

CCLGL EXAM FINAL REVIEW

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Exam Outline

- Public Sector Liability
- Sovereign Immunity
- Civil Rights
- Public Finance
- Procurement/Contracts
- Land Use & Zoning
- Eminent Domain
- Legislative and QJ Practice
- Sunshine & Public Records
- Home Rule & Police Power
- Conflict of Interest & Financial Disclosure
- Ethics

Public Sector Liability & Civil Rights

	Coverage	Applicability	Liability	Defense	Remedies	SOL	Notes
42 USC §1981 (Same equal rights) 42 USC §1982 (Same property rights)	Race, as understood in 1866	Public & Private (but not State unless waive 11 th amend.) (any person)	Govt & individuals, generally NOT state gov't unless 11 th Amendment Immunity waived	•Absolute immunity •Qualified immunity	•Injunctive •Back pay •Reinstatement •Compensatory, against ind. And govt. •Punitive, against ind.	4 years	•Must use §1983
42 USC §1983	Deprivation of rights, privileges or immunities under color of law	Public (private if engaging in "state action")	Govt if violation due to custom or policy NOT Private persons unless engaging in State Action (color of law)	•AI •QI	•Injunctive •Back pay •Reinstatement •Atty fees/costs •Punitive, against ind.	4 years	•Only applicable for constitutional or federally protected rights •No respondent superior unless acting under policy, custom, final policy maker.
42 USC §1985	Conspiracy to interfere with civil rights of any protected class	Public & private individuals	Govt & individuals	•AI •No QI		4 years	
Title VII	Prohibits employment discrimination based on: Race Sex (pregnancy and orientation) Color National Org. Religion	Public & private with 15+ employees	Govt, no individuals	•Religious corp •Bona fide occupational qualification •Bona fide seniority or merit system •Professionally administered objective ability test •Communists, aliens	•Back pay •Front pay •Restored benefits •Reinstatement •Atty fees/costs (Δ must show suit frivolous, unreasonable or w/out foundation) •Equitable relief •Compensatory •Jury trial •Punitive (private only)	File w/ EEOC in 300 days; 90 days to file after right-to-sue notice (if no determination, 180 days to sue)	•Discrimination •Motivating factor •Harassment •Retaliation •But for Includes applicants

Public Sector Liability & Civil Rights

	Coverage	Applicability	Liability	Defense	Remedies	SOL	Notes
GINA	Prohibits insurance and employment discrimination based on genetics	Public & private with 15+ employees	Govt, no individuals	•Absolute immunity •Qualified immunity	•Same as Title VII	File w/EEOC in 300 days; 90 days to file after right-to-sue notice (if no determination, 180 days to sue) OR May file w/in 60 days after charge filed without RTS	•Doesn't apply to •Inadvertent request of family medical history •Health services offered by employer •Info used for monitoring workplace toxins •Law enforcement
Equal Pay Act	Prohibits Discrimination on the Basis of Sex within an establishment for work performed under similar working conditions and that requires equal skill, effort, responsibility	All employers engaged in interstate commerce or production of goods for interstate commerce (Same as FLSA)	Individual and government		•Difference in compensation •Liquidated damages (Actual back wages lost) •Atty fees/costs	•2 years; •3 years if willful violation	•Only applicable for constitutional or federally protected rights •No respondent superior unless acting under policy, custom, final policy maker.
ADEA	Prohibits Discrimination based on age (40+)	Public & private with 20+ employees	Govt, no individuals	•BFOQ reasonably necessary to operation of business •Differentiation based on reasonable factor other than age •Bona fide seniority system •Disparate impact from application of BF Ee benefit plan	•Back pay •Front pay •Restored benefits •Reinstatement •Atty fees/costs (Δ must show suit frivolous, unreasonable or w/out foundation) •Liquidated Damages if violation willful equal to actual loss	File w/EEOC in 300 days; 90 days to file after right-to-sue notice (if no determination, 180 days to sue) OR May file w/in 60 days after charge filed without RTS	Circuit split re: Job Applicants (not covered in 7th and 11th Circuits)

Public Sector Liability & Civil Rights

	Coverage	Applicability	Liability	Defense	Remedies	SOL	Notes
Rehabilitation Act	Prohibits discrimination against otherwise qualified Ees w/ disability	All federal agencies and entities that receive qualifying federal financial assistance (local and state gov)			•Equitable relief •Attorney's fees •Monetary damages (not punitive)	4 years	But for causation like ADEA
Americans with Disabilities Act	Prohibits Discrimination against otherwise qualified EE w/ disability	Private with 15+ Ees and all public employers	Gov't, no individual		•Back pay •Front pay •Restored benefits •Reinstatement •Compensatory •Punitive damages •Atty fees/costs •Equitable/injunctive relief (reasonable accommodation)	File w/ EEOC in 300 days; 90 days to file after right-to-sue notice	•Applies to job applicants •But for causation
FLSA	Sets minimum wage and overtime requirements	All employers engaged in interstate commerce/production of goods for interstate commerce except exempt Ees for overtime rules	Govt and individuals		•Unpaid overtime compensation •Unpaid minimum wages •Liquidated Damages •Atty's costs and fees	•2 years; •3 years if willful violation	

Public Sector Liability & Civil Rights

FL	Coverage	Applicability	Liability	Remedies	SOL	Notes
FMLA	Prohibits Ee from interfering with, restraining, or denying exercise of FMLA rights or discrimination against individual for opposing practice made unlawful by FMLA	All public employers and private employers with 50+ employees for each working day during each of 20 or more calendar workweeks in current or preceding year	Govt (circuit split on ind. Liability – 11th circuit says no)	•Lost wages, benefits, actual losses < 12 weeks •Prejudgment interest as liquidated damages •Equitable relief •Atty's fees/costs	•2 years; •3 years if willful violation	NDAA added two more leave entitlements: •Qualifying exigency leave •Military caregiver leave (up to 26 weeks)
USERRA	Prohibits Discrimination against Ees and applicants for membership in military		Gov't	•Lost wages/benefits •Prejudgment interest as liquidated damages •Equitable/injunctive relief •Atty's fees/costs	No SOL but SOL will apply if USSERRA is brought through Section 1983 claim	•Applies to job applicants
FCRA	Prohibits discrimination on basis of race, color, national origin, sex, pregnancy, handicap, marital status	Public & private w/ 15+ employees	Govt, no individuals	•Equitable relief •Punitive damages for private Ers capped at \$200k •Total recovery against public employer capped at section 768.28 limits	File w/FCHR in 365 days; 1 year to file after reasonable cause determination. If no reasonable cause determination within 180 days of filing, Ee may file suit so long as it's w/in 4 years of claim event. If FCHR finds no reasonable cause, Ee must request admin hearing in 35 days or suit is barred.	
FL Age Discrimination Act	Prohibits discrimination based on age (no 40 limit)	Gov't but not law enforcement or firefighters	No liability for seniority system, BF employee benefit plan, BFOQ, discharge/discipline for good cause	•Equitable relief		Employee within career service system must appeal to perc and others may file civil action

Public Sector Liability & Civil Rights

3. In 2000, City implemented an ordinance which prohibited City residents from holding a business tax receipt for an eating establishment unless the applicant was Scandinavian, because the City Commission believed "only Scandinavians knew how to cook." In 2000, just after the ordinance was enacted, Resident Ricardo, of Italian decent, applied for and was denied a business tax receipt for a restaurant based on the ordinance. In 2005, Resident Ricardo filed suit against the City under Section 1981 and Section 1983, for the denial of the business tax receipt. Resident Ricardo's claims are barred:

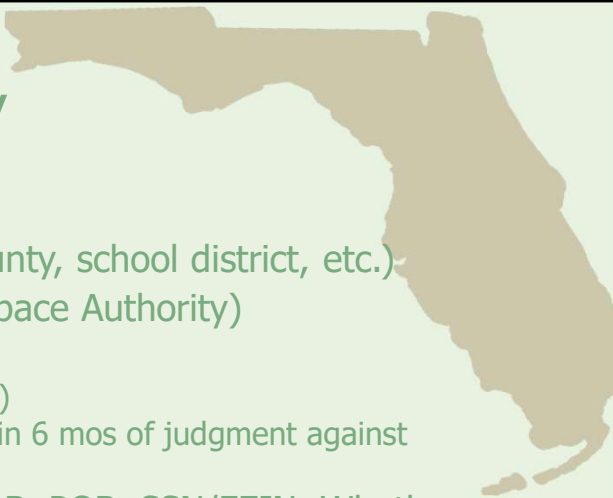
- a. by the statute of limitations.
- b. as municipalities cannot be sued under Section 1983.
- c. by the doctrine of qualified immunity.
- d. by the United States Constitution.

Sovereign Immunity

Section 768.28

- Who: State, Agencies, Counties, Cities, Constitutional Officers, Special Districts, Corporations acting as agency/instrumentality
- What: Negligent & Intentional Acts, not Contract Claims or Federal Claims
- Caps tort recovery at \$200,000/person; \$300,000/incident.
- Caps Atty's Fees to 25% of Recovery

Sovereign Immunity



Section 768.28 Notice of Claim

- Submitted to the entity (city, county, school district, etc.)
- DFS (unless city, county, or FL Space Authority)
- Within 3 years of the incident
 - unless for wrongful death (2 years)
 - Unless claim for contribution (within 6 mos of judgment against tortfeasor seeking contribution)
- Must include Claimant name, DOB, POB, SSN/FEIN, Whether Claimant owes over \$200 to State/Subdivision
- Entity has 6 mos to investigate unless it's MedMal, then 90 days

Sovereign Immunity

SOLs

- 4 Years
 - unless it' wrongful death then 2 years
 - but also see the conflict with the new general 2 year limitation in section 95.11 that passed in Ch. 2023-15, Laws of Fla.)
- Initial service must be made on head of agency (and DFS unless city, county or FL Space Authority)
- Entity has 30 days to respond

Sovereign Immunity

Com. Carrier Corp. v. Indian River Cnty., 371 So. 2d 1010 (Fla. 1979).
County/FDOT failed to maintain traffic control devices.

- Creates planning (no liability) /operational (potential liability) distinction
- Planning: basic policy decisions
- Operational: implementing that policy

Planning Activity

- Designing Landscape Area
- Traffic Management
- Expansion of infrastructure
- Staffing level decisions
- Establishment of Neighborhood Park

Operational

- Maintaining Established Landscape Area
- Maintaining Established Traffic Control Devices
- Maintaining Established Park or other Local Gov facilities

Sovereign Immunity

Triannon Park Condo. Ass'n Inc. v. City of Hialeah, 468 So. 2d 912, 917 (Fla. 1985). Owners allege condo shouldn't have received CO

- Can a governmental entity be liable in tort to property owners for negligent building inspectors in enforcing building code enacted pursuant to the police powers vested in that governmental entity?
- Operational, but no liability. Identifies additional classes of no liability action, including discretionary power to enforce compliance with laws (prosecutorial discretion):

(I) Legislative, permitting, licensing, and executive officer functions; - Never liability

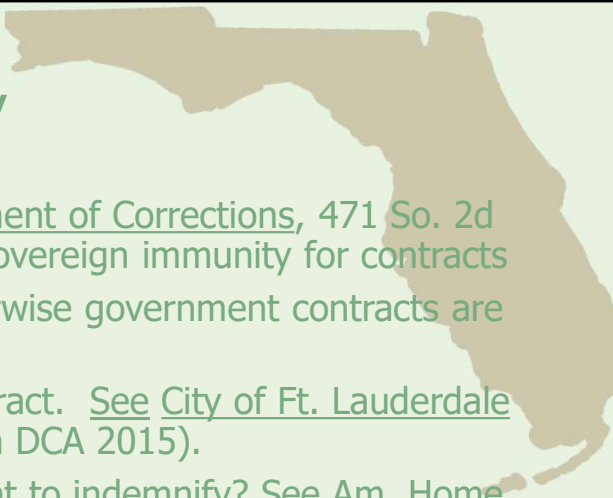
(II) Enforcement of laws and the protection of the public safety; - No Liability unless "special tort duty" created, such as when law enforcement officers become directly involved in circumstances which place people within a "zone of risk" [1] by creating or permitting dangers to exist, [2] by taking persons into police custody, [3] detaining them, or [4] otherwise subjecting them to danger. Pollock v. Fla. Dep't of

Highway Patrol, 882 So. 2d 928 (Fla. 2004)

(III) Capital improvements and property control operations – Sometimes Liability (planning/operational distinction)

(IV) Providing professional, educational, and general services for the health and welfare of the citizens – Sometimes liability (planning/operational distinction)

Sovereign Immunity



Pan-Am Tobacco Corp. v. Department of Corrections, 471 So. 2d 4 (Fla. 1984). Implied waiver of sovereign immunity for contracts

- Judicially created concept. Otherwise government contracts are effectively meaningless.
- Must be an express written contract. See City of Ft. Lauderdale v. Israel, 178 So. 3d 444 Fla. 4th DCA 2015).
- What about Local Gov agreement to indemnify? See Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp., 908 So. 2d 459 (Fla. 2005) and FDOT v. Schwefringhaus, 188 So. 3d 840 (Fla. 2016)

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ATTORNEYS AT LAW

Florida Supreme Court has held that cities can contractually waive sovereign immunity above statutory cap. Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp., 908 So. 2d 459 (Fla. 2005). Persuasive argument that Counties could also do so. Moral of the story is if waiving sovereign immunity, always include the language that you are only doing so within the limits prescribed by law and subject to the dollar value caps in 768.28,

Sovereign Immunity

2. The city of Miami Beach controls the beach area within the city limits pursuant to an agreement with the State of Florida, owner of the Beach. Under the terms of the agreement the city provides public restrooms, picnic tables and parking areas. The beach has not been designated by the city as a public swimming area and thus no lifeguards are provided although the city is aware that people use the area for swimming.

