

# **Training for Members of School District Appointed Committees, Councils, and Task Forces**



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## **Florida's Government-in-the-Sunshine Law: A Guide for Members of Advisory Bodies**

- 1. Are advisory bodies subject to the Sunshine Law?**
- 2. What steps must advisory bodies take to comply with the Sunshine Law?**
- 3. Are there any limitations upon the conduct of persons attending the meetings?**
- 4. What limits are there regarding communications between advisory body members?**
- 5. Does the Sunshine Law affect written communications?**
- 6. May I discuss social matters or attend social events with fellow advisory body members?**
- 7. May I exchange information with fellow advisory body members through an intermediary?**
- 8. What penalties may be imposed for a violation of the Sunshine Law?**

## **Florida's Government-in-the-Sunshine Law: A Guide for Members of Advisory Bodies**

### **1. Are advisory bodies subject to the Sunshine Law?**

Yes. Advisory bodies created by law, school district policy or otherwise established by The School Board are subject to the Sunshine Law, even though their recommendations are not binding. The entire decision-making process must be open to the public. If your advisory body's function is to consider various alternatives available to The School Board and make a recommendation upon those alternatives to The School Board, the role of the advisory group falls within the Sunshine Law. Members of an advisory body are prohibited from discussing with each other any subject matter that may come before the advisory body unless that discussion occurs during a publicly noticed meeting.

### **2. What steps must advisory bodies take to comply with the Sunshine Law?**

All advisory bodies must allow for public access to their meetings. This requires reasonable advance public notice of its meetings and the keeping of official minutes of each meeting. For a district-wide advisory body, the notice should be published throughout Broward County. For an advisory body serving a single school, the notice should be published in ways that would reach those persons interested in that school community.

All meetings should be held in places that are easily accessible to all members of the public who wish to attend.

During a properly noticed meeting, the decision-making process must be conducted in an open manner [i.e. not by secret ballot]. The entire decision-making process of the advisory body must be conducted before the public, not merely the final decision, so that the public may participate in the decision-making process.

Minutes of all meetings reflecting the events or actions taken at the meeting must be promptly recorded and open to public inspection. (No *verbatim* transcripts are required by law.) Tape recordings by the public must be allowed.

### **3. Are there any limitations upon the conduct of persons attending the meetings?**

Reasonable rules of orderly conduct may be adopted by the advisory bodies requiring orderly behavior on the part of those attending a public meeting. Public participation is not required for all issues being considered.

4. **What limits are there regarding communications between advisory body members?**

If one member of an advisory body is in the presence of another advisory body member and not at a publicly noticed meeting, no conversation (in person, by telephone or e-mail) may be conducted upon “any matter which will foreseeably come before” the advisory body for its consideration. Discussions precluded by the Sunshine Law can be as informal as a telephone conversation or remarks made while riding an elevator with another advisory body member. The Sunshine Law applies to conversations held by members when a quorum of your advisory body is not present. In these situations, the conversations must be limited to items listed in the public notice.

5. **Does the Sunshine Law affect written communications?**

Yes. The Sunshine Law precludes an advisory body member from circulating a memorandum or “e-mail” among advisory body members for the purpose of soliciting comments or responsive memoranda. However, one member may distribute informational material or a position paper to other members provided that no discussion or interaction (verbal or in writing) takes place outside of the public meeting.

6. **May I discuss social matters or attend social events with fellow advisory body members?**

Yes. You are free to discuss personal or social matters with your colleagues and attend social events with them. However, the Sunshine Law prohibits discussions with fellow advisory committee members of any matters that may foreseeably come before the advisory body for determination.

7. **May I exchange information with fellow advisory body members through an intermediary?**

No. The Sunshine Law precludes use of any other person – a non-advisory body member – as an intermediary to facilitate a communication between two advisory body members, which if done directly would constitute a violation of the law. In sum, an advisory body member cannot do indirectly that which cannot be done directly.

8. **What penalties may be imposed for a violation of the Sunshine Law?**

Any decision made by an advisory body in violation of the Sunshine Law is null and void *ab initio* (from the beginning). An advisory body member who has violated the Sunshine Law is guilty of a noncriminal infraction which is punishable by a fine not exceeding \$500 and is subject to removal from office. An advisory body member is guilty of a second degree misdemeanor for knowingly violating the Sunshine Law. A second degree misdemeanor is punishable by a fine not exceeding \$500.00 or by imprisonment not exceeding 60 days, or

both. Attorney's fees may also be assessed against the advisory board member except where the advisory body sought and followed the advice of its attorney.

For additional information, the *Government-in-the-Sunshine Manual* is available online at <http://myfloridalegal.com/sun.nsf/manual>. For your convenience, an order form for the hard copy of the manual is provided on page six.

If your advisory body requires information regarding a specific issue under the Sunshine Law, please contact the Office of the School Board Attorney for guidance.

