

Sunshine Law--school advisory committees

Number: INFORMAL

Date: January 30, 2003

Subject:
Sunshine Law--school advisory committees

Mr. Joseph Centorino
Assistant Attorney General
Office of the State Attorney
1351 Northwest 12 Street
Miami, Florida 33125

RE: SUNSHINE LAW--PUBLIC MEETINGS--SCHOOL BOARDS--ADVISORY
COMMITTEES--applicability of Sunshine Law to meetings of schools' agenda preparation group
and superintendent's executive management team. s. 286.011, F.S.

Dear Mr. Centorino:

This is in response to your recent letter requesting guidance for the Dade County School Board and to your office regarding the applicability of the Sunshine Law to the meetings of the Dade County Schools' Agenda Preparation Group and to the Dade County Superintendent's Executive Management Team.

Your letter indicates that a complaint has been filed alleging that a violation of section 286.011, Florida Statutes 1993, has occurred. Your office has investigated this matter and you have not found it appropriate to file criminal charges in connection with your investigation. However, because some uncertainty remains regarding the applicability of the Sunshine Law to these meetings you have asked for direction concerning future meetings of these groups.

The Government-in-the-Sunshine Law, s. 286.011, Fla. Stat. (1993), applies to "any board or commission of any state agency or authority or of any agency or authority of an county, municipal corporation, or political subdivision." Thus, the statute applies to public collegial bodies within this state at both the local and state levels.[1] The law is equally applicable to elected and appointed boards or commissions.[2]

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 and control." [3] Boards or commissions created by law or by a public agency are clearly subject to the provisions of s. 286.011, Fla. Stat. (1993).

Further, 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. "[4]

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for committees established for fact-finding only. When a committee has been established strictly for, and conducts only fact-finding activities, that is, the group is only gathering and reporting information, the activities of that committee are not subject to s. 286.011, Fla. Stat. (1993).[5] However, when a committee possesses or exercises not only the authority to conduct fact-finding but also to make recommendations, the committee is participating in the decision-making process and is subject to the Sunshine Law.[6]

In addition, when meetings are held by staff members who work for boards or commissions which are themselves subject to the Sunshine Law, the staff meetings are not generally subject to s. 286.011, Fla. Stat.[7] The function of staff is to inform and advise the decision-maker and, in carrying out normal staff activities, staff is not subject to s. 286.011, Fla. Stat.

However, when there has been a delegation to staff members of decision-making authority, the activities of staff in carrying out that authority may well be subject to the Sunshine Law. Thus, when a staff member ceases to function in his capacity as staff and is appointed to a committee which is delegated authority normally exercised by the public board or commission, he loses his identity as staff while working on the committee and is, accordingly, included within the Sunshine Law.

According to information supplied to this office:

"The Agenda Preparation Group will be responsible for fact-finding pertaining to School Board agenda items, including any necessary supportive information as backup to assist the Board in its deliberations."[8]

Based on this description, the agenda preparation group seems to function as staff for the school board in its agenda responsibilities in a fact-finding capacity. Nothing in the current information provided to this office indicates that the agenda preparation group makes recommendations to the school board or otherwise participates in the decision-making process.

Based on this description of the duties and responsibilities of the Agenda Preparation Group of the Dade County School Board, the board would not constitute a board or commission within the scope of the Government in the Sunshine Law and would not be required to comply with the provisions of s. 286.011, F.S.

The duties and responsibilities of the Superintendent's Executive Management Team are described in information submitted to this office as follows:

"Major attention of the Superintendent's Executive Management Team will focus on review of agenda items to be submitted for the Board's consideration, as well as issues arising within the operational areas they supervise."[9]

In light of this description, the Superintendent's Executive Management Team does not appear to participate in the decision-making process or to make recommendations to the school board relating to its staff function. Rather, the management team merely reviews and passes agenda items on to the superintendent for his or her determination of whether to forward such items to

the School Board for its consideration.

Assuming that this is an accurate reflection of the actual duties and responsibilities of the Superintendent's Executive Management Team for the Dade County Public Schools, the team appears to function primarily as staff for the Superintendent of Schools for Dade County and would not be subject to s. 286.011, Fla. Stat. (1993).

I trust that the preceding informal comments will be of assistance in providing guidance in the future.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

[2] See Op. Att'y Gen. Fla. 83-97 (1983).

[3] *Times Publishing Company v. Williams*, 222 So.2d 470, 473 (Fla. 2d DCA 1969).

[4] *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).

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

[6] See *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

[7] See *Occidental Chemical Company v. Mayo*, 351 So. 2d 336 (Fla. 1977).

[8] See Dade County Public Schools Administrative Organization 1993-1994 (revised 11/22/93), p. 72.

[9] *Id.* at p. 71.