

## Meetings Conducted Via Electronic Means

Florida's 2008 *Government-In-The-Sunshine Manual*,

b. Meetings conducted over the telephone or using electronic media technology

(1) Discussions conducted via telephones, computers, or other electronic means are not exempted from the Sunshine Law

As discussed in this manual, the Sunshine Law applies to the deliberations and discussions between two or more members of a board or commission on some matter which foreseeably will come before that board or commission for action. The use of a telephone to conduct such discussions does not remove the conversation from the requirements of s. 286.011, F.S. See, *State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), *per curiam affirmed*, 886 So. 2d 229 (Fla. 1st DCA 2004) (telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law).

Similarly, members of a public board may not use computers to conduct private discussions among themselves about board business. AGO 89-39. *Cf.*, Inf. Op. to Galaydick, October 19, 1995, advising that school board members may share a laptop computer even though the hard drive of the computer contains information reflecting the ideas of an individual member as long as the computer is not being used as a means of communication between members; and AGO 01-20 (a *one-way* e-mail communication from one city council member to another, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Sunshine Law; however, such e-mail communications are public records and must be maintained by the records custodian for public inspection and copying).

(2) Authority of boards to conduct public meetings via electronic media technology (e.g., telephone or video conferencing)

(a) State boards

In AGO 98-28, the Attorney General's Office concluded that s. 120.54(5)(b)2., F.S., authorizes *state* agencies to conduct public meetings via electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. See, Rule 28-109, F.A.C. *Cf.*, s. 456.011(3), F.S. (licensing boards within the Department of Health must conduct meetings through teleconferencing or other technological means, except for certain disciplinary hearings or "controversial" rule hearings or unless

otherwise approved in advance by the director of the Division of Medical Quality Assurance).

(b) Local boards

As to *local* boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct workshop and official meetings entirely through the use of communications media technology applies only to state agencies. AGO 98-28. Thus, since s. 1001.372(2)(b), F.S., requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id. But see*, Ch. 06-350, Laws of Florida, authorizing the Monroe County Commission to use teleconferencing equipment to qualify for a quorum for a special meeting.

If a quorum of a local board is physically present, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgement of the board." AGO 03-41. *See also*, AGO 94-55 (when a quorum of the board is physically present at the public meeting site in Florida, a museum board may allow an out-of-state member with health problems to participate and vote in board meetings by telephone; compliance with the requirements of s. 286.011, F.S., "would involve providing notice and access to the public at such meetings through the use of such devices as a speaker telephone that would allow the absent member to participate in discussions, to be heard by the other board members and the public and to hear discussions taking place during the meeting.").

Similarly, in AGO 92-44, a county commission was advised that the Sunshine Law would permit an ill county commissioner to participate and vote in commission meetings through use of an interactive video and telephone system that permitted her to see and hear the other members of the board and audience, provided that a legal quorum of the commission meet in a public place in the county, as required by statute. *See also*, AGO 02-82 (physically-disabled members of a city advisory committee may participate and vote by electronic means as long as a quorum of the committee members is physically present at the meeting site).

The physical presence of a quorum has not been required, however, where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at *workshop* meetings where no formal action will be taken. Thus, in AGO 06-20, the Attorney General's Office concluded that an advisory board composed of representatives from several county metropolitan planning organizations may use electronic media technology to link simultaneously held public meetings of citizens' advisory committees in

each of its participating counties, so as to allow all members of the committees and the public to hear and participate at workshops. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. *Id.*

Similarly, airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. AGO 01-66. 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 Internet access. *Id.* For meetings, however, 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. *Id.* Internet access to such meetings, however, may still be offered to provide greater public access. *Id.*

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks, which does not permit the public to participate online, violates the Sunshine Law by circumventing the notice and access provisions of that law. AGO 02-32. *Accord*, Inf. Op. to Ciocchetti, March 23, 2006 (even though the public would be able to participate online, a town commission's proposed use of an electronic bulletin board to discuss matters that may foreseeably come before the commission over an extended period of time would not comply with the spirit or letter of the Sunshine Law because the burden would be on the public to constantly monitor the site in order to participate meaningfully in the discussion).