IN THE SUPREME COURT OF FLORIDA

HOWARD NEU, et al.,

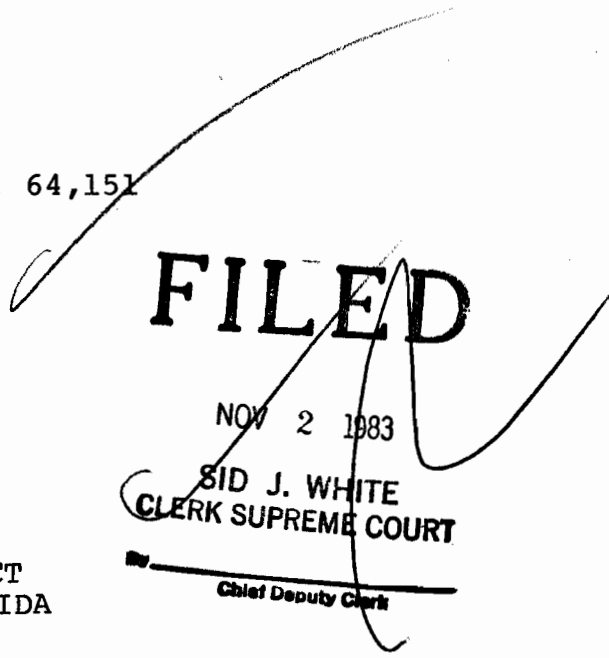
Petitioners,

vs.

CASE NO. 64,151

MIAMI HERALD PUBLISHING COMPANY, et al.,

Respondents.



CERTIFIED QUESTION
FROM THE THIRD DISTRICT
COURT OF APPEAL OF FLORIDA

BRIEF OF AMICUS CURIAE DEPARTMENT OF LEGAL AFFAIRS

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STATEMENT OF THE CASE AND OF THE FACTS

Amicus Curiae accepts and adopts the statement of the case and of the facts as they appear in the initial brief of the Respondents, the Miami Herald Publishing Company.

SUMMARY OF THE ARGUMENT

Florida's Government-in-the-Sunshine Law, §286.011, Fla. Stat. (1981), was enacted for the benefit of the public and should be liberally construed to facilitate that purpose. The Sunshine Law clearly states that it applies to "all meetings . . . at which official acts are to be taken . . . ." The Florida Supreme Court and other state courts have held upon more than one occasion that §286.011, Fla. Stat., applies to meetings between public bodies and their counsel for the purpose of discussing pending or anticipated litigation. Although statutory exemptions to the open-meeting requirements of the Sunshine Law may be created by the Legislature, §90.502, Fla. Stat. (1981), of the Florida Evidence Code does not provide such an exception nor do provisions of the Code of Professional Responsibility prohibit an attorney from discussing litigation related issues with a public body in an open meeting. Finally, no federal or state constitutional right is abridged by requiring a city council and a city attorney to discuss the settlement of pending litigation in an open, public meeting as required by the Sunshine Law.

I.

THIS COURT HAS DETERMINED IN PREVIOUS OPINIONS THAT §286.011, FLA. STAT. (1981), DOES APPLY TO MEETINGS BETWEEN A CITY COUNCIL AND THE CITY ATTORNEY HELD FOR THE PURPOSE OF DISCUSSING THE SETTLEMENT OF PENDING LITIGATION TO WHICH THE CITY IS A PARTY.

Section 286.011, Fla. Stat. (1981), Florida's Government-in-the-Sunshine Law requires all meetings of commissions of a municipal corporation to be public meetings open to the public. As legislation enacted for the public benefit, §286.011 should be construed liberally in favor of the public. See, Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla.1969); Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla.1973); Wolfson v. State, 344 So.2d 611 (Fla. 2d DCA 1977); Hough v. Stembridge, 278 So.2d 288 (Fla. 3d DCA 1973). A large body of judicial decision in this state has developed, including two particularly significant decisions by this Court applying this rationale, holding that it is the entire decision-making process to which the Sunshine Law applies and not merely to a formal assemblage of the public body at which voting to ratify an official decision is carried out. These courts have recognized that only by conducting the entire decision-making process in the open and subject to public scrutiny can the provisions of §286.011 truly be given effect.

In Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969), this Court specifically considered

whether a public body could meet privately with counsel to discuss business of the board if no official action were taken. In Doran, the Court stated that by including a provision in §286.011, Fla. Stat., declaring certain meetings to be public meetings, "[t]he obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." 224 So.2d at 698. The Court determined that §286.011, Fla. Stat., contained no exceptions and stated that:

> The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. During past years tendencies toward secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with "hanky panky" in the minds of public-spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made. (e.s.)

224 So.2d 699.

Two years later the Florida Supreme Court again considered the issue of whether an attorney-client exemption to the Sunshine Law existed and again found no exception for such meetings. This Court in City of Miami Beach v. Berns, 245 So.2d 38 (Fla.1971), recognizing that "[t]he question of whether secret sessions could

be held concerning privileged matter was definitely determined in Board of Public Instruction of Broward County v. Doran . . . .," stated that "[i]t is the law's intent that any meeting, relating to any matter on which foreseeable action will be taken, occur openly and publicly," 245 So.2d at 41. In Berns, the court was presented with the issue of whether a city council could hold informal, closed meetings with its attorney for the purpose of discussing, among other things, pending litigation. Prior to the issuance of the reported opinion in Berns, an opinion which gave the impression of recognizing an attorney-client privilege to the Sunshine Law was filed by the Supreme Court (attached as Appendix I). When the Court was made aware of the import of this opinion it was withdrawn, rehearing was granted and a new, revised opinion was published which stated that §286.011, Fla. Stat., should be construed to contain no exceptions.

This issue of whether the Government-in-the-Sunshine Law extends to discussions and deliberations as well as formal actions taken by a public board or commission was raised soon after the statute's adoption in 1967. In Times Publishing Company v. Williams, 222 So.2d 470, 473 (Fla. 2d DCA 1969), the district court, in resolving this issue, stated that

> 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. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest. Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each step constitutes an "official act," an indispensable requisite to "formal action," within the meaning of the act.

The court in the Times Publishing Company case, supra, sought to determine what was meant by the terms "official acts" and "formal action" as they are used in the Sunshine Law and looked to the case of Walling v. Carlton, 209 Fla. 97, 147 So. 236 (1933), in which an "official act" was defined as "any act done by the officer in his official capacity under color and by virtue of his office," Times, supra, at 473. The court reasoned that passive, non-formal acts such as the acts of deliberating, deciding, discussing or the act of listening to reports or expert advice are official acts which constitute steps leading up to some formal action by the public body. The terms "official acts" and "formal action" were not seen as synonymous by the court nor were "official acts" limited to "formal action".

> Clearly the legislature must have intended to include more than the mere affirmative formal act of voting on an issue or the formal execution of an official document. These latter acts are indeed "formal," but they are matters of record and easily ascertainable (though perhaps ex post facto), notwithstanding such legislation; and indeed the public has always been aware sooner or later of how its officials voted on a matter, or of when and how a document was executed. Thus, there would be no real need for the act if this was all the framers were talking

> about. It is also how and why the officials decided to so act which interests the public.

222 So.2d at 473-474. (Emphasis supplied by court)

Such an interpretation of §286.011, Fla. Stat., is consistent with other decisions of the Florida Supreme Court. For example, in Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla.1974), the Court considered the issue of whether a citizens' planning commission was subject to the Government-in-the-Sunshine Law. In so doing, the Court construed the scope of the Sunshine Law to include the "inquiry and discussion stages" of meetings of public bodies:

> One purpose of the government in the sunshine law was to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.

296 So.2d at 477.

In holding the citizens' planning commission subject to the open-meetings requirement of §286.011, Fla. Stat., the Court clearly elucidated the public policy argument in favor of open-meetings:

> Every meeting of any board, commission, agency or authority of a municipality should be a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the municipality. The ordinary taxpayer can no longer be led blindly down the path of government, for the news media, by constantly reporting community affairs, has made the taxpayer aware of governmental problems. Government, more so now than ever before, should be responsive to the wishes of the public. These wishes could never be known in nonpublic meetings, and the governmental agencies would be deprived of the benefit of suggestions and ideas which may be advanced by the knowledgeable public.

