

Meyers, Robert (COE)

INV 04-129

From: Meyers, Robert (COE)
Sent: Wednesday, November 03, 2004 4:24 PM
To: 'Eve Boutsis'
Subject: RE: RE; Thank you.

Eve,

I don't want to overstep my bounds, because my opinions regarding the Sunshine Law carry no weight, but I don't believe that Mr. Ludovici would be in violation of the Sunshine Law if he attends a meeting along with the Mayor and others. It has always been my understanding that in order for Sunshine Law to apply, two members of the same board need to meet. In this case, Ludovici is obviously not a member of the Village Council. The other thought is if Ludovici's committee delegated him the authority to attend this meeting and speak for the rest of the committee, that might trigger a requirement that the meeting should be open to the public. As far as classifying him as a lobbyist is concerned, I would be hard-pressed to reach that conclusion based on the facts that you have provided us. I don't see where he has been formally retained by a party and given the proper authority to represent the party's interests.

With respect to the public records questions, I don't know how specific a request has to be. Certainly the time it would take to collect all these e-mails can be charged to the requester, but I am not aware of any case law that holds that public records requests must be reasonable. There may be something involving individuals who regularly "harass" local governments with such requests, but as a general rule, I believe all requests have to be honored. It doesn't make sense, as one would hope the courts would recognize the rule of reason of reasons in this area, but the courts construe this right to access government records very broadly.

Hope this helps.

Robert

-----Original Message-----

From: Eve Boutsis [mailto:eboutsis@ngf-law.com]
Sent: Tuesday, November 02, 2004 2:38 PM
To: joecentorino@miamisao.com; rmeyers@miamidade.gov
Subject: RE; Thank you.
Importance: High

Hello gentlemen:

First, I wanted to say thank you for presenting the seminar last night. It was greatly appreciated.

Second, I have a couple of questions due to the seminar. When the seminar was held at the city of South Miami and a participant asked questions regarding blackberry transient emails - it was my understanding from that meeting that - emails like A hurricane is coming, a police officer was shot.... etc. had a limited life span for retention (basically as long as the information was relevant). Then there are the emails that are just transient, non-business related emails like: jokes, birthdays, etc., which are not public records as not related to work. Then, there are emails or blackberry emails that deal with city related substantive items that should be kept -- like for example, updates on committee meetings; or contracts. The seminar last night appeared to go further than my original understanding. Could you clarify?

Additionally, I was approached after the meeting by Mr. Ed Ludovici regarding a question he posed to you all after the meeting. Mr. Ludovici is chair of a village charter school committee. The committee was created to assist village council to decide whether they want to sponsor a charter school, where to locate one, what grades to service, how to

fund, whether the city wants to undertake doing so, etc. In interim, a private charter school committee purchased property within the village (at or near location proposed by another committee (the SW charette committee) for the location of a charter school. Mr. Ludovici wanted to attend a meeting with the private charter school, the city manager, and the mayor. We told Mr. Ludovici that under our village code he would probably be considered a lobbyist - as the code is restrictive, and he did not meet one of the exceptions to the rule. Further, as Mr. Ludovici is the chair of charter school committee and would want to attend the meeting, we found that his attendance would probably be a violation of the intent of sunshine laws - as the committee meets to discuss charter school opportunities for the village (incidentally, the committee is not directed to advocate private charter schools). For him to attend, facilitate, etc. the private group's meeting with the mayor --- the meeting would violate the intent of sunshine meetings -- in that, outside of an advertised public meeting, the chair of the committee could meet and discuss the very issues of the charter school committee with the mayor ---- outside of public forum. In fact, any discussions between the chair and the mayor, outside of the public forum, should be held to issues OUTSIDE of the scope of the purpose of the committee. Do you agree?

Further, any meeting with developer, mayor, and city manager, would not necessarily be just fact finding -- if there are questions, and answers and positions taken (on whether the school should service certain grades, the location, the needs of community, etc) then the meeting would not solely be fact finding by the chair and would then need to be public and advertised -- as it could influence the chair in his roll with the charter school committee.

Finally, If a person issues a public record request for all emails from city manager, city attorney, mayor and council for past two years -- please confirm that that request would not necessarily be a valid request. The person should specify what he is seeking. For example, all e-mails relating to a certain contract, or certain zoning application, or communications with a certain lobbyist or property owner within the village; or all emails regarding establishment of a certain committee I understand that municipalities must comply with public records requests and I urge clients to err on side of disclosure -- but such a blanket request would be insane for the village to produce, and completely impossible for me to review all the emails to make sure that the client does not waive any privileges - let alone that many of the e-mails may be transitory, obsolete, etc.

Thanks again. I apologize for the barrage of questions.

Very truly yours,

Eve

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