

**OFFICE OF THE STATE ATTORNEY**  
**EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA**  
**BREVARD AND SEMINOLE COUNTIES**

Viera Office  
2725 Judge Fran Jamieson Way  
Bldg. D  
Viera, FL 32940  
(321) 617-7510

Titusville Office  
400 South Street  
Suite D  
Titusville, FL 32780  
(321) 264-6933

Melbourne Office  
51 South Nieman Avenue  
Melbourne, FL 32901  
(321) 952-4617

**PHIL ARCHER**  
STATE ATTORNEY



Seminole County Office  
P.O. Box 8006 • 101 Bush Blvd.  
Sanford, FL 32772-8006  
(407) 665-6000

Seminole Juvenile Center  
190 Bush Blvd.  
Sanford, FL 32773  
(407) 665-5454

Reply to: Seminole County

February 12, 2021

Inspector Charles Dickson  
Florida Department of Law Enforcement  
Office of Executive Investigations, Public Corruption Unit  
2331 Phillips Road  
Tallahassee, FL 32308

RE: EI-14-0171

Dear Inspector Dickson:

I am in receipt of your reports memorializing that which you and I learned through our investigation into allegations that members of the Greater Orlando Aviation Authority Board of Directors possibly violated Florida's Sunshine Law in August, 2019. I agree with your conclusion that there is no evidence to substantiate the allegations under review, and I am writing to memorialize my findings.

Factual Background:

The Greater Orlando Aviation Authority (GOAA) is the entity responsible for managing the Orlando International Airport (OIA). It is governed by a seven-member Board of Directors that is comprised of the Mayor of the City of Orlando, the Mayor of Orange County, and five members who are appointed by the Governor of Florida. Day-to-day operations of OIA are handled by a Chief Executive Officer (CEO) who is appointed by the Board and who oversees hundreds of aviation authority staff members. Prior to the COVID-19 pandemic, OIA had over 500 million dollars in annual gross revenues and served approximately 50 million passengers, annually.

The GOAA Board of Directors meets monthly at publicly-noticed meetings in order to undertake official acts of the Authority. In advance of each monthly meeting, GOAA's CEO meets separately with each member of the Board to brief them individually on the topics that are expected to be addressed by the Board at the meeting.

In August, 2019, GOAA General Counsel Marcos Marchena officially announced his intention to step down from his position, effective December, 2019. This announcement triggered the need for GOAA to evaluate how, when, and who it would tap to succeed Mr. Marchena as General Counsel. To that end, GOAA CEO Phil Brown formulated a recommendation to the Board that they advertise the position of Chief Legal Officer and solicit

applications from interested individuals. Mr. Brown's recommendation was placed on the agenda for the August 28, 2019, GOAA Board meeting.

As was his routine practice, GOAA CEO Phil Brown then met separately with each GOAA Board Member prior to the publicly-noticed Wednesday, August 28, 2019, Board meeting, including Chairperson Domingo Sanchez. Chairperson Sanchez and CEO Brown met on Monday, August 26, 2019, at which time Chairperson Sanchez shared two of his own recommendations with CEO Brown: first, that the Board consider creating the positions of interim co-General Counsel, and second, that the Board consider former Florida Supreme Court Justice James Perry and Attorney Tara Tedrow as candidates for said positions.

Realizing that Chairperson Sanchez now had alternative recommendations to his own on the topic of how to handle replacing General Counsel Marchena, CEO Brown individually informed other Board Members that the item he had originally placed on the Agenda for the August 28, 2019, Board meeting (titled "Recommendation to Establish the Position of Chief Legal Officer," August 28, 2019, GOAA Agenda, Item VI. C.) would likely result in Chairperson Sanchez making his own two recommendations to the Board at the time of the meeting, the details of which CEO Brown shared, individually, with some of the other Board Members.

The GOAA Board of Directors met on August 28, 2019, at the publicly-noticed meeting. They moved through the Agenda for the meeting, and when CEO Brown's previously noticed item "Recommendation to Establish the Position of Chief Legal Officer" was called for discussion, Chairperson Sanchez announced his wish "to discuss a process for the Board to consider [to] move forward on the General Counsel services."<sup>1</sup> Chairperson Sanchez then made three recommendations to the Board. First, he recommended that a transition team be created that would be tasked with evaluating the GOAA General Counsel's reporting structure, the current best practices of legal counsel on issues of procurement and concessions, and how legal work should be issued and reported to GOAA staff and the Board. Second, he recommended that said transition team be comprised of GOAA CEO Phil Brown, GOAA Board Member Randall Hunt, Justice Perry, and Ms. Tedrow. Third, he recommended that Justice Perry and Ms. Tedrow serve as interim co-General Counsel as soon as letters of engagement could be executed with them both, and that they serve in those capacities for six months.

Chairperson Sanchez then announced that he would entertain a motion to adopt his three recommendations. In response, Board Member Randall Hunt made such a motion and Board Member Dr. Jason Pirizzolo seconded it. The Board Members then launched into a lengthy discussion of the motion, with many asking questions and some sharing their own familiarity with Justice Perry, Ms. Tedrow, and their qualifications. Ultimately, the Board voted to create a transition team consisting of the four individuals Chairperson Sanchez had recommended, and interim co-General Counsel positions consisting of attorneys working for the firms Nelson, Mullins, Riley and Scarborough, and Lowndes, Drosdick, Doster, Kantor, and Reed. At one point during discussion of the motion, both Justice Perry and Ms. Tedrow were recognized as being in the audience at the meeting, which understandably raised concerns regarding how much discussion had taken place regarding Chairperson Sanchez's recommendations prior to the publicly-noticed Board meeting, and whether any of those discussions violated Florida's

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<sup>1</sup> Video recordings of GOAA Board meetings can be found at [www.ocfl.net/OpenGovernment/OrangeTVVisionTV/VideoArchiveMenu.aspx](http://www.ocfl.net/OpenGovernment/OrangeTVVisionTV/VideoArchiveMenu.aspx).

Sunshine Law. Those concerns prompted a call for further investigation, which was assigned to State Attorney Phil Archer, Eighteenth Judicial Circuit in and for Seminole and Brevard Counties, because then-Ninth Circuit State Attorney Aramis Ayala's Executive Director and Chief General Counsel, Ms. Kamilah Perry, is the daughter of Justice Perry.

The resulting investigation has spanned nearly 16 months (12 of which were during COVID-19 pandemic conditions), and resulted in 11 sworn, voluntary interviews being conducted with Phil Brown, Mayor Jerry Demings, Christopher Dorworth, Mayor Buddy Dyer, William Dymond, Carson Good, Rafael Martinez, Harold McNeill, Justice Perry, Dr. Jason Pirozzolo, and Ms. Tedrow. Neither Randall Hunt nor Domingo Sanchez accepted our invitation to participate in voluntary, sworn interviews.

#### Legal Analysis:

Our respective agencies were tasked with conducting an investigation to determine whether members of the GOAA Board of Directors violated Florida's Sunshine law. Florida's Government-in-the-Sunshine Law is found in Florida Statutes Chapter 286, which sets forth the rules and regulations governing the operation of public business in our state. Specific to this analysis is Fla. Stat. s. 286.011(1), which provides:

All meetings<sup>2</sup> 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, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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. The board or commission must provide reasonable notice of all such meetings.

Pursuant to this statute, GOAA constitutes a government entity which must operate "in the Sunshine," and as such, its Board Members are required to abide by the statutory requirements s. 286.011. A Board Member's failure to do so subjects him or her to various penalties as set forth in Fla. Stat. s. 286.011(3):

- (a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.
- (b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the

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<sup>2</sup> A meeting of a government entity required to operate "in the Sunshine" occurs when two or more members of the entity discuss a matter that will foreseeably come before the entity for action. Transparency for Florida v. City of Port St. Lucie, 240 So.3d 780 (Fla. 4th DCA 2018).

second degree, punishable as provided in s. 775.082 or s. 775.083.

A fundamental tenet of Florida's Sunshine law is that a one-on-one conversation between a qualifying entity's staff member and Board Member does not constitute a meeting for purposes of s. 286.011.<sup>3</sup> Additionally, a staff member of a qualifying entity who does not exceed the bounds of his or her position is not subject to the provisions and requirements of Florida's Sunshine law.<sup>4</sup> These principles are logical and well-reasoned, because a government entity would never be able to efficiently and effectively function if every individual conversation held between a member of staff and a member of the board had to be held at a public meeting.

There are a few exceptions to these general principles, but none of those exceptions apply to the facts at hand. As identified in Florida Attorney General Opinion 89-39:

[w]hen a member of staff ceases to function in his capacity as staff and performs a decision-making function [reserved for the board or authority for whom he works], he loses his identity as staff . . . and is, accordingly, included within the operation of the Sunshine Law. [. . .] In addition, if staff is being used as a liaison between members of the county commission, then staff will be subject to the provisions of s. 286.011, F.S. As this office recognized in AGO 74-47, staff is not subject to the Sunshine Law so long as they do not act as a liaison between members of the public board or commission or attempt to act in the place of the board of commission members at their direction.

Our interviews revealed that GOAA Chairperson Domingo Sanchez discussed his recommendations regarding the formation of a transition team and the creation of interim co-General Counsel positions with GOAA CEO Brown. As was his responsibility, CEO Brown then shared Chairperson Sanchez's recommendations with other Board Members prior to the August 28, 2019, meeting, but there is no evidence that CEO Brown relayed the opinions of one Board Member to any other. You and I learned that after the August 28, 2019, Board meeting, CEO Brown communicated on multiple occasions with Ms. Tedrow and members of her law firm (Lowndes, Drosdick, Doster, Kantor, and Reed) in order to solidify her terms of engagement as interim co-General Counsel, and so that he could relay those terms to the GOAA Board for execution.

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<sup>3</sup> Mitchell v. School Board of Leon County, 335 So.2d 354 (Fla. 1st DCA 1976); Hough v. Stembridge, 278 So.2d 288 (Fla. 3d DCA 1973); Florida Parole and Probation Commission v. Thomas, 364 So.2d 480 (Fla. 1st DCA 1978); and Occidental Chemical Co. v. Mayo, 351 So.2d 336, 341 (Fla. 1977) (wherein the Florida Supreme Court stated, "[w]e reject (the) broad-brush argument that all meetings between the commissioners and their staff must be open to the public").

<sup>4</sup> Bennett v. Warden, 333 So.2d 97 (Fla. 2d DCA 1976); and Blackford for Use and Benefit of Cherokee Jr. High School Parent-Teacher Ass'n v. School Bd. Of Orange County, 375 So.2d 578, 580 (Fla. 5th DCA 1979) (wherein the Fifth District Court of Appeal stated, "the board's staff (which, of course, includes the superintendent) is not subject to the provision of the Sunshine law.").

All of CEO Brown's communications were completely legal and none violate Florida's Sunshine laws. Mr. Brown is a staff member and employee of GOAA and does not sit on its Board of Directors. Mr. Brown was never delegated any decision-making function outside the ambit of his normal staff function. There is no evidence that CEO Brown acted as a liaison between GOAA Board Members such that he was the conduit by which Board Members shared their opinions or views with one another. There is no evidence that CEO Brown was acting in the place of GOAA, or any of its members, during the course of his conversations with Ms. Tedrow and members of her law firm regarding her engagement as interim co-General Counsel. Rather, all indications are that CEO Brown was dutifully executing the fact-finding mission he had been tasked with, which was to determine the terms of Ms. Tedrow's engagement. Accordingly, neither CEO Brown's individual conversations with various GOAA Board Members prior to the August 28, 2019, Board meeting, nor the various fact-finding conversations he had with Ms. Tedrow and members of her firm following the meeting, violated Florida's Sunshine Laws.

Now I turn to whether there is any evidence that individual GOAA Board Members violated Florida's Sunshine Law by discussing the General Counsel issues privately between themselves. Our investigation revealed that in the days surrounding the August 28, 2019, Board meeting, the following occurred:

- GOAA Board Member **Randall Hunt** spoke with Ms. Tedrow, one-on-one, regarding the issue of GOAA General Counsel on August 13, 2019. Hunt then hosted a meeting with Ms. Tedrow, Justice Perry, and lobbyist Chris Dorworth at Hunt's private business office in Seminole County on August 23, 2019. Hunt communicated with Bill Dymond (CEO and President of Ms. Tedrow's law firm, Lowndes, Drosdick, Doster, Kantor and Reed) on September 19, 2019.
- GOAA Chairperson **Domingo Sanchez** spoke with Ms. Tedrow in person on two occasions: August 26 and September 12, 2019.
- GOAA Board Member **Carson Good** communicated with Mr. Dymond on multiple occasions: August 26, 27, and 29, and September 15, 16, 17, 20, and 26, 2019.
- GOAA Board Member Mayor **Buddy Dyer** communicated with Mr. Dymond on September 16, 2019.
- Rosanne Harrington (GOAA Board Member Mayor **Jerry Demings**'s Chief of Staff) communicated with Mr. Dymond on September 17, 2019.

