Board Report

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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October 27, 2020

Memo Discussing Issue Coming before BoCC on Thursday, November 5, 2020

This memorandum does not solicit feedback from any Commissioner and Commissioners are specifically asked not to respond to it (or discuss it amongst one another outside of a duly noticed BoCC meeting) as doing so could and likely would constitute a violation of one or more provisions of Chapters 119 and/or 286, Fla. Stat. So that it may be made available to the public, a copy of this memo is being provided to the Clerk to the Board so that it may be included in the minutes for the November 5, 2020 BoCC meeting. Please see the attached County Attorney's Office Inter-Office Memo dated December 12, 2016 which indicates that communications of this variety are authorized under applicable law.

Please be advised that this is a memo primarily pertaining to allocation of a portion of the remaining, unallocated, CARES Act funding. All proposals contained herein apply throughout Brevard County and do not favor any district or municipality.

Kindly note that discussion regarding an approximately $5M allocation to Parrish Medical Center is not included herein as the item appears too lengthy for inclusion in this document.

BREVARD COUNTY FIRE RESCUE

Brevard County provides ambulance service throughout not only the unincorporated portions of Brevard but also within all of Brevard's sixteen (16) municipalities. Any funding provided to benefit the rescue side of Brevard County Fire Rescue ("BCFR") would benefit not only residents and businesses located in unincorporated Brevard County but, rather, every single resident and business countywide. Moreover, given the number of auto-aid agreements in place, funding to the fire side of BCFR would benefit a large number of residents countywide.

Moreover, having recently infused funding to BCSO (both as a result of the BoCC's critical need finding and through CARES Act reimbursement), it is only appropriate that we do not neglect the other countywide first responders for whom we are responsible to provide ongoing funding. I suggest we focus allocations, first and foremost, on BCFR training, equipment, and response costs to the extent such costs qualify.

Anything we can do to infuse BCFR with federal funding will better ensure the ongoing safety of Brevard's residents, workers, and visitors by, at least temporarily, helping to remove funding as a barrier to recruiting, training, and, to an extent, retaining the highest quality first responders and equipping them with state-of-the-art, but not luxurious, equipment.

While I am still working with staff to better determine which particular expenses will lawfully qualify, it will be my proposal that we allocate a high 7 or low 8-digit amount to BCFR. It is presently anticipated that this amount will be roughly $11M. This figure represents a little less than 10.5% of the overall CARES Act funding allocated the Brevard County.

In total, the below proposals amount to roughly 2.3% of the $105M in CARES Act funding Brevard County has been provided to allocate.

HOUSING (MORTGAGE & RENT) ASSISTANCE

The BoCC previously allocated $4.4M for the County's housing assistance program. Since initial approval, the County removed the requirement that applicants show a 25% reduction in their income to meet the changing needs of local residents in accordance with guidance from state and federal agencies. One potentially helpful change which was was increasing the maximum duration during which an applicant could receive assistance from three to ten months. While that sounds wonderful, with a maximum cap of $7,200 per applicant, that amounts to a ceiling of $720 per month over the maximum ten-month period. This is far lower than the average rent and while some of those who are underemployed as a result of COVID-19 may only need temporary assistance with a portion of their housing expense, those who are wholly unemployed may find themselves homeless despite direct assistance being available on paper.

Increasing the maximum, per applicant, assistance from $7,200 to $12,500 over that same maximum, ten-month, period may prevent a number of individuals from becoming homeless as a result of the pandemic. While $1250 per month may be lower than the average rent in many areas, it goes much farther than $720 per month – an amount for which it is perhaps impossible to find adequate, far-from-lavish, housing.

Should the BoCC be in favor of this change, in order to better ensure adequate funding for this program, I intend to ask that we authorize up to an additional $2.2M to better fund the mortgage and rental assistance program. This amounts to approximately two percent (2%) of the original roughly $105M of CARES Act funding allocated to Brevard County.

URGENT CARE CLINICS

As of October 20, 2020, there appear to be no less than 22 licensed urgent care facilities spread throughout Brevard County. I am aware of urgent care centers located in Cocoa Beach, Malabar, Rockledge, Merritt Island, Port St. John, Palm Bay, Melbourne, Indian Harbour Beach, Titusville, and unincorporated Brevard County (including Viera). Many of these clinics are far more conveniently located to patients than our relatively few hospitals throughout Brevard County.