**Florida's Public Records Law:  
A Guide for Members of Advisory Bodies**

- 1. Are advisory bodies subject to the Public Records Law?**
- 2. What records must advisory bodies preserve?**
- 3. Are E-mails subject to public inspection?**
- 4. Are any public records confidential or exempt from public disclosure?**
- 5. What steps must I take to comply with the Public Records Law?**
- 6. When can a public record be destroyed or discarded?**
- 7. What penalties may be applied for a violation of the Public Records Law?**



## **Florida’s Public Records Law: A Guide for Members of Advisory Bodies**

The State of Florida has a policy that “all state, county, and municipal records are open for personal inspection and copying by any person.” The purpose of this policy is to promote transparency in government. This policy imposes the obligations of storing, maintaining and providing records when requested, subject to statutory exemptions.

### **1. Are advisory bodies subject to the Public Records Law?**

Yes. The records of an advisory body established to make recommendations to The School Board are subject to the Florida Open Public Records Law (“Public Records Law”). The Public Records Law applies to any person, body, officer, employee or entity acting on behalf of any public agency.

### **2. What records must advisory bodies preserve?**

The Public Records Law defines “public records” to include: “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of the agency. If any document is circulated for review between any advisory body members or among district staff, it is a public record. “Personal notes” can constitute public records if they are intended to communicate, perpetuate or formalize knowledge of some type. However, notes taken by an advisory body member for that member’s own *personal use* in remembering certain things do not fall within the definition of a public record. If you have a question about whether a particular document is a public record, ask your District’s staff liaison for guidance.

### **3. Are E-mails subject to public inspection?**

Yes, when the E-mail messages are sent or received by advisory body members in connection with their official duties. Such E-mails are public records and subject to disclosure unless an exemption applies. The fact that electronic means are utilized to transmit information in an e-mail message does not alter the obligation to maintain and preserve that message as a public record.

4. **Are any public records confidential or exempt from public disclosure?**

Yes. The Legislature has created numerous exemptions from public inspection and has identified certain records that must be kept confidential. Exemptions from public inspection are narrowly interpreted and are limited to the specific purpose for which they were enacted. The most common exemptions are student records and certain personnel records. Student records are confidential by federal and state law and cannot be disclosed except as specifically provided by statute. If you receive a request for a public record, ask your District's staff liaison for guidance.

5. **What steps must I take to comply with the Public Records Law?**

You should keep, preserve and make available to the public for inspection and copying any and all documents and electronic records and communications pertaining to your work as an advisory body member. You should also work cooperatively with your District's staff liaison to ensure that public records are preserved and that appropriate steps are taken to protect exempt and confidential information when complying with a public records request.

6. **When can a public record be destroyed or discarded?**

The official or record copy of a public record must be preserved and can be disposed of only in accordance with the Retention Schedule approved by the Florida State Dept. – Division of Library and Information Services. The applicable retention schedules are available online at <http://dlis.dos.state.fl.us/RecordsManagers>. Duplicate copies can be discarded after they are no longer of use.

7. **What penalties may be applied for a violation of the Public Records Law?**

**Civil Penalties.** An aggrieved person may bring a civil action to enforce the legal provisions of the Public Records Law when any provision of the Public Records Law is violated. The court may assess reasonable costs and attorney's fees against the agency if the court determines that the agency unlawfully refused to permit public inspection and copying.

**Criminal Penalties:** Criminal penalties may also be imposed depending on the nature of the violation.

- Any public officer who violates this law commits a non-criminal infraction punishable by fine not to exceed \$500.
- Any public officer who *knowingly* violates this law may be suspended and removed or impeached and commits a first degree misdemeanor. A first degree misdemeanor is punishable by imprisonment for a term not to exceed one year, or a fine not to exceed \$1,000, or both.

- Any person who *willfully and knowingly* violates any provision of the Act commits a first degree misdemeanor.
- Any person who *willfully and knowingly* violates the law by disclosure of confidential information related to victims of crimes or accidents, for purposes of solicitation of the victims or their relatives, commits a third degree felony. A third degree felony is punishable by a fine not to exceed \$5,000, or by imprisonment for a term not to exceed 5 years, or both.

If your advisory body requires further information regarding a specific issue under the Public Records Law, please contact the Office of the School Board Attorney for guidance.

## **Code of Ethics for Public Officers and Employees: A Guide for Members of Advisory Bodies**

- 1. Am I subject to the Code of Ethics for Public Officers and Employees?**
- 2. Are there any limitations on my ability to request or accept a gift?**
- 3. Are there restrictions on any compensation that I may accept?**
- 4. Are there restrictions on how I may use my position on the advisory body?**
- 5. Are there any limitations on my use of School District information?**
- 6. Can I do business with the School District while serving on an advisory body?**
- 7. Can I be employed by a company that is doing business with the School District?**
- 8. Can I vote on issues involving my salary and expenses?**
- 9. Do I have to file a financial disclosure form?**
- 10. What circumstances would present a voting conflict for me?**
- 11. What should I do if I have a voting conflict?**
- 12. What penalties may be applied for a violation of the Code of Ethics?**

