

DIGEST OF OFFICIAL OPINIONS

Bill McCollum
Attorney General
State of Florida

April – June 2009

RE: MUNICIPALITIES – CHARTERS – MUNICIPAL FINANCE – INITIATIVES – ELECTIONS – authority of citizens to amend municipal charter to require voter approval of capital project exceeding specified amount. ss. 166.021 and 166.031, Fla. Stat.; Art. VIII, s. 6, Fla. Const.

AGO 2009-12

April 1, 2009

Mr. Hans Ottinot, City Attorney, City of Sunny Isles Beach

A municipal charter may be amended pursuant to a petition initiative to require voter approval of any capital improvement project exceeding \$500,000 without conflicting with the city's constitutional home rule powers.

RE: SPECIAL DISTRICTS – WATER CONTROL DISTRICTS – REAL PROPERTY – WATER CONTROL PLAN – authority of water control district to purchase certain property. s. 298.22, Fla. Stat.; Chs. 71-669 and 2005-342, Laws of Fla.

AGO 2009-13

April 14, 2009

Mr. Terry E. Lewis, Lewis, Longman & Walker, P.A.

In light of the absence of an adopted water control plan and considering the requirement that the powers of the district must be exercised to accomplish water control district purposes, it is my opinion that the Spring Lake Improvement District is not authorized to purchase a multi-use golf course facility located within the district that includes a driving range, restaurant, bar, sewer plant, and related businesses.

RE: GOVERNMENT IN THE SUNSHINE LAW B MEDIATION B MUNICIPALITIES B FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT B CONFLICT RESOLUTION B authority of municipality to call closed executive session to discuss governmental conflict resolution issues. s. 286.011(8), Fla. Stat.; Ch. 164, Fla. Stat.

AGO 2009-14

April 23, 2009

Mr. Paul R. Gougelman, City Attorney, City of Melbourne

Section 286.011(8), Florida Statutes, does not authorize a city council to meet in executive session to consider the terms of settlement negotiations in conflict resolution proceedings

under the "Florida Governmental Conflict Resolution Act."

RE: GOVERNMENT IN THE SUNSHINE LAW – MEETINGS – MUNICIPALITIES – LITIGATION – applicability of exemption to meetings by city to discuss litigation strategy when not a named party. s. 286.011(8), Fla. Stat.

AGO 2009-15

April 23, 2009

Mr. Samuel S. Goren, City Attorney, City of Pembroke Pines

When the City of Pembroke Pines is a real party in interest of a pending lawsuit, it may conduct a closed attorney-client session under section 286.011(8), Florida Statutes, to discuss the pending litigation, despite not being a named party at the time of the meeting.

RE: MUNICIPALITIES – STREETS AND HIGHWAYS – PRIVATE ROADS – TRAFFIC CONTROL – authority to enforce traffic laws on private roads in gated community. ss. 316.006, 316.183, and 316.189, Fla. Stat.

AGO 2009-16

April 23, 2009

Mr. Joel D. Cantor, Office of General Counsel, City of Hollywood

A municipal police department may enforce state traffic laws, including speed limits prescribed in sections 316.183 and 316.189, Florida Statutes, on private roads within a gated community when the private community has entered into a traffic control agreement with the municipality pursuant to section 316.006(2), Florida Statutes.

RE: HOUSING FINANCE AUTHORITIES – COUNTIES – ability of housing finance authority to loan funds to for-profit entities. s. 159.608, Fla. Stat.

AGO 2009-17

April 23, 2009

Ms. Christy S. Evans, General Counsel, Housing Finance Authority of Palm Beach County

The Housing Finance Authority of Palm Beach County may loan funds to for-profit developers for the development of qualifying housing or the construction, purchase, reconstruction, or rehabilitation of qualifying housing under the provisions of Part IV, Chapter 159, Florida Statutes, if such housing fulfills the purposes of the act.