Admittedly, some of these facilities are owned by a large, privately-owned, hospital system. HealthFirst, for instance, operates "Centra Care" urgent care facilities in Cocoa Beach, Melbourne, and Titusville. The bulk, however, are far smaller medical practices which operate substantially (or entirely) on their own.

All such facilities employ numerous front-line providers in our community's ongoing battle against COVID-19 and they service many individuals who would otherwise needlessly fill emergency rooms countywide for mild cases of COVID-19 and for other upper-respiratory illnesses which do not require hospitalization.

COVID testing appears to be available at most, if not all, of these clinics. Many offer on-site rapid antigen testing to quickly detect viral proteins with what has been cited as 86% (or better) accuracy.

FDOH has realized the importance of urgent care clinics in our ongoing quest to diagnose (and, by extension, isolate and treat) COVID-positive patients. As such, FDOH has, for months provided a number of testing kits to local urgent care centers to enable them to continue this important work.

While it is unquestionable that urgent care clinics would ordinarily go through personal protective equipment (hereinafter "PPE"), irrespective of COVID, it has come to my attention that most, if not all, urgent care clinics have gone through much more PPE than is typical and this trend has been in place since March 1. It is my understanding that this increased usage of PPE is largely attributable to protecting providers in the course of diagnosing and treating suspected and confirmed cases of COVID-19.

During the November 5, 2020 CARES Act workshop, I intend to propose that, separate and distinct from all existing allocations, we authorize staff to reimburse up to $5000 per urgent care facility for expenses, incurred on or after March 1, 2020, which are attributable to COVID-19 and which are deemed low risk for clawback by our outside consultant, Tetra Tech. Urgent care centers would be eligible irrespective of ownership and irrespective of any existing governmental assistance already provided (e.g., CareerSource wage grants, etc.) except that expenses may not be reimbursed more than once (e.g., applicants may not double dip and realize a profit from having the same expense(s) reimbursed through multiple grant programs).

With 22 urgent care centers, if each were to apply for and qualify for the maximum grant value, this would total a $110,000 expense out of the remaining, unallocated CARES Act funding. To allow for the possibility that I may have missed a few urgent care clinics, if we assume that there may be 26 such clinics, county-wide, our maximum potential exposure would still only amount to $130,000. Out of the original roughly $105M, roughly half of which is remaining, even the highest figure amounts to a touch over one-tenth of one percent (0.1%).

As such, I intend to ask that we authorize up to this higher amount without further direction from the Board of County Commissioners.

ANIMAL RESCUE GROUPS WITH IN-COUNTY SHELTER FACILITIES

As you know, BCSO operates the County's animal shelter. Having spoken with Animal Services Director Joe Hellebrand, I have come to learn that one or more animal rescue groups reduce the burden on the County's shelter by housing dogs and cats at other locations. In some cases, dogs and/or cats are taken from the County's shelter and housed at a 501(c)(3) animal rescue group's

shelter, directly reducing the burden on the County's shelter. In other cases, dogs and cats are initially brought to a 501(c)(3) shelter away from the County's shelter, thus indirectly reducing the burden on the County's shelter. This is logical as someone surrendering one or more animals will likely take it/them to the nearest shelter without regard to whether the government or a nonprofit is running it.

While there are numerous praiseworthy animal rescue groups in Brevard County, the Brevard County SPCA (hereinafter "SPCA") and the Brevard County Humane Society (hereinafter "Humane Society") are the - forgive the pun - *big dogs*. Both house domestic animals (dogs and cats), many of which would otherwise come to (or remain in) the County's shelter.

While the BoCC previously authorized animal rescue nonprofits to apply for small business direct assistance without regard to number of FTE (full-time equivalent) staff, that program was limited to a maximum grant of $10,000 per recipient. These two organizations have almost certainly each sustained far larger qualifying losses on account of COVID-19.

Both organizations continue to be stressed by the ongoing pandemic and can benefit from CARES Act funding. The SPCA, for instance, has a program in which it funds routine vaccinations and pet food for folks who would otherwise have to surrender their animals. This program is likely to face additional financial strain during the holidays and demand may exceed, forcing individuals to surrender animals with whom they have grown attached. These surrendered animals would burden both nonprofits and County taxpayers as there is no way to control which shelter ends up receiving these loved but temporarily unaffordable family members.