## **Code of Ethics for Public Officers and Employees:** **A Guide for Members of Advisory Bodies**

**1. Am I subject to the Code of Ethics for Public Officers and Employees?**

Yes. You have been appointed to an “advisory body” as defined by the Code of Ethics for Public Officers and Employees (“Code of Ethics”). Members of advisory bodies are considered to be “public officers” as defined in the Code of Ethics and are subject to its standards of conduct and voting conflict provisions. Persons serving on an advisory body are subject to the Code of Ethics’ restrictions regarding the solicitation or acceptance of gifts, doing business with one’s agency, unauthorized compensation, misuse of public office, conflicting employment or contractual relationships, and disclosure or use of certain information. A copy of Section 112.313, Florida Statutes – Standards of Conduct for Public Officers, is attached to this handout.

**2. Are there any limitations on my ability to request or accept a gift?**

Yes. The Code of Ethics prohibits a member of an advisory body from soliciting or accepting anything of value to the member, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the advisory body member would be influenced thereby.

**3. Are there restrictions on any compensation that I may accept?**

Yes. The Code of Ethics prohibits a member of an advisory body, or his or her spouse or minor child, at any time, from accepting any compensation, payment or thing of value when the advisory body member knows, or with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the advisory body member was expected to participate in his or her official capacity.

**4. Are there restrictions on how I may use my position on the advisory body?**

Yes. The Code of Ethics prohibits a member of an advisory body from corruptly using or attempting to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit or exemption for himself, herself or others.

**5. Are there any limitations on my use of School District information?**

Yes. The Code of Ethics prohibits a member of an advisory body from disclosing or using information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for

his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

**6. Can I do business with the School District while serving on an advisory body?**

In general, you may not. The Code of Ethics prohibits a member of a District's advisory body, when acting in a private capacity, from purchasing, renting, leasing or selling any realty, goods or services to the District. The law contains a procedure whereby an advisory body member may ask the district school board to waive this limitation. Contact the Office of the School Board Attorney if further guidance is necessary.

**7. Can I be employed by a company that is doing business with the School District?**

In general, you may not. The Code of Ethics prohibits a member of an advisory body from having or holding any employment or contractual relationship with any business entity or any agency which is subject to the regulation of the school district or is doing business with the school district. Members of advisory bodies are also precluded from having or holding any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties. The Office of the School Board Attorney should be contacted to assist in determining whether a member has or is considering conflicting employment or a conflicting contractual relationship. In addition, the Code of Ethics provides a procedure whereby an advisory body member may ask the district school board to waive these limitations. Contact the Office of the School Board Attorney if further guidance is necessary.

**8. Can I vote on issues involving my salary and expenses?**

No. While it is unlikely that the business of your advisory body will involve such issues, the Code of Ethics prohibits an advisory body member from voting upon a matter affecting his or her salary, expenses or other compensation as a public officer, as provided by law.

**9. Do I have to file a financial disclosure form?**

No. The Code of Ethics does not require members of an advisory body to file a financial disclosure form.

**10. What circumstances would present a voting conflict for me?**

The Code of Ethics prohibits a member of an advisory body from voting on any measure (1) which inures to the member's special private gain or loss; (2) which the member knows

would inure to the special private gain or loss of any principal or parent organization or subsidiary of a corporate principal (other than a public agency) by whom he/she is retained; or (3) which the member knows would inure to the special private gain or loss of a relative or business associate of the member. A “relative” is defined under the Code of Ethics as a father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law or daughter-in-law. When a potential conflict first becomes known to a member of an advisory body, contact the Office of the School Board for assistance.

**11. What should I do if I have a voting conflict?**

If a member of an advisory body has a voting conflict, the member must orally disclose the nature of conflicting interest and abstain from voting upon a measure appearing before the advisory body. Although he or she cannot vote due to the conflict, the member is permitted to discuss the matter at the meeting. In addition, the member must file a voting conflict disclosure form, within 15 days after the vote occurs, with the person keeping minutes of the advisory body’s meetings. That form will be incorporated in the minutes, a copy must be provided immediately to the other members of the advisory body, and the form must be read publicly at the next meeting after it is filed. A copy of the form [Form 8B – Memorandum of Voting Conflict for County, Municipal and Other Local Public Officers] is attached to this handout. A copy of the form and instructions for its completion and filing can be found at [www.ethics.state.fl.us](http://www.ethics.state.fl.us). If any questions arise regarding a potential vote abstention during your service on the advisory body, please contact the Office of the School Board Attorney for guidance.

**12. What penalties may be applied for a violation of the Code of Ethics?**

Public officers can be suspended or removed from office for a violation of the Code of Ethics. In addition to any other civil or criminal penalty that may apply, a public officer can also be required to make restitution for any benefits received due to the violation and pay a civil penalty up to \$10,000.

If you require further information regarding a specific issue under the Code of Ethics, please contact the Office of the School Board Attorney for guidance.