AGENDA

CITY OF HAINES CITY, FLORIDA

CITY COMMISSION WORKSHOP

January 18, 2018
6:00 PM

Mayor H.L. Roy Tyler
Vice-Mayor Morris West **Commissioner Horace West**
Commissioner Don Mason **Commissioner Anne Huffman**

COMMISSION CHAMBERS
620 E. Main Street, Haines City, FL 33844
Phone: 863-421-9921 **Web: hainescity.com**

1. CALL TO ORDER

2. WORKSHOP ITEMS

2.1. CITY ATTORNEY MEMORANDUM

Staff Contact: *Fred Reilly, City Attorney (863) 421-3650*

2.2. DISCUSSION OF SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT PROJECTS

Staff Contact: *Linda Fisher, Interim Utilities Director*

3. AGENDA REVIEW

4. ADJOURNMENT

Website Address – hainescity.com

NOTICE – Pursuant to Section 286.0105 of the Florida Statutes, if any person decides to appeal any decision made by the City Commission with respect to any matter considered at this public meeting, such person will need a record of the proceedings and for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

For special accommodations, please notify the City Clerk's Office at least 72 hours in advance.
Phone: 863-421-9921

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the City Clerk's Office.

In accordance with the Americans with Disabilities Act (ADA), persons with a disability, such as a vision, hearing or speech impairment, or persons needing other types of assistance, and who wish to attend City Commission meetings or any other board or committee meeting may contact the City Clerk's Office in writing, or may call 863-421-9921 for information regarding available aids and services.

HAINES CITY

WWW.HAINESCITY.COM

CITY ATTORNEY
MEMORANDUM

To: The Honorable Mayor and City Commissioners

From: Fred Reilly, City Attorney

Date: January 18, 2018

Subject: City Attorney Memorandum

Introduction

The intent of this workshop item is to explain the relevant legal standards related to communications by the City Attorney with members of the City Commission.

Background

At the January 4, 2018 City Commission meeting, a consensus was given for the City Attorney to construct a memorandum and have it discussed at the January 18, 2018 workshop.

The memorandum is attached.

Organizational Goal(s)

Quality of Life: Create an environment that enhances the quality of life and benefits the community culturally, recreationally, and economically.

Budget Impact

There is not a budgetary impact.

Recommendation

Staff recommends discussing the memorandum with the City Commission.

Attachments:

a) City Attorney Communication Memorandum 01092018 (PDF)
b) Sarasota Citizens For Responsible Gov't v. City of Sarasota 48 So.3d 755 (Fla (PDF)

MEMORANDUM

TO: **CITY COMMISSIONERS AND CITY MANAGER**

FROM: **FRED REILLY, CITY ATTORNEY**

RE: **CITY ATTORNEY'S COMMUNICATION WITH CITY COMMISSIONERS**

DATE: **JANUARY 9, 2018**

I. INTRODCUTION AND BACKGROUND.

The purpose of this Memorandum is to explain the relevant legal standards related to communications by the City Attorney with members of the City Commission.

At the outset, I draw a clear distinction between communications and decision-making. Communications include informational briefings and advice. Decision-making requires action by the city commission as a whole at a public meeting.

II. ISSUE.

Is the City Attorney prohibited by the City Charter or Florida law from providing informational briefings and advice to members of the city commission (hereinafter referred to as the "Issue")?

III. CONCISE ANSWER.

No.

1. The City Charter does not contain either an affirmative obligation or an express prohibition about the manner in which the City Attorney communicates with the city commission.
2. If the city commission wishes to establish a policy about how the City Attorney communicates with individual city commission members, it can do so. No such policy currently exists.
3. The Florida Supreme Court has held that it is not a violation of the Sunshine Law for a staff member to provide informational briefings and advice to individual Board members of a government entity.

IV. ANALYSIS.

A. Attorney General Opinion.

I have considered whether it would be appropriate to request an opinion from the Florida Attorney General on the Issue. Based on the following two points which are stated in the Frequently Asked Questions section of the Florida Attorney General's website, I do not feel that a request for an opinion is necessary or appropriate:

1. **Attorney General Opinions are not a substitute for the advice and counsel of the attorneys who represent governmental agencies and officials on a day to day basis.** They should not be sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency's own legal counsel. Nor should an opinion be sought as a weapon by only one side in a dispute between agencies.

   Particularly difficult or momentous questions of law should be submitted to the courts for resolution by declaratory judgment. When deemed appropriate, this office will recommend this course of action. Similarly, there may be instances when securing a declaratory statement under the Administrative Procedure Act will be appropriate and will be recommended. (Emphasis added).

2. **Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. Instead such requests will usually be referred to the attorney for the local government in question.** In addition, when an opinion request is received on a question falling within the statutory jurisdiction of some other state agency, the Attorney General may, in the exercise of his or her discretion, transfer the request to that agency or advise the requesting party to contact the other agency. For example, questions concerning the Code of Ethics for Public Officers and Employees may be referred to the Florida Commission on Ethics; questions arising under the Florida Election Code may be directed to the Division of Elections in the Department of State. (Emphasis added).

B. Section 3.01 of the City Charter defines the City's form of government and is shown in its entirety below. The City's form of government is the "commission-manager plan." There are no other specific references to the "commission-manager plan" in the City Charter or Code of Ordinances.

Section 4.05 of the City Charter defines the role of the Mayor and vice-mayor and is shown in its entirety below.

Neither Section 3.01 nor Section 4.05 contain:

1. An affirmative obligation requiring the City Attorney to communicate with the city commission in a specific manner.
2. An express prohibition against the City Attorney communicating with the city commission in a specific manner.

The "commission-manager plan" of municipal government is not defined in the Florida Statutes.

C. Section 8.03 of the City Charter defines the City Attorney role and is shown in its entirety below.

Section 8.03 contains five affirmative obligations related to the City Attorney's role in providing legal counsel to the municipality:

1. (The City Attorney) shall act as the legal adviser to, and attorney and counselor for the municipality and all its officers in matters relating to their official duties.
2. He shall prepare all contracts, bonds and other instruments in writing in which the municipality is concerned, and shall endorse on each his approval or disapproval of the form and correctness thereof.
3. When required to do so by resolution of the city commission he shall prosecute and defend, for and in behalf of the city, all complaints, suits and controversies in which the city is a party.
4. **He shall furnish the city commission**, the city manager, the head of any department, or any officer or board not included in any department**, his opinion on any question of law relating to their respective powers and duties**. (Emphasis added).
5. In addition to the duties especially imposed under the preceding section [paragraph], he shall perform such other professional duties as may be required of him by ordinance or resolution of the city commission or as are prescribed for the city attorneys under the general laws of the state, which are not inconsistent with this Charter, or with any ordinance or resolution which may be passed by the city commission.

D. Section 8.03 does not contain:

1. An affirmative obligation requiring the City Attorney to communicate with the city commission in a specific manner.
2. A prohibition against the City Attorney communicating with the city commission in a specific manner.

E. The City Commission has not established a written policy addressing how the City Attorney should communicate with the city commission.

F. As stated in the fifth affirmative obligation in Section 8.03, the City Attorney is obligated to perform such other professional duties "as are prescribed for the city attorney under the general laws of the state, which are not inconsistent with this Charter, or with any ordinance or resolution which may be passed by the city commission."

In Sarasota Citizens For Responsible Government v. City of Sarasota, 48 So. 3d 755 (Fla. 2010), the Florida Supreme Court addressed whether private staff briefings of individual municipal board members in preparation for a public hearing constituted a violation of the Sunshine Law. The case is attached. In Sarasota Citizens, the Supreme Court stated that:

> "These informational briefings for individual members of the Board were not violations of the Sunshine Law. As this Court has explained,
>
> > members of a collegial administrative body are not obliged to avoid their staff during the evaluation and consideration stages of their deliberations. Were this so, the value of staff experience would be lost and the intelligent use of employees would be crippled."

The Sarasota Citizens case is directly on point and applicable to the City Attorney of a Florida municipality providing informational briefings for individual city commission members. Based on the Sarasota Citizens case, there is no Sunshine Law violation for a City Attorney providing such informational briefings for individual city commission members.

G. Rule 4-1.13 (Organization as Client), Rules of Professional Conduct of the Florida Bar Association is shown below. This Rule states a Florida attorney's ethical obligations in representing an organization such as a Florida municipality. This Rule is relevant to discussion of the Issue because it establishes the ethical obligations that must be considered by the Florida attorney representing an organization.

H. At the January 7, 2016 city commission meeting (commissioner comments), the commission gave its consensus "to allow the City Manager and City Clerk to notify just the Mayor to be excused from work for sick, vacation, or any other type of absences." The Minutes of this meeting are attached. This practical consensus action does not violate the City Charter and is not relevant to discussion of the Issue.

V. RECOMMENDATION

If the city commission wishes to establish a policy about how the City Attorney should communicate with the city commission, I recommend that the Issue be fully discussed and the city commission provide further direction on how it wishes to address this Issue.

VI. APPLICABLE AUTHORITY

Sec. 3.01. (Form of government), City Charter.

The form of government of the City of Haines City, provided for under this Charter, shall be that known as the "commission-manager plan" and the city commission shall consist of five (5) citizens who shall be elected at large in the manner hereinafter provided. The city commission shall constitute the governing body with powers as hereinafter provided to pass ordinances, adopt regulations and appoint a chief administrative officer, to be known as the "city manager," and to exercise all other powers hereinafter provided.

