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Government in the Sunshine, Public Records, Ethics

Town of Windermere - April 4, 2022

THE TOWN OF Windermere

Presented by

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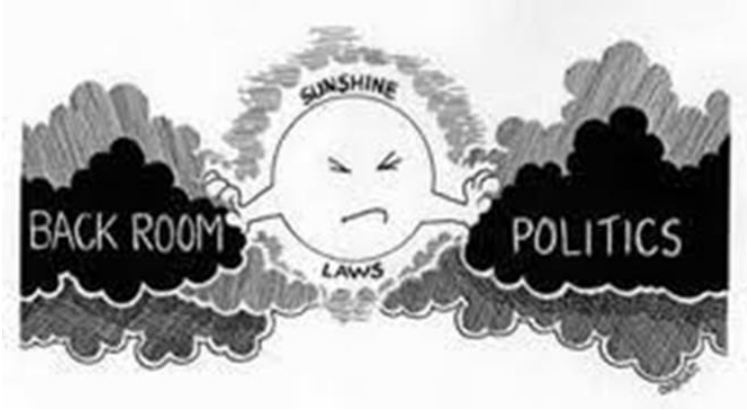
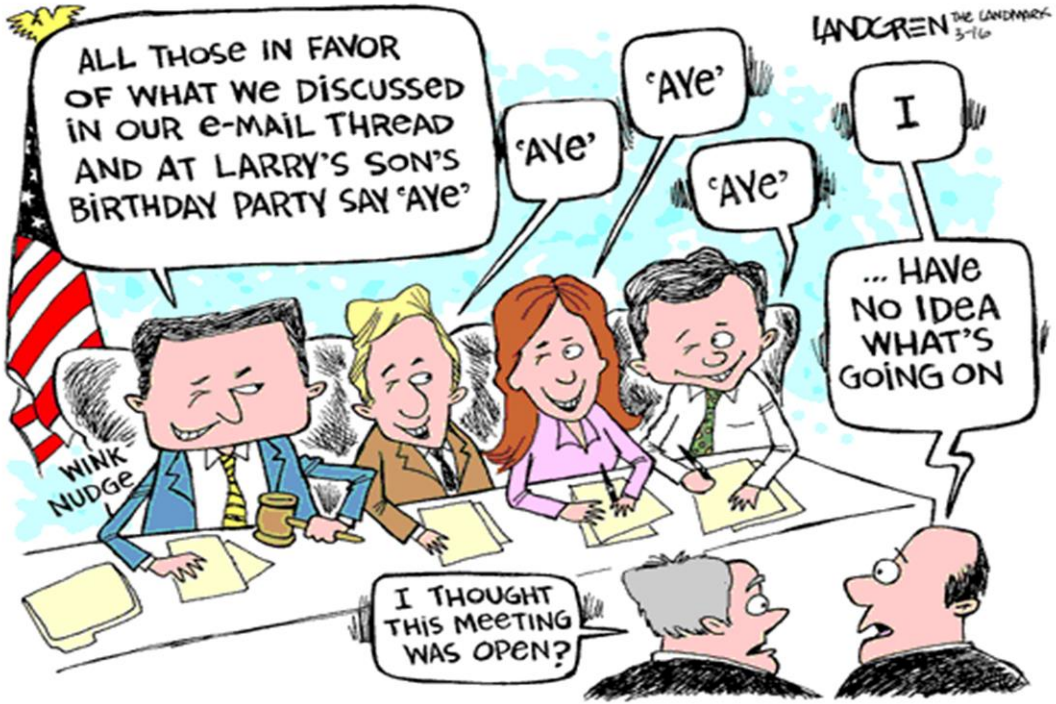
Overview

1. Government in the Sunshine Law – *Chapter 286, Fla. Stat.*
2. Public Records Law – *Chapter 119, Fla. Stat*
3. Ethics, Gifts, Financial Disclosure – *Part III of Chapter 112, Fla. Stat.*



Sunshine Law



Sunshine Law

Applicable to:

- Town Council

  and

- Advisory boards
- Committees

When such boards or committees have been delegated "decision-making authority" as opposed to mere "information gathering or fact-finding authority".