A guest in a local hotel ventured out onto the beach and while there rented a beach chair and umbrella from a concessioner licensed by the city. The guest decided to go for a swim and was dragged under by prevailing rip currents and drowned. Subsequently a wrongful death action was brought by the estate against the city, who after responding to the suit moved for summary judgment. At the hearing on the motion the trial court should:

- a. grant the summary judgment motion because the city does not have a duty of care to warn beachgoers of naturally occurring rip currents when it did not have control over the area and does not take express action to designate it a swimming area.
- b. grant the summary judgment motion because the city has the discretionary authority to operate or not operate swimming facilities and is immune from suit on that discretionary question.
- c. deny the summary judgment motion because the City controls the beach area and, therefore, had a duty of care to warn of dangers that were known or should have been known, and is not shielded from liability based on sovereign immunity.
- d. deny the summary judgment motion because it was reasonably foreseeable that people would use this area for swimming.

Public Finance

TRUE OR FALSE

Local governments in Florida can issue bonds backed by the taxing power of the local government without a referendum if such bonds mature in less than five years from the date of issuance.

FALSE: Local gov't can issue bonds without referendum if maturing less than **12 months** from date of issuance

Public Finance

TRUE OR FALSE

General obligation bonds maturing more than one year from the date of issuance can be issued only for capital projects or refunding purposes.

TRUE

Public Finance

TRUE OR FALSE

If a local government defaults on the payment of traditional revenue bonds, a bondholder can compel the local government to levy additional ad valorem taxes if necessary to pay the principal and interest on the revenue bonds.

FALSE: Revenue bonds are payable from a specific source of revenue and taxing power is **NOT** pledged.

Public Finance

TRUE OR FALSE

Special assessment bonds are not payable from ad valorem taxes and are considered revenue bonds for purposes of the constitutional referendum requirement.

TRUE

Public Finance

TRUE OR FALSE

The Constitution of the State of Florida, prohibits cities, counties and local governments from giving, lending or using their taxing power to credit or aid any corporation.

TRUE

Public Finance

TRUE OR FALSE

Local governments may only incur debt for a valid public purpose.

TRUE

Public Finance

TRUE OR FALSE

Local governments may, without voter approval, purchase vehicles under an installment sale contract under which the seller retains a purchase money security interest in the vehicle.

FALSE: Local governments cannot grant security interest in public property, including granting security interest in property, absent voter approval.

Public Finance

TRUE OR FALSE

Chapter 170, Florida Statutes, is the only method by which cities and counties may levy special assessments and issue special assessment bonds.

FALSE: Chapter 170 Florida Statutes is the general law providing for special assessment by municipalities. Assessments for counties are generally levied pursuant to an ordinance enacted under Chapter 125, Florida Statutes.

Public Finance

TRUE OR FALSE

Cities, counties and other local government entities in Florida are prohibited from issuing bonds unless the interest is exempt from federal income taxation.

FALSE: Interest on conduit financing not always exempt, “private activity bond”

Public Finance

TRUE OR FALSE

Existing ordinances and/or resolutions may limit the ability of a local government from issuing debt.

TRUE

Public Finance

TRUE OR FALSE

In determining whether a local government has duly created and perfected a security interest in pledged revenues, the requirements of Chapter 679, Florida Statutes (Uniform Commercial Code), must be satisfied.

FALSE: In 2001, the Florida Legislature adopted revisions to Florida's uniform commercial code relating to secured transactions (Ch. 679). Under the rewritten code, transfers by the governments and governmental entities continue to remain exempt from the provisions of the uniform commercial code relating to securing transactions (§679.1091(4)(n)).

Public Finance

TRUE OR FALSE

Chapter 75, Florida Statutes, provides a judicial proceeding pursuant to which bonds of a Florida local government can be declared valid prior to the issuance of such bonds.

TRUE

Public Finance

TRUE OR FALSE

Interlocal Agreements can be validated in circuit court under Chapter 75, Florida Statutes, if the agreement includes a payment obligation on the part of the local government.

TRUE

Public Finance

TRUE OR FALSE

Independent special districts must allege the creation of a trust indenture in a complaint for the validation of bonds to be issued by such special district.

TRUE

Public Finance

TRUE OR FALSE

Complaints for the issuance of bonds by a local government must be served upon the State Attorney for the circuit in which the complaint is filed.

TRUE

Public Finance

TRUE OR FALSE

Appeals of bond validations are filed with the District Court of Appeal.

FALSE: FSC has jurisdiction over bond validation appeals.

Public Finance

TRUE OR FALSE

If a bond issue is defeated at referendum, a new referendum can be held on the same bond issue no earlier than three months from the date of the first referendum.

FALSE: If a bond issue is defeated at referenda, no other referendum may be held with respect to such bonds for the same purpose for a period of 6 months.

Public Finance

TRUE OR FALSE

Notice of a bond referendum must be published at least 30 days prior to the referendum, at least twice, once in the third week and once in the fifth week prior to the date of the referendum.

TRUE

Public Finance

TRUE OR FALSE

If the issuer initiates a bond validation proceeding after a bond referendum, a taxpayer may still bring a separate test suit to determine the validity of the referendum.

FALSE: Binding effect of validation is based upon the doctrine of res judicata. Section 75.06, Florida Statutes. Validation judgments may still be subject to collateral attack with respect to issues not raised and adjudicated in validation proceedings.

Public Finance

TRUE OR FALSE

Bond information forms required to be filed with the Division of Bond Finance must be filed for all bonds issued by a local government in Florida, including conduit financings and obligations maturing in less than one year.

FALSE: C. Bond Information Forms (Combined Form 2003/2004)

1. As soon as possible after general obligation or revenue bonds are issued, Form 2003/2004 must be filed with the Division of Bond Finance.
2. Form 2003 includes general information about general obligation or revenue bonds, including names and addresses of participants.
3. Form 2004 (separate versions for competitive and negotiated sale) includes required disclosure of any fee paid by underwriter and issuer as well as underwriting spread components and other attorney and consultant fees paid; both must be filed within 120 days of issuance.
4. Form 2004 forms need not be filed for certain conduit financings (industrial development bonds, health facilities revenue bonds, educational facilities revenue bonds).

Public Finance

TRUE OR FALSE

Failure to comply with the reporting requirements is a capital offense, punishable by death or life in prison for the chief financial officer of the local government.

FALSE: Failure to comply with these reporting requirements may be reported to the Legislative Auditing Committee and could result in withholding of state funds.

Public Finance

TRUE OR FALSE

All fees paid by an underwriter in connection with the purchase of local government bonds must be disclosed to the issuer prior to the sale of such bonds, but no fees, including finders fees, have to be disclosed in the official statement for the bonds.

FALSE: Disclosure of fees paid by underwriter, including any finder's fee, must be made prior to sale of general obligation or revenue bonds. Finder's Fee must be disclosed in Official Statement of general obligation or revenue bonds.

Public Finance

TRUE OR FALSE

Notice of the sale of bonds by a local government must be published at least 30 days prior to the sale date.

FALSE: For competitive sales, notice of sale must be published at least 10 days prior to sale.

Public Finance

TRUE OR FALSE

There are no limitations on the rate of interest which local government bonds may bear.

FALSE: Section 215.84, Florida Statutes sets forth the maximum rate of interest for local government bonds. Chapter 159 Part VII sets forth a higher rate for taxable bonds; though Section 215.84 applies to both taxable and tax-exempt bonds, Chapter 159, Part VII, Florida Statutes, is more recent, expressly supersedes any conflicting law regarding the issuance of taxable bonds (Section 159.824, Florida Statutes).

Public Finance

TRUE OR FALSE

If the members of a special district's governing body are subject to removal by the governing body of a single county, the special district is a "dependent special district."

TRUE

Public Finance

TRUE OR FALSE

A district that includes more than one county is always an independent district.

TRUE

Public Finance

TRUE OR FALSE

Only local resolutions and ordinances govern the investment of funds by a local government.

FALSE: There is specific statutory authority for

- Counties (Chapter 125, Florida Statutes);
- Cities (Chapter 166, Part III, Florida Statutes);
- School Boards (Chapter 1011, Florida Statutes); and
- Special Districts (Chapter 218, Part III, Florida Statutes).

Additionally, Sect. 218.415 limits the types of investments which may be used for the investment of surplus funds of local governments to certain investments listed in the statute.

Public Finance

TRUE OR FALSE

There are no limitations on the investment of local government funds in derivative financial products, other than local ordinances or resolutions.

FALSE: Investments in derivative financial products must be specifically authorized and may be considered only if the chief financial officer has developed sufficient understanding of the derivative products and has the expertise to manage them. The use of reverse repurchase agreements or other forms of leveraged investments shall be prohibited or limited to transactions where the proceeds are intended to provide liquidity and for which the unit of local government has sufficient resources and expertise.

Public Finance

TRUE OR FALSE

If a local government reasonably expects the project financed with proceeds of its tax-exempt bonds to comply with tax law at the time of issuance no continuing compliance is legally required.

FALSE: Local government issuers of tax-exempt bonds should have in place compliance programs to monitor and document activities post issuance. This encourages the prevention of problems and timely remediation, should a problem arise.

Public Finance

MULTIPLE CHOICE

1. Local governments may issue bonds payable from ad valorem taxes without a referendum if such bonds:
 - (a) mature within 12 months
 - (b) mature within 24 months
 - (c) mature within 5 years
 - (d) none of the above

Public Finance

MULTIPLE CHOICE

2. Bonds subject to the referendum requirement may be issued for:
- (a) any public purpose
 - (b) only capital projects
 - (c) capital projects or operating expenses
 - (d) any purpose approved at referendum

Public Finance

MULTIPLE CHOICE

3. Bonds secured by a covenant to budget and appropriate legally available non-ad valorem revenues for the payment of debt service are:
- (a) not permitted under Florida law
 - (b) permitted but must be validated first
 - (c) ~~permitted but only for cities and charter counties~~
 - (d) permitted

Public Finance

MULTIPLE CHOICE

4. Local governments with taxing power may not grant a security interest in public property unless:
- (a) the security interest is a purchase money security interest and the creation thereof is approved by ordinance after a public hearing
 - (b) the creation of such security interest is approved at referendum
 - (c) a super majority of the governing body of the local government approves after a public hearing
 - (d) none of the above

Public Finance

MULTIPLE CHOICE

5. Authority for a charter county to levy special assessments and issue bonds secured by a pledge of such special assessments is found in:
- (a) Chapter 125, Florida Statutes
 - (b) Chapter 170, Florida Statutes
 - (c) Home Rule Powers
 - (d) all of the above

Public Finance

MULTIPLE CHOICE

6. Restrictions on a local government's ability to issue or incur debt may be found in:
- (a) Constitution, charter, statutes, ordinances, resolutions and contracts
 - (b) Constitution and statutes only
 - (c) Constitution, charter and statutes only
 - (d) none of the above

Public Finance

MULTIPLE CHOICE

7. Once a local government irrevocably pledges revenues to the payment of its bonds, this pledge can be revoked if:
- (a) the bonds are no longer outstanding
 - (b) the local government replaces revenues with equally credit-worthy payment source
 - (c) the revenues pledged were state revenues and the state reserved the right to revoke the funding source
 - (d) (a) and (c)

Public Finance

MULTIPLE CHOICE

8. An Order to Show Cause in a bond validation proceeding must be published:
- (a) once a week for four weeks, the first publication at least 30 days prior to the hearing date
 - (b) once at least 20 days prior to the hearing date
 - (c) once a week for two weeks, the first publication at least 20 days prior to the hearing date
 - (d) none of the above

Public Finance

MULTIPLE CHOICE

9. Which of the following would not be proper for judicial review in a bond validation hearing?
- (a) Whether the capital project to be financed is economically feasible
 - (b) ~~Whether local government complied with applicable election procedures in conduct of bond referendum~~
 - (c) Whether an interlocal agreement which obligates a local government to pay money is valid
 - (d) Whether remedies provided in a bond resolution are valid
 - (e) all of the above
 - (f) none of the above
 - (g) A and D only
 - (h) A only

Public Finance

MULTIPLE CHOICE

10. If a bond issue is defeated at referendum, no other referendum may be held with respect to such bonds for the same purpose for a period of:
- (a) 90 days
 - (b) one year
 - (c) six months
 - (d) none of the above

Public Finance

MULTIPLE CHOICE

11. Notice of bond referendum must be published:
- (a) once, at least 45 days prior to the election
 - (b) at least twice, once in the fifth week and once in the third week prior to the week of the election, the first publication of which must be at least 30 days prior to the election
 - (c) once a week for three weeks, the first publication of which must be at least 45 days prior to election
 - (d) none of the above

Public Finance

MULTIPLE CHOICE

12. Local governments must provide advance notice of sale to the Division of Bond Finance for:
- (a) all debt obligations of a local government
 - (b) ~~general obligation bonds only~~
 - (c) general obligation and revenue bonds, but only if the bonds mature in more than one year
 - (d) general obligation bonds and revenue bonds, but not special assessment bonds

Public Finance

MULTIPLE CHOICE

13. Form 2004, with respect to sale information must be filed:
- (a) for all general obligation bonds and revenue bonds maturing in more than one year, but not bond anticipation notes
 - (b) same as (a) but excluding conduit financings
 - (c) same as (a) but excluding conduit financings and competitively sold bonds
 - (d) same as (a) but excluding conduit financings and privately placed bonds

Public Finance

MULTIPLE CHOICE

14. Impact fees can be used by local governments for:
- (a) renewal and replacement of existing facilities only
 - (b) expansion facilities only
 - (c) any public purpose
 - (d) none of the above

Public Finance

MULTIPLE CHOICE

16. Investment of local government surplus funds are:
- (a) ~~limited by statute to United States Treasury obligations~~
 - (b) limited to certain investments unless the local government has a formal written investment policy
 - (c) limited by statute, but only with respect to special districts and non-charter counties
 - (d) none of the above

Procurement/Contracts

Federal Regs: 2 CFR 200

- local governments must comply with the “most restrictive” procurement requirements of both federal and state law
- and their own local policies. 2 CFR § 200.318

48 CFR part 2, subpart 2.1

- Federal Micropurchase Threshold: \$10k
- Simplified Acquisition Threshold: \$250k

Procurement/Contracts

State Statute

- 125 and 189 – counties and special districts
- 180.24, 255.0525, and 255.20 – advertising
- 255.05 – bonds
- 255.065 – public private partnerships
- 688 and 812.081 – trade secrets***

Governing Law: Statute of Frauds

The Statute of Frauds operates as a defense to the enforcement of a contract. Specified agreements must be in writing or evidenced by some type of memorandum to be enforceable. See § 672.201, Fla. Stat. (2022) (Florida's version of the UCC); §§ 725.01-725.08, Fla. Stat. (2022) (unenforceable contracts). The following are required to be evidenced by a writing:

- promises by executors or administrators to pay estates' debts out of their own funds;
- promises to answer for debt/default of another (surety);
- promises made in consideration of marriage;
- promises creating an interest in land (however, interests for one year or less are generally not subject to Statute of Frauds);
- promises that cannot be performed within one year (year runs from date of agreement and not date of performance);
- agreements for the sale of goods for \$500 or more-except for specially manufactured goods, written confirmation of an oral agreement, admissions in a pleading or court that contract existed, or partial payment or delivery was made and accepted;
- health care guarantees;
- debt barred by statute of limitations;
- newspaper subscriptions;
- home solicitation sales;
- home improvement contracts;
- and credit agreements.