Sec. 4.05. (Mayor and vice-mayor), City Charter.

The city commission shall elect from among its members a mayor and vice-mayor. The seating of the newly elected city commissioners and the election of the mayor and vice-mayor shall be done annually at the first regular city commission meeting in the month following the regular election, to be known as the "organization meeting." The mayor shall preside at meetings of the city commission, shall be recognized as head of city government for all ceremonial purposes, by the governor for purposes of military law, for services of process, execution of contracts, deeds and other documents, and as the city official designated to represent the city in all agreements with other governmental entities of certifications to other governmental entities, but shall have

no administrative duties nor administrative authority except as required to carry out the responsibilities herein, nor shall individual city commissioners have any administrative duties or authority. This shall not be considered as conferring upon the mayor the administrative or judicial functions of a mayor under the general laws of the state. The vice-mayor shall act as mayor during the absence or disability of the mayor.

Sec. 8.03. (City attorney), City Charter.

The city commission shall appoint a city attorney who shall not be an elective officer of the city, who shall hold office at the pleasure of the city commission, and who shall act as the legal adviser to, and attorney and counselor for the municipality and all its officers in matters relating to their official duties. He shall prepare all contracts, bonds and other instruments in writing in which the municipality is concerned, and shall endorse on each his approval or disapproval of the form and correctness thereof. When required to do so by resolution of the city commission he shall prosecute and defend, for and in behalf of the city, all complaints, suits and controversies in which the city is a party. He shall furnish the city commission, the city manager, the head of any department, or any officer or board not included in any department, his opinion on any question of law relating to their respective powers and duties. The city attorney may appoint an assistant or assistants subject to confirmation by the city commission.

In addition to the duties especially imposed under the preceding section [paragraph], he shall perform such other professional duties as may be required of him by ordinance or resolution of the city commission or as are prescribed for the city attorneys under the general laws of the state, which are not inconsistent with this Charter, or with any ordinance or resolution which may be passed by the city commission.

4-1 CLIENT-LAWYER RELATIONSHIP

RULE 4-1.13 ORGANIZATION AS CLIENT, FLORIDA BAR RULES.

(a) Representation of Organization. A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) Violations by Officers or Employees of Organization. If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization or a violation of law that reasonably might be imputed to the organization and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating

to the representation to persons outside the organization. Such measures may include among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Resignation as Counsel for Organization. If, despite the lawyer's efforts in accordance with subdivision (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with rule 4-1.16.

(d) Identification of Client. In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) Representing Directors, Officers, Employees, Members, Shareholders, or Other Constituents of Organization.A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 4-1.7. If the organization's consent to the dual representation is required by rule 4-1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

48 So.3d 755

SARASOTA CITIZENS FOR RESPONSIBLE GOVERNMENT, etc., et al., Appellants,
v.
CITY OF SARASOTA, Florida, etc., et al., Appellees.

No. SC10-1647.

Supreme Court of Florida.

Oct. 28, 2010.

[48 So.3d 757]

Andrea Flynn Mogensen of the Law Office of Andrea Flynn Mogensen, Sarasota, FL: Gregg D. Thomas and Paul R. McAdoo of Thomas and Locicero, PL, Tampa, FL, for Appellants.

Susan H. Churuti and Michael S. Davis of Bryant Miller Olive, P.A., Tampa, FL and Robert M. Fournier, City Attorney and Michael A. Connolly, Deputy City Attorney of Fournier and Connolly, P.A., Sarasota, FL, on behalf of The City of Sarasota; Stephen E. DeMarsh, County Attorney, Frederick J. Elbrecht, and Alan W. Roddy, Deputy County Attorneys, Sarasota, FL, and Ed Vogel, III and Michael Lawrence Wiener of Holland and Knight, Lakeland, FL, on behalf of Sarasota County, Board of County Commissioners of Sarasota County, Florida, Shannon Staub, Nora Patterson and Joe Barbetta, for Appellees.

Victor Lee Chapman of Barrett, Chapman and Ruta, P.A., Orlando, FL, on behalf of First Amendment Foundation, Inc., as Amicus Curiae.

PER CURIAM.

Sarasota Citizens for Responsible Government, et al., (collectively referred to as "Citizens") appeal a trial court's judgment validating bonds proposed for issuance by the City of Sarasota and the County of Sarasota in furtherance of an agreement bringing the Baltimore Orioles to Sarasota

[48 So.3d 758]

for spring training.[1] On appeal in this Court, Citizens only allege Sunshine Law violations by the County. They do not challenge any other aspect of the bond validation proceedings, and they do not appeal the trial court's determination that the City did not violate the Sunshine Law. For the reasons explained below, we affirm the trial court.

