

MEMORANDUM

TO: ARTHUR C. JOHNSON, PH.D.

CC: ANN KILLETS
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FROM: BRUCE A. HARRIS, ESQ., INTERIM CHIEF COUNSEL *BAH*

DATE: AUGUST 2, 2010

SUBJECT: SCHOOL ADVISORY COUNCILS: SUNSHINE LAW AND VOTING LEGAL ISSUES

The Office of Chief Counsel is updating and supplementing information that addresses certain legal issues of importance that members of School Board Advisory Committees must consider concerning the Sunshine law and voting at their School Advisory Council (SAC) meetings.

It is recommended that this information be shared with the District's principals and SAC chairs to discuss with their SAC members.

ISSUES:

- 1) Are School Advisory Councils subject to Florida's Sunshine Law and, if so, what must the SACs and their members do in order to comply with that Law's requirements?¹
- 2) When a vote is being taken at a SAC meeting, what are some of the legal issues that a SAC member must consider?

¹ A copy of this Memorandum will be available on the District's web site for School Improvement and can be located at:

<http://www.palmbeachschools.org/schoolimprovement/documents/05-06-09SunshineLawGuidelinesforSchoolAdvisoryCouncils.pdf>.

ANSWER TO QUESTION NO. 1:

Yes, School Advisory Councils² are subject to the Sunshine Law – FLA. STAT. § 286.011 – as determined by the Office of General Counsel of the Florida Department of Education in 1992 and by the Florida Attorney General in an Informal Opinion issued on February 17, 1995.

The Sunshine Law applies to any SAC meeting, any SAC subcommittee meeting and **any gathering of two or more committee members** at which official acts occur such as voting or **discussion of matters that will foreseeably come before the SAC for action**. Certain exceptions do apply in school settings as more fully described below in Sections III, A 1 and 2. At such a gathering the meeting must comply with the notice, openness, and minutes requirements of the Sunshine Law.

ANALYSIS:

Basic Requirements of the Sunshine Law

This Memorandum is based on current case law and interpretations of the Sunshine Act by the Florida Attorney General. The Florida Attorney General's *Government-in-the-Sunshine Manual 2010*³ explains three basic requirements which would apply to any formal or informal SAC meeting (or SAC subcommittee meeting) where any vote, resolution, rule, formal action, **or discussions** about such matters will take place:

- (1) Reasonable public notice of the meeting must be given.
- (2) The meeting must be open to the public, in a location accessible to the public.
- (3) Minutes of the meeting must be taken and must be made available for public inspection following the meeting.

Compliance with the Sunshine Law requirements is significant because if the Statute is violated, the action taken may be invalidated. Further, a civil fine of up to \$500 may be assessed against the member for any violation of this statute, and criminal penalties for a second degree misdemeanor may be imposed upon any member who knowingly violates this law. See Fla. AGO 2001-84.

Accordingly, if any specific questions arise relating to the Sunshine Act, they should be addressed at that time, if needed to the District's office of School Improvement, as to the particular factual situation rather than relying solely on this Memorandum.

I. Notice Requirements

We recommend that, normally, at least seven days notice should be provided for SAC meetings. (This general public notice is in addition to the separate advance written notice required by another Florida Statute to advise all SAC members of any matter that

² The Florida Statutes and School Board Policy 2.09 provide that the District School Board establish a School Advisory Council (SAC) for each school in the District.

³ An electronic abridged version of the current version of this Manual appears at <http://myfloridalegal.com/sun.nsf/manual>.

is scheduled to come before the SAC for a vote.⁴) The *Government-in-the-Sunshine Manual* suggests the following guidelines for a “reasonable public notice” of meetings under the Sunshine Law, and these guidelines are adaptable to SAC meetings:

1. The notice should contain the time and place of the meeting and, if available, an agenda (or if no agenda is available, subject matter summations might be used).” [The District’s web site for School Improvement contains a suggested template for an agenda at: <http://www.palmbeachschools.org/schoolimprovement/documents/SampleSACAgenda.pdf>]
2. The notice should be prominently displayed in the area in the agency’s offices set aside for that purpose, e.g., for cities, in city hall.⁵
3. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances and special meetings should have at least 24 hours reasonable notice to the public.
4. The use of press releases and/or phone calls to the wire services and other media is highly effective. On matters of critical public concern such as rezoning, budgeting, taxation, appointment of public officers, etc., advertising in the local newspapers of general circulation would be appropriate.

