

THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA

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January 8, 2010
BULLETIN #P-13377-S-CCSB

ACTION BY:
Information Only

Contact Person:
Bruce A. Harris, Esquire
PX 48500

TO: All Principals and Department Heads

FROM: Gerald A. Williams, Esq.
Chief Counsel

SUBJECT: Sunshine Law and Voting Guidelines for School Advisory Councils

The Office of Chief Counsel is providing copies of two Legal Memoranda regarding Sunshine Law and Voting Guidelines for School Advisory Councils. The attached memoranda should be shared with the School Advisory Council (SAC) chair and its members.

If you require additional information, please contact the Office of Chief Counsel.

ACJ:GAW:AK:BAH

Reviewed:
Ann Killets, Chief of Staff

Approved:
Arthur C. Johnson, Ph.D., Superintendent



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Legal Memorandum: #2009/10-014
Contact Person: Bruce Harris
PX48500

MEMORANDUM

To: SCHOOL BOARD ADVISORY COMMITTEES AND SCHOOL ADVISORY COUNCIL MEMBERS

C: SCHOOL BOARD MEMBERS
ARTHUR C. JOHNSON, Ph.D., SUPERINTENDENT
ANN KILLETS, CHIEF OF STAFF
JEFFREY J. HERNANDEZ, CHIEF ACADEMIC OFFICER
JOSEPH M. MOORE, CHIEF OPERATING OFFICER

FROM: GERALD A. WILLIAMS, ESQ.
CHIEF COUNSEL 

DATE: JANUARY 8, 2010

SUBJECT: CERTAIN STATUTORY AND POLICY ISSUES TO CONSIDER WHEN VOTING AT MEETINGS

The Office of Chief Counsel is providing the following information that addresses certain statutory and School Board policy issues of importance that members of School Board Advisory Committees and School Advisory Councils must consider relating to their discussion and voting at their Committee meetings:

1. Members cannot vote on an issue before the Committee if a conflict of interest exist 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.

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. **Advisory body members (including members of a school advisory council) 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**

- **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 School Improvement Department. If a School Board Advisory Committee member is in doubt about a conflict, please contact the District's department assisting with your committee, and the department may then contact 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. This is also the procedure under School Board Policy 1.10(4) (c) for advisory committee members.
- 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. School Board advisory committee voting members are all 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.

C. 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.

D. Certain Other Ethical Considerations When Voting

- "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 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 department assisting with your committee, and the department may then contact Chief Counsel’s office.

Respectfully submitted,



Bruce A. Harris, Senior Associate Counsel

Attachment –CE Form 8B

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY COUNTY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED	NAME OF POLITICAL SUBDIVISION:
	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20 _____:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.



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Legal Memorandum #2008/09-059
Contact Person: Bruce A. Harris PX4-8500

MEMORANDUM

TO: ARTHUR C. JOHNSON, PH.D.

CC: ANN KILLETS
JOSEPH M. MOORE
JEFFREY J. HERNANDEZ

FROM: GERALD A. WILLIAMS, ESQ., CHIEF COUNSEL *GAW*

DATE: MAY 6, 2009

SUBJECT: SUNSHINE LAW GUIDELINES FOR SCHOOL ADVISORY COUNCILS

ISSUE:

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

ANSWER:

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. In fact, the discussions and deliberations and the entire decision-making process are subject to the Sunshine

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.palmbeach.k12.fl.us/SchoolImprovement/new_sac_legislation.htm.

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.

Law. Hence, if any vote, resolution, or other action will be made or taken at a SAC meeting or a SAC subcommittee meeting, 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 2009*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 may be imposed upon any member who knowingly violates this law. 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 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.palmbeach.k12.fl.us/SchoolImprovement/docs/SAC_docs/agenda-sample.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 An electronic abridged version of the current version of this Manual appears at <http://myfloridalegal.com/sun.nsf/manual>.

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

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.palmbeach.k12.fl.us/SchoolImprovement/docs/SAC_docs/SACMinutesForm.doc .] 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, 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.

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.

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.

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. A summary of the Opinion appears in the Appendix below to this Memorandum.

B. Written Correspondence Can Violate the Sunshine Law

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 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.palmbeach.k12.fl.us/policies/>.

C. 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.

D. 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."

E. 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 are 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.

F. 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.

G. The Public's Right to a Meaningful Opportunity to Participate

The Sunshine Law contemplates not only the right of the public to attend meetings, but also in many circumstances the opportunity for public participation. Courts have required that, as to certain matters, **public input** at a public meeting was required.⁶ 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, however, that the 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."

H. 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. 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 112.311,⁷ 112.313,⁸ or 112.3143,⁹ F.S. If a member 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.

⁶ Courts have also recognized that there are some executive or ministerial functions, which have traditionally been carried out without public input, such as when a staff committee exercises delegated authority to review job applications and recommend a candidate. In such limited matters, judicial decisions appear to allow the public to remain spectators only.

⁷ 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 nature which is in substantial conflict with the proper discharge of . . . duties in the public interest."

⁸ 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.

⁹ 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."

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).

V. Conclusion

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.

APPENDIX

Q. Mr. Jones (a teacher) and the Math Department Chair (MDC) are both members of the SAC, in their hypothetical school district. The comments of all the SACs in the district are gathered to assist the school board in making a determination as to an approved range of instructional materials for district wide use. Considering that the particular textbook is under review by the SAC, can the teacher and Math Department Chair privately discuss the teacher's dislike of the textbook and his interest in using a particular workbook, which is also under review by the council, without violating the Sunshine Law?

A. "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 [the Sunshine Law]. 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."

Q. Can the Math Department Chair call a meeting of the math department without triggering the public meeting requirement, if the teacher/SAC member will be present and the Chair will discuss whether all the math teachers should volunteer to help the SAC evaluate materials?

A. "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 ...[the Sunshine Law]. 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 by the advisory council . . . Such discussion relates to the activities of the teachers themselves. It does not appear that the advisory council has either requested or accepted such services. Nor does it appear that . . . [they] are discussing or soliciting such services in their capacity as council members.”

Q. The SAC has been discussing solutions to behavior problems in the cafeteria and has included in the School Improvement Plan a better method of providing lunch. On the first day of school the behavior was terrible and the Principal wants to call a faculty meeting to obtain advice on preventing those problems the next day by having teachers escort students to the cashier, form lines, differently, and so on. All of these ideas had been discussed at a SAC meeting but were not formally put into action as part of the School Improvement Plan. The principal and several teachers are members of the SAC. May the principal call a faculty meeting today to seek a solution to prevent the same problems from reoccurring tomorrow?

A. “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 [the Attorney General’s] 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. 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.”

Q. In response to the same facts as in the previous question, the Principal wants to discuss today’s severe lunchtime behavior problem with School Resource Officer, who is also a member of the SAC. Can the Principal and the officer discuss this matter, which in a general way is under consideration by the SAC, without violating the Sunshine Law?

A. “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 [the Sunshine Law] 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 of the Principal and the SRO. [However,] 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.”

Q. Tomorrow, following today’s lunchtime problems, one of the parents, who happens to be a SAC member, finds the Principal and the Coach on lunch duty. They all happen to be members of the SAC. The parent is upset because her son was unable to eat lunch due to the problems.

May she discuss the continuing problems that she observes and make a suggestion that they should immediately change the arrangement of the cafeteria without triggering the Sunshine Law requirements considering that the SAC has been discussing improvement of cafeteria procedures?

A. “[Here], 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 lunchroom disruption on a particular day may be part of the broader topic of improvement of lunchroom 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.”