I. BACKGROUND

As the trial court summarized,

> [t]he Sarasota County Board of County Commissioners [Board] entered into a Memorandum of Understanding (MOU) with the Baltimore Orioles (Orioles) in July, 2009. The MOU obligated the Orioles, among other things, to relocate to Sarasota for spring training. Sarasota County is obligated to fund construction of facilities/facility improvements at the Ed Smith complex, the location within the City of Sarasota where the Orioles are obligated to conduct spring training activities, and other facilities located elsewhere in the County.
>
> Negotiation of the MOU with the Orioles followed unsuccessful attempts to retain the Cincinnati Reds in Sarasota and to secure relocation of the Boston Red Sox to Sarasota. In November, 2008, the [Board] instructed the County Administrator, James Ley, to initiate negotiations with the

> Orioles. Mr. Ley delegated this task to Deputy County Administrator David Bullock (Bullock). Negotiations between the County and Orioles began immediately and continued until the terms of the MOU were finalized in July, 2009. The MOU was approved by the [Board] at a public meeting on July 22, 2009. At that public hearing, the [Board] adopted an amended or modified Tourist Development Tax Ordinance, in part to provide part of the County's funding obligation under the MOU; approved an Interlocal Agreement with the City which included an obligation of the City to convey the Ed Smith complex to the County, to transfer funds to the County to offset part of the cost of construction and to undertake responsibility for environmental remediation, if required, at the complex; and adopted a resolution authorizing issuance of bonds for the purpose of financing costs associated with the improvements required by the MOU. Simultaneously, the City also authorized issuance of bonds to fulfill its obligations pursuant to the [I]nterlocal [A]greement.

More specifically, the MOU between the County and the Orioles states that the County shall provide "23.7 million to the Project" and that it is estimated the City's contribution will be approximately $7.5 million, for a total not to exceed "$31.2 million from all governmental sources." The MOU details that the proceeds of the County's bond issuance is "expected to be approximately $18.7 Million," that the proceeds of "[c]ash collections of one-half (1/2) of one percent (1%) of the County's Tourist Development Tax" is "estimated to be approximately $2 million," and that the County's "cash contributions from legally available non-ad valorem revenues" will not exceed $3 million. The County is also required to maintain and contribute annually to a capital repair and improvements fund with the Orioles also contributing to this fund. The MOU further explains that the City's bond issue serviced by funds from the State of Florida Office of Tourism, Trade and Economic Development

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(OTTED) or a cash equivalent of non-ad valorem revenues will be "in an amount no less than $7.5 million."

The MOU calls for the renovation of the Ed Smith Stadium complex, including a renovated clubhouse, batting cages, pitching mounds, practice fields, parking facilities, utilities, etc. Additionally, the MOU calls for renovations at the Orioles' minor league spring training facilities located at County-owned Twin Lake Park, including practice fields, a renovated clubhouse, administrative offices, batting cages, utilities, weight rooms, pitching mounds, etc. The MOU provides that the Orioles' lease of these facilities commences on November 1, 2009 and continues through October 31, 2039. The Orioles may not relocate its major league and minor league spring training operations from Sarasota during this lease term, and the Orioles' rent for this lease term is $1.00. However, the Orioles are generally responsible for the operating, maintenance, and repairs expenses. The Orioles are to manage the ticketing and parking operations and are to receive the revenue from concessions. But the County maintains some ability to use both the major league and minor league sites for civic-oriented events and for natural disaster purposes. In the MOU, the County and the Orioles also "acknowledge that it is mutually beneficial to

facilitate the establishment of a youth baseball academy" at the minor league site.

The Interlocal Agreement between the City and the County requires the City to transfer ownership of the Ed Smith Stadium complex to the County. It also requires the City to pay the environmental remediation costs associated with this facility. The City is further required to "use its best efforts to issue its bonds to be repaid by the OTTED funds ... in an amount estimated to be not less than $7.5 million."

The terms of the MOU and Interlocal Agreement were the result of extensive negotiations. In furtherance of the Board's directive to begin negotiations with the Orioles, Bullock retained two consultants for their baseball expertise and also consulted with County staff, including the County's chief financial officer, the County's attorney, the County's parks and recreation director, and a County planning coordinator. Bullock's communications and discussions with these individuals were not advertised or otherwise treated as public meetings.

The negotiations with the Orioles took place intermittently over a series of months through meetings, phone calls, and e-mailed documents involving different individuals, all coordinated by Bullock. Representatives of the Sarasota Chamber of Commerce became involved to advocate for an agreement with the Orioles, and the Chamber funded a study of the economic impact of spring training in Sarasota. The Orioles invoked the confidentiality provision of section 288.075, Florida Statutes (2009), to keep confidential its proprietary economic development information relating to the proposed transaction. These negotiations led to the July 22, 2009 presentation to the Board of the Interlocal Agreement and the MOU and several mechanisms to finance renovations to the stadium and other facilities.

