

Sunshine Law, school advisory council, faculty meetings

Number: INFORMAL

Date: January 31, 2003

Subject:

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The Honorable Robert W. Hughes
Superintendent
Alachua County School Board
620 East University Avenue
Gainesville, Florida 32601-5498

Dear Superintendent Hughes:

This is in response to your request for an opinion regarding the applicability of the Government in the Sunshine Law to faculty meetings attended by faculty members who are also members of the School Advisory Council. Specifically, you ask whether SAC members may participate in general discussions of school issues and whether they may solicit the views, guidance, or direction of fellow faculty or staffers.

In sum, faculty and staff meetings that are incidentally attended by two or more members of the school's advisory council are not public meetings that must be noticed and otherwise conform to the requirements of section 286.011, Florida Statutes, if the council members refrain from discussing between or among themselves issues that may come before the council for consideration. In the event the members of the council engage in discussion on matters that may come before the council for consideration, the faculty meeting would be subject to the requirements of the Sunshine Law. There would not appear to be a prohibition against SAC members gathering factual information regarding issues that may be considered by the council from their fellow staffers and teachers, if such information is collected without discussion between or among the members of the council and the SAC members have not been delegated decision-making authority by the council.

Section 286.011, Florida Statutes, the Government in the Sunshine Law, requires all meetings of a public board or commission at which official acts taken to be open to the public.[1] Florida courts have stated the Legislature's intent was to extend application of the Sunshine Law so as to bind "every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control." [2] The statute extends to the "discussions and deliberations of, as well as formal action taken by, a public board or commission." [3] Thus, the law has been held to be applicable to any gathering where two or more members of a public board or commission deal with some matter on which foreseeable action will be taken by that board or commission. [4]

The Florida courts have held that advisory boards, whose powers are limited to making recommendations to a public agency and which possess no authority to bind that agency in any way, are subject to the Sunshine Law. [5] It has been held that the nature of the act performed

rather than the makeup of a committee or its proximity to the final decision that determines whether an advisory committee is subject to section 286.011, Florida Statutes.[6]

Section 229.58, Florida Statutes, provides for the creation of a school advisory council (SAC) for each school in the district and a district advisory council that may be comprised of representatives of each SAC. Each SAC shall be composed of the principal and an appropriately balanced number of teachers, education support personnel, students, parents, and other business and community citizens who are representative of the ethnic, racial and economic community served by the school.[7]

As a collegial body created by statute with the authority to make recommendations to a public agency, a SAC is subject to the Sunshine Law. The Department of Education has concurred in this conclusion and stated that such advisory councils must perform their duties subject to the Sunshine Law.[8] In light of the composition of the SAC, there may be instances where an individual member may need to discuss in his professional or personal capacity issues that may also be the subject of consideration by the council. You set forth the scenario where two or more teachers of a school are members of the SAC and are in attendance at a school faculty meeting and question whether their attendance would subject the faculty meeting to the Sunshine Law.

In Attorney General Opinion 92-79, this office was asked whether members of a committee whose meeting are subject to the Sunshine Law could attend or participate in meetings or functions not subject to the Sunshine Law at which discussions relevant to the business of the committee take place. Citing *Hough v. Stembridge*,[9], wherein the court found that the Sunshine Law applies to all gatherings, formal and informal, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission, the opinion concluded that the members could not meet in a social situation to discuss matters that are to be considered by the committee without complying with the requirements of the Sunshine Law. While recognizing that the Sunshine Law does not prohibit members of a public board or commission from meeting together socially or in other situations, provided matters that may come before the public body are not discussed at such gatherings, in the event board or commission matters arise, this office advised the member to excuse himself from the meeting or hold such meeting in the sunshine.

You have not indicated that the school faculty has been delegated some duty or decision-making function that would subject faculty meetings to the Sunshine Law. Further, a faculty meeting attended by two or more members of a SAC would not be subject to section 286.011, Florida Statutes, provided any discussions do not relate to council matters.[10] As noted above, however, a faculty meeting at which two or more members of a SAC engage in discussion of matters that may come before the council should comply with the requirements of the Sunshine Law.

