

Sunshine Law--faculty on school advisory council

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Subject:
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The Honorable F. Allen Boyd, Jr.
Chairman, Committee on Governmental Operations
308 House Office Building
Tallahassee, Florida 32399-1300

Dear Representative Boyd:

You ask whether the Government in the Sunshine Law applies to members of a school advisory council who also serve as faculty members or school administrative officials or who are parents.

According to your letter, the House of Representatives Committee on Governmental Operations is considering language which would amend section 229.58, Florida Statutes, to exempt from the Government in the Sunshine Law certain meetings between school or district advisory council members regarding educational issues necessary to be discussed as a function of their professional or parental roles. In order to determine the extent the Sunshine Law currently affects such meetings, you have provided this office with various hypothetical situations for my comment.

Section 286.011, Florida Statutes, the Government in the Sunshine Law, requires all meetings of a public board or commission at which official acts are taken to be open to the public.[1] Florida courts have stated that it was the Legislature's intent 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 statute 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 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 is the nature of the act performed rather than the makeup of the committee or its proximity to the final decision which determines whether and advisory committee is subject to section 286.011, Florida Statutes. [6]

You also ask this office to consider the impact of Article I, section 24, Florida Constitution, which provides:

"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."

This constitutional provision has not been subjected to substantial review by the appellate courts of this state. However, the court decisions involving the Government in the Sunshine Law would appear to provide guidance as to how the courts may interpret the new constitutional provision. You state that the Sunshine Law, unlike the constitutional provision, does not expressly provide that discussions are included within its terms. As noted above, however, the courts have interpreted its terms to include such discussions and deliberations. Article I, section 24, Florida Constitution, requires that meetings of a public collegial body "at which public business of *such body is . . . discussed*" (e.s.) to be open and noticed. Such language refers to discussions by the public body of the business of that body and would not encompass discussions which do not relate to the business of the collegial body.

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

As a collegial body created pursuant to statute with the authority to make recommendations to a public agency, the school advisory councils are subject to the Sunshine Law. The Department of Education has concurred and stated that such advisory councils must perform their duties subject to the Sunshine Law.[8] Due to the composition of these councils, however, instances may arise where an individual member may need to discuss in his professional or personal capacity issues which may also be the subject of consideration by the council. You, therefore, have set forth various hypothetical situations in which you ask my opinion as to whether the Sunshine Law applies.

Section 229.58(2), Florida Statutes, provides that each advisory council shall perform such functions as are prescribed by regulations of the school board; in addition each school advisory council shall assist in the preparation and evaluation of the school improvement plan. As a means of avoiding such problems or questions arising under the Government in the Sunshine Law, the school board should carefully consider their charge to the school advisory councils to ensure that the duties of the school advisory council are clearly delineated. For example, the rules of the school board might clearly establish the council's role in establishing policy and goals rather than day-to-day decision making for a particular school.

In those instances in which the Sunshine Law is applicable, the requirements of that statute must be satisfied. Thus, for meetings which are subject to section 286.011, Florida Statutes, reasonable notice must be given, the meeting must be open to the public and held in a location accessible to the public, and minutes must be taken. The determination, however, as to who is responsible for taking the minutes is one which the public board must resolve.

Due to the intricate nature of your hypothetical examples, they are set forth verbatim in the body of this opinion.

SITUATION 1

You state that the school advisory council is required by the district school board's rules to review the curriculums for high school English and math to assess needs in those areas and to make recommendations, including recommendations for text books and materials. The research and recommendations of all school advisory councils are provided to the district-wide textbook selection committee which will oversee the project and forward recommendations to the school board. The school board will then approve a range of materials for district-wide use.

Thus, the function of the school advisory council in reviewing and making recommendation of textbooks is not to advise or determine which textbook will be utilized by any particular school but rather the broader task of assisting the school board in making a determination as to an approved range of materials for district-wide use.

For purposes of this example, you indicate that the advisory council for Excel High School is composed of the English Department Chairman (EDC); the Math Department Chairman (MDC); the Principal, the Assistant Principal (AP); a school counselor (SC); Mr. Jones, a science certified teacher teaching a remedial math class; Mrs. Brown, an English teacher; Mr. Butler, a math teacher; several other teachers; and several parents including Mrs. Davis.

a. Mr. Jones dislikes the old dilapidated math textbook utilized in his remedial math class; he is also 10 textbooks short. He wants to switch to a workbook beginning second semester. Can he discuss with the MDC without triggering the public meeting requirements, his dislike of the text (which is currently under review by the advisory council and received criticism at the last council meeting); that the textbook is not topically interesting to the students; that he wants to order the workbooks (which are also under review by the council) for next semester, and that in doing so he can better evaluate the workbook for the council; and, that if ordering workbooks is not possible, can the math department find or order 10 more textbooks for him (even though it is likely that the series will be discontinued)?