The negotiations with the Orioles took place alongside a series of discussions by the Board at its public meetings. For example, on November 4, 2008, the Board approved a motion directing staff to open negotiations using one-half percent of tourist development tax revenue and potential City contributions. On November 18, 2008, Bullock provided a status report of the meetings and discussed the location of

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a proposed new facility and the components of the new facility. County staff also presented information regarding capital costs, potential funding sources, and the economic impact of the proposed new facility. On November 18, the Board also discussed specific components of the potential deal, including operations and maintenance payments and a proposed Cal Ripken youth baseball academy. Then, on December 9, 2008, the Board discussed a proposal by one of the commissioners that involved $31.6 million financed with one-half percent of tourist development tax money to renovate the existing Ed Smith Stadium. On December 17, 2008, Bullock requested guidance from the Board on acceptable parameters for a proposal to retain Major League Baseball. Both County staff and Orioles representatives made presentations. Also on December 17, the Board discussed and rejected an Orioles' proposal for a $58 million spring training facility to be funded by an additional one-quarter percent of tourist development tax money, but then approved a counteroffer involving a lower dollar figure. At public meetings on January 27, 2009 and February 11, 2009, the Board again discussed the Orioles negotiations. On March 17, 2009, the Board directed the County Administrator to send correspondence signed by the Board Chair to the Orioles requesting a written counteroffer.

At various points after the start of negotiations with the Orioles in November 2008, e-mails from constituents or others to

members of the Board regarding the Orioles were copied to other Board members and sometimes included the reactions from other Board members. In at least one e-mail correspondence, a comment was directly addressed from one Board member to another. The last e-mail among Board members produced at trial was sent on April 12, 2009.

Thereafter, at its properly noticed public meeting on April 14, 2009, the Board discussed the Baltimore Orioles negotiations, including construction costs and potential funding, and one of the commissioners presented a detailed, draft counter-proposal term sheet outlining funding, terms of the lease, advertising, the youth facility, and an agreement with the City, among other issues. The Board rejected that commissioner's proposal as well as another commissioner's alternative proposal. At an April 21, 2009 meeting, the Board discussed the Orioles' proposal and directed the County Administrator to send correspondence to the City asking for formal confirmation of the City's willingness to issue bonds. At a May 13, 2009 meeting, the Board discussed the City's resolution, and Bullock advised the Board on discussions with the Orioles. The Board discussed stadium costs and financing and then directed the County Administrator to proceed with negotiations providing funding in the amount of $28.2 million contingent upon specific terms relating to operations and maintenance, advertising, construction management, stadium uses, property taxes, terms of occupancy, and the Cal Ripken youth facility. Then, on May 26, 2009, the Board discussed the Orioles' response as well as funding sources for the renovation of the stadium. One commissioner noted that she "could handle" another $3 million in addition to the prior $28.2 million offer. And members of the public, including a representative of Citizens, spoke regarding the proposed facilities.

Ultimately, these negotiations and meetings resulted in Board action on July 22, 2009. On that date, the Board held a public hearing that lasted over four hours. The Board heard from approximately forty citizens, including several representatives of Citizens. Bullock and staff gave a presentation on the provisions of the proposed

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documents and answered questions posed by the Board.

Then, on February 19, 2010, after Citizens filed a suit alleging Sunshine Law violations against the City and the County, the Board held another public hearing for the reconsideration and ratification of the Interlocal Agreement, the MOU, and related actions. The Board also adopted a new resolution authorizing the sale of bonds to finance the County's portion of the facility renovations.

Additionally, the County and the City filed separate complaints seeking validation of the bonds proposed for issuance in furtherance of the agreement with the Orioles. The County's validation complaint related to County Resolution No. 2010-029, which was adopted on February 19, 2010 and which authorized three types of bonds: (1) Capital Improvement Revenue Bonds, Series 2010A (Federally Taxable-Build America Bonds-Direct Subsidy); (2) Capital Improvement Revenue Bonds, Series 2010B (Federally Taxable-Build America Bonds-Recovery Zone Economic Development Bonds-Direct Subsidy); and (3) Capital Improvement Revenue Bonds, Series 2010C. And the City's validation complaint related to City Resolutions No. 10R-2135 and 10R-2139, which were adopted on November 2, 2009 and December 7, 2009 and which authorize Sales Tax Payments Revenue Bonds, Series 2010 (Federally Taxable-Build America Bonds-Recovery Zone Economic Development Bonds-Direct Subsidy). Citizens

alleged Sunshine Law violations as objections to both of these bond validation actions.

