

1-D-4 | NOTICE REQUIREMENTS**a. Reasonable Notice Required**

A vital element of the Sunshine Law is the requirement that boards subject to the law provide "reasonable notice" of all meetings. See s. 286.011(1), F.S. Even before the statutory amendment in 1995 expressly requiring notice, the courts had stated that in order for a public meeting to be in essence "public," reasonable notice of the meeting must be given. See *Hough v. Stembbridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973); *Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985).

Reasonable public notice is required for all meetings subject to the Sunshine Law and is required even though a quorum is not present. AGO 90-56. And see *Baynard v. City of Chiefland, Florida*, No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003) available online in the Cases database at the open government site at myfloridalegal.com (reasonable notice required even if subject of meeting is "relatively unimportant"). Notice is required even though meetings of the board are "of general knowledge" and are not conducted in a closed door manner. *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309, 310 (Fla. 1st DCA 1991). "Governmental bodies who hold unnoticed meetings do so at their peril." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

The Sunshine Law does not define the term "reasonable notice," and "[f]ew cases address the question of what is reasonable notice." See *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018). In *Transparency*, the court referenced AGO 73-170, which concluded that the type of notice given depends on the purpose for the notice, the character of the event about which the notice is given, and the nature of the rights to be affected. "Where there is no specific legislative directive as to what constitutes reasonable notice as a matter of law, we agree with the Attorney General that it is a fact specific inquiry." *Transparency*, at 787.

Therefore, the type of notice is variable and depends upon the facts of the situation and the board involved. In each case, an agency must give notice at such time and in such a manner as to enable the media and the general public to attend the meeting. AGOs 00-08, 04-44, 80-78 and 73-170. And see



Rhea v. City of Gainesville, 574 So. 2d 221, 222 (Fla. 1st DCA 1991) (purpose of the notice requirement is to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wish). Cf. Lyon v. Lake County, 765 So. 2d 785, 790 (Fla. 5th DCA 2000) (where county attorney provided citizen with "personal due notice" of a committee meeting and its function, it would be "unjust to reward" the citizen by concluding that a meeting lacked adequate notice because the newspaper advertisement failed to correctly name the committee). See also Suncam, Inc. v. Worrall, No. CI97-3385 (Fla. 9th Cir. Ct. May 9, 1997), available online in the Cases database at the open government site at myfloridalegal.com (Sunshine Law requires notice to the general public; agency not required to provide "individual notice" to company that wished to be informed when certain meetings were going to occur).

For example, "burying a notice inside a committee application and calendar on the instructional materials page of the [school district's] website is an unreasonable way to give public notice of a meeting" of a school board textbook committee that is subject to the Sunshine Law. Florida Citizens Alliance, Inc. v. School Board of Collier County, 328 So. 3d 22 (Fla. 2d DCA 2021). Additionally, the notices did not mention that the meetings were open to the public. By contrast, the school board posted notices of regular school board meetings on the public notice page of the district website and in an electronic newsletter.

While the Attorney General's Office cannot specify the type of notice which must be given in all cases, the following notice guidelines are suggested:

1. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
2. The notice should be prominently displayed in the area in the agency's offices set aside for that purpose, e.g., for cities, in city hall, and on the agency's website, if there is one.

3. Except in the case of emergency or special meetings, notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.

4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. See *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate).

5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly effective in providing notice of upcoming meetings.

The notice procedures set forth above should be considered as suggestions which will vary depending upon the circumstances of each particular situation. See AGO 73-170 ("If the purpose for notice is kept in mind, together with the character of the event about which notice is to be given and the nature of the rights to be affected, the essential requirements for notice in that situation will suggest themselves"). See also AGOs 00-08, 94-62 and 90-56. An individual challenging the adequacy of a meeting notice is not required "to allege and prove that some member of the public was not afforded an opportunity to attend the meeting because notice was not adequate," because this "is not an element of a cause of action for a Sunshine Law violation." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 787 (Fla. 4th DCA 2018).

Thus, in *Rhea v. City of Gainesville*, 574 So. 2d 221 (Fla. 1st DCA 1991), the court held that a complaint alleging that members of the local news media were contacted about a special meeting of the city commission one and one-half hours before the meeting stated a sufficient cause of action that the Sunshine Law had been violated. Compare *News and Sun-Sentinel Company v. Cox*, 702 F. Supp. 891 (S.D. Fla. 1988) (no Sunshine Law violation occurred when on March 31, a "general notice" of a city commission meeting scheduled for April 5 was posted on the bulletin board outside city hall); and *Lozman v. City of Riviera Beach*, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), per curiam affirmed, 79 So. 3d 36 (Fla. 4th DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (no violation of



Sunshine Law where notice of special meeting held on Monday, September 15 was posted at city hall and faxed to the media on Friday, September 12 and members of the public [including the media] attended the meeting).

The determination as to who will actually prepare the notice or agenda is essentially "an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by... charters and ordinances." Hough, 278 So. 2d at 291.

b. Notice Requirements when Meeting Adjourned to a Later Date

If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed. AGO 90-56.

c. Notice Relating to Record Needed for Appellate Review

Section 286.0105, F.S., requires:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

This statute applies to every "board, commission, or agency of this state." See AGO 19-14 (Education Practices Commission, established in s. 1012.79, F.S., is a "commission" for purposes of s. 286.0105, F.S.)

The notice requirement in s. 286.0105, F.S., "is imposed at each occasion where notice of a meeting or hearing is required and is to be included in the notice to be given to the public of such meeting." Linares v. District School Board of Pasco



County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com, quoting from AGO 89-82. See also *Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that with the adoption of s. 286.0105, F.S., "the legislature understood the importance of a verbatim record for appellate review of government board decisions."

d. Paid Advertising Requirements and Additional Notice Provisions Imposed by Other Statutes, Codes, or Ordinances

While the Sunshine Law requires only that reasonable public notice be given, a public agency may be subject to additional notice requirements imposed by other statutes, charters or codes. In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Mattimore, February 6, 1996.

For example, while the Sunshine Law does not mandate that an agency use a paid advertisement to provide public notice of a meeting, other statutes may specify publication requirements for certain actions. See *Yarbrough v. Young*, 462 So. 2d 515, 517n.1 (Fla. 1st DCA 1985) (Sunshine Law does not require city council to give notice "by paid advertisements" of its intent to take action regarding utilities system improvements, although the Legislature "has required such notice for certain subjects," e.g., 166.041[3][c], F.S.). See also s. 189.015(1), F.S. (notice requirements for meetings of the governing bodies of special districts); and s. 1001.372(2)(c), F.S. (school board meetings). Cf. s. 50.0311, F.S. (Internet website publication of governmental agency notices).

Similarly, a board or commission subject to Ch. 120, F.S., the Administrative Procedure Act, must comply with the notice and publication requirements of that act. See, e.g., s. 120.525, F.S. Those requirements, however, are imposed by Ch. 120, F.S., not s. 286.011, F.S., although the notice of a board or commission meeting published pursuant to Ch. 120, F.S., also satisfies the notice requirements of s. 286.011, F.S. *Florida Parole and Probation Commission v. Baranko*, 407 So. 2d 1086 (Fla. 1st DCA 1982).

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