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TO: Heidi Petito, County Administrator  
Jorge Salinas, Deputy County Administrator

FROM: Sean Moylan, Deputy County Administrator

CC: Amy Lukasik, Tourism Development Director

DATE: August 13, 2025

RE: Flagler County Cultural Council, Inc.

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A question has arisen as to whether the Flagler County Cultural Council, Inc., a private not-for-profit corporation ("FC3"), designated by the County as a local arts agency and contracted to provide promotional services to the County related to arts and history, should be subject to the Sunshine Law.

Factual Context

FC3 was established as a Florida not-for-profit corporation in August 2021. In October 2022, the County Commission designated FC3 as Flagler County's Local Arts Agency ("LAA") through Resolution 2022-67. Unfortunately, although Board of County Commissioners did not create FC3, the resolution designating it as the LAA references the statutory authority of counties to create local arts agencies, which has caused confusion. We are presenting an amended and restated resolution to the County Commission on Monday, August 18, 2025, to correct this.

FC3 is not an advisory board of the County. It is a private entity that provides contracted services to the County much like other non-profits in the community such as Stewart Marchman, Boys and Girls Club, and the Humane Society. FC3 meets monthly. Its regular meetings are open to the public.

The County's intent in designating FC3 as the County's LAA, as stated in the resolution, is as follows:

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**Andy Dance**  
District 1

**Greg Hansen**  
District 2

**Kim Carney**  
District 3

**Leann Pennington**  
District 4

**Pam Richardson**  
District 5

- Stimulate greater governmental and public awareness and appreciation of the importance of the arts, history, and culture among the residents of Flagler County.
- Encourage and facilitate greater and more efficient use of governmental and private resources in order to more fully develop and support the arts.
- Encourage and facilitate opportunities for Flagler County residents and visitors to participate in arts and cultural programs and activities.
- Expand and support cultural tourism development in Flagler County.
- Promote the development and of artists, arts institutions, and community organizations sponsoring arts, historical and cultural programs and activities.
- Assess the needs of the artistic, historical and cultural institutions and community organizations sponsoring such activities.
- Otherwise serve the citizens of Flagler County in the realm of arts, history and culture.
- The resolution also states that FC3 will assist local organizations in obtaining grants and by providing technical support in developing and promoting FC3's activities.

Importantly, the resolution notes that the County does not have the staff to operate an arts or cultural affairs department and that FC3 can help the County achieve the goals of the County Commission's Strategic Plan and Comprehensive Plan as well as the Tourist Development Office's Strategic Plan.

The County provided funding for the development of FC3's strategic plan. The County allows FC3 to use its Tourism Development Office ("TDO") for its meetings, and the TDO makes a County employee available to FC3 as a liaison and facilitator of its meetings.

In August 2023, the County entered into promotional services contract with FC3. The contract automatically renews from year to year until terminated and requires the County to provide a \$40,000 annual fee to FC3 in exchange for specific services and deliverables. Some of the requirements of FC3 under the contract include: developing a website with information about FC3 programs; creating a social media presence; promoting arts, culture, historical sites and events to residents and visitors; growing membership; and regular reporting to the County's Tourist Development Office.

At the same time, FC3 conducts activities that are not at the behest of the County, such as fundraising, providing scholarships to local youth, and processing grant applications with the City of Palm Coast.

#### Florida Arts and Culture Act

Section 265.32(8)(b), Florida Statutes, defines a local arts agency to include both public and private non-profits such as FC3:

“[A] public **or private nonprofit organization** located in Florida and operating on a permanent basis for the primary purpose of strengthening, supporting, and stabilizing the activities of one or more county art and cultural constituencies.”  
Section 265.283(11), Florida Statutes. (emphasis added)

The County may have multiple local arts agencies. However, FC3 is the only LAA in Flagler County and the only entity eligible to receive revenue from the state from specialty license plate sales. FC3 is in the process of contracting directly with the Florida Department of State, Division of Arts and Culture, for use of the license plate funds. (Previously, the Governing Board of the Flagler Auditorium, also a private non-profit, was designated to receive the County’s portion of the specialty license plate funds.)

#### Attorney General Opinion 98-49

Twenty-seven years ago, in a factual context similar to our current scenario, the Attorney General (“AG”) rendered an advisory opinion concluding that Lake County’s designated local arts agency was subject to the Sunshine Law. AGO 98-49. The AG noted that private entities are sometimes subject to the Sunshine Law i.) when they are created by a public agency; ii.) when the public agency delegates governmental functions to the private entity; or iii.) when the private entity plays an integral role in the decision-making process of the public agency. Although our situation is somewhat distinguishable from Lake County’s, the Attorney General would likely reach the same conclusion today in regard to FC3.

