Public Records

Number: INFORMAL

Date: November 12, 2014

Subject:
Public Records

Mr. Ralph Yoder
Superintendent, Calhoun County
School District
20859 Central Avenue East, RM-G20
Blountstown, Florida 32424

Dear Mr. Yoder:

As Superintendent of the Calhoun County School District, you have requested this office's assistance regarding the characterization of a video recording made during a meeting of the school board as a public record. Attorney General Bondi has asked me to respond to your letter and I provide the following informal comments in an effort to assist you.

Section 119.011(12), Florida Statutes, provides a definition of "[p]ublic records" for purposes of the Florida Public Records Law, Chapter 119, Florida Statutes:

"'Public records' means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

An "[a]gency" for purposes of the Public Records Law is defined to be

"any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."[1]

There is no question that the school board is an "agency" for purposes of Chapter 119, Florida Statutes, or that minutes taken of the meeting of the board pursuant to section 286.011, Florida Statutes, are public records which must be made available by the school board for public inspection and copying.[2]

While this office has received conflicting information regarding the purpose and character of the meeting held and the facts surrounding the recording of the meeting, a 2004 Attorney General's Opinion appears to provide some guidance in this situation. In Attorney General Opinion 04-15, the issue considered was whether a tape recording of a staff meeting was a public record in light

of *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*[3] In that case, the Florida Supreme Court contrasted public records which it considered to be records intended to communicate, perpetuate, or formalize information with materials prepared as drafts or notes, which it characterized as "precursors" of governmental records not intended to be final evidence of the knowledge recorded. This office concluded that tape recordings were public records since they were made at the request of the executive director as an independent record of the proceedings and, unlike tapes or notes taken by a secretary as dictation, were intended to perpetuate the discussion at a staff meeting.

From material communicated to this office, it appears that the video recording involved in your request was made of a school board meeting and at the direction of a school board member. While this office has not been advised of the uses to which this record may have been intended to be put, it appears to be a record intended to perpetuate the discussion at the meeting. In addition, you have not advised this office that any other record of the meeting was prepared as is required by section 286.011, Florida Statutes.

Finally, information submitted to this office suggests that the video recording may be of a quasi-judicial proceeding or hearing held by the school board. I note that the Florida Supreme Court has stated that there is no exception to the Sunshine Law which would allow closed-door hearings or deliberations when a board or commission is acting in a "quasi-judicial" capacity.[4] Thus, "[t]he fact that a board or commission is acting in a quasi-judicial capacity does not remove it from the [reach] of section 286.011, Florida Statutes."[5]

Any determination of a violation of the Government in the Sunshine Law or the Public Records Law is the province of the State Attorney in the judicial circuit in which the complaint is filed. This office is not a fact finder and has no authority to investigate whether a violation of the law has occurred or prosecute such a violation.

I trust that these informal comments will assist you in resolving this matter.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosures: Attorney General Opinion 2004-15
Informal Opinion to Matthews, dated July 12, 2004

cc: M. Gene Stephens (cubby1952@netzero.com)

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[1] Section 119.011(2), Fla. Stat.

[2] *See* Ops. Att'y Gen. Fla. 86-21 (1986) and 86-93 (1986), concluding that the Sunshine Law

does not require public boards to tape record meetings, however, if it chooses to do so, the tape recordings are public records.

[3] 379 So. 2d 633 (Fla. 1980).

[4] *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

[5] Op. Att'y Gen. Fla. 10-04 (2010). *And see Occidental Chemical Company v. Mayo*, 351 So. 2d 336, 340 n.7 (Fla. 1977), *disapproved in part on other grounds, Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992) (characterization of the Public Service Commission's decision-making process as "quasi-judicial" did not exempt it from s. 286.011, F.S.); and *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), affirming the lower court's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance hearing. *See also* Ops. Att'y Gen. Fla. 92-65 (1992), 83-43 (1983), and 77-132 (1977). *Cf.* Op. Att'y Gen. Fla. 10-15 (2010) (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).