296 So.2d at 475.

As the Florida Supreme Court stated in Town of Palm Beach v. Gradison, supra, when there is doubt as to whether the Government-in-the-Sunshine Law applies, public bodies should follow the open-meetings policy of the State. And see, Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260, 263 (Fla.1973) ("The obvious intent of the Government-in-the-Sunshine Law, was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action will be taken by the board.")

It is clear from the case law discussed supra, that Florida courts have interpreted the open-meeting requirement of the Sunshine Law to extend to the entire process by which a decision is reached including the acts of discussing, deliberating or listening to expert advice by a public body and that the terms "official acts" and "formal action" as used in §286.011, Fla.

Stat. (1981), encompass more than the actual vote-taking which results in a decision by the board or commission. This Court in Board of Public Instruction of Broward County v. Doran, supra, and City of Miami Beach v. Berns, supra, has clearly and definitively spoken to the issue and answered in the affirmative the question of whether the Sunshine Law applies to meetings between a city council and a city attorney held to discuss pending litigation to which the city is a party. To overturn the holding of the Third District Court of Appeals in this case and recede from prior opinions of this Court extending the Government-in-the-Sunshine Act to meetings between a city attorney and the city council would deal a crippling blow to the Sunshine Law. As Governor Askew stated in vetoing HB 1107, legislation which would have permitted public agencies to meet in secret with their attorneys in order to discuss pending litigation:

> Discussion of pending litigation behind closed doors would prove a very broad and significant exception to the "Sunshine Law." Many of the decisions which public boards and agencies are called upon to make today are directly related to pending litigation. These decisions include the sale of public lands, environmental disputes, educational issues, and the financing of public projects -- to name just a few. So what we are talking about is excluding the public from a significant amount of public business.

See, Journal of the (Florida) House of Representatives, December 13, 1977, pp. 2-3 (veto message for HB 1107), (Appendix II).

Public funds finance public litigation and it is the public rather than the boards and commissions who is represented by public counsel. In order to participate in any meaningful fashion in decisions regarding pending litigation against a municipality or its settlement, the public must be present at meetings between the city council and the attorney for the public body.

II.

SECTION 90.502, FLA. STAT. (1981), DOES NOT CONSTITUTE AN EXEMPTION TO THE GOVERNMENT-IN-THE-SUNSHINE LAW FOR MEETINGS BETWEEN A CITY COUNCIL AND THE CITY ATTORNEY HELD FOR THE PURPOSE OF DISCUSSING THE SETTLEMENT OF PENDING LITIGATION TO WHICH THE CITY IS A PARTY.

The Florida Evidence Code, codified as Ch. 90, Fla. Stat., was adopted by the Legislature during the 1976 regular session although the effective date of the act was delayed until July 1, 1979. See, In re Florida Evidence Code, 372 So.2d 1369 (Fla. 1979). Included within the code is a provision relating to privileged attorney-client communications. See, §90.502, Fla. Stat. (1981). The following year, the Legislature passed House Bill 1107 which permitted public agencies to meet in secret with their attorneys in order to discuss pending litigation. Governor Askew, in vetoing the bill, stated that to allow such secret meetings "would frustrate the intent of the 'Sunshine Law' and diminish considerably the atmosphere of openness that has come to be expected of government in this State." See, Journal of the (Florida) House of Representatives, December 13, 1977, pp. 2-3 (veto message for HB 1107) (Appendix II).

Thus, following enactment of the Evidence Code in 1976, the Florida Legislature specifically adopted a provision recognizing an attorney-client privilege under the Government-in-the-Sunshine Law. The Legislature, in enacting a statute, is presumed to act with full knowledge of the existing statutes relating to the same

subject. See, William v. Jones, 326 So.2d 425 (Fla.1975), appeal dismissed, 429 U.S. 803; Tamiami Trail Tours v. Lee, 194 So. 305 (Fla.1940); Carcaise v. Durden, 382 So.2d 1236 (Fla. 5 DCA 1980). Had the Legislature intended the provisions of §90.502, Fla. Stat., to constitute an exemption to the Government-in-the-Sunshine Law for meetings between a public board or commission and its attorney, it would not have passed a bill exempting the same meetings from §286.011, Fla. Stat., the following year. To hold otherwise presumes that the Legislature, in adopting HB 1107, passed a useless and unnecessary bill. As the Florida Supreme Court stated in Sharer v. Hotel Corporation of America, 144 So.2d 813, 817 (Fla.1962):

> It should never be presumed that the Legislature intended to enact purposeless and therefore useless, legislation. Legislators are not children who build block playhouses for the purpose, and with the gleeful anticipation, of knocking them down.

