School board, authority of individual member

Number: INFORMAL

Date: March 30, 2012

The Honorable Charlie Van Zant
Clay County School Board Member
900 Walnut Street
Green Cove Springs, Florida 32043

Dear Mr. Van Zant:

Thank you for your recent request for assistance in determining whether holding a town hall style question and answer session in school facilities falls within the scope of a school board member's duties or authority. You also question whether the attendance of other school board members would subject the session to the Government in the Sunshine Law.

Materials you have provided include a memorandum from Ms. Linda L. Chessman on behalf of Mr. Ben Wortham, Superintendent of the Clay County School District, concluding that it would be a violation of state law and school board policy to allow an individual member of the school board to hold a "town hall meeting" at a school facility. Additionally, a memorandum from Mr. J. Bruce Bickner, Attorney for the School Board of Clay County, advises that such a meeting would be a "de facto" meeting of the school board which may be called only by the superintendent, the school board chairman, or by the vote of a majority of the members of the school board.

As discussed in this office's Statement Concerning Attorney General Opinions, such opinions are not a substitute for the advice and counsel of the attorneys who represent governmental agencies and officials on a day to day basis. Moreover, this office is not in a position to arbitrate disagreements which may arise within a governmental agency.[1]

Initially, I must concede that it is beyond the authority of this office to evaluate every aspect of a school board member’s interaction with his or her constituents to determine whether the member is carrying out school board duties or authority in each instance. Moreover, it would be a mixed question of fact and law which may not be determined by this office as to whether holding a town hall style meeting with constituents constitutes carrying out the duty or responsibility of a school board member. In order to be of assistance, however, the following general comments are offered.

While nothing in Florida law precludes you from communicating with your constituents, your inquiry concerns the holding of a "town hall meeting" on school property. Section 4, Article IX, Florida Constitution, provides that in each school district "there shall be a school board composed of five or more members" which "shall operate, control and supervise all free public schools within the school district . . . ."[2] The powers and duties of a district school board are couched in terms of being exercised "as a board," and do not contemplate the exercise of official duties of the board by a single member.[3] Pertinent to your inquiry, section 1001.42(2), Florida Statutes, states that the district school board, "acting as a board," shall "[s]ubject to the rules of

the State Board of Education, control property . . . ." Also relevant is the provision in section 1001.43(10), Florida Statues, authorizing the district school board to adopt policies and procedures necessary for the daily business operation of the board relating to "citizen communications with the district school board and with individual district school board members[.]"[4] School district policy, however, indicates that individual board members are entitled to full information and data necessary to the proper casting of the member's vote on any matter coming before the board for consideration, which "extends to the duty to listen to complaints that citizens bring him/her."[5]

Thus, the decision as to the control or permitted use of school district property appears to be one that the board must determine. In the absence of a request from a majority of the board, this office must decline to comment on the board's refusal to permit you to use school board property for your meeting.

Regarding the school board attorney's comments that the calling of such meeting would constitute a "de facto" meeting of the school board, I would generally note that Florida law prescribes that a district school board hold not less than one regular meeting each month for the transaction of business according to the schedule arranged by the board[6] and "shall convene in special sessions when called by the district school superintendent or by the district school superintendent on request of the chair of the district school board, or on request of a majority of the members of the district school board[.]"[7]

However, as noted above, this office may not comment upon the school district's decision not to allow you to hold your meeting on school property, absent a request from a majority of the board.

This office has previously discussed the attendance of board members at privately sponsored political forums and concluded that such attendance does not violate the Sunshine Law if there is no discussion among the board members on matters which foreseeably come before the board or commission members to avoid situations in which private gatherings may be used to circumvent the Sunshine Law's requirements.[8] However, this office has stated that a forum hosted by a city council member with city council members invited to attend and participate in the discussion would be subject to the requirements of section 286.011, Florida Statutes.[9]

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsh

---

[1] *See* Frequently Asked Questions About Attorney General Opinions, available at: http://myfloridalegal.com/opinions.

[2] Section 4(b), Art. IX, Fla. Const.

[3] *See* ss. 1001.41, 1001.42, and 1001.43, Fla. Stat.

[4] *Cf.* Op. Att'y Gen. Fla. 97-61 (1997) (attorney for a school board represents the board as a collegial body and acts at the request of the board as a collegial body and not at the request of an individual member); Inf. Op. to Keith B. Martin, dated November 21, 2006 (while school board member's authority to request public records pursuant to Ch. 119, Fla. Stat., *as a member of the public* may not be abridged, a school board would not appear to be prohibited from adopting a policy limiting the ability of a school board member to utilize staff to research and provide information or to create new records, in that case.

[5] School District of Clay County, School Board Policies, s. 1.02(A)4., which also requires a school board member to convey any complaint received to the superintendent.

[6] Section 1001.371, Fla. Stat., requires the chair and secretary of the district school board to "make and sign a copy of the proceedings of organization [of the board], including the schedule for regular meetings[.]"

[7] *See* s. 1001.372(1), Fla. Stat., further providing that if the district school superintendent fails to call a special meeting when requested to do so, such meeting may be called by the chair of the board or by a majority of the members by giving two days' written notice of the time and purpose of the meeting to all members and to the superintendent.

[8] *See* Op. Att'y Gen. Fla. 94-62 (1994). *And see Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (Sunshine Law must be construed "so as to frustrate all evasive devices").

[9] Inf. Op. to David Jove, dated January 12, 2009.