The trial court consolidated the bond validation proceedings and Citizens' Sunshine Law complaint. After a four-day bench trial, the trial court validated the County's and the City's proposed bonds and denied Citizens' complaint. On appeal in this Court, Citizens allege that the trial court erred in ruling that (a) Bullock's consultations were not required to be in the sunshine, (b) the one-on-one staff briefings of County Board members prior to the July 22, 2009 public meeting were not a violation of the Sunshine Law, and (c) any e-mail violations were cured by the Board's public meetings.

II. THE NEGOTIATIONS TEAM

Citizens contend that the trial court erred when ruling that Bullock and the individuals he consulted in negotiating with the Orioles (the so-called negotiations team) were not a board or commission subject to the Sunshine Law. However, we agree with the City and County and affirm the trial court.

At the outset, we note the following:

> [A] trial court must make three determinations during a bond validation proceeding: (1) whether the public body has the authority to issue the subject bonds; (2) whether the purpose of the obligation is legal; and (3) whether the authorization of the obligation complies with the requirements of law. *City of Gainesville v. State,* 863 So.2d 138, 143 (Fla.2003). On appeal, this Court reviews the "trial court's findings of fact for substantial competent evidence and its conclusions of law de novo." *Id.* (citing *City of Boca Raton v. State,* 595 So.2d 25, 31 (Fla.1992); *Panama City Beach Cmty. Redev. Agency v. State,* 831 So.2d 662, 665 (Fla.2002)).

Bay County v. Town of Cedar Grove, 992 So.2d 164, 167 (Fla.2008). This appeal regarding alleged Sunshine Law violations only concerns the third item above, whether the authorization complies with the requirements of law.

[48 So.3d 762]

Article I, section 24(b) of the Florida Constitution provides:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

And section 286.011, Florida Statutes (2009), commonly known as the Government in the Sunshine Law, provides in part:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no

> resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Because section 286.011 "was enacted in the public interest to protect the public from 'closed door' politics ... the law must be broadly construed to effect its remedial and protective purpose." *Wood v. Marston,* 442 So.2d 934, 938 (Fla.1983). As this Court has explained,

> [t]he statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.

Town of Palm Beach v. Gradison, 296 So.2d 473, 477 (Fla.1974). "Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury...." *Id.* Therefore, where officials have violated section 286.011, the official action is void ab initio. *Id.*

All governmental authorities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted. *See* art. I, § 24(c), Fla. Const. The requirements may also apply to committees subordinate to or selected by traditional governmental authorities. This Court in *Wood* explained that the dispositive question is whether "decision-making authority" has been delegated to the committee. 442 So.2d at 939. Where the committee has been delegated decision-making authority, the committee's meetings must be open to public scrutiny, regardless of the review procedures eventually used by the traditional governmental body. *See id.* at 939-40 ("Where a body merely reviews decisions delegated to another entity, the potential for rubber-stamping always exists. To allow a review procedure to insulate the decision itself from public scrutiny invites circumvention of the Sunshine Law."). In contrast, a committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities. *See id.* at 940-41; *see also Lyon v. Lake County,* 765 So.2d 785, 789 (Fla. 5th DCA 2000) ("When a committee has been established for and conducts only information gathering and reporting, the activities of that committee are not subject to

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section 286.011, Florida Statutes."). Whether, in fact, the delegation is a delegation of decision-making authority or fact-finding authority is evaluated according to the "nature of the act performed, not on the make-up of the committee or the proximity of the act to the final decision." *Wood,* 442 So.2d at 939 (emphasis omitted).

In this case, the trial court's order included factual findings regarding the roles of the individuals Bullock consulted when negotiating with the Orioles. Specifically, the trial court found that "the people and entities Bullock met with ... operated in the roles of advisor, consultant and facilitator to assist him in the performance of his duty to negotiate with the Orioles." The trial court found that these individuals "did not deliberate with, or without, him." "Bullock retained and exercised the ultimate authority to negotiate the terms of the MOU that would be submitted to the [Board] for consideration."

These factual findings are supported by competent substantial evidence in the record. *See Lyon,* 765 So.2d at 790 (reviewing trial court's factual finding that a meeting was informational for competent substantial evidence in the record). For example, Bullock testified that there was never a committee formed to negotiate any aspects of the MOU. Bullock also testified that he only consulted with the County's chief financial planning officer for information regarding potential funding and financing mechanisms and that the County's parks and recreation director "would provide information because this is essentially a recreational facility." Additionally, the County's project coordinator testified that she provided staff support by making copies, typing letters, and scheduling meeting rooms. There was also testimony from the County Administrator that the baseball experts' responsibilities were "to advise staff as to the makeup of what should be [in] an MOU, the issues to be aware of[, and] to provide some comparative analysis of other such deals around the country." And individual members of the so-called negotiating team testified that they were not delegated any authority to negotiate with the Orioles and that everything was under the direction of Bullock. Therefore, there is competent substantial evidence in the record to support the trial court's findings that the individuals consulted by Bullock performed an informational and fact-finding role in assisting Bullock.

Because the individuals consulted by Bullock served an informational role, the so-called negotiations team did not constitute an advisory committee subject to the requirements of the Sunshine Law. As explained above, only advisory committees acting pursuant to a delegation of decision-making authority by the governmental entity are subject to the open meetings requirement of section 286.011. Advisory committees functioning as fact-finders or information gatherers are not subject to section 286.011. *See Lyon,* 765 So.2d at 789; *Cape Publ'ns, Inc. v. City of Palm Bay,* 473 So.2d 222 (Fla. 5th DCA 1985); *Bennett v. Warden,* 333 So.2d 97 (Fla. 2d DCA 1976). This is not a situation where Bullock and the individuals he consulted made joint decisions. *Cf. Dascott v. Palm Beach County,* 877 So.2d 8 (Fla. 4th DCA 2004). Instead, these individuals were simply providing advice and information, which does not make the negotiations team a board or commission subject to the Sunshine Law. *See, e.g., McDougall v. Culver,* 3 So.3d 391, 393 (Fla. 2d DCA 2009) ("[T]he senior officials provided only a recommendation to the Sheriff but they did not deliberate with him nor did they have decision-making authority. Therefore, we conclude that the use of the memoranda did not violate the Sunshine Law.");

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Jordan v. Jenne, 938 So.2d 526, 530 (Fla. 4th DCA 2006) ("Because the [group] provided only a mere recommendation to the inspector general and did not deliberate with the inspector general, the ultimate authority on termination, we conclude that the [group] does not exercise decision-making authority so as to constitute a 'board' or 'commission' within the meaning of section 286.011, and as a result, its meetings are not subject to the Sunshine Act.").

Citizens argue that the statutes regarding economic development agencies should alter this analysis. Citizens specifically point to section 288.075(2)(a), Florida Statutes (2009), which provides:

> Upon written request from a private corporation, partnership, or person, information held by an economic development agency concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business

> activities in this state is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first.

The County acknowledges that Bullock was acting as an economic development agency and that the Orioles' proprietary information was not released pursuant to section 119.07(1), Florida Statutes (2009), of the Public Records Act after the Orioles invoked the exemption outlined in section 288.075(2)(a). However, this does not mean Bullock and the individuals he consulted were a board or commission within the meaning of section 286.011 of the Sunshine Law. If an individual is not already a member of a board or commission governed by the Sunshine Law, nothing about working on economic development projects or receiving proprietary information converts him or her into one.

Accordingly, this Court affirms the trial court's ruling regarding Bullock and the individuals he consulted while negotiating with the Orioles.

III. ONE-ON-ONE BRIEFINGS

Citizens next argue that the trial court erred in determining that the private staff briefings of individual board members in preparation for the July 22, 2009 public hearing did not violate the Sunshine Law. We agree with the contrary arguments of the City and County and affirm the trial court.

This Court has explained that meetings within the meaning of the Sunshine Law include any gathering, formal or informal, of two or more members of the same board or commission "where the members deal with some matter on which foreseeable action will be taken by the Board." *Tolar v. School Bd. of Liberty County*, 398 So.2d 427, 428 (Fla.1981); *see also Bd. of Pub. Instruction v. Doran*, 224 So.2d 693, 698 (Fla.1969). However, public officials may call upon staff members for factual information and advice without being subject to the Sunshine Law's requirements. *See Occidental Chem. Co. v. Mayo*, 351 So.2d 336, 342 (Fla.1977); *Wood*, 442 So.2d at 940 ("The Second District found no violation, holding, *inter alia*, that the meetings were not decision-making in nature, but were 'for the purpose of "fact-finding" to assist him in the execution of [his] duties,' [*Bennett*,] 333 So.2d at 99, and we approve the holding that such fact-finding staff consultations are not subject to the Sunshine Law.").

Here, Bullock, individually and assisted by other County staff, held one-on-one meetings in the two- or three-day period immediately preceding the Board's public

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meeting on July 22, 2009. These meetings were informational briefings regarding the contents of the MOU, where Bullock would also ask if the individual members had any questions about the MOU. There is no evidence that Bullock or other County staff communicated what any commissioner said to any other commissioner.

These informational briefings for individual members of the Board were not violations of the Sunshine Law. As this Court has explained,

> members of a collegial administrative body are not obliged to avoid their staff during the evaluation and consideration stages of their deliberations. Were this so, the value of staff expertise would be

> lost and the intelligent use of employees would be crippled.

Occidental, 351 So.2d at 342 n. 10. Therefore, we affirm the trial court's ruling regarding these one-on-one meetings.