The Manual states that the “type of notice that must be given is variable”. The school must give notice at such time and in such a manner as will enable the media and the general public to attend the meeting.

II. Requirements of Taking Minutes and What Must be Included

Minutes of meetings are required and are open for public inspection. The written minutes of SAC meetings need not be verbatim transcripts. However, the Attorney General states in the Manual that they should represent “a brief summary or series of brief notes or memoranda reflecting the events of the meeting.” [The District’s web site for School Improvement contains a suggested template for minutes at: <http://www.palmbeachschools.org/schoolimprovement/SchoolAdvisoryCouncil.asp> and then click Sample Minutes.] There is no requirement to tape record the meeting, and even if the meeting is recorded, written minutes still must be taken and promptly made available for public inspection. If the SAC desires to make an optional tape recording,

⁴ School Board Policy 2.09(4)(b)(ii) requires all SAC Bylaws to include provisions “requiring at least three **(3) business days’ advance notice in writing to all members** of the advisory council of any matter that is scheduled to come before the council for a vote.” (This notice to members is in addition to the meeting notice for the general public under the Sunshine Law.)

⁵ For SAC meetings and SAC Subcommittee meetings, the “reasonable notice” requirement probably is satisfied by the school’s prominently posting notices at the bulletin board in the front office where other notices to parents or the public are posted. In addition, notices should be posted on the school’s marquee and website, published in the school newsletters or sent to the local media.

the tape becomes a public record which must be made available for public inspection, and must not be erased or disposed of except as provided by law.

III. Open Meetings Requirements

A. Informal Conversations of SAC Members Can Be Subject to the Sunshine Law

Even informal discussions of members of the same committee can be subject to the Sunshine Law. For example, the Manual has stated that the Sunshine Law applies to “*any gathering, whether formal or 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.*” Thus, if two members of the same committee informally discuss selecting a new member, that discussion is subject to the requirements of the Sunshine Law and must be conducted at an open forum. The Florida Attorney General has applied the Sunshine Law to **communications between voting and ex officio non-voting members** of a Sunshine advisory committee. (Fla. AGO- 2005-18)

Similarly, the Attorney General advises in the Manual that if the conversation is by telephone, or the discussion is by use of a computer, the Sunshine Law prohibits two or more members of the same committee from discussing a matter that foreseeably will come before that committee.

These principles naturally raise questions regarding informal occasions when a couple of SAC members happen to be together and to converse informally. The Attorney General has explained that “[m]embers of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings.”

1. 1995 Informal AG Opinion regarding a faculty meeting

The Attorney General in an Informal Opinion issued to a Superintendent of Schools in 1995 has explained that the term foreseeably “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.”

That Informal Opinion was based upon a “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, [it was asked] 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.”

Although the opinion stated that “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. ... [i]n 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.**”

Accordingly, the opinion determined that “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.”

2. 1994 Informal AG Opinion regarding faculty, administrative staff and parents

Furthermore, the Attorney General in an Informal Opinion issued in 1994 concluded, “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.” However, “they should not use this opportunity to discuss the merits or disadvantages of [the suggestions] as a component of the school improvement plan.” In this Opinion, the Attorney General has offered many examples to explain the application of the foregoing principles in response to a request for the applicability of the Sunshine Law to SAC members who are also faculty members, school administrative officials, or parents. Within the Appendix below to this Memorandum appears the situations presented in the request for an opinion and the Attorney General’s opinion. Due to the intricate nature of your hypothetical examples, they are set forth verbatim in the body of the Opinion as well as within this Memorandum.

B. Voting at Meetings Must be Open

The SAC may **not** take a secret vote at its meeting on an issue. All actions of the SAC at its meetings must be open to the public and are subject to Florida’s Sunshine Law.

In addition, a Florida statute that also applies to SAC’s, requires that “**a vote shall be recorded or counted for each such member** [of that governmental body] present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest...”

Thus, secret votes are not allowed by SAC members at their SAC meetings.

C. Written Correspondence Can Violate the Sunshine Law

Written communications between SAC members is prohibited under Sunshine concerning matters which may foreseeably come before the SAC. The Attorney General advises that a SAC member may use a written memorandum to inform other members of a topic that will be discussed at a SAC meeting, provided there is no interaction regarding the memo between that SAC's members prior to the meeting (and the memo does not invite this interaction), and provided the memo will be available to the public as a public record. *However, members must **not** circulate the memo "for comment,"* since that would constitute a private meeting and impermissible interaction on the matter prior to the public meeting. The memo cannot constitute official SAC action.

