A close-up, slightly angled view of the American flag. The top left corner shows the blue canton with white stars, while the rest of the image is dominated by the red and white stripes. The fabric has a visible texture and some stitching details.

Miami-Dade County League of Cities
ELECTED OFFICIALS'
HANDBOOK

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Introduction

Becoming an elected official is challenging yet rewarding, since each person's experience is unique. Your role as an elected official will be impacted by numerous factors. What follows is a general informational guide to help you make informed decisions as you lead your City. Please realize that many of these rules are factually driven; therefore, no one answer fits all questions or issues confronted by elected officials. Remember that you are not alone, your first line of assistance is your City Attorney, City Manager or City Clerk,* each of whom has developed experience in their respective fields. In this guide, we have included additional resources to answer your questions.

The Miami-Dade County League of Cities and its City Attorneys Advisory Committee developed this guide as a service to elected officials. MDCLC provides the organizational framework for our municipalities to work together. The handbook is a general guide intended to provide initial orientation regarding your challenging yet immensely rewarding role. Of course, MDCLC is also available to assist you. You may contact the League office at 305-416-4155, mdclc@bellsouth.net or visit our website at www.mdclc.org.

We wish to thank the members of the City Attorneys Advisory Committee for their volunteer efforts to update this handbook. The committee members are:

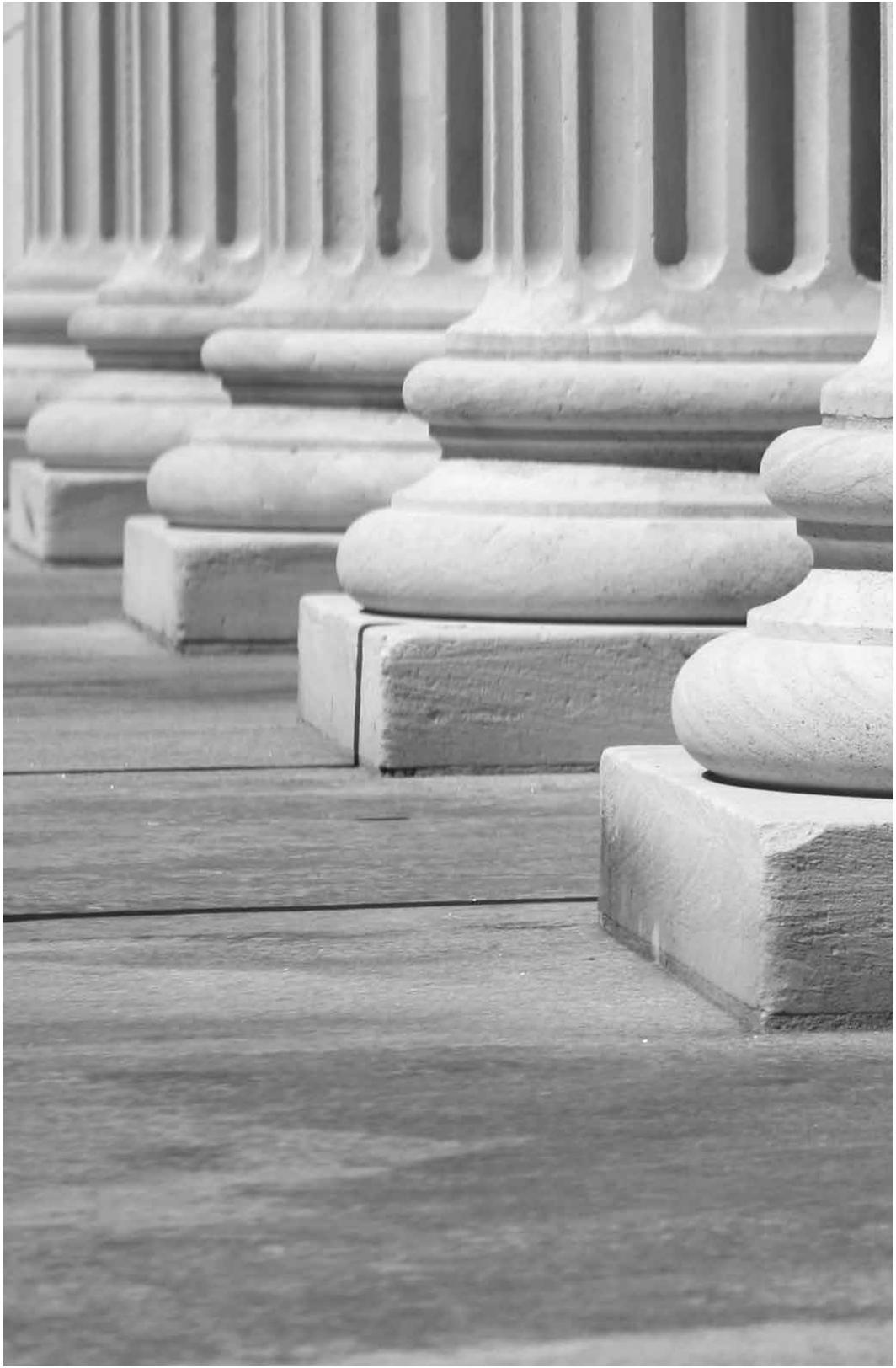
- Sonja K. Dickens, Esq., Chairperson, City Attorney, City of Miami Gardens
- Victoria Mendez, Esq., City Attorney, City of Miami
- Miriam Ramos, Esq., City Attorney, City of Coral Gables
- Norman C. Powell, Esq., Village Attorney, Village of El Portal
- Richard Kuper, Esq., Executive Director, MDCLC

