
THE BRECHNER REPORT

Volume 24, Number 10 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
October 2000

Governor uses Sunshine loophole for private meetings

TALLAHASSEE — The governor used a loophole in the state's Open Meetings Law to hold a closed meeting with two future leaders of the Legislature.

ACCESS MEETINGS

In August, Gov. Jeb Bush met with Rep. Tom Feeney, R-Oviedo, and Sen. John McKay, R-Bradenton, in a meeting off-limits to the public and

press. Bush was able to meet with Feeney and McKay since the state's Sunshine Law is silent on meetings between the governor and legislative leaders who have yet to

take office.

Feeney and McKay are republican nominees for House Speaker and Senate president, they will not assume these posts

until after the November election.

The governor defended his meetings with the legislators, stating that the closed meetings gave leaders opportunity to plan an agenda for 2001.

He also says he plans to hold these kinds of meetings again. "There's no secret conspiracy here, we want to have a conversation without a lot of scribbling," Bush said. (8/16/00)

Council whispers overshadow meeting "Perfect Storm" causes uproar

ST. PETERSBURG — Elected officials who whisper rather than speak into a microphone during official meetings may violate the state's Open Meeting Laws, according to a Sunshine Law expert. Recently, members of the St. Petersburg City Council, Hillsborough County Commission and the Hernando County School Board have been caught whispering behind their hands to others.

"The law prohibits secret discussion about public business," said Sandra Chance, director of the Brechner Center for Freedom of

Information at the University of Florida. "Whispering about public business during a public meeting or discussing public business during a recess of a meeting not only violates the letter of the law but the spirit of the Government-in-the-Sunshine Laws."

The custom of whispering by elected officials during meetings became so prevalent last year that then-Hillsborough County Commission chair Jan Platt asked the county's attorney to remind commissioners about the state law.

A memo outlining the Open Meetings Law was issued by Senior Assistant County Attorney Mary Helen Campbell to commissioners. (8/8/00)

PRIVACY

ORLANDO — The family of drowned sea captain Frank William "Billy" Tyne Jr. is suing makers of "The Perfect Storm," a summer movie hit, for depicting him in a "false and unflattering light."

Tyne's wife and his two daughters filed the suit in U.S. District Court against Time Warner Entertainment and the two companies involved in the film's production.

In their suit, they allege the film depicted Tyne in a negative light, that it was produced without their consent and that it violated their privacy.

In response, Time Warner issued a statement refuting their claims and asserting that they did not need the family's permission to make the film or portray Tyne. They also refute that Tyne was portrayed in a negative light.

The movie, based on a book by the same name, focuses on a fishing boat caught in a severe storm in the North Atlantic in 1991. (8/30/00)

Hospital refuses union record request

VERO BEACH — A local hospital official is refusing to release employee names and addresses to a nurse's union, citing a 1998 exemption by a judge in Tampa from the Government in the Sunshine laws.

The exemption subsequently was ruled unconstitutional in a case involving Tampa General Hospital.

Indian River Memorial Hospital president Jeff Susi said the hospital

does not have to follow the state's Public Records Law and release the information to the Teamsters Local No. 769. "I would argue that we shouldn't expose our employees to getting calls during dinner," said Susi.

ACCESS RECORDS

The union, which currently represents 138 members of the hospitals 440 registered nurses, has filed an unfair-labor charge with the National Labor Relations Board in response to the hospital's refusal to release the information. (8/2/00)

Former hospital trustee asks for legal fund support

VERO BEACH — A former hospital trustee has asked the Indian River County Hospital District to reimburse him almost \$9,000 for legal fees in his defense against claims of Sunshine Law violations. Allen Seed claims that the district should reimburse his expenses since the state has dropped its pursuit of criminal charges in the case.

In March, a county grand jury issued indictments against Seed and Richard Aldrich, claiming the two former trustees had knowingly violated Florida's Sunshine Law, a misdemeanor and committed perjury, a felony (*Brechner Report*, May 2000).

According to grand jury records, the two discussed district business over

dinner last August and subsequently, while under oath, lied about the meeting. In a plea agreement, state prosecutors agreed to drop the criminal aspects of the case and revise them as civil infractions.

Under state law, the hospital's board of trustees will make the final determination to reimburse Seed. (8/5/00)

Sunrise cleared of Sunshine Law violations

SUNRISE — The city has been cleared of allegations of possible Sunshine law violations in its negotiations to approve a new \$200 million fashion mall in Sunrise.