Sunshine Law

Basic requirements:

1. Meetings must be open and accessible to the public.
2. Meetings must be noticed.
3. Written minutes must be taken.

§286.011 Florida Statutes

Sunshine Law

Things to remember:

- If 2 or more members of the **same** council/committee need to discuss council/committee related business, a meeting must be officially noticed.
- Do not call, text or e-mail each other on town related business – all discussions must be in an open, noticed meeting.
- You cannot have a person act as a "go-between".
- Whispering and passing notes at a noticed meeting could be considered an unnoticed meeting if discussing town business.
- Once a meeting is adjourned, don't talk about town business on your way out of the room.
- Members of the public must be provided an opportunity to address the council/committee during the decision-making process, and **before** a decision is made.

Sunshine Law

Permissible Closed Sessions:

- *Pending* litigation [direction only 286.011(8)]

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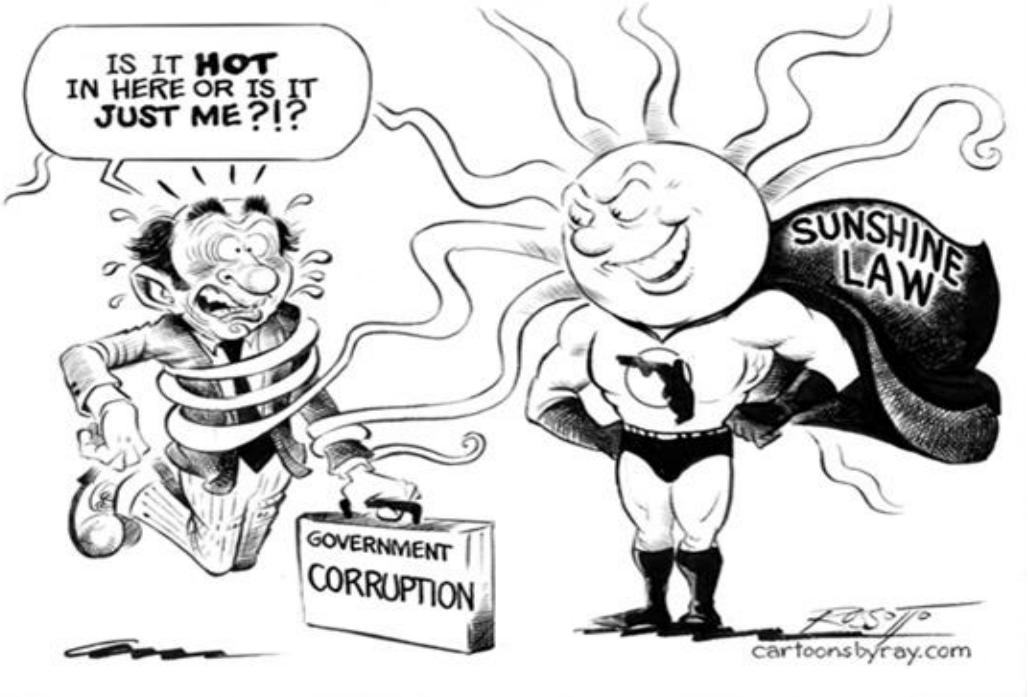
Sunshine Law

City of Belle Isle "Roundtable":

