

School Board, sharing of laptop computer

Number: INFORMAL

Date: December 18, 1995

Subject:
School Board, sharing of laptop computer

The Honorable Stephen Galaydick
School Board Member of Hernando County
919 North Broad Street
Brooksville, Florida 34601

Dear Mr. Galaydick:

This is in response to your request for an opinion as to whether you may share your laptop computer with other members of the school board when the hard drive of the computer contains information reflecting your thoughts and conclusions regarding matters either pending or which may come before the school board without violating the Government in the Sunshine Law.

In sum, the sharing of a computer in which the hard drive contains information reflecting your thoughts and conclusions regarding matters pending or which may come before the school board would not be a violation of section 286.011, Florida Statutes, if the computer is not used as a means of communicating between or among members of the board. Use of a computer to communicate thoughts and conclusions regarding pending or future matters before the school board among members of the board would be considered discussions of a board or commission subject to the open meetings requirements in section 286.011, Florida Statutes, the Government in the Sunshine Law.

Section 286.011, Florida Statutes, states that all meetings of public boards or commissions at which official acts are to be taken are public meetings open to the public. This statutory requirement extends to the discussions and deliberations of a board or commission, as well as any formal action taken by the board.[1] Thus, the Government in the Sunshine Law applies to any gathering where two or more members of a board or commission discuss a matter upon which foreseeable action will be taken by the board or commission.

While generally the requirements of the Sunshine Law are applicable to meetings of two or more members of the same board or commission, there are situations in which to assure compliance with the law's terms, the presence of two or more members is not required. For example, in Attorney General Opinion 89-39, this office concluded that the use of computers by members of a board of county commissioners to communicate among themselves would be subject to the provisions of section 286.011, Florida Statutes.[2] Thus, it is the communication of information between and among members of a board or commission regarding matters that may come before the board or commission that is subject to the Sunshine Law.

I would note, however, that the mere transmission of information from one member of a board or

commission to other members, without further interaction between or among the members, does not violate the Government in the Sunshine Law. In Attorney General Opinion 89-23, this office concluded that the Sunshine Law is not violated when one commissioner sends a report to another commissioner for informational purposes, so long as there is no interaction between the commissioners. Similarly, it has been concluded that no Sunshine Law violation occurs when a board member expresses his or her views or voting intent on an upcoming matter to a news reporter who the member knows will publish the account in a local newspaper prior to the meeting at which the matter will be considered, if the member is not using the reporter as an intermediary to communicate with other members to circumvent the requirements of the law.[3]

Accordingly, the mere fact that your thoughts regarding matters upon which the school board may take action would be accessible by other members of the board, would not, by itself, constitute a violation of the Government in the Sunshine Law. It may be advisable, however, in order to avoid the appearance of impropriety, to take precautions against using the computer as a means to communicate between or among members of the school board on issues that are before or may be considered by the board without consideration of the provisions in section 286.011, Florida Statutes. There appear to be several ways in which the members of the board could share the use of the laptop without sharing the information each places into the computer. While each member may wish to use the hard drive of the computer, any thoughts or conclusions on pending matters could be copied onto a disk that would remain with the individual member. The board may also consider the use of an encryption program, thereby allowing each member to store his or her information in a format not readily accessible by the other members.[4]

I trust the above observations will provide guidance in the resolution of this matter. These informal comments were prepared by the Division of Opinions in order to be of assistance to you, but does not constitute a formal opinion of the Attorney General.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] See, e.g., *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), stating:

"Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of [s. 286.011, F.S.]. . . . Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an 'official act,' an indispensable requisite to 'formal action,' within the meaning of the act."

[2] See *a/so* Inf. Att'y Gen. Op. to John Blair, June 29, 1973, stating that the circulation of a memorandum reflecting the views of one member on an issue pending before a board or commission among the other members who indicated their assent or dissent on the memorandum was subject to the provisions in section 286.011, Fla. Stat.

[3] See Fla. Op. Att'y Gen. 81-42 (1981).

[4] I would note that it has been judicially determined that information stored on a computer is as much a public record as a written page. See *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983). See *also* Fla. Op. Att'y Gen. 91-61 (1991) (computer data software disk is a public record).