This office has not previously interpreted when a matter is considered to be one upon which foreseeable action will be taken. The term "foreseeable" in its ordinary use is defined as "being such as may reasonably be anticipated; lying within the range for which forecasts are possible." [11] Thus, "foreseeable" would not appear to contemplate a mere possibility of an event occurring, but rather depends upon a reasonable contemplation that it will occur. In making the determination of whether a matter is one upon which foreseeable action will be

taken, it may be advisable to consider the council's agenda for future meetings and to be mindful of the council's purpose.

A limited exception to the Sunshine Law has been recognized for advisory committees established strictly for the conducting of fact finding activities.[12] This office has acknowledged the fact finding exception in the case of an "agenda preparation group" whose duties were limited to fact finding pertaining to school board agenda items, including necessary supportive information to assist the board in its deliberations.[13] When a committee possesses not only the authority to conduct fact finding but also to make recommendations, then the committee is participating in the decision-making process and is subject to the Sunshine Law.[14]

In this instance, the individual faculty members who are also members of the SAC do not appear to have been delegated any fact finding authority by the council, but rather are conducting such fact finding individually as a part of carrying out their duties as members of the SAC. The provisions of the Sunshine Law do not ordinarily apply to a single member of a public board or commission.[15] When an individual has been delegated the authority to act on behalf of a public board or commission covered by the Sunshine Law, then meetings of the single member with others to carry out the delegated authority would be subject to the law. For example, an individual council member, with either the formal or informal approval of the board, may meet with a private garbage contractor if the purpose of the meeting is essentially information gathering and the member has not been delegated a portion of the decision-making authority of the council. If, however, the council member has been authorized, either formally or informally, to exercise any decision-making authority on behalf of the council, the meeting would be subject to section 286.011, Florida Statutes.

Accordingly, the individual SAC members who conduct information gathering at faculty meetings would not be subject to the Sunshine Law, as long as the individual member has not been authorized to exercise decision-making authority on behalf of the SAC. The individual members, however, should refrain from using the faculty meeting forum and any fact finding in a manner to communicate with each other regarding SAC business.

I trust these informal comments will assist you in evaluating the circumstances under which the Sunshine Law would be applicable.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] See s. 286.011, Fla. Stat. (1993), stating that "[a]ll meetings 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, at which official acts are to be taken are declared to be public meetings open to the public at all times" See *also* Art.

I, s. 24, State Const., which provides:

"(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public . . . except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution."

[2] *Times Publishing Company v. Williams*, 222 So.2d 470, 473 (Fla. 2d DCA, 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So.2d 821, 825 (Fla. 1985).

[3] *See Times Publishing Company v. Williams*, *supra*.

[4] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

[5] *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974); *accord Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So.2d 694 (Fla. 3d DCA, 1988).

[6] *See Wood v. Marston*, 442 So.2d 934 (Fla. 1983), in which the Court held that an ad hoc advisory committee appointed to screen applications and make recommendations for the position of dean of the law school at a public university played an integral part in the decision-making process and was subject to the Sunshine Law. *And see* Op. Att'y Gen. Fla. 86-51 (land selection committee appointed by water management district to evaluate and recommend projects for acquisition subject to the Sunshine Law).

[7] Section 229.58(1)(a), Fla. Stat. (1993).

[8] *See* Op. Dept. Educ. Fla. 92-015 (1992); and Op. Dept. Educ. Fla. 92-064 (1992).

[9] 278 So.2d 288 (Fla. 3d DCA 1973).

[10] *See* Op. Att'y Gen. Fla. 92-79 (two or more members of a committee that would otherwise be subject to the Sunshine Law who attend or participate in meetings or other functions unconnected with the committee should refrain from discussing matters on which foreseeable action may be taken by the committee to avoid violation of the Sunshine Law).

[11] Webster's Third New International Dictionary (1981 Ed.) P. 890.

[12] *See Cape Publications, Inc. v. City of Palm Bay*, 473 So.2d 222 (Fla. 5th DCA 1985).

[13] *See* Inf. Op. To Joseph Centorino, February 4, 1994.

[14] *See* Op. Att'y Gen. Fla. 94-21 (1994) (Sunshine Law applies to meetings of a negotiating team created by resolution of the city commission that reports final negotiations to the city commission for ratification and approval).

[15] See Inf. Op. To John Dillener, January 5, 1990 (Sunshine Law not normally applicable to meetings of town council member with private citizens).