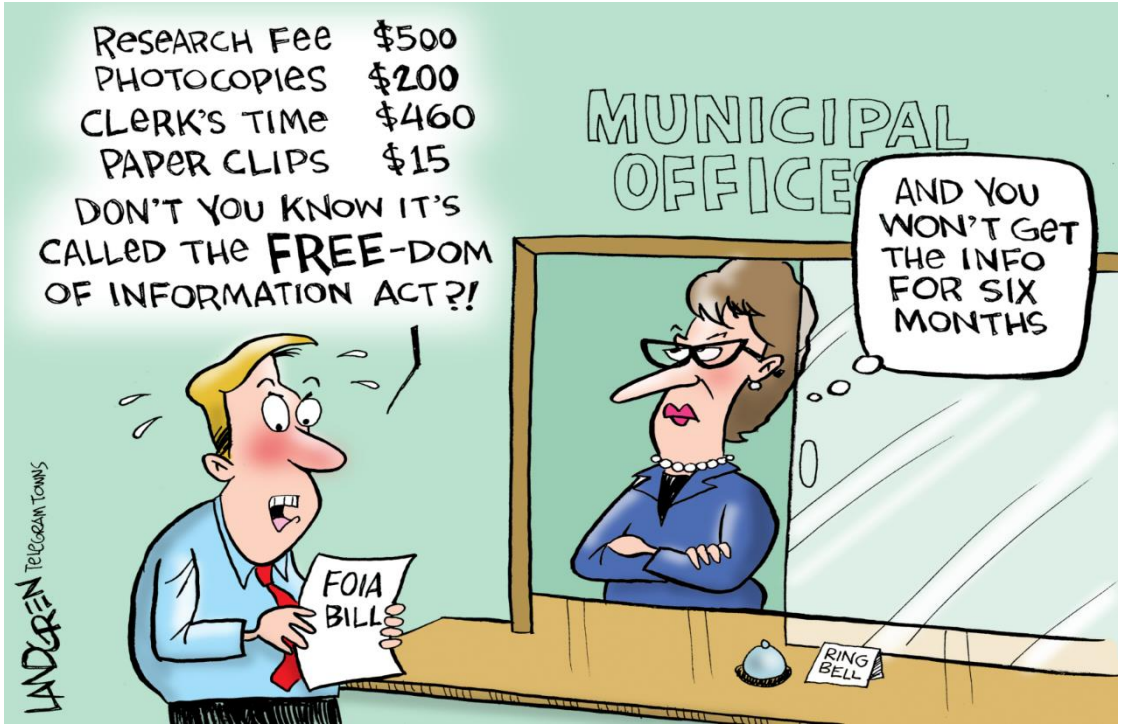
- Group of citizens and Belle Isle City Commissioners met to discuss strategy for campaigning and recruiting people to run for the Belle Isle City Commission.
- Meetings held in a commission member's home, Facebook posts, emails, parking lot outside of Town Hall
- State Attorney's office found a violation….

Sunshine Law

Questions?



Public Records



Public Records Law

Applicable to records of:

- Town employees
- Town Council
- Advisory Boards
- Committees
- All town records

Public Records Law

Important things to know:

- Every record made or received in connection with town business.
- All elected and appointed officials and town employees must permit inspection and copying of public records.
- NOT limited to traditional written documents.
- Includes texts and emails made or received in connection with official business.
- Includes YouTube videos, Facebook posts, tapes, photographs, videos and sound recordings.

Public Records Law

Important things to know:

- Public records can only be destroyed in accordance with a specific process under state law.
- Public records must be retained for certain periods of time.
- The law applies to communications with residents, members of the public, employees, consultants, contractors and legal counsel and others involving town business, even if it is on your private computer, laptop or phone. It is the nature of the record – not the location.
- Purely personal e-mails are not public records, but there is no "expectation of privacy" for communications on a town owned computer.

Public Records Law

Important things to know:

- Public records include metadata.
- There is no "unfinished business" exemption – drafts and notes can be a public record.
- A public records request may be verbal, written, e-mailed, by any person at any time for any or no reason.
- You cannot require the requester to provide his or her name, and he or she does not have to say why the records are requested.
- If you receive a public records request, let the Town Clerk know immediately.

Public Records Law

Orange County "textgate":

- Public-records scandal – Orange County Mayor and Commissioners each fined $500.00.
- 2012 political fight over a referendum for paid sick-time.
- Mayor and Commissioners exchanged texts with lobbyists and citizens opposed to the measure during a public hearing on the issue.
- Public records request was made for the texts.
- They lost or deleted the texts.
- State Attorney Jeff Ashton concluded the mayor and four commissioners had violated public records laws but unintentionally.

Public Records Law

Statutory exemptions:

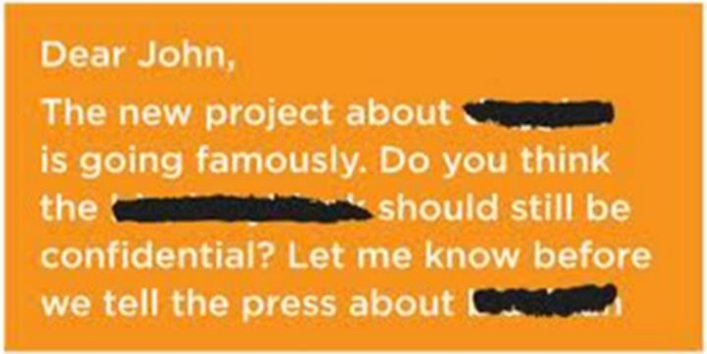
The entire record is a public record unless there is an express statutory exemption.