IV. E-MAILS

Lastly, Citizens contend that the trial court erred by ruling that any violations committed in e-mail discussions between board members were cured by the Board's public meetings that were held up to and including July 22, 2009. Agreeing with the contrary arguments of the City and County, we affirm the trial court.

In *Tolar*, 398 So.2d at 429, this Court held that Sunshine Law violations can be cured by "independent, final action in the sunshine," which this Court distinguished from mere ceremonial acceptance or perfunctory ratification of secret actions and decisions. *See also Zorc v. City of Vero Beach*, 722 So.2d 891, 903 (Fla. 4th DCA 1998) ("[O]nly a *full*, open hearing will cure a defect arising from a Sunshine Law violation. Such violation will not be cured by a perfunctory ratification of the action taken outside of the sunshine."); *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So.2d 857, 861 (Fla. 3d DCA 1994) ("Governmental actions will not be voided whenever governmental bodies have met in secret where sufficiently corrective final action has been taken.").

In *Tolar*, a school superintendent-elect met privately with school board members and discussed, among other things, the removal of Tolar as director of administration and abolition of his position. 398 So.2d at 427. At a subsequent public meeting in which Tolar was present and "given full opportunity to express his views," the school board members voted to transfer Tolar to another position and abolish his position. *Id.* Tolar sued for injunctive relief, alleging a violation of section 286.011. *Id.* As this Court noted, "By the express terms of section 286.011, any resolution, rule, regulation, or formal action taken at these secret meetings would not be binding." *Id.* at 428. Yet this Court declined to invalidate the action taken by the school board. *Id.* Instead, this Court distinguished *Tolar* from its previous holding in *Gradison*, 296 So.2d 473, where this Court held void formal action that "was merely the crystallization of secret decisions." *Tolar*, 398 So.2d at 428.

As explained in *Tolar*, the *Gradison* holding invalidating what was merely a summary approval of secret decisions

> does not mean, however, that public final action of the Board will always be void and incurable merely because the topic of the final public action was previously discussed at a private meeting....
>
> ....
>
> ... [H]ere[,] the Board took independent, final action in the sunshine in voting to abolish the position. The Board's action was not merely a ceremonial acceptance of secret actions and was not merely a perfunctory ratification of secret

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> decisions at a later meeting open to the public.

398 So.2d at 428-429.

In this case, e-mails from constituents to members of the Board were copied to other members and sometimes led to comments between Board members regarding the topic of bringing the Orioles to Sarasota for spring training. The last such e-mail exchange, which possibly violated the Sunshine Law,

occurred on April 12, 2009. However, the Board conducted multiple public meetings subsequent to that April 12 exchange where the topic of Orioles spring training was discussed and considered. For example, on April 14, 2009, the Board publicly rejected a commissioner's detailed proposal for an agreement with the Orioles as well as another commissioner's alternative proposal. Then, on May 13, 2009, the Board publicly discussed stadium costs and financing and directed the County Administrator to proceed with negotiations providing funding in the amount of $28.2 million contingent upon specific terms relating to operations and maintenance, advertising, construction management, stadium uses, property taxes, terms of occupancy, and the Cal Ripken youth facility. Then, on May 26, 2009, the Board considered the Orioles' response as well as funding sources for the renovation of the stadium. One commissioner noted that she "could handle" another $3 million in addition to the prior $28.2 million offer. Ultimately, on July 22, 2009, the Board held a properly noticed public hearing and approved the MOU and the Interlocal Agreement after a multi-hour discussion. In fact, representatives of Citizens spoke at that July 22 hearing as well as the prior meeting on May 26.

Based upon the fact that, subsequent to the last possibly violative e-mail, multiple proposals were discussed and rejected before one was finally approved, it is clear the Board took independent, final action in the sunshine regarding Orioles spring training in Sarasota. This simply is not the case of a "ceremonial acceptance of secret actions [or] merely a perfunctory ratification of secret decisions at a later meeting open to the public." *Tolar*, 398 So.2d at 429. Therefore, any possible e-mail violations were cured.

CONCLUSION

We affirm the trial court's judgment validating bonds proposed for issuance by the City of Sarasota and the County of Sarasota in furtherance of the agreement bringing the Baltimore Orioles to Sarasota for spring training. Because Bullock's so-called negotiations team only served an informational role, it was not subject to the requirements of the Sunshine Law. The County also did not violate the Sunshine Law when Bullock, assisted by other County staff, briefed individual Board members prior to the July 22, 2009 public meeting. Finally, any possible violations that occurred when Board members circulated e-mails among each other were cured by subsequent public meetings regarding the negotiations and agreement with Orioles.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

[1] We have jurisdiction. *See* art. V, § 3(b)(2), Fla. Const.; *see also Rowe v. Pinellas Sports Auth.*, 461 So.2d 72, 74 (Fla.1984).