

THE BRECHNER REPORT

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County commissioners violated Sunshine law

Stuart — A judge ruled that Martin County commissioners violated the Sunshine law by meeting in closed-door sessions to discuss possible legal action pending against the county. The commissioners met privately to discuss legal notices threatening potential lawsuits. The Open Meetings Law allows

ACCESS MEETINGS

commissioners to meet privately to discuss “pending litigation.” *The Palm Beach Post* filed suit against the county, accusing the commissioners of violating the law.

“This is one of those situations that’s not clear-cut in the (law),” according to Judge Ben Bryan, 19th Judicial Circuit.

The Palm Beach Post’s attorney successfully argued that the commissioners

violated the law because the county was not a party to a lawsuit in either case. The judge then ordered the county to release written transcripts of the meetings and to pay the newspaper’s attorney fees.

Martin County settled a lawsuit with the newspaper three years ago and agreed to comply with a court order requiring commissioners to discuss settlements in public. (12/8/00)

Community group pays legal fees

Tampa Palms — A community development group will pay \$40,000 in legal fees after choosing not to appeal a judge’s order that the group violated the state’s Open Meeting Law.

The Tampa Palms Community Development District supervisors

agreed to pay the attorney fees for former supervisor Bob Doran who sued the district in 1999, citing four Sunshine Law violations.

In May, Judge Manuel Menendez Jr., 13th Judicial Circuit, ruled in Doran’s favor, but withheld a decision on reimbursement until November. (11/11/00)

State attorney ordered files deleted

Tampa — State investigators have concluded that a deceased state attorney attempted to destroy public records and filed false campaign reports.

According to an investigation completed by the Pasco-Pinellas state attorney’s office, Harry Coe “grossly misrepresented his debts on state-required financial disclosure forms.”

At the time of his death, the state attorney’s office estimates that Coe had a negative net worth of at least \$150,000.

His financial indebtedness was largely a result of excess pari-mutuel betting, according to the special prosecutor’s report.

ACCESS RECORDS

The investigation also found that Coe directed an employee to destroy records on his laptop computer, a violation of the state’s Public Records Law. That employee will not be punished, according to State Attorney Bernie McCabe.

Gov. Jeb Bush had requested the state investigation in July, shortly thereafter Coe took his life. (11/28/00)

The Brechner Report celebrates its 25th year of publishing news about freedom of information and other First Amendment issues.

COURTS

Bomber’s letters to remain sealed

Tallahassee — A judge denied a request from the U.S. Attorney’s office to make public two letters from convicted Florida A&M University bomber Lawrence Lombardi to the federal judge who sentenced him.

Prior to sentencing Lombardi on Sept. 15, U.S. District Judge Robert Hinkle received two letters from the bomber, according to court records. The letters were sent directly to the judge, who ruled that the letters were not public records.

According to Hinkle, the letters discuss “medical matters that ordinarily would not become public” and “apparently intend... to support mitigation of his sentence.” The letters will be held in Lombardi’s files at the U.S. Probation office.

The judge sentenced Lombardi to life in prison for making and setting off two PVC pipe bombs that damaged FAMU facilities on Aug. 31, 1999, and Sept. 22, 1999. (10/24/00)

Hospital board denies trustees legal fee reimbursement

Vero Beach — A hospital board refused to reimburse a board member for legal fees incurred in his defense against Sunshine law violations. The Indian River County Hospital District turned down trustee Richard Aldrich's \$36,000 reimbursement request.

In March, a county grand jury issued indictments against Aldrich and former trustee Allen Seed for knowingly violating the Sunshine law by discussing

district business at a restaurant last August. (*Brechner Report*, May 2000)

The grand jury also alleged the pair committed perjury by later lying about the dinner while under oath to the grand jury. In June, prosecutors dropped the perjury charges and criminal charges and revised the Sunshine law infractions as a separate civil infraction. Former trustee Seed also requested legal fee reimbursement from the hospital board, but that request was

denied. (*Brechner Report*, Oct. 2000) (10/20/00)

ADVERTISING UF coach says no to radio ads

Tallahassee — A local radio station raised the ire and eyebrows of the University of Florida football coach by using his likeness in an outdoor advertising campaign.

Through his attorney, head football coach Steve Spurrier requested that WHTF, Hot 104-FM remove seven local billboards that used his photo and the slogan, "Spurrier Says: Don't listen."

The billboards were scheduled for display from November through December, but after the call from the coach's attorney, the ads were removed. "I don't want to cause any trouble. If Coach Spurrier is upset, we're going to take them down," said Hank Kestenbaum, marketing manager for parent company Triad Broadcasting.