Governing Law: Statute of Frauds

- The Statute of Frauds is satisfied if the writing contains the following:
 - identity of parties sought to be charged,
 - identification of contract's subject matter, terms and conditions of agreement,
 - recital of consideration, and
 - signature of party to be charged.
- The Statute of Frauds is particularly relevant in relation to change orders and/or amendments in contracts. It is important to document any of these changes in writing in order to avoid litigation or disputes.

Procurement/Contracts



Procurement Methods

- Competitive Bids: scope easily identified; usually advertised via Invitation to Bid (ITB); primary criteria is PRICE
- Competitive Proposals: ITB not possible but scope can be sufficiently identified; usually by Request for Proposals (RFP); in addition to price, factors like experience, proposal, ability, availability can be used & must be disclosed in the RFP; negotiation OK within reason, not for required terms of scope or material terms like price
- Invitation to Negotiate: ITB, RFP not possible; enables negotiation with multiple vendors to achieve best value as basis of award. AT&T Corp. v. Dep't of Mgmt. Servs., 201 So. 3d 852 (Fla. 1st DCA 2016).
- Piggybacking
 - Accela, Inc. v. Sarasota Cnty., 993 So. 2d 1035 (Fla. 2nd DCA 2008) (upholding challenge to "piggyback" contract);
 - National Chem. Labs, Inc. v. Broward Cty. School Bd., No. 21-1530 (DOAH Sep. 8, 2021) (applying Accela and rejecting challenge to piggyback transaction).

Competitive Procurement Methods CCNA § 287.055, Fla. Stat. (2022)



applies to services of an architect, professional engineer, landscape architect, registered surveyor or mapper



for a project: fixed capital outlay or planning study



Related to (1) construction over \$325k; (2) planning study or activity fee exceeds \$35k



Requirements

Uniform public announcements

Competitive selection – NO COMPENSATION UNTIL NEGOTIATION

Negotiation after ranking

Must consider if firm is MBE-Certified under s. 287.0943, Fla. Stat.



CCNA Continuing Contracts: max construction cannot exceed \$4m; Max fee for individual study \$500k

Bid Protests: State Claims Protest Bond

Section 287.042(2)(c), Florida Statutes, requires any person protesting under the APA, to post a bond in an amount equal to 1% of the estimated contract amount at the time of filing the formal written protest.

Local governments can similarly require a protest bond under their governing law. See *Zayo Group, LLC v. School Bd. of Polk Cnty.*, No. 21-1708 (DOAH Sep. 17, 2021) (1% calculation based on initial contract term, not all possible renewals).

Local Preference: Types

- Pure local preference ordinances or policies automatically award a fixed percentage in favor of a local bidder; The percentage tends to be around 5%.
- Tie bid: awards contract to local business when tied in price
- Employment Oriented: preference for bidders who employ a fixed percentage of local citizens/business
- Reciprocal: applies a foreign localities preference standards in favor of local bidders competing against foreign bidder.

Section 255.05 Bonds

- (18) "Lienor" means a person who is:
 - A contractor;
 - A subcontractor;
 - A sub-subcontractor;
 - A laborer;
 - A materialman who contracts with the owner, a contractor, a subcontractor, or a sub-subcontractor; or
 - A professional lienor under s. 713.03;
- making payments to all persons defined in s. 713.01 who furnish labor, services, or materials for the prosecution of the work provided for in the contract.
- Bond itself need not reference statute for limitations provisions to apply

Change Orders and Amendments

- Should amendments comply with competitive bidding requirements?
- Writing? Contract provisions generally provide that Amendments be in writing. Florida law requires written change orders on public projects where express terms of the governmental entity's contract contains such a provision. Courts must balance the doctrine of sovereign immunity against holding public entities more accountable for cost increases to contractors.
- An implied contract may arise out of an express contract where the contractor is required to perform "extras"; an implied theory is barred only if the express contract concerns the same subject matter as the implied contract. F.H. Paschen, S.N. v. B&B Site Dev., Inc., 311 So. 3d 39 (Fla. 3d DCA 2021).
- Damages? If the contractor seeks only to recover damages owed for work performed within the scope of the contract, and not to modify the scope of work, then the contractor is not required to follow mandatory dispute resolution procedures regarding extra work. Miami-Dade Cty. Expressway Auth. v. Elec. Consultants Corp., 300 So. 3d 291 (Fla. 3d DCA 2020).

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Amendments?

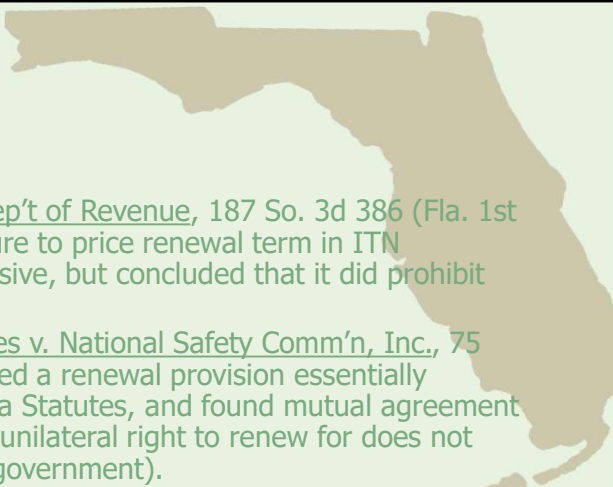
Compare *Asphalt Paving Sys., Inc. v. Anderson Columbia*, 264 So. 3d 1110 (Fla. 1st DCA 2019) (petition alleging that state agency change order failed to meet statutory requirement for public bidding exemption established party's standing and entitled it to hearing under Chapter 120, Florida Statutes) and *Op. Att'y Gen. Fla. 2003-29* (Jun. 25, 2003) (city may not modify a utility O&M contract to include repairs and capital improvements in excess of no-bid maximums prescribed by city's charter and by state law without seeking bids for additional work) *Grove Key Marina, Inc. v. Sakolsky*, 383 So. 2d 695 (Fla.

3d DCA 1980) (where 1973 lease had been executed as the result of competitive bidding process, but there was no competition relating to later amendments, in the absence of requirement of expenditure the amendments were not void).

Writing?

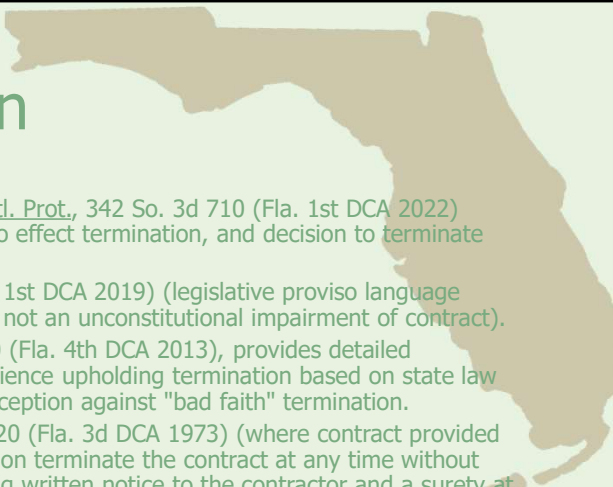
Cty. of Brevard v. Miorelli Eng'g, Inc., 703 So. 2d 1049 (Fla. 1997) (contractor not entitled to recovery for changes without a written change order). b. Ajax Paving Indus., Inc. v. Charlotte Cty., 752 So. 2d 143 (Fla. 2d DCA 2000) (distinguished claim in Miorelli as one for damages not covered in the original contract, whereas Ajax claimed damages for work and materials clearly addressed in the original contract between the parties). c. Acquisition Corp. of Am. v. Am. Cast Iron Pipe Co., 543 So. 2d 878 (Fla. 4th DCA 1989) (enforceability of written change orders).

Contract Renewal



1. Xerox State & Local Solutions, Inc. v. Dep't of Revenue, 187 So. 3d 386 (Fla. 1st DCA 2016), rejected argument that failure to price renewal term in ITN procurement rendered offer non-responsive, but concluded that it did prohibit agency from later renewing contract.
2. Dep't of Highway Safety & Motor Vehicles v. National Safety Comm'n, Inc., 75 So. 3d 298 (Fla. 1st DCA 2011), discussed a renewal provision essentially identical to section 287.058(1)(f), Florida Statutes, and found mutual agreement of the parties is required for renewal; a unilateral right to renew for does not exist for either the private party or the government).
3. Dep't of Corrections v. C&W Food Serv., Inc., 765 So. 2d 728 (Fla. 1st DCA 2000) (despite renewal clause for two additional one-year periods, renewal is not a unilateral right).

Contract Termination



1. Fla. Env'tl. Reg. Specialists, Inc. v. Fla. Dep't Env'tl. Prot., 342 So. 3d 710 (Fla. 1st DCA 2022) (contract "did not require any magic language" to effect termination, and decision to terminate did not implicate open meeting law).
2. Northwood Assocs. v. Ertel, 265 So. 3d 665 (Fla. 1st DCA 2019) (legislative proviso language prohibiting use of funds to pay for certain leases not an unconstitutional impairment of contract).
3. Handi-Van, Inc. v. Broward Cnty., 116 So. 3d 530 (Fla. 4th DCA 2013), provides detailed discussion of government termination for convenience upholding termination based on state law contract analysis and no sympathy for federal exception against "bad faith" termination.
4. Rollins Servs. v. Metro. Dade Cnty., 281 So. 2d 520 (Fla. 3d DCA 1973) (where contract provided that "the authority may at its option and discretion terminate the contract at any time without any default on the part of the contractor by giving written notice to the contractor and a surety at least ten (10) days prior to the effective date of the termination set forth in notice," such unilateral termination provision can be enforced because specifically reserved in the contract).

Contract Damages

1. Broward Cty. v. CH2M Hill, Inc., 302 So. 3d 895 (Fla. 4th DCA 2020) (in professional malpractice claims against licensed engineer and breach of contract claims against contractor, trial court may allocate damages on comparative fault basis pursuant to section 768.81, Fla. Stat., rather than hold breaching parties jointly and severally liable).
2. FDEP v. ContractPoint Florida Parks, LLC, 986 So. 2d 1260 (Fla. 2008) (section 11.066, Florida Statutes, does not require specific legislative appropriation before governmental entity can be required to pay valid judgment entered for breach of contract with private entity).
3. Martin Cnty. v. Polivka Paving, Inc., 44 So. 2d 126 (Fla. 4th DCA 2010) (to recover damages, contractor must prove that gov't delay caused indefinite standby, so contractor couldn't take additional work).
4. Triple R Paving, Inc. v. Broward Cnty., 774 So. 2d 50 (Fla. 4th DCA 2000) ("no damage for delay" clause unenforceable when the delay results from fraud or bad faith).
5. C.A. Davis, Inc. v. City of Miami, 400 So. 2d 536 (Fla. 3d DCA 1981) (upholding "no damage for delay" clause).

Procurement/Contracts

5. You represent an asphalt supplier to a subcontractor to a contractor for Pretty DOT in Pretty County, Florida. Pretty has paid the contractor, and supposedly, the contractor paid the subcontractor, in full and received a general release in favor of itself and the surety. However, the subcontractor did not pay your client. The contractor and subcontractor have filed for bankruptcy protection. Your client wants payment from the performance bond, even though your client failed to comply with all of the notice and time requirements contained in section 255.05(2) when perfecting these claims. You advise your client:

- a. Statutory notice and time limitation provisions may be enforceable, even where bond at issue does not contain reference to those provisions as required by statute.
- b. The bond should be treated as a "common law bond," subjecting the bond to the more general statute of limitations because the bond did not contain the notice essential by statute.
- c. The statute only applies to state buildings, and not roads constructed by counties.
- d. To sue Pretty County, because they should have caught the mistake during their procurement process.

