

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA

SUZANNE HARRIS, an individual,
Plaintiff,

CASE NO.: 2011 CA 1027

v.

WALTON COUNTY, FLORIDA.
Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT
AND DENYING DEFENDANT WALTON COUNTY'S RENEWED
MOTION FOR FINAL SUMMARY JUDGMENT**

This cause has come before the Court on Plaintiff, Suzanne Harris', Motion for Final Summary Judgment on Count I of Plaintiff's Second Amended Complaint as to Defendant Walton County, Florida ("Walton County") and Defendant's Renewed Motion for Final Judgment. The Court, having considered the pleadings, record and arguments of counsel briefed and made at a hearing before this Court on September 1, 2015, hereby makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. At its Regular Meeting on January 26, 2010, Walton County appointed Lynn Hoshihara as Interim County Attorney with the "authority and responsibility to review the legal schedules, assist in the transition, and *work with the Board to secure outside legal counsel*, as needed to stay on schedule with current legal issues; and to utilize local attorneys as outside counsel."¹

¹ No potential attorneys to be hired as outside counsel were identified by the Board nor were potential contract terms discussed.

2. On June 3, 2010, Walton County, by and through Ms. Hoshihara, entered into a contract for legal services with attorney George Ralph Miller.

3. Thereafter and on October 21, 2010, Walton County, by and through Ms. Hoshihara, entered into a subsequent contract for legal services with Attorney Miller.

4. Neither the hiring of Attorney Miller or the aforementioned contracts were discussed, voted on or otherwise approved at a meeting open to the public with notice provided and minutes taken. Furthermore, the record evidence establishes that Ms. Hoshihara did not work with the Walton County Board of County Commissioners at any public meeting after January 26, 2010, to hire or approve any contracts entered into with Attorney Miller.

5. Unrelated to the contracts at issue, on December 22, 2009, at a public meeting, Walton County hired Attorney Miller solely and specifically to assist in the resolution of a separate lawsuit filed by Suzanne Harris alleging that Walton County had violated the Florida Public Records Act (Chapter 119, Florida Statutes), and “any other duties we think that he might help us with *at this time*.” (emphasis added.) The only pending matter identified by or addressed by Walton County on December 22, 2009 was the resolution of the Harris public records litigation. The December 2009 retention of Miller did not encompass future work or future contracts negotiated and executed by Ms. Hoshihara outside of a public meeting.²

6. Pursuant to the contracts Attorney Miller entered into with Walton County on June 3, 2010, and October 21, 2010 respectively, Attorney Miller submitted invoices totaling \$187,400.00 for legal services to the County Attorney for her review as well as County Finance. Prior to the dates of its public meetings, the County Commissioners and some members of the public were furnished with written documentation, in the form of Expenditure Approval Lists

² If the December 22, 2009 retention of Attorney Miller encompassed future work or contracts as the Defendant asserts, there would not have been a need for the Board to direct Ms. Hoshihara to work with it to secure outside legal counsel on January 26, 2010.

(EALs), which indentified all vendors (including Attorney Miller) and the amounts of payments to be made to them. These EALs were subsequently approved by the Board on a Consent Agenda at its public meetings. The County paid the invoices in full.

II. CONCLUSIONS OF LAW

7. Summary judgment is proper when there is no genuine issue as to any material fact, and the movant proves she is entitled to summary judgment as a matter of law. The parties have stipulated to the Court that no factual disputes remain in the litigation. Therefore, summary judgment is appropriate when the moving party demonstrates that the non-moving party cannot prevail under the law.

8. Florida's Sunshine Law, embodied in Section 286.011(1), Florida Statutes, states, in pertinent part, as follows:

“All meetings of any board or commission...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.”

Thus, this section provides for public access to meetings where official acts are to be taken. *Grapski v. City of Alachua*, 31 So.3d 193, 198 (Fla. 1st DCA 2010). The Sunshine Law must be broadly applied to promote open government and vindicate the constitutional right to open government codified in Article I, section 24, *Constitution of Florida*. See *Forsberg v. Housing Authority of City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984). Violation of this section may result in criminal and civil remedies, including declaratory and injunctive relief. *Grapski* at 200.