Wishing you great success in your public service,

Richard Kuper, Esq.,
Executive Director, MDCLC

Sonja K. Dickens, Esq.,
Chair, MDCLC-City Attorneys Advisory Committee
City Attorney, City of Miami Gardens

**The term city includes towns & villages.*



ELECTED OFFICIALS' HANDBOOK

I. Legal Foundation for Local Government

A. Public Officials

1. Role of Appointed Officials

- a. City Manager: The City Manager is responsible for the Administration of the City Government and for the implementation of the City Council's/Commission's policies. The City Manager is also the supervisor of all department heads. Moreover, they are responsible for running the day-to-day operations of the City. The City Manager's Office is also responsible for setting administrative policy, hiring of the City Manager's staff, and proposing the annual budget.
- b. City Attorney: The City Attorney is the chief legal advisor for the Mayor, City Commission/Council, and City Staff. The City Attorney's Office is responsible for preparing ordinances, resolutions, and contracts. The City Attorney also advises all city staff and handles or oversees all litigation and controversies involving the City, its officials, and employees, acting in their official capacity.
- c. Clerk: The City Clerk is the keeper of the City Council's/Commission's legislation and minutes as well as the manager of all-important City documents. The City Clerk's Office is responsible for organizing, printing the Agenda, and maintaining public records. In some cities, the Clerk acts as the Chief Election Supervisor for local elections.

2. Role of the Elected Officials in the Different Forms of Government

- a. Manager/City Council/Commission Form of Government: The City Council/Commission establishes the policies for the City, while the Manager is responsible for day-to-day administration and implementation of all legislative and policy actions, hires and fires all staff, and prepares the annual budget.

- b. Strong Mayor Form of Government: The City Commission/Council holds a legislative role, whereas administrative power is vested in the Mayor. The Mayor is responsible for day-to-day administration and implementation of all legislative and policy action, hires and fires all staff, and prepares the annual budget. The Mayor may be a voting member of the City Council. Some city charters provide for mayoral veto.
- c. City Council/Commission Form of Government: The City Council/Commission collectively sets the policy for all city government and approves the city budget. Individual Council Members may be responsible for one or more departments and are responsible for the administrative oversight of those departments.

