

Florida Attorney General Advisory Legal Opinion

Number: INFORMAL

Date: July 20, 2016

Subject: Videoconferences -- Public Meetings

The Honorable David Cheifetz
Mayor, Town of Manalapan
600 South Ocean Boulevard
Manalapan, Florida 33462-3398

Dear Mayor Cheifetz:

The Office of the Attorney General has received your inquiry as to whether the Manalapan Town Commission may conduct public meetings in which a quorum could consist of both commissioners who are physically present and commissioners who are not physically present but are participating by videoconference.

This office has addressed public meetings via electronic media in prior opinions that are cited in the following excerpt from the 2016 edition of the Government in the Sunshine Manual:[1]

"2. Authorization to conduct public meetings via telephone, video conferencing, computer, or other electronic media

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.

b. Local boards

(1) Meetings

As to local boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct 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. And see AGOs 09-56 (where a quorum is required and absent a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum), and 10- 34 (city may not

adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum). Cf. s. 163.01(18), F.S., authorizing certain entities created by interlocal agreement to conduct public meetings and workshops by means of communications media technology. However, 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 judgment of the board.' AGO 03-41.

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting. AGO 94-55. And see AGOs 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).

(2) Workshops

The physical presence of a quorum has not been required 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. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. For example, the Attorney General's Office advised that 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 at 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, the 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. Cf. AGO 08-65, noting that a city's plan to provide additional public access to on-line workshop meetings by making computers available at a public library 'should ensure that operating-type assistance is available at the library where the computers are located.'

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. And see 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 foreseeably may 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). Compare AGO 08-65 (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided).

Moreover, there is no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting. Inf. Op. to Sugarman, August 5, 2015."

I hope this excerpt and the opinions cited are helpful to you. I recommend that you contact your Town Attorney for further guidance in this matter.

Sincerely,

Ellen B. Gwynn
Assistant Attorney General

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[1] Government in the Sunshine Manual, pp. 16-17 (2016 ed.). The manual is available online at: <http://www.myfloridalegal.com/sun.nsf/sunmanual>. Attorney General Opinions are available online at: <http://myfloridalegal.com/ago.nsf/Opinions>.