Land Use/Zoning

- Ch 163 Community Planning Act (cities and counties)
- Ch 125 Counties authorizes
 - Comprehensive plan
 - Establish, coordinate, and enforce zoning and business regulations necessary for protection of the public
 - Building, housing, and other technical codes and regs
 - Provide roads and sewer
- Ch 166 Cities authorizes
 - Any power for municipal purposes except where expressly prohibited

Land Use/Zoning

- Section 163.3167, F.S. provides specific authority for adoption of comprehensive plan and management of growth.
- Section 163.3167(1) grants both municipalities and counties power and responsibility for:
 - Plan for future development and growth
 - Adopt and amend comprehensive plans to guide future development and growth
 - Adopt appropriate land development regulations

Land Use/Zoning

Comp Plan Requirements

- Must identify a local planning agency
- Provide for 5 and 10 year planning horizon
- Elements
 - Capital Improvement Element
 - Future Land Use Element
 - Intergovernmental Coordination
 - Traffic circulation element (transportation element)
 - General sewer, solid waste, drainage and potable water and natural groundwater aquifer recharge element
 - Recreation and open space
 - Conservation
 - Housing element—provide for creation and preservation of affordable housing

Comprehensive Plan Required Elements

- Intergovernmental Coordination (Provides for identifying and implementing joint planning areas & joint infrastructure service areas and provide for dispute resolution)
- Traffic circulation element (transportation element)
- General sewer, solid waste, drainage and potable water and natural groundwater aquifer recharge element
- Recreation and open space
- Conservation
- Housing element—provide for creation and preservation of affordable housing

Capital Improvement Element

- Concurrency: Must set forth minimum levels of service for potable water, wastewater, and drainage
- May establish levels of service for transportation, schools, and parks (Note: interlocal still needed for schools)
- Must address how to correct existing facility deficiencies
- Element required to cover at least 5-year period and must be reviewed annually
- Must include projected revenue sources
- Projects need to be identified as funded or unfunded

Future Land Use Element

- Must include distribution for residential, commercial, industrial, agricultural, recreational, conservation and public uses
- Should provide appropriate allocation of land to ensure balance of uses to foster vibrant viable communities and economic development opportunities
- Future Land Use Element to include a Future Land Use Map
- Long range planning tool (usually a 20-year time horizon)
- Must include distribution of uses for residential, commercial, industrial, agricultural and other key uses
- Must provide a balance of use to foster vibrant viable communities and economic development opportunities
- Must address compatibility
- Encourage recreational and commercial waterfronts Encourage schools near residences
- Protect historic resources

Land Use/Zoning

Expedited State Review

- 2 hearings – transmittal and adoption
- Adopted plan sent to State Land Planning Agency
- Adversely affected person (someone who has an adverse interest which exceeds in degree the general interest of the community) may file petition with DOAH within 30 days
- DOAH issues recommended order:
 - In compliance - goes to state land planning agency who either issues final order concurring or send to Administration Commission for final action
 - NOT in compliance – goes to Admin. Commission for final order; if no action taken within 90 days, then recommended order is final; noncompliance Admin Comm may penalize by way of receipt of grants or infrastructure funding

Land Use/Zoning

State Coordinated Review

- Applies to areas of critical state concern, propose rural land stewardship, propose a sector plan or amendment thereto, newly incorporated municipalities, developments subject to this process
- Public hearing then transmitted to reviewing agencies & other requesting governments within 10 days of hearing
- Reviewing agencies have 30 days to send comments to local government
- State Land Planning Agency ("Agency") issues ORC Report (Objections, Recommendations, & Comments) as to whether plan is in compliance; also identifies adverse impacts to state resources and how to mitigate
- After comments received, local government holds adoption hearing
- After adoption, Agency has 45 days to determine compliance and issue Notice of Intent on Agency website
- Amendment goes into effect upon posting of Notice of Intent, unless challenged
- Affected person may file a petition with DOAH; Agency challenge limited to comments provide after transmittal

Land Use/Zoning

Small-Scale Review

- 50 acres or less (or 100 acres if site within rural area of critical concern, pursuant to Sec. 288.0656(2)(d), Florida Statutes)
- For map amendments, text can be included so long as no text change to goals, policies, & objectives of the local comp plan
- Review does NOT require transmittal hearing
- Upon adoption at public hearing, an affected person may file a petition within 30 days of adoption
- Effective 31 days after adoption, unless challenged
- Hearing shall be held within 60 days of assignment of ALJ
- Parties to the hearing will be petitioner, local government and any intervenor; State Land Planning Agency cannot intervene
- Standard of review is fairly debatable

Land Use/Zoning

Other Ch 163 Provisions

- Amendments to comp plan can be done as often as desired, Sec. 163.3187, Florida Statutes
- Sector plans are intended for areas of at least 5,000 acres and shall emphasize urban form, protect regionally significant resources, and protect public facilities, Sec. 163.3245(1), Florida Statutes
- Special requirements for jurisdictions with a military installation within the boundary; must send any land development regulation amendments to the installation commanding officer if will affect the intensity, density, or use in close proximity to the installation, Sec. 163.3175, Florida Statutes.
- Decision on amendment to comp plans are review on a fairly debatable standard of review, a rule of reasonableness
- Every 7 years each local government must review comp plan for consistency with any statutory changes that have been enacted, Sec. 163.3191, Florida Statutes.
- Once comp plan is adopted, the requirements of the comp plan and all its elements are strictly applied and compliance of other land use and zoning regulations and project approvals are reviewed on basis of strict scrutiny
- All 3 types of Comp Plan processes require challenge through Ch.120 Administrative Law challenge which is reviewable by the Governor and Cabinet (Administration Commission)

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Manatee Co v Mandarin Development Inc., 301 So.3d 372 (Fla. 2d DCA 2020)
Constitutional Challenge -

Facial constitutional challenge - Statute of Limitations for a land use ordinance begins to run at the point of enactment or adoption.

As applied constitutional challenge – statute of limitations of a land use regulation would begin at the time of regulation adoption or property acquisition, is a later date, as that is when the property owner would have a bona fide need for a declaration of rights. Coastal Development of North Florida v City of Jacksonville Bch, 788 So.2d 204 (Fla. 2001) Standard of review is fairly debatable.

Island Inc. v City of Bradenton Beach, 884 So.2d 107 (Fla 2d DCA 2004) Fairly debatable standard is rule of reasonableness.

The Realty Associates Fund IX, v Town of Cutler Bay, 208 So.3d 735 (Fla. 3d DCA 2016)

Once comp plan adopted, the requirements of comp plan and all its elements are strictly applied and compliance of other land use and zoning regulations and project approvals are reviewed on basis of strict scrutiny.

Land Use/Zoning

Land Development Regulations (LDRs)

- Must be consistent with and implement the comprehensive plan and at a minimum:
 - Regulate the subdivision of land
 - Regulate the use of the land and water to ensure compatibility of adjacent uses and provide for open space
 - Provide for protection of potable water wellfield
 - Regulate areas subject to flooding and provide for drainage and stormwater management
 - Protect environmentally sensitive lands
 - Regulate signage
 - Provide public facilities and service meet or exceed the standards provided in the CEI
 - Ensure safe and convenient traffic flow and address parking
 - Maintain existing density of residential property or RV parks if intended for residential use in unincorporated areas
 - Incorporate preexisting development orders
- Zoning is optional in LDRs but inclusionary zoning, planned unit developments, impact fees and performance zoning are encouraged
- Zoning identifies the current uses allowed, while Comprehensive Plans are long range uses – the FLU
- Compliance of a Development Order with the Comprehensive Plan is based on the terms of the Comprehensive Plan not the terms of the implementing LDRs or zoning.
- Development Agreements, s. 163.3227, Fla. Stat., limits 30 years, s. 163.3229, Fla. Stat.
- Rural Land Stewardship Areas, s. 163.3248, Fla. Stat., 10k+ Acre overlay designed to establish protection of natural resources/retain rural areas without affecting underlying permitted uses, densities; credits can be sent/received
- Urban Infill/Redev Areas, s. 163.2517, Fla. Stat., targeting ec dev, job creation, housing etc.
- Code must specifically provide for exceptions

Land Use/Zoning

Exceptions to LDRs

- Conditional uses/special exceptions
 - Require public hearing
 - Usually binding site plan
 - Applicant must show it meets criteria, gov't must prove inconsistency w/ Comp Plan for denial
- Non-conformities– use in place before Code & may continue so long as not changed
- Vested Rights– developer relied in good faith on act/omission and made substantial expenditure/change
- Variances
 - Usually dimensional
 - Owner didn't create the need
 - No reasonable use without variance
 - Doesn't create unfair benefit
 - Consistent w/General Intent of the LDRs and doesn't harm the area

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Conditional Uses and Special Exceptions:

Irvine v. Duval County Planning Comm'n, 495 So.2d 167 (Fla. 1986) Generally, Conditional Uses, including the terms "Special Exception," and "Special Permit" refer to uses which are permitted if certain general criteria are met. The initial burden to establish compliance with criteria is on applicant, but it shifts to local government to establish that the use does not meet the criteria and is, in fact, adverse to the public interest.

Cap's-On-The-Water, Inc. v. St. Johns County, 841 So.2d 507 (Fla. 5th DCA 2003), reh. den., rev. den. 851 So.2d 728 (Fla. 2003) –criteria must be sufficiently detailed so as not to be subject to whimsical or capricious application or unbridled discretion.

Vested Rights (Equitable Estoppel) - a regulation is enacted or modified, there arises a possibility that a property owner may claim a vested right to proceed with development as if the new or revised regulation had not been adopted.

The test:(1) relied in good faith; (2) upon some act or omission of the government; and (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the acquired right

Franklin County v. Leisure Prop., Ltd., 430 So.2d 475 (Fla. 1st DCA 1983);

City of Hollywood v. Hollywood Beach Hotel Co., 283 So.2d 867 (Fla. 4th DCA 1973), rev'd in part, 329 So.2d 10 (Fla. 1976) Legislative vesting - granted to projects which

have received a certain level of approvals, Sec. 163.3167(5), Florida Statutes.

Edgewater Beach Owners Association, Inc. v. Walton County, Florida, 833 So. 2d 215 (Fla. 1st DCA 2002), rev. den. 845 So.2d 889 (Fla. 2003) Variances –

Nance v. Town of Indiatlantic, 419 So.2d 1041 (Fla. 1982) - An exemption granted from certain land development regulations where literal enforcement of the provisions of land development regulations would result in an unnecessary hardship

Wolk v. Board of County Commissioners of Seminole County, 117 So.3d 1219 (Fla. 5th DCA 2013) - reviewing a decision regarding a variance request, the Court must review whether there is substantial competent evidence on the record to support whether the variance review criteria in the applicable code have been met

City of Satellite Beach v. Goersch, 217 So.3d 1143 (Fla 5th DCA) - applicant carries the burden to establish the criteria necessary to grant the request is met

Herrera v. City of Miami, 600 So.2d 561 (Fla. 3d DCA 1992), rev. den. 613 So.2d 2 (Fla. 1992) - strict application of the land development regulations will work an undue hardship on the applicant

City of Jacksonville v. Taylor, 721 So.2d 1212 (Fla. 1st DCA 1998); rev. den. 732 So.2d 328 (Fla. 1998) - grant of the variance will be consistent with the general intent of the regulations and not harm the area

Land Use/Zoning

Timing for Processing Development Orders

- Sec. 125.022(1) F.S. Counties; Sec. 166.033(1), F.S.
- Municipalities
- 30 days for local government to determine completeness of application
- 30 days for applicant to respond
- Local government must approve, deny, approve with conditions within 180 days after determining an application is complete for quasi-judicial matters and 120 days for other applications

Developments of Regional Impact(DRI)

- Sec. 380.06. Florida Statutes, required a special review for a project which may significantly affect more than one jurisdiction
 - Large projects
 - Unique projects
- Slowly being phased out; not required for new development
- Existing DRI development orders remain in effect unless abandoned

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Site Plan Review -

For Planned development zoning, generally requires the approval of a site plan by the governing body at a public hearing. The level of detail required at the public hearing level can vary greatly from one jurisdiction to another. Site Plan approval may also be conditioned by the local government. Howard v. Murray, 184 So.3d 1155 (Fla.1st DCA 2015). Development rights attributable to the larger parent tract pursuant to an approved site plan do not appear to automatically pass with conveyance of the fee simple interest of a portion of the parent tract and no automatic transfer of a specific portion of the development rights allocated to the parent parcel with if only title is conveyed at the time of transfer. For development permits filed after July 1, 2012, the local government may not require as a condition of processing or approval that the applicant obtain a permit or approval from any state or federal agency unless the agency has already issued final agency action denying the federal or state permit. Sections 125.022 (County) and 166.033 (Municipalities), Florida Statutes.

Land Use/Zoning

6. Prior to purchasing a vacation home in Key West the property owner approached the city attorney to be sure the city would allow the unit to be rented. The city attorney, interpreting the current city ordinance, assured the property owner that the property could be used for short term rentals so long as both the property was not rented for more than a total of 25 weeks per year and the property owner obtained a non-transient business tax receipt from the City. A couple of years later the City adopted new land development regulations which replaced the city ordinance for rentals and told the property owner he could no longer engage in short-term rentals. If the property owner files an action for declaratory relief seeking a determination of whether the new ordinance is applicable to the property, the trial court should:
- a. rule in favor of the City because the property's use was no longer a valid use.
 - b. rule in favor of the property owner because the property owner established a valid nonconforming use.
 - c. rule in favor of the property owner because the property owner asked permission.
 - d. rule in favor of the city if the evidence establishes that the city attorney interpretation of the ordinance was in error and was never presented to the City Commission for approval.

Code Enforcement

Due Process means the entire process complies with Ch. 162 and local code

- Notice of Violation (s. 162.21, Fla. Stat.) required to initiate UNLESS repeat violator (then direct to Notice of Hearing) s. 162.06(3), Fla. Stat. includes ALL violations/code citations
- Notice of Hearing: certified mail, hand delivery, leaving notice with person over 15 at violator's residence or manager of comm. property or by POSTING (s. 162.12, Fla. Stat.)
- Hearing is QJ & must afford due process

Code Enforcement

Order must include

- Findings of Facts that track the NOV, NOH, and Hearing
- Conclusions of Law— usually each of the Violations
- Provides Compliance Date OR Indicates Compliance Achieved before Board Hearing (can still prosecute s. 162.06(2))
- Provides for Fines, If Applicable
 - \$250 First Time
 - \$500 Repeat
- Provides for Administrative Fees

Code Enforcement

Following the Order, On Compliance Date:

- Enter an Affidavit of Compliance or Non-Compliance
- If Non-Compliance, send a letter indicating that Respondent can request another hearing.
 - Massey v. Charlotte Cnty., 842 So. 2d 142 (Fla. 2d DCA 2003).
 - Wilson v. Orange Cnty., 881 So. 2d 265 (Fla. 5th DCA 2004).
- Enter/Record the Order or Hold ANOTHER Hearing if requested

Code Enforcement

Notice of Violation	Notice of Hearing	Hearing	Order	Affidavit of Compliance/Non-compliance	Final Hearing	Order Imposing Fines
For 1st Time Violators Skip to Notice of Hearing for Repeat Violators If no compliance, move to Notice of Hearing	Lists all violations date and time of hearing Even if compliance reached before hearing, Case may be prosecuted	Code Enforcement Officer OR Attorney who does not also represent the Code Enf. Board Prosecutes Board finds facts and violations of law	Findings of Fact as presented at Hearing/found by Board Conclusions of Law/Violations as found by Board Permissible Fine/Fees	Complete affidavit of non-compliance and mail to violator notice that he/she may request a hearing on non-compliance prior to recording of the Order Imposing Fines	Hold Final Hearing if Requested If Not...	Record Order Imposing Fines beginning on date of noncompliance from initial Order

Eminent Domain

- “Just” Compensation in US Const. vs. “Full” in Fla. Const.
- Ch 73 “slow take” v. Ch 74 “quick take”
- Conflicting powers of Condemnors
 - Prior public use cannot be taken unless authority expressly given by legislature or necessarily implied. Fla. E. Coast R’wy Co.
 - Superior power of condemnation, expressly granted or implied, suspends prior public use and permits taking Fla. E. Coast R’wy Co.
 - Compatible use doctrine: taking won’t impair existing use and proposed use is not detrimental to the public

Eminent Domain

Conditions Precedent

- Public Purpose or Use and Necessity
- Notification to FDEP/Water Mgmt District
- Notice & good faith negotiation with fee/business owner
 - Written offer, certified mail return receipt requested
 - Based on Appraisal
 - Attempt to agree re: compensation
- Must provide requested info to fee owner (appraisal, ROW maps, construction plans) within 15 days of request
- Business Owner must submit damages good faith written offer within 180 days of notice; entitled to compensation for damage/destruction to business established for 5 years or more resulting from denial of use of land taken by public body. For property taken between Jan 1 2000 and Dec 31 2004, it was 4 years. Only applies when action is brought by FDOT, county, city, district, but not private power companies Sashett v. Tampa Elec. Co., 413 So. 2d. 157 (Fla. 2d DCA 1987).
- Resolution meeting s. 73.021, Fla. Stat. authorizing condemnation action
- Petition meeting s. 73.021 and if quick take, 74.031 declaration of taking reciting the GFE of value

Eminent Domain

Order of Taking

- Slow Take (Ch 73)
 - No deposit required until final judgment, no appraisal necessary unless owner requests as part of presuit negotiations
 - Condemnor can decide whether to deposit funds/pay only attorney's fees if the award is too high
- Quick Take (Ch 74)
 - At OT Hearing, condemnor proves public purpose and necessity
 - Owner may present defenses based on public purpose/necessity
 - Challenge to GFE of value
 - Discovery of engineering/appraisal testimony
 - Failure to obtain regulatory permits/Notify DEP or WMD
 - Date owner must surrender possession
 - Order: transfer title on court registry deposit of GFE w/in 20 days, fix time and terms to surrender property, make other provisions for rights of parties.
 - Good faith estimate of value deposited into court registry w/in 20 days and right to property vests in condemnor and right to full compensation vests in owner once funds deposited into Court registry

Eminent Domain

7. Eminent City needs property for a road project from Property Owner. Eminent City elects to obtain the property under the Eminent Domain "Quick Take" provisions of Chapter 74 of the Florida Statutes. After complying with all of the statutory prerequisites and obtaining an order after notice and hearing, the City deposits the amount of its good faith estimate of value into the registry of the Court. The deposit is made eleven (11) days after the date of the order granting the taking. The attorney for Property Owner claims that the deposit is not timely. The Judge should declare that the order granting the taking is:

- a. void and cannot be reinstated because the deposit of the City had to be made within ten (10) days.
- b. valid and because the deposit of the City had to be made within twenty (20) days.
- c. void because the statute requires the deposit of the City had to be made within ten (10) days but the order may be reinstated on the basis that a deposit on the eleventh (11th) day is in substantial compliance with the statutory process.
- d. valid and because the deposit of the City had to be made within fifteen (15) days.

Legislative & QJ Practice

- Legislative
 - Developing policy
 - Ordinances, LDC/LDR, Comprehensive Plan
 - Declaratory/injunctive relief
 - Fairly debatable standard
 - Review is de novo
- QJ
 - Applying policy to specific set of facts
 - Rezoning, development orders, site plan, variance, code enforcement
 - Petition for Writ of Certiorari
 - Strict Scrutiny
 - Competent, substantial evidence
 - Due process
 - Essential requirements of law
 - Confined to the record on appeal/not de novo

Legislative & QJ Practice

- Snyder, nature of decision & character of hearing: if you're creating new policy: Leg. Applying existing law: QJ.
- Hirt v. Polk Cnty., PUD to permit 258 homes—nature of challenge and way Board made its decision was QJ, such that a writ of certiorari is the correct remedy.
- Grace v. Town of Palm Beach, 656 So. 2d 945, request for special exception is QJ

Legislative & QJ Practice

Due Process

- Rules of evidence
 - Basic fairness
 - Hearsay
 - Process to accept/give all parties time to review
- Cross Exam (Parties v nonparties)
- Impartial decisionmaker

Essential Requirements of Law

Violation of clearly established principle of law resulting in a miscarriage of justice
Heggs, 658 So. 2d at 258. Examples:

- Local gov't applied wrong code to application
- Correct criteria applied but application misinterpreted

Competent Substantial Evidence

- DeGroot at 916
- NOT reweighing-- So long as the record contains competent, substantial evidence to support the decision, the court's job is ended. Wiggins, 151 So. 3d 457, 464 (Fla. 1st DCA 2014)

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Rights of public

oJennings v. Dade County case

oCarrilon Community Residential v Seminole County party v participant distinction

Legislative & QJ Practice



Writ of Certiorari

- Filed under Fla. R. App. P. 9.100(g)
- 30 days from rendition of the Order
- Development Order must be rendered in accordance with Ch 125 and 166: within 120 days if hearing is required, 180 days of application, 30 days in other contexts
- Granting the writ sends it back to the decisionmaker for another hearing— see Yusem and Coastal Jacksonville

Legislative & QJ Practice



Order to Show Cause

- After Court has reviewed petition for writ and found it sufficient, Court directs respondent to show cause within time set by court
- Renard standing test
 - If the nonapplicant is challenging the substantive decision—such as whether the local government correctly applied the LDC in granting application—must suffer special injuries from the decision that differ in kind, rather than degree, from the rest of the community have a legally cognizable interest to support standing. Renard, 261 So. 2d at 836–37.
 - But if the challenge is procedural—i.e., that the local government failed to give notice—nonapplicant need only be an affected resident, citizen, or owner. Id. at 838.
 - Interest group must exist before the decision rendered to have standing
- Development Order must be rendered in accordance with Ch 125 and 166: within 120 days if hearing is required, 180 days of application, 30 days in other contexts

Legislative & QJ Practice

An applicant properly appealed the planning and zoning division's denial of his application to build a canopy over his marina slip to the town council. At the quasi-judicial hearing, the town council approved the building permit after the applicant presented substantial competent evidence supporting his position. However, no written ruling was filed with the town clerk. The town later voted, at a rehearing 35 days later, to reconsider the applicant's building permit and deny it. The applicant filed for a writ of prohibition in the circuit court, contending that the town did not have jurisdiction to reconsider the approval of the permit. Should the writ be issued?

- a. No, because a written order on the first decision had not been filed with town clerk, the time for invoking review jurisdiction of circuit court had not started to run.
- b. Yes, because more than 30 days passed from the initial action approving the permit; therefore, the council's actions became final under the Florida Rules of Appellate Procedure.
- c. No, because the applicant has not exhausted his administrative remedies under the Administrative Procedures Act.
- d. Yes, because no new evidence was presented at the rehearing before the town council to justify the denial.

Sunshine Law & Public Records

1. The Sunshine Law applies to:

- A. Leon County School Board
- B. Federal Trade Commission
- C. Florida House of Representatives
- D. All of the above

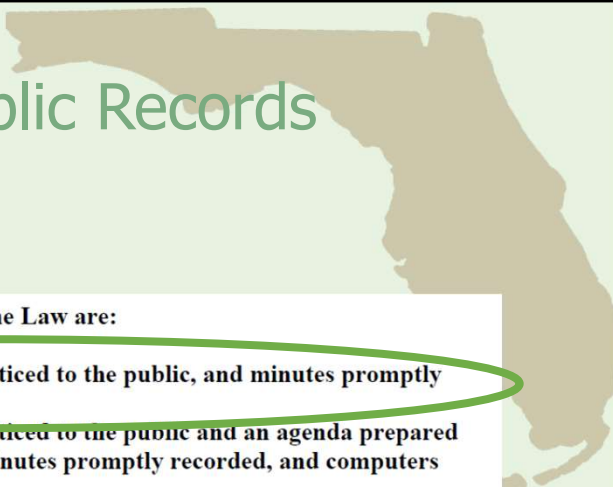
Sunshine Law & Public Records



Which of the following statements is incorrect?

- a. An agency of the state must allow inspection of its records but it is not required to provide copies.
- b. If a requestor identifies a record with sufficient specificity to permit the agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record.
- c. Members of an advisory council are not entitled to copies of public records free of charge.
- d. An agency may not charge for travel costs, search fees, development costs, or other incidental costs of producing a record.

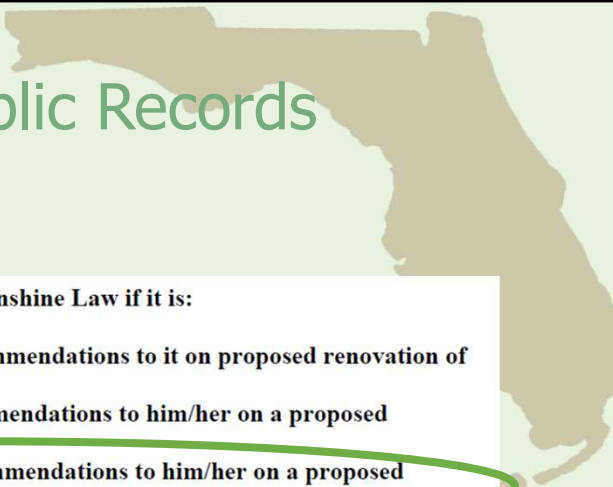
Sunshine Law & Public Records



2. The three basic requirements of the Sunshine Law are:

- A. Meetings must be open to the public, noticed to the public, and minutes promptly recorded
- B. Meetings must be open to the public, noticed to the public and an agenda prepared
- C. Meetings must be open to the public, minutes promptly recorded, and computers provided for public use
- D. Meetings must be open to the public, noticed to the public and noticed to the press

Sunshine Law & Public Records



3. An advisory board is NOT subject to the Sunshine Law if it is:

- A. Appointed by a school board to make recommendations to it on proposed renovation of a school building.**
- B. Appointed by city manager to make recommendations to him/her on a proposed renovation of city hall.**
- C. Appointed by a circuit judge to make recommendations to him/her on a proposed renovation of the courthouse.**
- D. None of the above.**

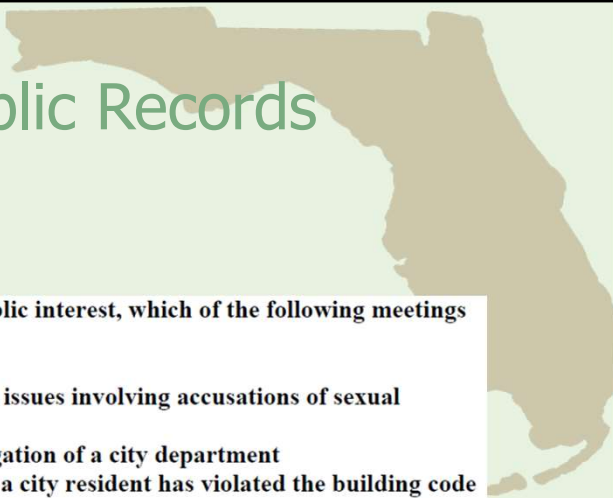
Sunshine Law & Public Records



4. The following persons are subject to the Sunshine Law

- A. A state agency division director who is an ex officio nonvoting member of a state advisory council
- B. A mayor who is a member of the city council but can vote only to break a tie
- C. A mavor who is not a member of the city council but can veto legislation
- D. Both A and B are correct

Sunshine Law & Public Records



5. If a city council believes that it is in the public interest, which of the following meetings may be CLOSED to the public:

- A. Meetings to discuss sensitive personnel issues involving accusations of sexual harassment against the city manager**
- B. Meetings to discuss an ongoing investigation of a city department**
- C. A hearing on a complaint alleging that a city resident has violated the building code**
- D. None of the above.**

Sunshine Law & Public Records

6. Which of the following statements are correct?

- A. If a city council is considering whether to take disciplinary action against an employee, the council may exclude the employee from the meeting but all other persons must be allowed to attend.
- B. The council board may prohibit a member of the public from tape recording a meeting if a council member objects to the taping.
- C. If a member of the public wishes to videotape a board meeting, the council may require that the videotaping be nondisruptive.
- D. None of the above

Sunshine Law & Public Records

7. A county commission is holding a special meeting to consider whether to discipline an employee for sexually harassing several coworkers. The coworkers have asked the commission to close the meeting because of the embarrassing nature of the sexual harassment. The commission would like to close the meeting to the public in order to protect the privacy of the sexual harassment victims. If a county commission believes that the commission meeting should be closed to protect privacy rights, it can

- A. Close the meeting only if the Legislature has passed a law which exempts that type of meeting from the Sunshine Law
- B. Close the meeting based on the right of privacy provision in the Florida Constitution.
- C. Both A and B are correct
- D. None of the above

Sunshine Law & Public Records

8. Two members of the city council are talking to each other at a football game. A reporter is with the council members and able to hear the entire conversation. The council members:

- A. Have not violated the Sunshine Law because even if they were discussing city council business, the meeting was public because a newspaper reporter was present.
- B. Have violated the Sunshine Law if they were talking about matters that foreseeably could come before the city council for discussion or action
- C. Have violated the Sunshine Law if they were talking about city council matters that have been scheduled for a vote by the city council
- D. Both B and C are correct

Sunshine Law & Public Records

9. The members of a board that is created under both state and federal law are:

- A. Subject to the sunshine law and public records law in the same way as the members of a school board
- B. Not subject to either the sunshine or the public records law because federal agencies are not subject to the Sunshine Law.
- C. Subject to the sunshine and public records law if they choose to be but are not required to comply
- D. Subject to the Sunshine Law but not the public records law.

