



STEPHEN B. RUSSELL
Office of the State Attorney
20th Judicial Circuit

Serving Charlotte, Collier, Glades, Hendry and Lee

FOR IMMEDIATE RELEASE

September 16, 2008

State Attorney Steve Russell announces his office has completed its second review of the issues of possible sunshine law violations pertaining to the dismissal of the former superintendent of Collier County schools.

The findings are attached.

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Stephen B. Russell, State Attorney

MEMO

TO: Stephen B. Russell, State Attorney
FROM: Dean R. Plattner, Assistant State Attorney
DATE: September 11, 2008
RE: Collier County School Board Sunshine Issues

This memo is a follow-up to a previous preliminary review which we conducted, regarding allegations of sunshine law violations by members of the Collier County School Board. That preliminary review was concluded with the issuance of your letter, dated January 8, 2008, to the School Board Attorney, Richard Withers. It was determined at that time that there was no evidence, nor even any specific allegations, of conduct by any individual which would be a violation of the sunshine law.

Since that time, the civil lawsuit filed by former superintendent Raymond Baker against the Collier County School Board, which alleged, in part, sunshine violations, has been settled. At your request, Chief Investigator Kevin Smith and I have over the last few months reviewed materials copied from the court file in that case, to determine if there was any additional statements or other evidence therein which would support any further action by this office.

For this follow-up review, we have considered the sworn depositions of Linda Abbott, Richard Calabrese, Dennis Thompson, and Terrance Walters, along with the materials attached as exhibits (which included copies of e-mails and telephone records).

It should be noted that as part of the settlement, Mr. Baker has agreed and stipulated that "the evidence to date does not establish that a violation of the Sunshine Law occurred." We agree with that assessment and statement.

While the depositions discuss numerous issues which might have been argued (if the case had proceeded to trial) as relevant to the issues of Mr. Baker termination from employment, there remains no evidence whatsoever that any member of the school board committed any act in violation of the sunshine law.

As with any criminal charge, an alleged violation of the sunshine law requires evidence, in the form of sworn statements and/or documents, that proves the elements of the offense beyond a reasonable doubt. In this matter, the plaintiff stipulated that the evidence did not even meet the much lesser standard of proof required in civil cases.

Regarding the specific factual issues in this case, it appears that a citizen, Mr. Walters, had contact with Dr. Thompson, before Mr. Baker was fired. It also appears that Mr. Walters had contact with one of more board members, at separate times. Dr. Thompson may also have had communications with one or more board members, separately. None of this is, in itself, a violation of the sunshine law.

The sunshine law prohibits two or more members of the same board from discussing the business of their board outside of a properly noticed public meeting. It also prohibits the practice of “daisy chaining”, where a third person is used as a conduit to pass information from one board member to another.

The sunshine law does not, however, prohibit casual communications between board members about things other than their board’s business, although the best practice may well be to refrain from this, and thus avoid any improper appearance. Further, the law does not prohibit any or all board members from communicating directly with employees, or prospective employees, or any member of the public.

The clear problem with investigating, reviewing, or prosecuting any alleged sunshine violation is the simple fact that, by their nature, the alleged communications will generally have been made in private. Unless there is a witness to the conversation who testifies as to the content, or one of the parties to the conversation admits to what was said, then there is no way to prove a violation, even if one occurred.

In this case there has still not yet been any actual evidence that any violation occurred. The matter still seems fueled, instead, by pure speculation and innuendo, by those who disagree with the substantive decision made by the board. It is important that the State Attorney avoid being in the position of being used by one side or another in a political or policy dispute. These decisions are supposed to be made by the duly elected public officials, and those who disagree should avail themselves of the appropriate political or electoral processes. Only in those situations where there is evidence of a criminal violation is it legal or appropriate for the State Attorney to take action.

Whether school board members, or others, had their own agendas or reasons for firing Mr. Baker and/or hiring Dr. Thompson, or had violated anyone’s contractual rights in doing so, was the subject of civil litigation which has been settled. These issues are not criminal within the authority of this office. Whether board members acted appropriately, or in the best interests of the community, are political and policy issues to be determined by the public. The simple fact, however, is that, to date, there has been no evidence provided by anyone which proves that any board members had unlawful communications with each other, which might have violated the sunshine law. Therefore, there is still no basis for this office to take any further action in this matter.

We have also become aware of another recently filed civil lawsuit which apparently raises again some of these same issues. This memo is not intended as a comment in any way upon such a lawsuit. While any private party may have the right to file a lawsuit in court, such action does not in itself affect our review of the merits, or lack thereof, of a potential criminal investigation or prosecution.

Cc: Randall B. McGruther, Chief Assistant State Attorney
Kevin Smith, Chief Investigator