B. Limits on Liability

The potential liability of an elected official acting in his/her official capacity largely depends on whether the claim brought is based on Federal or Florida law.

a. Federal Law Claims

Federal law claims that could be brought against a public official include but are not limited to: suits filed under federal civil rights laws; the United States Constitution; the Rehabilitation Act; and the Americans with Disabilities Act. Under federal law, public officials acting in their capacity as a public official may have absolute or qualified immunity.

Public officials have absolute immunity from liability for legislative activities when such actions are an integral step in the legislative process. For example: signing an ordinance into law; speech and debate on an issue; or voting on an issue. Whether an act is legislative depends on the nature of the act rather than on the motive or intent of the official performing it.

Public officials have qualified immunity from liability when the state of the law does not give the public official fair warning that his/her alleged conduct violated Federal law. A Federal right is clearly established only if its contours are sufficiently clear that a reasonable official will understand that what he/she is doing violates someone's rights.

b. Florida Law Claims

Florida law claims that could be filed against a public official include but are not limited to: libel; slander; negligence; false arrest; and breach of contract. Generally, these claims fall into one of two categories: tort or contract. Contract claims seldom are brought against public officials who are acting in their official capacity. State law claims seeking damages against individuals for their official activities are generally brought in tort.

Public officials who make statements within the scope of their duties are immune from suit for defamation. This immunity is very limited.

On the other hand, sovereign immunity as it applies to public officials is very broad. Public officials are generally immune from suits for damages resulting from “any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” Fla. Stat. 768.28(9)(a). This immunity essentially immunizes all good faith activity within the scope of a public official acting within the scope of her/his official duties.

II Legal Foundation for Local Government

A. Home Rule Powers of a Municipality

Except when expressly prohibited by law, municipalities may exercise any power for municipal purposes (this includes corporate and proprietary powers) to enable them to properly conduct municipal government affairs, perform municipal functions, and render municipal services. This means that unless it is expressly prohibited by Constitution, state statute or county code, the City can enact whatever legislation it deems necessary to protect the health, safety and welfare of its citizens. In Miami-Dade County, the Home Rule Amendment to the Florida Constitution, adopted on November 16, 1956 and the Home Rule Charter adopted on May 21, 1957, afford the County broad home rule powers. The legislature cannot enact special acts applicable only to Miami-Dade County. Dickinson v. Board of Public Instruction, 217 So.2d 553, 555 (Fla. 1968). See also, S & J Transportation, Inc. v. Gordon, 176 So.2d 69 (Fla.1965). For example, in Miami-Dade County, under applicable provisions of the County Charter, the County may merge, consolidate, abolish, and change the boundaries of

municipalities in the County, may transfer municipal powers to the County, and may provide a method for establishing new municipalities. The essential enumerated County Powers, which deal with municipalities, are listed in Section 1.01 of the County Charter and Article 6 of the County Charter.

B. Charter/Code

1. Charter: the founding document upon which a local government is created. It is akin to a Constitution.
2. Code of Ordinances: a body of local laws enacted by the Mayor and City Council/Commission.

C. Ordinance/Resolution

1. Ordinance: an official legislative action of a municipality or county body which is a regulation of a general and permanent nature and enforceable as a local law.
2. Resolution: an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

D. Agenda Process

The Agenda Process is often managed by the City Clerk's Office, City Manager's Office and the City Attorney's Office. Usually staff prepares an Agenda Cover Memorandum, which explains the matter to be heard before the City Council/Commission. Most memoranda provide for a funding source for all items that cost money.

III. Sunshine Law/Public Records

A. Sunshine Law

The "Sunshine Law" is the broad categorization given to the Public Records laws and Open Meeting laws throughout the State of Florida. The general rule is that all documents of a public entity are public records unless they are expressly exempted by the State statutes. The Sunshine Law requires that meetings of two or more members of a public agency (i.e. City Commission/Council, Advisory Boards) be held in public. It requires that these meetings be publicly noticed and that minutes be kept.