- Exemptions must be explicitly provided by statute.
- Exemptions must be narrowly applied.
- All exemptions must be stated in writing to a requestor.

Public Records Law

Statutory exemptions:

- Sealed bids and proposals (for a certain period of time). [119.071(1)(b), Fla. Stat.]
- Information relating to a facility's security system plans. [119.071(3)(a), Fla. Stat.]
- Building plans and drawings depicting the internal layout and structural elements of a building owned or operated by an agency. [119.071(3)(b), Fla. Stat.]
- Many more…



Sunshine and Public Records Law

For violations of the law -

- The State Attorney or a Grand Jury can be involved
- Private parties can sue
- Penalties can include:
  - Jail time – 60 days in jail for a knowing violation
  - Fines – $500 for an unintentional violation
  - Attorney's fees
  - Trial
  - Nasty press coverage

Public Records Law

Questions?

Ethics

HEY, MR. GOVERNMENT OFFICIAL, WHAT'S GOING ON UNDER THERE?
TRUST ME. YOU DON'T NEED TO KNOW.
CLOAK of SECRECY
THE PUBLIC
BILL
LAW
©2009 FLORIDA TODAY

Ethics

Basic principles of Ethics in Florida: *Part III of Chapter 112, Fla. Stat.*

- Promote the public interest
- Maintain the respect of the people for their government
- Ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.

The ethics laws consist of two types of provisions:

1. Those prohibiting certain actions or conduct;
2. Those requiring that certain disclosures be made to the public.

Ethics

Applies to:

- Town Council members
- Committee members
- Advisory-board members
- Town employees

Ethics

The following is a brief summary of the Ethics Code. If you are in a situation where something may apply to you, please ask!

Ethics

What to remember:

Do not use your position at the town to secure anything special for yourself, your family, friends, or anyone else.

Ethics

Caution areas:

- Doing business with the town – you or your family should not do business with the town. *[Sec. 112.313(3), Fla. Stat.]*
- Secondary employment – there cannot be any conflict with your town position. You cannot take a job with a company doing business with the town. *[Sec. 112.313(7), Fla. Stat.]*
- Using information -- Don’t use information which you learned from your town position to gain a special advantage for you or your family or anyone else. *[Sec. 112.313(8), Fla. Stat.]*

Ethics

Caution areas:

- Honoraria – you cannot accept a payment to speak or write for an organization. Reasonable expenses can be paid. *[Sec. 112.3149, Fla. Stat.]*
- Nepotism – you cannot hire, promote, or advocate for your relatives to get a job with the town. *[Sec. 112.3135, Fla. Stat.]*

Ethics

General Rule About Voting

- You must vote on all Council items.
- *Unless* you have "conflict of interest" or there appears to be a "possible conflict of interest." [Sec. 286.012, Fla. Stat.]
- "Abstentions" are not allowed.

Ethics

Voting Conflicts

Must disclose if, on *any* issue, the Council's vote would benefit or hurt…

- You
- Your relative
- Your business partner
- Your employer
- Your client/customer
- The parent company, subsidiary company, or sister company of…
  - Your employer
  - Your client