9. The intent of the Sunshine Law is to cover any gathering of the members of the Board where the members deal with some matter on which foreseeable action will be taken by the Board. *Tolar v. School Board of Liberty County*, 398 So.2d 427, 428-29 (Fla. 1981). While

the Sunshine Law statute does not define “formal action,” as a matter of law, “[e]very step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an ‘official act,’ an indispensable requisite to ‘formal action,’ within the meaning of the act.” *Rhea v. City of Gainesville*, 574 So.2d 221, 222 (Fla. 1st DCA 2010), quoting *Times Publishing Co. v. Williams*, 222 So.2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds*.

10. Entering into a contract is a “formal action” under the Sunshine Law. Therefore, for a contract to be lawfully entered into, the contract must be approved at a public meeting that complies with Section 286.011, Florida Statutes.

11. Unilateral action by one government official that commits taxpayer funds and that has not been fully and lawfully authorized at a public meeting violates Section 286.011(1), *Florida Statutes*. See *Leach-Wells v. City of Bradenton*, 734 So.2d 1168, 1171 (Fla. 2d DCA 1999). This is especially true in the present case since Walton County appointed Ms. Hoshihara as Interim County Attorney and specifically directed her *to work with the Board of County Commissioners to secure outside legal counsel*. Despite this specific directive, no record evidence indicates that Ms. Hoshihara worked with the Board at any public meeting after January 26, 2010 to obtain approval to subsequently hire or enter contracts with Attorney Miller.³ Further, no record evidence indicates that the Board ratified the contracts in the same manner as the contracts would have initially been approved or that the Board had full knowledge of the material facts relative to the agreement. *Frankenmuth Mutual Insurance Co. v. Magaha*, 769 So.2d 1012 (Fla. 2000).

³ In response, Walton County relies upon its adoption of Resolution 2008-36 dated March 25, 2008. However, Resolution 2008-36 only exempts the hiring of “outside counsel” from the *competitive bidding requirements* and not from the approval by the Board of contracts that commit taxpayer funds. Moreover, Walton County’s reliance on this Resolution disregards the fact that there exists no record evidence indicating that the Interim County Attorney ever worked with the Board at a public meeting after its January 26, 2010 directive.

12. The “mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury” such that any act of government that stems from a Sunshine Law violation is “void ab initio.” *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974).

13. By entering into a contract with Miller on June 3, 2010, without a public meeting and authorizing action, Walton County violated the Sunshine Law codified in section 286.011(1), Florida Statutes.

14. By entering into a contract with Miller on October 21, 2010, without a public meeting and authorizing action, Walton County violated the Sunshine Law codified in Section 286.011(1), Florida Statutes.

IT IS, THEREFORE, ORDERED AND ADJUDGED that:


A. Plaintiff Suzanne Harris’ Motion for Final Summary Judgment against Defendant Walton County as to Count I of the Second Amended Complaint is **GRANTED**.

B. Defendant Walton County’s Renewed Motion for Final Summary Judgment is **DENIED**.

C. The June 3, 2010, and October 21, 2010 contracts for legal services entered into with Attorney George Ralph Miller are hereby deemed void ab initio.

The Court reserves jurisdiction over this matter to resolve pending motions, enter all necessary orders and judgments and determine the Plaintiff’s entitlement to attorneys’ fees and the amount thereof.

DONE AND ORDERED in Chambers at the Santa Rosa County Courthouse, Milton,
Florida on this 30th day of September, 2015.



Honorable John F. Simon, Jr.
Circuit Court Judge

Conformed Copies to:

William G. Warner, Esq., pleadings@warnerlaw.us; billwarner@warnerlaw.us;
timwarner@warnerlaw.us
Matthew L. Gaetz, II, mgaetz@kaglawfirm.com; elawniczak@kaglawfirm.com
Mark Davis, mdd@co.walton.fl.us; sincrissie@co.walton.fl.us