



FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, FL 32301

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26 July 2012

Mr. William Congdon, General Counsel
St. Johns River Water Management District
P.O. Box 1429
Palatka, FL 32178-1429

Dear Mr. Congdon:

Thank you for your letter of July 23, 2012. I appreciate your statement of the facts pertaining to the poll of members of the SJWMD board, but I am sorry to say that this has done nothing to relieve our concern. We continue to believe that this process violated the Sunshine law as a de facto meeting of the board to discuss the official action of making policy regarding the disposition of lands owned by the District.

There is no comparison between this poll versus the facts considered in AGO 89-23. There, a member submitted a public memorandum explaining his views on an upcoming issue. Here, the staff presented the quantitative results of a poll in which members privately communicated their answers. The views of no member were disclosed or debated in the public meeting but only the tabulated results of the poll. Quite obviously, the poll was used to obviate discussion in the public meeting, a purpose which the Attorney General expressly disapproved in AGO 89-23.

We understand that the poll was not an instance of back room politics, but that alone is not sufficient to satisfy the Sunshine law. The law applies to “[e]very step in the decision-making process, including the decision itself, [as] a necessary preliminary to formal action. It follows that each such step constitutes an ‘official act,’ an indispensable requisite to ‘formal action,’ within the meaning of the act. *Times Pub. Co. v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969). Polling members on questions of great public importance undoubtedly makes the process more “efficient,” but polling a public body to obviate the inefficiency of public discussion and debate is in fact a violation of the Sunshine law. See, *Leach-Wells v. City of Bradenton*, 734 So.2d 1168 (Fla. 2d DCA 1999).

We hope and trust that in the future you will not see fit to advise your agency to use such a poll in making public policy.

Sincerely,

Barbara A. Petersen

Barbara A. Petersen, President

Cc: SJRWMD Governing Board
FAF Board of Directors