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# **E-MAIL LEGAL RAMIFICATIONS**

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## **I. Florida's Sunshine Law - Section 286.011, Florida Statutes**

### **A. The Rule.**

1. All meetings of any School Board, except as otherwise provided in the Constitution, at which official acts are to be taken are public meetings open to the public. Section 286.011(1), Florida Statutes.

### **B. What Does This Have To Do With E-mail?**

1. One-way communication between elected officials, when it does not result in the exchange of comments or responses on subjects requiring public action, does not constitute a meeting subject to the Sunshine Law. Op. Att'y Gen. Fla. 96-35 (1996); Op. Att'y Gen. Fla. 01-20 (2001).
2. The use of an electronic anonymous newsletter which facilitates communication among members of a public board on matters that foreseeably may come before the public board for official action is subject to the Sunshine Law. Informal Op. Att'y Gen. Fla., October 31, 2000.
3. According to the Florida Attorney General, airport authority members may conduct informal discussions and workshops over the Internet provided proper notice is given and interactive access to members of the public is provided. Such interactive access must include not only public access via the Internet but also designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have computers with Internet access. Notice of such discussions should include the locations where such computers with Internet access will be available. For meetings where a quorum is necessary for action to be taken, physical presence of the members

making up the quorum would be required in the absence of a statute providing otherwise. Op. Att'y Gen. Fla. 01-66. (2001).

C. Penalty for Non-Compliance.

1. Non-criminal infraction - fine not exceeding \$500.00. Section 286.01 I(3)(a), Florida Statutes.
2. Criminal infraction - if knowingly violate the Sunshine Law, guilty of a second degree misdemeanor. Section 286.01 I(3)(b), Florida Statutes.
  - Imprisoned up to 60 days
  - Monetary fine not exceeding \$500.00
3. Suspended from office - the Governor may suspend an elected or appointed public official who is charged with any misdemeanor arising directly out of official conduct or duties. Section 112.52(1), Florida Statutes.
4. Removed from office - the Governor may remove a public official who pleads guilty or no contest, or who is found guilty. Section 112.52(3), Florida Statutes.

## II. Florida's Public Records Act - Chapter 119, Florida Statutes

### A. The Rule.

1. Public records 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 ... in connection with the transaction of official business. Section 119.011(11), Florida Statutes.
2. All materials made or received in connection with official business which are used to perpetuate, communicate or formalize knowledge are public records subject to disclosure. *Shevin v. Byron*, 379 So. 2d 633 (Fla. 1980).

### B. What Does This Have To Do With E-mail?

1. E-mail messages made or received in connection with official business are public records subject to disclosure in the absence of an exemption. Op. Att'y Gen. Fla. 96-34 (1996); Op. Att'y Gen. Fla. 01-20 (2001).
2. E-mail messages (public records) may not be destroyed except in accordance with retention schedules approved by the Division of Library and Information Services of the Department of State. Op. Att'y Gen. Fla. 96-34 (1996).
3. Mail received at government offices addressed to elected officials should be copied and then forwarded to the elected official to ensure the proper retention and maintenance of such public records. Op. Att'y Gen. Fla. 04-43 (2004).
4. Personal e-mails stored in a government owned computer are not made or received in connection with the transaction of official business and therefore do not fall

within the definition of public records subject to disclosure by virtue of their placement on a government owned computer system. *State v. City of Clearwater*, 863 So.2d 149 (Fla. 2003)."

C. Penalty for Non-Compliance.

1. Non-criminal infraction - fine not exceeding \$500.00. Section 119.10(l)(a), Florida Statutes.
2. Criminal infraction - if willfully and knowingly violate Public Records Act, guilty of a first degree misdemeanor. Section 119.10(2), Florida Statutes.

— Imprisoned up to 1 year

— Monetary fine not exceeding \$ 1,000.00

3. Suspended from office - the Governor may suspend an elected or appointed public official who is charged with any misdemeanor arising directly out of official conduct or duties. Section 112.52(1), Florida Statutes.
4. Removed from office - the Governor may remove a public official who pleads guilty or no contest, or who is found guilty. Section 112.52(3), Florida Statutes.

### III. Public Official Ethical Considerations - Chapter 112, Florida Statutes

#### A. The Rule.

1. Public officials and employees are prohibited from corruptly using or attempting to use their official position or any resource within their trust, to secure a special privilege or benefit for themselves or others. Section 112.313(6), Florida Statutes.
2. Mismanagement, waste or negligent acts are not sufficient, "corrupt" requires intent.

#### B. What Does This Have To Do With E-mail?

1. A city official's use of a city business card to promote the official's personal profit, gain or business would create a prohibited conflict of interest. However, if the card is used for a public purpose and the official incidentally receives a private or business benefit, a prohibited conflict is likely not created. Commission on Ethics, Opinion No. 02-13 (2002).
2. A public official's use of the resources of his office, including personnel, for the benefit of his church violated Section 112.313(6), Florida Statutes, resulting in a public censure and reprimand, and a \$5,000.00 penalty. Commission on Ethics, Final Order No. 00-51 (2000).
3. A city commissioner violated Section 112.313(6), Florida Statutes, when he used city stationary to promote a symposium for which he received compensation. *Gordon v. Comm. On Ethics*, 609 So. 2d 125 (Fla. 4<sup>th</sup> D.C.A. 1992).

C. Penalty for Non-Compliance.

- Impeachment
- Removal from office/employment
- Suspension
- Public censure
- Reprimand
- Demotion
- Reduction in salary
- Forfeit 1/3 of salary for 1 year
- Civil penalty up to \$10,000
- Restitution of pecuniary benefits
- Forfeit retirement system benefits