



# FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, FL 32301

www.floridafaf.org

02 April 2013

Mr. Andrew Seltz, Director  
Leon County Animal Control  
501-B Appleyard Drive  
Tallahassee, FL 32304

Director  
City of Tallahassee Animal Control Service Center  
1125 Easterwood Drive  
Tallahassee, FL 32301

Ms. Sonya White, Executive Director  
Leon County Humane Society  
413 Timberlane Road  
Tallahassee, FL 32312

Mr. Gerry Phipps, President  
Be The Solution, Inc.  
1400 Village Square Blvd., Suite 3-306  
Tallahassee, FL 32312

## **Re: Sunshine Law Requirements of Pertaining to The ASPCA Partnership**

Dear Members of the ASPCA Partnership Board:

It has come to our attention that the ASPCA Partnership, an advisory board making recommendations to the Leon County Commission and the Tallahassee City Commission, is holding private meetings in direct contravention of Florida's Sunshine Law, which mandates that advisory boards such as the ASPCA Partnership must conduct open meetings that everyone in the community can attend. We write this letter to inform members of the Partnership leadership team of the requirements and their obligations under the Sunshine Law, codified in chapter 286, Florida Statutes.

### **FACTUAL BACKGROUND**

In 2011, representatives from the Tallahassee-Leon Community Animal Service Center (a city-run and operated shelter), the Leon County Animal Control Division, the Leon County Humane Society, and Be The Solution, Inc., were appointed to the newly-formed the ASPCA Partnership. APSCA Tallahassee, Retrieved March 29, 2013 (<http://www.aspc.org/Adoption/aspc-partnership/tallahassee/tallahassee-fl>). The ASPCA Partnership holds monthly meetings.

This partnership makes recommendations to local government, facilitating improvements in the animal control operations within Leon County and the City of Tallahassee. The APSCA Partnership leadership board has identified numerous goals and programs improve animal control operations within Leon County. Both Leon County and the City of Tallahassee have made changes as a result of participation in the ASPCA program. See Be The Solution ASPCA Update, last retrieved April 1, 2013 (<http://www.bethesolution.us/new/ASPCA.html>).

### **LAW & ANALYSIS**

The ASPCA Partnership leadership board, which essentially functions as an advisory board to both Leon County and the City of Tallahassee, is subject to the Sunshine Law. Importantly, all members of the board, whether they are government officials or otherwise, must abide by the same requirements as members of elected or appointed boards. See *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994) (“[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials”).

The Sunshine Law, s. 286.011(1), F.S., states:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which

official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Both the Florida courts and the Attorney General have stated that advisory boards established by public agencies are subject to the Sunshine Law even though their recommendations are not binding on the entities that created them. For example, in *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, the court stated: The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law. 535 So. 2d 694, 695 (Fla. 3<sup>rd</sup> DCA 1988). "The fact that an advisory group is created by a single public official rather than by a collegial body such as the city commission does not alter the application of the Sunshine Law to such a group." AGO 05-05. See also *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (Sunshine Law applies to an ad hoc advisory committee appointed by a university president), and *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county ordinance to serve in an advisory capacity to the county manager).

The ASPCA Partnership leadership board functions as an advisory board to Leon County and the City of Tallahassee, and there is a little doubt that the organization is a sunshine body subject to the Sunshine Law. The leadership board consists of representatives from both government agencies and local non-profit organizations. The ASPCA Partnership has made recommendations to facilitate improvements in the animal control operations within Leon County the City of Tallahassee, at least some of which have been adopted and implemented by the County and the City.

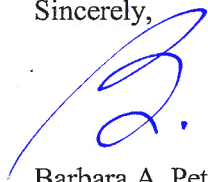
The recommendations and programs of the ASPCA Partnership have a direct impact on many of the animal control operations within Leon County and the City of Tallahassee. Therefore, there is no doubt that the meetings ASPCA Partnership board must comply with Sunshine Law.

#### **BASIC REQUIREMENTS OF THE SUNSHINE LAW**

Florida's Sunshine Law requires that all meetings of the ASCPCA Partnership leadership board be open and noticed to the public, and that minutes of such meetings be taken. Section 286.011(1), F.S. We ask that the ASPCA Partnership board comply with the requirements of the law, ensuring that all future meetings are open and accessible to every individual in the community.

Should you have questions or need any assistance, please do not hesitate to contact me.

Sincerely,



Barbara A. Petersen, President

Cc: Lewis W. Shelly, City Attorney, City of Tallahassee  
Herbert W.A. Thiele, County Attorney, Leon County  
Jon Kaney, General Counsel, First Amendment Foundation