According to station personnel, the ads were designed to "have a little fun with the rivalry" between Florida and Florida State and the photo was taken from a photo warehouse operated by Lamar Advertising. "We were just having some fun with the rivalry. If it was taken the wrong way, I'm sorry," said Kestenbaum. (12/1/00)

State attorney rules council testimony okay

Cocoa Beach — City commissioners may attend other city board meetings as long as they don't discuss issues among themselves, according to an opinion from the Attorney General's office.

Cocoa Beach city manager Charles Billias had requested feedback from the Attorney General's office on the practice of city commissioners attending and testifying at various city board meetings. "It is not a violation of the Government in the Sunshine Law for elected city

commissioners to attend other city board meetings and comment on agenda items that may subsequently come before the commission for final action," according to the Attorney General's opinion.

However, cautions the opinion, if more than one commissioner is present at another city board meeting, "no discussion or debate may take place among the commissioners on these issues," that might lead to a Sunshine Law violation. (AGO 2000-68, 11/17/00)

COURTS

Reporters gain access in tire blowout suit

Lake City — A circuit court judge ruled that reporters from two news organizations can attend pre-trial depositions of former tire workers.

Judge E. Vernon Douglas, 3rd Judicial Circuit, ruled that reporters from *USA Today* and WFTV will be allowed to sit in during the depositions of four former workers from a Firestone tire plant.

The workers are being deposed as part of a personal injury lawsuit filed by a woman who was injured in a tire blow-out accident.

The judge's ruling is being met with positive reception from news advocates. "That's a new twist, at least in Florida. It's good that he's going to open the process," said Dick Shelton, executive director of the Florida Press Association. (10/14/00)

Judge: Logo secret unveiled on T-shirt

Panama City — Once a logo has been used on a T-shirt, it's no longer a trade secret, according to a recent ruling by Judge Don Sirmons, 2nd Judicial Circuit, who dismissed a felony charge against a graphic designer.

Designer Dallas Strickland was cleared of theft or unlawful copying of trademark secrets charges by the judge, who ruled that Strickland's on-line website posting of logos he designed for a company was permissible.

Strickland's attorney argued that

logos created for J and J Enterprises were not trade secrets, since they had previously been displayed to the public. "Once it's worn on a T-shirt in public, it's not a trade secret," said John Daniel.

Strickland had worked for the company for eight years as a designer before starting his company last year. However, the logos were not patented or copyrighted by the company. Therefore, there was no copyright or trademark infringement, according to Daniel.. (12/1/00)

DECISIONS ON FILE

Copies of case opinions, attorney general opinions, or legislation reported in any issue as on file may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

City sues paper for public records request determination

Clearwater — In response to a newspaper's request for a copy of a police department employee survey, the city has sued the paper to determine if the surveys were public records.

The *St. Petersburg Times* requested copies of an employee satisfaction surveys given to Pinellas Park police department employees by Management

of America of Tallahassee.

The City Council had approved spending over \$40,000 for the survey project.

The company has provided the paper with some related documents, but not the written survey form or the results.

City documents, including those prepared for a public agency by a private

entity are public records, according to the newspaper's attorney. "It's definitely a public record. There's no way around that," said Allison Steele. (12/6/00)

AG rules inactive criminal records open

Miami — Inactive criminal investigation files are open to public inspection, according to a recent Attorney General's opinion.

State attorney Katherine Fernandez Rundle requested an opinion on whether the results of a state investigation into allegations of criminal activity by a police officer should remain sealed pending the conclusion of an internal police investigation.

The results of the state's investigation

should be open, according to Florida Attorney General Bob Butterworth.

"It is my opinion that the confidentiality provisions of section 112.533, Florida Statutes, do not exempt an inactive criminal investigative file from inspection and copying pursuant to section 119.07, Florida Statutes, while an active internal affairs investigation (concerning the same complaint) is pending," wrote Butterworth. (AGO 2000-66, 11/17/00)

Paper donates legal fees to library

St. Petersburg Beach — After winning their public records lawsuit against the city, a local newspaper is giving the money to the local library. The *St. Petersburg Times* won a \$4,750 legal fee reimbursement from the city of St. Petersburg, which they donated to the Friends of the St. Pete Beach Library.

The newspaper filed the city in 1997 when they refused to provide a reporter with copies of public documents. "As all hell broke loose, they basically sort of clamped down on giving access to records," said Tom McGowan, the newspaper's attorney. McGowan noted that since that time, the city has been very cooperative, providing records at the time of the request.

According to the paper, their policy is to donate money from successful public records lawsuits to local charities so that community residents are not penalized by their local government actions. (11/9/00)

Public defender cleared by investigation

Tampa — A public defender has been cleared of copyright violations by a state investigation. Following complaints by four citizens earlier this year, the Florida Department of Law Enforcement conducted a six-month investigation of Hillsborough County Public Defender Julianne Holt.