RE: MUNICIPALITIES\FIREWORKS\ORDINANCES\municipality prohibited from enacting ordinance directly prohibiting or interfering with the state safety standards or right to purchase, sell, use, or possess consumer fireworks. s. 10, Ch. 2007-67, Laws of Fla.

AGO 2009-18

April 23, 2009

Mr. Samuel S. Goren, Coral Springs City Attorney

The moratorium imposed by Chapter 2007-67, Laws of Florida, prohibiting a municipality from enacting an ordinance which would directly prohibit or directly interfere with the safety standards established by state law or the right to purchase, sell, use, or possess consumer fireworks in Florida is still in effect, and will continue until such time as the Legislature takes action to repeal the prohibition.

RE: MUNICIPALITIES\RECORDS\GOVERNMENT IN THE SUNSHINE LAW\INTERNET\public record implications for city=s Facebook page. s. 119.011(12), Fla. Stat.; Art. I, s. 23, Fla. Const.

AGO 2009-19

April 23, 2009

Mr. Samuel S. Goren, Coral Springs City Attorney

1. Since the city is authorized to exercise powers for a municipal purpose, the creation of a Facebook page must be for a municipal, not private purpose. The placement of material on the city=s page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes. In any given instance, however, the determination would have to be made based upon the definition of "public record" contained in section 119.11, Florida Statutes. Similarly, whether the Facebook page of the friends would also be subject to the Public Records Law, Chapter 119, Florida Statutes, would depend on whether the page and information contained therein was made or received in connection of the transaction of official business by or on behalf of a public agency; 2. The city is under an obligation to follow the public records retention schedules established by law; 3. While Article I, section 23, Florida Constitution, may be implicated in determining what information may be collected by the city, the constitutional provision expressly states that "[t]his section shall not be construed to limit the public's right of access to public records and meetings as provided by law." Thus, to the extent that information on the city=s Facebook page constitutes a public record within the meaning of Chapter 119, Florida Statutes, Article I, section 23, Florida Constitution, is not implicated; 4. Communications on the city=s Facebook page regarding city business by city commissioners may be subject to Florida=s Government in the Sunshine Law, section 286.011, Florida Statutes. Thus, members of a city board or commission must not engage on the city=s Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

RE: LOCAL GOVERNMENT CODE ENFORCEMENT – MUNICIPALITIES – use of initial violation to charge repeat violation. s. 162.06, Fla. Stat.

AGO 2009-20

May 6, 2009

Mr. James C. Brady, City Attorney, City of Lauderdale Lakes

A city may not cite and prosecute an individual for a repeat code violation based upon a previous adjudication of the same violation that has not been resolved or for which the violator has failed to comply.

RE: TRAFFIC B FINES B LAW ENFORCEMENT B payment of associate costs for computer and communication devices under traffic fine transferred to municipality for automation. s. 318.21(9), Fla. Stat.

AGO 2009-21

May 6, 2009

Mr. Curtis Robbins, Chief of Police, Howey-in-the-Hills

The associated fees (such as monthly expenses, purchase, repair and maintenance costs, and contractual or licensing obligations) for devices such as mobile data terminal used to access the computer aid dispatch system or the portable devices such as a Blackberry or PDA device used when the mobile data terminals are not readily accessible may be paid from the fees received by the city pursuant to section 318.21(9), Florida Statutes.

RE: COUNTIES B CRASH REPORTS B MOTOR VEHICLES B PUBLIC RECORDS B FEES B ACCIDENTS B ORDINANCES B authority of county to obtain information from crash reports. ss. 316.066 and 316.008, Fla. Stat.

AGO 2009-22

May 14, 2009

Ms. Alison P. Rogers, Escambia County Attorney

1. Escambia County is not entitled to receive information contained in crash reports from law enforcement agencies prepared pursuant to section 316.066, Florida Statutes, based on authority contained in the County's Motor Vehicle Accident Cost Recovery Fee Ordinance; 2. Escambia County is not authorized by section 316.008(1)(k), Florida Statutes, to adopt an ordinance requiring that the county be given access to the information contained in crash reports prepared pursuant to section 316.066, Florida Statutes, prior to the expiration of the 60-day confidentiality period.