Ethics

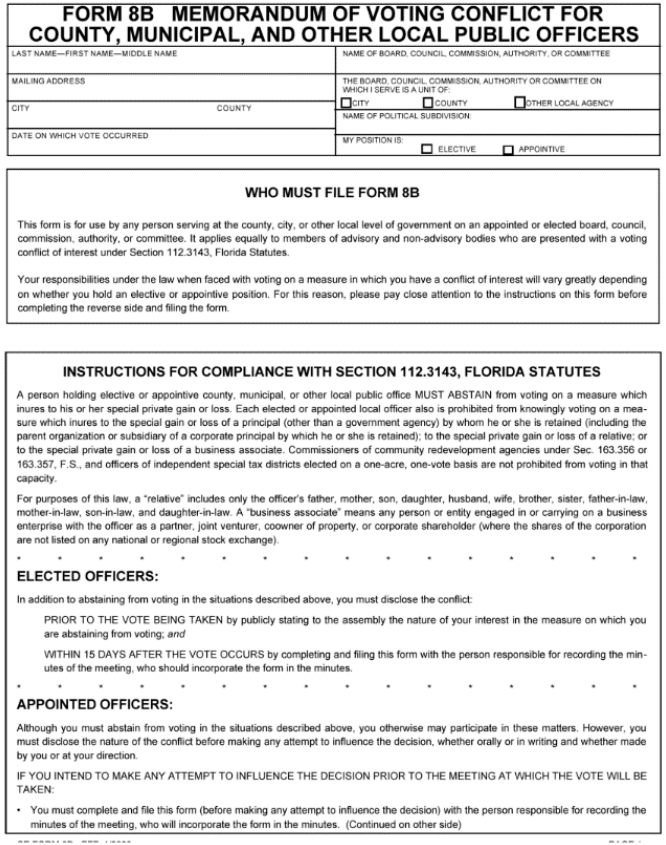
Voting Conflicts

- Do not vote
- Must file Form 8B (with the Town Clerk) within 15 days after the vote
- May participate in the discussion if the conflict is first disclosed (but why would you?)

Ethics

Voting Conflicts

- MUST abstain:
  - conflict of interest
- MAY abstain:
  - appearance of a conflict of interest
  - If you abstain for either reason, file Form 8B



FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☐ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: ☐ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

Ethics

After-office lobbying for elected officials – "No revolving door" rule

- May not lobby your town council
- *for compensation* (for a client)
- for 2 years after leaving

[Sec. 112.313(14), Fla. Stat.]

Gifts

Gifts

What is a "gift"?

- Money
- Real estate
- Use of real estate
- Tangible personal property
- Intangible personal property
- Use of personal property
- Food or beverages
- Membership dues
- Transportation
- Plants and flowers
- Admission tickets (sports, concerts, cruises, theme parks, etc.)
- Forgiveness of debt
- A preferential rate or price on
- A debt, loan, goods or services
- Any other thing having value
- Any other service having value

Gifts

Caution areas:

- Taking gifts – taking anything of value for you or your family over $100 can be an ethics violation. [Sec. 112.3148. Fla. Stat.]
- Asking for gifts – don’t ask people working with or associated with town business for anything – lobbyist, vendor, customer, or anyone doing business with the town. [Sec. 112.313(2), Fla. Stat.]

Gifts

Disclosure of gifts by you:

- Any gift which is accepted AND worth over $100
- Exceptions:
  - Gifts from relatives
  - Prohibited gifts (*i.e.*, from lobbyists and vendors)

Gifts

Gifts disclosed … by lobbyists and vendors:

- All gifts to you worth over $25
- Disclosed quarterly … by the lobbyist or vendor, not you

Ethics

Penalties *(employees, officers, candidates)*:

Impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of one-third salary per month for twelve months, a civil penalty up to $10,000, restitution of any pecuniary benefits received, and triple the value of a gift from a political committee.

Financial Disclosure

What is disclosed and where?

- Form 1: certain assets and liabilities, sources of income, and certain other information.

- Form 1F: financial disclosure statement … from January 1 to your last day in office.

Both filed with the Supervisor of Elections in Orange County. [Sec. 112.3145(6), Fla. Stat.]

Financial Disclosure

Penalties:

- Fail to file by August 1st: delinquency notice.
- Fail to file, then, by September 1st: $25-per-day fine.
- Max fine: $1,500.

Note: The Supervisor of Elections must send Form 1 to council members no later than June 1st of each year. [Sec. 112.3145(8)(b), Fla. Stat.]

Ethics

Questions?

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Florida Commission on Ethics

- Available for advice: ethics / gifts / financial disclosure
- Phone: 850-488-7864
- Website: www.ethics.state.fl.us

Annual Training

Constitutional officers, **elected municipal officers**, and commissioners of community redevelopment agencies are required to receive a total of four hours training, per calendar year: ethics, public records, and open meetings.
[Sec. 112.3142, Fla. Stat.]

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