In summary there may be valid reasons for a Village Council Member to request a public meeting with a colleague outside of a regular Council meeting to discuss Village business but such meetings should be kept to a minimum and broadly noticed with sufficient time to allow the public and fellow Council Members to attend if they wish These Sunshine Meetings are not a substitute for a full and open discussion of the matter(s) at a regular Council meeting before any formal action is taken by the Council