B. Public Records

Section 119.011(1) Florida Statutes - All documents, e-mails, drafts, 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. Certain records are exempt from disclosure, for example: active criminal investigations: active ethics investigations: and substance of confession while a case is active. Also, public records may contain exempt information, which includes, but is not limited to: bank account numbers; debit/credit card numbers; social security numbers; driver's license numbers; identifying information of certain employees; home addresses, phone numbers, dates of birth; photographs of law enforcement officers, their spouses and children; and information regarding victims of certain sexual or child abuse offenses. This information must be redacted before the recording is produced.

C. Public Meetings

Discussions, deliberations or any gathering in person or electronically, formally or informally where two or more members of the same board, commission or committee discuss some matter on which foreseeable action will be taken by that board, commission or committee are subject to the Public Meeting laws.

1. The Sunshine Law applies to conversations where board members discuss matters, which foreseeably will come before the board for action, meaning that the law applies if there is a possibility that the board will have to take action on the matter. The Sunshine Law applies to all communication between board members, no matter the form, including phone conversations, emails, and text messages.
2. The Sunshine Law applies to “any board on commission of any State agency or authority of an agency or authority of any county, municipal corporation, or political subdivision” Fla. Stat. 286.011(1). The determining factor is whether the advisory board or committee has been delegated authority by the entity that created the board or committee, or whether the board or committee is limited to fact-finding or information gathering only. If the committee has been given decision-making authority, the committee's meetings must be open to the public.
3. The use of staff members and other liaisons to carry on de facto meetings of a board is not permitted and violates the

Sunshine Law. For example, it is permissible for the City Manager to meet with individual members of the Board for briefings, but it is not permissible for the City Manager to circulate the thoughts of other board members or to indicate how others will vote.

4. There are some exceptions to the public meeting requirements. For example, one such instance is settlement negotiations or strategy sessions related to litigation expenditures. This is where a public agency's attorney(s) asks for a meeting to discuss litigation strategy or settlement negotiations. Another instance where meetings of agencies are exempt from public disclosure are those meetings held pursuant to Section 768.28 of the Florida Statutes that relate to the evaluation of claims or to offers of compromise filed with a risk management program of the state, its agencies, and subdivisions. Yet another exemption exists where collective bargaining negotiations occur between the chief executive officer of a public entity and the public agency.
5. The Sunshine Law requires that "reasonable notice" be given. There is no definition in the statutes as to what constitutes "reasonable"; however, courts have opined in instances where notice has been deemed unreasonable. Additionally, written minutes must be kept of all sunshine meetings, including workshops. Simply advertising a meeting is not enough; the statute requires that minutes be kept. The minutes can be a summary of what happened in the meeting; they do not have to be verbatim.
6. The public has the right to attend public meetings of a board or commission, but they do not necessarily have the right to be heard at the meeting where actions are being taken. The law requires that the public be given a reasonable opportunity to be heard on a proposition before a board or commission, but the opportunity to be heard does not have to occur at the same meeting at which the board or commission take official action, so long as the opportunity to be heard is at a meeting that is during the decision making process and is within reasonable proximity in time before the meeting at which the board or commission take the official action. Public agencies are permitted to provide guidelines for public comment, including the amount of time that people are permitted to speak. They can also prescribe procedures for designating that representatives of groups speak instead of the entire group. They are also permitted to require people to complete a form, and they can limit how long public comment is permitted to take place generally. Due to the public's right to attend, public

meetings may not be held in facilities that discriminate or unreasonably restrict access and should be able to accommodate the expected attendees. In addition, luncheon meetings and out-of-town meetings are to be avoided.