The Manual notes that the same principles apply to **e-mail**: the Sunshine Law prohibits SAC members from communicating via e-mail on matters pending before the SAC or which may foreseeably come before the SAC, although "email communication of factual background information" between that council's members "that does not result in the exchange of council members' comments or responses on subjects requiring council action does not constitute a meeting subject to the Government in the Sunshine Law." Additionally, e-mails regarding SAC matters generally would be **public records**, subject to retention under the District's retention schedule and subject to disclosure under Florida's Public Records Act. The Public Records Act applies to documents received or made by a Committee member in his or her official capacity. See School Board Policy 2.041 at <http://www.palmbeachschools.org/policies/>.

D. Nonmembers Must Not Be Used as a Conduit for Thoughts of Members

The Manual explains that the "Sunshine Law is applicable to meetings between a board member and an individual who is not a member of the board when that individual is being used as a liaison between, or to conduct a *de facto* meeting of, board members." Thus, SAC members must not circumvent the Sunshine Law prohibitions on informal discussions as to SAC matters by using a non-member third person as an intermediary between this SAC's members. This rule applies to telephone calls, e-mail, and any form of written correspondence as well as to face-to-face or other verbal communication. Similarly, courts have held that a rapid-fire succession of private meetings between a non-member and individual committee members can constitute a *de facto* meeting that violates the Sunshine Law (even though normally an individual member may lawfully meet in private with an individual non-member). Such a violation is especially likely if the series of private discussions is scheduled for the purpose of avoiding public discussion on a matter that is before the committee or will foreseeably come before the committee. The guiding principle in both of the situations described here is: that which must not be done directly, should not be done indirectly.

E. Delegation of Authority

The Manual states that a "single **member of a board who has been delegated the authority to act on behalf of the board** in negotiating a lease 'is subject to the

Sunshine Law and therefore cannot negotiate for such a lease in secret.” Yet, “if a board member or designee has been authorized only to gather information or function as a fact-finder, the Sunshine Law does not apply.”

The provisions of the Sunshine Law do not ordinarily apply to a single member of a public board or commission. However, the Attorney General in a 1994 Informal Opinion stated that “ **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.”

F. Luncheon Meetings Discouraged; Inaudible Discussions Prohibited

Public committees are encouraged to hold meetings in places easily accessible to the public. To promote public access, the Attorney General discourages the use of luncheon meetings due to a “chilling effect” on the public’s willingness to attend; many people who would otherwise attend the meeting may be reluctant to attend without buying a meal, and they may be unable or unwilling to do so. Furthermore, it may be difficult for the public to hear the conversation of the Committee members at their table, and this difficulty would violate the “openness” requirement of the Sunshine Law.

On a related matter, the Manual states that any side discussion of two or more Committee members during a meeting, or during a recess in the meeting, may violate the Sunshine Law if the conversation relates to matters before that Committee and is not generally audible to the entire public attending the meetings. Furthermore, if one or more members of the public were to come forward during a recess of the meeting and converse with two or more the Committee members about a matter before the Committee, such conversation would be prohibited unless it were clearly audible to the other members of the public.

G. Discussions During Inspection Trips Can Violate the Sunshine Law

The Attorney General notes that if two or more SAC members go to observe a property or other item on an inspection trip, a Sunshine Law violation would occur if two or more of the SAC’s members engage in conversation concerning the business of the SAC or matters that may foreseeably come before it. The Manual states that, if such discussion will take place, then the inspection trip must meet the requirements of the Sunshine Law (advance notice must be given, the public must be afforded a reasonable opportunity to attend, and minutes must be promptly recorded and made available for inspection). Therefore, if circumstances make it impossible to invite the general public to attend an inspection trip, the members must refrain from discussing public business until they hold

a duly noticed public meeting. This prohibition applies both during the trip and after the trip, until the open meeting occurs.

On November 21, 2008, a Florida appellate court determined that a **school board's fact finding trip through a school bus tour** to explore the effects of rezoning violated the Sunshine Law. The school board did not comply with Sunshine requirements for this trip, although members had no discussions of the rezoning plans during the bus tour and took no vote. Yet, the Court ruled that this trip constituted a meeting and "the School Board violated the Sunshine Law because the 'fact-finding' exception does not apply to the ultimate decision making governmental authority." Accordingly, it would appear that an entity with ultimate decision making governmental authority must consider fact finding trips as meetings and the site of a Sunshine meeting should be stationary or not occur within a moving vehicle.

