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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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July 22, 2004

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Honorable Blaine Galliher  
Member, House of Representatives  
Post Office Box 4353  
Gadsden, Alabama 35904-4353

Pardons and Paroles Board – Public Notice  
– Special Members – Sunshine Law –  
Etowah County

The scope of the Sunshine Law extends to all meetings of the Alabama Board of Pardons and Paroles (“Board”) in which a quorum is present, regardless of whether the meeting deals with pardons and paroles or with administrative, supervisory, and personnel duties.

The Board must provide reasonable public notice of any meeting in which it discusses Board business. No single means of notice is statutorily specified, but notice by publication in a newspaper is a commonly used and generally adequate means of providing the notice required by the Sunshine Law. The legal time period required between notice and meeting is a “reasonable” time, a period that may depend upon the circumstances.

Because any meeting of two or more regular members to discuss board business constitutes a quorum, permanent board members may not meet to discuss and decide board business without providing public notice.

Because special board members are bound by Board orders, the Board should provide copies of its orders to the special board members.

The Board has an obligation to keep a correct record of the meetings. Properly transcribed and authenticated minutes are a sufficient means of keeping the required records.

Dear Representative Galliher:

This opinion of the Attorney General is issued in response to your request.

### QUESTIONS

(I) Can the Board of Pardons and Paroles meet to discuss and/or take official action, on a matter other than pardons and paroles hearings, randomly during the day without ample public notice in relation to time and location?

(II) What must be the nature of the public notice (newspaper, etc.)?

(III) Is there a legal time period required between notice and meeting?

(IV) Can a quorum (two members) of the permanent board meet behind closed doors in a private office or any other place and discuss board business?

(V) Do special board members have a right to receive notice of business meetings and the right for those meetings to be held at a time when they would not be hindered from attending the meeting because of his or her official duties to the Board?

(VI) Should special members receive copies of all Board orders?

(VII) Are recorded minutes of business meetings required?

FACTS AND ANALYSIS

Your request states that the Alabama Board of Pardons and Paroles properly gives notice of Board meetings for hearings to interested parties. The Board, however, does not give public notice of the time, date, and place of Board meetings for the purpose of attending to the public's business concerning matters other than pardons and paroles hearings. Instead, you report that these meetings occur, and matters are discussed, voted on, and Board orders are signed at frequent (sometimes daily) random meetings hastily called in the Board's downtown courtroom. No public notice or notice to special board members is given of any work session or of any meeting where business is discussed, motions are made and voted on, or where formal Board orders are signed. The special board members, who are bound by Board orders, do not receive notice of Board meetings, and they do not normally receive a copy of the Board's orders.

As to Question I, in addition to complying with notice statutes dealing specifically with pardons and paroles hearings, the Board must also comply with the Alabama Sunshine Law, section 13A-14-2(a) of the Code of Alabama. The Sunshine Law provides:

No executive or secret session shall be held by any of the following named boards, commissions or courts of Alabama, namely: Alabama Public Service Commission; school commissions of Alabama; board of adjustment; state or county tax commissions; any county commission, any city commission or municipal council; or any other body, board or commission in the state charged with the duty of disbursing any funds belonging to the state, county or municipality, or board, body or commission to which is delegated any legislative or judicial function; except, that executive or secret sessions may be held by any of the above named boards or commissions when the character or good name of a woman or man is involved.

ALA. CODE § 13A-14-2(a) (1994).

All meetings that are subject to the Sunshine Law, "whether formal or informal, whether or not an official vote is taken, must be open to the public." *Dale v. Birmingham News Co.*, 452 So. 2d 1321, 1323 (Ala. 1984). The scope of the Sunshine Law extends to all meetings of the Board in which a quorum is present, regardless of whether the meeting deals with pardons and paroles or with administrative, supervisory, and personnel duties. See *Auburn Univ. v. The*

*Advertiser Co.*, 867 So. 2d 293 (Ala. 2003). The Board must provide reasonable public notice of any meeting in which it discusses Board business.

As to Question II, the Alabama Supreme Court stated the following:

The Alabama Sunshine Law does require that reasonable notice be given to the public . . . The public must be given a reasonable opportunity to be aware of the place where the notice will be posted; and the time, date and place of the meeting must be available to the public on reasonable inquiry. When special circumstances arise or when a meeting is called for truly emergency purposes, the agency holding the meeting should so declare and should give such notice as is reasonable under the circumstances, unless the giving of such notice is impractical or impossible.

*Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953, 959 (Ala. 1994). Although notice statutes applying to pardons and paroles hearings have more specific notice requirements, the Sunshine Law requires only that the notice of meetings to conduct other business be reasonable. No single means of notice is statutorily specified, but notice by publication in a newspaper is a commonly used and generally adequate means of providing the notice required by the Sunshine Law.

As to Question III, the Sunshine Law requires notice that is reasonable, or reasonable under the circumstances, and does not impose specific time or means requirements. It should be noted that statutes applying to pardons and paroles hearings do contain more specific notice requirements. The legal time period required between notice and meeting is a "reasonable" time. What time is "reasonable" may depend upon the circumstances. As a point of reference, some administrative boards provide two weeks' notice of meetings under the Sunshine Law.

As to Question IV, if a quorum of a board meets to discuss board business, the Sunshine Law requires that the meeting be open to the public. Members of a public body, however, are not prohibited from meeting socially or informally if no business of the body is conducted. This does not mean, however, that two board members may never engage in a conversation about agency business while at a social gathering. Opinion to Honorable Nelson Papucci, Member, House of Representatives, dated January 29, 1996, A.G. No. 96-00118. Because any meeting of two or more regular members to discuss Board business constitutes a quorum, permanent members of the Board may not meet to discuss and decide Board business without providing public notice.

The Supreme Court of Alabama stated that “[t]he right to public access extends to the entire process from public policy discussions and formulation through adoption and enforcement. Otherwise, business could be conducted in secrecy and public meetings held only to ratify decisions already made in secret.” *Dale* at 1323. Although permanent members of the Board are not prohibited by the Sunshine Law from all social conversation about Board business, they may not discuss Board business in a manner that removes any part of this process from public scrutiny. In addition, statutes governing the Board’s pardons and paroles hearings may impose additional restraints on discussion of those matters.

As to Question V, special members of the Board “shall be appointed and serve for the limited purpose of conducting hearings and making determinations concerning pardons, paroles, restorations of political and civil rights, remission of fines and forfeitures, and revocations.” 2003 Ala. Acts No. 2003-415. Special board members are not given authority to decide other matters (e.g., administrative, supervisory, and personnel matters) coming before the permanent Board. Neither the Sunshine Law nor the Code provisions concerning special board members require that the special board members be excused from performing their official Board duties in order for the board members to attend business meetings. The Sunshine Law might be violated, however, if the permanent board members consistently scheduled business meetings and duties of the special board members to coincide with each other so that the special board members are deprived of the right to attend business meetings of the Board.

Although the special board members possess no right to be free from scheduling conflicts, the Sunshine Law requires that “the time, date and place of the meeting must be available to the public on reasonable inquiry.” *Slawson* at 959. Special board members are entitled to the same right as the general public to reasonable notice of the business meetings held by permanent board members.

As to Question VI, orders of the Board are public records, and citizens of the state of Alabama have a right to inspect and to make copies of such writings under the Alabama Open Records Act. ALA. CODE § 36-12-40 (2001). As a public agency, the Board must, upon request, provide a copy of its orders to the special board members. Because special board members, however, are bound by Board orders, the Board should provide copies of its orders to the special board members in the normal course of business.

As to Question VII, the Board has a general obligation to record its meetings. In examining a similar question regarding whether the Alabama State Personnel Board had such an obligation, the Alabama Supreme Court found the following:

We find no statutory requirement that the Personnel Board, in the performance of its administrative functions, keep any record, or transcript thereof, of the proceeding before it . . . It may be assumed that there is a general obligation upon the Personnel Board to keep some correct record of the proceedings of its meeting. It is generally held that the minutes of such meetings . . . are sufficient for that purpose.

*Personnel Bd. for Mobile County v. Bunkley*, 255 Ala. 299, 51 So. 2d 368 (1951). This reasoning also applies to business meetings of the Board, which has an obligation to keep a correct record of its meetings. Properly transcribed and authenticated minutes are a sufficient means of keeping the required records.

#### CONCLUSION

The scope of the Sunshine Law extends to all meetings of the Alabama Board of Pardons and Paroles ("Board") in which a quorum is present, regardless of whether the meeting deals with pardons and paroles or with administrative, supervisory, and personnel duties.

The Board must provide reasonable public notice of any meeting in which it discusses Board business. No single means of notice is statutorily specified, but notice by publication in a newspaper is a commonly used and generally adequate means of providing the notice required by the Sunshine Law. The legal time period required between notice and meeting is a "reasonable" time, a period that may depend upon the circumstances.

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Honorable Blaine Gallier  
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Milt E. Belcher of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive style with a large initial "C" and "S".

CAROL JEAN SMITH  
Chief, Opinions Division

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