Given the unique circumstances of these two organizations in providing a public service which would otherwise be shouldered in large part by BCSO Animal Services, I intend to ask that we authorize each such organization to be reimbursed, for qualifying expenses, up to an additional $100,000 each.

Please note that it is my understanding that, to date, the SPCA has not yet applied for any of the $10,000 available. Were both organizations to apply for and receive the maximum permissible grant proposed, the maximum exposure CARES Act funding faces totals $200,000 – just under two-tenths of one percent (0.2%) of the original $105M CARES Act allocation made available to Brevard County.

To be blunt, where there is an articulable countywide benefit, I am likely willing to support, at similar funding levels, nonprofits other commissioners bring to my attention at the CARES Act workshop scheduled for November 5. Even if all five of us make use of this, we'd be looking at well under one percent of the total amount allocated to Brevard County.

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BOARD OF COUNTY COMMISSIONERS

Inter-Office Memo

TO: Scott Knox

FROM: Alex Esseesse

SUBJECT: Ability for commissioner to send out a memorandum or position statement to the other commissioners on an issue that will go before the Board

DATE: 12/8/16

Issue: A commissioner wants to prepare and circulate a written memorandum to the other members of the Board of County Commissioners that discusses an issue that will go before the Board. This memorandum will include the commissioner's stance/position on the matter and will likely recommend that a certain course of action be taken by the Board.

Question: Can a commissioner prepare and circulate a memorandum/position statement to other commissioners on an issue that will go before the Board without violating the Government in the Sunshine Law, Chapter 286, Florida Statutes?

Short Answer: Yes, but with caution. No discussions of the information/positions outlined in the memorandum can be discussed outside of a public meeting; the memorandum cannot solicit feedback from the other Board members; there cannot be any responses to the memorandum prior to the public meeting; and, because the memorandum is a public record, a copy must be made available to the public. Furthermore, the memorandum/statement cannot be used as a substitute for action at a public meeting and cannot be used to enable staff to act as an intermediary among the commissioners.[1]

Analysis

The Government in the Sunshine Law was adopted, at least in part, to prohibit public business from being conducted in private. Put another way, "[o]ne purpose of the [G]overnment in the [S]unshine [L]aw was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance."[2] In order to accomplish this goal, Florida law provides that

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[1] *See*, Op. Att'y Gen. Fla. 01-21 (2001).
[2] Palm Beach v. Gradison, 296 So.2d 473, 477 (Fla. 1974).

> [a]ll meetings of any board or commission . . . of any agency or authority of any county, . . . except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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.[3]

Courts have found that, "[i]n order for there to be a violation of [Fla. Stat. § 286.011], a meeting between two or more public officials *must take place* which is violative of the statute's spirit, intent, and purpose."[4] However, despite this assertion, it has been established that "the physical presence of two or more members is *not necessary* in order to find the Sunshine Law applicable."[5] In practice, this means that Fla. Stat. § 286.011 "should be construed so as to frustrate all evasive devices" used to circumvent the statute's purposes of transparency and openness.[6]

Florida Attorney General Interpretations

The Florida Attorney General has issued a number of opinions on when and how official subject to the Government in the Sunshine Law can use memoranda to discuss their stances and/or suggest certain positions be taken on issues requiring official action before their respective boards. For example, in **AGO 2007-35**, the Florida Attorney General was tasked with determining whether city commissioners could exchange documents on issues that would come before the commission for official action. As mentioned above, "the courts and this office have found that there are instances where the physical presence of two or more members is not necessary in order to find the Sunshine Law applicable."[7] The Attorney General found that "a commissioner may send informational material to the other commissioners outside of a public meeting provided that there is no interaction between or response from the other commissioners."[8] Importantly,

> [w]hile it is not a direct violation of the Sunshine Law for members to circulate their own written position statements to other council members so long as the council members avoid any discussion or debate among themselves on these statements, the members' discussions and deliberations on matters coming before the commission must occur at a duly noticed [meeting] and . . . must not be used to circumvent the requirements of [Fla. Stat. § 286.011].