Sunshine Law & Public Records



10. The Florida Supreme Court ruled that the Sunshine Law applied to advisory committees in the following case:

- A. ~~Board of Public Instruction of Broward County v. Doran~~
- B. Town of Palm Beach v. Gradison
- C. ~~Associated Press v. NCAA~~
- D. B and C are correct

Sunshine Law & Public Records

10. The Florida Supreme Court ruled that the Sunshine Law applied to advisory committees in the following case:

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- C. ~~Associated Press v. NCAA~~
- D. B and C are correct

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For example, in *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the Sunshine Law. The *Gradison* court, concluding that the committee served as the alter ego of the council in making tentative decisions, stated that “any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law.” *Id.* at 476.

Doran is about enjoining future violations similar to the one at issue

NCAA is about (transcript and response prepared as part of NCAA disciplinary proceeding involving state university were public records because the “the purpose of the transcript was to perpetuate the information presented to the infractions committee” and the response “was designed to communicate information to the body that would hear the appeal within the NCAA”).

Sunshine Law & Public Records

11. A city council member meets privately with another member of a city council to discuss a contract which is under consideration by the council. Which of the following is true?

- A. The State Attorney could charge the council members with a noncriminal infraction for violating the Sunshine Law.
- B. The Attorney General could charge the council members with a noncriminal infraction for violating the Sunshine Law.
- C. The Florida Ethics Commission could charge the council members with violating the Sunshine Law.
- D. All of the above.

Sunshine Law & Public Records

12. On May 1, 2010 a city held an election to fill three seats on the city council. John Smith has been a member of the city council since 2005 and was reelected to office. Jane Doe and Mary Jones have never served on the council and both were elected. All three will be officially sworn in on June 1, 2010. Which of the following meetings are subject to the Sunshine Law?

- A. A meeting held on May 2 between Jane Doe and Mary Jones.
- B. A meeting held on April 30 between Jane Doe, Mary Jones, and John Smith.
- C. A meeting between held on June 2 between Doe, Jones and Smith.
- D. A and C are correct

The swearing in is a red herring! Don't fall for it

Sunshine Law & Public Records

13. A county commissioner, county manager (county employee), sheriff, city commissioner and city police chief want to meet to discuss whether the county should make improvements to the jail. Which of the following statements is correct?

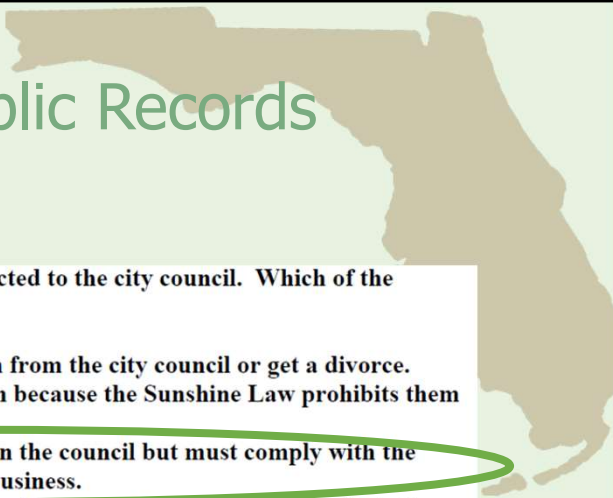
- A. The meeting should be open to the public because both the city commissioner and county commissioner must comply with the Sunshine Law.
- B. The meeting is not subject to the Sunshine Law.
- C. The meeting is subject to the Sunshine Law because the sheriff and county commissioner are elected officers of the county.
- D. The meeting is subject to the Sunshine Law because all of these individuals bear some responsibility for the county jail.

Sunshine Law & Public Records

14. A city commissioner wants to send an email from her personal computer to the city manager (city employee) about an item on the city commission agenda. Which statement is correct?

- A. The email is a public record.
- B. The email is not a public record because personal emails are not subject to the public records law.
- C. The email is not a public record but the city manager should not respond to the email because the response would violate the Sunshine Law.
- D. The email is a public record but the city manager should not respond to the email because the response would violate the Sunshine Law.

Sunshine Law & Public Records



15. A husband and wife have both been elected to the city council. Which of the following statements is correct?

- A. Both the husband and wife must resign from the city council or get a divorce.
- B. Either the husband or wife has to resign because the Sunshine Law prohibits them from serving together on the council.
- C. Both the husband and wife may serve on the council but must comply with the Sunshine Law when they discuss city council business.
- D. Both the husband and wife may serve on the council but must file a conflict of interest form before each city council meeting.

Sunshine Law & Public Records

16. A town council has met at 10 AM on the first Monday of the month for years. However, due to a clerical error, the notice for the council's last meeting did not appear in the newspaper. However, since town residents know that the council always meets on the first Monday, members of the public were in attendance at the meeting. The notice error was not discovered until after the council met and approved a contract. No one from the public has objected to the contract approval. Which of the following is correct?

- A. Since the notice error was inadvertent and no one objected, the council did not violate the Sunshine Law and the action to approve the contract is valid.
- B. Although the board technically violated the Sunshine Law because the meeting was not noticed, since the error was inadvertent and no one objected, the council may simply ratify the contract approval without discussion at the next scheduled meeting.
- C. Because the meeting was not properly noticed to the public, the council violated the Sunshine Law and must hold a full and open discussion of the contract at its next meeting; otherwise, a judge could rule that the contract is invalid.
- D. Even though the meeting was not properly noticed to the public, the meeting did not violate the Sunshine Law since members of the public were in attendance.

Sunshine Law & Public Records

17. A city council is considering whether to buy a piece of property. A statute makes the records showing the market value of the property confidential and exempt from the public records law but there is no statute which exempts the meeting from the Sunshine Law. The council wants to close the meeting while it decides what to offer for the property. Which of the following statements is true:

- A. The council can close the meeting if it first determines that the public benefit in closing the meeting (council can obtain a better deal for the property) outweighs the benefits of keeping the meeting open.
- B. The council can close the meeting because the Legislature has enacted a statute making the market value records of the property confidential and the council therefore has implied authority from the Legislature to close the meeting.
- C. The council cannot close the meeting.
- D. A and B are correct.

Sunshine Law & Public Records

18. A city council has applied for a grant from a federal agency. The application requires each council member and his or her spouse to include a copy of their tax return. Federal law makes these returns confidential in the hands of the federal agency but they are not exempted from disclosure under Florida law. Which of the following statements is correct?

- A. The tax returns of both the spouses and the councilmembers are subject to disclosure under the Florida public records law.
- B. The councilmember tax returns must be disclosed under the Florida public records law but, due to the right of privacy provision in the Florida Constitution, the spouse returns are confidential.
- C. Because the tax returns are confidential in the hands of the federal agency, neither the councilmember nor spouse returns are public under the Florida public records law.
- D. None of the above.

Sunshine Law & Public Records

19. The Department of Children and Families has received a request for a report prepared by the chief inspector general that reviewed whether the agency had acted properly in its care of a foster child. The report includes both public and confidential information. Which of the following statements is correct?

A. Since the report contains both public and confidential information, the Department should refuse to produce the entire document.

B. If it would be burdensome to redact confidential information, the Department may simply release the entire unredacted document if it believes that it would be in the public interest to do so.

C. In order to make it easier in the future to respond to public records requests, the Department may permanently destroy or obliterate the confidential material from the original document.

D. The agency must redact the confidential material and then release the remainder for public inspection without destroying any portion of the original document.

Sunshine Law & Public Records

20. A mayor has received a public records request for her emails. Which of the following emails are public records?

- A. Email messages from the mayor that are sent from her personal home computer in which the mayor explains to the city manager why she believes that city hall must be renovated.
- B. Email messages from the mayor that are sent from her personal home computer in which the mayor asks her brother whether he would like to accompany the mayor and her family on their annual vacation.
- C. Email messages from the mayor that are sent from her government computer in which the mayor asks her father whether he would like to accompany her and their family on their annual vacation.
- D. A and C are correct.

Sunshine Law & Public Records



21. A legislator, city commissioner and judge are members of a committee that is planning its first meeting. Which of the following statements is true?
- A. If the committee was created by statute, it is subject to the Sunshine Law.
 - B. If the committee was created by a judge, it is not subject to the Sunshine Law.
 - C. Both A and B are correct.
 - D. Neither A nor B are correct.

Sunshine Law & Public Records

22. A city council is planning a meeting to discuss a controversial issue. What steps can the council take to help ensure that the meeting is not disrupted?

- A. Require that everyone seeking to enter the building where the meeting is being held to go through weapons screening.
- B. Require that everyone sign in and show their driver's license prior to entering the meeting room.
- C. Ban the use of video cameras or tape recorders in the meeting room.
- D. None of the above.

Sunshine Law & Public Records

23. A city police department receives a public records request for photographs of a crime scene from a closed robbery case. There is no statutory exemption from the public records law that applies to the photographs. Which of the following statements is correct?

- A. The department is not required to release the photographs because the public records law does not apply to photographs.
- B. The department must release the photographs.
- C. Unless release of the photographs would violate accepted police standards and procedures, the department must release the photographs.
- D. Unless the person taking the pictures has asked the department not to release them, the department must release the photographs.

Sunshine Law & Public Records

24. A state employee, Rip V. Winkel, is given a written reprimand for sleeping on the job. The employee files a grievance, and after a public hearing, the grievance committee rules that the employee should have been given a written warning instead of a reprimand. The committee enters an order declaring that the reprimand is invalid. A few weeks later, the agency receives a public records request for all records relating to Mr. Winkel's employment. Which of the following statements is correct?

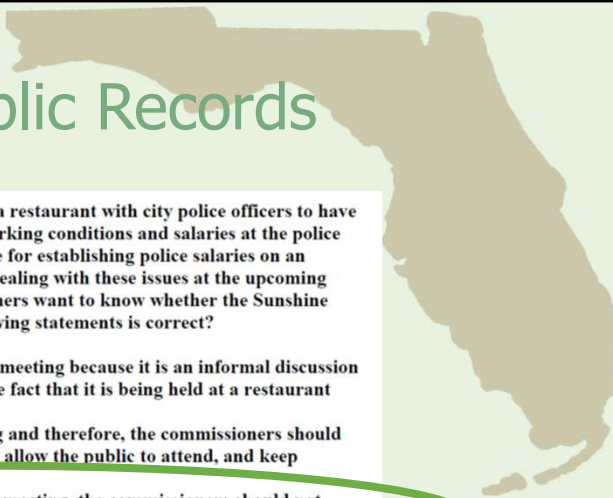
- A. Because the reprimand was overturned, the agency should destroy it.
- B. The reprimand is a public record and must be provided in response to the public records request although the agency may add a notation that the reprimand was overturned by a grievance committee.
- C. Because the reprimand was overturned, the reprimand should be placed in a sealed envelope and the agency should not produce it in response to the public records request.
- D. The reprimand is a public record because the grievance committee should not have held a public hearing on the grievance.

Sunshine Law & Public Records

25. A city recreation advisory committee is voting to elect officers. The Chair has proposed that the members use written ballots. She would prefer that members be able to simply identify the person they are voting for, and not themselves, on their ballots if they choose. Which of the following statements is true?

- A. Because the committee is only an advisory committee, the members are not required to use written ballots that include the name of the person voting and the person they voted for. The members can simply mark their choice on the ballot and remain anonymous if they choose.
- B. Because the vote is only to elect officers rather than to discuss or take action on recreation issues, the members are not required to use written ballots that include the name of the person voting and the person they voted for. They can simply mark their choice on the ballot and remain anonymous.
- C. The members must use written ballots that include the name of the person voting and the person they voted for.
- D. The committee is not allowed to use written ballots and can only cast votes via roll call.

Sunshine Law & Public Records



26. Two city commissioners plan to meet at a restaurant with city police officers to have an informal discussion over breakfast about working conditions and salaries at the police department. The city commission is responsible for establishing police salaries on an annual basis although there is no agenda item dealing with these issues at the upcoming meeting of the city commission. The commissioners want to know whether the Sunshine Law applies to the meeting. Which of the following statements is correct?

- A. The Sunshine Law does not apply to the meeting because it is an informal discussion between two commissioners, as evidenced by the fact that it is being held at a restaurant rather than in the city commission chambers.
- B. The Sunshine Law applies to the meeting and therefore, the commissioners should provide public notice of the restaurant meeting, allow the public to attend, and keep minutes.
- C. Because the Sunshine Law applies to the meeting, the commissioners should not hold the meeting at the restaurant and instead should have the discussion at an open public meeting of the commission that is duly noticed and held in a public place.
- D. The Sunshine Law does not apply to the meeting because only two members of the commission will attend and the issues are not scheduled for a vote at the commission meeting.

Sunshine Law & Public Records

27. A state licensing board held a workshop meeting to discuss possible legislative changes to the licensing law. The meeting was properly noticed and open to the public. No votes were taken. After the board meeting, the secretary prepared minutes. When a newspaper reporter asked for a copy of the minutes, the secretary refused saying that the minutes were not public record until the board approved them at its next meeting in accordance with Roberts Rules of Order. The refusal to provide the minutes until approved at the next meeting of the board:

- A. Is a violation of the Sunshine Law and the Public Records Law
- B. Is a violation of the Public Records Law but not the Sunshine Law
- C. Is a violation of the Sunshine Law but not the Public Records Law
- D. Does not violate either the Public Records Law or the Sunshine Law.

Sunshine Law & Public Records



28. The sheriff's office is investigating whether the city manager stole grant funds allocated for a city program. As part of its investigation, the sheriff's office has obtained copies of city financial records relating to the grant program and these copies are now in the hands of the sheriff's office. Sheriff investigators also visited city hall and reviewed the manager's employment evaluations. A newspaper makes a public records request to the city finance department and the city personnel office for the employment evaluations and also for the financial records. The newspaper's public records request does not mention the sheriff's investigation. Which of the following is correct:

- A. Because the sheriff's office has obtained copies of the financial records as part of a criminal investigation, the city is not required to release those records to the reporter. However, it is required to release the employment evaluations since the sheriff's office only reviewed these records and did not obtain copies.
- B. Because there is an ongoing criminal investigation and the financial records and the employment evaluations are relevant to the investigation, the city is not required to release the records to the reporter.
- C. Even though there is an ongoing criminal investigation, the city must release the employment evaluations and financial records that are in its possession.
- D. None of the above.