Judge George A. Brescher dismissed portions of a civil lawsuit filed by Sawgrass Mills in the 17th Judicial Circuit, stating that the city had not violated the Sunshine Law when City Manager Pat Salerno and members of

his staff negotiated privately with the Sunrise Land Group. Sawgrass Mills operates a shopping center across the street from the proposed site.

According to the judge's order, the Sunshine Law applies only to meetings of a board or commission, not of an executive staff and a private party.

In addition, the judge also found that the city provided sufficient public notice. (8/11/00)

PRIVACY CONTINUED

Police to limit cell phone monitoring

WASHINGTON — Monitoring of cellular phone conversations by law enforcement officials under a government agency order has been limited by a federal appeals court decision.

The U.S. Court of Appeals for the District of Columbia Circuit ruled that law enforcement officials must first meet a high burden of proof when seeking a warrant that would allow them to monitor

a suspect's cellular phone conversation. The decision strikes a provision of a year-old order by the Federal Communications Commission that had required private companies to install equipment that could be used by agents for surveillance purposes. A coalition of telephone companies filed the appeal last year, claiming that the government order was too costly and it might violate the constitutional rights of cell phone users. (8/16/00)

Dancer I.D. law violates privacy

JUPITER — A law requiring exotic dancers to register with the Palm Beach County was stripped from the books by a judge who ruled that it violated the privacy of the dancers.

An anonymous dancer using the initials "D.B" filed the complaint against the 10-month-old law. Judge Kathleen Kroll, 15th Judicial Circuit, ruled that requiring strippers to provide their real names and addresses to the county, which would then be available

through the state Public Records Law, violated their privacy.

In addition, she noted that while the law was aimed at keeping underage girls from dancing at nude bars, that the law did not require them to carry or wear the cards while dancing, only to present the cards within a "reasonable" time.

"This could be after the performer (who could be a minor) performs," she wrote.

The county is appealing the ruling. (7/26-27/00)

Council passes on free TV offer

MELBOURNE — An offer by a citizen's watchdog group to tape and broadcast the Palm Bay City Council for free has been turned down by the council, but has prompted the council to issue a request for proposals.

The bid process will serve as a compromise, eliminating any concerns of partiality on the part of council members and the public, according to Mayor Ed Geier.

Robert Doucette, the president of Citizens Allied for a Managed Partnership made the initial taping offer to the council, noting that the broadcast will allow viewing of the meetings for those who cannot attend the meetings, such as shut-ins or those who cannot drive at night.

Council sessions will be aired on Brevard County Space Coast Government Television. (7/23/00)

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.

Judge dismisses public record lawsuit

PENSACOLA — A circuit judge has refused to rule on who should be responsible for maintaining and storing public records by dismissing a public records lawsuit filed by a school board member.

Judge Joseph Tarbuck, 1st Judicial Circuit, threw out the suit, stating that it's not his job to tell board members how to do their jobs. The recently dismissed suit

was the latest legal maneuver between Escambia County School Board member Vanette Webb and the school board. Last year, Webb was convicted of knowingly withholding public records from a local political activist, but the conviction was later tossed out (*Brechner Report*, December 1999). She has also filed suit against the school board to recoup legal costs in her

criminal trial, which is currently under appeal. (8/17/00)

COURTS

Shooting video ban upheld

WEST PALM BEACH — A judge has refused to lift his order banning reproduction of surveillance videotape that shows a student shooting and killing his teacher.

Judge Richard Wennet, 15th Judicial Circuit, ruled that the school surveillance video was a public record in the trial of seventh-grader Nathaniel Brazill (*Brechner Report*, September 2000).

The grainy videotape was shown at the Palm Beach County Courthouse's jury assembly room. "It is one thing for the prospective jury pool to read a detailed newspaper description of the videotape, and another to have the jury pool actually see the incident as it occurred," wrote Judge Wennet.

Those who chose to view the tape were required to sign a form pledging not to reproduce the tape. Brazill was charged with first-degree murder following the shooting of his teacher, Barry Grunow, last May. (7/29/00)

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The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. *The Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

FIRST AMENDMENT

Teacher sues to regain teaching post

ST. PETERSBURG — A former school teacher is suing to get her job back, claiming her contract was not renewed based on her comments about the treatment of black students in Pinellas County.