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[3]Fla. Stat. § 286.011(1).
[4]Hough v. Stembridge, 278 So.2d 288, 289 (Fla. 3rd DCA 1973) (*emphasis added*).
[5]Op. Att'y Gen. Fla. 96-35 (1996) (*emphasis added*).
[6]Gradison, 296 So.2d at 477; Op. Att'y Gen. Fla. 96-35 (1996).
[7]Op. Att'y Gen. Fla. 2007-35 (2007).
[8]*Id.*

Ultimately, the Attorney General found that a commissioner may send documents to other members of the commission on matters going before the commission for official action, "provided that there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting."[9]

In **AGO 01-21**, the Florida Attorney General was asked whether board members could prepare individual position statements on the same subject and exchange these memoranda to the other board members. In the situation outlined in AGO 01-21, board members "prepare[d] and circulate[d] statements meant to communicate a particular council member's position on issues coming before the board," but these statements did not solicit responses from the other members and were made available to the public.[10] The Florida Attorney General's Office found that "[w]hile [it] 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 Law so long as the council members avoid any discussion or debate among themselves on these statements."[11] More specifically, the Florida Attorney General noted that such a practice would become "problematic" if and when "any such communication [was] a response to another commissioner's statement" because it opened the door for board members to respond to one another outside of a duly noticed meeting, causing the requirements of Fla. Stat. § 286.011 to be circumvented.[12] Despite reaching such a conclusion, the preparation and distribution of such memoranda/statements amongst the commissioners would not be a "direct violation of the Government in the Sunshine Law."[13]

The Florida Attorney General issued an opinion (**AGO 96-35**) that addressed the issue of whether a school board member could circulate a memorandum "expressing that member's position on a matter that [would] come before the school board for action and urging the other board members to give the author's position very serious consideration."[14] Importantly, "[t]he memorandum [did] not request other board members to respond prior to the meeting at which the topic will be brought up for action or discussion."[15] The Attorney General made it a point of identifying circumstances where the use of a memorandum would not be permitted. For example, a memorandum cannot request board members to respond with comments and/or to request the board members to "indicate his or her approval or disapproval" for certain views.[16] Based on such a position, the Attorney General came to the conclusion that

> if a school board member writes a memorandum to provide information to make a recommendation to other school board members on a particular subject, there is

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[9] *Id.*
[10] Op. Att'y Gen. Fla. 01-21 (2001).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Op. Att'y Gen. Fla. 96-35 (1996).
[15] *Id.*
[16] *See, Id.*

> no violation of [Fla. Stat. § 286.011]. However, the use of a memorandum to solicit comment from other members of the board or commission or the circulation of responsive memoranda by other board members would violate the statute. Such action would be equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input.[17]

Another Florida Attorney General opinion (**AGO 89-23**) found that "[t]he use of a written report by one [city] commissioner to inform other commissioners of a subject which will be discussed at a public meeting does not violate Florida's Government in the Sunshine Law if prior to the public meeting, there is no interaction related to the report among the commissioners."[18] Again, in that situation, the other commissioners were not requested to and did not provide any comments on the report prior to the public meeting. The Attorney General determined that the memorandum would be allowed as long as "[t]he circumstances . . . do not . . . involve the use of a report as a substitute for action at a public meeting, inasmuch as there is no interaction among the commissioners prior to the public meeting." Furthermore, the memorandum cannot be used by other city officials, such as a city manager, "to act as intermediary among the commissioners" to ask "each commissioner to state his or her position on a specific matter which will foreseeably be considered by the commission at a public meeting in order to provide information to the members of the commission."[19]

Conclusion

A County commissioner is permitted to prepare and circulate a memorandum on an issue to go before the Board. However, no discussions of the information/positions outlined in the memorandum can be discussed outside of a public meeting; the memorandum cannot solicit feedback from the other Board members; there cannot be any responses to the memorandum prior to the public meeting; and, because the memorandum is a public record, a copy must be made available to the public. Additionally, the memorandum/statement cannot be used as a substitute for action at a public meeting and cannot be used to enable staff to act as an intermediary among the commissioners.

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[17]Op. Att'y Gen. Fla. 96-35.
[18]Op. Att'y Gen. Fla. 89-23 (1989).
[19]*Id.*