The AG noted that the mere receipt of public funds through a contract with a public agency does not alone subject the private entity to the strictures of the Sunshine Law. Ultimately, the AG focused on a distinction between a private entity providing services *to* a public agency versus a private entity providing services *in place of* a public agency—a principle of public records jurisprudence as opposed to Sunshine Law jurisprudence. The AG cites a Fifth District Court of Appeal case, *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.*, for the principle that a private entity becomes subject to public records laws when its contract with the

public agency relieves that agency from the operation of a public obligation, such as operating a jail or providing fire protection.

#### Decision-Making Authority vs. Fact-Finding Authority

Committees appointed or designated by public entities may be subject to the Sunshine Law. It is the function of the private entity, not its structure or makeup, that determines whether it has a public decision-making role. The dispositive question is whether the committee has been delegated **decision-making authority** as opposed to mere **information-gathering authority**. If the entity is delegated decision-making authority, it is subject to the Sunshine Law. On the other hand, if its role is merely information-gathering for the ultimate decision maker, it is not subject to the Sunshine Law.

In *Knox v. District School Board of Brevard*, the court found a staff committee appointed by a superintendent to review applications for a principal position was not subject to the Sunshine Law because, although the committee evaluated applications and assigned them numerical scores, the committee did not eliminate any applications and presented them all to the superintendent.<sup>1</sup> 821 So. 2d 311 (Fla. 5<sup>th</sup> DCA 2002). Conversely, the Florida Supreme Court found a search committee for a dean position at the University of Florida was subject to the Sunshine Law because the committee eliminated some applications, thus becoming part of the decision-making process. *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983).

#### Conclusion and Recommendation

The Sunshine Law is remedial and must be construed broadly to accomplish its purpose. There is no question that FC3 is more entangled with the Tourist Development Office than other non-profit corporations that receive grant funding from the County.

To the extent FC3's Promotional Services Agreement requires FC3 to utilize public funds to fulfill part of the County's strategic goal of attracting tourists interested in culture and history, it is my opinion that FC3 has stepped into the policy arena and become part of the decision-making process of how the County spends its promotional TDT revenue. Although FC3 is not operating a jail or providing fire service protection, it is fulfilling a role of the County that larger counties may choose to bring in-house. Inasmuch as FC3 acts as an alter ego of the County (fulfilling the role of a would-be arts and culture department), it should operate in the Sunshine.

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<sup>1</sup> This is similar to FC3's role in scoring grant applications on behalf of the City of Palm Coast and then presenting all applications to the City Council for the actual awarding of the grant.

At the same time, I recognize there are many activities conducted by FC3 unrelated to its promotional services agreement with the County and which do not cross the line into public decision-making. As just one example, it is my understanding the local scholarships provided by FC3 are unrelated to the County.

I view the situation as analogous to agencies on aging, which are nongovernmental, independent, not-for-profit corporations funded in part by Florida's Department of Elderly Affairs pursuant to the Older Americans Act of 1965. Under Florida law:

“Area agencies on aging are subject to chapter 119, relating to public records, and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings.” Section 20.41(8), Fla. Stat.

The same is true in our situation. When FC3 votes on the expenditure of County funds, it should be done in compliance with the Sunshine Law. This means FC3 members cannot discuss such matters outside of a publicly noticed meeting, and minutes must be taken.

On the other hand, members may speak to each other and operate outside of the Sunshine when conducting private matters on behalf of the non-profit corporation or on matters that do not amount to decision-making of the County. For example, when FC3 members organize the logistics of events, even events funded in part by the County, they may do so outside of a public meeting. In this example, the decision to fund the event (i.e., the vote on a grant agreement) should only be discussed and made in a public meeting. But decisions such as who will promote the event on the radio or what a social media post will say about the event can be done outside of a public meeting.

This is one of the most challenging Sunshine Law questions I've been presented. The answer is not black and white. However, when in doubt, the best practice and safest course of action is to assume the Sunshine Law applies. Our office can provide training to FC3 to help it better understand the principles I've laid out in this memo. For now, my recommendation is that the Tourist Development Office publicly notice FC3 meetings that involve votes on the expenditure of County funds and ensure that minutes are taken.