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Memorandum

To: Mayor Kirkland

cc: Town Commission

From: Brad Bettin

Re: Sunshine Law

Date: April 15, 2014

You advised

- Earlier today you were in a lunch meeting in a public place with an elected official from another community and representatives of an outside organization, the purpose of which was discussion of issues of interest to everyone involved.
- You invited one of our Commissioners to the meeting because he's particularly interested in the subject matter, to which you invited one of our Commissioners.
- While you were meeting, another one of our Commissioners came on the scene, sought to join the meeting.
- You expressed your concern about the Sunshine Law, but the second Commissioner would not leave.
- You called me and asked my advice.
- I told you that, given the meeting was in a public place, you weren't in a position to insist that the second Commissioner leave, which left you with one option: adjourn your meeting and reconvene (if at all) in a place where you had authority to control access to the meeting (such as your office or the office of one of the other participants).
- You report that you did adjourn the meeting, and that soon after, a third Commissioner appeared in the vicinity and was observed talking with the second Commissioner. You surmised that the third Commissioner's appearance at the site was the result of her being called by the second Commissioner.

DISCUSSION

Private communications between Commissioners to discuss matters which foreseeably will come before the Commission are prohibited by the Sunshine Law. The Sunshine Law applies to any gathering (formal or informal) of two or more Commissioners at which matters of public interest which may foreseeably come before the Commission are discussed. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So.3d 755, 764 (Fla. 2010).

Under the circumstances you relate:

- Had you continued with the meeting you describe in the presence of the second Commissioner, both of the Commissioners would be at risk of being deemed in violation of the Sunshine Law.
- The discussion between the second Commissioner and the third Commissioner (if she was called by the second Commissioner) may well have violated the Sunshine Law (presumably, the purpose of the call was to alert the third Commissioner to the meeting in which you were a participant).

There's been some thought that Commissioners could conceivably attend a common "private," i.e., "not noticed" meeting so long as they remained silent and did not communicate with each other during the same. I don't believe that distinction is viable. In *Finch v. Seminole County School Board*, 995 So.2d 1068 (Fla. 5th DCA 2008), members of a school board were held to have violated the Sunshine Law by participating in a bus tour (which included participants other than the elected officials) of neighborhoods which would be affected by proposed Board action even though the Board members were kept separate from each other, said nothing during the tour and did not vote during the tour. **Merely being in the same place as each other when information about a matter likely to come before the Board is being obtained is a violation if that "meeting" wasn't properly noticed and open to the public.**

CONCLUSIONS & RECOMMENDATIONS

1. As Mayor, you certainly have the power, right and authority to meet with anyone you wish to discuss Town business.
2. If you wish to invite a Commissioner to attend any such meeting, that is your prerogative, as is the decision of which Commissioner to invite.
3. It's reasonable for you to expect our elected Commissioners to be mindful enough of the Sunshine Law that they'll avoid any situation where a violation could be claimed. Given which, you should be able to hold a "Sunshine Law compliant" meeting with third parties in public and to invite one of our Commissioners to the same without incident.
4. With that said, if another elected Commissioner appears on the scene and does not

immediately absent himself / herself, then your only real option is to adjourn your meeting immediately. To do anything else risks having both the Commissioner you invited and the Commissioner who appeared uninvited accused of violating the Sunshine Law.

5. Which is an argument for scheduling such meetings for locations where one of the participants has control over access to the meeting, i.e., you meet in your office or the office of one of the other participants.
6. The circumstances you relate suggest at least some of our Commissioners are either unaware or unmindful of their obligations under the Sunshine Law. We can't have that happening; we can't have it continuing.