

Sunshine Law, School direct support organization

Number: INFORMAL

Date: March 17, 2005

Subject:

Sunshine Law, School direct support organization

Mr. Michael D. Chiumento, Attorney
Flagler County School Board
4 Olds Kings Road North
Suite B
Palm Coast, Florida 32137

Dear Mr. Chiumento:

You ask on behalf of the Flagler County School Board, whether the Flagler County Education Direct-Support Organization, created as a nonprofit corporation pursuant to s. 237.40 and Ch. 617, F.S., is subject to the Government in the Sunshine Law.

In sum: Until this matter is judicially determined, this office advises the district school board direct-support organization, created pursuant to statute for the purpose of assisting the district school board in meeting the educational needs of the students in the county, to comply with the requirements of the Government in the Sunshine Law.

The Flagler County Education Direct-Support Organization, Inc. (foundation), is a private nonprofit corporation established pursuant to s. 237.40 and Ch. 617, F.S. You have advised this office that the foundation's activities include the awarding of teaching grants and recognition awards, the development of programs relating to the fine and performing arts, and the financing of staff recruitment. No details regarding such activities, however, have been provided to this office.

Section 237.40, F.S., authorizes a district school board to permit the use of its property, facilities, and personal services by a direct-support organization subject to the provisions of that statute.[1] The records of the direct-support organization are public records subject to disclosure with the exception of information relating to the identity of donors or prospective donors.[2]

The school board is responsible for prescribing by rule the conditions with which the direct-support organization must comply in order to use the property, facilities or personal services of the district. These rules, which are to be coordinated with the Department of Education, are to provide for budget and audit review and oversight by the district school board and the department.[3] You have not, however, provided this office with any information regarding the rules adopted by the school board.

According to the Articles of Incorporation of Flagler County Education Direct-Support Organization, Inc., the specific and exclusive purpose of the corporation is:

"to operate as a direct-support organization created by the authority of Florida Statutes Section 237.40 to receive, hold, invest, and administer property and to make expenditure[s] to or for the benefit of public pre-kindergarten through 12th grade education and adult vocational and community education programs in Flagler County, Florida." [4]

Its purpose is to "provide charitable and educational aid in the form of money, and other forms of property and services, to the School Board of Flagler County, Florida, to promote education, disseminate information and other related activities of the Board." [5]

To accomplish this, the foundation is authorized to solicit, receive and hold both real or personal property, to perform the duties of trustee or act in any other fiduciary capacity under a deed of trust, will, or agreement, and to make contributions, grant, gifts and transfers of property to or for the benefit of that board which are tax exempt under s. 501(c)(3) of the Internal Revenue Code. You state that the "Members of this private organizations [sic], that is by agreement among themselves," although the district school board must approve the board of directors. [6]

Section 286.011, F.S., the Government in the Sunshine Law, provides in pertinent part:

"All 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 . . . at which official acts are to be taken are declared to be public meetings open to the public at all times."

In considering the interpretation of s. 286.011, F.S., the courts of this state have stated that the Sunshine Law should be liberally construed to give effect to its public purpose. [7] Moreover, both this office and the courts have advised officials that if they are in doubt as to the applicability of s. 286.011, F.S., they should comply with the open-meeting policy of the state. [8]

You state that the foundation does not act in an advisory capacity to the school board nor does it play an integral part in the school board's decision-making process. In addition, you indicate that the school board does not exercise day-to-day control over the foundation.

It is not clear, however, from the information provided to this office whether the foundation may be exercising some governmental or legislative functions on behalf of the school board. The materials accompanying your letter indicate that the foundation will be involved in making grants to teachers and developing "programs that enhance and enrich the fine and performing arts."

District school board direct-support organizations are created pursuant to statute and although they constitute private nonprofit corporations, they seek to assist the district school board in carrying out its functions of meeting the educational needs of the students in the county. Towards that end, these organizations are authorized to use district property. Their records are open for public inspection with the limited exemption for information identifying donors and prospective donors. [9]

In addition, I note with respect to the instant inquiry that the superintendent, school board's attorney and chairman of the school board serve on the foundation's board of directors, that the foundation's registered agent is the school board attorney, and that the address of the foundation's principal place of business is the Flagler County School Board offices.

In light of the above and in keeping with the courts' directive that the Sunshine Law is to be liberally construed, I would advise the foundation to meet in the sunshine.[10]

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tcs

[1] Section 237.40(2), F.S. See s. 237.40(1), F.S., defining a district school direct-support organization to mean an organization which:

- "1. Is approved by the district school board;
2. Is a Florida coporation not for profit, incorporated under the provisions of chapter 617 and approved by the Department of State; and
3. Is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of public prekindergarten through 12th grade education and adult vocational and community education programs in this state."

[2] Section 237.40(4), F.S.

[3] *Id.*

[4] Article IV, Articles of Incorporation, Flagler County Education Direct-Support Organization, Inc. (Art. of Incorp.). *And* see s. 237.40(1), F.S., defining "District school board direct-support organization."

[5] *Id.*

[6] See, s. 237.40(3), F.S., which requires that the board of directors of the district school board direct-support organization be approved by the district school board.

[7] See, e.g., Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969).

[8] See, e.g., Town of Palm Beach v. Gradison, 296 So.2d 473, 477 (Fla. 1974) ("[t]he principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State"); *Government-in-the-Sunshine Manual*, 1990 edition, pp. 38-39.

[9] See Krause v. Reno, 366 So.2d 1244 (3 D.C.A. Fla., 1979); Cape Coral Medical Center, Inc. v. News-Press Publishing Company, Inc., 390 So.2d 1216 (2 D.C.A. Fla., 1980), and Wood v. Marston, 442 So.2d 934 (Fla. 1983), stating that inasmuch as the policies behind the Public

Records Law, Ch. 119, F.S., and the Sunshine Law, s. 286.011, F.S., are similar, they should be read together.

[10] *Cf. Fox v. News-Press Publishing Company, Inc.*, 545 So.2d 941 (2 D.C.A. Fla., 1989) (towing company under contract with city to perform what is essentially a governmental function, that is, the removal of wrecked and abandoned automobiles from public streets and property pursuant to ordinances enacted under the city's police powers, is subject to Ch. 119); and *PHH Mental Health Services, Inc. v. The New York Times Company*, Case No. 88-2337-02 (Cir. Ct. Polk Co., filed September 12, 1989) (private nonprofit corporation providing mental health services held to be subject to Ch. 119, F.S., as purpose and operation of corporation found to be inextricably intertwined with the operation of the mental health district); *Wood v. Marston*, *supra* (policies behind Ch. 119, F.S., and s. 286.011, F.S., similar so they should be construed together).