As this office stated in Attorney General Opinion 92-26, officials may discuss matters for which no action by the committee on which they sit is required; however, discussions of matters which will come before the committee for action are subject to the requirements of section 286.011, Florida Statutes. A discussion between Mr. Jones and the MDC regarding a textbook needed for a particular class is a specific and narrow matter which would not come before the advisory council for resolution and, therefore, would not be subject to the requirements of section 286.011, Florida Statutes. However, any discussion of Mr. Jones' ability to evaluate the text for the advisory council should be conducted at a properly noticed, open meeting for which minutes have been taken, as this discussion would touch on the broader determination of approved materials.

b. Can the MDC, without the triggering [of] the public meetings requirements, discuss with the AP, Mr. Jones' concerns regarding the merits of the text versus the workbook, find out whether the AP can get the text from another school, discuss whether there is enough money in the

budget to order the texts or workbooks (keeping in mind that the council must assist the Principal as needed in preparing the school's budget), and discuss whether, since the workbook is more topically interesting, all the remedial math classes should switch to the workbook second semester[?]

The discussion between the MDC and the AP appears to be related to the day-to-day activities or needs of the school and thus would not be a matter on which the council would act. The issues being discussed are specific to the needs of a particular class or school even though they may also be the topic of general study by the council. For example, this office in Attorney General Opinion 93-41 stated that the Sunshine Law did not apply to conversations between a sheriff and a state attorney relating to a particular ongoing criminal investigation even though the case may involve facts or issues which are the general topic of study by the county criminal justice commission on which both served.

According to the information provided to this office, the school advisory council is responsible for making recommendations to the district-wide textbook committee which, in turn, make recommendations to the district school board. The school board is responsible for deciding upon a range of materials available for use in the district rather than the selection of a particular textbook or textbooks to be used in a particular class or school.

Thus, the discussion between the MDC and the AP under the above factual scenario would not, in my opinion, be subject to the Sunshine Law.

c. Can the AP, without triggering the public meetings requirements, discuss with the Principal his concerns over the merits of the text versus the workbook, discuss whether all the remedial math classes should switch to the workbook the second semester since it is more topically interesting (which would hopefully generate more student interest, maybe positively affect attendance, and reduce some of the discipline problems—which were areas of concern discussed generally at the initial council meeting and will routinely come up for discussion at each council meeting in that these concerns are an element of review regarding materials), and find out whether funds are available to order needed workbooks[?]

To the extent that the discussions between the AP and the Principal relate narrowly to decisions which must be made by such officials in their capacity as school administrators rather than to the broader, policy considerations of the advisory council, such discussion would not be subject to section 286.011, Florida Statutes. As discussed in b. above, the discussion between the MDC and the AP relates to the day-to-day activities or needs of the school and thus would not be a matter on which the council would act. The issues discussed are specific to the needs of a particular class or school even though they may also be the topic of general study by the council. Accordingly, as concluded in b. above, to that extent, the discussions between the AP and Principal set forth in c. would not be subject to the requirements of section 286.011, Florida Statutes.

d. Can the MDC call a math department meeting, without triggering the public meeting requirements, where Mr. Jones will be present and Mr. Butler, and discuss the relative demerits and merits of the remedial math text and the workbook, respectively; find out what the other teachers think of the text and workbook; discuss whether all, some, or none of the remedial math

classes should switch to the workbook second semester; discuss whether all of the math department teachers should volunteer to work with the advisory council members to evaluate math materials; and, discuss the strengths and weaknesses of the survey form, and make recommendations regarding changing the survey form, with respect to review of math material[?]

To the extent the math department meeting is held to discuss the merits of the text and workbook for purposes of use in their own classes or by the math department of the particular school, it would not be subject to the open meetings requirements of section 286.011, Florida Statutes. Furthermore, a discussion of whether the math department teachers should volunteer to assist the school advisory council would not appear to be a matter which, at the time of the discussion, would be subject to action of the advisory council.

The discussion as to whether the math teachers should volunteer to work with the advisory council would not be subject to the Sunshine Law. Such discussion relates to the activities of the teachers themselves. It does not appear that the advisory council has either requested or accepted such volunteer services. Nor does it appear that the MDC, Mr. Jones and Mr. Butler are discussing or soliciting such services in their capacity as council members.