IV. Ethics

A. Review the following on ethics:

- (1) City Code: Check municipal code
- (2) County Code: See Miami Dade Code, Chapter 2
- (3) State Statutes: See Florida Statutes, Chapter 112
- (4) Federal Regulations: See 5USCAApp. 4Ethics in Government Act of 1978

B. Jurisdiction on Ethics Issues Contacts:

- (1) City Attorney
- (2) Miami Dade County Commission on Ethics and Public Trust
19 West Flagler Street, Suite 820
Miami, Florida 33130
Main Number (305)579-2594
Ethics Hotline (786) 314-9560
Fax (305) 579-0273
ethics@miamidadegov
- (3) State Attorney's Office
E.R. Graham Building
1350 N.W. 12 Avenue
Miami, Florida 33136
Telephone (305) 547-0100
Miamisao.com
- (4) State Ethics Commission
3600 Maclay Boulevard South
Suite 201
Tallahassee, Florida 32312
Telephone (850) 488-7864
Fax (850) 488-3077
Griffin.nancy@leg.state.fl.us

C. Conflicts of Interest

1. Per Se Conflicts: Certain contractual, business or family relationships held by an elected official create a conflict of interest. The following reflects such prohibited conflicting relationships:

- (a) Doing business with City: An elected official may not enter into any contract or transact business with the City when either he or any member of his immediate family has a financial interest in said transaction; nor may an elected official enter into any contract or transact any business with the City through an entity in which he or any member of his immediate family has a “controlling financial interest” (10% or more interest). [Miami Dade County Code Section 2-11.1 (c)]

An elected official may not in his/her official City capacity purchase, rent or lease goods, equipment or services to the Municipality from either his own business entity or an entity in which his spouse or child is an officer, director, proprietor, partner or owner of a “material interest” (an interest of 5% or more). [Section 112.313(3) Florida Statutes]. Note that the definition of ‘immediate family’ in the County Code and ‘relative’ in Florida Statutes is different.

- (b) Employment and contractual relationships with entities doing business with the City: An elected official is prohibited from having any employment or contractual relationships with any business entity which is doing business with, or is subject to the regulation of, his/her City. [Section 112.313(7) Florida Statutes]
- (c) Elected official serving as City employee: An elected official may not be an employee of his City. This restriction is limited to simultaneous service in the same City, meaning that an elected official may be employed by a governmental entity other than the City in which he presently serves as

an elected official. [Section 112.313(10) Florida Statutes]

(d) Lobbying representation restrictions: An elected official is prohibited from:

(1) Appearing on behalf of any third party before any of his/her City's boards, committees or agencies (including the City Commission) for the purpose of seeking relief sought by that third party. This prohibition also restricts the elected official's receipt of compensation, directly or indirectly or in any form, for services rendered to a third party, who seeks some benefit from a City board, committee or agency (including the City Commission), in connection with the benefit sought by that third party; and

(2) Appearing in any court or administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the City agency through the suit in question. [Miami Dade County Code Section 2-11.1(m)1]

2. Voting Conflicts: When an elected official is expected to vote on a matter that may result in a benefit or loss to a party with whom he/she has a certain contractual, business or family relationship, a voting conflict of interest may exist. When faced with such a voting conflict, the elected official must publicly declare the conflict, abstain from voting on the particular item, leave the Commission Chambers during discussion of that item, and file a written disclosure of the conflict within 15 days from the subject vote. [Miami Dade County Code section 2-11.1(d); Section 112.3143 Florida Statutes]

3. Post-Service Lobbying Restrictions: For a period of 2 years, after leaving their office, former elected officials are prohibited from lobbying their City directly or indirectly.