Sunshine Law & Public Records

29. A reporter is writing a story on whether the school district has wasted money buying all the school lunches from McDonalds. He makes a public records request for the financial records relating to food purchases. The District responds that the information is contained in a database that includes both public information and confidential social security numbers. None of the district's software programs can redact the social security numbers. The reporter wants to know what the District's options are under the Public Records Law. Which of the following statements is correct:

- A. The District must acquire or develop a program that will redact the social security numbers and cannot charge the reporter for the cost of the program.
- B. The District may if it chooses acquire a program to redact the social security numbers, but is not required to do so.
- C. The District must acquire or develop a program to redact the social security numbers and may pass the cost of the program on to the reporter.
- D. The District can choose whether to provide the data in electronic or hard copy format and the reporter must pay the costs of the medium selected by the District.

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Despite the general rule, however, the *Seigle* court recognized that an agency may be required to provide access through a specially designed program, prepared by or at the expense of the requestor, where:

- 1) available programs do not access all of the public records stored in the computer's data banks; or
- 2) the information in the computer accessible by the use of available programs would include exempt information necessitating a special program to delete such exempt items; or

3) for any reason the form in which the information is proffered does not fairly and meaningfully represent the records; or
4) the court determines other exceptional circumstances exist warranting this special remedy.
422 So. 2d at 66-67.

Sunshine Law & Public Records

30. Which of the following cases deal with access to public records in digital or electronic form?

- A. Booksmart Enterprises Inc. v. Barnes and Noble College Bookstores Inc.
- B. Seigle v. Barry
- C. National Collegiate Athletic Association v. Associated Press
- D. B and C.

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National Collegiate Athletic Association v. Associated Press, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010), the court held that a confidentiality agreement entered into by a private law firm on behalf of a state university with the NCAA that allowed access to records contained on the NCAA's secure custodial website that were used by the university in preparing a response to possible NCAA sanctions, had no impact on whether such records were public records, stating that "[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private."

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing

cabinet” *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983).

Sunshine Law & Public Records

31. A city clerk has received over 150 public records requests over the past year from John Jones. Each of the public records requests asks for records relating to Mr. Jones' ex-wife who is a city employee. Jones is very rude and obnoxious when he comes to city hall to make his requests. Which of the following options is available to the clerk?

- A. Because the Mr. Jones is so rude, the clerk would be authorized to ban him from city hall and instead require him to make his requests in writing or over the telephone.
- B. Because Mr. Jones has asked for an extraordinary number of records, the city clerk would be authorized to ask him to specify the particular records that he wants.
- C. Because Mr. Jones has made numerous public records requests which all relate to his ex-wife, Mr. Jones could be charged with stalking.
- D. None of the above.

Sunshine Law & Public Records

32. A state agency is rewriting its public records policy and has asked for employee suggestions on how to improve the current policy. Which of the following suggestions is consistent with the public records law?

- A. In order to ensure the most efficient utilization of staff, the agency should establish a specific two hour period during the day, such as 2PM to 4PM during which the public may request public records.
- B. In order to ensure that records are properly processed, the agency should develop a public records database for the agency records custodian to use in recording public records requests and responses.
- C. In order to ensure that records are properly processed, the agency should develop a written form that the public is required to use when requesting public records.
- D. All of the above are consistent with the public records law.

Sunshine Law & Public Records

33. An agency purchasing director has decided that it is time to renegotiate the contract for the agency computer system. The director creates an advisory committee composed of staff and one outside person to review the bids and rank the proposals. The director is not bound by the committee's rankings and can award the contract to any of the qualified firms that submitted bids. Which case does this fact scenario most closely resemble?

- A. Town of Palm Beach v. Gradison
- B. Silver Express v. Board of Trustees
- C. Port Everglades Authority v. International Longshoremen's Association
- D. Pinellas County School Board v. SunCam, Inc

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Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the Sunshine Law.

Thus, in Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee composed primarily of staff that was created by a college purchasing director to assist and advise her in evaluating contract proposals was subject to the Sunshine Law. The committee's job to "weed through the various proposals, to determine which were acceptable and to rank them accordingly" was sufficient to bring the committee within the scope of the Sunshine Law.

In Port Everglades Authority v. International

Longshoremen's Association, Local 1922-1, 652

So. 2d 1169, 1170 (Fla. 4th DCA 1995), the court ruled that a board's selection and negotiation committee violated the Sunshine Law when competing bidders were requested to excuse themselves from the public committee meeting during presentations by competitors.

Pinellas County School Board v. Suncam, Inc., 829 So. 2d

989 (Fla. 2d DCA 2002) (school board violated the Sunshine Law when it refused to permit videotaping of a public meeting held to evaluate general contractor construction proposals).

Sunshine Law & Public Records

34. Due to budget cuts, a county commission faces the difficult decision of laying off a number of employees. County employees are upset about this and plan to attend the upcoming commission meetings and demonstrate against the proposed layoffs. Which of the following options are permissible under the Sunshine Law?

- A. In an effort to help provide a more tranquil atmosphere for its discussions, the commission could start holding public meetings at the local country club.
- B. The county manager could hold one on one meetings with each of the individual commission members to discuss the options and come to a consensus as to which employees to lay off thereby avoiding a confrontation at the commission meeting.
- C. The county commission could establish a 24 hour on line electronic bulletin board that would be available during the entire month of June where county commissioners, county employees, and the public could discuss the proposed layoffs.
- D. None of the above.

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Sunshine Law & Public Records

35. School board member Smith is concerned about the school superintendent's proposal to eliminate teacher tenure and tie teacher salaries to student performance on the FCAT. She writes a letter to the other school board members about her concerns and files a copy of the letter as a public record in the school district offices. No school board members respond to Smith's letter. Several weeks later, Smith notices that there is an item on the agenda which calls for a school to be closed. She wants the school to remain open. Smith calls school board member Brown to ask him to vote with her on the issue. He responds that he hasn't decided which way to vote and will have to wait until the meeting to make up his mind. Which of the following statements is correct:

- A. Smith's letter to the school board members and the telephone conversation with Brown violated the Sunshine Law.
- B. Neither Smith's letter to the school board members nor the telephone conversation with Brown violated the Sunshine Law.
- C. Smith's letter to the school board members did not violate the Sunshine Law, but the phone conversation with Brown violated the Sunshine Law.
- D. Smith's letter to the school board members violated the Public Records Law.

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Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the Sunshine Law.

Thus, in Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee composed primarily of staff that was created by a college purchasing director to assist and advise her in evaluating contract proposals was subject to the Sunshine Law. The committee's job to "weed through the various proposals, to determine which were acceptable and to rank them accordingly" was sufficient to bring the committee within the scope of the Sunshine Law.

In Port Everglades Authority v. International

Longshoremen's Association, Local 1922-1, 652

So. 2d 1169, 1170 (Fla. 4th DCA 1995), the court ruled that a board's selection and negotiation committee violated the Sunshine Law when competing bidders were requested to excuse themselves from the public committee meeting during presentations by competitors.

Pinellas County School Board v. Suncam, Inc., 829 So. 2d

989 (Fla. 2d DCA 2002) (school board violated the Sunshine Law when it refused to permit videotaping of a public meeting held to evaluate general contractor construction proposals).

Sunshine Law & Public Records

36. A newspaper reporter conducts separate individual interviews with county commissioners Smith and Jones as well as the county manager (a county employee) about their views on an upcoming agenda item. After his interview, Smith telephones the county manager and they discuss what each said to the reporter. Smith then calls Jones to discuss his conversation with both the reporter and the county manager. Which of the following statements is correct?

- A. The individual one on one interviews between each commissioner and the reporter violated the Sunshine Law because the reporter asked each commissioner how he felt about an upcoming agenda item.
- B. Smith's telephone call with the county manager violated the Sunshine Law.
- C. Smith's telephone call with Jones violated the Sunshine Law.
- D. All of the above.

Sunshine Law & Public Records

37. Wal Mart executives have contacted the City of Tallahassee and indicated that they might open up a store on the FSU campus. However, before the executives will talk to the City they insist that the City enter into an agreement providing that if Wal Mart locates in Tallahassee, all City records pertaining to Wal Mart will not be kept at City Hall but instead will be scanned and stored in a digital database maintained by Wal Mart and accessible only through use of a password. Which statement is correct?

- A. The City should not enter into the agreement unless it receives assurances from Wal Mart that they will provide the password to anyone who asks for it as long as the requestor has a legitimate need for the records.
- B. The City should not enter into the agreement unless it receives assurances from Wal Mart that Wal Mart will also maintain hard copies of the digital records.
- C. The City should not enter into the agreement unless it receives assurances that FSU will also be allowed access to the Wal Mart records.
- D. The City should not enter into the agreement.

Sunshine Law & Public Records

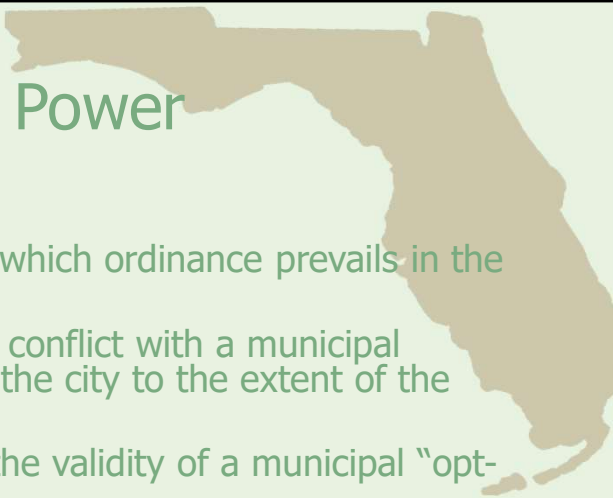
38. An employee is working on an investigative report. The investigation has been going on for several weeks and the employee has prepared a number of drafts of the report. A public records request is filed with the agency seeking “all records relating to the investigation.” Which of the following constitutes a public record?

- A. An early draft that never left the employee’s desk and was never circulated to anyone within or outside the agency.
- B. A draft report that was sent to the employee’s supervisor and was returned with a note “need to make changes”
- C. A draft report that was emailed to the supervisor but the supervisor has not gotten around to reading it yet
- D. B and C.

Home Rule & Police Power

- Before 1968, all power granted from legislature.
- After 1968 constitutional revision (and S. 166.021, F.S.), home rule power for charters is expansive and non-charters have powers authorized by legislature AND special acts related to charter counties must be approved by electors
- Charter counties can have LESS home rule power than non-charters when their charters restrict them. State v. Sarasota Cnty. 549 So. 2d 659 (Fla. 1989)
- Post 1968: look for preemption or charter limitation that says you can't

Home Rule & Police Power



County Preemption of Cities

- Charter county charter provides which ordinance prevails in the event of conflict
- Non-charter county ordinance in conflict with a municipal ordinance is not effective within the city to the extent of the conflict
- Municipal purpose exception to the validity of a municipal “opt-out” ordinance
- Dual referenda may be required for the resulting transfer of powers: Art. VIII, § 4, Fla. Const.

Home Rule & Police Power

Transfer of Powers requires approval by vote of electors of Transferor and Transferee

- Whether the transfer from one unit of government to another involves the provision of services or the preemption of regulatory authority, and
- Whether the transfer from one unit of government to another involves total relinquishment of power and control over the service at issue.

Home Rule & Police Power

Transfer of Powers requires approval by vote of electors of Transferor and Transferee

- Whether the transfer from one unit of government to another involves the provision of services or the preemption of regulatory authority, and
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Home Rule & Police Power

Special Districts

15. A "Dependent Special District" is a special district in which:
- (a) the membership of its governing body is identical to the governing body of a single county or municipality
 - (b) all members of the governing body are appointed by the governing body of a single county or municipality
 - (c) members of the governing body are subject to removal by the governing body of a single county or municipality
 - (d) all of the above

Home Rule & Police Power

4. City adopted a road impact fee, setting its rate at the highest in Florida's history. County wants to adopt the same rate. Under Florida Statutes §163.31801, "Florida Impact Fee Act," what is County unable to do when it adopts its new rate for roads impact fees?
- a. Calculate the impact fee based on the most recent and localized data.
 - b. Charge an administrative fee for the collection of impact fees that exceeds its actual costs of collection to pay for the next impact fee study.
 - c. Adopt its ordinance with more than 90 days notice before the effective date of imposition of a new or amended impact fee.
 - d. Create a separate accounting fund to account for the revenues and expenditures of the road impact fee.

