

THOMAS &
LOCICERO

Tampa Office
400 N. Ashley Dr., Suite 1100, Tampa, FL 33602
P.O. Box 2602, Tampa, FL 33601-2602
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida Office
101 N.E. Third Ave., Suite 1500
Ft. Lauderdale, FL 33301
ph 954-332-3619 fax 877-967-2244 toll free 866-967-2009
www.tlolawfirm.com

Rachel E. Fugate
Direct Dial: (813) 984-3065
rfugate@tlolawfirm.com

Reply to Tampa

May 7, 2008

VIA FACSIMILE (941-480-3031)
AND E-MAIL (emartin@ci.venice.fl.us)

Mayor Ed Martin

Re: May 8, 2008 City of Venice Meeting with FAA

Dear Mayor Martin:

Thomas & LoCicero PL represents the *Sarasota Herald-Tribune* ("Herald-Tribune"), which asked us to contact you concerning a meeting scheduled for May 8, 2008 at 11:00 a.m. between city officials, two private citizens invited by the City Council, and representatives of the Federal Aviation Administration ("FAA"). It is our understanding that the purpose of the meeting is to discuss an airport safety plan formulated by an ad hoc citizen group and the FAA has objected to the presence of the media. As explained below, we believe this meeting is subject to Florida's Sunshine Law.

The City of Venice is responsible for adopting a comprehensive airport plan. Traditionally, airport issues initially went before the Airport Advisory Board (and it is our understanding this Board operated in the Sunshine) and then to the City Council. The current proposal for the airport plan, however, is being formulated by the ad hoc citizen group. Although, the formation of the group remains somewhat of a mystery, one member stated that the group's work was being done at the behest of the Mayor. Once the group finalizes its plan, it will be presented to the City Council for approval.

Florida's Government in the Sunshine Law, Section 286.011, Florida Statutes, guarantees that Florida's government will operate in the open. Specifically, Florida's Sunshine Law applies to "any board or commission of any state agency" and requires that "all meetings . . . at which official acts are to be taken" are open to the public. Fla. Stat. § 286.011(1). A right of access is also recognized in the Florida Constitution. *Frankenmuth Mut. Ins. Co. v. Magaha*, 769 So. 2d 1012, 1021 (Fla. 2000) (noting that the Sunshine Law "is of both constitutional and statutory dimension").

Florida courts liberally construe the Sunshine Law in order to give effect to its laudatory public purpose. Zorc v. City of Vero Beach, 722 So. 2d 891, 897 (Fla. 4th DCA 1999).

One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. *The statute should be construed so as to frustrate all evasive devices.*

Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974) (emphasis added). Indeed, “the Sunshine Law was enacted in the public interest to protect the public from closed door politics and, as such, the law must be broadly construed to effect its remedial and protective purpose.” Wood v. Marston, 442 So. 2d 934, 938 (Fla. 1983). Thus, Florida courts have consistently refused to allow public entities to perform decision-making functions outside the Sunshine. *Id.* In fact, the Florida Supreme Court has laid down a clear, simple and overriding principle in relations to government meetings: “When in doubt, [a public body] should follow the open-meeting policy of the State.” Gradison, 296 So. 2d at 477.

Florida case law is clear – a public entity cannot escape the dictates of the Sunshine Law by delegating its decision-making function. Wood v. Marston, 442 So. 2d 934, 938-39 (Fla. 1983) (finding faculty committee that screened applicants for a university position subject to the Sunshine Law). To be sure, when a public body delegates any part of the decision-making process, those delegated responsibility “stand in the shoes” of the public body as far as the application of the Sunshine Law. News-Press Publ’g Co. v. Carlson, 410 So. 2d 546, 547 (Fla. 2d DCA 1983). It appears that the City has delegated its responsibility of formulating an airport plan to the ad hoc citizen group. As such, the ad hoc group must conduct itself in accordance with Florida’s Sunshine Law.

Similarly, advisory groups that provide recommendations to public bodies are subject to Florida’s Sunshine Law. See, e.g., Silver Express Co. v. District Bd. of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee created to assist the decision-maker in evaluating proposals for flight training services subject to the Sunshine Law); Spillis Candela & Partners, Inc. v. Centrust Savings Bank, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (“[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials”); Lyon v. Lake County, 765 So. 2d 785, 790 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county commission to serve in an advisory capacity to the county manager). Whether officially delegated a governmental responsibility or not, the ad hoc citizen group at the very least is advising the City on an airport plan and must operate in the open.

Government entities cannot avoid the dictates of the Sunshine Law by allowing ad hoc groups to finalize decisions to a point just short of ceremonial acceptance. It appears, however, that is precisely what is occurring with the airport plan. An ad hoc group of citizens are formulating an airport plan that will eventually come before the City for approval. To be sure, every part of the decision-making process with respect to the airport plan, must be conducted in the Sunshine.

The Herald-Tribune believes strongly in its constitutional right to attend public meetings and is fully prepared to protect this right. However, we are hoping that this matter may still be resolved amicably and without the need of litigation. Therefore, we request that you allow the Herald-Tribune to attend the May 8 meeting.

Thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely

THOMAS & LOCICERO PL

A handwritten signature in cursive script that reads "Rachel E. Fugate".

Rachel E. Fugate

REF/ref

cc: Bart Vernace, Federal Aviation Administration
(407-812-6978; bart.vernace@faa.gov)
Fred Watts, Venice Municipal Airport
(941-483-5942; fwatts@ci.venice.fl.us)
David McCraw, Esq.
Victor Hull