It is important to distinguish to whom the attorney-client privilege extends in order to determine who may validly waive such a privilege. Section 90.502(2), Fla. Stat. (1981), provides that:

> A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.

The privilege may be claimed by the client, pursuant to §90.502 (3)(a), Fla. Stat. (1981), and by "[t]he lawyer, but only on

behalf of the client," as stated in §90.502(3)(e), Fla. Stat. (1981). It is the client and not the lawyer, to whom the privilege of confidentiality extends. As the court recognized in Times Publishing Company v. Williams, 222 So.2d 470, 475 (Fla. 2d DCA 1969), it is the public which is the real client of the attorney for a public board or commission and as the true client of the attorney, the public may waive any privilege of confidentiality:

> The privilege of confidentiality can be waived and the effect of Ch. 67-356 (codified as §286.011, Fla. Stat. [1981]) has been to waive the privilege on behalf of the board. The clear import of the "All meetings" provision of this statute is that the public, acting through the legislature, has waived the privilege with regard to the enumerated public bodies.

The judiciary has recognized the power of the Legislature to waive the privilege of confidentiality and has exempted those conversations required by law to be divulged from the scope of the privilege. See, Fla. Bar Code Prof. Resp., D.R. 4-101, particularly D.R. 4-101(D)(1) which provides that a lawyer shall reveal "confidences or secrets when required by law, provided that a lawyer required by a tribunal to make such a disclosure may first avail himself of all appellate remedies available to him." (e.s.)

In the Times Publishing Company v. Williams case, supra, the Second District Court recognized that a limited attorney-client privilege exemption to the Sunshine Law existed based on the then

existing provisions of the Canons of Ethics. The court stated that an attorney "cannot be put in the untenable position of choice between a violation of a statute or a violation of a specific Canon insofar as they clearly conflict," (emphasis of the Court, 222 So.2d at p. 475) and that such a conflict could arise in situations involving privacy and confidentality in conducting pending or anticipated litigation. At the time the court decided the Times Publishing case, the Code of Ethics Rule B, §37, stated unqualifiedly that "[i]t is the duty of a lawyer to preserve his client's confidences," and that an attorney should not "accept employment which involves or may involve the disclosure or use of these confidences. . . ." However, this conflict does not exist under the present Code of Professional Responsibility adopted by the Supreme Court on June 3, 1970, which became effective in October of that year. Pursuant to Fla. Bar Code Prof. Resp., EC 4-2:

> The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents after full disclosure, when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. . . . (e.s.)

And see, Fla. Bar Code Prof. Resp., DR 4-101(D), which states that a lawyer shall reveal confidences when required by law to do so provided that the lawyer may first avail him or herself of all available appellate remedies. It is clear that the justification for an attorney-client privilege exception to the Sunshine Law as

proposed by the district court in the Times Publishing Company case no longer exists and an attorney may meet publicly, without violating the Canons of Ethics, to discuss pending or anticipated litigation with a public body client as no "clear conflict" between the statutes and the Canons of Ethics would prohibit such a meeting.

Finally, any argument asserting that an attorney-client privilege exemption to the Sunshine Law is necessary to protect the public interest in pending litigation ignores the effect and extent of current discovery techniques in civil litigation. Pursuant to the Rules of Civil Procedure generally governing discovery, parties may obtain discovery regarding any mattter, which is not privileged, which may be relevant to the subject matter of the pending action. Fla.R.Civ.P. 1.280(b). As Governor Askew recognized in his veto message on HB 1107:

> While it might appear to some at first glance that public bodies should not be kept from doing what their private adversaries in litigation do all the time, this is not really a proper comparison. The argument that the "other side" has an unfair advantage in litigation with public agencies because they are able to consult in private, ignores the reality of litigating under the modern rules of civil procedure. These rules allow very extensive pretrial discovery of evidence by opposing parties to a suit. The party that prevails today is not the party with a secret strategy or document, but rather the side that has done the best job of researching and preparing its case.

