Public Meetings--negotiations

Number: AGO 71-32A

Date: June 17, 2011

Subject:
Public Meetings--negotiations

(Supplement to AGO 071-32)

To: W. Crosby Few, Attorney, School Board, Tampa
Prepared by: Herbert T. Schwartz, Deputy Attorney General

RE: PUBLIC MEETINGS-- GOVERNMENT IN THE SUNSHINE--ADMINISTRATIVE LEVEL--NEGOTIATIONS

QUESTION:

If the Hillsborough County Board of Public Instruction conducts negotiations with the classroom teachers association on an administrative level and if the negotiators have no power to bind their principals, is the Sunshine Law violated by such negotiation being held in private?

SUMMARY:
Clarification of AGO 071-32.

I am of the view that the answer to your question is in the negative. I am not unmindful of AGO 071-32 issued by me on March 3 of this year. I am also not unmindful of the recent order entered by the Honorable Rhea Pincus Grossman in the case of Bassett, et al. v. Braddock, et al., in the Eleventh Judicial Circuit, Dade County. One of the issues of that case dealt with an issue similar to your request. That case dealt with a professional negotiator being retained by the Dade County Board of Public Instruction and being an agent or servant of the said board. The professional negotiator retained by the Dade County Board of Public Instruction was under specific authority and limited in the range of his negotiations. Judge Grossman found her partial final judgment of March 25, 1971 that "the negotiator is the agent of the board and is governed by the provisions of s. 286.011, F.S." No authority need be cited for the basic premise of law that an agent can bind his principal. The case arising in Dade County is presently on appeal, and is pending before the Supreme Court of Florida after having been certified by the Third District Court of Appeal.

From your letter I presume that the staff level discussions contemplated are totally exploratory in nature and result in no decisions that are controlling or binding upon the board of public instruction. It is this factor which gives the Hillsborough County matter a completely different hue vis-a-vis the Dade County issue. Likewise, it is this factor which would place the discussions envisioned in your request outside of the scope and intendment of s. 286.011, F.S. Thus viewed, the staff representatives of the parties to the negotiation in your situation cannot be viewed as agents of the parties as found by Judge Grossman in the Bassett case.

It is my view that the distinguishing feature in Hillsborough County is the lack of *binding authority* in the administrative staff members who carryon preliminary negotiations with staff members of the Classroom Teachers Association. I assume that these staff level discussions entail primarily the setting, out of positions by the respective parties so that appropriate briefing and memoranda can be supplied to the principals for their consideration and discussion in open meetings. This would seem a logical approach so that the principals may carryon meaningful and informed discussion when the final negotiation and settlement process begins, which process would clearly be within the ambit of the Sunshine Law and thus required to be in public.

I cite to you a portion of Judge Grossman's final judgment which I find compelling in answering your question:

"Since the work product of these negotiations is tentative and binding on no one, and since the public will be given an opportunity to express itself on those problems prior to their approval . . . the [private staff level negotiations] cannot be in violation of the letter or purpose of the Government in Sunshine Law."

While I recognize that Judge Grossman held an opposite view from AGO 071-32 in the Dade County case, I recognize that first, that case is on appeal and has, not been definitively or authoritatively adjudicated by an appellate court and second, that the Dade County factual situation differs significantly from your own.

This opinion should be interpreted in no way as modifying or receding from AGO 071-32. I view my above remarks as an expansion and modification of that earlier opinion based on the significant distinguishing feature of the Hillsborough County factual situation.