According to the 17-page report, there was "no evidence of criminal wrong-doing," for any of the four counts. The complaints were filed by former

public defender employees who had been fired for various reasons.

Former assistant Public Defender Gary Ketcham had filed the copyright violation complaint against Holt, who he said directed him to make copies of a law publication for other attorneys in the office.

However, according to the FDLE, since the copies were for Holt's employees only, she did not violate copyright laws. (11/17/00)

IRS sues for record access in Miami

Miami — In an effort to gain access to financial records of Americans who use off-shore banks, the Internal Revenue Service has filed a federal lawsuit against two credit card companies, American Express Travel Related Services Co. and MasterCard International.

Both companies conduct business in the Caribbean, but maintain their headquarters in the Miami area.

In their suit, the IRS is requesting identifying information such as passport

and driver's license numbers, and information on purchases such as cars, boats, airline tickets and lodging made between 1998 to 1999.

A MasterCard spokeswoman cited the company's past cooperation with federal investigations, "We are mindful of our cardholder's privacy concerns and maintain minimal if any personally identifiable information regarding MasterCard transactions," said Sharon Gamsin. (10/19/00)

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State's Sunshine Laws opened election process

Florida was at the epicenter of the post-presidential election controversy. And, the state's government-in-the-sunshine laws assumed center stage as the aftershocks were felt around the world.

As director of the Brechner Center for Freedom of

The Back Page

By Sandra F. Chance

Information, I got calls from reporters across the country and around the world asking how our laws

Sandra F. Chance

worked, if the laws really required canvassing board meetings be open to the public, and why the court proceedings, including the arguments before the state's Supreme Court, could be televised.

Florida's strong government-in-the-sunshine laws allowed unprecedented access to the various aspects of the story. Americans everywhere were able to see for themselves how decisions were made. One canvassing board even moved its meeting to a parking lot in order to accommodate the huge public turnout.

Known as the "Public-Right-to-Know Laws," or the "Sunshine Laws," the laws shed light into the sometimes dark and secret caverns of government. These laws provide citizens the legal right of access necessary to make informed decisions about our government and help ensure our democracy.

The right of access to public meetings and records ensures that the founding father's vision of government by and for the people remains a reality. The laws allow citizens to monitor governmental activities. The laws guarantee that public officials will be held accountable for their actions.

Many reporters were stunned at the level of access to information about the process and mused about what would have happened in their state

For example, an editor in Virginia compared his state's open government laws to what was happening in Florida. "Virginia officials would almost certainly lock the doors and pull down the shades during the ballot counting and election-board meetings," he concluded

And then it dawned on the politicians and national media that the ballots were public records and that someone could do an independent recount. Florida's public records law allows the public to inspect the ballots, but only election officials can touch the ballots.

By the time you read this, the media outlets, as the public's surrogate, have probably started to examine the ballots. In Miami, at least 19 organizations requested access to the disputed ballots. The New York Times, the Los Angeles Times, Time magazine and The Miami Herald

appeared in a Miami circuit court to get access to the 10,750 questioned ballots. The Washington Post has also said it wants to count the ballots.

The Florida Society of Newspaper Editors is considering putting together a consortium of newspapers to view the ballots. The Associated Press has been approached about leading some counting efforts, too. The Brechner Center may be involved in the process, as well.

Newspapers are not the only ones interested in the ballots. Judicial Watch, a conservative public-interest legal foundation, has 500 volunteers waiting to resume its count. The Rev. Jesse Jackson has called for a consolidated effort to count the ballots, saying the disputed ballots were "too pregnant with historical meaning to go uncounted."

Why would a newspaper want to look at the ballots? "Our intent is to examine the ballots and describe in detail what they show. People can come to their own conclusions," said The Miami Herald Executive Editor Martin Baron.

Some leading Republicans don't like the idea that the ballots are public records. New Jersey Governor Christine Todd Whitman wants to seal the ballots for 10 years to "prevent the presidency from being undermined." I've even heard a few calls to destroy the ballots, to protect the "legitimacy" of the presidency.

Obviously, Gov. Whitman needs a remedial lesson on public records in Florida. But, it's not all her fault, really. Her state is well-known for having one of the country's worst public records law.

And, while Florida has some of the strongest open government laws in the country, there are some places where the sun apparently didn't shine.

The state's legislative leadership took full advantage of the fact that lawmakers are not subject to all the provisions of the state's open meetings law to engage in private phone calls to decide critical issues. In addition, there are questions about possible sunshine law violations by the governor's office and the state canvassing board.

People may disagree over the result of the post-presidential election proceedings, but few people will disagree over the important role the state's sunshine laws played in keeping the public informed and holding public officials accountable for their actions.

Sandra Chance is the director of the Brechner Center for Freedom of Information at the University of Florida.