RE: PROPERTY APPRAISER B COMMON ELEMENTS B TAXATION B SUBDIVISIONS B REAL PROPERTY B whether golf course property is "common element" for purposes of taxation. s. 193.0235, Fla. Stat.

AGO 2009-23

May 14, 2009

The Honorable David Johnson, Seminole County Property Appraiser

1. So long as the golf course, located within a platted subdivision and designated on the plat, approved site plan or otherwise as a "common element for the exclusive benefit of lot owners," is not included within the lots that constitute inventory for the developer which inventory is intended to be privately owned or is currently privately owned, such property would appear to qualify as a "common element" for proration of taxes pursuant to section 193.0235, Florida Statutes; 2. In order to qualify as a "common element" for purposes of section 193.0235, Florida Statutes, a golf course must be actually and exclusively used by the lot owners of the subdivision and be designated on the plat, approved site plan, or otherwise as a "common element for the exclusive benefit of lot owners."

RE: MUNICIPALITIES B FIREARMS B CONCEALED WEAPONS B MEETINGS B whether city council meeting is "place of business" in which city council member can carry firearm. ss. 790.06 and 790.25, Fla. Stat.

AGO 2009-24

May 27, 2009

Mr. Matt E. Dannheisser, Gulf Breeze City Attorney

A member of a municipal city council may not carry a weapon or firearm during a city council meeting pursuant to the "place of business" exception set forth in section 790.25(3)(n), Florida Statutes. Further, it is irrelevant to resolution of this question that the city council member possesses a concealed weapons license as section 790.06, Florida Statutes, clearly prohibits the carrying of concealed weapons into any meeting of the governing body of a municipality.

RE: GOVERNMENT IN THE SUNSHINE – BERT J. HARRIS ACT – ATTORNEY CLIENT – MUNICIPALITIES – SETTLEMENT NEGOTIATIONS – pre-suit notice period is not pending litigation allowing closed attorney-client meeting. ss. 70.001 and 286.011(8), Fla. Stat.

AGO 2009-25

June 10, 2009

Mr. Ernest H. Kohlmyer, Counsel to Town of Yankeetown

A town council which has received a pre-suit notice letter under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting pursuant to section 286.011(8), Florida Statutes, to discuss settlement negotiations.

RE: COUNTY B FARMS B RIGHT TO FARM ACT B BUILDINGS B ZONING B meaning of residential dwelling; applicability of zoning ordinances. ss. 604.50, 823.14, Fla. Stat.

AGO 2009-26

June 15, 2009

Mr. Robert B. Battista, Citrus County Attorney; Mr. Gregg R. Brennan, Assistant County Attorney

1. The term "residential" in section 604.50, Florida Statutes, does not require that persons reside in the dwelling on a full-time basis in order to remove the building from the exemption for nonresidential farm building under this section; 2. The county has the authority to enforce its zoning regulations regarding the construction of a building on land classified as agriculture under section 193.461, Florida Statutes, if those regulations do not limit the operational activity of the bona fide farm operation.

RE: SPECIAL DISTRICTS B PORTS B ADVERTISING B authority for port district to fund grant to build replica boats. Ch. 315, Fla. Stat.; and Ch. 2000-478, Laws of Fla. AGO 2009-27

June 15, 2009

Mr. Geoffrey B. Dobson, Attorney, St. Augustine Port, Waterway and Beach District
In light of the requirement that the powers of the St. Augustine Port, Waterway and Beach District must be exercised to improve and maintain waterways within the district, this office cannot conclude that a district purpose would be served by funding a grant to a local service organization for purposes of constructing two replica boats which would be donated to a museum in Spain.

RE: COUNTIES--INFRASTRUCTURE SURTAX--TAXATION--use of infrastructure surtax monies to fund capital improvements to private property. s. 212.055(2), Fla. Stat.

