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Reply to: Venice

April 10, 2018

The Honorable John W. Holic, Mayor  
and Members of the City Council  
401 West Venice Avenue  
Venice, Florida 34285

Re: Position Papers

Dear Mayor Holic and Council Members:

Kelly and I have received questions regarding City Council member position papers and we thought it would be best to do a brief refresher on the topic.

Generally, a position paper is a written statement, written by or at the behest of a Council Member, that's distributed in some way, which reflects the view of that City Council Member with regard to actions to be taken by Council.

As you can imagine, there are many Florida Attorney General opinions which address this and related topics. What is clear from reading them is that a position paper is a public record and not a *per se* violation of the Sunshine Law. But in the words of the Attorney General:

While this office would strongly discourage such activity, it would appear that council members . . . may prepare and distribute their own position statements to other council members without violating the Government in the Sunshine

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Law so long as the council members avoid any discussion or debate among themselves on these statements. However, to the extent that any such communication is a response to another commissioner's statement, it may constitute a violation of the Government in the Sunshine Law to circulate the responsive statement. Thus, this is problematical and it would be a better practice to discuss commissioners' individual positions on matters coming before the board during the course of an open meeting. AGO 2001-21.

The settlement agreement that the City approved in Anthony Lorenzo and Citizens for Sunshine, Inc. v. City of Venice, et al., reflects this same discouragement of position papers.

The countervailing argument is that the citizens should have an understanding of how each member has or intends to act regarding issues faced in public office. But as Florida courts have noted

Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire *decision-making process* that the legislature intended to affect by the enactment of the statute before us. Times Publishing Company v. Williams, 222 So.2d 470, 473 (Fl. 2<sup>nd</sup> DCA 1969). (emphasis supplied in original)

Thus citizens not only have the right to understand the positions of their elected officials but also to observe the transparent workings and decision-making process of local government. There are times when these two rights may conflict.

The danger of position papers is that another elected official may feel compelled to respond or, worse, address this topic using a similar medium not knowing (but appearing to) violate the Sunshine Law.

Thus the Attorney General has recommended that position papers are to be avoided. I would only add that, if a position paper is circulated, it be done in accordance with the City's IT policy and the Council member's City email address be used for the communication. In that way, inadvertent actions by the remaining City Council members

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may be avoided and, if the position paper raises topics that need to be discussed, the next public meeting is available for that purpose.

Please remember that the Sunshine Law applies to matters that are reasonably foreseeable to come before Council. It does not apply to matters that have been decided and will not reasonably come back before Council. But, if experience is any guide and given the possibilities of appeals, reconsideration and the general repetitive nature of issues before local government, be very careful with what is "reasonably foreseeable".

Finally, if a position paper is written, remember that judging evidence of a quasi-judicial matter prior to hearing the evidence may be grounds for disqualification from hearing the matter. A judge who, prior to court, has written that the car accident was caused by speeding is viewed as a poor judge for determining IF the car was speeding.

I hope this is of some assistance. By copy of this to the City Clerk, I ask that she place this topic at the next appropriate City Council meeting under Charter Officer attorney reports.

In the meantime, should you have any questions, please feel free to contact me.

Respectfully,

A handwritten signature in dark ink, appearing to read 'DPP', with a stylized flourish at the end.

David P. Persson

DPP/dgb

cc: Edward Lavalley, City Manager  
Lori Stelzer, City Clerk  
Kelly M. Fernandez, Esquire