H. Meetings Must be Noticed and Open to the Public

Article I, Section 24 (b) of the Florida Constitution provides in pertinent part that "[a]ll **meetings** ... of any collegial public body of a county [or] municipality ... 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 where exempted by chapter 286 or specifically closed pursuant to the state constitution. The exemptions do not appear to apply to a SAC.

On March 10, 2010, the First District Court of Appeal issued its decision in Keesler v. Community Maritime Park Associates, Inc., 32 So.3d 659, 2010 WL 786216 (Fla. 1st DCA 2010). The court ruled that although Florida's Sunshine Statute required that meetings of an entity subject to the Sunshine Act "be open to the public, **the law does not give the public the right to speak at the meetings.**" See also Grapski v. City of Alachua, 31 So.3d 193,199 (Fla. 1st DCA Jan. 21, 2010).⁶

The Sunshine Law contemplates the right of the public to attend meetings. In many circumstances, the opportunity for public comment should be allowed. The public should be afforded a meaningful opportunity to speak on matters involving final decision-making by the SAC.

The SAC may adopt reasonable rules to ensure the reasonable orderly conduct of the meeting, including limiting the time for public comment. Note that the Florida Attorney General advises that when a committee is "carrying out certain executive functions which traditionally have been conducted without public input . . . the public has the right to attend but may not have the authority to participate."

IV. Conclusion as to Question No. 1

⁶ Note that petitions for review in both cases have been filed with the Florida Supreme Court.

The Sunshine Law applies to any meeting, discussion, or conversation of two or more SAC members if it relates to matters before the SAC, or which foreseeably will come before the SAC for action. Any such meeting, gathering, or discussion must comply with the three basic requirements of the Sunshine Law: (1) reasonable notice of the meeting must be given to the public; (2) the meeting must be open to the public and held in a place accessible to the public, and (3) minutes of the meeting must be taken and must be made available for public inspection. Open meeting requirements as to communications between SAC members must be observed. These principles also apply to written communications.

ANSWER TO QUESTION NO. 2:

1. Members cannot vote on an issue before the Committee if a conflict of interest exists and must disclose the conflict before the Committee votes;
2. **Members who might have a conflict and hold an appointed position must disclose their conflict before they participate** in the discussion of an item and before making any attempt to influence the decision;
3. Members, if present at a Committee meeting, **cannot abstain** from voting, unless a conflict of interest exists; and
4. Members **must abide by statutory and Policy Code of Ethics** considerations which include:
 - a. not corruptly misusing their public position to secure a personal benefit;
 - b. not accepting anything of value to the recipient based on any understanding that the vote, official action, or judgment of the official would be influenced thereby, and
 - c. not accepting any compensation, payment, or things of value when the official knows or, with the exercise of reasonable care, should know that it is given to influence a vote or other action in which the official was expected to participate in his/her official capacity.

V. Abstention from Voting to Avoid a Conflict of Interest

The Florida Commission on Ethics has held that SAC members are considered to be “public officers” under the Code of Ethics for Public Officers and Employees, which prohibits actions that would create a conflict of interest.⁷ Any SAC member who is present at a meeting cannot vote when a potential conflict-of-interest would appear to be created under Fla. Stat. sections 112.311,⁸ 112.313,⁹ or 112.3143.¹⁰ If a member

⁷ SAC members as volunteers performing their functions while they are on District property or are participating in District-related activities would also be subject to the School Board’s Code of Ethics—School Board Policy 3.02—and its provisions prohibiting conflicts of interest.

⁸ FLA. STAT. § 112.311(5) prohibits having “any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur[ring] any obligation of any

desires to abstain from voting due to a potential or apparent conflict, Florida Statutes require that the member must state the basis for abstaining and file a disclosure.

Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. The member must complete and file Ethics Commission Form 8B found at: http://www.ethics.state.fl.us/forms/form8b_2000.PDF. See School Board Policy 1.10(4) (c) (applying this provision to SAC members).

A. Voting Is Prohibited If There Is A Conflict Of Interest

- Florida's Code of Ethics for Public Officers and Employees and the Florida Commission on Ethics have held:
 1. **School Advisory Council members are considered to be "public officers."**
 2. Public officers are prohibited from voting when there is a **potential or apparent conflict of interest** and the committee member, if present, must **abstain** from voting.
 3. An opportunity should be provided at each meeting for members to make any necessary disclosures of voting conflicts before any vote is taken on an item.
- **Disclosures and abstention** from voting are necessary if the public officer is facing a vote in an official capacity upon any measure:
 - **which would inure to his or her special private gain or loss;**
 - **which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained . . . ; or**

nature which is in substantial conflict with the proper discharge of . . . duties in the public interest."