The survey form was designed by the advisory council to provide an extensive analysis of the materials. In soliciting input as to the strengths and weaknesses of the form and in making recommendations regarding changes to the form, the discussion would be directed to the activities of the advisory council; therefore, such discussions among the members of the council should be conducted in the sunshine.

e. Can the Principal, without triggering the public meeting requirements, discuss this issue at the next faculty meeting where the MDC, EDC, VP [sic], Mr. Jones, the school counselor and the other teacher members of the council will be present[?] The Principal wants to elicit comments from the faculty who have had experience with the textbook as to their opinion regarding the textbook, he wants to explain the shortage of and poor quality of the existing text and the negative ramifications this is potentially having with the remedial math students, and request that the various departments review their budgets and advise him whether there are some expenditures they can cut from their budgets to help fund this project.

The discussions you have described relate specifically to the functions and responsibilities of the Principal for the individual school and not to his activities as a member of the school advisory council. Therefore, such discussions would not appear to be subject to section 286.011, Florida Statutes.

f. Can the EDC and Mrs. Brown, without triggering the public meeting requirements discuss at this faculty meeting their concerns regarding the poor quality of the remedial readers used in the English I classes (which text is the subject of the council's review), that three teachers share one set of remedial readers, and that the English department would like to purchase at least 1 SRA reading kit (which is under review by the council) because the range of reading levels is more inclusive and topically interesting, the department thinks the kit would best meet the needs of the students, and utilization of 1 kit second semester could help in conducting the council review[?]

A discussion between the EDC and Mrs. Brown relating to their concerns about the quality and

the limited quantity of books used in their classes, and the purchase of supplemental materials for the department relates to the activities and needs of this particular school. Thus, such discussions concern their duties and responsibilities as faculty members of the school rather than their activities as members of the advisory council. Such discussions, therefore, would not be subject to the requirements of the Sunshine Law. However, discussions involving the utilization of supplemental materials in conducting advisory council review of such materials would relate to council activities and would be subject to section 286.011, Florida Statutes.

SITUATION 2

You state that the Principal, Assistant Principal of Discipline (AP), the school resource officer (SRO), Coach Steele, the chairman of the Athletic Department (AD), several teachers including Mrs. White, the head sanitary engineer of the school, several parents including Mrs. Davis, and others are members of the school advisory council. The council is responsible for assisting in the preparation and evaluation of the school improvement plan.

According to your letter, part of Rough High School's improvement plan includes improvement in providing lunch to the students. You state that the advisory council met several times during the summer to formulate areas of concentration to be addressed in the plan, including the number and length of lunch periods, long lunch lines, cafeteria behavior, and truancy during and after lunch. The first day of school each of the lunch periods had to be extended by a half hour, the lines moved slowly and were long, fights broke out, and nearby residents and businesses complained about damage done by lunch truants.

a. After lunch on the first day the Principal announced over the intercom that there would be a brief faculty meeting after school. Can the Principal discuss the problems with lunch that day (which are precisely the problems that occurred last year and are continuing problems all of which have been discussed at the advisory council meetings) with the faculty if the SRO, Coach Steele, and the other advisory teacher members are present at the faculty meeting, without meeting the requirements of the public meetings law? The Principal wants to request that teachers escort their students before reaching the cashier, and form the lines from the side doors instead of the front doors so as not to impede refuse collection and exiting (all of which have been suggested at the council meeting).

A faculty meeting attended by various faculty including several members of the advisory council at which the Principal addresses the problems that occurred on that particular day during lunch would not, in my opinion, be subject to the Sunshine Law. The Principal, in requesting teachers to escort their students and to direct their students to use side doors, would appear to be performing his responsibilities as Principal to regulate or direct the conduct of students attending the school under his control.[9]

While such actions may be similar to those under consideration on a broader basis by the advisory council, they are taken in response to a problem which demands immediate attention and does not constitute the development and implementation of the school improvement plan. The Principal and other members of the advisory council, however, should refrain from using this opportunity to discuss proposed methods to be utilized in the school improvement plan.

b. The Principal wants to discuss with the SRO the problems with lunch, of which the SRO is aware because he voluntarily stationed himself in the cafeteria during lunch; reiterate that, as the SRO is aware, the council is working on a permanent plan to remedy the problems but have not completed the plan, and, request that at least for the next two weeks of school an additional 3 to 5 SRO's be assigned to the school during lunch. Can the Principal conduct this meeting without complying with the public meetings law?

