

## **CEAC, the Sunshine Law, the Public Records Law, and “E-mail”**

Florida’s Sunshine Laws<sup>1</sup> have been interpreted to apply to advisory committees like CEAC, providing a right of public access to their proceedings, including any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. This means that:

**No CEAC member may discuss with another CEAC member business that may come before CEAC, except in a public meeting for which there has been notice**

In the past this has been fairly easy to regulate because CEAC business was limited and, being diverse members of the community, there was little interchange between them individually. The requirement to notice CEAC meeting dates was met in setting the annual schedule, and agendas were provided when prepared. Minutes were prepared, and public record requirements of access to all documents was easy since we had all the documents in house.

Two questions are raised: what topics, and what types of discussion, are prohibited? Outside discussion of topics that may reasonably come before CEAC in the course of business are prohibited, except at another meeting that is properly noticed.<sup>2</sup> CEAC has some control over the affected subjects in that they can set their agenda in advance. However, given the nature of CEAC and its purpose to allow citizens to bring up issues of concern as they arise, this may be difficult. Discussion between two or more people normally involves a sharing of ideas back-and-forth in an effort to develop a position or reach a decision. This has historically occurred in face to face conversation, telephone conversation, and written communication. However, our electronic world has expanded this process through the creation of “e-mail”. It should be further noted that one CEAC member can write to all or any of the others, but the recipients may not respond. This may occur when one member is notifying others of his/her intent to raise an issue at a future meeting.

The purpose of the Sunshine requirement is to allow the public to observe and understand the reasoning behind, and basis for, decisions that are made. E-mail has come to serve as a communication mechanism for transmitting information generated by third parties (e.g. copies of news articles, summaries prepared by someone else, messages from another), as well as a method for sharing one’s own thoughts (e.g. letters, arguments, etc.). Although simply transmitting public information and opinions of others could be viewed as an expression of one’s own preferences, it clearly is not as direct a form of “discussion.” Limited sharing of third party information, already public, is not as clearly subject to the open meeting restrictions, unless it is used as a method for circumventing the Sunshine requirements.

However, with the increase in citizen participation in pending governmental issues with the inter-relatedness of most current policies and issues, and with the increasing use of e-mail communication and listserves, we are developing what could become a problem. Hopefully this will provide some guidance for how to deal with these concerns.

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<sup>1</sup> **Section 286.011 Florida Statutes provides:**

- (1) All meetings of any board or commission ...at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection...
- ...
- (3)(b) Any person who is a member of a board or commission...who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree...

**Section 119.07(1) Florida Statutes provides** that “Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so...”

<sup>2</sup> Two or more CEAC members can discuss topics that may come before CEAC at other meetings subject to the Sunshine laws since those meetings will also be noticed, open to the public, and generate minutes of their proceedings.

We suggest the following approach:

Meetings:

All CEAC meetings, regular and special, will be scheduled with at least 5 days notice. Although law only requires “reasonable notice,” CEAC by-laws currently require 5 days mailed notice to CEAC members. Agendas will be mailed at least 5 days in advance, providing the topics for discussion. Regular CEAC meetings will be scheduled annually, with public notice arranged for at the beginning of the year. Special meetings will be arranged as needed.

Minutes and Records:

EPC’s administrative liaison will record and produce summary minutes. As a sunshine committee, CEAC must have minutes for all meetings, regular and special. Recording is not required, but is helpful in preparing the minutes. Minutes and related documents are kept at EPC for public inspection.

Other meetings of CEAC members:

CEAC members who are on multiple committees which discuss issues that come before CEAC need to determine which are sunshine committees and which are not.

- Sunshine meetings are open and the subjects noticed, so discussion between CEAC members at such meetings is appropriate, even if the subjects may come before CEAC. Other sunshine meetings will produce minutes so that there is a record of the discussion, and documents, available to the public. Copies do not need to be made available to CEAC unless the member wishes CEAC to specifically address them. If so, they will then become CEAC records as well.
- Non-Sunshine meetings may not have been properly noticed to satisfy the Sunshine laws. Further, there is a question of the availability of minutes and documents. If two or more CEAC members want to attend such meetings, then special arrangements will need to be made to address the public notice requirement (EPC administrative liaison can help). Copies of documents and minutes will also have to be addressed, whether or not they are made part of CEAC’s record.

E-mail communications:

It is desirable for CEAC members to share information, and the speed and efficiency of e-mail is very useful. Discussion of issues and personal comments however, risks constituting an unnoticed meeting and should be avoided. Not all CEAC members have e-mail, so communication by that method within CEAC is not complete. However, CEAC members appear on various e-mail listserves, receiving information from outside sources over which they have little control. When there is no communication directly between the CEAC members themselves on the subject, receipt of the same information would not be subject to the Sunshine law.

(a) E-mails between CEAC members may be similar to Non-Sunshine meetings:

- E-mails should be limited to providing general information available publicly, such as forwarding articles in the newspaper, etc.
- Discussion, comment, etc. should not be included, but rather reserved for CEAC meetings
- E-mails should reach as many as have e-mail, with alternate communication attempted to those who do not
- Copies should be made and distributed at the next CEAC meeting. The sender of the e-mail should bring copies to the meeting for distribution. If the sender includes Mary Jo in the e-mail distribution list, we will make a copy for the public records.

(b) From a CEAC member to a distribution list that includes one or more other CEAC members may not constitute a “discussion” between members

- E-mails should be limited to providing general information available publicly, such as forwarding articles in the newspaper, etc.
- CEAC member discussion, comment, etc. should not be included, but rather reserved for CEAC meetings, or, the other CEAC person should be deleted from the distribution list
- Copies should be made and distributed at the next CEAC meeting. The sender and/or the receiver of the e-mail should bring copies to the meeting for distribution. If Mary Jo is included in the e-mail distribution list or provided a forward copy, we will make a copy for the public records.