However, former elected officials may within two years of leaving office, lobby City personnel other than the governing body of that municipality, its Chief Administrative Officer or employees, and their immediate support staff when they become employed by governmental entities, 501(c)(3) non-profit entities or educational institutions entities, and lobby on behalf of such entities in their official capacities. [Miami Dade County Code Section 2-11.1(q); section 112.313(14) Florida Statutes]

4. Prohibited Solicitation/Gifts-Solicitation: There are numerous restrictions on the ability of an elected official to solicit a gift. The primary restriction being the prohibition on solicitation based upon an understanding that official action would be influenced thereby. [Miami Dade County Code section 2-11.1(e) (3); section 112.313(2) Florida Statutes] State law also prohibits the solicitation by elected officials of certain gifts from political committees and from lobbyists. [section 112.3148 Florida Statutes]
 - (a) Exceptions: Under the County Code there are two express allowances for solicitation: gifts solicited by employees or Commissioners on behalf of the City in the performance of their official duties for use solely by the City in conducting official business; and gifts solicited by Commissioners or their staff on behalf of a nonprofit organization where neither the Commissioner, not his or her staff receive any compensation as a result of the solicitation. Separately, there are categories of items that are not considered gifts at all (for reporting purposes): political contributions; gifts from relatives or members of one's household; and awards for professional achievement. It is important to list them separately, so the distinction is clear.
 - (b) Value of gift: In addition to the solicitation rules set forth above, an elected official is prohibited from accepting any gift exceeding \$100 from certain political committees or from a person who lobbies his/her City. [section 112.3148 Florida Statutes]. There are certain limited exceptions from the legal definition of what is a "gift" (i.e., gifts from a relative), and you should contact your City Attorney to confirm whether any of these exceptions apply and the legal effect thereof.

D. Transparency/Disclosure Requirements

The following situations require the filing of written disclosures on forms available in your City Clerk's Office:

1. Voting Conflict: When an elected official has a voting conflict, disclosure of that conflict must be made both orally (prior to the subject vote), and in writing (within 15 days from the vote).
2. Gift Receipt: An elected official is required to disclose in writing all gifts or series of gifts from any one person having a value in excess of \$100—this disclosure must be made in the calendar quarter immediately following the receipt of gift.
3. Certain Relationships: The County Ethics Code requires the written disclosure of certain business relationships held by City personnel or persons affiliated with them. These relationships relate primarily to said person's interest and/or employment with an entity, that is doing business with your City.[Miami Dade County Code sections. 2-11.1(c)(4) and (f)]
4. Financial Disclosure: All elected officials are required to file by July 1 of each year a statement of financial interests for the immediately preceding calendar year to be filed with their County Supervisor of Elections.

Hypotheticals

Q: A city council would like to hold a retreat. Could they hold it outside the city limits and if so, what procedure would need to be followed?

A: Public access to meetings of public bodies such as a City Council is the key element of the Sunshine Law and public agencies have been advised by the State Attorney General to avoid holding municipal council meetings in places not reasonably accessible to the public, such as out-of-town meetings. The Sunshine Law requires that meetings of a city council be “public”, and for a meeting to be truly “public”, the public must be given advanced notice and provided with a reasonable opportunity to attend. There is no express prohibition in the law against out of town meetings being held, but a balancing test should be performed to determine whether the public was given a reasonable opportunity to attend.

Q: I am going to Tallahassee or Washington to meet with a senator/representative to lobby for “xyz”. Other members of my council may also be there. Can we attend these meetings together?

A: It is preferable that each councilmember meet individually with the senator/representative as matters discussed are likely to come before the council/commission; otherwise, the meeting would be subject to the Sunshine Law, which is difficult to comply with at a geographically distant location, since the public has to be reasonably able to attend and minutes have to be kept. Private political or community forums may not be used to circumvent the statute’s requirements.

Q: If, during a council meeting, one member of the council whispers to another member, is the communication subject to sunshine?