Journal of the (Florida) House of Representatives, December 13, 1977, pp. 2-3 (veto message for HB 1107), (Appendix II).

The Sunshine Law does not prohibit public agencies from initiating or defending any lawsuit. Section 286.011, Fla. Stat. (1981), only mandates that if a legal matter requires the official action of a public board, the public must be allowed to participate. If this court were to permit an exception to be read into the Sunshine Law as appellees request, the rights of the public to be involved in an extremely important decision-making process would be eroded. The rights which have been extended to the public under the Sunshine Law and enforced by the courts of this state should not be diminished. If petitioners believe that it is in the interests of the public that an exemption for attorney-client communciations be created, then it is to Legislature and not the courts that petitioners should look for redress. See, Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 700 (Fla.1969); Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260, 263 (Fla.1973).

By enacting §286.011, Fla. Stat. (1981), the Legislature, on behalf of the public, has waived any privilege of confidentiality which may have been construed to exempt meetings between public counsel and a public body client to discuss litigation from the open-meeting requirements of the Sunshine Law. Nor can public counsel claim that such disclosure violates the attorney's ethical obligation as the Canons of Ethics clearly recognize that such disclosure must be made when required by law. While amicus

curiae recognize that, absent constitutional limitations, one Legislature cannot bind another as to the mode in which it shall exercise its constitutional power of amendment, or limit or enlarge the general power of a subsequent legislature in the matter of amendments, see, e.g., Kirkland v. Town of Bradley, 104 Fla. 390, 139 So. 144, 145 (Fla.1932); Straughn v. Camp, 293 So.2d 689, 694 (Fla.1974), appeal dismissed, 419 U.S. 891, and that valid legislative exceptions to the Sunshine Law may be created, see, Tribune Company v. School Board of Hillsborough County, 367 So.2d 627 (Fla.1979), amicus curiae submit that the provisions of the Evidence Code do not constitute such an exception to the Sunshine Law.

III.

NO CONSTITUTIONAL RIGHT TO COUNSEL IS ESTABLISHED BY THE UNITED STATES OR FLORIDA CONSTITUTION WHICH WOULD BE ABRIDGED BY REQUIRING MEETINGS BETWEEN A CITY COUNCIL AND A CITY ATTORNEY TO DISCUSS THE SETTLEMENT OF PENDING LITIGATION TO BE HELD IN PUBLIC PURSUANT TO §286.011, FLA. STAT. (1981)

The federal and state constitutions do not extend the right to counsel to all aspects of civil litigation. The discussions in the case at bar concerning the settlement of civil actions for money damages against a municipal corporation do not involve circumstances to which the constitutional right to counsel extend.

In a number of well-known cases, the United States Supreme Court has found that a constitutional right to counsel, provided by the government, is mandated whenever imprisonment can be imposed. Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932) (right to counsel in a death case); Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (right to counsel for noncapital serious offenses); In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (right to counsel in juvenile dependency proceedings where the issue involved the commitment of a juvenile for criminal conduct); Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972) (right to counsel for petit offenses whenever imprisonment could be imposed). In comparison, the Court has rejected an

absolute constitutional right to counsel in other civil and criminal matters. For example, in Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973), the Court rejected a right to counsel for parole revocation proceedings and in Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974), a right to counsel for the purpose of seeking discretionary review in criminal cases was similarly rejected. In Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), the Court refused to recognize a procedural due process right to counsel in a proceeding terminating welfare payments. And see, In the Interest of D.B. and D.S., 385 So.2d 83, 89 (Fla.1980) (the extent of procedural due process protections varies with the character of the interest and nature of the proceeding involved). Cf., Art. I, §16, Fla. Const. (guaranteeing right of counsel to accused in all criminal prosecutions).