A discussion between the Principal and the SRO regarding problems during the lunch period and the need for additional SRO's to be assigned to the school during lunch would be in response to the immediate problem occurring at the school. Such a discussion would not be subject to the requirements of section 286.011, Florida Statutes, as it does not involve proposed changes to be recommended to the school advisory council for the school improvement plan and would appear to fall within the responsibilities and the Principal and the SRO.[10] The Principal and the SRO should refrain from discussing contemplated action by the advisory council, as such gratuitous comments may give the impression of impropriety.

c. The Principal wants to meet with Coach Steele, the AD, and all the other P.E. teachers who have 4th period planning and discuss the cafeteria problems (enumerated above), request they volunteer to give up their planning period to supervise the cafeteria and various other locations during lunch (in exchange for other consideration), and get the Coaches and AD to find parent volunteers from the Athletic Booster Club (who generally rise to the call of duty) to assist with lunch duty (use of permanent or temporary parent volunteers was discussed at the last council meeting) during at least the first two weeks of school and maybe permanently. Can the Principal conduct his meeting without complying with the public meetings law?

As discussed in the previous factual situations, meetings which involve the Principal carrying out a duty or responsibility to ensure that the day-to-day school activities are carried out in an orderly fashion would not be subject to the Sunshine Law. Moreover, as cautioned above, such meetings should not be used as a venue for making decisions or discussing the more comprehensive considerations of what should or should not be included in the school improvement plan.

d. Mrs. Davis' son was unable to eat lunch the first day of school because lunch period ended before he got through the line. She goes to the school during lunch the second day of school and finds the Principal, SRO Coach Steele, and the AD at lunch duty, Can she discuss with the Principal, SRO, Coach Steele or the AD or all of them together the problems she currently observes in the cafeteria regarding, for example, not enough cashiers and too many waste handlers, in conjunction with the fact that her son had not eaten the day prior; and can she make an immediate suggestion that in the 10 minutes between lunch periods today they remove the 4 tables on the side of the cafeteria which are impeding lunch line traffic flow (possible relocation of the 2 salad bars, staffing needs, rearrangement of the tables, and the possible need for construction of additional doorways were discussed at the last council meeting). Can such discussions be conducted without complying with the public meetings law?

In the factual situation above, a specific complaint is made by a parent to school officials. The discussion between the parent and various school officials relates to an attempt to resolve an immediate concern and not the activities of the advisory council in developing a school

improvement plan. While the particular subject of lunch room disruption on a particular day may be part of the broader topic of improvement of lunch room service considered by the advisory council, the discussion of the specific events of that day would not subject the discussion to the requirements of the Sunshine Law.

e. Can the [head] sanitary engineer discuss with the Principal at the end of the second day that they were offered and could borrow the operative, surplus conveyor belt for trays from another high school and have it installed by the next day which would reduce the refuse disposal problem (use of conveyor belts and complete automation of the disposal system have been discussed at the last council meeting.) Can such a discussion be conducted without complying with the public meetings law?

Once again, the factual situation involves the resolution of an acute problem facing the school, rather than the development of a school improvement plan. While the installation of a conveyor belt for refuse in the lunch room would address the long term problem of efficient disposal of lunch room waste, it is not an adoption or implementation of the proposal by the school advisory council. Nor does it otherwise affect, restrict or modify the school advisory council's authority or duty to accept or reject such a proposal for the school improvement plan. Accordingly, the Principal and sanitary engineer may discuss the loan of a conveyor belt without violating the Sunshine Law. However, they should not use this opportunity to discuss the merits or disadvantages of such a system as a component of the school improvement plan.

As these factual situations clearly demonstrate, there may be instances when discussions involving school personnel and parents who also serve on the school advisory council include matters which may be under consideration by the council in a broader context. The discussion of these matters when performing their day-to-day responsibilities as school personnel or as parents rather than as members of the school advisory council would not necessarily be subject to the Government in the Sunshine Law.

I trust that these advisory comments may be of assistance to you and the committee in considering the proposed legislation.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See s. 286.011, Fla. Stat. (1993) ("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, 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 . . .").

[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*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).

[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 Sunshine Law).

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

[8] See Op. Dept. Educ. Fla. 92-15 (1992); and Op. Dept. Educ. Fla. 92-64 (1992).

[9] See, e.g., ss. 232.25 and 232.26, Fla. Stat. (1993).

[10] See, e.g., s. 230.2318, Fla. Stat. (1993), providing for the school resource program to, among other things, perform law enforcement functions within the school setting and to identify and prevent delinquent behavior.