⁹ FLA. STAT. § 112.313 refers to soliciting or accepting gifts, doing business with one's agency, accepting unauthorized compensation, misusing public position, holding conflicting employment or contractual relationships, wrongful disclosure of information, improper lobbying, and related matters.

¹⁰ FLA. STAT. § 112.3143(3)(a) refers to "any measure which would **inure** to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer."

- which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

The Florida Ethics Commission has issued many opinions over the years relating to whether factual situations constitute a conflict of interest. If a SAC member is in doubt about whether a conflict exists, please contact the District's office of School Improvement or the Chief Counsel's office.

- The member must state publicly at the meeting the basis for abstaining (the nature of the person's interest) prior to the vote being taken and file a disclosure **within 15 days after the vote occurs**.
- Ethics Commission (CE) Form 8B "Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers," is the disclosure form to file and a copy is attached to this Memorandum. This Memorandum is a public record and is filed with the person responsible for recording the minutes of the meeting, who shall incorporate the Memorandum in the minutes.
- CE Form 8B is also available from the Commission on Ethics web site at: www.ethics.state.fl.us/ethics/forms.htm or from the Office of Chief Counsel.
- The minutes must reflect for that vote that the person abstained and the Memorandum of conflict must be attached to the minutes.

B. Appointed Members Who Have a Conflict Must also Disclose Before Participating in Discussion or Attempting to Influence Decision

- The Ethics Commission has determined that all School Advisory Council members are considered appointed.
- Appointed members who have a conflict, but intend:
 - to "participate" in the discussion or make any attempt to influence the decision, orally or in writing, whether made by the member or at the member's direction,
 - must **abstain** from voting and
 - must make their disclosure before they participate or make any attempt to influence the decision.

To make a disclosure, the member must:

- if the intent to influence the decision occurs prior to the meeting when a vote will be taken,
 - file a Memorandum of Voting Conflict (CE Form 8B) prior to the meeting,
 - the Memorandum is to be provided immediately to the other members of the committee and is to be read publicly at the next

- meeting after its filing; or
- if the disclosure has not been made prior to the meeting at which the measure will be considered or the conflict was unknown prior to the meeting;
 - make the disclosure orally at the meeting before "participating," and
 - then file the Memorandum (Form 8B) **within 15 days** after the vote occurs,
 - a copy of the Memorandum Form 8B would be provided immediately to the other members of the committee and be read at the next meeting after its filing.

The Memorandum must be filed with person responsible for recording the minutes.

Even with a disclosure, it is not recommended that a member with a conflict attempt to influence the vote or participate in the discussion.

VI. Absent a Conflict, Member Must Vote if Present

- A Florida statute provides that **no member** of any state, county, or municipal governmental board, commission, or agency **who is present** at any meeting **may abstain from voting** except when, with respect to any such member, **there is, or appears to be, a possible conflict of interest.**
- **A vote shall be recorded or counted for each such member present.**
- Such member shall comply with the disclosure requirements stated above if there is a conflict of interest.
- A Florida district court of appeal has applied this Statute to School Boards and its Sunshine committee members.
- Accordingly, members must vote unless the conflict of interest provision applies.

VII. Certain Other Ethical Considerations When Voting¹¹

- "Public officers and public employees may not corruptly use or attempt to use their official position or ...perform their official duties, to secure a special privilege, benefit, or exemption for themselves or another."

--"Corruptly" means "done with a wrongful intent and for the purpose of obtaining, or compensating, or receiving compensation

¹¹ The Florida Ethics Code in FLA. STAT. § 112.312 (8) defines "Conflict" or "conflict of interest" to mean " a situation in which regard for a private interest tends to lead to disregard of a public duty or interest." See also footnote 6 above as to School Board Policy 3.02.

for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.”

- Further, public officers and public employees are prohibited from soliciting or accepting anything of value to the recipient **based on any understanding that the vote, official action, or judgment of the official would be influenced thereby.**
- Additionally, public officers and public employees and their spouses and minor children, are prohibited from accepting any compensation, payment, or thing of value **when the official knows or, with the exercise of reasonable care, should know that it is given to influence a vote or other action in which the official was expected to participate in his/her official capacity.**

If you require additional information, please contact the District's office of School Improvement or Chief Counsel's office.

Attachment –CE Form 8B

APPENDIX

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.**