A: Yes, if the conversation pertains to a subject that may come before the council for a vote. At a publicly noticed council meeting, council members should refrain from whispering to each other, as all communications on the dais should be audible to the audience. Although the conversation between the two council members is occurring at a publicly noticed meeting, if the public cannot hear the substance of the communication then the two council members are having a conversation outside of the Sunshine Law. However, if the conversation is not related to a subject to be voted upon, then the communication is not subject to sunshine. We would suggest that council members refrain from any such communications as sunshine violations have been alleged against two or more council members speaking to each other (or together to audience members) after a council meeting has been adjourned or recessed, while the video recording of the meeting has still been running.

Q: May city commissioners, outside a public meeting, exchange documents that they wish other members of the commission to consider or matters coming before the commission for official action, and if so, what limitations exist? May a city commissioner prepare a written report, which is to be the basis of discussion at a public meeting, and furnish it to the City Manager for distribution to the other city commissioners without violating section 286.011, Florida Statutes, Florida's Sunshine Law?

A: The use of a written report by one committee member to inform another committee member of an item or subject which will be discussed at a public meeting does not violate the Sunshine Law as long as there is NO interaction among the committee members related to the report and the report is NOT circulated for comments to be distributed to the committee members. "On the other hand," if a report reflects the views of a commission member on a pending issue and is circulated among the members with each person indicating his or her approval or disapproval, a violation of the Sunshine Law has occurred.

Q: Are text messages a public record? Is there a distinction between my personal phone and a city-provided phone?

A: The law does not differentiate between private or public communication devices. If the essence of the e-mail/text message is the public's "business", it is likely to be an available public record.

Q: If I write notes during a council meeting on my own pad, are they public records? Even if they are cartoons?

A: It is the public policy of the State of Florida that the "business" of government be open and available for review by the public. All e-mails, text messages, cartoons and other writings, whether sent or received, which addresses government business, are public records and must comply with the public records retention schedule; however, depending on the extent the city commissioner has taken notes for his or her own personal use, such personal notes that are not intended to perpetuate, communicate, or formalize knowledge at a workshop or during a commission meeting would not be considered public records.

Q: If I use my personal computer to send an e-mail for city business, then are all my e-mails subject to public records?

A: Only those E-mail messages, which are made or received in connection with official business, are considered public records and subject to disclosure. However, statutory exemptions from public inspection may apply.

Q: Is a community citizens' police academy subject to Sunshine Law, pursuant to section 286.011, Florida Statutes if two or more officials attend?

A: A city elected official may attend a public meeting held to consider a proposed city ordinance and express his or her views on the proposed ordinance even though other city elected officials may attend. However, the city elected officials in attendance may not engage in a discussion or debate with each other. The Sunshine Law could be violated if elected officials from the same city attend a private community forum sponsored by a private organization and ask questions of a speaker to express their views even though no direct comments or questions were made to each other.

Q: Can my significant other accept a gift from a lobbyist?

A: Yes, it is considered lawful so long as its value does not exceed \$100 and it was not based upon any understanding that official action would be influenced thereby.

Q: Do I need to disclose gifts I have received from my agency, such as tickets to events, travel, etc.?

A: Gifts that have been provided to an elected official from the official's city do not have to be disclosed if the elected official provides some official city-related service at the ticketed event. However, additional tickets provided by the city to the elected official to be used by other persons must be disclosed and reported as gifts by the elected official.

Q: Does a commissioner have to disclose a gift from a developer who is a friend where the gift is valued over \$100?

A: The gift laws prevent an elected official from accepting a gift exceeding \$100 from a lobbyist or principal of a lobbyist, whether or not a "personal friendship" exists—if the developer is not a "lobbyist or principal of lobbyist", this gift may be accepted and since its value exceeds \$100, it must be disclosed.

Q: Does a commissioner have to disclose complimentary tickets to a political fundraiser where the cost of attendance exceeds \$100.00?

A: In general, admission tickets are valued on the face value of the ticket or the per event basis, whichever is greater—since the attendance value here exceeds \$100, this gift must be disclosed.



MIAMI-DADE COUNTY LEAGUE OF CITIES

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