AGO 2009-28

June 15, 2009

Ms. Alison Rogers, Escambia County Attorney

The county may not use infrastructure surtax proceeds to contribute to the construction of the Naval Flight Academy where the facility will not be owned by the county, nor will it be available for use by the county as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the county.

RE: COUNTIES B CITATIONS B MISDEMEANORS B ORDINANCES B authority of county to adopt ordinance making it a misdemeanor to fail to timely pay a civil penalty. Art. I, s. 18, Fla. Const.; s. 828.27, Fla. Stat.; Part II, Ch. 162, Fla. Stat.

AGO 2009-29

June 15, 2009

Mr. John K. McPherson, Gilchrist County Attorney

Gilchrist County has no authority to adopt an ordinance designating the failure to timely pay

the civil penalty imposed pursuant to Part II, Chapter 162, Florida Statutes, as a criminal misdemeanor and is prohibited from doing so by Article I, section 18 of the Florida Constitution. Further, the clear terms of section 828.27, Florida Statutes, and the constitutional provisions discussed herein constitute a prohibition against Gilchrist County adopting an ordinance imposing a criminal penalty for failure to timely pay the civil penalty imposed pursuant to the county's animal control or cruelty ordinance adopted pursuant to section 828.27(2), Florida Statutes.

RE: COUNTIES B MEDICAL RECORDS B EMERGENCY MEDICAL SERVICES B PUBLIC RECORDS LAW B REPORTS B DEPARTMENT OF HEALTH B RECORDS B confidentiality of emergency medical records. ss. 119.07 and 401.30, Fla. Stat.

AGO 2009-30

June 15, 2009

Mr. Michael S. Craig, Polk County Attorney

The entire record of an emergency call which contains patient examination and treatment information and is maintained as required by section 401.30(1), Florida Statutes, is made confidential and exempt from the provisions of section 119.07(1), Florida Statutes, by subsection (4) of section 401.30, Florida Statutes. Reports containing statistical data, required by the Department of Health to be documented and submitted to the department on forms developed and provided by the department, are public records and must be made available for inspection and copying following redaction of any patient-identifying information contained in such reports pursuant to section 401.30(3), Florida Statutes.

RE: PENSIONS B POLICE AND FIREFIGHTERS B RETIREMENT B FORFEITURE B FELONIES B forfeiture of local public pension benefits. s. 112.3173, Fla. Stat.

AGO 2009-31

June 15, 2009

Mr. Robert A. Sugarman, Attorney, City of Pompano Beach Police and Firefighters= Retirement System

Section 112.3173, Florida Statutes, requires the official or board responsible for paying benefits under a public retirement system to make a forfeiture determination when the board has reason to believe that the rights of the person under any such system are required to be forfeited pursuant to the statute. So long as the Pompano Beach Retirement System is a "public retirement system" within the scope of Part VII, Chapter 112, Florida Statutes, and the board has either received notice or otherwise has reason to believe that a forfeiture under the statute is required, the Board of Trustees of the City of Pompano Beach Police and Firefighters= Retirement System must provide notice and hold an administrative hearing on this matter.

RE: COMMUNITY REDEVELOPMENT AGENCY B TRUST FUNDS B MUNICIPALITIES B TAXATION B whether community redevelopment agency authorized to expend trust funds for private capital improvement project. ss. 163.370 and 163.387, Fla. Stat.

AGO 2009-32

June 19, 2009

Ms. Julie O. Bru, City Attorney, City of Miami

Payment of relocation expenses is limited by the provisions of section 163.370, Florida Statutes, which does not authorize the expenditure of funds for construction of facilities located outside the redevelopment area.

RE: CLERKS OF COURTS DOMESTIC VIOLENCE COURTS FILING FEES clerk prohibited from imposing filing fee for domestic violence protection petition. ss. 28.241 and 741.30, Fla. Stat.

AGO 2009-33

June 19, 2009

The Honorable Tim Smith, Clerk of Courts, Putnam County

In light of the specific prohibition in section 741.30(2)(a), Florida Statutes, the clerk of court may not assess a filing fee for the filing of a petition for a domestic violence injunction.

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