

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, May 25, 2018 1:51 PM
To: Sanchez, Rodzandra (COE)
Subject: Jose Villalobos, Esq., City Attorney, City of West Miami (Sunshine Law) INQ 18-125

INQ 18-125 Villalobos

From: Centorino, Joseph (COE)
Sent: Friday, May 25, 2018 1:40 PM
To: 'jose.villalobos@akerman.com' <jose.villalobos@akerman.com>; 'maria.y.gonzalez@akerman.com' <maria.y.gonzalez@akerman.com>
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Subject: INQ 18-125 Jose Villalobos, Esq., City Attorney, City of West Miami (Sunshine Law)

Mr. Villalobos:

This is in response to your inquiry concerning whether it would violate the Sunshine Law (Section 286.011, F.S.) or any ethics provision for the City Commission of the City of West Miami to adopt a procedure whereby proposed resolutions or ordinances would be first brought up at City Commission meetings as discussion items, prior to their being drafted, rather than being voted upon for first reading. I understand that this is being proposed as a way to avoid what may be unnecessary time and effort in the drafting of legislative proposals or resolutions, where there may be insufficient support for passage. It is my understanding that no vote would actually be taken on the item, which would be advertised as a discussion item only.

I assume, for the purposes of this inquiry, that there is nothing in the City Charter or Code of Ordinances that would prevent the City Commission from considering such a procedural rule, or, if so, that appropriate action would be taken to permit consideration of such a rule change.

This office does not enforce or authoritatively interpret the Sunshine Law, which is a state statute enforceable by the State Attorney. We do provide guidance on the law on an informal basis since we are mandated by County ordinance to provide training to County and municipal elected officials on the Sunshine Law. Questions arising under the Sunshine Law requiring a more formal opinion may be submitted to the Attorney General of the State of Florida.

The Sunshine Law (Section 286.011, F.S.) is applicable to any gathering, formal or informal, of two or more members of a public board to discuss some matter on which foreseeable action will be taken. This includes "collective inquiry and discussion stages." See *Town of Palm Beach v. Gradison*, 296 So. 2d 474, 477 (Fla. 1974). Obviously, the placing of such items on a Commission agenda as discussion items, rather than action items, would not remove the requirement that the discussions occur in the context of meetings properly noticed and in compliance with all the requirements of the Sunshine Law. As long as the items are brought before the Commission at sessions held in compliance with the Sunshine Law, I do not see that there would be any violation of the Sunshine Law in the Commission's adoption of a procedure whereby the items would be first brought up as discussion items, either in drafted or undrafted form, prior to being placed on a future agenda for passage, or not, depending on the will of the proposer, as long as the Sunshine Law is observed in all respects at the meeting in question. Also, there is nothing in the County Ethics Code that would preclude such a procedure.

A positive aspect of such a rule is that it could remove an incentive for members to violate the Sunshine Law in order to gauge the sentiments of their colleagues on any given proposal. Having a general discussion about an item in a public

forum, without the necessity of an immediate vote, would allow for an assessment of support in a publicly-noticed meeting prior to going forward. It also would identify possible amendments to an ordinance that might be considered prior to formal drafting, and, thus, provide a better overall product to consider at the first reading stage.

I do have a couple of caveats. Since this will be advertised as a discussion item only, then it could not be used to preclude a Commissioner from going forward with the proposal at a future meeting, even if the reaction of the other Commission members at the initial discussion was negative toward it. Such preclusion would turn the issue into an action item, rather than a discussion item, if it were deemed equivalent to a rejection of the item, ending its pending consideration. Also, since such a rule would prolong the process for adopting an ordinance or resolution, it would be important to have a means of waiving the discussion requirement if it involved something of an emergency nature.

Sincerely,
Joe Centorino

From: maria.y.gonzalez@akerman.com [<mailto:maria.y.gonzalez@akerman.com>] **On Behalf Of**
jose.villalobos@akerman.com
Sent: Thursday, May 24, 2018 1:27 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: Question on Procedure

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Dear Mr. Centorino,

Pursuant to our conversation earlier today, normally, individual City Commissioners instruct City Attorneys to prepare draft resolutions and ordinances to be heard at properly noticed public forums pursuant to Florida Statute.

It has been suggested that any ideas being proposed for resolutions or ordinances be brought before the City Commission as discussion items prior to their drafting in order for each commissioner to be better acquainted and informed, again in a public forum, as to specific matters/ideas they wish to make into a resolution/ordinance.

Do you find that such procedure would conflict with any present ethical or Sunshine law? Any input would be greatly appreciated.

Jose Villalobos

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