Clearly no absolute right to counsel in civil actions has been recognized by the courts. Nor do the discussions between a city council regarding litigation issues and the city attorney represent proceedings in which any right to counsel has been recognized. Therefore, the city may not claim any such right in these discussions nor may it assert that the provisions of the Sunshine Law would abridge such a right.

Evolving notions of due process and fundamental fairness (under U.S. Const. amend. XIV, §1 or under Art. I, §9, Fla. Const.) do not require that a city be afforded the right to

effective assistance of counsel during meetings with counsel to discuss settlement of pending litigation. As was stated by the United States Supreme Court in Williams v. Mayor of Baltimore, 289 U.S. 36, 40, 53 S.Ct. 431, 77 L.Ed. 1015 (1933):

> A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator.

See, e.g., Coleman v. Miller, 307 U.S. 433, 441, 59 S.Ct. 972, 83 L.Ed. 1385 (1939) ("[b]eing creatures of the State, municipal corporations have no standing to invoke . . . the provisions of the Fourteenth Amendment of the Constitution in opposition to the will of their creator." [e.s.]) As these cases clearly demonstrate, a municipality has no st nding to assert that it is denied due process rights by the state. The Legislature, acting on behalf of the people of the state, imposed the open-meetings requirement of the Sunshine Law upon meetings such as those between a city council and a city attorney to discuss settlement of pending litigation. A city may not assert that such a legislative provision represents abridgement of the city's constitutional right to due process.

In addition, this Court has implicitly recognized the public's right of access to meetings and records as an appropriate area for legislation even when such legislation affects attorney-client communications. See, City of Miami Beach v. Berns, supra, in which it was held that meetings of a city

commissioner with the city attorney to discuss pending litigation were subject to the open-meeting requirement of §286.011, Fla. Stat. And see, Fla. Bar Code Prof. Resp., DR 4-101(D)(1), which provides that a lawyer shall reveal "confidences or secrets when required by law . . . ." Cf., Hillsborough County Aviation Authority v. Azzarelli Construction Co., Inc., 436 So.2d 153 (Fla. 2d DCA 1983), in which the district court, in concluding that an attorney's work product was subject to disclosure under Ch. 119, Fla. Stat. (1981), stated that "access to public records . . . is a matter of substance"; and Wait v. Florida Power & Light Company, 372 So.2d 420 (Fla.1979), in which this Court stated that, in the absence of a statute making such information confidential, attorney-client communications were subject to Ch. 119, Fla. Stat. (1975).

It thus appears clear that no federal or state constitutional right is abridged by the Legislature's requirement that a city council and a city attorney discuss the settlement of pending litigation in an open, public meeting as required by §286.011, Fla. Stat. (1981).

CONCLUSION

For the foregoing reasons the state urges this court to affirm the decision of the Third District Court of Appeal and declare that discussions by a public body with its attorney concerning the conduct of pending or anticipated litigation do not constitute an exception to the Sunshine Law and must be held openly and publicly as required by §286.011, Fla. Stat. (1981).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE has been forwarded by U.S. Mail to Mr. Thomas M. Pflaum, Simon, Schindler & Hurst, Attorneys at Law, 1492 South Miami Avenue, Miami, Florida 33130; Mr. Steven M. Kamp, Paul & Burt, Attorneys at Law, 1300 Southeast Bank Building, Miami, Florida 33131; Mr. Thomas K. Petersen, Chief Assistant State Attorney, 1351 N.W. 12th Street, Miami, Florida 33125; Mr. Richard J. Ovelmen, General Counsel, The Miami Herald Publishing Company, One Herald Plaza, Miami, Florida 33131; Mr. James R. Wolf, General Counsel, Florida League of Cities, Inc., Post Office Box 1757, Tallahassee, Florida 32302; Mr. Robert M. Rhodes, Messer, Rhodes & Vickers, Attorneys at Law, Post Office Box 1876, Tallahassee, Florida 32302-1876 and Mr. Parker D. Thomson, Thomson & Zeder, Attorneys at Law, 1000 Southeast Bank Building, Miami, Florida 33131 this 2ND day of November, 1983.

Gerry Hammond

GERRY HAMMOND