



MITRANI RYNOR ADAMSKY TOLAND

ATTORNEYS

301 Arthur Godfrey Rd
Penthouse
Miami Beach FL 33140
T 305.358.0050
F 305.358.0550
www.mitrani.com

Karen Williams Kammer, P.A.
kkammer@mitrani.com

May 3, 2019

BY ELECTRONIC MAIL

The Hon. Francis Rooney
c/o Chris.Berardi@mail.house.gov

Harmful Algal Bloom Meeting Participants

**Re: May 7, 2019, Harmful Algal Bloom Meeting at
Florida Gulf Coast University
*Press and public's objection to meeting closure in violation of
Section 286.011, Florida Statutes***

Dear Congressman Rooney and Meeting Participants:

As some of you may know I represent WINK News and Ft. Myers Broadcasting Company in Ft. Myers.

My clients and I understand that the May 7, 2019, Harmful Algal Bloom Meeting in which Congressman Rooney is participating along with other Florida state and local officials at Florida Gulf Coast University ("HAB Meeting") is closed to the press and public. Respectfully, on behalf of my clients and the public we must object strenuously to closure as a violation of Florida's Sunshine Law, Section 286.011, Florida Statutes.

Legal background. As I'm sure you know, the Sunshine Law requires 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 must be open to the public, including the press. Reasonable notice of such meeting must be provided, and minutes of such meeting must be "promptly recorded" and "shall be open to public inspection." See Sections 286.011(1) and (2), Fla. Stat. This right of access also is embedded in Florida's Constitution in Art. I, sec. 24(b). It applies to *any gathering*, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which *foreseeable action* will be taken by the board or commission; it also applies when individual members from different boards meet when one or more of such individuals has been delegated the authority to act on behalf of his or her board. See, *for example*, AGO 84-16. Only the Florida Legislature may create exemptions to the presumption of openness. Art. I., sec. 24(c), Fla. Const. Exemptions must be construed narrowly, and the Sunshine Law must be construed broadly in favor of access to give effect to the law's public purpose. See, *for example*, *Wood v. Marston*, 442 So.2d 934, 938 (Fla. 1983). Efforts to evade the requirements of the law are improper:



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[B]oards and agencies should not be allowed to circumvent the plain provisions of the statute. The *benefit to the public far outweighs the inconvenience of the board or agency. If the board or agency feels aggrieved, then the remedy lies in the halls of the Legislature and not in efforts to circumvent the plain provisions of the statute by devious ways* in the hope that the judiciary will read some exception into the law.

Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260, 264 (Fla. 1973) (emphasis added).

Our objections to closure of HAB Meeting. In light of the well-settled legal principles described above, we have grave concerns about the position taken by Congressman Rooney the HAB Meeting should be closed to the press and public. Specifically:

1. Respectfully, Congressman Rooney has no legal standing to determine whether a meeting of Florida state and local officials such as the HAB Meeting should be closed.

For the reasons described above, respectfully, it is not up to Congressman Rooney to determine whether meetings among various Florida state and local officials are or are not subject to Florida's Sunshine Law. Only Florida's Legislature is empowered to enact exemptions to the presumption of openness, that is, to enact statutes directing which otherwise public meetings, or portion thereof, should be closed to the press and public.

2. Even so, his reasons for closure do not exist in Florida law.

The Congressman's following explanation for imposing closure here finds no basis in law:

*We are bringing various federal, state, and local agencies and entities together to share best practices and **discuss how to best deal with the adverse impacts of harmful algae blooms.** It is important that these agencies **meet face-to-face to build personal relationships** that can be leveraged when these events occur, and that we **provide a private forum conducive to free and open, technical discussion concerning appropriate responses to future outbreaks,** how to contain and minimize their impacts and how to track and communicate resultant*

health risks. To obtain the participants we have, the forum must be private and technically oriented. I will continue to do my best to inform



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our community about progress made and welcome comments, questions, or input from all of our citizens.

April 29, 2019, statement of Congressman Rooney (emphasis added). Florida law recognizes *none* of these stated reasons as a basis to close an otherwise public meeting, and the Legislature has not enacted any statutory exemption reflecting any of these purported rationales: meeting “face-to-face to build personal relationships,” “provid[ing] a private forum [for] technical discussion,” or claiming that “[t]o obtain the participants” the meeting “must be private and technically oriented.” Thus, the Meeting must be open as a matter of law.

3. The stated purpose of the Meeting involves matters on which foreseeable action will be taken by the public boards and commissions represented at the Meeting, and thus the Meeting must be open to the press and public.

According to the official invitation sent to the Meeting participants as well as Congressman Rooney’s press release, the stated purpose of the meeting is “*to develop proactive measures to mitigate the damaging impact of harmful algal blooms*” (April 18, 2019, invitation to participants from Congressman Rooney) (emphasis added), and to ensure the state “*ha[s] every procedure in place to control an outbreak*” of algal bloom (April 23, 2019, press release from Congressman Rooney) (emphasis added). Thus, in looking at the actual admitted function of this gathering, it is clear the gathering is exercising a decision-making function by sorting through information and options, and making recommendations to the various government entities represented. In light of the serious and imminent algae threat, these clearly are matters on which *foreseeable action* will be taken by the many public boards and commissions participating in this Meeting, such as Lee County, Collier County, the city councils of Ft. Myers, Ft. Myers Beach, Cape Coral, and the numerous others. Thus, the Meeting must be open as a matter of law.

4. The identity of the Meeting invitees creates the appearance that Meeting participants were purposefully selected in an attempt to evade the Sunshine Law’s requirements, thereby causing us grave concern.

While we disagree with the Congressman’s position that no two Meeting participants serve on the same board or commission, or that each individual participant does not have the delegated decision-making authority on behalf of his or her government entity, assuming his position is accurate we nevertheless



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have serious concern there is the appearance Meeting participants were selected with the express goal of ensuring no two members of the same board or commission attended. Because Florida courts uniformly reject such efforts to avoid application of the Sunshine Law, regardless whether such efforts may be well-intentioned, the Meeting must be open.

5. Any purported concern about decorum or order during the Meeting is not a basis for closure.

To the extent the Congressman or any participant is concerned about the orderly conduct of the Meeting, it is up to the body itself to adopt reasonable rules to ensure orderly procedure and require members of the public attending to behave appropriately. Such concern, however, cannot form the basis for closure, including banning the use of non-disruptive recording devices. *See, for example, Pinellas County School Board v. Suncam, Inc.*, 829 So.2d 989 (Fla. 2d DCA 2002). Accordingly, *at minimum* members of the press should be permitted to attend with non-disruptive recording devices, including the use of a pool camera.

* * *

The devastating effect of the algal blooms on the health and welfare of Florida's citizens, as well as on the state's economy, is worthy of continued discussion to devise efforts to combat it. Nonetheless, such efforts must be conducted in the sunshine as Florida law requires. However well-intentioned the notion of closing the HAB Meeting to the press and public may have been, such closure in our view violates Florida's Sunshine Law. Accordingly, we urge each of you to honor our objections and insist the Meeting be made open to the press and public in the manner described above. We appreciate your consideration

Sincerely,

Karen Kammer

Karen Williams Kammer, P.A.

Counsel to WINK News and Ft. Myers Broadcasting Company

KWK: