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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

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March 3, 2020

The Honorable Governor Ron DeSantis
State of Florida
Executive Office of Governor Ron DeSantis
400 S Monroe St.
Tallahassee, FL 32399

RE: Emergency Response Recommendation to Address Coronavirus Disease 2019 (“COVID-19”) – Section 286.011, Florida Statutes: Local Government Meeting Requirements in the Event of Quarantines, Isolation Directives, or Further Community Spread.

Dear Governor DeSantis:

Our law firm has the honor of serving as the City Attorney for nineteen municipalities, and as outside counsel for dozens of other local governments, throughout the State of Florida. We write to request your issuance of a limited emergency exemption from Section 286.011(1), Florida Statutes, which may serve as an obstacle to the proper and effective functioning and emergency response of local governments in the event of quarantines, isolation directives, and further community spread of COVID-19.

As of the writing of this letter, the CDC has reported community spread of the virus within the United States and the Florida Department of Health has announced there are three presumptive positive cases within Florida. The CDC’s website currently states that “more cases of COVID-19 are likely to be identified in the coming days...It’s also likely that person-to-person spread will continue to occur...and that at some point, widespread transmission of COVID-19 in the United States will occur.”

On March 1, 2020, you issued Executive Order Number 20-51 designating the Florida Department of Health as the lead state agency to coordinate emergency response activities among the various state agencies and local governments, and directed the State Health Officer to take any actions necessary to protect the public health. The Executive Order states in Section 8:

“I hereby direct the Florida Department of Health to make its own determinations as to quarantine, isolation and other public health interventions as permitted under Florida law.”

Section 286.011, Florida Statutes, requires that all meetings of the governing boards of local governments at which official acts are to be taken be open to the public. The Florida Attorney General's Office (the "AGO") has consistently interpreted this statute to require the *physical* presence of a quorum of the local governing board in order to hold a local governing board meeting at which official acts are to be taken.¹ Specifically, the AGO has also opined that the participation of an absent member in a meeting by telephone conference should be permitted only in extraordinary circumstances and when a quorum of the board members is physically present at the meeting.² Further, the AGO has opined that local governments may not alter the quorum requirements to allow members who are participating through electronic means and not physically present to be counted toward the quorum,³ and they are not authorized to provide that participation by a member of the board by electronic media technology constitutes his or her physical presence for purposes of establishing a quorum.⁴

We are concerned that future directives from Federal and State health officials declaring quarantines may prevent local governments from holding board meetings at which the physical attendance of local elected officials is required to conform with Section 286.011. Encouraging the public to attend such meetings may also conflict with such quarantines and could potentially promote further community spread. During this health emergency, permitting elected officials to participate telephonically or through electronic means, such as a webinar type meeting (with the public being able to either call or log in to listen and/or watch) would best serve the public interest and protect the health, safety and welfare of the citizens and residents of Florida.

In light of the expected spread of COVID-19 and the CDC's anticipation of possible widespread transmission, we respectfully urge you to order an emergency exemption for communities where community spread is occurring, a quarantine has been imposed, or health authorities are recommending isolation or the avoidance of public gatherings. We would request that these communities be exempt from Section 286.011(1), Florida Statutes, so that official acts may be taken during meetings where a quorum of the governing board is only telephonically or electronically present. This exemption will enable these local governments to continue to effectively operate and to timely address emergency situations affecting the public health, welfare or safety. Such an exemption is similar to the existing exemption in Section 286.0114, Fla. Stat., related to the public's opportunity to be heard. It would enable Florida's local governments to continue to hold governing body meetings in the event physically present public gatherings in their respective jurisdictions are banned by Federal, State or County directives to address COVID-19.

¹ See Florida AGOs 92-44, 98-28 and 2003-41.

² See AGO 2003-41.

³ See AGO 2010-34.

⁴ See AGO 2009-56.

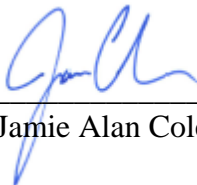
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Thank you in advance for your consideration of this matter. Please consider our firm as a resource with your efforts to respond to this sunshine law issue, and feel free to contact me at (954) 763-4242 or JCole@wsh-law.com.

Weiss Serota Helfman Cole & Bierman, P.L.

By:  _____
Jamie Alan Cole

cc: Ashley Moody, Esq.
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