"The school board violated Ms. William's constitutional right to free speech when it terminated her employment," said Tampa attorney Robert McKee. McKee was retained by the

Pinellas Classroom Teacher's Association to represent Veronica Williams. According to McKee, the school board began investigating Williams shortly after a demonstration at Gibbs High, where she taught. The demonstration was coordinated by the National People's Democratic Uhuru Movement, of which Williams is a member. (8/24/00)

Festival violates rights, says native group

NEW PORT RICHEY — A native rights group claims that a 78-year old street festival is defamatory in its portrayals of American Indians and has called for a civil rights investigation by the state Attorney General's office.

According to the American Indian Movement (AIM), the Chasco Fiesta presents "defamatory, prejudicial and dehumanizing" portrayals during the 10-day street event.

The group has singled out the Chasco Pageant, a dramatization of a folk tale of

Chasco, Queen of the Calusas. The tale labels American Indians as savages and espouses the superiority of European culture over indigenous cultures, according to Sheridan Murphy, AIM's state director.

Chasco Festival organizers deny the racist claims, "We're not getting an opportunity to even do anything before they've gone ahead and filed these official complaints," said Don Zisa, chairman of the Chasco steering committee. (8/4/00)

Prison magazine ban challenged

MIAMI — A group of prisoners and a magazine retailer can continue their suit against a state prison magazine policy, banning certain magazines, according to a federal judge's ruling.

The prison inmates and Komar Co., a Maryland-based magazine retailer, sued to resume delivery of their *Playboy* and

Penthouse magazines in 1998.

In late August, Southern District Judge Donald Graham ruled that there was sufficient legal room to challenge the policy on First Amendment grounds and that an internal appeal process set up by the Corrections Department may be insufficient. (8/22/00)

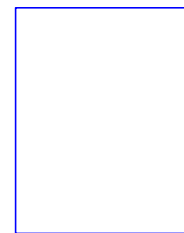
Asking about access critical in Campaign 2000

We all know how difficult the past couple of years have been in Florida, fighting for public access. Unfortunately, I don't see it getting any better any time soon. Thus, we need to try again to make public access a campaign issue in the 2000 election.

The Back Page

By Barbara A. Petersen

Here are some simple ways to make that happen.



Barbara Petersen

When your editorial

boards and reporters are interviewing candidates for public office, ask that they solicit the candidates' views and opinions regarding the public's constitutional right to oversee its government.

CAMPAIGN 2000 Sample Public Access Questions

Are you aware that Florida has the strongest constitutional guarantee of public access in the country? Article I, section 24, of the Florida Constitution grants us the right to access the records of all three branches of state government. It also stipulates that all meetings "of any collegial body" of the executive branch of state government or local government where public business is to be discussed or transacted must be open and noticed to the public. Nine out of 10 voters in the 1992 General Election voted in favor of the constitutional amendment creating this right of access.

What are your views on the public's right to oversee its government through access to government records and meetings? What would you do, if elected, to strengthen and support this right?

During the last legislative session, bills were filed that would have created over 30 new exemptions to the Public Records and Open Meetings Laws.

Are there any records and/or meetings currently open to the public that you would like to see closed? Conversely, are there any records and/or meetings currently closed that you would

like to see opened? Under Florida law, all records and meetings are presumed open unless there is a specific statutory exemption, and only the Legislature can create new exemptions to the Public Records Law, ch. 119, F.S., and the Open Meetings Law, s. 286.011, F.S. Currently, there are over 750 exemptions to both laws. In the past ten years, one of the biggest issues regarding public records has revolved around fees, and whether government should profit from the provision of public records. What are your views on the fee issue-should government be allowed to sell public records, or should it be limited to recovering only the actual cost of disseminating public records?

Some people argue that public records are an asset that government should be allowed to exploit through higher fees for public access, particularly if a requester is going to use those records for a commercial purpose. Others believe that the dissemination of public records is a public good, and that because government collects and uses the public records as part of its daily business, there is no justification for charging anything more than the actual cost of duplication.

What are your views on electronic access to public records, including a public agency's e-mail? Do you think that the public should pay for this alternative record-keeping method, or should on-line access be freely available to anyone with access to a computer and modem? Do you think it's possible to provide on-line access to public records while respecting an individual's right to privacy?

The benefits from this exercise are twofold: (1) Each candidate will be on the record, and can be held accountable for future actions; and (2) in soliciting such information from political candidates, we not only get them on the record, we also are able to provide them with some sensitivity training and education on public access issues.

Barbara A. Petersen is the executive director of the First Amendment Foundation in Tallahassee.