The timing of these various communications, and the fact that they involved five separate members of the GOAA Board may give rise to concerns that there was improper communication between Board Members, but the facts as we have learned them provide an altogether legal explanation for the events.

You and I conducted a voluntary, sworn interview with Chris Dorworth, a former member of the Florida House of Representatives and a current land developer and lobbyist. Mr. Dorworth testified that he learned from his personal friend, GOAA Board Member Randall Hunt, that Hunt was interested in having Justice Perry and Ms. Tedrow installed as interim co-General Counsel for GOAA in light of Marcos Marchena's pending resignation. Mr. Dorworth testified during our interview of him that he shared Mr. Hunt's idea with GOAA Chairperson Domingo Sanchez (who subsequently recommended Justice Perry and Ms. Tedrow for the positions at the August 28, 2019, Board meeting) and another of his personal friends, GOAA Board Member Carson Good. There is no evidence that Mr. Hunt intended for Mr. Dorworth to relay his idea to

either Chairperson Sanchez or Mr. Good, nor is there any evidence that Mr. Dorworth shared the opinions and views of Mr. Hunt, Chairperson Sanchez, or Mr. Good, amongst the three.

Mr. Dorworth testified that he was unaware of any communications taking place between individual Board Members on the topic of GOAA General Counsel. Similarly, Mr. Dorworth testified that no GOAA Board Members asked him to be the conduit or intermediary by which they could communicate with one another regarding the matter. These important facts were corroborated through the other interviews we conducted, wherein the witnesses we interviewed testified that they were unaware of any Board Members speaking with one another regarding these matters or using another person as the means by which they could relay their opinions and views to one another.

It is worth noting that a similar situation involving Mr. Dorworth resulted in him being prosecuted in Orange County Clerk of the Court Case Number 2014-MM-5841-B-O for the offense of “Violation of Public Meeting Law,” pursuant to Fla. Stat. s. 286.011 and 777.011 (the Principal statute). The trial court dismissed the State’s prosecution of Mr. Dorworth in said case for two reasons. First, the court determined that Florida’s Sunshine Law was intended only to apply to “members of a board, commission, state agency, authority of a county, municipal corporation, or political subdivision.” As such, the court found that application of Florida’s Sunshine Law to a private citizen, such as Mr. Dorworth would “lead to an unconstitutional result” because it infringes upon a private citizen’s freedom of speech. Second, the court found that prosecuting private citizens for a violation of s. 286.011 constitutes an “overbroad application of the Sunshine law” because “private citizens will be hesitant to exercise their First Amendment right to communicate with public officials for fear that their communications will constitute a violation of the Sunshine Law.” In making its finding, the trial court stated:

Defendant [Dorworth] is accused of relaying information between and among members of the OOCEA about employment matters related to the OOCEA’s executive director, and thereby aiding the members to meet without complying with the requirements of s. 286.011. As a private citizen, Defendant has a First Amendment right to communicate and petition public officials and members of public boards on matters that may come before that board. Communication with public officials and members of public bodies to influence the public body’s decision is the primary function of Defendant’s profession as a lobbyist and is permitted by law. s. 11.045(e), 112.3215(f), Fla. Stat. s. (2013) (“Lobbying” means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill or a member or employee of the Legislature. “Lobbies” means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee.). Furthermore, “regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford.” McCutcheon v. Fed. Election Com’n, 134 S.Ct. 1434, 1441 (2014). Using the principal statute to prosecute private citizens and private

citizens with political access to public officials, such as lobbyists, is an unconstitutionally overbroad application of the Sunshine law.”

(Order Granting Motion to Dismiss, State v. Christopher E. Dorworth, Case Number 2014-MM-5841-B-O, County Court of the Ninth Judicial Circuit, in and for Orange County, Florida; Per Curiam Affirmed on Appeal, State v. Christopher E. Dorworth, Case Number 2014-AP-48-A-O, Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida.)