Home Rule & Police Power

Preemption

- Fl courts recognize express and implied
- Local ordinance/inferior legislative body
- Express preemption—explicit language preempted to the state
 - medical marijuana (11)
 - 125.0109 Family Daycare shall be a valid residential use
 - Solar farms shall be an allowable use in ag zoning
- City/County ordinance can be more stringent than legislature
- S. 57.112 Fla Stat, prevailing party atty fees

Home Rule & Police Power



Implied Preemption

- Conflict with state law
 - To comply with one, a violation of the other is required
 - Rent control ordinance before express preemption
- Conflict with pervasive regulatory scheme
 - Public records
 - Traffic code
 - Shows intent to occupy the field
 - More stringent is allowed if local policy
- Local gov't act contrary to state assignment of discretion/responsibility
 - 'stay in your lane'
 - Ch 334 transportation code: city county state assignments of responsibility
 - Charter county transportation surtax Hillsborough County Provisions of the Charter Amendment directly clash with state assignment of county commissioners to direct surtax expenditures

Home Rule & Police Power

- Constitutional Millage limitation Art VII § 9
- Ten mill exceeded for 2 years for general governmental purposes for payment of bonds
- MSTU ad valorem tax less than Countywide
 - 10 mills for municipal purposes 125.01(1)(q) and (r)
 - "tax equity tool"
 - Particular service, no referendum
 - Without MSTU county millage is uniform
- Creation deadlines s. 200.066 Fla Stat
 - Jan 1 for new MSTU/not a special district area or other taxing area
 - July 1 for existing boundaries MSTU (unincorporated area, special district, city, combination of those)
 - Municipal consent is because any millage diminishes the mills available to that City

Home Rule & Police Power

Fees (user, regulatory, impact)

- Regulatory fees
- 163.31801 FL Impact fee act
 - New phasing requirements (cannot be increased more than once/4 years, capped at 12.5% in a given year and <50% over 4 years OR
 - Extraordinary circumstances after 2 public workshops
- Proprietary user fees
 - Utility
 - Franchise
 - Trash
 - Can make a profit, just and equitable, comparable to other similar businesses Rosalind Holding Co. v. Orlando Util. Comm'n

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Such regulatory fees cannot exceed the cost of the regulatory activity and are generally required to be applied solely to pay the cost of the regulatory activity for which they are imposed. As an example, as explained subsequently, the fee imposed on development to regulate its impact on the need for future capital facilities must meet the "dual rational nexus test." In other words, the impact fee cannot exceed the cost of the capital facilities required as a consequence of the development regulation and must be used and expended for such regulatory purpose. Similarly, building permit fees cannot exceed the cost of the governmental activity established to regulate the building permit issuance and ensuing inspection activity.

In *Tamiami Trails Tours, Inc. v. City of Orlando*, 120 So. 2d 170 (Fla. 1960), the owners or operators of trucks challenged the validity of a permit charge imposed by ordinance for utilization by trucks of designated freight and loading zones on city streets. At issue was whether the ordinance was a valid exercise of the police power of the municipality in its regulation of traffic on its streets or whether the exaction or fee was a tax. The challengers of the ordinance were not objecting to the city's regulation of traffic under its police power by the establishment of freight zones but merely the imposition of a fee for the use of such zones.

User fees are imposed by local government in the

exercise of a proprietary activity and can generate a profit available for general governmental expenditures, as long as the profit generated is reasonable. User fees generally benefit the party paying the fee in a manner not shared by the general public and are paid by choice in the sense that the feepayer has the option of not using the governmental service provided.

For example, a local government utility fee imposed pursuant to an exercise of a proprietary function can generate a profit as long as the amount of profit is reasonable. . As an illustration, the First District Court of Appeal in Jacksonville Port Authority v. Alamo Rent-a-Car, 600 So. 2d 1159 (Fla. 1st DCA 1992), recognized that the fee charged Alamo for its use of airport facilities was not imposed by the Jacksonville Port Authority (the "JPA") "to regulate its airport system under the auspices of the general police power, but rather to do so as a function of its proprietary status." Id. at 1164.

Other examples of fees imposed by local government in its proprietary capacity are admission fees, franchise fees, and traditional user fees such as recreation registration fees or entrance fees. Such fees are governed by the principle that the feepayer receives a benefit or that the fee imposed is reasonable in relation to the privilege or service provided.

Home Rule & Police Power

Special Assessments

- Assessed against property because it receives a special benefit
- Services or capital has a "logical relationship" to property benefits Lake Cnty. v. Water Oak Mgmt Corp.
 - General governmental functions like Law Enforcement—not special, but see Rushfeldt, 630 So. 2d 643 (Fla. 3d DCA 1994).
- Fairly and reasonably apportioned City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992)

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whether there is a "logical relationship" between the services provided and the benefit to real property. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).

Lake County v. Water Oak Management Corp., 695 So. 2d 667, 669 (Fla. 1997).

City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992);
Parrish v. Hillsborough County, 123 So. 830 (Fla. 1929).

Home Rule & Police Power

10. The town council entered into a management agreement with the Friends of the Theater, Inc. (the "Friends"), a non-profit corporation, to fix-up and operate an old city recreation center as a performing arts center. Under the contract, the Friends agreed to split the net revenues with the town, but the Friends are also able to set the cost of tickets and the rental rates for use of the building. A small group of performing artists (the "Artists") opposes the contract claiming an illegal restraint of trade, and the creation of an illegal monopoly by the town, because there are no other venues to use downtown. However, the town council wants to be more entrepreneurial and approves the contract. The Artists file a lawsuit asking for a declaratory judgment pointing out that Section 542.18, Florida Statutes, states in part that "every contract, combination, or conspiracy in restraint of trade or commerce in the state is unlawful." As town attorney, you are aware that Section 166.021(1), Florida Statutes provides the town with "governmental corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." What should your advice to the town council regarding this lawsuit be?

- a. It doesn't matter whether the town created a monopoly because the town cannot contract with a private entity to perform a public function.
- b. The town council clearly created a monopoly which restrains trade and the contract must be terminated.
- c. The town council may have created a monopoly, but it isn't illegal because it is not "expressly prohibited by law" from doing so.
- d. The town council is permitted to contract with a private entity to operate its facility, but depending on the facts, it may nonetheless be prohibited from doing so if it creates an illegal restraint of trade.

Ethics

- Public Officers 112.313 and 112.3143, "elected or appointed to hold office in any agency, including any person serving on an advisory body."
- Public Employee has same meaning as in Tort. Wright, 389 So.2d 662
- Candidates 112.312
- Local government attorneys 112.313(16)
- Constitutional officers 112.3142 annual training
- Governing bodies of commercial service airports must also

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Local government attorneys, such as the city attorney or county attorney, and their law firms are prohibited from representing private individuals and entities before the unit of local government which they serve. A local government attorney cannot recommend or otherwise refer to his or her firm legal work involving the local government unit unless the attorney's contract authorizes or mandates the use of that firm. [Sec. 112.313(16), Fla. Stat.]

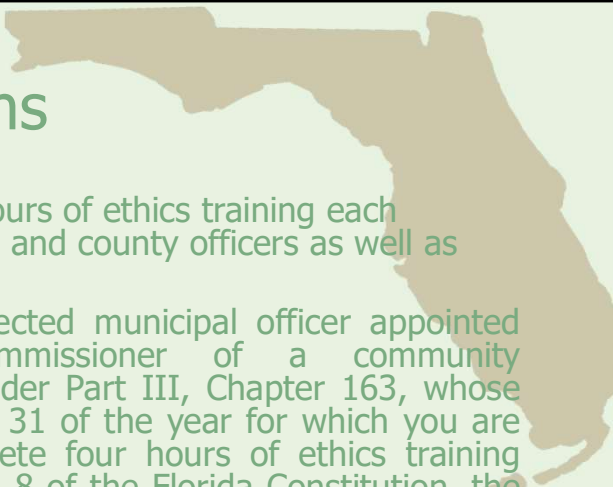
Ethics

ANTI-NEPOTISM LAW - A public official is prohibited from seeking for a relative any appointment, employment, promotion, or advancement in the agency in which he or she is serving or over which the official exercises jurisdiction or control. No person may be appointed, employed, promoted, or advanced in or to a position in an agency if such action has been advocated by a related public official who is serving in or exercising jurisdiction or control over the agency; this includes relatives of members of collegial government bodies. NOTE: This prohibition does not apply to school districts (except as provided in Sec. 1012.23, Fla. Stat.), community colleges and state universities, or to appointments of boards, other than those with land-planning or zoning responsibilities, in municipalities of fewer than 35,000 residents. Also, the approval of budgets does not constitute "jurisdiction or control" for the purposes of this prohibition. This provision does not apply to volunteer emergency medical, firefighting, or police service providers. [Sec. 112.3135, Fla. Stat.]

Ethics

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Training Certifications

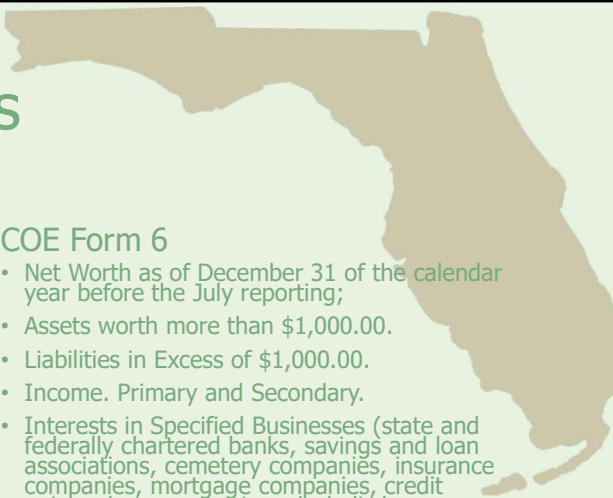


- [Required by s. 112.3142, F.S. 4 hours of ethics training each calendar year for elected municipal and county officers as well as constitutional officers]
- If you are a Constitutional or elected municipal officer appointed school superintendent, a commissioner of a community redevelopment agency created under Part III, Chapter 163, whose service began on or before March 31 of the year for which you are filing, you are required to complete four hours of ethics training which addresses Article II, Section 8 of the Florida Constitution, the Code of Ethics for Public Officers and Employees, and the public records and open meetings laws of the state. You are required to certify on the form that you have taken such training.

Ethics

11. Under which of the following circumstances would the Code of Ethics for Public Employees require that a member of a county commission abstain from voting?
- a. A vote regarding commissioner's salaries.
 - b. A vote that results in a financial gain of the commissioner's uncle.
 - c. A vote that affects many citizens of the county, including the commissioner.
 - d. A vote that results in a financial gain of the commissioner's business associate.

Financial Disclosures



COE Form 1

- Income: Primary Source and Secondary Source of Income.
- Real Property (not your homestead/residences, but yes to your vacation home).
- Intangible Personal Property.
- Liabilities
- Interests in Specified Businesses.
- Training Cert.

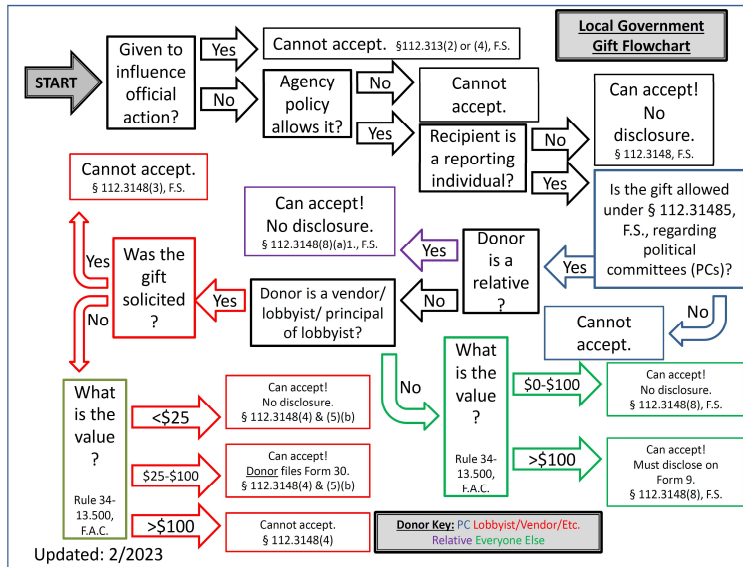
COE Form 6

- Net Worth as of December 31 of the calendar year before the July reporting;
- Assets worth more than \$1,000.00.
- Liabilities in Excess of \$1,000.00.
- Income. Primary and Secondary.
- Interests in Specified Businesses (state and federally chartered banks, savings and loan associations, cemetery companies, insurance companies, mortgage companies, credit unions, loan companies, alcoholic beverage licenses, pari-mutual wagering companies, utility companies and those regulated by the PSC, and those entities granted franchise to operate by city or county government.
- Training Cert.

Gifts

- Applies to anyone who is required to fill out a COE Form 1 or COE Form 6.
- MUST report gifts that you believe to have a value over \$100.00 (COE Form 9).
- EXCEPTIONS:
 - Relatives: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, a person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, or any other natural person having the same legal residence as you.
 - Gifts worth over \$100 for which there is a public purpose, given to you by an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district created pursuant to s. 373.069, South Florida Regional Transportation Authority, the Technological Research and Development Authority, a county, a municipality, an airport authority, or a school board; or a gift worth over \$100 given to you by a direct-support organization specifically authorized by law to support the governmental agency of which you are an officer or employee. These gifts must be disclosed on Form 10.

Gifts



Conflicts of Interest

"Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

"business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

"Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

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(3)(a) No county, municipal, or other local public officer (elected or appointed, including advisory boards) shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2)(state, regional, county, local or municipal government entity of Florida); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. S. 112.3143(3)(a), Florida Statutes

286.012, F.S. Voting requirement at meetings of governmental bodies.—A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member

present, **unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s.**

112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. **If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.**

Conflicts of Interest

Elected Officer

- **PRIOR TO THE VOTE:** publicly state to the assembly the nature of your interest in the measure on which you are abstaining from voting;
- **DURING THE VOTE:** Abstain from Voting
- **AFTER THE VOTE:** w/in 15 days complete a COE Form 8b and give it to the recorder of the minutes to be incorporated in the minutes.

Appointed Officer

- **IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:** You must complete and file form 8b (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency. The form must be read publicly at the next meeting after the form is filed.
- **IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:** You must disclose orally the nature of your conflict in the measure before participating. You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

Conflicts of Interest

11. Space County Fire Department employs firefighters and paramedics to provide emergency services to the residents of Space County. In addition, Space County has granted two private, non-profit companies exclusive franchises to provide emergency fire and paramedic services within certain defined geographic areas of the county. Firefighters and paramedics employed by the Space County Fire Department also supplement their income by working for one or the other of the two franchised emergency services companies. Does this supplemental employment by the firefighters and paramedics constitute a prohibited conflict of interest under the code of ethics for public employees?
- a. Yes however, Space County may adopt an ordinance allowing the firefighters and paramedics to work for franchised emergency service companies.
 - b. Yes, and Space County may not adopt an ordinance allowing the firefighters and paramedics to work for franchised emergency service companies.
 - c. No, so long as the firefighters and paramedics do not work for the franchised companies during the working hours assigned by Space County.
 - d. No, the firefighters and paramedics have a constitutional right to find work to supplement their income and benefits.

GOD SPEED!

Please Email or Call with any questions
or use the listserve for discussion!

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