In-person Quorum-School Board Advisory Meetings

Number: INFORMAL

Date: March 05, 2021

Subject:
In-person Quorum-School Board Advisory Meetings

Ms. Barbara J. Myrick, General Counsel
The School Board of Broward County, Florida
600 S.E. Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

Dear Ms. Myrick,

This office has received your inquiry of November 4, 2020 on behalf of the School Board of Broward County, Florida, asking substantially the following question:

May a district school board's advisory committee meet remotely through communications media technology and without the requirement of an in-person quorum at a physical meeting location?

Because advisory committees are part of the district school board organization,1 unless and until legislatively or judicially determined otherwise, I conclude that the statutory requirement of an in-person quorum at a physical meeting location that applies to the School Board in conducting its business also applies to a school board advisory committee in carrying out its delegated duties.2

Background Facts

The School Board's inquiry is prompted by the expiration of Executive Order 20-69,3 in which Governor DeSantis had exercised his authority, during the declared Covid-19 pandemic emergency,4 to suspend any Florida Statutes that require a quorum of a local government body to be physically present in one location for it to conduct official business.5 The same executive order suspended any requirement that a local government body meet at a specific public place, and also authorized local government bodies to utilize communications media technology to conduct public meetings.6 You state that, during the time that Executive Order 20-69 was effective, advisory committees of the Board "met remotely through means of communications media technology and without an in-person quorum." The School Board now asks if, in the absence of the effective suspension of any requirement that a quorum be physically present, its advisory committees must have an-person quorum in one physical meeting location to conduct business.

Legal Analysis

Pursuant to section 1001.32(2), Florida Statutes, "district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law."7 Two general principles

apply in this regard. First, “[w]hen the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way.”8 Second, local provisions on a subject are deemed to conflict with state law on the same subject if a person acting to comply with one provision necessarily violates another.9

Chapter 1001, Florida Statutes, governs how school districts are organized and their meetings conducted. Section 1001.43(10) provides that the “district school board may adopt policies and procedures necessary for the daily business operation of the district school board, including, but not limited to, the . . . organization of the district school board, including special committees and advisory committees.” According to Black’s Law Dictionary, “organization” means the “way in which the various parts of a system are arranged and work together.”10

Therefore, by statute, special committees and advisory committees are component parts of a district school board.

Section 1001.372, Florida Statutes, sets out the requirements for conducting district school board meetings. It requires that such meetings “shall be held in the office of the district school superintendent or in a room convenient to that office and regularly designated as the district school board meeting room,” or, upon giving “due public notice,” “at any appropriate public place in the county.”11 It provides, further, that a “majority shall constitute a quorum for any meeting of the district school board,” and that “[n]o business may be transacted at any meeting *unless a quorum is present,* except that a minority of the district school board may adjourn the meeting from time to time *until a quorum is present.*”12 This office has interpreted these requirements to mean that “a quorum of the members of the board” must be “physically present at the meeting site.”13

The district school board’s authority to “adopt policies and procedures necessary for the daily business operation of the district school board, including . . . district school board meeting procedures, including participation via telecommunications networks, use of technology at meetings, and presentations by nondistrict personnel”14 does not provide a basis to avoid the physical quorum requirement. 15 While the statute allows a school board (including its advisory committees) to use communications media technology to allow a physically absent member to attend a public meeting by telecommunication network16 if a quorum of the members of the board is physically present at the meeting site,17 they do not excuse compliance with the physical quorum and location requirements of section 1001.372, Florida Statutes.

Conclusion

Based on the foregoing, unless and until legislatively or judicially determined otherwise, I conclude that where, as here, an executive order previously suspending a statutory in-person requirement for constituting a quorum has expired, the statutory requirement of an in-person quorum at a physical meeting location that applies to the School Board in conducting its business also applies to a School Board advisory committee in carrying out its delegated duties.

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General

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1 *See* § 1001.43(10), Fla. Stat. (2020).
2 *Cf.* Op. Att'y Gen. Fla. 2010-34 (2010) ("As an administrative arm of the city's governing body, however, it would appear that the same legislative requirement for the physical presence of a quorum in order to conduct municipal business would apply when the retirement board is carrying out its delegated duties.") (footnote omitted).

3 *See* Exec. Order 20-246 (Exec. Off. of the Gov. Sept. 30, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-246.pdf.
4 *See* Exec. Orders 20-52 (Exec. Off. of the Gov. Mar. 9, 2020); 20-114 (Exec. Off. of the Gov. May 8, 2020); 20-166 (Exec. Off. of the Gov. July 7, 2020); 20-179 (Exec. Off. of the Gov. July 28, 2020); 20-213 (Exec. Off. of the Gov. Sept. 4, 2020); and 20-246 (Exec. Off. of the Gov. Sept. 30, 2020), https://www.flgov.com/covid-19-executive-orders/.

5 *See* Exec. Order 20-69 (Exec. Off. of the Gov. Mar. 20, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-69.pdf.

6 *Id.*
7 *Accord* Op. Att'y Gen. Fla. 98-28 (1998).

8 *Alsop v. Pierce*, 19 So. 2d 799, 805-06 (1944).

9 *See Laborers' Int'l Union of N. Am., Local 478 v. Burroughs*, 541 So. 2d 1160, 1161 (Fla. 1989) ("Putting it another way, a conflict exists when two legislative enactments 'cannot co-exist.'") (quoting *Laborers' Int'l Union of N. Am., Local 478 v. Burroughs*, 522 So. 2d 852, 856 (Fla. 3d DCA 1987)) (citation omitted).

10 *See* Black's Law Dictionary (11th ed. 2019) (defining "organization").

11 § 1001.372(2), Fla. Stat. (2020).

12 § 1001.372(4), Fla. Stat. (2020)(emphasis added).

13 Op. Att'y Gen. Fla. 98-28 (1998).

14 § 1001.32(10), Fla. Stat. (2020).

15 In the absence of a statute explicitly providing otherwise, this office has consistently interpreted provisions requiring a quorum to be "present" for a government body to conduct public business to mean that the quorum of members must be physically present, and that members present by electronic means may not count toward establishing the quorum. *See generally* Op. Att'y Gen. Fla. 2020-03 (2020), and opinions cited therein.

16 “Telecommunications” has been defined in an unrelated statute to mean “the science and technology of communication at a distance, including electronic systems used in the transmission or reception of information.” § 282.0041(35), Fla. Stat. (2020).

17 This office has suggested that a school board, in permitting absent members not needed for a quorum to participate in board meetings remotely, “may wish to consider this office's previous opinions condoning the use of electronic media technology when an absent member is physically unable to attend a meeting due to medical treatment or physical infirmity.” Op. Att’y Gen. Fla. 98-28 (1998) (citing Op. Att'y Gen. Fla. 92-44 (1992) and Inf. Op. Att'y Gen. to Bryan W. Henry, dated July 26, 1982). However, section 1001.43(10), which was first enacted in 2002, does not require an absent member to be “physically unable to attend” to participate electronically.