Taking my lead from this legal guidance, it is clear that Mr. Dorworth engaged in the same behavior in 2019 as it relates to GOAA, as he did in 2014 regarding OOCEA, and that such behavior has been previously determined to be legal and non-violative of s. 286.011. Furthermore, there is no evidence that any GOAA Board Members requested that Mr. Dorworth communicate their opinions and views to any other member(s) on the issue of General Counsel. As it relates to the communications that Mayor Dyer and the Chief of Staff for Mayor Demings had with Bill Dymond, all indications are that both Mayors were independently trying to determine facts that would bear upon their decisions regarding the issues of General Counsel for GOAA, and that neither had been delegated decision-making authority regarding the matter. Such behavior is legal under Florida’s Sunshine Law.<sup>5</sup>

Lastly, in an effort to be complete in my analysis, allow me to address the use of memorandums and emails between Board Members as the means by which they may choose to inform one another of a subject that is expected to be addressed by the Board at a future public meeting. The minutes of the August 28, 2019, Board meeting reflect that Board Member Carson Good sent an email to his fellow Board Members recommending that GOAA negotiate an agreement with a consulting firm to evaluate best practices relating to GOAA procurement, concessions, and construction practices. None of the other Board Members responded to Mr. Good’s email, and there was no exchange or interaction between the members on the topic until they met at the publicly-noticed Board meeting.

It is a long-standing principal of Florida’s Sunshine Law that “[t]he use of a written report by one commissioner to inform the other commissioners of a subject which will be discussed at a public meeting does not violate Florida’s Government in the Sunshine Law if prior to the public meeting, there is no interaction related to the report among the commissioners.” (Florida AGO 89-23.) While such practices are highly discouraged because they invite the potential for a Sunshine Law violation and tend to offer an appearance of impropriety, they are not illegal. Accordingly, given the specific facts at hand, Mr. Good’s email to his fellow Board Members on a topic expected to be addressed by the GOAA Board at a future public meeting does not constitute a violation of Fla. Stat. s. 286.011.

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<sup>5</sup> Florida Attorney General Opinion 90-17, “It is not a violation of the Government in the Sunshine Law for a city council member, either formally or with the informal approval of the council, to meet with a private . . . contractor if the purpose of such meeting is essentially information gathering and the council member has not been delegated a portion of the decision-making authority of the council itself.”

Conclusion:

There is no evidence that any member of the GOAA Board of Directors had an exchange of views or opinions with any other member regarding topics that were expected to be brought before the Board for official action. Further, there is no evidence that any Board Member used a non-Board Member as a conduit or intermediary for the purpose of communicating their thoughts or opinions regarding such matters. Accordingly, there is no evidence that members of the GOAA Board of Directors violated Florida's Sunshine Law.

Sincerely,

PHIL ARCHER  
STATE ATTORNEY



STACEY STRAUB SALMONS  
Chief Assistant State Attorney  
Florida Bar Number 0351430  
101 Eslinger Way  
Sanford, Florida 32773  
(407) 665-6000  
ssalmons@sa18.org

cc: Chief Executive Officer Phil Brown  
Greater Orlando Aviation Authority  
Orlando International Airport  
One Jeff Fuqua Boulevard  
Orlando, Florida 32827

Mayor Jerry Demings  
400 East South Street  
Orlando, FL32801

Christopher Dorworth  
Care of Richard Hornsby  
1217 East Robinsons Street  
Orlando, FL 32801

Mayor Buddy Dyer  
400 South Orange Avenue  
Orlando, FL 32801

William Dymond  
Greg McNeill  
Tara Tedrow  
Lowndes, Drosdick, Doster, Kantor, & Reed, P.A.  
215 N. Eola Drive  
Orlando, FL 32801



Carson Good  
Care of Richard Lee Barrett  
Barrett, Chapman & Ruta, P.A.  
P.O. Box 3826  
Orlando, FL 32802-3826

Rafael Martinez  
Care of Thomas Wilkes  
GrayRobinson, P.A.  
301 East Pine Street  
Suite 1400  
Orlando, FL 32801-2741

The Honorable James Perry  
(Address intentionally withheld as a courtesy and to avoid future redactions to this document pursuant to Fla. Stat. s. 119.071(4)(d)2.e.)

Dr. Jason Pirozzolo  
Orlando Hand Surgery Associates  
801 North Orange Avenue  
Suite 600  
Orlando, FL 32801