

Frigo, Victoria (COE)

From: Centorino, Joseph (COE)
Sent: Friday, December 07, 2012 10:03 AM
To: 'Eve Boutsis'
Cc: Frigo, Victoria (COE)
Subject: INQ - Palmetto Bay

Eve,
Sorry, I answered the wrong question. I still have an issue, however, with regard to how they could go against the recommendation of the Village attorney. The shade meeting does not occur at all unless you call for it, and it would be because you deemed the disclosure of information would be harmful to the Village's interests. It is pretty outrageous that an elected official would deliberately subvert the Village's interests in this way, and I think you need to underscore the importance of maintaining confidentiality to your council members.

In any event, I do not see any Sunshine Law violation in the event that one of the members discloses the information, nor do I think it makes the transcript public. This is different than the situation where the entire board, which is responsible for maintaining confidentiality, waives it by permitting an unauthorized individual to attend. I do not believe that the actions of one rogue member could create a waiver of confidentiality by the entire board. However, there is an Ethics provision which would apply to an individual council members disclosure of the information. See Section 2-11.1(h) of the Miami-Dade Ethics Code, which prohibits the disclosure of confidential information gained through one's official position. It is significant that this section does not appear to require that the information be used for personal gain, as the State Confidentiality statute (112.3138) requires (See AGO 03-09). I think the possibility of an ethics violation should be able to deter a member of your council from making such an unwarranted disclosure.

Joe

From: Eve Boutsis [mailto:eboutsis@fbm-law.com]
Sent: Friday, December 07, 2012 8:49 AM
To: Centorino, Joseph (COE)
Subject: RE: Palmetto Bay

Joe: thanks. I guess I did not make my inquiry clear. Yes, I know litigation has to be initiated. I guess my concern is as follows, and you may not be the right person to assist me - perhaps it is a Florida Bar or Evidence code issue - if we hold a shade session on pending litigation (I have at least 3 active cases) to discuss settlement, but 2 of 3 elected officials want to hold no shade sessions - they want public discussion, but a majority does want shade session - what binds the two from not disclosing what is said during the shade session? I don't see any "penalty" and disclosure would lead to a loss of the privileges associated with the shade session. I understand at end of litigation all the transcripts are made public... but during the litigation, if there is a public disclosure, as I see it, the entire council loses the "privilege" of the confidentiality of the shade session due to an unauthorized disclosure by a (or two) council person's actions.

Do you see the issue I am trying to address? I am trying to determine if my gut is correct - that the privilege is waived, and that there is or is not a "penalty" for such disclosure. The only thing I can think of is that the remainder of council could issue a "censure" on the council person that discloses the discussions, but, that is form over substance.

Eve

From: Centorino, Joseph (COE) [mailto:CENTORI@miamidade.gov]
Sent: Thursday, December 06, 2012 4:57 PM
To: Eve Boutsis
Subject: RE: Palmetto Bay

Eve,
As you know, the provision for a shade meeting is very limited. There must be pending (not threatened or expected) litigation to trigger that provision. Assuming that the shade meeting is properly called, there are strict limitations under the statute regarding who may be present. If the statute is violated and an inappropriate person is present, the result is that the meeting does not qualify as a shade meeting, and a transcript of the meeting will be made available to the public. See *School Board of Duval County vs. Florida Publishing Company*, 670 So. 2d 99 1st DCA 1996). There is no criminal or non-criminal penalty imposed on the individuals who participate in the meeting.
Joe

From: Eve Boutsis [mailto:eboutsis@fbm-law.com]
Sent: Thursday, December 06, 2012 12:31 PM
To: Centorino, Joseph (COE)
Subject: Palmetto Bay

Joe: (corrected reference to statute)

As a former State Attorney I was wondering if you could provide me some guidance -

Some of my council believes in holding shade sessions relating litigation (286.011, FS) - with court reporter, etc.

Some believe, as County does, to hold all discussions in public forum.

As I work for a majority of the council on any action - as I understand the issue - it would be a requirement that the council conform to the wishes of a majority of the council on this issue. So, if 2 want public discussion but 3 want shade discussions - then the majority wins and the shade session is held.

Now, despite the 3-2, all the council would have to keep the privilege - meaning - not discussing with anyone about the settlement discussions or strategy discussed during the shade session.

If true, in your experience, what is the penalty should any one council person break the privilege by taking to a third person - is there a sanction for that council person? Does the privilege get revoked for the entire council to the act of one council person?

I am trying to be prepared should this occur.

Thanks.

Very truly yours,

Eve,

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